

THE LAW OF DOWER.

protection in favour of the wife, so that in future, her consenting to a mortgage of the legal estate, should not have the effect of depriving her of all control over the equity of redemption.

We confess to being no great advocates for the continuance of the law of dower in any shape; at the same time, if it is the will of the Legislature to continue it, the propriety of the proposed alteration in the law was we think manifest. The amendment, we believe, was suggested by the late Chief Justice of Ontario, than whom, one would have thought, no more precise or accurate lawyer could be named to supervise the draft of the Act to give effect to his suggestion, and we have reason to believe that the draft of the Act was in fact submitted to him and received his approval, as carrying out his intention.

The only section which it is necessary to consider here is the first, which reads as follows:—"No bar of dower contained in any mortgage, or other instrument intended to have the effect of a mortgage or other security upon real estate, shall operate to bar such dower to any greater extent than shall be necessary to give full effect to the rights of the mortgagee or grantee under such instrument." At first sight, certainly, these words appear to effect an important change in the law of dower. Whereas, formerly a bar of dower in the legal estate had an unlimited effect, and enabled the husband alone to dispose of his wife's dower in the equity of redemption, the Act says that henceforth a bar of dower in a mortgage is only to be operative to the extent that may be necessary to give full effect to the mortgage. If, for realizing the security, it is necessary that the bar should be absolute, then it is absolute. If, on the other hand, it is not necessary for that purpose that it should be absolute, then it is not absolute but only partial.

We are certainly disposed to agree with

the late Chief Justice in thinking that the Act does in effect work the change in the law which he contemplated; but, then, such is the infirmity of human language and its inadequacy to express to all minds the same ideas, that we find to others the self-same words have a very different import. In *Smart v. Sorenson* Mr. Justice Ferguson in effect holds, as we understand his judgment, that the Act has made no alteration whatever in the wife's interest in the equity of redemption; and that now, as formerly, whenever the wife bars her dower in the legal estate, her husband may in his lifetime dispose of the equity of redemption so as to deprive her of her dower therein.

The dower of a woman in a legal and equitable estate stood on quite a different footing—while the former rested on the common law, the latter was purely the creation of a statute. While the one could not be defeated by the conveyance of the husband alone, the other could. Perhaps this distinction has not been kept sufficiently in view by the draftsman who framed the Act in question. At the same time, there is certainly room for argument that the limitation which the Act undoubtedly does create in the effect of a bar of dower contained in a mortgage, is to a certain extent, if not altogether, defeated by the construction which Mr. Justice Ferguson has placed upon it.

The learned judge seems to have thought that the wife had no interest in the equity of redemption, upon the ground that her husband could assign it without her assent. We submit that the second section of the Act gives her an interest in the equity, even though it should be ultimately decided that her husband by an assignment can deprive her of this interest without her consent.

The language of this section is: "In the event of a sale of the land comprised in any such mortgage or other instrument, under any power of sale contained therein,