

revest in Wilson the legal estate for life? If the husband was tenant in fee, subject only to a trust for Wilson during his life, the grave question arises whether the legal title to dower is to be barred or defeated by the existence of a trust for a third person during life.

These cases however are considered by Chancellor Johnson, in *Bowie v. Berry*, 1 Md. Ch. Dec. 452 and 3d Md. Ch. Dec. 360, and in *Purdy v. Purdy*, 3 Md. Ch. Dec. 547, as establishing the rule that if the equitable title to lands be parted with by the husband in his life-time, the widow will not be allowed dower in them.⁷ *Purdy v. Purdy* was a case of the purchase of lands by four brothers. The title was conveyed to two of them, who on the same day mortgaged it for money loaned for the payment of the purchase money. One of the two brothers, to whom the land had not been conveyed, paid his share of the mortgage debt to the mortgagee, but part was still unpaid and the mortgage still subsisting when this brother, who had married subsequently to the mortgage, died. The Chancellor said that there was some difficulty in determining the character of the estate held by this brother. It had been argued that he had a resulting trust in the land, but it did not appear that he had paid any of the purchase money at the time of the purchase, which is indispensable to the creation of such a trust. But the Court held that whatever his interest was, by his consent to the mortgage he had parted with it, and he, therefore, not only had not the equitable title at his death, but never had it during the coverture. The case is generally cited for the points, that a widow is not entitled to dower in an equitable estate held by the husband during the coverture unless he also dies the owner of such estate, and that if he parts with it though without the concurrence of his wife she will not be entitled to her dower if she survive him.

It was once held that the husband must *part* with his equitable title, and therefore in *Bowie v. Berry supra*, where the husband during coverture had obtained the equitable title to the lands in question, and then contracted to sell them to a third party and on payment of the purchase money to convey the legal title free from incumbrance, and subsequently acquired the legal title, and died before the payment of the entire purchase money to him by **7** his vendee, it was decided that his widow was* entitled to dower. It was urged that the husband's title at the time of the contract of sale was only an equitable one and that by a transfer of this title in his life-time he might have defeated his wife's claim to dower, and that in equity his contract to sell must have the same effect. The Court, however, held, that the husband having acquired the legal title his widow was entitled to be endowed, and that however it might be that an agreement of the husband to convey before dower attaches will in equity defeat it, a mere executory agreement to convey after the inception of the title to dower will not

⁷ *Glenn v. Clark*, 53 Md. 580, 604; *Rabbitt v. Gaither*, 67 Md. 94. In the last named case it was held that the gift of an equitable estate made by the donor with the fraudulent intention of depriving his wife of dower therein was invalid as against her dower claim, at least where the donee had knowledge of the donor's fraudulent intention. But whether it was necessary to prove such knowledge, *quaere?*