which asked that the dower be set out, was over-ruled by Blake, V.C. His Lordship in giving judgment, said:—"Such assignments operate, not as actual transfers, but by way of contract, entitling the party interested to come here for specific execution; and, as I can discover no principle upon which an assignment of a widow's title of dower should not have the same effect, I am of opinion that the demurrer must be over-ruled." The widow, then, upon an assignment of her right to a stranger, is in this position, that she, no less by her name's being joined in the proceedings with her assignee as co-plaintiff, than by the agreement or contract itself, evinces her desire to have the dower actually ascertained and set out, being under a contract with her assignee, that upon this being done he shall enjoy it; which contract, Courts of Equity will enforce. It has been asserted that the case of *McAnnany* v. *Turnbull*, 10 Gr., to which we have had occasion to refer before, is a decision conflicting with the former. But in the principle which is the subject of the above remarks, we have the key to this case, which instead of conflicting with *Rose* v. *Simmerman* serves rather to strengthen it. In *McAnnany* v. *Turnbull*, a purchaser at a sheriff's sale of the widow's right to dower, filed a bill to have the dower set out; and his bill was dismissed. Here the Court, finding that there was no such expression of the intention or desire of the widow to ask for that which the law allowed her did she wish it, could not enforce the right, because the element of assent necessary to a contract could not be found. There was no such expression of an agreement or contract between the widow and the purchaser, as would suffice to cause the Court to act upon the principle above enunciated, and declare that she had, either by words or by actions, made a declaration of trust in favour of the purchaser. There was no desire expressed by her to have her dower set out. It was attempted to be done contrary to her wishes. This is plainly the ground of the decision, and not the lack of the quality of negotiability in the interest itself. For Vankoughnet, C., in delivering the judgment of the Court, says: "This right she may never assert. She may not choose to disturb the heir, or interfere with his freehold; and if she does not, who at law caw do it for her?" From which it is to be inferred, that, if the widow had chosen to "disturb the heir," her expression of her will would have been given effect to by the Court, even though, as in *Rose* v. *Simmerman*, she had asked it for another. We may therefore conclude, that the right to dower was not assignable at law to a stranger; though Equity would, in such cases, always enforce an assignment for value.

Such being the state of the law, the statute 35 Vict. cap. 12, O., was passed, which enacted that *choses in action*, arising out of contract, should be assignable at law. The question suggests itself, is this right a *chose in action*, "arising out of contract?" It is submitted that it is. It is said in the books to be claimable by the widow, "as of common right; which would imply a contract. It might not unfairly be argued also, that, being a right arising out of the marriage contract, it should therefore be held to be within the act. For, though not the actual object of the contract, it is still one of the natural and inevitable consequences of it; and must be contemplated as such in every marriage contract. This has been the opinion of many eminent judges, not least among whom is Sir Joseph Jekyll. Mr. Park, in his Treatise on Dower, however, in "adverting more particularly to the fallacies of this notion," assails the argument of Sir Joseph Jekyll on several grounds; with what success the learned (and if he have followed me thus far,