

## DOWER IN MORTGAGED LANDS.

A widow's right to dower in lands of her husband mortgaged by him to secure his own debt, where she joins in the deed, to bar dower, was until the Act of 1895, a question of considerable doubt. This matter was referred to in these pages on a previous occasion (vol. 31, p. 114).

It was held by the Divisional Court (Falconbridge and Street, JJ.) in *Pratt v. Bunnell*, 21 O.R. 1, following the cases prior to the Act, that under the Dower Act, R.S.O. c. 133, ss. 5 & 6, where the mortgage was given to secure the unpaid purchase money of the land, upon sale under the power in the deed, the widow was entitled merely to dower in the surplus after payment of the mortgage. The decision rests on the principle that under these circumstances all the husband's interest in the land is his equity of redemption, and that therefore the wife is dowable out of the value of the equity alone. In the later case of *Gemmill v. Nelligan*, 26 O.R. 307, it was held by Robertson and Meredith, JJ., that where the mortgage was given to secure not the purchase-money, but a loan to the husband, that then the wife was entitled to dower out of the surplus only, but to be computed, as to the amount, upon the whole value of the land as ascertained by the sale.

The principle of this decision is that in such cases the wife joining in the deed does so practically as surety for her husband, and is entitled to have the mortgage discharged by him or his estate before her dower is computed (see *Robertson v. Robertson*, 25 Gr. 486). As this latter decision deals only with mortgages to secure loans and leaves the prior case untouched, as an authority, where the mortgage is given for unpaid purchase-money, the result of the two is to attach to the Dower Act a totally different meaning according as it is applied to the two classes of mortgages.

To remedy this peculiar result the Act of 1895, c. 25, s. 3, was passed, which declared, following the above cases, that in the event of a sale by the mortgagee "the amount to which she (the wife) shall be entitled shall be calculated on the basis of the amount realized from the sale of the land, and not upon the amount realized from the sale over and