

If one takes into consideration the difficulties which so often lie in the way of making a beneficial partition, the varied interests often involved, and what, in many cases, in the almost impossibility, those interests by means of a partition, and that a sale was provided to meet these very difficulties, it seems a signal failure in the remedy if it is only applicable to cases where no rights of dower are in question, or, if such rights to intervene the remedy can only be adopted by an unmarried tenant in common by his submitting to a substantial pecuniary loss. In my opinion both reason and convenience favor the jurisdiction and practice as laid down in the cases I have just cited. Bearing in mind the subject matter and the evils intended to be remedied by the sale, I cannot see anything in the act which prevents it being construed in the way proposed. The right of petition at the instance of a co-tenant and the right of a sale when a petition cannot be made beneficially, are among the incidents, and by the latter course the husband's title is directed. She is prevented from the enjoyment of her dower consummate, but that is a right which depends upon her surviving her husband, and she is getting a compensation for her interest in the accrued price of the land, and the court has ample means of securing that compensation to her. Such are the principles upon which the court acted in *Weaver v. Gregg*, 6 Ohio State Rep. 547, referred to in *Cameron v. Doner*, 176, and also in *Jackson v. Edwards*, 7 Paige 410, and in appeal in 22 Wend. 498.

I am unable to see any principle which would prevent this Court compelling a married woman to become a party, so that in common with her husband her right derived through him, and therefore subject to the incidents attaching to his estate, of which a sale is one, should be sold and divided so as to realize the full value of the property and give to the purchaser the title of the tenants in common and those claiming through or under them. It is said that this course took a right from the wife without compensation. This is not so. The compensation is included in the proceeds of the sale coming to her husband, as representing his interest in the property, and it only becomes a question between her husband and herself what proportion she is entitled to receive. If they cannot agree, the Court has ample means of settling the question, for I see no greater difficulty in ascertaining the value of a wife's inchoate right of dower than in determining the value of a widow's dower under section 250, sub-section 4. When that question arises it will be found that the powers of the Court are ample for the protection of the interests of both husband and wife. Although in cases where a partition and not a sale is asked for, it is not necessary, for reasons which I have above stated, to make the wives having inchoate rights of dower parties to the suit. It involves an inconvenient practice to omit them in cases where a sale might be asked for, and in cases where the circumstances are such as to render a partition incapable of being beneficially made. Married women having such inchoate rights should, I think, be made parties to the bill. This demurrer must be overruled.