

The claim of a widow for dower is a highly favored one, and with respect to a devise, accepted by her in lieu of it, she is, by the terms of the act of assembly, and by judicial decision, regarded as a purchaser for a fair consideration. *Act of 1798, ch. 101, sub-ch. 13, sec. 5; Gibson vs. McCormick, 10 Gill & Johns., 67.*

Suppose in this case it had happened, that a title paramount to the title of the mortgagor had been outstanding in some third person, and after the assignment of the dower, this title had been successfully asserted, and the doweress turned out of possession, would she not have had a right to be compensated out of the other lands of her husband, if he left any? It is supposed she would, and that the rule applicable to jointures made subsequent to the marriage, from which the widow has been fairly evicted by law, would extend to a doweress legally dispossessed of the lands assigned to her in dower.

It does not clearly appear in this case, of what other lands the mortgagor died seized, though from the language of the mortgage, in describing the premises, as all the lands of the mortgagor lying "south-east of Hagerstown," it is fair to be inferred that he held other lands. Now, presuming such to be the case, and that the widow, by a defect in the title of her husband, had been deprived of the lands assigned her in dower, would not justice require, that some compensation should be made her out of those other lands, or must she be held rigorously to the assignment, be the consequences what they may? There cannot be a question, that, under the act of assembly of 1818, chap. 193, sec. 10, Mrs. Buchanan, would, but for the proceedings on the equity side of Washington County Court, be entitled to dower to some extent in these lands; because, notwithstanding the mortgage, the equitable title was in the husband, and the act in terms declares, that widows shall be entitled to dower in lands held by such title, and the question, therefore, is, whether this proceeding in Washington County Court, shall deprive her of this right, when it is obvious, her title to the lands assigned her in that proceeding, must yield to the subsequent sale, to satisfy the mortgage.