

the order of the 13th of October last, was improvidently passed. The question now, however, comes up on the application to rescind that order; and, as for the reasons stated, I think a sufficient foundation is not laid for the order asked for. It is, thereupon, ordered, that the order of the 12th of December last, suspending so much of the order of the 13th of October last, as required the defendant, George H. Williams, to produce books and papers, be made absolute; and, that the said order of the 13th of October last, to that extent, be, and the same is hereby, rescinded.

[No appeal was taken from this order.]

CASPER MANTZ, ADMINISTRATOR, }
 vs. }
 BUCHANAN ET AL. }

MARCH TERM, 1848.

[DOWER.]

THERE can be no doubt, that a wife, notwithstanding she joins her husband in a mortgage, may, nevertheless, take her dower in the land subject to the mortgage; and, that she has a right to redeem, and may call upon the personal representatives of her deceased husband to apply the personal assets to the extinguishment of the mortgage debt, so as to free her dower from the incumbrance.

It is equally clear, that if a wife in Maryland relinquishes her dower in lands mortgaged by her husband, upon private examination, according to the acts of assembly upon the subject, and the lands are sold to satisfy the mortgage debt, whatever may be her right to a proportion of the proceeds of sale, she cannot, as against the purchaser, claim dower in the land.

The claim of a widow for dower is a highly favored one; and with respect to a devise accepted by her in lieu of it, she is, by the terms of the act of assembly and by judicial decision, regarded as a purchaser for a fair consideration.

Where the widow had received an assignment of her dower in the lands, by a court of competent jurisdiction, and the lands were subsequently sold under a decree to satisfy the mortgage debt; it was **HELD**—that this assignment did not deprive her of the right to be provided for out of the remaining estate of her husband.

The law intends to give the widow one-third of the husband's real estate, by way of dower, and as a provision for her support; but she takes it subject to liens created prior to the marriage, or to such as she consents to after the marriage, in the mode pointed out by the legislature, and she can take no more.