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Equity--Specific Performance--Contract to Convey--Abatement or Indemnity for Outstanding Inchoate Dower Interest

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NOTE

EQUITY—SPECIFIC PERFORMANCE—CONTRACT TO CONVEY—ABATEMENT OR INDEMNITY FOR OUTSTANDING INCHOATE DOWER INTEREST.—Generally a vendee may enforce specific performance of a contract to convey real estate to the extent of the vendor's ability to convey and have compensation for the difference between the actual performance and the performance which would have been an exact fulfillment of the terms of the contract.[1] There is, however, an irreconcilable conflict of authority as to whether this general principle is applicable to cases where a husband contracts to convey lands, and his wife refuses to join therein and releases her inchoate dower right.[2]

The courts have given three general types of relief to the vendee in such cases.[3] One group of courts (a majority of those which have considered the problem) allows specific performance

[1]Pomeroy, Specific Performance of Contracts, 3rd ed., sec. 438; 2 Story, Equity Jurisprudence, 13th ed., sec. 779.

[2]"An irreconcilable conflict of authority," Long v. Chandler, (1914) 10 Del. Ch. 339, 345, 92 Atl. 256. "Perplexing question to the courts." Barbour v. Hickey, (1894) 2 App. D. C. 207, 213, 24 L. R. A. 763. "Much diversity in the courts upon this question." Brookings v. Cooper, (1926) 256 Mass. 121, 124, 152 N. E. 243, 46 A. L. R. 745, and note.

[3]See Horack, Specific Performance and Dower Rights, 11 Iowa Law Review 97.

of the contract to the extent of the husband's interest only upon the vendee paying the full purchase price with no deductions for the unreleased inchoate dower right[4] of the vendor's wife in the lands.[5] These courts have advanced various reasons for refusing either a decree of abatement or indemnity. One of the more popular reasons is that such a decree might coerce the vendor's wife into releasing her dower interest,[6] and the policy of the law is that a wife is not to dispose of her dower right except by her own spontaneous will.[7] Nevertheless, it does seem that undue importance has been given to the coercive weight of such a decree.[8] Is a wife really coerced, or even slightly compelled, to give up her dower interest "otherwise than by the exercise of her own free and untrammelled will"[9] when even an abatement is allowed? Then, too, what effect would an action at law against the vendor for breach of contract have upon his wife?[10]

[4]In this note, the statutory interest of the wife in the real property that her husband was seised of during coverture will be called dower, even though technically speaking it is not dower.

[5]Long v. Chandler, (1914) 10 Del. Ch. 339, 92 Atl. 256; Reilly v. Cullinane, (1923) 53 App. D. C. 17, 287 Fed. 994; Ebert v. Arends, (1901) 190 Ill. 221, 60 N. E. 211; Solomon v. Schwitz, (1915) 185 Mich. 620, 152 N. W. 196, 3 A. L. R. 557; Rosenow v. Miller, (1922) 63 Mont. 451, 207 Pac. 618; Bondarchuk v. Barber, (1944) 135 N. J. E. 334, 38 A. (2d) 872 (for the facts of this case, see Recent Case, p. 289); Barnes v. Christy, (1921) 102 Ohio St. 160, 131 N. E. 352; Kuratli v. Jackson, (1911) 60 Or. 203, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note, Ann. Cas. 1914A 203; Riesz's Appeal, (1873) 73 Pa. 485; Halden v. Falls, (1914) 115 Va. 779, 80 S. E. 576, Ann. Cas. 1915C 1034; Milam v. Williams, (1914) 73 W. Va. 467, 80 S. E. 770. See Free v. Little, (1907) 31 Utah 449, 88 Pac. 407.

[6]Kuratli v. Jackson, (1911) 60 Or. 203, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note, Ann. Cas. 1914A 203; Stone v. Stanley, (1920) 92 N. J. Eq. 310, 112 Atl. 496; Reilly v. Cullinane, (1923) 53 App. D. C. 17, 287 Fed. 994.

