

If the widow cannot ascertain the lands out of which she is dowable, she will have the assistance of the Court in finding them out, and on general principles of equity is entitled to a discovery of whatever may be essential to establish her claim. In England a plea of purchase for a valuable consideration without notice is a good defence where the widow proceeds for her dower in equity. The authorities are collected in *Gomm v. Parrott*, 3 C. B. N. S. 47, where an inspection of the deed by which her husband conveyed the land out of which dower was claimed was refused to the widow. It is said, however, that the rule is otherwise in the United States. Story Eq. sec. 630 *et seq.* And inasmuch as such a defence would not avail at law, it would seem that under our Act it would be overruled in equity against a claim for dower out of a legal estate.

Assignment of dower—Improvements—Rents and profits.—The right being established and the lands out of which dower is to be given being ascertained, the dower is next to be assigned. It is said in *Daniel's Ch. Prac.* 1140, that this may be done by the Court in Chambers, or by directing a commission to issue. In Maryland the practice is for a Commission to issue to four or more persons nominated by the parties, as under Commissions to take testimony, empowering them, or any three or more of them, to go upon the property and lay off the dower. They are also directed by the Commission to make and return a plat and certificate of the lands and an accurate description of the one-third part or dower so laid out. The form of the interlocutory decree and Commission may be seen in *Alexander's Chancery Pr.* 333, 335.

Powers of Commissioners.—The powers of the Commissioners are the same as under a Commission of Partition. As elsewhere observed, the law requires that the widow's dower should be set off by metes and bounds, and hence, if the subject is divisible, a return not showing an assignment of one-third by metes and bounds cannot be supported. It will be observed, however, that the Commission directs the Commissioners to lay off one-third of the real estate mentioned &c. "consisting of the following tracts &c.," if there be more than one tract. Hence it would seem not to be necessary in all cases that the widow should have one-third of each part of the husband's estate. Indeed the Commissioners are for the purpose of making a *quasi*-partition of her interest and that of the heir, and their duty is fulfilled by laying off one-third in productive value of the estates. Like the sheriff they are the appointed judges to decide any dispute between the heir and the widow, subject of course to the revision of the Court. This, however, is the simple case of lands in the hands of the heir or of a single purchaser. As above stated, if they are in the hands of several purchasers the dower must be assigned in each parcel. If the husband were tenant in common and died before partition, the bill for dower would probably be considered as praying a partition, but, no doubt, it might be otherwise by agreement between the parties, and then the widow's dower must be assigned to her in common, and not in severalty, and therefore could not be set out by metes and bounds. In such a case it is *presumed that the 25 duty of the Commissioners would be discharged by returning the proper description of the lands, and assignment of dower according to her proportion of interest therein, which she would then be entitled to enjoy in like manner and with like remedies as other tenants in common. For the man-