THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

New Jersey Court of Errors and Appeals.

EDNA R. W. LARNED, Plaintiff-Respondent, AGAINST ELIZABETH MACCARTHY, *et als.*, Defendants-Appellants.	**Action at Law on Appeal.**

BRIEF FOR PLAINTIFF-RESPONDENT.

Statement of Facts.

The facts of the case are as follows: The plaintiff was entitled to dower in certain real estate at Summit, N. J.

She was requested by the heirs at law, who owned the land to join in a deed releasing her dower. The price was mentioned and she was asked whether in case of a sale, she preferred to be paid a sum in gross or to have one-third of the proceeds invested for her benefit.

She replied through her agent that she would join in the deed at the price named and that her percentage as fixed by the tables annexed to the Rules of Chancery was as eventually stated 21.935 per cent.

POINT I.

The plaintiff-respondent claims that the correspondence set forth in the complaint constituted a contract or bargain by correspondence, by which she agreed to release her dower in a certain piece of real estate for a certain percentage of the purchase price at first mentioned at 23.545, and later after attention had been called to the amended rules of the Court of Chancery for 1910, for the percentage of 21.935. The following extracts from such correspondence are all that are necessary for the understanding of the case. On the 5th April, 1912, plaintiff received a letter from one Mr. MacCarthy, admitted to have been the agent of the defendants and dated April 4th (Exhibit B), which states:

> "We have an offer of $45 a front foot for a 100 ft. strip on Prospect Street just above Larned Road with a depth of 175 feet along Larned Road. Will you please let me know as soon as possible if you will consent to the sale on these terms. The executors are of the opinion that it is a reasonable offer and should not be refused. I should like also to know in the event of their effecting a sale *whether or not you would wish to take a sum in gross in lieu of dower or prefer to have one-third of the proceeds invested for your benefit.*"

In reply to this letter and on April 5th, 1912 (Exhibit C), Mr. Richards, the agent of the plaintiff wrote at her request to Mr. MacCarthy * * * "As to the proposed sale of a plot on Prospect "Street, Summit. She directs me to say that she "consents to this sale at $4,500 and prefers to be "paid a sum in gross for her interest—you have "supposed her age to be greater than it is. She was "35 on the 23rd day of Feb., 1912. Her per-

"centage for dower under the New Jersey Chancery "rules is therefore 23.545 * * *."

It should be observed that Mr. Richards' reply adopts the language of Mr. MacCarthy's proposition—"would she wish", and "would she prefer" and he states that she "prefers" his first alternative which is to "take a sum in gross." She thus accepted the form of a sum in gross and specifies that the percentage that she claims under the N. J. Chancery Rules is therefore 23.545 per cent. The plaintiff claims that these two letters constituted a contract and the trial Judge appears to have so found—State of Case, p. 37.

The defendants and appellants claim that by such correspondence there was no bargain and that the value of her dower right should be ascertained by reference to certain rules of the Court of Chancery which were framed for the purpose of adjusting the value of rights of dower and courtesy in certain suits and where the tenant in dower or courtesy expressly consented to accept a sum in gross.

Upon the sale of the lot in question the entire purchase money was received by the defendants the plaintiff having united with them in a conveyance of the property, leaving such conveyance in their hands for delivery.

The amount for which the action is brought is the sum of $1146.42 being 21.935 per cent. of the $5226.48 which were the net proceeds of the sale, after deducting commissions and necessary expenses. Upon the foregoing facts it is at once evident that the plaintiff did not have in view any other calculation for fixing the value of her dower right than that set forth in the correspondence annexed to the complaint, and she in no manner, subjected herself to the rules of the Court of Chancery but merely agreed to take a sum in gross in accordance with the tables an-

nexed to such rules which fix the percentage to be allowed for a dower right, for each particular age. The plaintiff's age was at the time, 35 years, and the percentage by the table at that age was under the tables of 1910, 21.935 per cent. There was no suit whatever pending either in the Orphan's Court or the Court of Chancery and she had in no manner consented to subject herself to the said rules. This precise percentage having been fixed as the price at which she would make conveyance of her dower right and the defendants having, without any question or further bargaining, as to the price to be paid for her release presented to her a deed for execution, and she having duly executed and delivered to them for delivery to the purchaser the said deed, and they having received the entire purchase money, the defendants became at once liable to her for the price or percentage which, by the correspondence between them, had been agreed upon. To make the position more emphatic we may suppose that the plaintiff, having authorized the letter of April 5th, and delivered the deed had demanded of the defendants that one-third of the proceeds should be invested for her benefit and for the term of her natural life. Would they not at once have said in case this proposition did not please them that they would not agree to such change of the contract and that they did not wish one-third of the proceeds subjected, during the term of her life to the hazards of investment.

POINT II.

The plaintiff claims that the actual value of her dower cannot be less than the sum claimed on any theory. Dower is thus defined in Vol. 2 of the Compiled Statutes of New Jersey: "That

"the widow of any person dying intestate or "otherwise, shall be endowed for the term of her "natural life of the one full and equal third part "of all the lands, tenements, and other real estate "whereof her husband or any one to his use was "seized of an estate of inheritance at any time "during the coverture" * * * Under this statute the purchase price would stand for the land itself and she would be entitled to have either one-third part of the proceeds invested for her benefit or to have a sum in commutation thereof, based upon her expectation of life, paid as a sum in gross. It might be conceded that in case she had consented to a reference to determine the value of such sum in gross the state of her health might be taken into consideration. In this case, it is admitted, that she has the average expectation of life.

POINT III.

It appeared upon the argument in the trial court that the defendants claim that the plaintiff had in some manner subjected herself to Rules 184 and 185 of the Court of Chancery. A very cursory reading of these rules shows that they apply only to a case where *improved property* is sold. And where there are two subjects for inquiry in determining the sum in gross which a widow in some suit or proceeding has consented in writing to accept. The two questions are:

1st. What was the net income of the property with all proper deductions for repairs before the sale.

2nd. What is the income estimated at 4 per cent. upon the proceeds of sale. As there is only one income in this case, namely, from the proceeds

of sale, these rules have no application to the case under consideration.

The defendants herein argue that there being no income from the plot in question on account of its being a vacant plot that to nothing was to be added "one-half of the excess calculated from the net proceeds of sale." In other words, that a rule that was intended to enable the master to report in favor of an addition to the widow's sum in gross in lieu of dower was to be employed to reduce her dower by one-half. The object of the rule was to give the widow more and not less than she was heretofore receiving from improved real estate. The rule has no application at all to vacant property for it requires two incomes from which to make the calculations. But it seems unnecessary to discuss the purpose of these rules, for, as we have said, the plaintiff made no consent to be bound by them and there was no suit of any kind pending.

