other grounds, the Court's dictum is completely contrary to the usual Missouri practice of remanding every criminal case involving error or omission, the higher court assuming no power to do what the trial court should have done originally. Even in cases of the sort discussed here, despite R. S. Mo. (1929) 3765, giving the Supreme Court power to correct judgments erroneous as to time or place of imprisonment, the general practice has been to send the record back to the trial court, there to be amended to conform to the construction of the statute as laid down by the Supreme Court. *State v. McFadden,* (1925) 309 Mo. 112, 274 S. W. 354. If the dictum in the principal case is followed in future opinions, the Missouri courts will have abandoned the traditional attitude of the past, and be embarked upon the more rational and progressive tendency apparent in modern opinions on criminal procedure.

W. H. M., '36

DOWER—EMINENT DOMAIN—EQUITABLE CONVERSION—RECONVERSION.—The city of New York condemned a portion of appellant's property and awarded him $53,258. His wife, claiming dower, filed notice of a lien on one-third of the award and this sum was set aside to her. The husband appealed. *Held,* in a 3 to 2 decision, that the inchoate right of dower is not such an interest in land taken by eminent domain as to entitle the wife to have a part of the award set aside for her benefit in case she survives her husband. *In re Cropsey Avenue, in City of New York* (1935) 278 N. Y. Supp. 815.

The instant case is of special significance because it is a direct reversal of the New York policy expressed in *Matter of N. Y. and Brooklyn Bridge* (1894) 75 Hun. 558, 27 N. Y. Supp. 597 and *Simar v. Canady* (1873) 53 N. Y. 298. The case accepts the view stated in *Moore v. Mayor* (1853) 8 N. Y. 110. The attempt of the court in the principal case to distinguish the case at bar from that of the *Brooklyn Bridge* case is futile and unconvincing.

All authorities agree that when land is taken by the right of eminent domain, it is not necessary to make the wife a party to the proceeding, as her inchoate dower is inferior to the right of the state to take land for public purposes, and when it is so taken the inchoate dower is extinguished. *Venable v. Wabash Western R. Co.* (1893) 112 Mo. 103, 20 S. W. 493; 1 Nichols, *Eminent Domain* (2nd ed. 1917) sec. 12; 1 Washburn, *Real Property* (5th ed. 1887) pp. 577-582. There is conflict, however, as to whether the wife is entitled to share in the proceeds of the award. The question has been adjudicated in but a comparatively few jurisdictions the majority of which hold that she has no right to share in the award. *Moore v. Mayor,* supra; (dicta) *Venable v. RR Co.,* supra; *Flynn v. Flynn* (1898) 171 Mass. 312, 50 N. E. 650, 42 L. R. A. 98; *McCullough v. St. Edwards Electric Co.* (1917) 101 Neb. 802, 165 N. W. 157; *Long v. Long* (1919) 99 Ohio St. 330. 124 N. E. 151, 5 A. L. R. 1343; *Salvatore v. Fuscellaro* (R. I. 1933) 166 Atl. 26, and the principal case. New Jersey is in the vanguard for the minority holding which maintains that the inchoate right of dower attaches

to the fund derived from the real estate. *Wheeler v. Kirtland* (1875) 27 N. J. Eq. 534. This was also the rule in England before the recent statutory abolition of dower. *In re Hall's Estate* (1870) L. R. 9 Eq. 179. The minority view admits that the inchoate dower is not an "estate" in land, but declares that it is a subsisting, substantial "right" possessing some of the incidents of property, and having a present cash value. *American Blower Co. v. MacKenzie* (1929) 197 N. C. 152, 147 S. E. 529.

That dower interest is a valuable property right, entitled to judicial protection, is perhaps most evidenced in actions by a wife to set aside conveyances the purpose of which is the destruction of the right. *Byrnes v. Owens* (1926) 243 N. Y. 211, 153 N. E. 51; and even more in suits by a bride to set aside ante-nuptial conveyances made for the purpose of defeating her expectations of dower. *Murray v. Murray* (1890) 90 Ky. 1, 13 S. W. 244; *Voidick v. Kirsch* (Mo. 1919) 216 S. W. 519. A search of the cases reveals that the inchoate dower right attaches to the surplus proceeds remaining after a sale to satisfy paramount liens, mortgages, and other encumbrances, and that it is unaffected by a sale of the husband's land either for taxes, or under execution to satisfy a judgment against him. *Home Bldg. Corp. v. Rosin* (1923) 200 N. Y. Supp. 814; *Mills v. Van Voorhies* (1859) 20 N. Y. 412; *Thompson v. McCorkle* (1893) 136 Ind. 484, 34 N. E. 813; *Pingree v. De Haven* (1925) 90 Fla. 42, 105 So. 147; 19 C. J. 496. The purpose of dower is to provide for the support of the wife after the husband's decease, Walsh, *Law of Property* (2nd ed. 1927) sec. 97, and the courts should avoid doctrines by which dower may be barred or extinguished.