[7]"The policy of these decisions is very manifest. The wife is not to be wrought upon by her love for her husband, and sympathy in his situation, to do that which her judgment disapproves as contrary to her interest; nor is he to be tempted to use undue means to procure her consent." Riesz's Appeal, (1873) 73 Pa. 485, 490.

[8]"Undue importance seems to have been given to the coercive weight of a decree of abatement of the price, or even a requirement that the husband indemnify the vendee against his wife's claim." Long v. Chandler, (1914) 10 Del. Ch. 339, 352, 92 Atl. 256.

[9]"The letter and policy of the law forbid a wife to convey her interest in land otherwise than by the exercise of her own free and untrammelled will." Burk's Appeal, (1874) 75 Pa. 141, 146, 25 P. F. Smith, 147, 15 Am. Rep. 587.

[10]"The rule, then, which looks only to the possible injury to the wife because of the fact that she may be influenced by her husband, takes this uncertain or possible injury as the basis of protection of the wife through the refusal or specific performance, and fixes a certain and positive injury, in many cases, upon the husband, and, in practically every case, upon the purchaser from him, while the wife may still suffer as great an actual damage because of the husband's liability for damages at law." Horack, Specific Performance and Dower Rights, 11 Iowa Law Review 97, 111.

Perhaps the most serious objection,[11] especially in the case of abatement, is that the value of the wife's contingent dower interest cannot be accurately determined.[12] The amount of the purchase price retained as abatement for indemnity should be equal to the then present value of the outstanding dower interest of the vendor's wife.[13] But the value of a common law dower right[14] is dependent upon three contingencies: the time elapsing before the death of the first spouse,[15] which spouse survives,[16] and if the wife survives, how long she lives after the death of her husband.[17] Thus the courts would have to determine the life expectancies of two people.[18] In

[11]"If either an indemnity bond or an abatement in price should be required, the penalty of the one and the amount of the other would have to be fixed. That could not be done without determining the value of the dower right, which in its turn cannot be ascertained without prophesying the prior death of the husband and forecasting the wife's demise—a gruesome, futile task, which the courts cannot be called upon to undertake." Reilly v. Cullinane, (1923) 53 App. D. C. 17, 20, 287 Fed. 994.

[12]Humphrey v. Clement, (1867) 44 Ill. 299; Kuratli v. Jackson, (1911) 60 Or. 203, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note, Ann. Cas. 1914A 203. Haden v. Falls, (1914) 115 Va. 779, 80 S. E. 576, Ann. Cas. 1915C. 1034; Long v. Chandler, (1914) 10 Del. Ch. 339, 92 Atl. 256; Rosenaw v. Miller, (1922) 63 Mont. 451, 207 Pac. 618, Reilly v. Cullinane, (1923) 53 App. D. C. 17, 287 Fed. 994.

[13]Hazelrig v. Hutson, (1862) 18 Ind. 481; Davis v. Parker, (1867) 96 Mass. 94, 14 Allen 94; Tebeau v. Ridge, (1914) 261 Mo. 547, 170 S. W. 871, L. R. A. 1915C 367; Brookings v. Cooper, (1926) 256 Mass. 121, 152 N. E. 243, 46 A. L. R. 745, and note; Najarian v. Boyajian, (1927) 48 R. I. 213, 136 Atl. 767; City of Murray v. Holcomb, (1932) 243 Ky. 287, 47 S. W. (2d) 1026.

[14]"The estate of dower is an estate to which a widow is entitled at common law, for the period of her life, in one-third of the lands and tenements of which her husband was seised in fee simple or fee tail, and which her issue, if any, would inherit." 1 Tiffany, Real Property, 2nd ed., 733. Accordnig to the New York Decedent Estate Commission Reports, (1930) 295, in twenty-four states and the District of Columbia dower still exists, either virtually as it was at common law or in regulated form.

