

obtained heretofore in either a Court of Equity or a Court of Law, or in both Courts.

In *Naill v. Maurer*, 25 Md. 532, it was held that this section authorized Courts of Equity to proceed according to the usual course of such Courts, and adjudicate claims for dower by the principles and rules of equity, and in such proceedings the equities of the case are to be considered.

The bill must state the marriage of the demandant with her deceased husband, his death and his seisin during coverture of the land, see *Knighton v. Young*, 22 Md. 359. In the forms of bills for dower generally given there is an averment of some impediment at law to her recovery; but under our Act of Assembly it should seem that this is unnecessary.

At common law, if the husband aliened part of his lands with warranty and left other lands in the same county, which descended to the heir, the whole of the widow's dower was to be assigned to her out of the lands descended, if of sufficient value, in exoneration of the alienee. When the alienee on being sued vouched the heir, who admitted the warranty and assets in the same county, the widow took judgment against the heir. But if the lands lay in different counties, the widow had immediate judgment against the alienee, leaving him to recover against the heir. If the heir had assets for part in the same county the widow had a conditional judgment for that part, *Co. Litt.* 39-a, n. 6. But if the tenant vouched one who vouched the heir, the judgment was directly against the tenant, *ibid.* It is conceived that this principle still applies, and that the widow is now dowable out of the lands descended of her husband, if of sufficient value and in the same county, in case of the alienee.

If there are conflicting claims to the land, the widow may bring all the parties in interest before the Court and have their respective claims adjusted so far as her dower is concerned. Otherwise, by analogy to law, the widow to recover dower must sue the person who is bound to assign that dower to her, *Kiddall v. Trimble*, 8 Gill, 207: but here, as in other cases, if she asks for relief against any other person he must be made a party. In *Doe v. Gwinnell*, 1 Q. B. 682, it appeared that the lands had been greatly improved by building after their alienation by the husband, but that one-third at least of the lands aliened remained not built on; but that portion was not in the hands of the defendant, for though the husband had aliened to one person, that person had parcelled out the lands to several others. The Court said that where the lands at the death of the husband are in the possession of several persons, whether by the husband's act or **24** the act of the alienee, dower must be assigned as \*to one-third of the lands in each person's possession, and so is *Perkins*, sec. 423, "If the freehold, whereof the widow is dowable, be in the possession of divers persons by several titles, she on a writ of dower brought against one of them shall recover only the third part of the freehold which is in his possession. So that a man or woman &c. who hath possession of only parcel of the freehold of which the woman is dowable, shall not be charged according to the possession of the whole freehold of which she is dowable, except he or she so will it." *Co. Litt.* 35 a. 31 b. 165 a.

It follows therefore that where there are separate tenancies of the land, the widow must sue the tenants of the several parcels separately. And this is the rule both at law and in equity.