

who is not licensed to sell the same to be drunk on the premises, drinks, or causes or permits any other person to drink such liquor on the premises where the same is sold, the seller of such liquor shall, if it appears that such drinking was with his privity or consent, be subject," etc. Held, that the conviction was wholly bad upon its face in not describing the offence as described in the statute and it was impossible to amend it by the evidence, for there was no evidence whatever showing, either expressly or by any reasonable inference, that the drinking was with the privity or consent of defendant.

D. Armour for delendant.

Langton, Q.C., for prosecutor.

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ROSE, J.] [OCT. 12.
RE LUCKHARDT.

Dower—equitable estate.

Motion for payment out of court by Michael Weichel of money in court, being the surplus proceeds of sale under a mortgage power. The motion was opposed by Amelia Luckhardt, who contended that the moneys should remain in court to answer dower. The question was whether the legal estate vested in the mortgagee so as to give the wife a right to dower. The husband made a contract for the purchase of the lands, and, as part of the purchase money was required to pay off an existing mortgage, so as to give vendor a first mortgage for the balance, he paid off the existing mortgage, and obtained a discharge. On the same day he obtained a conveyance and gave back a mortgage, in which his wife joined to bar dower. All three instruments were registered, the discharge first, the conveyance second, and the mortgage third. It was argued on behalf of the wife that the deed and mortgage remained in escrow until the registration of the discharge, which operated to convey the legal estate to the husband, and that the dower then attached. Held,

that the deed and mortgage were executed and delivered without condition and not in escrow. It was only as grantee of the land that the purchaser obtained and registered the discharge, and he was not entitled to the legal estate save for the purpose of completing the transaction so as to vest it in the vendor as security for the unpaid purchase money. What the purchaser retained was the equity of redemption, which at that time was all the vendor had, and the mortgage he gave back was a mortgage of the equity, and the registration of the discharge subsequent to the delivery by the operation of the statute vested the legal estate in the vendor as mortgagee. The legal estate, therefore, was at no time in the husband, and the subsequent proceedings by which the property was sold prevented dower attaching under the statute, because the husband cannot die beneficially entitled. *Nevitt v. McMurray*, 14 A. R., 126, 139, Cameron on Dower p. 114, referred to. Order made for payment out of court to applicant.

J. C. Haight for the applicant.

W. Davidson for Amelia Luckhardt.

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ARMOUR, C. J.]
FALCONBRIDGE, J.] [OCT. 11.
STREET, J.]

RE BARTRAM v. ROCKETT.

Mandamus—remedy by action.

Appeal from order of Boyd C., in the London weekly Court, in the nature of a writ of mandamus, commanding the appellant to pay to the applicant, the sum due to him by virtue of sec. 25 of the Ontario Voters' List Act, 1889, as clerk of the court for the revision of the voters' list of the village. The Chancellor held that it was the duty of the treasurer, under the statute, to pay the money, although the village corporation had a judgment for costs against the applicant. The