

was passed. The point came up in 1852 in a case where the mortgagee had sold under power of sale after the mortgagor's death, and it was said that either the husband or the mortgagee could sell free from dower, the husband never having had more than an equitable estate: *Smith v. Smith*, 3 Gr. 451. The case is not entirely in point, however, because the husband in his lifetime never had the legal estate. He was merely a purchaser of the lands, and mortgaged his equitable estate as purchaser, giving the mortgagees power to get in the legal estate from the vendor, which they did.

The point, however, never created much difficulty until the enactment of the statute of 1879, and it was laid down by the Court of Appeal in *Martindale v. Clarkson* (1880), 6 O.R. 1, that prior to 1879 the wife had no estate in her husband's equity of redemption after a conveyance made in his lifetime, even though he had been seized of the lands, provided he mortgaged them in his lifetime and the wife joined to bar her dower. See also *Beavis v. McGuire* (1882), 7 A.R. 704, at p. 713. The same principle had also been adopted in *Black v. Fountain* (1876), 23 Gr. 174, and *Fleury v. Pringle* (1878), 26 Gr. 67. We can therefore state the following further position with some assurance of being correct.

*III. Before March 11th, 1879, where a wife joins with her husband to bar her dower in a mortgage, she may be deprived of her dower if the equity of redemption is conveyed either by the husband during his lifetime or by the mortgagee under his power of sale.*

After March 11th, 1879, different considerations arise, based upon the effect of ss. 1 and 2 of 42 Vict., c. 22. Section 1 provided that no bar of dower in a mortgage should operate to bar dower to any greater extent than is necessary to give full effect to the rights of the mortgagee; and s. 2 preserves the wife's dower in any surplus arising where the lands are sold by the mortgagee under his power of sale or where they are sold by any legal process. The question first arises whether the wife by virtue of the statute retains her inchoate right of dower in an equity of redemption after joining in her husband's mortgage to bar her dower. In *Martindale v. Clarkson* (1880), 6 A.R., at pp. 5 and 6, there are *dicta* of Patterson, J.A., to the effect that this Act creates a "new right" in the