

defeat it. But this case, if not overruled by, is difficult to be reconciled with *Lynn v. Schley*, 27 Md. 547.⁸ The Court of Appeals there did indeed expressly declare, that under the act of 1818 the widow was entitled to dower in equitable estates of inheritance of all kinds held by her husband or not parted with at the time of his death without prejudice to *prior liens*. But the order of events in that case stood thus: marriage,—legal estate acquired by the husband,—deed by husband and wife converting that legal into an equitable estate,—an agreement or assignment executory by the husband charging that equitable estate with the payment of the claim of John G. Lynn, which agreement was declared to be a *pledge &c.*, and to give the creditor a prior claim to payment out of the proceeds of sale: it was, said the Court, in equity an assignment of the fund *pro tanto*. So that there the preferred lien of John G. Lynn on the proceeds of sale, the widow being held dowable out of the surplus only, was created subsequently to the acquisition of the equitable estate of the husband and the possibility of dower in the wife. *Miller v. Stump* is express authority that a mortgage by the husband is such an equitable assignment as will be good against the widow, so far as the purchaser is concerned, although it was intimated in that case, that the widow might be endowed out of the surplus proceeds of sale, if any; and no doubt if the husband's equitable title were sold by his creditors during his life the widow's claim would be defeated. So too the law is express, that the claim shall not operate to the prejudice of the unpaid vendor, or "other lien on the same," and in these cases the widow can only be endowed in subordination thereto, *Ellicott v. Welch*, 2 Bl. 242, *Miller v. Stump supra*, *Chew v. Farmers' Bank*, 9 Gill, 361. Chancellor Johnson thought in *Mantz v. Buchanan*, 1 Md. Ch. Dec. 207, that the sound construction of the words "other lien on the same" was, that they applied to liens created by the husband prior to the marriage. And accordingly, in *Stewart v. Beard*, 4 Md. Ch. Dec. 319, a judgment recovered subsequently to the marriage was held by him not to defeat the widow's title to dower in an equitable estate of her husband. The inference is, that a judgment recovered prior to the marriage would defeat dower in equitable estates, as it was determined in the *Trustees of Queen Anne Co. &c. v. Pratt*, 10 Md. 5, that an execution on a judgment rendered prior to the marriage will defeat dower in legal estates. So a statute or recognizance bound the tenant in dower, though if the heir were an infant she was entitled to a stay during his non-age, *Jenk. Cent.* 36. But a statute merchant or staple or an *elegit* was only a chattel interest, *Co. Litt.* 42 a. and therefore did not prevent the wife's dower from attaching subject to it. There seems some inconsistency in holding that the lien of a judgment recovered before marriage thus defeats the widow's dower in legal and equitable estates, but that a judg-

⁸ Where the owner of an equitable estate in land contracts to sell it for a valuable consideration and subsequently acquires the legal title, such contract will be regarded in equity as executed and will defeat a widow's right to dower in such estate. The husband holding the dry legal title, his wife should join with him in the conveyance, and if they refuse to do so, a court of equity will appoint a trustee to convey the same. *McRae v. McRae*, 78 Md. 270, 285, overruling *Bowie v. Berry*, 1 Md. Ch. 452.