

wife's favour entitling "her to dower out of that equitable estate notwithstanding that the husband should not die seized of it," and at p. 6 he says, "but it extends the rule to cases not reached by that decision when it recognizes the right of the wife where the sale takes place in the lifetime of the husband." These *dicta*, however, did not summarily dispose of the point. It came up squarely for decision in 1885 in *Smart v. Sorenson*, 9 O.R. 640, a judgment of Mr. Justice Ferguson, which, if correctly reported (it was an oral decision at *nisi prius*, and is not verbatim), decided that, notwithstanding 42 Vict., c. 22, the wife took no estate in her husband's equity of redemption during his lifetime. The decision, however, seems to be at variance with certain *dicta* of that very learned judge in *Re Luckhardt* (1898), 29 O.R. 111, at p. 117, where he quotes *Martindale v. Clarkson* and speaks of the "new right" conferred by the statute of 1879. He there says, "since the passing of that Act she is entitled to dower out of an equitable estate regardless of the husband's dying seized (*sic*) of it, when the equitable estate comes into existence by the husband being owner of the land, executing a mortgage upon it, in which the wife joins to bar dower." *Smart v. Sorenson* was discussed by the Chancellor in *Re Croskery* (1888), 16 O.R. 207, where he says, in what is expressly stated to be a dictum: "Personally I do not see why the wife's claim to dower should in these cases rest in the caprice of her husband. She has foregone her dower for a certain purpose, and that being satisfied, it revives, and all the world has notice of this, so that if the husband assigns or sells the equity the assignee or grantee is not a purchaser for value without notice of her possible rights if the mortgage is more than satisfied out of the land." See also *Ayerst v. McClean* (1890), 14 P.R. 15, to the same effect. The point was expressly decided in favour of the wife in *Pratt v. Bunnell* (1891), 21 O.R. 1, though that case was disapproved upon another branch of it, namely, the *quantum* of dower assignable. See *Gemmell v. Nelligan* (1894), 26 O.R. 307. This brings us down to 1911, when Mr. Justice Riddeil, in *Standard Realty Co. v. Nicholson*, 240 L.R. 46, following *Pratt v. Brunnell* upon the point which was not disapproved in *Gemmell v. Nelligan*, reaffirms the principle that after 1879 the