The value of dower or of any other property is the sum or price that it will bring. Improvements may or may not produce income. If improvements are not adequate or suitable the improvements may become a detriment instead of an addition to the value of the property. In case of an actual sale of property the price obtained is that upon which the rights of the parties are to be calculated. In this case, a vacant lot was to the purchaser, Halsey, of more value than one improved, for she could improve it to suit herself. As to the value of dower in Woodland: See *Brown* v. *Richards,* 17 N. J. Equity, 32. See also the very recent case of *Turner* v. *Kuehnle,* 71 N. J. Equity, 466. In both these cases the court held that the doweress was entitled to have one-third of the net proceeds of sale invested for her benefit.

Any judgment which would result in compell-

ing the widow to receive for her dower less than a sum in gross based upon the entire net proceeds of sale would under the New Jersey Statute be unconstitutional as taking her property without due process of law. An exception might be made where the health of the widow was so decidedly bad that her expectation of life was much below the average, but even that could not be taken into consideration except in the case of a sale in some suit or proceeding in which she had consented to accept a sum in gross.

The judgment of the Court below should be affirmed.

WILLIAM B. STITES,
77 River St.,
Hoboken, N. J.
JAMES RICHARDS,
Attorneys and Counsel for
Plaintiff-Respondent.

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New Jersey Supreme Court

Notice of Appeal

(Filed, May 12, 1913)

NEW JERSEY SUPREME COURT

UNION COUNTY

EDNA R. W. LARNED, Plaintiff, vs. ELIZABETH MACCARTHY, *et als.*, Defendants.	Action at Law. Notice of Appeal.

To:

William B. Stites, Esq.,
Attorney for Plaintiff.

Take notice that the defendants appeal to the Court of Errors and Appeals, from the whole of the judgment entered in this cause.

Yours &c.,
ROE, RUNYON & TOMPKINS,
Attorneys for defendants.

(Endorsed:)

"Service of a true copy hereof acknowledged this 9th day of May, 1913.

WM. B. STITES,
Atty. of Plaintiff.

Grounds of Appeal

(Served June 6, 1913, filed June 9, 1913)

NEW JERSEY COURT OF ERRORS AND APPEALS

EDNA R. W. LARNED, Plaintiff and Respondent vs. ELIZABETH MACCARTHY, *et al.*, Defendants-Appellants.	Action at Law.

The appellants state the following grounds of appeal:

1. That the damages awarded were illegal and not in accordance with the finding of fact.

2. That the Court erred in the application of rule 185 of the Chancery Court by finding for the plaintiff for the full amount calculated upon the proceeds of sale, when the said amount should have been reduced by one-half of the difference between said amount and the amount calculated upon the income of said property, which was nil, and which difference would have made the sum due the plaintiff-respondent, $573.21.

3. That the Court erred in giving damages for the whole amount calculated upon the net proceeds of sale and disregarding the law that consideration should be given for the amount calculated upon the income of sale.

4. That the Court exceeded its power in exercising a discretion as to a reasonable amount to be paid in lieu of dower, in not basing such discretion upon the amount calculated upon the income of said property, however small the same may be.

5. That the Court found that the agreement of the parties was that the plaintiff was to be paid a gross sum to be calculated according to the 185th rule of the Court of Chancery, and awarded damages, not in conformity with said rule.

ROE, RUNYON & TOMPKINS,
Attorneys of Defendants-Appellants.

JUDGMENT RECORD

(Filed, September 3, 1912)

NEW JERSEY SUPREME COURT

EDNA R. W. LARNED, vs. ELIZABETH MACCARTHY, WILLIAM A. LARNED and EDWARD P. LARNED.	Complaint William B. Stites, Attorney.

Elizabeth MacCarthy, William A. Larned and Edward P. Larned, the defendants in this cause were summoned to answer unto Edna R. W. Larned, the plaintiff therein in an action at law upon the following complaint:

1. Plaintiff resides at Summit, Union County and State of New Jersey.

2. Plaintiff is the widow of William Z. Larned; late of Summit, deceased; and that the said William Z. Larned died at said Summit on the thirtieth day of March, 1911, leaving a last will and testament, which has been duly proved and admit-

ted to probate by the Surrogate of said County of Union, a copy thereof is hereto annexed, as a part of this complaint and marked Exhibit A.

3. That said William Z. Larned left him surviving the plaintiff, his widow, as before stated and the defendants herein named his only children and heirs at law.

4. That said William Z. Larned died seized and possessed, among other real properties, of a certain plot of real estate, situate on the corner of Prospect Street and Larned Road in said Summit and having a frontage on Prospect Street and in the rear of 119.35 feet, and in depth and on Larned Road of 175 feet, hereinafter mentioned and referred to as having been conveyed to one Elizabeth Halsey by the parties herein.

5. That in and by his last will and testament the said William Z. Larned devised the said mentioned real estate to the defendants herein in fee simple, subject to the right of dower of the plaintiff therein which dower right he expressly confirmed by his said will.

6. That in all the transactions and negotiations hereinafter mentioned James Richards acted as attorney and agent for the said plaintiff.

7. That in all the transactions and negotiations hereinafter mentioned Albert H. MacCarthy who is the husband of the defendant Elizabeth MacCarthy acted as the agent for the said defendants.

8. On the fourth day of April, 1912, the said plaintiff received a letter from the said Albert H. MacCarthy, acting as agent of the said defendants, in which it was stated that an offer was made of $45.00 a front foot for a one-hundred foot strip on Prospect Street at the corner of Larned Road, with a depth of 175 feet on Larned

Road and asking whether plaintiff would consent to a sale at that price, and that the defendants were of the opinion that the offer should be accepted and that he would like to be advised, in case she agreed to the sale, whether plaintiff would wish to take a sum in gross in lieu of dower or prefer to have one-third of the proceeds invested for her benefit, a true copy of which letter is hereto annexed, marked Exhibit B, and made a part hereof.

9. On April fifth, 1912, the said plaintiff, by the said James Richards, communicated with the said Albert H. MacCarthy by letter acknowledging receipt of said letter of April 4th, in which plaintiff consented to said proposed sale of said premises on Prospect Street in Summit at that price and stating the she "preferred" following the language of said request, to be paid a sum in gross for her interest and that her percentage for dower under the New Jersey Chancery Rules was 23.545, a true copy of which said letter is hereto annexed and marked Exhibit C, and made a part hereof.

