

of the Court of Chancery in partition suits did not originally operate upon the title to the property ; but when it had been determined what portions of the land were to go to each tenant, the Court, in order to complete the title, ordered mutual conveyances to be executed by the parties, which order the Court enforced, as it did any other order it saw fit to make: *Whaley v. Dawson*, 2 Sch. & L., 367 ; *Gay v. Parpart*, 106 U.S., 679.

This order for the parties to execute conveyances was not made in pursuance of any statutory or special power, but by the authority which is inherent in the Court to do all that is necessary for a complete and effectual exercise of its jurisdiction. And so where a bill is brought for a partition, either by joint tenants or tenants in common, as mutual conveyances are decreed, all persons necessary to make such conveyances must be parties to the suit, for which proposition an anonymous case is cited.

It is very clear that if such conveyances were being made to strangers, the wife would be a necessary party so as to release her right of dower, for without such release, the title would be defective. And if she is not a necessary party where the conveyances are to be made mutually among the tenants in order to complete and perfect their titles in severalty, it is because as a matter of law the wife's right of dower in the severance being made attaches solely to that portion of the land decreed to her husband.

The right of partition is one which each tenant in common admittedly has against his co-tenants, and this court, in order to administer that right and make it effectual, will find means to surmount every difficulty in the way ; and in my opinion, where the circumstances exist which warrant the sale, the right to the sale is as absolute as the right to the partition for which, under these circumstances, the estate has substituted the sale. Considering that the object to be accomplished is, in this one case, to vest in each tenant a title free from all dower rights of the co-tenant, and in the other case to give to such tenant the value of that right in money as derived from a sale, it is the duty of this court, I think, to carry out that object. It cannot be doubted that if the land be sold, subject to a right of dower, the marketable saleable value is materially lessened. And in such a case, the unmarried tenant is placed at a great disadvantage. If the statute will bear such a construction as to permit the wife's right to be got rid of by a sale, without violating any recognized principle of equity or canon of construction, the rights of all parties will, in my opinion, be more equitably protected than in any other way. It does not, I think, violate any principle of equity. In the first place, we have the general rule of the court which requires all persons to be parties to a suit where interests in the subject matter of the suit may be effected by the decree. It is said a wife has no interest until, by her husband's death, her right has become consummate, and her dower has been assigned. She has no estate in the land, it is true, but she has an interest.

Kent, in his commentaries, at page 50, says : Dower is a title inchoate and not consummate till the death of the husband, but it is an interest which attaches in the land as soon as there is the concurrence of marriage and seisin: *Allen v. Edinburgh Life Insurance Company*, 25 Grant, 314 ; *Miller v. Wiley*, 16 U.C. C.P., 529.