

And the second was, whether, if not so precluded, she was entitled to a proportion of the entire net proceeds of the sale regulated by the chancery sale, provided her claim did not affect the mortgage debt, or only to a proportion of the surplus, after satisfying that lien.

To the first of these the Chancellor said :]

THE CHANCELLOR:

It has been argued by the solicitor of the judgment creditor, that Mrs. Buchanan, by the proceeding in Washington County Court, assigning her dower in these lands, has made her election to take in that form, and that she cannot now claim any part of the purchase money. There can be no doubt that a wife, notwithstanding she joins her husband in the mortgage, may nevertheless take her dower in the lands, subject to the mortgage, and that she has a right to redeem and may call on the personal representatives of her deceased husband, to apply the personal assets to the extinguishment of the mortgage debt, so as to free her dower from the incumbrance. 4 *Kent's Com.*, 44 ; 2 *Powell on Mortgages*, 701.

But, it is equally clear, that if a wife, in Maryland, relinquishes her dower in lands mortgaged by the husband, upon privy examination, according to the acts of assembly upon the subject, and the lands are sold to satisfy the mortgage debt, whatever the right of the wife may be, to a proportion of the proceeds of the sale, she cannot, as against the purchaser, claim dower in the land. The principles settled by the Supreme Court of the United States, in the case of *Stelle vs. Carroll*, 12 *Peters*, 201, are considered as conclusively establishing this proposition. And such is also shown to be the law in New York, and in several other states, in 4 *Kent*, 44.

It follows, therefore, that notwithstanding the widow of the mortgagor in this case had received an assignment of her dower in the lands by a court of competent jurisdiction, the subsequent sale under a decree to satisfy the mortgage debt, has effectually deprived her of the benefit of the assignment, and that unless she is entitled to a proportion of the purchase money, she can get nothing.