

In the cases which have been decided in this State, since the Act of 1818, ch. 193, which gives the wife dower in an equitable estate, the wife was denied her dower, because the husband's estate was divested during his lifetime. No case has been decided in which it has been held that a mere executory contract to convey by the husband has had the effect to defeat the dower, and certainly no case can be found in which the wife's right to dower in a legal estate of inheritance in the husband, either in deed or in law, has been defeated by the act of the husband without the concurrence of the wife, where the act was performed after the inception of the right of dower.

Here, the contract of 1839, which was made after the right to dower had attached, is relied upon. But that contract was never consummated; nor had the purchaser in the lifetime of the husband, nor has he now, put himself in a condition, by paying the money, to demand its fulfilment. And after the date of it, the husband took to himself the legal title, which deprived him of the power of defeating his wife's right to dower, without her consent. My opinion, therefore, is, that she is entitled to dower, or an equivalent in money.

It appears that \$3,500 of the money, paid by Berry to Bowie, was applied by the latter, in payment of the land; and this sum, I think, should be deducted from the value of the land, as ascertained at the death of Mr. Bowie, before the dower, or its equivalent, is awarded the complainant. To that extent, I regard the defendant as occupying, by substitution, the place of those who sold it to Mr. Bowie; and as the dower-claim could not be enforced to their prejudice, so neither can it as against Berry, so far as he stands, by substitution, in their shoes.

I do not, however, think that Mr. Berry can set off this sum of \$3,500 against the dower. That would be to defeat the claim altogether, and would place him in a better situation than the parties to whom Mr. Bowie paid the money. Mr. Bowie paid, out of his own means, the difference between the price he was to pay for the land, and the \$3,500 paid by Berry, and which he applied to pay for the land. How much Mr.