

of the bar of dower before the statute, and that was to have dower in the surplus calculated on the full value of the land, where the mortgage was to secure a debt of the husband, except where the debt was for unpaid purchase money of the mortgaged land, and in that case calculated on the value in excess of the incumbrance.

By a later Act, 58 Vict. ch. 25, sec. 3, it was provided that: "3. In the event of the land, comprised in any mortgage or other instrument hereafter executed by which the mortgagor's wife barred her dower, being sold under any power of sale contained in the mortgage, or under any legal process, the wife shall be entitled to dower in any surplus of the purchase money arising from such sale, which may remain after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land had the same not been sold; and the amount to which she is entitled shall be calculated on the basis of the amount realized from the sale of the land, and not upon the amount realized from the sale over and above the amount of the mortgage only. This section shall not apply where the mortgage is for the unpaid purchase money of the land; and nothing in this section contained shall be construed to affect, by implication or otherwise, any question in the case of mortgages heretofore executed."

Except for the provision as to the basis for calculating the amount to which the wife is to be entitled for her dower, this section does not differ in substance from sec. 2 of the Act of 1879.

While sec. 3 applies only to cases in which the mortgaged land has been sold under a power of sale in the mortgage or under legal process, it, like sec. 2 of the earlier Act, provides that the wife is to be entitled to dower in the surplus to the same extent as she would have been entitled to dower in the land had it not been sold, and in the provision as to the basis for calculating the amount to which the wife is to be entitled the legislature indicates, I think, that the draughtsman was under the impression that that would have been the measure of the wife's rights if the land had not been sold.

If the order appealed from is right, as sec. 3 is confined to cases in which the land is sold under power of sale in the mortgage or under legal process, it would follow that in other cases a different rule would be applicable, and in them