

W. R. Meredith, for the plaintiff.

W. H. Barnum, for the defendant.

LATCHFORD, J.:—The lands were purchased by the deceased in 1895, and about the same time mortgaged for \$350. The plaintiff joined in the mortgage to bar her dower. In 1899, the husband of the plaintiff assigned to one Pierce for the benefit of his creditors, conveying to the assignee his right of redemption. Such title as Pierce obtained under the assignment was transferred by various mesne conveyances—all duly registered—to the defendant, who asserts that he acquired an absolute title to the lands freed from the plaintiff's right to dower.

The mortgage in which the plaintiff had joined to bar her dower was given when her husband was seized in fee of the lands. It was paid off, and a discharge thereof executed before the assignment was made; but the discharge was not registered until after the assignee had conveyed to one of the defendant's predecessors in title. The plaintiff's husband died intestate after the conveyance to the defendant had been made and registered.

The lands at the date of the assignment were apparently subject to the mortgage. The discharge, as stated, had not been registered. If the mortgage was paid off before maturity, and therefore void, the fact was not established in the admissions on which the trial proceeded. In the view I take, the point is not material.

The plaintiff is, on other grounds, entitled to succeed. As soon as her husband acquired the land in fee, her right to dower arose. Her bar of dower in the mortgage did not operate to any greater extent than was necessary to give effect to the rights of the mortgagee: R.S.O. 1897 ch. 164, sec. 7, sub-sec. 1; now 9 Edw. VII. ch. 39, sec. 10, sub-sec. 1. See *Re Anger*, 26 O.L.R. 402. When the mortgage was paid off, her suretyship was at an end. It is quite true that the husband died seized of no estate, legal or equitable, in the lands. But he was the owner of an estate in fee during coverture. The plaintiff's right of dower then arose. It was not barred except for the purpose of the mortgage; and, when the mortgage was paid off, her right was as complete as if the mortgage had not been given.

She is entitled to dower as claimed, and to the costs of this action.

There will be a reference to the Master at St. Thomas, if the parties cannot agree upon the amount payable. Costs of reference to the plaintiff.