

reality exonerated by the general estate exists only where the debt is of the husband's contracting, and consequently if the estate descended to him before marriage with an incumbrance in any shape upon it, she would take her dower in it *cum onere*.¹⁰

Assignment of dower¹¹—**Sale free of dower**.—Dower may be assigned by arrangement between the heir and the widow, and such assignment may be by parol, *Moris v. Harris*, 9 Gill 29. Where the husband dies intestate and partition of his estate is made under the Acts to direct descents, Code Art. 47 (1820, ch. 191) the Commissioners are by sec. 62¹² to ascertain and lay off the widow's dower before they proceed to divide or value the estate, and they are to make the ascertainment and location of such dower a part of their return to the Commission, which the Court is to confirm or reject as in other cases. By sec. 63,¹³ if the widow consent in writing, filed with the Clerk of the Court, to a sale of the intestate's real estate, it is to be sold free of her dower, and the Court is to award her such proportion of the net purchase money, not exceeding one-seventh nor less than one-tenth thereof, as may be equitable, considering her health, age and condition, and the award of payment shall operate as a bar to her dower. The proceeding under this Act is by *ex parte* petition in the Circuit Court on the law side, but equity exercises a concurrent jurisdiction on bill or petition and answer

¹⁰ **The Act of 1898, ch. 457, sec. 6**, extends a widow's dower to lands "held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands, or other lien on the same." Code 1911, Art. 45, sec. 6.

But this act has no application to a case where the property in question was acquired and the marriage celebrated prior to its passage. *Slingluff v. Hubner*, 101 Md. 652. Cf. *Harris v. Whiteley*, 98 Md. 430.

¹¹ **Dower before assignment**.—A wife's inchoate right of dower is not such a right as may be bargained and sold. Her deed does not pass any title and operates only by way of estoppel and release. She cannot convey to a stranger but can only release to the owner of the fee. Nevertheless it is a substantial and valuable interest and its release by the wife may constitute, even as against the husband's creditors, a valuable consideration for a valid payment to her by him of such a sum as a court of equity may, in a given case, deem reasonable. *Duttera v. Babylon*, 83 Md. 536; *Reiff v. Horst*, 55 Md. 42; *Reiff v. Eshleman*, 52 Md. 582; *Pyle v. Gross*, 92 Md. 134.

And even after the husband's death, his widow's dower, until assignment, is a mere right which is incapable of transfer so as to vest the transferee with the right to compel an assignment. *Rowland v. Prather*, 53 Md. 232.

It is a mere chose in action and cannot be taken in execution by her creditors and in such case equity has no power to aid a creditor by subjecting the widow's unassigned right of dower to the payment of her debts. *Harper v. Clayton*, 84 Md. 346.

¹²Code 1911, Art. 46, sec. 62.

¹³Code 1911, Art. 46, sec. 63.