

In March, 1879, Richard and John mortgaged the land to Coughlin, to secure \$700. The widow knew of the making of this mortgage, but refused to join in it.

In November, 1879, Richard and John mortgaged to Maclellan for \$4,000, and in this mortgage the widow joined as surety for her sons, receiving no benefit from the money raised.

Maclellan registered his mortgage prior to Coughlin's, and without notice of it, and thereby gained priority over it.

Subsequently, under proceedings had under the Maclellan mortgage, the lands were sold, and realized \$7,500. After payment of Maclellan's claim, \$1,612 remained in court, and the question for the Court was, whether Coughlin or the widow were entitled to it. The Chancellor decided in favour of the widow, but the Court of Appeal have awarded Coughlin priority. First of all they say that the priority gained by Maclellan under the Registry Act did not enure to the benefit of the widow, as she was not a purchaser or mortgagee for value; nor was she entitled to that priority by virtue of her being surety for the mortgagor, because the doctrine of subrogation could not be invoked, to defeat the honest claims, and superior equities of third persons.

When we come to consider the legal effect of Coughlin's mortgage, it is clear that it was effective merely to convey the estate of the two mortgagors, John and Richard. It did not affect the widow's dower. All the estate, therefore, he acquired in the land was an estate subject to dower.

Maclellan, on the other hand, acquired an interest as mortgagee which included the estates of John and Richard and also that of the widow. By prior registration he acquired priority over Coughlin's mortgage as regards the estates of John and Richard, but as regards the estate of the widow, he was entitled to priority as regards that, entirely apart from any question of registration.

The land being sold produces \$7,500, and the master finds that the value of the widow's dower in the property is equal to \$1,162, which is the amount which remains over and above what is sufficient to satisfy Maclellan's claim.

Now it must be borne in mind that what has been sold is not merely John and Richard's interest which was the subject of the mortgage to Coughlin, but the widow's dower also, to which Coughlin had no claim, and at first sight it might appear that, the mortgage having been satisfied out of the principal's estate, what remained must necessarily be attributable to the amount realized from the widow's dower, more especially as the amount of the value of the dower and the amount of the surplus coincided. But more careful consideration will, we think, lead to the conclusion (as the Court of Appeal have, in fact, determined) that Coughlin had a superior equity to the money, to the extent of his claim. Because, when the widow joined in the mortgage to Maclellan she knew that the principals had previously mortgaged their estate, and had the transaction been carried out as she contemplated, or may reasonably be supposed to have contemplated, when she joined in the Maclellan mortgage, it is quite clear that the estate of her principals would have had to make good the Coughlin mortgage, before it could have been applicable to pay the Maclellan mortgage. The decision of the Court of Appeal virtually places