10. On the 11th day of April, 1912, plaintiff by her attorney, received a letter from said Albert H. MacCarthy, dated the 10th day of April, 1912, acknowledging the receipt of plaintiff's letter of April 5th, a true copy of which letter is hereto annexed and made a part hereof, marked Exhibit D. That said letter and the one next hereinafter set forth had chiefly reference to a negotiation which was pending between the plaintiff and the defendants for the sale of plaintiff's interest in certain lands situate in the State of Kansas, which the parties were proposing to deal with in accordance with the laws of the State of New Jersey.

11. Plaintiff by her said attorney on the 13th day of April, 1912, wrote a letter to the said Albert H. MacCarthy, in which she stated that in the sale of the said real estate on Prospect Street, the plaintiff would accept her percentage according to the amended table attached to the Amended Rules of 1910, of the Court of Chancery, a true copy of which letter is hereunto annexed and marked Exhibit E, and made a part hereof. That by said amended table her percentage would be 21.9347 instead of 23.545 as stated in Exhibit C.

12. That in pusuance of said correspondence and on the 26th day of April, 1912, and at the request of the said defendants, through their agent Albert H. MacCarthy, the plaintiff executed a deed, in which the defendants joined as grantors, to one Elizabeth Halsey of said premises on Prospect Street, in which the total consideration of the conveyance was stated to be Five thousand three hundred and seventy Dollars and seventy-five cents, ($5,370.75), and plaintiff by said deed joined in the warranty of the title thereof, at request of the defendants, and to the extent of her share in the proceeds, as is expressly set forth in said deed and on or about the said 26th day of April, 1912, signed and acknowledged said deed, which was dated on the first day of May, 1912, and delivered the same to the defendants, who thereafter on or about the first day of May, 1912, also executed and acknowledged said deed and delivered the same to the said Elizabeth Halsey and received in cash and a purchase money mortgage the whole of said consideration aforesaid.

13. That the defendants agreed that they would regard the said purchase money mortgage

as cash in settling with plaintiff for her gross sum in lieu of dower.

14. The plaintiff became of the age of thirty-five years on the 23rd day of February, 1912, and by reason of her health and vigor has the usual and full expectancy of life.

15. That said premises herein mentioned and conveyed to the said Elizabeth Halsey is situated in a neighborhood which is well adapted for building sites and in a flourishing city and where a sale might reasonably be expected and where there is a reasonably active market for such premises.

16. Plaintiff says that her percentage for her dower as agreed upon by the defendants as aforesaid, upon the sale of the premises herein mentioned at the price of $5,370.75 amounts to the sum of One thousand one hundred sixty-four dollars and forty-two cents ($1,164.42), which they have refused to pay.

17. Plaintiff says that the reasonable and fair value in law of her dower right so conveyed or released by her as aforesaid and upon said price realized is irrespective of any agreement, the above sum of One thousand one hundred forty-six dollars and forty-two cents ($1,146.42).

Wherefore, plaintiff demands judgment against the defendants for the said sum of One thousand one hundred and forty-six dollars and forty-two cents ($1,146.42) with interest thereon from the first day of May, 1912, together with the costs of this action.

WM. B. STITES,
Attorney for Plaintiff.

Exhibit A

Annexed to complaint

Copy of Will of William Z. Larned

I, William Z. Larned, of the City of Summit, State of New Jersey, eighty-nine years of age and being of sound mind and memory, do, make, execute and declare this my last will and testament in manner and form following that is to say:

First: I direct that my funeral expenses and such personal debts not secured by mortgage as I may owe be paid and discharged as soon as practicable after my decease.

Second: I give and devise and bequeath to my wife Edna R. W. Larned, the following properties:

a. A plot of ground situate on the southerly side of the Blockburn Road in the City of Summit, New Jersey, adjoining land now owned by her, running from the northeasterly corner of her lot easterly along the southerly side of said road one hundred (100) feet, thence running southerly and parallel to her line to the land of Benj'm F. Holmes and thence westerly along the Holmes line to the southeasterly corner of her lot and thence northerly along the easterly line of her lot to the point or place of beginning.

b. I give to my said wife the sum of Five thousand ($5,000) dollars in cash to be paid within three months after my death.

c. I give to her one hundred volumnes of books from my library to be selected by her.

d. I confirm to her, her right to dower in all the real estate of which I shall die seized.

I confirm her right to the income of the trust fund made for her benefit of which James Richards and Wm. A. Larned are trustees.

Exhibit A – Complaint

THIRD: I give and bequeath to Elizabeth Bankhead of New York City the sum of one thousand dollars and to her sister Mrs. Horace Bacon the sum of five hundred dollars in token of valued friendships of many years.

FOURTH: I give to the Summit Free Library Association for the purchase of books, one thousand dollars and to the Fresh Air and Convalescent Homes for current expenses the sum of one thousand dollars.

FIFTH: I give and bequeath to my daughter Mrs. Elizabeth MacCarthy the sum of two thousand ($2,000) dollars in trust nevertheless to invest and keep invested said sum and pay the net interest or income to Erastus Drummond, my long time employee during his natural life and at his death if his wife survive him, then to her during her life and then to their children then surviving. Said trustee in her discription may pay over the principal of said fund to said *sestui qui* trust at any time if she thinks it beneficial to them to do so.

SIXTH: I give and bequeath to my said daughter Elizabeth McCarthy the sum of one thousand ($1,000) dollars in trust nevertheless to invest and keep the same invested and pay over the net interest or income thereof to the father or other guardian of Susan W. Wiley, daughter of Albert Wiley of Amityville, New York, towards her education and support until she arrives at the age of twenty-one and when she arrives at that age to pay the principal of said fund to the said Susan E. Wiley. Said trustee may at any time pay the principal to said father or guardian in her discretion if she thinks it beneficial to said *cestui qui* trust to do so.

Exhibit A – Complaint

SEVENTH: I give to Elizabeth Dwyer five hundred dollars.