The principal case puts much weight on the proposition that the character of the realty was changed into personalty by the award and that dower does not attach to the "cash." This contention is impotent, for dower has been allowed in the "cash" surplus arising from a foreclosure sale. *Kitchen v. Jones* (1908) 87 Ark. 502, 113 S. W. 29; 19 L. R. A. (N. S.) 723; *In re Knapp* (1898) 54 N. Y. Supp. 927; 11 *Am. & Eng. Enc. Law* (2nd ed.) p. 210. Such a view also entirely overlooks the doctrines of "equitable conversion" and "reconversion."

Equitable conversion has been defined as the constructive change of property from realty to personalty, or from personalty into realty, existing in the intendment of equity. Bispham, *Principles of Equity* (1919) sec. 307. It is the logical expression of the maxim that equity regards that as done which ought to be done, *Moore v. Kernachan* (1922) 133 Va. 206, 112 S. E. 632, and it is admitted in order that the rights of parties may be enforced and preserved. *Foster's Appeal* (1873) 74 Pa. 391. The doctrine is generally applied to those cases where land directed to be converted into money is treated as money. *Marcey v. Graham* (1925) 142 Va. 285, 128 S. E. 550; *N. Y. C. & H. R. R. Co. v. Cottle* (1919) 168 N. Y. Supp. 463. It is not limited to such situations, however, and the courts have generally held that funds realized from the judicial sale of a decedent's land partake of the same rules of distribution as the property which they represent, *i. e.*, the money is treated as realty. *M'Learn v. Wallace* (U. S. 1836) 10 Pet. 625; *State* ex rel. *Enyart v. Doud* (1925) 216 Mo. App. 480, 269 S. W.

923. The instant case could have followed the reasoning of *In re Tatham's Estate* (1915) 250 Pa. 269, 95 Atl. 520, in which damages paid to the executors in trust for realty condemned during the widow's lifetime was held to be distributable as realty, and not as personalty.

The court also failed to consider the doctrine of reconversion, which is an imaginary process by which a constructive conversion is countermanded and the converted property restored to its original status in the contemplation of the law, at the election of the parties entitled to the property, or by operation of law. Bishpam, *Principles of Equity,* supra; Chandler, *Reconversion in Missouri,* 12 St. L. L. Rev. 175 et seq. Although the general rule under the doctrine is that *all* of those having a beneficial interest in the property converted must consent to a reconversion (*Wyatt v. Stillman Institute* [1924] 303 Mo. 94, 260 S. W. 73), it has been held that where the direction is for a conversion of money (as for example, the award) into realty (to which the right of dower would unquestionably attach) only *one* of the beneficiaries need elect to reconvert as to her share. *Seely v. Jago* (1717) 1 P. Wms. 389, 24 Eng. Rep. 438. The New York court could have reached a more equitable decision by following *Nall v. Nall* (1912) 243 Mo. 247, 147 S. W. 1006, and *Griffith v. Witten* (1913) 252 Mo. 627, 161 S. W. 708, to the effect that at the option of the beneficiary, property which became money as a result of the conversion may be regarded as realty.

Since it is the policy of the law to protect dower at all hazards, the inchoate right should be preserved under the circumstances of the principal case as well as otherwise. The contrary view should be confined to controversies between the state and the wife of one whose property is condemned; for the reason behind the rule vanishes when the question arises as between the parties to the marriage in connection with the fund which is the substitute for the real property taken. Young and Carswell J. J., dissenting in the principal case. The better view would appear to be for the court to order that one-third of the total award be deposited in trust for the wife contingent on her surviving the husband, with the annual income of the fund going to the husband.

W. F. '37.

EQUITY—INJUNCTIONS—LIBEL.—Counterclaim by defendants alleging that complainant and its servants and agents made false statements as to the quality of its products and that complainant circulated false statements concerning defendant corporation intending to injure the defendants in business and to deceive the public and the defendants' customers. *Held:* Counterclaim dismissed. The Court of Chancery is without jurisdiction to restrain injury to business or property threatened by false representation as to character, quality, or title of property, nor does its jurisdiction extend to cases of libel or slander. *A. Hollander & Son, Inc. v. Jos. Hollander, Inc.,* (N. J. Eq. 1935) 177 Atl. 80.

That equity will not restrain by injunction the threatened publication of a libel, as such, however great the injury to property may appear to be,