

rights as to dower of Sarah Auger, the widow of the deceased, in the lands devolving upon his death.

R. J. McLaughlin, K.C., for the administrators.

J. J. Maclellan, for Sarah Auger.

MIDDLETON, J.:—The question arising upon this motion is the basis upon which dower should be allowed to Sarah Auger, the widow of the deceased.

The late Michael Auger, who died on the 12th May, 1909, on the 1st November, 1898, purchased the lands in question for \$3,000—\$2,800 being secured by a vendor's lien and mortgage, in which the wife barred her dower. The deed and mortgage were practically contemporaneous transactions; the inference being that the deed was first delivered, as it contains a clause "and the grantor releases to the grantee all his claims upon the said lands excepting the said lien for unpaid purchase-money and *the mortgage to be given therefor.*" The mortgage had been reduced to \$1,700 before Auger's death; and since his death, the lands have been sold for \$5,250; and the widow has joined the administrators in conveying, her rights being reserved for the opinion of the Court. The question is: has she a life interest in \$1,750, a third of this price, or in \$1,183.33, a third of the price less the mortgage?

Smith v. Norton, 7 U.C.L.J. O.S. 263, a decision of the Court of Error and Appeal, determines that at common law the seisin of the husband was complete and the right to dower attached. Esten, V.-C., distinguishes the case from a conveyance operating under the Statute of Uses, where the grantee to uses is a mere conduit to convey the estate to the person entitled, saying that, where the mortgage and deed are one transaction, "the person is by the deed fully and perfectly seised of the estate until by his own act (not the act of another) he parts with it by executing the mortgage." The case then before the Court was an appeal from a common law Court, in an action of dower by the widow of the purchaser, who had not joined in the mortgage back to secure the purchase-money. It was intimated by some of the Judges that in equity the mortgagee might obtain relief.

In the next year, a similar question arose in Heney v. Low, 19 Gr. 265. There, again, the wife did not join in a mortgage to secure the balance of purchase-money. The purchaser sold the equity of redemption; and the original vendor, who still held the mortgage, obtained a reconveyance. On an action being brought, at law, for dower, a bill was filed in equity to restrain the action at law. The situation was complicated by the question