EIGHTH: I give bequeath and devise all the personal and whereso ever the same may be situand personal and wheresoever the same be situated to my three children William A. Larned, Edward P. Larned and Elizabeth MacCarthy, to be divided equally among them, share and share alike. In its distribution I desire that they eqalize as nearly as may be the advances I have made or shall make to them severally prior to my decease. And finally

I make, constitute and appoint my said three children Wm. A. Larned, Edward P. Larned and Elizabeth MacCarthy to be the executors and executrix of this my will, with full power and authority to sell any and all real estate of which I may die seized and to execute good and sufficient conveyances therefor with or without warranty, and I direct that no security be required of them or either of them whether they reside in the state where this will shall be proved, and I revoke all former wills by me made—Witness my hand and seal this eleventh day of January, 1911.

Signed William Z. Larned, (L.S.)

The foregoing instrument was upon the day of the date thereof signed, sealed, published and declared by the said William Z. Larned as and for his last will and testament in our presence and in the presence of each other and who at his request have signed our names as witnesses thereto. Said will consists of six pages and is dated January 11th, 1911.

OTTO F. VON ARNIM,
253 Broadway, New York City.
WM. H. DEADY,
244 E. 19th St., N. Y. C.

Exhibit B

Annexed to complaint

Estate of W. Z. Larned,
Summit, New Jersey.
Apr. 4, 1912.

Mrs. William Z. Larned,
#1 Tulip Street,
Summit, N. J.

Dear Edna:

I herewith enclose check to your order for $1224.63 in settlement of quarterly estate account to Mar. 31st. In a day or so I shall send you a complete copy of all ledger accounts to the end of the quarter and hereafter will send a statement of the quarterly entries with the quarterly check.

We have had an offer of $45.00 a front foot for a one-hundred foot strip on Prospect St. just above Larned road with a depth of 175 ft. along Larned Road. Will you please let me know as soon as possible if you will consent to the sales on these terms.

The Executors are of the opinion that it is a reasonable offer and should not be refused. I should like also to know in the event of effecting the sale whether or not you would wish to take a sum in gross in lieu of dower or prefer to have one-third of the proceeds invested for your benefit.

Very sincerely yours,
Signed, ALBERT H. MacCARTHY.

M/S. encl.

Exhibit C

Annexed to complaint

JAMES RICHARDS
Attorney and Counselor at Law

New York, April 5, 1912.
RE Mrs. Larned.

Dear Mr. MacCarthy:

Your favor of the 4th as to Atchison lots at hand Edna, on my request by 'phone, came to see me at once, and we talked over your proposition as to Kansas property and also the agreement you sent. We also talked over your letter to her of 4th as to proposed sale of plot on Prospect Street, Summit.

She directs me to say that she consents to this sale at $4,500, and prefers to be paid a sum in gross for her interest. You have supposed her age greater than it is. She was 35 on the 23d day of February, 1912. Her percentage for dower under the N. J. Chancery Rules is therefore 23.545.

As to the Kansas proposition, I will write you at Summit in detail tomorrow.

Yours very truly,
JAMES RICHARDS.

Albert H. MacCarthy, Esq.,
Summit, N. J.

Dict, JR/W

Exhibit D

Annexed to complaint

ESTATE OF WILLIAM Z. LARNED

Summit, New Jersey.
Apr. 10, 1912.

Mr. James Richards,
#50 Church Street,
New York City.

My dear Sir:

I acknowledge receipt of yours of the 5th inst., in reference to the sale of the one hundred foot plot on Prospect St., Summit at the price of $4,500 and note that Mrs. Larned will consent to such a sale for that price, and that she would prefer to be paid a sum in gross for her interest. We will have this corner plot surveyed to see the amount of land that is left and in case the balance is of sufficient size to make a good sized lot we shall draw up the necessary papers to carry into effect this sale.

I also acknowledge yours of the 6th inst., in reference to the Estate lands in Kansas and *note* the contents. According to my recollections you cited me a New Jersey Equity case to show the annuity table in use in New Jersey for figuring out the present value of a widows dower interest In looking over your letters the only reference I find to this matter is one in which you refer me to No. 25 New Jersey Equity page 513, and in this it states that Chancery rules 130-131 govern this matter.

This case was decided in 1874 and the annuity table which I used in my calculations a few days

Exhibit D – Complaint

ago is the one given in Kocher's Orphans Court Practise for New Jersey published in 1902, and I judge this table is the proper one to use for it says at the head of the column "Widows percentage of net proceeds of sale." I took Mrs. Larned's age as being thirty-five and found that the percentage as given by the table was approximately 22%. With regard to the third paragraph in the form of agreement that I sent you I stated the legal rate of interest with the idea that it would be at the rate of 6%, and it of course would be safer to state it at 6% as this is the rate at which one can always secure a loan on reasonable security.

Five per cent money is not always available and this rate of interest should be at the prevailing rate for such a loan.

I do not understand your expression that the agreement should specify that she should pay one third of the interest estimated at 5% and not more because improvements will be constantly deteriorating." My idea is that the gross income from the Kansas should be charged quarterly or semi-annually for the interest at six per cent on any loans that were made for the improvement of the property and in case of a sale of the property the principal of these loans should first be paid off and the balance remaining distributed according to the interests of the different parties.

In order to protect against fire loss full insurance should be carried and any recovery on policies for total destruction should first be used to pay off the loans.

I note you suggest that in case of sale of an improved property that the fair value of the

Exhibit D - Complaint

improvement should be paid instead of the principal of the loan which was secured to make the improvement.

Adopting such a method as this it *seem* to me would be making it somewhat of a one sided affair, the dowerss getting the benefit of the increased rentals because of the improvement and being charged only one third of the interest at six per cent, and the cost of the improvement and the devicees at the end of a number of years being charged for the deteriorating of the improvements that they took the trouble to make in order to increase the income for all parties concerned. There may be some equity in this but my present impression is that it will not appeal very forcibly to the devisees.

It may be true that your proposed agreement, was along the lines of your letter of Sept. 19th but even so it left out one feature on which the most stress was laid when we discussed the terms of the agreement, an interchange of quit claim deed and a provision for improving the property.

With regard to the suggestion for the devisseess to pay a sum outright for a quit claim deed I note that Mrs. Larned is willing to accept $10,000. but refuses the offer of $7,500. If you or she were in the money market during these times when cash is an extremely valuable commodity, I think you would understand why the devisees are not overly anxious to give up cash and take over real estate that has been a drug on the market for so many years.

There *on* object in consenting to do this is to get the estate matters settled up as soon as possible. The one way that we can arrive at the

present value is to consider what it would sell for at present and then estimate the sum in gross for the amount of this selling price, and this I attempted to do in my calculations. I took the sum of $50,000 when perhaps I should have averaged the 51,000 and 57,000 and figured it out on a basis of present value of 54,000. This would have increased the total about $300.00.

