

husband cannot convey the wife's inchoate right of dower in an equity of redemption created by his own mortgage in which she has joined to bar her dower. Apparently, apart from this decision he would have been prepared to hold the contrary: see p. 51. In *Re Auger* (1912), 26 O.L.R. 402, at p. 406, Sir William Meredith, sitting in Divisional Court, recognizes the "new right" conferred by Act of 1879, and so it may with some confidence be submitted as a further proposition that: *IV. Where, since March 11th, 1879, a wife joins with her husband in a mortgage and bars her dower in lands of which he was previously seized of a legal estate in fee, her inchoate right to dower subsists and is not lost by the husband's conveyance of the equity of redemption in his lifetime.*

The other questions which arise are even more difficult of solution upon the decisions and statutes, and they yet remain to be considered. They deal with the *quantum* of dower assignable out of the proceeds of the equity of redemption. A simple example will illustrate the problem: A husband owns lands which sell for \$3,000. There is a mortgage of \$2,000 to be paid, so that the equity of redemption is worth \$1,000. Is dower assigned out of the whole value of the lands so that \$1,000 must be set aside, or only out of the equity, \$1,000, so that \$333 must be assigned? This problem is also capable of subdivision: (1) Where the mortgage is to secure purchase money either before or after 1879; (2) Where it is to secure a debt of the husband's and is made before March 11th, 1879; (3) where it is to secure a debt of the husband's and is made after March 11th, 1879. It will be found that in both cases No. (1) forms an exception to the law affecting Nos. (2) and (3), so it will be dealt with only as a branch of the other two problems. Let us first inquire how much of the equity of redemption had to be set aside before March 11th, 1879, out of the proceeds of a sale available for the husband, his assignees, creditors, devisees, or next-of-kin, after satisfying the mortgage. Here we find a striking fluctuation of opinion, and the best way is to consider the cases historically, beginning with the year 1867. In that year *Sheppard v. Sheppard*, 14 Gr. 174, was decided, Vankoughnet, C., holding in an administration action that the widow took the whole surplus up to a point sufficient to give her