

Strafford, }  
Dec., 1899. }

HALL, *Ap't*, v. HALL & a.

70	47
73	70

A widow is not entitled to dower in land to which her husband had a right of conveyance, and which after his decease was purchased by the administrator for the benefit of the estate.

PROBATE APPEAL. Facts agreed. The plaintiff, widow of Dyer P. Hall, was married to him August 15, 1883. Before the marriage Dyer gave a note for \$1,450 and a deed of a tract of land to Deborah Felker, who, at the same time, gave him a bond to reconvey upon payment of the note. Dyer continued in possession of the land until his death. His administrator paid the note, and thereupon Deborah conveyed the land to him for the benefit of the estate. The plaintiff claims dower in the land.

*Worcester, Gafney & Snow*, for the plaintiff.

*George E. Cochrane* and *John Kivel*, for the defendants.

PEASLEE, J. The deed to Deborah Felker, being accompanied by a secret trust, was voidable as to the grantor's creditors (*Stratton v. Putney*, 63 N. H. 577); but as between the parties it was a valid contract. *Esty v. Long*, 41 N. H. 103. The parties intended that the deed and bond should operate only as security. While no other inference can be drawn from their acts, yet the transaction cannot be treated as a mortgage because of the prohibition of the statute. P. S., c. 139, ss. 1, 2; *Tiffit v. Walker*, 10 N. H. 150; *Gordon v. Gordon*, 54 N. H. 152. Hall had a right to a conveyance upon the performance of certain conditions. This right having been created simultaneously with the grant, the grantee acquired no such seizin as would support a dower right as against Hall. *Hunkins v. Hunkins*, 65 N. H. 95, 99; *Hallett v. Parker*, 69 N. H. 134. On the other hand, Hall had not sufficient interest to support such a title in his widow. Conceding that it is the law that the holder of an equitable title has sufficient seizin to support a claim of dower (compare 1 Per. Tr., s. 324, 1 Wash. R. P. 202 *et seq.*, 4 Kent 45, with *Hopkinson v. Dumas*, 42 N. H. 296, 306), it cannot avail this plaintiff. The equitable title required for this purpose is a present right to enforce in a court of equity a demand either for a legal title or for the beneficial use of the property. *Pugh v. Bell*, 2 T. B. Mon. 125,—15 Am. Dec. 142; 1 Per. Tr., s. 324. This is more than Hall possessed. He had only a right to

obtain title upon performing the condition of the bond. He owned an executory contract, but neither a legal nor equitable title to the real estate. If the condition had not been performed, Deborah's title would have been complete without foreclosure or further conveyance. The bond was personal property; and the fact that the administrator converted it into real estate, instead of selling it, does not change the nature of the estate in his hands. *Vandewalker v. Rollins*, 63 N. H. 460, 464.

*Appeal dismissed.*

All concurred.

Strafford, }  
Dec., 1899. }

SNOW, *Adm'r*, v. FIRST FREEWILL BAPTIST SOCIETY OF SOMERSWORTH & a.

Where a will directs an executor to invest a legacy and apply the income thereof to the use of the legatee, the principal of the fund is to be held by him as trustee.

BILL IN EQUITY, praying for the construction of the fourth and fifth clauses of Lois Merrill's will, which are as follows:

"4th. I give and bequeath to the First Freewill Baptist Society, where I attend church, the proceeds of the note I have against it, also the sum of five hundred dollars, and direct my executor to safely invest said sums, and the income thereof to be annually applied to the uses of said society in the village of Great Falls in said Somersworth.

"5th. I give and bequeath to the Congregational Society at Ossipee Center the sum of five hundred dollars, to be safely invested by my executor, and the income annually applied to the uses of said society."

The defendants are the beneficiaries named in these clauses and claim that the legacies should be paid to them.

*Worcester, Gafney & Snow*, for the plaintiff.

*William F. Russell*, for the defendants.

YOUNG, J. The provisions of the will that the executor invest these legacies, apply the income from them to the defendants' use, and collect the note which forms a part of the legacy given in the fourth clause, are all the evidence there is as to whether the testa-