

is bound, by a judgment of foreclosure against her husband in an action to which she is not a party.

In view of this difference of opinion, it may perhaps be useful to consider which of the two opinions is probably correct; and in order to do so, it is necessary to bear in mind the state of the law prior to the 42 Vict., c. 22. Before that Act, we think it was quite clear that an absolute bar of dower in a mortgage was, in fact, an absolute bar, as far as the mortgagee and those claiming under him were concerned. But even before the Act, she had, notwithstanding the bar of dower in the mortgage, still a possible right of dower in the equity of redemption which remained vested in her husband, provided he died entitled to it; but if by sale or foreclosure his equity of redemption were divested before his death, that had the effect of depriving his wife of all dower in such equity. It is, therefore, easy to see that, prior to that statute, a wife of a mortgagor who had barred her dower in a mortgage was not a necessary party to the suit of the mortgagee for foreclosure or sale, because, so far as her dower in the legal estate was concerned, it was effectually barred by the mortgage, and her right to dower in the equity depended altogether on her husband dying entitled to it, which he could not do if it were divested by sale or foreclosure in his lifetime.

The 42 Vict., c. 22, did not pretend to interfere with the rights of the mortgagee; it only assumes to give the mortgagor's wife dower in any surplus which might be realized, in the event of a sale of the mortgaged property, after satisfying the claim of the mortgagee. Very shortly after the passing of the Act, it was held by Galt, J., that, notwithstanding the Act, a mortgagor might still defeat his wife's right to any share of such surplus by a voluntary sale of his equity of redemption: *Calvert v. Black*, 8 P.R. 255; but we think it may well be doubted whether that was a correct interpretation of the statute. We believe that it was this very mischief that the statute was intended to remedy, but it is possible that it has failed to carry out that intention. The decision was dissented from by Armour, C.J., in *Pratt v. Bunnell*, 21 O.R., at p. 2.

But though the wife of a mortgagor undoubtedly has a right, under the statute, to dower in the amount which may represent the value of the equity of redemption when realized, it is another thing to say that she is also entitled to redeem the mortgage.