

*pan v. Tappan*, 24 N. H. 400, and *Heydock v. Duncan*, 43 N. H. 95, cited by the defendant.

In *Morgan v. Dodge*, 44 N. H. 255, the decree was reversed because the executrix was sole residuary legatee. In the *dictum* concerning the suspension of administration in favor of creditors, in such a case as this, we do not concur.

The statute, under which the original administration was granted, contemplates and provides that the widow shall inform the judge in writing that she accepts the provisions of the will. This was not lone. The provision is one intended for her benefit, and which she might waive. But we are not called upon to decide what rights she might have. If she might complain, the defendant does not stand in her position, and is not authorized to complain for her.

*Decree reversed.*

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DORR v. LEACH.

A suit on a mortgage, made by the defendant to the plaintiff, cannot be contested by a third person admitted to defend it, who claims a superior title not derived from either of the parties, and who cannot be affected by a judgment in favor of either of them.

ENTRY, on a mortgage made by the defendant to the plaintiff. The defendant made no defence. One Plumer, who had been admitted to defend the action, offered to prove that he had a good title to the demanded premises, not derived from the plaintiff or the defendant, and that the defendant, having no title, could convey none to the plaintiff.

*Hill, Weed, and Smith*, for the plaintiff.

*Lougee and Copeland*, for Plumer.

STANLEY, J. Plumer ought not to have been admitted to defend. He has no interest in this suit. There is no way in which he will be prejudiced, or his rights affected, by the judgment. The evidence of his title was therefore irrelevant and inadmissible. *Buckman v. Buckman*, 4 N. H. 319; *Blaisdell v. Ladd*, 14 N. H. 129; *Boscawen v. Canterbury*, 23 N. H. 188; *Pike v. Pike*, 24 N. H. 384; *Dunbar v. Starkey*, 19 N. H. 160.

*Motion denied.*