

purchased the land subject to the mortgage—that is, where he acquired only the equity of redemption—there has been but little difficulty. The widow has been allowed dower out of one-third of the equity only, and not out of one-third of the value of the land regardless of the mortgage. So also the widow takes nothing if the husband assigned his equity of redemption before death. The statute of William gave no dower under such circumstances, and no earlier statute or rule of law was available to assist the widow. Upon this the cases of *Re Luckhardt*, 29 O.R. 111, and *Fitzgerald v. Fitzgerald*, 5 O.L.R. 279, may be consulted, and other cases cited hereafter bear this out; so we shall not stop to quote other authorities at present. We are therefore able to formulate two propositions with a fair degree of certainty: *I. Where the husband purchases an equity of redemption the wife only has dower where he dies beneficially entitled. II. Dower is only assigned to her out of one-third of the value of that equity of redemption. The mortgage must be deducted before making any calculation of the widow's interest in the lands.*

Quite other considerations arose, however, where the husband was seized of lands free from mortgage, but executed a mortgage in which the wife joined to bar her dower. Two questions then arose: (1) Did the wife's dower subsist in the equity of redemption whether the husband conveyed it or not during his lifetime? And (2) where dower did attach in the equity of redemption, how much of it must be assigned for that purpose? One-third of the surplus over the mortgage, or one-third of the value of the land payable out of that surplus? It was recognized, of course, that dower having been barred for the benefit of the mortgagee, such questions did not affect him. They were only relevant in considering the claims of the husband's creditors, devisees, assignees of the equity of redemption, or next-of-kin.

Let us take the first of these questions, namely, whether the wife's right to dower was vested in her so that her husband or the mortgagee could not so convey the equity of redemption as to deprive her of it after the mortgagor's death. To answer this inquiry we must consider the law between 1834 and 11th March, 1879, when the Act to Amend the Law of Dower, 42 Vict., c. 22,