Robertson, 25 Gr. 486, estimating it upon the whole value of the land and not on the surplus over the incumbrance." Applied to the case in hand, viz., a mortgage given to secure an advance and not for purchase money, the statement is perfectly correct; but there is nothing in the case to indicate that the learned judge had the case of a mortgage for purchase money in mind, or that he would have held that the same rule applied to such mortgages. In neither of the other cases, *Re Croskery* and *Re Hague*, were the mortgages in question given for purchase money—nor do we find anything in these cases to indicate that the learned judges who decided them had in view the case of mortgages for purchase money.

As Street, J., points out, there was a clear distinction before the Act of 1879 in the rights of a wife to dower in land subject to mortgage where the mortgage was given to secure the purchase money of the mortgaged land, and where the mortgage was given to secure a loan or a debt other than purchase money. *Campbell* v. *Royal Canadian Bank*, 19 Gr. 334, had settled that in the case of a mortgage for purchase money the dower was to be calculated only on the value of the equity of redemption; whereas, where the mortgage was not given to secure purchase money, *Doan* v. *Davis*, 23 Gr. 207, and *Robertson* v. *Robertson*, 25 Gr. 486, had settled that the wife's dower was to be calculated on the basis of the whole value of the land. This distinction the Act of 1879 does not appear to us to be intended to disturb, and notwithstanding the verbal criticism which Street, J., has applied to s. 6, we are disposed to think it is framed for the very purpose of preserving this distinction. That section provides that in the event of the sale of the mortgaged land, the dowress is to be "entitled to dower in any surplus of the purchase money arising from such sale which may remain after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land from which the surplus purchase money shall be derived had the same not been sold."

The words "to the same extent" appear to us to indicate that the Legislature had in view the fact that the extent to which a widow in the then state of the law was entitled to dower in mortgaged land was not in all cases the same, but varied according to the nature of the purpose for which the mortgage had been given, and the use of these words seems to us plainly to show that it was not intended to interfere with that distinction. Had it been intended to lay down a rule to be applied to all cases, irrespective of the previously well-established distinction, we are disposed to think that the language would have been different. The draughtsman probably had in view when using the words "had the same not been sold" a case of administration where, without a sale of the mortgaged land, it becomes necessary to adjust the rights of the parties, and to determine to what extent and for what amount the dowress is entitled to dower.

The dower, on whatever basis it is calculated, can, in the event of a sale, only be payable out of the surplus; but if it were intended in all cases to confine the dowress' claim to one-third of the surplus, it was certainly easier to say so than to use the phraseology actually adopted, which, to our mind, plainly enough implies that the Legislature contemplated the fact that the extent to which a widow is entitled to dower depends on the circumstances of each case.