

appeal is that when the husband borrows money on his land for his own debt, the wife by barring her dower pledges her inchoate estate in it as surety for her husband's debt, and that, except so far as it is necessary to protect the mortgagee—the principal creditor—she, the surety, cannot be said to have parted with or destroyed her interest in the lands, so that, if the mortgagee realizes upon or is paid out of the lands, she as surety is entitled to the mortgagee's rights to the extent necessary to ensure that her whole interest (or so much of it as is left after satisfying the mortgage) is returned to her. Such reasoning, of course, will not apply to cases of unpaid purchase money, where, owing to the existence of a vendor's lien, she never took any estate at all except in the surplus. These decisions, in spite of their very considerable variance, probably justify the statement of our next proposition, as follows: *V. Prior to March 11th, 1879, where a widow has barred her dower by a mortgage but becomes entitled to dower out of an equity of redemption, the amount assignable is one-third of the total value of the lands except where the mortgage is to secure unpaid purchase money, when she has dower in one-third only of the surplus, and it makes no difference whether the surplus is realized from a sale under power of sale or legal process or whether it is voluntary.*

Having ascertained the law prior to March 11th, 1879, let us now consider what effect (if any) the statute 42 Vict., c. 22, had on the computation of the value of dower. Originally there were only two sections (numbers 1 and 2) bearing on the point. They will be found in an altered condition in 9 Edw. VII., c. 39, s. 10. The effect of the original enactment has been already stated *supra*. Mr. Justice Ferguson, in *Re Luckhardt*, 29 O.R. 111, at p. 117, points out, as already mentioned, that the statute gives a "new right" to dower in an equity of redemption which the husband cannot assign; and then he says: "So far as I am able to see, the right to equitable dower in cases other than the one above described is unaffected by that statute, and stands as it stood before the Act was passed." In other words, if this view is correct, the statute had very little if any effect upon the quantum of dower assignable out of the equity of redemption.

Notwithstanding this view, the Act gave rise again to a good deal of discussion, and there was a marked difference of opinion