

9 as in other cases of partition. The form\* of proceeding in Chancery<sup>14</sup> and of the commission to be issued was settled in Hughes' case, 1 Bl. 46. It has been determined in a number of cases, that the proceedings must conform to the requirements of the Acts to direct descents. Accordingly, in Phelps v. Stewart, 17 Md. 231, it was held, that the failure of the Commissioners to lay off the widow's dower before partition amongst the heirs, where she had not assented to a sale, was a fatal objection to their return, and see 18 Md. 334.

In cases of proceedings by creditors to sell the real estate of a deceased debtor, the course of Chancery is either to grant a commission to assign dower to the widow, or to direct the land to be sold subject to her claim, or to award her a proportion of the purchase money in lieu of dower, Spurrier v. Spurrier, 1 Bl. 477 n. Mildred v. Neill, 2 Bl. 354 n. Ewing v. Ennals, ibid. 356 n. Watkins v. Worthington, ibid. 509, Simmons v. Tongue, 3 Bl. 341. Lawes v. Lumpkin, 18 Md. 334, is an authority that the dower of the wife cannot be sold without her consent, although in Gardner v. Miles, 5 Gill, 94, she was held bound by a decree for sale of land free from dower in a cause in which she had been made a party so long as it was unreversed. But where she consents to the sale or applies, if the sale has been improperly made without her consent, for a proportion of the proceeds of sale, the right of the Court to make her an allowance in lieu of dower was affirmed in Maccubbin v. Cromwell, 2 H. & G. 444. And now the Code, Art. 16, sec. 32,<sup>15</sup> provides that *in all cases* when lands and tenements are to be sold under a decree, and the widow consents in writing to the sale of the entire estate, the Court is authorized to allow her a proportion of the proceeds, and by sec. 34,<sup>16</sup> if she will not consent to a sale of her dower, the Court may, if it appear advantageous to the parties, appoint commissioners to lay off her dower. If it should not appear advantageous to the parties, she is left to pursue her ordinary remedy.<sup>17</sup>

Where the widow elects to have her dower laid off, she may apply by petition filed in the cause. A commission is then issued to five persons, who may be nominated in the petition. The Commissioners lay off the dower by metes and bounds, and make return thereof to the Court. The costs are allowed out of the general fund produced by the sale of the property. In practice a decree confirming her dower to the widow is in these cases not necessary, and does not seem to be called for or made; *per* Chancellor Bland in Watkins v. Worthington, Simmons v. Tongue *supra*; but no doubt as in other cases the assignment of the dower ought to be confirmed

<sup>14</sup>Code 1911, Art. 16, sec. 42 *et seq.*

<sup>15</sup>Code, 1911, Art. 16, sec. 44.

<sup>16</sup>Code 1911, Art. 16, sec. 46 (as now amended).

<sup>17</sup>Where property is owned by tenants in common subject to a widow's right of dower, she cannot be forced to consent to a sale thereof free of dower. Any sale without her consent must be made subject to her dower right. If she does consent, however, then her rights in the proceeds are fixed by sec. 44 of Art. 16 and sec. 63 of Art. 46 of the Code of 1911 and a court of equity has no power to change that proportion. Stein v. Stein, 80 Md. 306; Shipley v. Mercantile Trust Co., 102 Md. 649. See *In re* Hall's Est., L. R. 9 Eq. 179; Miller v. Miller, 42 Md. 631.