

12702

No. _____

Supreme Court of Illinois

Owen

vs.

Robbin^s

71641  7

~~7758~~

And then

1792-1793

George A. Smith

Over

1270
1858

#

Preserved

8721

Book for lot of New Mass
In Channing

172
Emilie O'meara

ms
George S. Robbins

Transcript

Filed April 21, 1854

Sealed

Open

W. H.

W. H.

True Transcript

Certified by

Comptroller J. W. B.

State of Illinois }
County of Cook ss.

Pleas before the Honorable
John M. Wilson, Judge of the Cook County
Court of Common Pleas within and for the County
of Cook and State of Illinois at a Vacation Term
of the said Cook County Court of Common
Pleas, begun and holden at the Court House
in the City of Chicago in the County and State
aforesaid, on the first Monday being the Sixth
day of July in the year of our Lord one
thousand eight hundred and fifty seven, and
of the Independence of the United States the
Eighty second.

Present the Honorable John M. Wilson Judge
John L. Wilson, Sheriff of Cook County
Attest Walter Kimball Clerk

Be it Remembered, That heretofore, to wit,
on the Twentysecond day of December A.D.
Eighteen Hundred and fifty five, Emilie
Owen by Isaac G. Wilson, her Solicitor filed
in the office of the Clerk of the Cook County
Court of Common Pleas, her Petition for
Dower in the words and figures following
to wit.

State of Illinois }
County of Cook ss.

Of the February Term of the
Cook County Court of Common
Pleas A.D. Eighteen Hundred and
fifty six

To the Honorable John M. Wilson Judge of the
Cook County Court of Common Pleas in
Chancery sitting:—

The Petition of Emily
Owen of the County of Sangamon respectfully
sheweth unto your Honor, that she is widow of
Thomas J. Owen, deceased late of the County
of Cook, and that as such widow she is entitled
to Dower of the third part of all the lands whereof
her said husband was seized during Coverture.

That your Petitioner and the said Thomas
were married in the year of our Lord
Eighteen Hundred and twenty three, and
lived together as husband and wife until
on or about the fourteenth day of October,
A.D. Eighteen Hundred and thirty five,
when the said Thomas died leaving the follow-
ing Children heirs of his body by your Petiti-
on, namely: Thomas aged eleven years and
upwards, William aged eight years and
upwards, George aged four years and up-
wards and Elias aged ten months and
upwards. And your Petitioner further

represents that during such your petitioned coexistence as aforesaid, to wit in the years Eighteen Hundred and thirty four and thirty five, the said Thomas J. W. Owen was seized in fee simple, absolute in his own right the following described lands situate lying and being in the County of Cook aforesaid and known and designated as Block number one hundred and five (105) and Block number one hundred and Eight (108) in School Section Addition to Chicago -

That on or about the Twentyfirst day of May A.D. Eighteen Hundred and thirty five, the said Thomas by deed conveyed said Blocks of land to E. K. Hubbard, and that the title to the same has since by various conveyances passed to and George S. Robbins, who is now seized in fee of the same subject to your Petitioner's right of Dower.

Your Petitioner avers that she has never conveyed, aliened, released, discharged nor in any manner relinquished her right of dower in said lands, either during the life of the said Thomas nor since his death, but on the contrary your Petitioner avers that she is now entitled to her reasonable dower in said lands, to wit to the one third part thereof for and during her natural life,

Your petitioner therefore prays

that the said George S. Robbins, may be made
defendant to the petition and proceeding, that
process issue against him and that he be
compelled to answer herein fully and particu-
larly; and that upon a final hearing of her
said petition she may be allowed her dower
in the lands and premises before described, and
have such other and further relief in this be-
half as to justice and equity shall appertain.
and she will ever pray &c. ~~Emeline Owen~~
Isaac J. Wilson } True. Owen
Sol^r for Compt^r }

State of Illinois }
Sangamon County } ss.

Emeline Owen being by
me duly sworn deposes and saith that she has
heard read the foregoing and within petition
and knows the contents thereof, and that the
facts therein stated, are true of her own
knowledge except so far as stated to be upon
information and belief, and those she
believes to be true. True. Owen
subscribed and sworn to before
me this 6th day of March AD. 1856.

