

the wife of any of the parties. This section seems to be a codification of the Act of 1839, ch. 23. That act conferred express authority on the Court to sell the inchoate dower right of the wife of one of the joint tenants or tenants in common mentioned in it, she being made a party complainant or defendant. In *Warren v. Twilley*, 10 Md. 39, the Court of Appeals said that it was by no means certain, that even prior to this Act a sale under such a decree for *partition* would not bar a *potential* or inchoate right of dower in the wife of one of the joint owners of the land, but since the act there could be no doubt. When the sale is made and ratified any inchoate or possible dower right of the wife in the land to which she may previously have been entitled is transferred to the proceeds of sale, out of which the Court has full power to provide for any legitimate claim on account of dower. It may even be collected from the case, that had the wife been made a party to the suit without her consent or knowledge, as against the purchaser her right would be barred.²¹

How assignment of dower made.—Properly, dower ought to be assigned by metes and bounds and therefore ought to be parcel of the lands and tenements of which she is dowable. The Sheriff in assigning dower on a judgment, and as we have seen, the commissioners under our descent laws are bound to pursue the strict rules of law. In *Wilhelm v. Wilhelm*, 4 Md. Ch. Dec. 330, the Commissioners in dividing certain lands under the Act of 1820, ch. 191 assigned to the widow a portion of the land *in fee* equal to her dower in the whole. The Chancellor was of opinion that such an assignment was bad, it being in effect to make the widow a co-heir with the heirs of the deceased against or without their consent. Where from the nature of the husband's interest in the estate such an assignment is impracticable, as if the husband were tenant in common or a coparcener and died before partition, the widow is endowed of one-third of his share and holds in common with the other tenants or heirs. And so of hereditaments indivisible in their nature, dower may be assigned specially in one-third of their profits. In *Hannah K. Chase's case*, 1 Bl. 206, the property out of which dower was claimed was a tavern, and the Chancellor directed the **11** Commissioners to report all the circumstances* of the property specially, and whether dower could be assigned in it, and suggested that a rent distrainable of common right might be given in lieu of dower, see *Perk. sec. 406*. The Commissioners made their return that though the location of the widow's dower might be specifically made, yet from the character of the property it would be to the manifest injury and detriment of the parties. No further proceedings were taken, as the Chancellor's decree was reversed and the bill dismissed by the Court of Appeals.

But dower may be differently assigned by agreement between the heir and

²¹A sale of land for purposes of partition under Code 1911, Art 16, sec. 137 will bar the inchoate right of dower of the wife of one of the co-owners, and it seems that to such suit she need not be made a party, her inchoate right being transferred to the proceeds of sale out of which the court will make her an allowance. *Mitchell v. Farrish*, 69 Md. 235, 238; *Rowland v. Prather*, 53 Md. 232; *Rule 25 of Equity Courts of Baltimore City*. Cf. *Kensett v. Trust Co.*, 116 Md. —.