

of merger; but the question of the widow's right to dower in equity, under the circumstances, is also satisfactorily disposed of. Esten, V.-C., p. 269, says: "Supposing, however, the true effect of the agreement to be that S. in equity retained his mortgage, rather than took it back, so that it is equitably paramount to the title of dower, yet, undoubtedly, that title attached for every other purpose, and as against every other person. It could have been enforced against Low's heir. For every other purpose except to give priority to the mortgage the purchase-money must be considered paid and the estate conveyed." Spragge, V.-C., after pointing out that the legal right to dower could not be denied, and that the mortgagee would be protected in equity, says, of the purchaser of the equity of redemption: He "surely could have no equity to prevent the assertion of Mrs. Low's legal title to dower. . . . She could claim her dower, not against S. mortgagee, but against S. alienee of her husband; and I really do not see upon what principle this Court could interpose, unless in respect to the mortgage."

This being the situation when the wife does not join in the mortgage to bar her dower, her joining is, under sec. 10 of the Dower Act, 1909, to have no greater effect than necessary to secure the rights of the mortgagee.

Had the land been sold under this mortgage, sec. 10(2) of the Dower Act would have been applied and governed the widow's rights in the surplus money; but, where the land passes to the administrator, the rights of the parties are still regulated by *Re Robertson*, 25 Gr. 486, and *Re Hague*, 14 O.R. 660; and the wife, being a surety for her husband, has the right to cast the burden of the mortgage primarily on his estate. Neither the husband nor any one claiming under him has any equity which can be set up against her legal right to dower, which she has pledged as surety only for the husband's debt.

So declare. Costs out of estate.

BRITTON, J.

DECEMBER 15TH, 1911.

SMITH v. GRAND TRUNK R.W. CO.

Railway—Injury to and Death of Servant—Engine-driver—Negligence—Person in Charge—Conductor of Train—Workmen's Compensation for Injuries Act, sec. 3, sub-sec. 5—Rules of Railway Company—Negligence of Engine-driver—Responsibility—Findings of Jury.

Action by Jean Smith, widow and administratrix of the estate of Charles Franklin Smith, who was a locomotive engineer