(Seal)

Given under my hand and
Seal of Office as Clerk of the Circuit
Court of Sangamon County, State
of Illinois, J. H. Mackay, Clerk

And afterwards, to wit, on the Twentieth day of February A.D. Eighteen Hundred and fifty six. said day being one of the days of the February Term of said Court County Court of Common Pleas, the following among other proceedings was had in said Court and entered of Record, to wit,

Emilie Owen	} In Chancery
vs	
George J. Robbins	} Petition for Dower

And now comes the said defendant by Morris & Blackburn his Solicitors, and on his Motion it is Ordered that the petitioner show cause why by the last day of this term, why the petition herein, should not be dismissed for want of the signature of the petitioner thereto.

And afterwards, to wit, on the Twelfth day of March in the year last aforesaid, said day being also one of the days of the February Term of said Court, the following, among other proceedings was had in said Court and entered of Record, to wit,

Emilie Owen } In Chancery
vs } Petition for Dower
George S. Robbins }

And now come Isaac G. Wilson Solicitor for said Petitioner and in Answer to the Rule of the defendant heretofore entered in this cause to show cause &c. and file herein the power of attorney of the said petitioner authorizing him to institute this proceeding. And on motion of said Solicitor it is ordered that the Rule be discharged and leave is given to withdraw from the files the said Power of Attorney by filing a certified copy thereof.

And afterwards to wit on the Twenty eighth day of April in the year last aforesaid the said defendant by Morris & Blackburn his Solicitors filed in the office of the Clerk of said Court his Answer to the said Petition in the words and figures following to wit.

State of Illinois }
Cook County }

The answer of George S. Robbins defendant to the Petition of Emilie Owen filed in the Cook County Court of Common Pleas. against him the said Robbins by the said Emilie.

This defendant Comes, and for answer to the said petition of said Emilee, says he has no knowledge except from said Petition that said Emilee is the widow of the said Thomas J. V. Owen deceased in said Petition mentioned; nor that she was lawfully married to him the said Thomas as alleged in her said Petition; and therefore this defendant demands strict proof of said allegations of said petitioner in her said Petition stated. This defendant says he denies that the said Emilee and the said Thomas lived together as husband and wife from the year 1823 until about the 14th day of October A.D. 1836. nor did said Thomas J. V. Owen depart this life the 14th day of October 1836, or at any other time in said year 1836, as untruey alleged in her said petition. But this defendant on information and belief says that the said Thomas J. V. Owen died about the 14th day of October A.D. 1835, and that the petitioner by the name and description of Emilee Owen, administered upon his Estate on the 30th day of October A.D. 1835 by giving bond and security of that date and taking the oath prescribed by law as by reference had to said bond and oath on file in the clerks office of the County Court of Cook County will more fully appear.

This defendant further says, he denies that the said Thomas J. V. Owen in the year

1834 & 35. was seized in fee simple, absolute in his own right of the following described lands situate lying and being in the County of Cook aforesaid, and known and designated as Block one hundred and five (105), and Block one hundred and Eight (108) in the School Section Addition to Chicago as alleged in said Petition of said petitioner. nor had said Thomas J. W. Owen any such title to the said Blocks of land on the 21st day of May A.D. 1835 or at any time before that time, nor at any time before his death. But this defendant on information and belief says that the said deceased in his life time and prior to the year 1835 bid off said Blocks of land at a public sale made by the Commissioner of School lands for said County or some such officer, who gave said deceased a certificate of his bid, and receipt for one fourth of the purchase money then paid down, and that the residue was payable in one, two and three years thereafter, with interest annually, and on full payment of principal & interest he would have been entitled to patents for said Blocks of land from the Governor of the State of Illinois, the last payment thereon falling due in the fall of the year 1835.

This defendant on information and belief further says that before said purchase money was paid for the said Blocks of land, by said

deceased, or any body for him, and before the Governor of the State of Illinois issued the patents for the Conveyance of said Blocks of land to the said deceased, to wit, on the 22nd day of May A.D. 1835, the said deceased in his life time sold and conveyed all his right title and interest in and to the said Blocks of land, unto the said Elijah K. Hubbard, as hereinafter more fully stated: and this defendant on information and belief, says that after the death of the said Thomas J. V. Owen deceased, to wit, on the 7th day of December A.D. 1835, the Governor of the State of Illinois by patents of that date issued to the said deceased & were made and executed to him, who was then dead and had been for nearly two months before the issuing of said patents for said Blocks of land as will appear by reference had to the attached. Copies of said Patents annexed to his answer and prayed to be taken as part of this His answer one of which said copies is marked Exhibit A. and the other Exhibit B.

