

THE LAW OF DOWER—CURIOSITIES AND LAW OF WILLS.

v. *Edinburgh Life Assurance Co.*, 19 Gr. 248; *McAnnany v. Turnbull*, 10 Gr. 298. In the latter case, Vankoughnet, C., argued thus: "Until the assignment, the widow merely has a right to procure dower; she is a mere stranger to the land and a trespasser, if she ventures on it; this right she may never assert; she may not choose to disturb the heir, or interfere with his freehold: and if she does not, who at law can do it for her? I asked in the argument if there was any instance to be found of an assignee of a dowery bringing a writ of dower in his own name. None such was shewn, and I am not aware of one." The point here is what can be done *at law*. For it had previously been decided in *Rose v. Simmerman*, 3 Gr. 598, that in equity, the widow may sell and convey her title to dower before assignment. This seems also to be the view taken, though with some hesitation, by Wilson, J., in the case of *Miller v. Wiley*, 16 C. P. 529, and again reported in 17 C. P. 369.

Whether a creditor can obtain equitable execution against the widow's right to dower before assignment is one of those nice questions which seems not to have been decided. Against it is the view presented in *Carrick v. Smith*, 34 U.C. Q.B. at p. 397; in favour of it is the course of decision in *Cottle v. McHardy*, 17 Gr. 342. Upon this matter it is not unreasonable that there should be legislative interference, so as to render this valuable right available to creditors, beyond peradventure.

But the strangest fluctuations of judicial opinion are to be found in the consideration of the question as to the rights against creditors of the widow who, during coverture, has joined in a mortgage to bar dower for the purpose of securing a debt of her husband. In *Sheppard v. Sheppard*, 14 Gr. 174, the Chancellor (Vankoughnet) held, that when the land in such a case sold for more than was suf-

ficient to satisfy the mortgagee's claim, the widow was entitled to have her dower as of the whole value of the land out of the surplus in preference to the simple contract creditors of her husband. In *Thorpe v. Richards*, 15 Gr. 403, the same judge was of opinion that he had gone too far in the former case in giving the widow the value of her dower out of the entire estate to the prejudice of her husband's creditors. This change of view was adopted, and followed out into an actual decision by Mowat, V.C., in *White v. Bastedo*, 15 Gr. 546, where he decided that the widow had no equity to have the mortgage debt paid out of the general assets, as against the simple contract creditors, so as to set the land free to answer her dower. The law was laid down in the same way by the same Vice-Chancellor in *Baker v. Dawbarn*, 19 Gr. p. 118. And in *Campbell v. Royal Canadian Bank*, 19 Gr. p. 341, Spragge, Chancellor, said: "I think it must now be taken as settled that, as between the widow and creditors, she is dowable only in respect of the value of the land in excess of the incumbrance, *i. e.* of course, in a case where she is bound by the incumbrance. But lately, we understand the same question again arose in *Re Robertson*, (not yet reported), and Proudfoot, V.C., came to the conclusion that the judgment in *Sheppard v. Sheppard*, right and correctly expounded the law. All this is unsatisfactory.

CURIOSITIES AND LAW OF WILLS.*

It is easy enough to prepare such a will as, "All to wife," or, "Dear Polly, when I ave gon, hall I av belongs to you, my dear Polly;" as soon, however, as one gets beyond these laconic documents

* The Curiosities and Law of Wills. By John Proffatt, LL.B., author of "Women Before the Law," &c., (Vol. II. of Legal Recreations). San Francisco: Sumner, Whitney & Co. 1876.