[15]Obviously a dower right which will vest immediately, or in the near future, is of greater value than one which might not vest until several years hence. Thus the courts which allow an abatement deduct the value of the wife's right at the time of the conveyance. See footnote 13.

[16]"Until the death of the husband, the wife has merely a contingent right or interest known as 'dower inchoate.' Until his death, she has a possibility of an estate, conditional in the first place upon her survival of him. . . ." I Tiffany, Real Property, 2nd ed., 798.

[17]The wife gets a life estate, at common law, in one third the lands her husband was seised of during coverture. Obviously, the longer she lives the greater the value of her dower interest. See footnote 14.

[18]"The proper rule for computing the present value of the wife's contingent right of dower, during the life of the husband is to ascertain the present value of an annunity for her life equal to the interest in the third of the proceeds of the estate to which her contingent right of dower attaches, and then to deduct from the present value of the annuity for her life, the value of a similar annunity depending upon the joint lives of herself and her husband; and the difference between those two sums will be the present value of her contingent right of dower." Jackson v. Edwards, (1839) 7 Paige Ch. 386, 408. This rule seems to have been followed by many of the courts which allow an abatement.

states where they have statutory dower, by which the wife gets an interest in fee if she survives her husband,[19] the problem is somewhat simplified.[20] Yet, the courts must still determine how much time will pass before the death of the first spouse,[21] and which spouse will survive.[22] Some courts have said that the value of the contingent dower interest can be "estimated" by tables of mortality and by the statute of present values of estates less than a fee.[23] Perhaps "estimated" is the best word that could have been used. "These mortality tables are no doubt approximately correct as an average of many cases, yet in any individual case reliance thereon would be a mere speculative hazard."[24] It certainly seems as if at least the courts which allow an abatement are gambling with the money of the unwilling vendor.[25]

Courts have proposed other reasons for refusing a decree of abatement or indemnity. They say it would be making a new contract for the parties,[26] or it does not appear that the parties cannot be put in a status quo,[27] or it would impair the marketability of the land,[28] or it would compel the vendee to accept an imperfect

[19]At least eight states have given the surviving wife an interest in fee in the real property her husband was seised of during coverture: Indiana, Iowa, Kansas, Maine, Minnesota, Nebraska, Pennsylvania, and Utah.

[20]In these states the courts need not determine the length of the life of the wife in determining the value of her life estate. At the death of the husband, the value of the wife's dower interest becomes apparent; and its value will be the same whether the wife lives one day or one hundred years longer than her husband.

[21]See footnote 15.

[22]In statutory dower the wife gets an interest in fee only if she survives her husband. See Minnesota Statutes, (1941) sec. 525.16; Code of Iowa, (1939) sec. 11990.

[23]Wright v. Young, (1858) 6 Wis. 125, 70 Am. Dec. 453; Hazelrig v. Hutson, (1862) 18 Ind. 481; Tebeau v. Ridge, (1914) 261 Mo. 547, 170 S. W. 871, L. R. A. 1915C 367; Williams v. Wessels, (1915) 94 Kan. 71, 145 Pac. 856; Najarian v. Boyajian, (1927) 48 R. I. 213, 136 Atl. 767.

[24]Kuratli v. Jackson, (1911) 60 Or. 203, 207, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note; Ann. Cas. 1914A 203.

[25]"In fixing $250, or any other sum, (as the amount to be retained from the purchase price) the court is simply making a guess, as mere a guess as if we were to undertake to say, whether a white ball or a black would be drawn by lot from an urn containing an equal number of each color." Humphrey v. Clement, (1867) 44 Ill. 299, 301.

[26]Phillips v. Stauch, (1870) 20 Mich. 369; Riesz's Appeal, (1873) 73 Pa. 485; Kuratli v. Jackson, (1911) 60 Or. 203, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note Ann. Cas. 1914A 203; Long v. Chandler, (1914) 10 Del. Ch. 339, 92 Atl. 256; Solomon v. Schwitz, (1915) 185 Mich. 620, 152 N. W. 196, 3 A. L. R. 557; Reilly v. Cullinane, (1923) 53 App. D. C. 17, 287 Fed. 994.