This defendant further states the said Thomas J. V. Owen, and the petitioner by the name of Emeline his alleged wife, in his life time to wit, on the 22nd day of May A.D. 1835, in consideration of Forty six Hundred Dollars to them in hand paid, by deed of that date by them duly signed, executed and delivered,

did sell and convey all their Estate, right, title, interest, property. Claim and demand of, in and to the said Blocks of land above described unto the said Elijah H. Hubbard of said Cook County his heirs and assigns forever, in trust for Annis, Townsend & Co. and G. F. Moulton of the City of New York, and A. L. DeKoven & Elijah Hubbard of Middletown, Connecticut, with covenants among others therein contained, to wit: That said Thomas was ^{well} seized of said premises in fee, in his own right, that they were free from incumbrance, and for quiet enjoyment and to make further conveyance to said Hubbard, which deed was on the same day acknowledged by the said Thomas & Emeline the Petitioner before one R. E. Deacock, a justice of the Peace of said County and filed and recorded in the Records office of said County on the 18th day of June A.D. 1835. in Book D. at page 101 as by reference had to an attested copy of said deed hereto annexed as part of this this answer, will more fully and at large appear. marked Exhibit C.

And this defendant further says, that on the said 21st day of May 1835. the said Thomas J. V. Owen and Emeline the said Petitioner went before the said justice in said County of Cook, where said Blocks of land were then and still are situate, and both of

them to him were personally known to be the real persons who executed the same deed, and then and there acknowledged the same to their act & deed for the purpose contained therein and the said petitioner being by said justice examined separate and apart from her said husband, acknowledged that she executed the same after own free will without the coercion of her said husband. thereby as this defendant believes and so insists winning her knowledge of the contents of said deed as signed, executed and acknowledged by her as aforesaid, as by reference had to the justice's Certificate indorsed upon the back of said deed will more fully appear, and is made a part of this his answer, and this defendant further says that he insists that if said petitioner had any right of Dower in and to said Blocks of land, she relinquished the same in and by the execution and acknowledgment so made as aforesaid; and on this point he prays the judgment of the Court and that said Petition be dismissed with costs &c.

This Defendant on information and belief says that the said Blocks of land, before and at the date of said deed from Owen to Hubbard as aforesaid, were vacant and unoccupied lands, and that ^{said} Thomas J. V. Owen as this defendant is advised by his counsel, and believes to be true, and so states the fact to be, had not such

little in and to the said Blocks of land, as would
intitle his widow to dower in the same by the
laws of Illinois, existing at the date of said death
of consequence; and upon this point he prays the
judgment of this Court; and that said Petition
may be dismissed with cost &c.

— This defendant further says he is inform-
ed and believes and states the fact to be that
said Elijah H. Hubbard departed this life
either in the year 1838 or 1839 at his own house
in Chicago in said Cook County, having pre-
viously to his death duly made and executed
his last will and testament in writing, and
therein appointed William H. Brown of Illinois
and H. Griswold Hubbard of Connecticut his
Trustees and Executors, which last will and
testament was in due time and place duly
proven and admitted to Record in the Probate
Court of said County of Cook & State of Illinois
as by reference to said Will when produced or
the Court may direct will appear, and the
defendant on information and belief further
says that the said Brown & Hubbard took upon
themselves the execution of said will of said
deceased Hubbard, and that said will and
testament gave them full power and authority
to settle, grant and convey said Blocks of land
as they should believe just & proper. And
the said Trustees and Executors under & in fur-

