

dower. It is said by Mr. Jacob, in his note to 1 Roper, H. & W. 406, to be doubtful whether a Court of equity would now exercise this power, and that the proper course was to apply to the Court of law from which the process issued. But if the assignment be made by the Sheriff of lands not comprised in the judgment, they may be recovered back in ejectment, for as to anything included in his return and not authorized by the judgment the execution is void, *Booth v. Marquis of Lindsay*, 2 Ld. Raym. 1293, and see *Penn v. Isherwood*, 5 Gill, 206. If the Sheriff assign dower contrary to common right when it might have been assigned regularly, this is error in the execution, and may be taken advantage of as such by the tenant, *Park Dow*. 271. Whether if long after an assignment of dower had been made and acquiesced in, circumstances should occur which would make such an assignment excessive against the heirs, as if the part retained by them were evicted by title paramount, the widow's dower would not be admeasured in equity, *quære?*

On the other hand, if the Sheriff disobey the writ, the assignment cannot be supported, and the Court will order it to be amended. Thus in *Longvill's* case, 1 Keb. 743; *Park Dow*. 272, the Sheriff was committed for taking 60l to execute his writ, and the Court directed that the assignment of dower, being under value, should be amended. The widow may after the return has been made, like the heir, have a *scire facias* if her share turns out defective in quantity, *Moor*, 679, pl. 928, unless she be barred by her acceptance or agreement to it.

Warranty implied in assignment of dower.—Every assignment of dower according to common right by the heir or the Sheriff implies a special warranty, that if the tenant in dower be impleaded by one having a title paramount, she shall vouch and recover in value a third part of the two remaining parts of the land of which she is dowable, *Co. Litt.* 384 b; *Mantz v. Buchanan*, 1 Md. Ch. Dec. 202. But it is expressly laid down in *Bedingfield's* case, 9 Rep. 17 b. that though the widow in such a case was to be endowed anew of other lands descended to the heir, where the assignment was by the alienee of the husband or of the heir and she was impleaded, she could not vouch the alienee to be endowed anew, and the reason is, because of the greater privity in the first case. As the old proceeding of vouching the tenant and recovering from him has gone out of use in Maryland, the dowress might, it is presumed, resort on eviction to a *scire facias* upon the judgment for dower, for an assignment *de novo*, or bring a new writ of dower as if no assignment had been made. In *Mantz v. Buchanan* *supra*, the widow, having been evicted of lands assigned to her in dower by Washington County Court in equity, which were sold under a mortgage by a decree in the Court of Chancery, applied by petition in that cause for a proportion of the proceeds of sale, and it was allowed to her in that Court.

If, however, the wife be endowed by the *heir* or *tenant* against common right, she shall hold the land charged in respect of a charge made after her title of dower, that is, she takes it subject to all the incumbrances which affected it in the possession of her husband, *Co. Litt.* 32 b. and n. 2 thereto. But this is probably on the ground of consent. As a consequence she will not be entitled to be endowed anew of other lands of the husband if she be