[27]Long v. Chandler, (1914) 10 Del. Ch. 339, 92 Atl. 256.

[28]Riesz's Appeal, (1873) 73 Pa. 485; Long v. Chandler, (1914) 10 Del. Ch. 339, 92 Atl. 256.

title which he had not in mind when he agreed to purchase,[29] or it would result in great pecuniary injury to all parties involved,[30] or it would cause too much injury to the vendor who has not been at fault,[31] or it would be protecting a vendee who knew when he entered the contract that the vendor could not convey all the lands without his wife's consent.[32] Perhaps all of these rather confused reasons have their merit. At any rate, they form some basis upon which the courts may rest their decision if they decide against an abatement or indemnity bond.

A second group of courts allows specific performance with an abatement of the purchase price for the wife's inchoate interest.[33] Many of these courts hark back to the old general rule that the purchaser has the option of having the contract specifically performed as far as the vendor can perform it and have an abatement out of the purchase money for any deficiency in the title, quantity, quality, description or other matters touching the estate.[34] The unreleased inchoate dower interest of the wife is a defect in title.[35] Thus the purchaser did not get what he bargained for and should not be required to pay the full purchase price.[36] A few courts have either said it would be unjust to make an innocent purchaser suffer

[29]Solomon v. Schwitz, (1915) 185 Mich. 620, 152 N. W. 196, 3 A. L. R. 557. This reasoning is rather weak. No case has been found wherein the vendee is forced to accept a partial performance of the contract to convey.

[30]Phillips v. Stauch, (1870) 20 Mich. 369.

[31]Riesz's Appeal, (1873) 73 Pa. 485.

[32]"If he has purchased with knowledge of the contingent right of the wife, it is no great hardship that he should be compelled to take the husband's deed alone, with the risk or possibility of his wife having an estate in dower, and be made to rely for compensation in that even upon his covenant of title." Milam v. Williams, (1914) 73 W. Va. 467, 469, 80 S. E. 770; Lucas v. Scott, (1885) 41 Ohio St. 636; Fisher v. Miller, (1926) 92 Fla. 48, 109 So. 257. The more recent cases decided in these same courts have not made knowledge an issue. Barnes v. Christy, (1921) 102 Ohio St. 160, 131 N. E. 352; see Taylor v. Day, (1931) 102 Fla. 1006, 1013, 136 So. 701.

[33]Williams v. Wessels, (1915) 94 Kan. 71, 145 Pac. 856; Martin v. Merritt, (1877) 57 Ind. 34, 26 Am. Rep. 45; City of Murray v. Holcomb, (1932) 243 Ky. 287, 47 S. W. (2d) 1026; Brookings v. Cooper, (1926) 256 Mass. 121, 152 N. E. 243, 46 A. L. R. 745, and note; Sanborn v. Hockin, (1874) 20 Minn. 178, Gil. 163; Scheerer v. Scheerer, (1921) 287 Mo. 92, 229 S. W. 192; Feldman v. Linsanski, (1924) 239 N. Y. 81, 145 N. E. 746; Najarian v. Boyajian, (1927) 48 R. I. 213, 136 Atl. 767; Wright v. Young, (1858) 6 Wis. 125, 70 Am. Dec. 453.

[34]Martin v. Merritt, (1877) 57 Ind. 34, 26 Am. Rep. 45; Melamed v. Donabedian, (1921) 238 Mass. 133, 130 N. E. 110.

[35]Wright v. Young, (1858) 6 Wis. 125, 70 Ann. Dec. 453; Feldman v. Linsanski, (1924) 239 N. Y. 81, 145 N. E. 746.