success of the power and authority vested in them
by virtue of said last will and testament and
of the law in such case made and provided,
did on the 2nd day of October A.D. 1840. by
deed of that date as such Trustee and Executors
grant and convey the said Blocks of land above
described unto the said Russell H. Nevins (of the
firm of Nevins Townsend & Co.) of New York
and to his heirs and assigns forever for a
valuable consideration set forth in said deed,
which said deed was afterwards duly acknowl-
edged and Recorded in the Records office of said
Crest County on the 21. September 1841. in Book
6. page 240. as by reference to said Record Book
or deed when produced will more fully appear
and is prayed to be taken and considered as part
of his his answer. This defendant ^{says} that after-
wards to wit, on the 29th day of April A.D. 1848
the said Blocks of land still being vacant
and unoccupied lands. that said Russell H.
Nevins by deed of that date in consideration of
Ten Thousand Dollars to him in hand paid
did grant, bargain, sell and convey the said
Blocks of land above described unto this de-
fendant his heirs and assigns forever with
full covenants of warranty seizen, good right
to sell and for quiet enjoyment thereof, & which
deed was duly acknowledged and recorded
in the Records office aforesaid. on the 4th day

affirmed A.D. 1851. in Book 45. page 134, as by
reference to said deed in possession of this defendant
and ready to be produced when and where the
Court may direct. Will more fully appear and
is prayed to be considered as part of this answer
when so produced.

This defendant says, he admits he holds the title
to said Blocks of land and is seized in fee
thereof. But he denies that he the said defendant
holds said Blocks of land subject to the
Petitioner's alleged right of Dower in the same as
alleged in her said petition.

This defendant says
that from the fact that said Petitioner did
sign and execute said deed with her said hus-
band and joined him in the transfer of his
title, interest and claim in and to said Blocks
of land as aforesaid, more than twenty years
before she set up any claim of Dower in the
same, and after his and her children had
arrived at lawful age and she and they
had disposed of all the estate of said deceased
of more than \$40,000, and perhaps after they
have more or less squandered the same and
placed themselves or some of them and their
funds beyond the reach of this defendant, for a
breach of said deceased's warranty of quiet
enjoyment of said premises, clearly impressed
this defendant with the belief that said Petitioner

knows her claim to be unjust and oppressive and as he believes unjust and oppressive and therefore says he is advised by his counsel and believes said petitioner ought not in equity and good conscience to have and maintain her said Petition against him because he says that he is a bona fide purchaser of said lands in said Petition described, for a valuable consideration of Ten Thousand Dollars by him fully paid without any notice of the Petitioner's alleged claim of Dower in the said premises, and because he further says that the said petitioner title or right of Dower if any she had, to the said Blocks of land accrued to her for more than twenty years next before she made any claim or demand of Dower in said premises, and for more than twenty years next before this suit was brought, and this defendant further says, that he insists and relies upon this matter and upon the Statute of limitations in such case made and provided, approved February 10th 1827, as a bar of her rights to have and maintain her said Petition, or have any decree thereon, against him, this defendant.

This defendant says that said Petitioner ought not to have and maintain her said petition against him, because he says that the said Russell B. Nevins under whom this defendant claims title to said Blocks of

land by purchase thereof as aforesaid. Having color of title to the said. made in good faith and that the same were vacant and unoccupied lands from 23rd October 1840. till in 1853, when the same became occupied by the tenants of this defendant, and since then has so continued to be occupied by his tenants, and this defendant says on information and belief that he or his agents paid all taxes legally assessed on said Blocks of land for seven successive years. prior to the filing of said petition and suing out process thereon against this defendant. And this defendant says that he insists and relies upon this matter and upon the Statute in such case made and provided, approved March 2nd 1839. in bar of the said petitioner's right to have and maintain the said petition, or have any decree thereon against him the said defendant.

This defendant further says, that he is advised and believes and so states the fact to be, that said petitioner ought not to have and maintain her said petition against him, because he says that said Blocks of land, were vacant and unoccupied lands from the year 1833 till the year 1853, and that the said Russell H. Nevins, under whom this defendant claims title to said premise by purchase aforesaid owned and had color of title to said vacant

and unoccupied premises made in good faith, and that said Kevin by his agents, and this defendant since his said purchase as aforesaid by his agents paid all taxes legally assessed on said Blocks of land for seven successive years prior to the petitioner filing her said petition against this defendant in this Court, and this defendant says that he insists and relies upon this matter and upon the Statute in such case made and provided in bar of the said petitioner's right to have and maintain her said petition or to have any decree thereon against this defendant,