With these changes I think the heirs would consent to make cash payment of $8,000, but I am positive that they will not consent to go beyond this figure. Cash is far more attractive than real estate, much of which is undeveloped and which bears a heavy tax burden which of late years has been increased.

I feel sure that the heirs wish Mrs. Larned to pursue whatever course she consider for her best interest and that they do not wish her to do anything which she would consider in the nature of a sacrifice of her rights. I have today forwarded to her a copy of the ledger accounts covering all the transactions during year from Apr. 1st, 1911 to Mar. 31, 1912, and hereafter at the end of each quarter I shall give her a copy of the quarterly entries. In case these are not in form such as she would like, I would be glad to have any suggestions she wishes to make concerning the matter.

Very truly yours,

ALBERT H. MacCARTHY.

Exhibit E

Annexed to complaint

JAMES RICHARDS
Attorney and Counselor at Law

New York, Apr. 13, 1912.

Dear Mr. MacCarthy:

I received your letter of the 10th upon the 11th, and mailed the same with my comments upon it to Mrs. Larned and have received the same back with her reply this morning.

With respect to the annuity table to which you refer in Kocher's Orphans Court Practice, it is entitled "Table of Mortality," present value at 4% interest of an annuity of $1.00 during life, first payment to be made at the end of the year; also showing the widow's percentage of the net proceeds arising from the sale of land in which she is entitled to dower, her age at the time of sale being given. These are the tables adopted also by the Court of Chancery as published on the 4th day of March, 1910, and probably previously. However, sales by the Orphan's Court are sales for the payment of debts so far as I could observe, but under Rule 170 of the Court of Chancery, it appears that the widow's right of dower is to be ascertained in partition suits in the same manner as on the sale of infants lands, and these sales are governed by the 184th rules and 185th rules, which are not invariable according to the decisions thereon, and of course, in no case, is the widow obliged to accept a sum in gross based upon the tables. It is only when she agrees to do so.

However, upon the sale of the lot which you

propose to sell at Summit, she will accept a sum in gross according to that table.

As to the proposition to buy her interest in the Kansas lands outright for $8,000.00, she direct me to say that she can not accept that sum, and I do not think that she will accept anything less than the $10,000. I think she will accept that sum, but I can not say until I have another interview with her.

Yours very truly,

JAMES RICHARDS.

Albert H. MacCarthy, Esq.,
No. 261 Broadway, City.
Dict. JR/W.

Answer

(Filed, October 3, 1912, by consent as within time)

Defendants, Elizabeth McCarthy, William Larned, and Edward P. Larned, all of whom reside at Summit, Union County, New Jersey, say:

They admit the allegations respectively set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 of plaintiff's complaint.

They admit the allegations set forth in paragraph 11 of said complaint, except that part thereof which states as follows:

"That by said amended table her percentage would be 21.9347 per cent instead of 23.545 per cent as stated in Exhibit C." which allegation they deny.

They admit the age of plaintiff as stated in paragraph 14 of said complaint, but as to her

present health and vigor or expectancy of life these defendants have no knowledge or information thereof sufficient to form a belief.

These defendants further answering, deny the allegations respectively set forth in paragraphs 16 and 17 of the plaintiff's complaint.

ROE, RUNYON & TOMPKINS,
Attorneys of Defendant.

Judgment

(Entered, April 24, 1913)

This case was tried before Judge Benjamin A. Vail, without a jury at the Union Circuit on March 10th, 1913. After hearing the evidence and counsel for plaintiff and for defendant the Court finds:

1. The Court finds the issues for the plaintiff and that the statements contained in the complaint are supported by the evidence.

2. The damages of plaintiff are assessed at $1,146.42 with interest thereon from May 1st, 1912.

Whereupon it is adjudged that the said plaintiff do recover of the said defendant the sum of one thousand one hundred and forty-six dollars and forty-two cents with interest thereon from May 1, 1912; and also his costs which are taxed at the sum of sixty-five dollars and ninety-one cents. $1,146.42 Interest from May 1, 1912. $65.91 Costs.

Judgment entered April 24, 1913.

WM. S. GUMMERE,
C. J.

Clerk's Certificate

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this fourteenth day of May, A. D. nineteen hundred and thirteen.

WILLIAM C. GEBHARDT,
Clerk.

(Seal)

Stipulations as to Facts

NEW JERSEY SUPREME COURT

UNION COUNTY

EDNA R. W. LARNED,
vs.
ELIZABETH McCARTHY and others.

Tried at Jersey City, N. J., on Monday, March 10, 1913, before Hon. Benjamin A. Vail.

Mr. Stites: It is admitted by counsel for the respective parties, that the facts alleged in the complaint are admitted with the exception of the proposition of law involved as to the amount of percentage which the plaintiff is entitled to.

Mr. Roe: Hadn't you better put that in the form of the fact, saying this, that it is admitted that William Z. Larned died leaving a will, in

which he gave to his wife the confirmatory dower interest in all of his real estate; that the will was admitted to probate and that the defendants were made the executors of the will.

Mr. Richards: Yes; and they are the sole devisees.

Mr. Roe: That they are the residuary devisees. That there was a piece of real estate situated in Summit, New Jersey, to be sold. That the executors under their power of sale—

Mr. Richards: No. Here is a certified copy of the deed. Put that in evidence.

Mr. Roe: Very good. That the executors prior to April, 1912, had an offer for this property, as residuary devisees; that they wrote to the widow, stating to her that they had an offer of forty-five dollars a running foot for this property, and asking her if she would join in the deed, or would release her dower, and in doing so whether she wanted her interest invested or she would take a gross sum in lieu of dower—

Mr. Richards: They asked if she wished—if you will read it from the letter which is attached to the bill—

Mr. Roe: Yes. Under their letter of April 4th, Mr. McCarthy wrote, "We have an offer of forty-five dollars a front foot for one hundred feet on Prospect Street, just above Larned Road, with a depth of one hundred and seventy-five feet on Larned Road. Will you please let me know as soon as possible if you will consent to a sale on these terms. The executors are of the opinion that it is a reasonable offer and should not be refused. I should like also to know if in the event of effecting this sale whether or not you would wish to take a sum in gross in lieu of dower, or prefer to have one third of the proceeds invested

for your benefit." That is the exact language. This was replied to by Mr. Richards, under date of the 3rd of April.