[36]Williams v. Wessels, (1915) 94 Kan. 71, 145 Pac. 856.

because the vendor has broken his contract [37] or the vendor is in default and should not be heard to complain.[38] These seem to be cogent reasons for desiring an abatement. Yet many courts of equity, though they feel constrained to offer the vendee some form of relief, find it impossible to decree specific performance with an abatement because of the practical difficulty of accurately ascertaining the value of the wife's inchoate dower interest.[39] Some courts simply allow an abatement without discussion of any of the difficulties herein indicated.[40] Others suggest that there is no more difficulty in ascertaining the amount of an abatement in an action of specific performance than damages in an action at law.[41] It has been suggested that the courts which allow abatement are those in which law and equity are administered by the same courts, the distinction in procedure between them being abolished.[42] That may be, but it still seems impossible to justify an abatement in an equity procedure.[43]

A few jurisdictions have forsaken the quibbling over abatement and have found a more just solution to the problem.[44] They have allowed the purchaser, upon sufficient security, to retain a portion of the purchase price to indemnify himself against the future dower claims of the vendor's wife.[45] There are three different schemes

[37]"The defaulting option giver should not get the whole purchase price and then as a reward for his breach of contract keep one-third of the title in a life estate in the family." Tebeau v. Ridge, (1914) 261 Mo. 547, 571, 170 S. W. 871, L. R. A. 1915C 367.

[38]See Sebold v. Williams, (1942) 203 Ark. 741, 744, 158 S. W. (2d) 667.

[39]See footnote 12.

[40]Wingate v. Hamilton, (1855) 7 Ind. 73; Park v. Johnson, (1862) 4 Allen 259; Sanborn v. Nockin, (1874) 20 Minn. 178, Gil. 163; City of Murray v. Holcomb, (1932) 243 Ky. 287, 47 S. W. (2d) 1026.

[41]"If the damages can be assessed at law, then, upon the same principle, and with the same ease, the compensation can be ascertained in equity." Pomeroy, Specific Performance of Contracts, (1926) 3rd ed., 942. Williams v. Wessels, (1915) 94 Kan. 71, 145 Pac. 856; Najarian v. Boyajian, (1927) 48 R. I. 213, 136 Atl. 767.

[42]Kuratli v. Jackson, (1911) 60 Or. 203, 209, 118 Pac. 192, 38 L. R. A. (N.S.) 1195, and note, Ann. Cas. 1914A 203; Long v. Chandler, (1914) 10 Del. Ch. 339, 347, 92 Atl. 256.

[43]North Carolina allows an abatement only where there has been a stipulation in the contract against incumbrances. Bethell v. McKinney, (1913) 164 N. C. 71, 80 S. E. 162.

[44]Bradford v. Smith, (1904) 123 Iowa 41, 98 N. W. 377; Sadler v. Radcliff, (1927) 215 Ala. 499, 111 So. 231; Sebold v. Williamson, (1942) 203 Ark. 741, 158 S. W. (2d) 667; Holly Hill Lumber Co. v. McCoy, (1943) 203 S. C. 59, 26 S. E. (2d) 175, 148 A. L. R. 285, and note. See Handy v. Rice, (1904) 98 Me. 504, 57 Atl. 847.

[45]The American Law Institute, Restatement of Contracts, sec. 365, illustration 4, says that there should either be an abatement or sufficient indemnity against future injury to the purchaser in case the vendor's wife should survive him and enforce her rights.