And this defendant further says that he is advised that said petitioner ought not to have or maintain her said petition against this defendant, because he says that said Blocks of land above described were vacant and unoccupied, and on the 29th day of April A.D. 1848, and continued so till in the year 1853, and that he having color of title to the same made in good faith; that he by his agents has paid all taxes legally assessed on said Blocks of land for seven successive years immediately prior to the commencement of this suit against him, and he insists and relies upon this matter and upon the Statute in such case made and provided, in bar of the said petitioner's right to have or main-

tain her said petition, or have any decree
thereon against him the said defendant.

This defendant further says that he is ad-
vised by counsel, that said petitioner has not
by her said petition and proceedings, shown
herself entitled to any relief in the premises
as against this defendant, and upon this point
he prays the judgment of the Honorable Court,
and said petition may be dismissed, and
this defendant having fully answered said
petition prays to be dismissed with his costs
and charges and about his defence most
wrongfully sustained.

Morris & Blackburn } George S. Robbins
Sols for Defd }

State of New York }
City & County of New York }

George S. Robbins defend-
ant, who subscribed to the foregoing answer
of his, makes oath and says: that the matters
and things set forth in the foregoing answer
of his upon information and belief, he be-
lieves the same to be true, and those other-
wise stated are true.

April 14. 1856

Subd

Jos. T. Maxwell
Clerk Superior Court of
the City of New York

And afterwards, to wit, on the Twenty ninth day of April, in the year last aforesaid the said petitioner by her said Solicitor filed in the office of the Clerk of said Court her Replication to the said defendants Answer in the words and figures following, to wit

Book County Court of Common Pleas
In Chancery
Emilie Orm
vs } Petition for Dower
George S. Robbins }

The Replication of Emilie Orm to
the Answer of George S. Robbins
Defendants.

This Repliant saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said Answer, for replication thereto saith that she will aver and prove her said petition to be true certain and sufficient in the law to be answered unto, and that the said Answer of the said defendant is uncertain untrue and insufficient to be replied unto by this Repliant. Without this. That any other matter or thing whatsoever in the said Answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or de-

nied is true, All which matters and things
this Repleint is and will be ready to aver and
prove as this Honorable Court shall direct.
and she humbly prays, as in and by her
said petition. She hath already prayed
Isaac G. Wilson
S^{ol} for Petitioner

And afterwards to wit on the ninth day of
March A.D. 1857, the said parties by their
said Solicitors filed in the office of the Clerk
of said Court, their Stipulation in the
words and figures following, to wit,

Cook County Court of Common Pleas

Emeline Owen

George S. Robbins } In the matter of
Petition for Dower

The following facts are
admitted on the part of the petitioner and defend-
ant in the above entitled cause by their
Solicitors.

That the petitioner Emeline Owen
is the widow of Thomas J. V. Owen deceased
late of Cook County Illinois, and that the
petitioner and the said Thomas were married

in the year Eighteen Hundred and Twenty three and lived together as husband and wife until about the 14th day of October A.D. 1835 when the said Thomas departed this life leaving children as stated in said petition as amended. It is further admitted that during his life time and during the coverture of the said Petitioner as aforesaid, the said Thomas at a sale made in October 1832 in pursuance of the laws of Illinois then existing, by the Commissioner of School lands at public auction, bid in the premises described in said petition known as Blocks One Hundred and five, and One Hundred and Eight, in School Section Addition to Chicago, and received from said Commissioner a certificate of such purchase setting forth that one fourth of the purchase money had been paid therefor by the said Thomas, and that the said Thomas, his heirs and assigns, would be entitled to patents for said premises upon the full payment of the balance of such purchase money, payable in equal instalments with interest, in one two and three years from the time of such purchase.

It is further admitted that the said Thomas in his lifetime paid the instalments on said purchase as they became due, the last payment falling due and being paid on the

day of October A.D. 1835, after the sale and conveyance by him to Hubbard, and that patents were afterwards issued for said premises by the Governor of the State of Illinois, in the usual form to and in the name of the said Thomas, purporting to grant and convey said premises to the said Thomas, his heirs and assigns, bearing date the 7th day of December A.D. 1835.