Mr. Richards, we admit, represented the widow, and he wrote: "As to the proposed sale of plot on Prospect Street, Summit, she directs me to say that she consents to this sale at forty-five hundred dollars"—I suppose he meant forty-five dollars a foot; he said forty-five hundred dollars—"and prefers to be paid a sum in gross for her interest. You have supposed that her age is greater than it is. She was thirty-five on the 23rd of February, 1912." That is her age anyhow now?

Mr. Richards: Yes, now.

Mr. Roe: "Her percentage for dower under the New Jersey Chancery rules is therefore 23.545 per cent." That is all that refers to that.

Mr. Richards: Yes. Afterwards she called my attention to the Orphans' Court rules, and I found that they were the chancery rules as amended in 1910, which made the percentage 21.935, and I wrote him a letter saying that, however, in closing this transaction we will accept 21.935.

Mr. Roe: Under the amended rules. Now that was practically all the letters that you wanted read? Do you want the other letters in? After that transaction there was an academic discussion of what the gross sum in lieu of dower was.

The Court: That would be a mere matter of calculation.

Mr. Richards: That is what we supposed, at any rate.

Mr. Roe: The sale was made—

Mr. Richards: By deed dated—here is the warranty deed.

Mr. Roe: And the widow joined in.

Mr. Richards: I would like to add still further that she joined in the deed not with the executors under their power of sale, but with the defendants, who are the heirs and the devisees of the late William Z. Larned, who was a well known lawyer in Summit, New Jersey, and in New York, and Mr. McCarthy brought around the proposed deed to me for consideration, ranty deed, in which she was joined in the coveand he brought around a full covenant warranty deed, in which she was joined in the covenants of warranty, and I agreed to that, inserting a clause that the warranty should bind each one in proportion to their share of the consideration money. The exact language will appear by the deed itself, which should go in evidence. It was not a deed under the power of sale; it was a deed from the heirs in which the widow joined in the covenant of warranty, and the eventual consideration was not forty-five hundred dollars, because more land was added, but was $5,370.75, and her percentage, as I calculated, was the amount in this suit, $1,146.42.

Mr. Roe: Now the only question is, what is her gross sum in lieu of dower. We owe her the gross sum in lieu of dower.

The Court: Isn't it a mere matter of calculation?

Mr. Roe: Yes, under the rules they have referred to.

The Court: You sold it for $5,300.

Mr. Richards: I have the rules here.

The Court: You sold the property, the widow and the heirs sold it for $5,370.75. Under the rules her percentage is a fixed sum.

Mr. Roe: I suppose your Honor has had experience in those matters. There was an early

decision made on the fixing of these, upon which these rules were founded.

The Court: It is the mere construction of the rule I have to pass on?

Mr. Roe: No; the rules were amended after this case came in.

The Court: It is a construction of a rule.

Mr. Roe: The construction of a rule, that is all. This case laid it down that while these tables were put in the rule they were a part of the rule and governed by the rule. This case was decided in 1873 and the rules were then amended, saving that the calculation for dower—

The Court: You are going to give me a memorandum of these cases?

Mr. Roe: I mention this only in showing the basis upon which they established their rule. Your Honor understands that this question arises under the sales of land in connection with partition suits, and in cases in the Orphans' Court for the sale of land for the payment of debts.

Mr. Richards: In every case where the widow consents.

Mr. Roe: Yes. We will have to enter another admission on the record for your benefit, and that is, she has the ordinary average of age, in ordinary health, at thirty-five.

Mr. Richards: There is no question as to her having the ordinary probability of human life.

Mr. Roe: Is she now thirty-six?

Mr. Richards: Yes, now, and of course it is a year later; this proposition relates back to the time the deed was made.

The Court: Certainly; at the time the sale was made.

Mr. Roe: Those were governed by rules 183, 184 and 185. 185 rule was the rule that was in

existence in 1853, and then after this decision in 1873 it was amended and again amended in 1901.

Rule 184 is as follows: "And if any person entitled to such dower or estate shall have agreed to join in the sale and accept such sum in gross, or investment in lieu thereof, then, upon such sale, it shall be referred to a special master to ascertain and report the clear yearly income, above insurance, repairs and taxes, that such tenant for life could realize from the whole premises during his or her life, if owner of the whole for life; and in such calculation allowance shall be made for all repairs necessary to keep the premises in as good condition as at the sale, including the renewal of any part of the buildings thereon that may, by ordinary wear and tear, or from decay, require renewal; and from said income to ascertain and report the gross value of such dower or other estate, on the principle of life annuities, to be calculated on the basis of the table annexed to the rules of this Court,"—that, your Honor sees, was on the income— "and further to ascertain the gross value of such dower or estate from the net proceeds of the sale above costs and expenses, to be calculated on the basis of said table; and in case such consent is to accept a gross sum, to inquire into and report the condition as to health of such doweress or life tenant, and whether he or she has an average expectancy of life; and if not, what deduction should be made from such gross sum on that account."

Now 185 is as follows: "The gross sum allowed in lieu of dower or other estate so sold, shall not be greater than that calculated on the net proceeds of the sale; and when the clear yearly income shall be less than the interest on the net proceeds of sale at four per cent, the gross sum to be allowed shall be calculated, by adding

to the amount calculated from the clear yearly income in cases of dower one-half, and in other cases one-fourth, of the excess of the amount calculated from the net proceeds of sale over the amount calculated from the clear yearly income."

I think it is admitted there is no income from this property—vacant land.

Mr. Richards: Vacant land and utterly immaterial in this case.

Mr. Roe: "Having made such calculation and ascertained the result, the master is to report, irrespective of that result, what is, in his opinion and under all the circumstances of the case, a reasonable satisfaction for said dower or other estate."

Mr. Roe: Now, according to the rule it shall be calculated on the clear yearly income, for the reason that she, having a life estate and one-third, and not having herself the power to sell the property, all she can derive from it would be the clear yearly income from the one-third.

The Court: And that is nothing.

Mr. Roe: That is nothing. Now, applying that rule your Honor will see, if we calculate from the clear yearly income, it is nothing. Calculating from the net proceeds of sale it is the amount that they claim in their declaration. Now the rule says that the difference shall be divided.

The Court: That is, the difference between nothing and the amount claimed?

Mr. Roe: Yes.

The Court: Under the calculation under the rule what would the dower be?

Mr. Roe: It would be just one-half of that calculated upon the tables.

The Court: That is what you claim?

Mr. Roe: That is what we claim.

The Court: And they claim—what does it amount to?

