

ment recovered subsequently to the marriage has not that effect on dower in the latter, when by a conveyance or charge upon the lands in his lifetime the husband may bar her either entirely or *pro tanto*. But in *Lynn v. Schley* the doctrine of *Stewart v. Beard* was affirmed by the Court of Appeals. Upon the whole then it appears, that whilst the widow's right to dower in an equity is not affected by the *general* lien of a judgment confessed during coverture, it may be defeated absolutely by a simple conveyance or agreement\* to convey, or displaced by a mortgage or other specific lien charging the debt specifically upon the equity.

In *Spangler & Carroll v. Stanler*, 1 Md. Ch. Dec. 36, an effort was made to subject to dower under the above Act a lease for 99 years at a nominal rent, if demanded, where there was a covenant by the lessor to convey in fee to the lessees on request. It was insisted that the covenant enured as a release by way of enlargement of the estate. But the Chancellor was clearly of opinion that the estate was legal and not equitable.

If the wife of a mortgagor does not join in a mortgage or otherwise release her right, she is entitled to dower as if the mortgage had not been made, and this right is affirmed by the Statute 4 & 5 W. & M. c. 16 s. 5. If, however, she does join in the mortgage, or if at the time of marriage there be a mortgage of her husband outstanding on the lands, she is entitled under the laws of Maryland to be endowed of whatever equitable interest her husband may have therein. Therefore the wife is entitled to be endowed subject to the mortgage; she has a right to redeem, of which the husband cannot deprive her, *Bank of Commerce v. Owens supra*,<sup>9</sup> and may call upon the personal representatives of the deceased to apply the personal assets to the extinguishment of the mortgage debt, so as to free her dower from the incumbrance, *Chew v. Farmers' Bank*, 9 Gill 361; *Mantz v. Buchanan*, 1 Md. Ch. Dec. 202.

It may be a question even in Maryland, whether she is not entitled to call upon the heir to discharge the mortgage debt out of the lands remaining to him, in exoneration of that assigned to her for dower, see *Park Dow*, 351, 352, F. N. B. 46 G. 150 Q.

However in *Mantz v. Buchanan supra*, Chancellor Johnson held that the Legislature intended to give the widow dower only in the interest remaining in the husband after satisfying a vendor's lien or other lien existing prior to the marriage or created afterwards with her concurrence. He therefore allowed the widow her proportion only of the *surplus* proceeds of sale after deducting the mortgage debt with interest. And this was affirmed in the *Bank of Commerce v. Owens supra*. It is suggested with some diffidence, that the situation of a widow claiming dower subject to a mortgage is similar to that of a widow evicted by title paramount out of lands of which she is endowed, who can claim only to be endowed anew of the residue. It must be remembered that the equity of the wife to have the

\* When a married woman has joined with her husband in a mortgage of his real estate, she is entitled on his death to redeem the same, notwithstanding her dower has not been assigned; and this right is not affected by the fact that her husband executed a second mortgage in which she did not join. *Hays v. Cretin*, 102 Md. 695. But see *Dawson v. Bank*, 6 Ch. D. 218; 4 Ch. D. 639; *Meek v. Chamberlain*, 8 Q. B. D. 31.