

as if the *feme covert* at the said execution were of the full age of twenty-one years.

This section held not to be retrospective in its operation. This section does not confer power upon the court to ratify the mortgage of a *feme covert* infant, after she is of age and against her consent. Intent of this section. *Glenn v. Clarke*, 53 Md. 600.

1904. art. 16, sec. 43. 1888. art. 16, sec. 43. 1860. art. 16, sec. 32. 1799, ch. 49, sec. 6. 1816, ch. 154, sec. 10. 1818. ch. 193, sec. 8. 1819, ch. 183. 1820, ch. 191, sec. 28.

**44.** In all cases where lands and tenements are to be sold under a decree, and the widow who is entitled to dower in such lands will consent in writing to the sale of the entire estate therein, the court shall order the same to be sold free from any claim of dower, and allow the widow such portion of the net proceeds of sale as may be just and equitable, not exceeding one-seventh nor less than one-tenth, according to the age, health and condition of such widow.

A widow must either consent to a sale free of her dower and accept what is given by this section, or else the property must be sold subject to her dower under section 46. This section covers all cases where the widow consents to a sale free of dower. *Stein v. Stein*, 80 Md. 308.

Where the husband's lands which were subject to dower have been sold, the widow or her assignee will be allowed a part of the fund in lieu of dower. *Maccubbin v. Cromwell*, 2 H. & G., 443.

This section referred to in estimating the value of a life estate. *Williams' Case*, 3 Bl. 266. And see *Ridgely v. Iglehart*, 3 Bl. 546; *Abercrombie v. Riddle*, 3 Md. Ch. 323; *Peyton v. Ayres*, 2 Md. Ch. 64; *Goodburn v. Stevens*, 1 Md. Ch. 420; *Dorsey v. Smith*, 7 H. & J. 366; *Williams' Case*, 3 Bl. 210, etc.

See art. 46, sec. 63.

*Ibid.* sec. 44. 1888, art. 16, sec. 44. 1860, art. 16, sec. 33. 1839, ch. 23.

**45.** In all suits by joint owners to sell lands, the court may decree a sale free from the claim of dower by the wife of any of the parties.

The fact that the words in the act of 1839, ch. 23, "she being made a party to the proceedings, either complainant or defendant," do not appear in the code, commented on in raising the question as to whether the widow is required to be made a party to partition proceedings under section 137. The proceedings, however, must be conducted in substantial compliance with section 137; proceedings held defective. *Mitchell v. Farrish*, 69 Md. 238.

It is not clear that prior to this section a decree for partition did not bar dower; if the wife is a party to the partition proceedings, her dower is barred. *Rowland v. Prather*, 53 Md. 240; *Warren v. Twilley*, 10 Md. 50.

The act of 1839, ch. 23, referred to as *in pari materia*, and to be construed together, with the act of 1785, ch. 72—see section 137. *Billingslea v. Baldwin*, 23 Md. 115.

See sec. 137 and notes.

*Ibid.* sec. 45. 1888, art. 16, sec. 45. 1860, art. 16, sec. 34. 1816, ch. 154, sec. 11. 1820, ch. 191, sec. 27. 1880, ch. 222.

**46.** Where there is a decree for the sale of lands, and a widow is entitled to dower therein, and will not consent to a sale of her dower, the court may, if it appears advantageous to the parties, appoint five commissioners to assign and lay off the dower of such widow; and any person holding land by descent, devise or purchase, subject to a widow's dower therein, may apply to the court sitting in chancery for the assignment of such dower, and the court thereupon shall appoint five