Mr. Richards: $1,146.

Mr. Roe: Under theirs $1,146., and I say, half of that. There is nothing to be calculated on the yearly income, and the rule says it shall be divided by the half between—

The Court: Then the difference between $1,150.

Mr. Roe: $1,146.42. On the income nothing,—that would take one-half of that away, which would be $573.21. Under the rule the Chancellor may say, or I suppose this Court may say—it is still discretionary, it shall report irrespective of the result a reasonable satisfaction for dower to the estate.

The Court: After laying down the rule they say the Court can apply the rule to suit itself.

Mr. Roe: Yes. You can say that is a reasonable amount.

Mr. Richards: I would like to be heard after he finishes, in reply to that, about the rule.

The Court: There is no decision, Mr. Roe, I think, showing what limited discretion the Court has?

Mr. Roe: No. I remember once making a report on a tenancy case, when I applied that rule, and the sale was allowed, and the young man was entitled to twenty-five hundred dollars, and I reported it to the Court and they took off five hundred dollars arbitrarily. In cases of dower of course we would have to go to the records themselves to show how the Chancellor has done; he almost invariably follows the rule, but in some cases he does not, I am frank to say. A very funny occurrence often takes place in these cases when we are calculating the widow's dower. We will ask her how her health is, and she will say that she has been feeling very badly since her

husband died, and I have got to say to her that of course she is cutting down her allowance by putting that in, and then she will get in good health.

The Court: That is not the issue in this case, because the health of the widow is all right.

Mr. Roe: Yes. The widow in this case, we do not dispute that.

The Court: So it narrows itself down to whether they are entitled to the full amount of eleven hundred dollars, or whether, under your insistment, they are entitled to half of that, or whether I must exercise discretion and say whether she is entitled to something between those two sums?

Mr. Roe: Yes. That narrows it down. We owe them that. Of course we owe them her gross percentage of dower. We do not dispute that.

The Court: Then I suppose it is a question entirely in my reasonable discretion, isn't it?

Mr. Roe: I suppose having regard to the rules it is practically in your Honor's discretion in that way. Of course I would like to have you hear the other side.

Mr. Richards: Now, if your Honor please, in saying that it is left to your Honor's discretion, they are omitting altogether the correspondence. They presented, in that letter of April 4th, received on the 5th, and which I answered on the 5th, an option to Mrs. Larned, "Do you wish a sum in gross in lieu of dower, or would you prefer to have one third invested for your benefit?" In answering that letter I followed the language of Mr. McCarthy's letter, and I said she preferred to take a sum in gross in lieu of dower for the percentage, as I afterwards modified it, of 21.935. Besides that, to go into a statement of

facts, which appears from the correspondence there, I have been having quite a controversy with Mr. McCarthy, with regard to certain lands in Kansas. Under certain circumstances Mrs. Larned said, that she would, in order to make everything pleasant with the heirs, agree to take the Kansas lands. In Kansas, when a man dies owning real estate, his widow takes one-half in fee. We were discussing some compromise with regard to the Kansas land, and Mr. McCarthy wrote this letter, which I see the stenographer is taking down, "I took Mrs. Larned's age as being thirty-five, and found that the percentage as given by the table was approximately twenty-two per cent," and we had quite a discussion about that. Now he never had mentioned any other sum whatever than twenty-two per cent, but he did come to see me—I want that to go into this evidence—after she had signed the deed, and said in making these calculations, "Mrs. Larned is about three months older than thirty-five, and I think there ought to be something taken off for those three months"—and I told him—I got a little hasty, and I said I thought it was rather close, trying to calculate it for three months; that the rule was to take the nearest birthday, as I understand it, and he took exception to that and wrote me about my calling him close, and I took it back, because he said it was his duty, representing the devisees of Mr. Larned, to get all he could for them, so, I said, however, in considering the rule, we will in this case take the amount that appears by the table of 1910, instead of the table that I had gotten from Dickinson's Chancery in our library—I did not happen to have a later edition—so there was that additional fact, but I never had presented to me any such case.

This, I say, is a bargain by correspondence. If they did not wish to accept a deed from her and pay her 21.935, they were estopped to name any other consideration without saying, "No, Mrs. Larned—no, Mr. Richards—we do not consider that part of the bargain." And then they sent over this deed—nothing was said anything further—they sent over this deed and she signed it with two of the heirs on the 29th of April, and it was acknowledged by her on the 29th of April, and thereafter delivered, I don't know when, somewhere about the first of May, and the whole amount was received in cash, and I expected to receive a check for the $1142.46, but what he did was to write me a letter saying he was told by a master in chancery that the proper way to estimate that dower was to take that rule 185. Well, I never was more astonished in my life. I do not see how anybody could be otherwise than astonished. In the first place, taking things up logically, the rules of the Court of Chancery are not mandatory. They are not statutes. They are only, as statute creating them says, to assist the Court in practice, and Krankeit case which I think is the one he cited, says the rules are not invariable, so that would leave it discretionary. I say in this case there can be no discretion, because the discretion would depend upon whether she has the average expectancy of life, and in some cases there is another thing taken into consideration. Your Honor knows very well that during the war rents were very high, and the Chancellor took that into consideration in the investigation of widows' commutation of dower, and they would not sanction it, it was so extravagant. Often a building on property is a source of depression of the value instead of in-

creasing the value. I have seen a house on the corner of Fifth Avenue and 57th Street that cost a million dollars which has been sold for only a few thousand dollars to get rid of it—worth nothing.

Now, I am going to look a little more carefully at the rules. These rules evidently had application only to improved property and they only applied to the case when the widow consented to join them. She did consent, but under a stipulation that she was to get a certain percentage, if I am right in law, as I think I can not be otherwise. That was agreed upon in the correspondence. Rule 184 relates altogether to improved property. (Reads rule 184.)

What was the object of this rule, by adding to the amount calculated from the clear yearly income—wasn't it to induce a widow who had an interest to be sold in Orphans' Court proceedings for the benefit of creditors, to give up a certain income from the rent of improved property, where the improved property did not bring in an income. Are they going to enforce this rule when the rule says, "to add to the income derived from the clear yearly income one half of that increase derived from the net proceeds of sale." It is only in the case where there are two incomes, one income from the property itself, the other income from the net proceeds of sale. That is to help the widow along, they would induce her to join in the deed. Here was a statute or rule affecting the widow's right of dower, and they say under that rule we want you to add to nothing the half of something to improve the widow's estate. Some of my learned friends have told me that is the practice of the masters in chancery here in similar cases. If so, the widows have

not been well represented, as it appears to my mind.

