

CORRESPONDENCE.

death, she must *passively* have awaited that event; now she may *actively* assert her right, thereby acquired. Whereas, as wife, she had corresponding rights incidental to her position; now there exists a totally new relationship, incidental to which, are corresponding new rights. And it is the different relationships between the wife and her interest, and between the widow and hers, and the corresponding enjoyable or assertable rights incidental to each relationship, that we mean when we speak of the different qualities of the two rights. Though the *object* of her rights has been all along the same, she now bears a different relationship to it; and she has, incidental to this new relationship, a new right, viz., one consummate and vested, depending for its full enjoyment, only upon the exercise of her volition. But it has this peculiarity, that "it is probably the only existing case in which a title, though complete and unopposed by any adverse right of possession, does not confer on the person in whom it is vested, the right of reducing it into possession by entry." *Park on Dower*, p. 334.

We have already seen, in the first of these letters, that she has not any estate in the land before the assignment of dower. She is but entitled "to have one established for her." In fine, as the authorities quoted in my last letter show, she has but a right of action, which she may assert, or not, as she thinks fit; but which she may yet forfeit by withholding the title deeds from the heir. This right, being a *chose in action*, could not at common law, have been assigned to a stranger. For "the common law regards the title of dower, for many purposes, as a mere right of action; and consequently refuses to permit its transfer, except by release to the terre-tenant, by way of extinguishment." *Rose v. Simmerman*, 3 Gr. 600. Thus, it might have been released to the heir; or to the reversioner,

or remainder-man, after an estate for life. *Shep. Touch.* 39; which release would be an effectual bar of her right, not only as against either of these latter, but also as against the tenant for life. *Ibid.* 328. And a release to the tenant for life might also have been taken advantage of by the remainder-man or reversioner. *Ibid.* She might also have released to guardian in chivalry; of which the heir might have taken advantage. *Ibid.* 327. But a release of all *actions* to the reversioner would not preclude her from suing for her dower: for she did not thereby release her *right*; and at the time of the release, she had no right of action against him. *Co. Litt.* 265a. *Altham's case*, 8 Rep. 151. But a release of her right of action, in order to be a present effectual bar, must be to the tenant of the freehold; for the immediate right of action was against him. But a release of all actions to the tenant of the freehold will not bar an action against the remainder-man; since; but the action was released, the right still remains. For *jas prosequendi quod sibi debetur* was not released to the remainder-man. See *Altham's Case*, 8 Rep. at p. 152 a. At law, then, the right to deal with this interest was restricted to its extinguishment.

In Equity, however, we find that the right was assignable on the principles on which the Court of Chancery always allowed *choses in action* to be assigned. We find it thus laid down in Story's *Eq. Jur.* 1040: "They give effect to assignments of * * *choses in action*. Every such assignment is considered in Equity as in its nature amounting to a declaration of trust, and to an agreement to permit the assignee to make use of the name of the assignor, in order to recover the debt, or reduce the property into possession." This principle is illustrated by *Rose v. Simmerman*, cited *supra*. A widow had assigned her right to dower to her co-plaintiff; and a demurrer to the bill,