

Upon examining the return of the commissioners, it is by no means apparent, that the partition among the heirs, preceded the assignment of dower to the widow ; and seeing that by the 27th section of the act of 1820, ch. 191, the dower is to be ascertained and laid off, before the division among the heirs is made, it may be very fairly inferred, that though the lines of the several lots may have been previously run out and laid down ; yet still the dower was ascertained, and laid off, before an actual allotment and partition among the heirs. But at all events, be this as it may, the act of the commissioners, in laying down and assigning the dower, and making partition among the heirs, was not consummated and binding, until their return was ratified by the court, and, therefore, their whole proceedings in assigning dower, and making partition, may be regarded as taking effect at the same time.

I do not, however, regard this question, as at all material to the rights of the widow in her dower lands. Whether the assignment of her dower proceeded, or followed the partition among the heirs, in the order of time, can, in my judgment, have no influence in determining the extent to which she may use her lands. Her interest is a continuation of the seizin of her husband ; the seizin of the heir being defeated, *ab initio*, the moment the certainty of the estate to be held by the widow is ascertained by the assignment. 1 *Roper on Husband and Wife*, 427 ; 4 *Kent's Com.*, 69.

So soon, then, in this case, as the particular lands which the widow was to hold for her dower, were ascertained by the assignment of the commissioners, the right of the heirs was defeated, whether the partition among them had been made, or not, and the dowress was in, in legal intendment, of the seizin of her husband.

The Chancellor cannot subscribe to the doctrine, that the widow was bound to use each parcel of her dower land, as if her husband had died seized only of the one lot, to which such parcel belonged. The inconvenience of such a rule would be so severely felt, that nothing but the most controlling authority would induce me to follow it.