Besides that, what is the value of the property. The statute of New Jersey don't say anything about income. The statute of New Jersey says that the widow shall be endowed with one third part of the real estate—it don't say improved or unimproved, so she can not get any income from that. Isn't that absurd? Suppose she had a partition suit, and had from Mr. Larned's estate a large number of lots; she is thirty-five years of age, with an expectation by the tables of thirty-one years of life; so you mean to say she could not use that in connection with commercial life insurance? It is used every day. Large manufacturing concerns insure their foremen and others that they depend upon, and their inventors and others and do it constantly, and it is a mere matter of mathematical calculation. If she had a dower right in those lots she could undoubtedly sell that, and at any rate they can not sell the lots without her consent. Would anybody take that deed and improve the property with her dower right on it, knowing that just as soon as the property is improved the widow's dower attaches to the improvements that are put upon it after her husband's death. The law is well settled that when improvements are made if a husband makes a deed that his wife joined—she don't take dower after his death in the improvements, but she does take dower in the value of the land. They wanted to give her one-tenth and these young men and their sister, about her age, want to take nine-tenths for themselves. The gross proceeds of sale are $5,236.28. They offered $675.21, leaving for them $4,653.07, or $1,551 for each one. If it is left to your Honor's discretion,

which I can not concede for an instant, under the facts of there being a contract and under the fact of these being no special circumstances, and there are no improvements to be calculated and no repairs, and there are no questions arising from the rents being too high—

The Court: Do you claim, Mr. Richards, that by reason of the agreements they are estopped from setting up that she has any less claim than the amount of $3,700?

Mr. Richards: On the principle of estoppel and also on the principle that it was a positive bargain by correspondence, and when a man makes an offer and I accept it, there the bargain is made. That is just what a contract is. When a man makes an offer and the other accepts it—that is the elementary definition in all the law books. What is a contract? When a man makes an offer and the other accepts it. Here was an offer in writing. They tried to say that because the executors had a power of sale that made a difference; they could have sold it anyhow. How absurd a proposition from any lawyers in standing, to say a husband can, by giving a power of sale, take away her right of dower, which is paramount That proposition it seems to me is perfectly absurd. I can not see any reasoning in it from beginning to end.

The Court: Send me your cases, if you will, and I will decide it. Have you anything to say, Mr. Roe?

Mr. Roe: Nothing more than he called attention to the express agreement in the matter. I do not think there was an express agreement. Of course, in his letter he says, "She agrees to accept the purchase price of $4,500 at 21 per cent upon that," which would only be $987.

Mr. Richards: There is nothing of that kind, sir.

Mr. Roe: In that letter.

Mr. Richards: Where is there anything of that sort, if I understand you?

Mr. Roe: "She consents to sell at $4,500 and prefers to be paid the sum in gross for her interest."

Mr. Richards: That is what it first came to, one hundred dollars a front foot, but afterwards they added more front feet. "You have supposed her age greater than it is. She was thirty-five on the 23d of February last. Her percentage for dower under the New Jersey chancery rules is therefore 23.535."

Mr. Roe: Yes, and then afterwards he says it should be a gross sum calculated under the rules, 24.185—

Mr. Richards: I mentioned the other percentage.

The Court: Send me the papers and send me the law as soon as you are able to find it and I will decide it. You can give your brief to Mr. Roe within a week from today and then he can answer it within a week, and send to me.

Decision

(Filed April , 1913)

NEW JERSEY SUPREME COURT

UNION COUNTY

EDNA R. W. LARNED,
vs.
ELIZABETH MACCARTHY, *et als.*

VAIL, J.

This case, by agreement of counsel, was tried by the Court without a jury.

The plaintiff was the widow of William Z. Larned, and the defendants are his heirs-at-law. William Z. Larned died March 13, 1911, leaving a last will and testament, in which, after making certain bequests and devises, he confirms to his widow her right of dower in all the real estate of which he might die seized. After his death his heirs, by deed of warranty, sold a certain piece of property in Summit, New Jersey, and the net sum realized was $5,226.48. The plaintiff consented to this sale and joined in the deed, and this action is brought to recover the value of her dower on the proceeds of the sale. The defendants admit that she is entitled to dower and that nothing has been paid, but they dispute the amount claimed.

It appears by the testimony that in April, 1912, the plaintiff received a letter from Albert H. MacCarthy, who was the husband of one of the defendants and who was acting as the agent of the heirs, stating that the heirs had an offer for the property in question which they

thought advisable to accept and asked if the plaintiff would consent to the sale, and if so, whether she would prefer to take a sum in gross or have one-third of the net proceeds invested for her benefit. To this letter the plaintiff, by her agent James Richards, replied consenting to the sale and said she preferred to take a sum in gross and that her percentage under the New Jersey chancery rules was 23.545. Subsequently, and before signing the deed, the plaintiff by her agent Mr. Richards wrote to Mr. MacCarthy saying that she would accept her percentage under the amended Chancery rules, which would be 21.9347 instead of 23.545. A deed was then signed and the plaintiff joined in the warranty.

The plaintiff insists that the sum due her must be ascertained by multiplying the $5,226.48 by 21.9347, and that the result is $1,146.42. On the contrary, the defendants say that the amount must be ascertained by the computation made in accordance with Chancery rule 185. and that this would give the plaintiff $573.22. The argument being that as it is admitted that, as the property sold yielded no income, therefore under the rule cited the gross sum could not exceed one-half of the amount calculated from the net proceeds of sale. But this rule further provides: "Having made such calculation and ascertained the result the Master is to report, irrespective of that result, what is in his opinion and under all the circumstances of the case a reasonable satisfaction for said dower or other estate."

This matter is not before me in any proceeding where the property is sold by order or decree of any Court, wherein the widow would be compelled to take a gross sum or have one-third of the pro-

ceeds invested for her benefit. She was not obliged to sign the deed, and only signed after making an express statement that her percentage would be 21.9347. Even assuming that the calculation made by defendants is the correct one, I think, under the circumstances, the defendants had full notice of the claim made by the plaintiff, and it is fair to presume that if they had made the claim then that they now do, the plaintiff would have declined to sign the deed.

Therefore, under all the circumstances of the case, I decide that a reasonable satisfaction for the plaintiff's dower would be $1,146.42 with interest from May 1, 1912 and costs of suit.

B. A. VAIL,
Judge.