of indemnity. By the Iowa rule, if the wife refuses to release her dower interest, the vendee has the option of accepting performance by the husband to the extent of his ability and the retention of so much of the purchase money as shall be proportionate to the highest outstanding or contingent interest not conveyed, without paying interest on it.[46] The amount so retained is either paid over to the clerk of court or is secured by a lien, created in favor of the vendor, on the lands in question.[47] The Alabama rule calls for the retention of one-half or one-third of the purchase price, as the wife may presently appear to be entitled under the statutes of that state.[48] If the vendor's wife dies first, the amount reserved, with legal interest, is paid to the surviving vendor. If she survives her husband, then the purchaser need only pay interest on the amount reserved up to the time of the vendor's death; and, by way of compensation, he retains the portion of the purchase price originally withheld as indemnity, without paying interest on it up to the time of the death of the vendor's wife. At her death, the purchaser pays the heirs at law of the vendor the amount retained as indemnity, with the accrued interest up to the time of the vendor's death. The ultimate payment of the amount reserved as indemnity is secured by a decretal order making it a lien upon the land, or else by a mortgage on the land, conditioned and payable as above described.[49]

There is yet a third method of indemnifying the vendee against the claims of the vendor's wife. The Souht Carolina court has rather arbitrarily decreed that one-sixth of the present value of the real estate in question is the wife's common law dower interest at any given time. Thus if the vendor's wife refused to join in the conveyance, they allow the vendee to retain an amount equivalent to one-sixth of the value of the lands (not one-sixth of the purchase price) as indemnity. The purchaser must deliver to the vendor a bond in writing for the amount retained, secured by a mortgage on

[46]Leach v. Forney, (1866) 21 Iowa 271, 89 Am. Dec. 574; Presser v. Hildenbrand, (1867) 23 Iowa 483; Sebold v. Williamson, (1942) 203 Ark. 741, 158 S. W. (2d) 667.

[47]Bradford v. Smith, (1904) 123 Ia. 41, 98 N. W. 377; Thompson v. Colby, (1905) 127 Ia. 234 103 N. W. 117.

[48]In Alabama the amount of the dower depends upon whether the husband leaves lineal descendents, whether the estate is solvent, whether the wife has a separate estate, and upon the relative value of the wife's separate estate. At most the surviving wife can have a life estate in one half of the estates her husband was seised of during coverture. Alabama Code of 1928, secs. 7427-7430.

[49]Minge v. Green, (1912) 176 Ala. 343, 58 So. 381; Sadler v. Radcliff, (1927) 215 Ala. 499, 111 So. 231.

the lands in question, payable to the vendor, and conditioned to pay the vendor interest thereon at the rate of six per cent per annum on the said sum, payable annually so long as the vendor's wife lives; and upon her death, while the vendor still lives, the vendee must pay the said sum to him. If the vendor's wife survives her husband, upon his death the vendee must pay her the amount so retained with any accrued interest. In this way the vendee can get a clear title to the land which not even the vendor's wife can defeat.[50] The South Carolina rule has one fatal weakness. It is doubtful that any other court, under similar circumstances, would require the wife to involuntarily relinquish her dower right, even if she is sufficiently compensated.[51]

In comparing the Alabama rule with the Iowa rule, it might be well to remember that in Alabama the wife gets at most a life interest in a portion of the lands her husband was seised of during coverture;[52] while in Iowa the surviving wife gets a one-third interest in fee.[53] Much more elaborate provisions are needed to compensate the purchaser for the loss of a life estate than for the loss of a fee interest. And even though, by the Alabama rule, interest was used to make compensation for the life estate in the surviving wife, it was also used to compensate the vendor for the loss of a portion of the purchase price while both he and his wife lived. In the latter respect, the Alabama rule is probably more just in its application than the Iowa rule. While the purchaser enjoys the full use of the land he ought to pay interest on the part of the purchase price retained as indemnity. He ought not to enjoy the use of the purchase price and the land both.[54] Those who favor an abatement might object that indemnity with such interest is hardly better than no relief at all.[55] For there are instances in which the vendee, after

[50]Holly Hill Lumber Co. v. McCoy, (1943) 203 S. C. 59, 26 S. E. (2d) 175, 148 A. L. R. 285, and note. With the aid of legislation, the Maine court has reached almost the same result. Handy v. Rice, (1904) 98 Me. 504, 57 Atl. 847.

