

on the ground that its execution on her behalf under the power of attorney was fraudulent. See *Orford v. Orford and Danforth Heights Limited*, *infra*. The matter was still more out of the ordinary in that an action for alimony was then pending between the wife and husband. See *Orford v. Orford*, *supra*.

The evidence upon which this application was based was taken in England, by commission in the pending alimony action, and tended to prove that the wife had been living apart from her husband in circumstances which disentitled her to alimony.

In the judgment in *Orford v. Orford*, *supra*, the learned Judge had found as a fact that the wife was guilty of adultery in England in January and May, 1918, and that she gave birth to a child of which her husband was not the father on the 13th February, 1919. During the whole of the period in question she was living apart from her husband.

For the purposes of this motion, the learned Judge took into consideration the evidence in the alimony action and the judgment therein, and he now declared that the applicant's wife was, for a period of more than two years before the making of the application, living apart from her husband in circumstances which disentitled her to alimony, and that the applicant was, therefore, entitled to sell or mortgage his lands, and particularly the lands mentioned in the deed to Danforth Heights Limited, free from dower, and ordered that her concurrence therein for the purpose of barring her dower be dispensed with.

The objection that *Orford* was not the owner did not come with much force from one who in another action was seeking to set aside the conveyance to the company as fraudulent.

The power of the husband to make a good title under sec. 14 should not be hampered by technical objections. The applicant was the owner at the time he executed the deed. The conveyance to the company was in fact a sale. The ownership and sale brought him sufficiently within the terms of the section to justify the making of the order. In view of the wording of sub-sec. 3, it might be prudent for the applicant to execute a further deed, expressed to be free from his wife's dower, by way of confirmation of the earlier one. Sub-section 4 extends the operation of the section to cases where a conveyance has already been made by the husband and part of the purchase-money has been retained by the purchaser as an indemnity against dower. That serves as a guide to the intended scope of the section. It is not the mere sale or mortgage that is the subject-matter of the section, but the sale or mortgage "free from dower."

The objections to the making of the order are not valid, and an order should be made as already stated.