

that in equity, an agreement of the husband to convey *before dower attaches*, will, if enforced in equity, extinguish the claim to dower; but no case, I apprehend, can be found, in which it has been held that a mere *agreement* to convey after the inception of the title to dower, has defeated the title, though an actual conveyance without the concurrence of the wife would have done so.

The claim to dower is always a favored one. It is a legal right, and if she accepts a devise from her husband in lieu of it, she is considered as a purchaser of the thing devised for a fair consideration; *Gibson vs. McCormick*, 10 *G. & J.*, 65, 113. But in this case Mr. Bowie not only died holding the equitable estate, bound, to be sure, by his contract with the defendant, but after he contracted with the defendant, he acquired the legal title, and was seized of that legal title at the time of his death. And at the time he thus acquired the legal title, the defendant had not put himself in a condition to demand a conveyance, by paying the purchase-money, a portion of which still remains due.

Mr. Bowie having, by the deed of 1843, acquired a legal estate of inheritance in possession, to which the issue of the wife might by possibility inherit, it follows, by the settled law upon the subject, that she could not be defeated of her dower by any act of the husband, without her concurrence; *Park on Dower*, 5.

The estate of the wife does not take effect out of the ownership of the party assigning the dower, but it is regarded as a continuation of the estate of the husband, for as soon as her dower is assigned the law supposes her in, by relation from the death of her husband, and does away all mesne seisin, or as Lord Coke expresses it, "the law adjudges no mesne seisin between the husband and the wife." *Coke, Littleton*, 241(a). The question is, whether, by the contract of 1839, made when Mr. Bowie only held an equitable title, the wife's right to dower, of which she could not be deprived by any act of his without her concurrence, after he acquired the legal title in 1843, shall be defeated?