[51]See Leach v. Forney, (1866) 21 Ia. 271, 89 Am. Dec. 574; Walker v. Kelley, (1892) 91 Mich. 212, 217, 51 N. W. 934; Barbour v. Hickey, (1894) 2 App. D. C. 207, 213, 24 L. R. A. 763; Minge v. Green, (1912) 176 Ala 343, 58 So. 381; Long v. Chandler, (1914) 10 Del. Ch. 339, 342, 92 Atl 256; Williams v. Wessels, (1915) 94 Kan. 71, 76, 145 Pac. 856. The South Carolina court has vigorously denied that such a decree would be unconstitutional because it deprives the wife of her dower right without due process of law. Holly Hill Lumber Co. v. McCoy, (1944) 30 S. E. (2d) 856.

[52]Alabama Code of 1928, sec. 7427.

[53]Code of Iowa, (1939) sec. 11990.

[54]Minge v. Green, (1912) 176 Ala. 343, 58 So. 381.

[55]See the dissent by Justice Mayfield in Minge v. Green, (1912) 176 Ala. 343, 364, 58 So. 381.

paying the vendor as interest an amount in excess of that originally retained, might yet have to pay the amount withheld as indemnity and still only get what he could have had in the first instance by paying the full purchase price and ignoring the dower interest of the vendor's wife.[56] Either form of indemnity is bad in that the lands may be tied up for almost two lives in being.[57] However, the old objection that it is an impossibility for any human agency to approximate the present value of the wife's dower interest is not as important in the case of indemnity as it is in abatement. Under either rule of indemnity the vendor is assured of the eventual payment of the full contract price if his wife's dower interest does not vest. And if it does, why should he be entitled to the full purchase price? Therefore, there are no contingencies. At most the vendor unjustly loses the use of part of the purchase price for a time, and by one rule he is even compensated for that. Moreover, the exact value of the wife's dower interest need not be ascertained for indemnity. The amount retained would be made large enough to cover all contingencies.[58] Even so, admittedly the retention of a large portion of the purchase price by the vendee may cause some hardship to the vendor who may not have been personally at fault.[59]

In fine, because of the contingent nature of the wife's incohate dower interest, there is probably no method of doing justice to all parties involved. But, after careful consideration, it can hardly be denied that in states where common law dower still exists, the rule laid down by the Alabama court, even with all its faults, is the nearest approach to total justice. In states such as Minnesota where there is a statutory substitute for dower, wherein the wife is given an interest in fee in all the lands her husband was seised of during coverture, a modified form of the Iowa rule might be

[56]"Suppose the chancellor fixes it (the amount of indemnity) at $2000, then the complainant must pay interest (8%) on this amount till the wife signs, or she or the husband dies. Suppose the husband and wife both live 50 years, and the wife dies first, the complainant will have paid $8,000 as interest and the $2,000 indemnity, making $10,000 and will get nothing more than he would have gotten had he taken the deed of the husband alone in the beginning." Minge v. Green, (1912) 176 Ala. 343, 365, 58 So. 381.

[57]See dissent in Minge v. Green, (1912) 176 Ala. 343, 365, 58 So. 381.

[58]Wannamaker v. Brown, (1906) 77 S. C. 64, 57 S. E. 665; see Springles' Heirs and Adm'rs v. Shields, (1850) 17 Ala. 295, 298; Long v. Chandler, (1914) 10 Del. Ch. 339, 351, 92 Atl. 256.

[59]Riesz's Appeal, (1873) 73 Pa. 485, 491. New Jersey, a jurisdiction which generally denies either abatement or indemnity, allows indemnity where there has been fraud or bad faith in the wife's refusal to release her dower. Young v. Paul, (1855) 10 N. J. Eq. 401, 64 Am. Dec. 456; Miller v. Headley, (1931) 109 N. J. Eq. 436, 158 Atl. 118; see also Free v. Little, (1907) 31 Utah 449, 88 Pac. 407.