

Boyd, C., Ferguson, J. }  
Robertson, J. }

IN RE LUCKHARDT.

[Jan. 10.]

*Dower—Mortgaged lands—Purchase of equity of redemption—Discharge of existing mortgage—New mortgage—Registration—Equitable dower—42 Vict., c. 22—Legal estate—Momentary seisin.*

A married man, making a purchase of certain lands, as part of the consideration, paid off an existing mortgage and obtained a statutory discharge in favour of his vendor. On the same day the vendor executed a conveyance to him, and he executed the mortgage in which his wife joined to bar dower, in favour of the vendor, to secure the balance of the purchase money. All three instruments were registered on the same day, the discharge first, the conveyance second, and the mortgage third. The purchaser subsequently made another mortgage, his wife again joining to bar dower, under which the lands were sold.

*Held*, affirming the judgment of ROSE, J., (ROBERTSON, J., dissenting), that the dower of the wife of the purchaser did not attach.

Per FERGUSON, J.: The right to equitable dower in cases other than those where the equitable estate comes into existence by the husband, being the owner of the land, executing a mortgage upon it in which the wife joins to bar dower, is unaffected by 42 Vict., c. 22, and stands as it stood before that Act was passed; and as in the present case the husband was not, at the time of the making of the mortgage, the owner of the land, but there was an outstanding mortgage upon it made by one who was or had been the owner, the case did not fall within the statute, and the appellant was not entitled to the new right spoken of in *Martindale v. Clarkson*, 6 A.R.I.

It was contended that the husband became entitled to the legal estate at the time of the discharge of the mortgage which was in existence when the equity of redemption came into his hands, and when he gave back another mortgage for part of the purchase money; but this contention could not prevail; upon the registration of the discharge, the legal estate which the mortgagee executing the discharge had, went directly to the purchaser's then existing mortgagee, without passing even momentarily through the purchaser.

*W. David*, for Luckhardt. *J. C. Haight*, for receiver.

Armour, C J., }  
Street, J. }

BANK OF TORONTO v. QUEBEC FIRE INS. CO.

[Jan. 17.]

*Discovery—Examination of officer of company—Assignor of chose in action—Rules 439, 441.*

Rule 441 of the Rules of 1897 provides that where an action is brought by an assignee of a chose in action, the assignor may without order be examined for discovery.

*Held*, that this rule could not be extended by reference to Rule 439 or otherwise, to the examination of an officer of a corporation, the assignors of a chose in action.

*R. McKay*, for plaintiffs. *L. G. McCarthy*, for defendants.