It is further admitted that the said Thomas before his decease, and before he had paid the last instalment for said lands to wit. on the 21st day of May A.D. 1835. for and in consideration of \$4.600. paid to him did execute and deliver unto Elijah K. Hubbard the deed of conveyance in trust as stated in the defendants answer. with full covenants of general warranty of title and quiet possession of said blocks of land. said deed bearing date on that day, and which was acknowledged on the said 21st day of May 1835, and duly recorded in the Records office of Cook County in Book D. page 101 on the 18th day of June 1835, and that the said defendants shall be permitted to read said deed on the record upon laying the usual foundation of a copy of it with the certificate of acknowledgment as given by the Justice, in evidence on the hearing of this cause. But as to the question whether the

rights of the said petitioner are conveyed or affected by said deed and certificate, this question is referred to the judgment and determination of the Court upon the facts.

It is further admitted that said premises were subsequently conveyed to Russel St. Kevin, and were on the 29th day of April 1848 conveyed to said defendant as stated in his answer.

It is admitted that said lands were vacant and unoccupied at the times stated in the defendant's answer, and it is also admitted that the said defendant and his grantors were in the occupation of said lands at the times stated in his said answer, but as to whether the said Deft. and his grantors paid taxes thereon as stated in his said answer, the Defendant is left to his proof of the same by putting in evidence on the hearing, the tax books, his tax receipts, and such other legal proof as he may be able to produce, on the hearing of this cause, or all or any of them.

It is further admitted that the said petitioner has not since the death of her said husband asserted her right to dower in said premises by demand or suit until the filing of said petition, nor has she exercised acts of ownership over said premises since the death of her said husband, by taking possession, paying taxes, or in any other manner.

But as to whether the widow, the said Euclid
Owen is barred of her dower by said deed
and facts which will appear in this case is
left for the Court to decide, and is referred to the
Court for determination from all the facts and
circumstances in the case.

Isaac G. Wilson for A.G.W.

Hayne Miller & Lewis
for Petitioner

B. S. Morris for Deft

It is hereby further agreed that the Petition
and answer may be amended so as to conform
to the foregoing agreed statement of facts.
It is also admitted that the taxes and assess-
ments were paid as stated in the defendants
answer.

Isaac G. Wilson

for Petitioner

B. S. Morris for Deft

The following instrument was read on the hearing of said
cause.

This Indenture made the 21st day of May in
the year of our Lord ^{One thousand eight hundred eighty five} ~~1885~~ between Thomas
J. H. Owen and Euclid Owen his wife of
the County of Cook and State of Illinois of the
first part and Elijah W. Hubbard, of said
County in Trust for Kevin Townsend & Co.
and W. F. Moulton of the City of New York, and

H. L. Devoen and Elijah H. Hubbard of Middle-
bury Connecticut of the second part. Witnesseth,
That the said parties of the first part for and in
consideration of the sum of Forty Six thousand
Dollars lawful money of the United States of
America to them in hand paid by the
said parties of the second part at or before the
en sealing and delivering of these presents the
receipt whereof is hereby acknowledged and the
said parties of the second part their heirs
Executors and administrators forever released
and discharged from the same by these pres-
ents. Have granted, bargained, sold, aliened,
revised, released and, confirmed, and by these
presents doth grant, bargain sell, alien,
revisd, release, and confirm unto the said par-
ties of the second part and to their heirs and
assigns forever, All of the following Blocks
or lots of land, to wit, Block No. One thousand
and five, and Block No. One thousand and
Eight in Section no. Sixteen in Township No.
thirty nine, North of Range No. Fourteen East
of the Third Principal Meridian in the State
of Illinois, as laid out by the Trustees of said
Township, a plan of which is Recorded in the
Recorders office in and for the said County
of Cook, reference being thereunto had for
further particulars. Together with all and
singular the tenements, hereditaments, rights

members privileges and appurtenances unto the said
above mentioned and described premises belong-
ing or in anywise appertaining. And the reversion
and reversions. Remainder and remainders,
rents, issues and profits thereof. And also all
the Estate, right, title, interest, property, possession
claim or demand, whatsoever as well at law as
in Equity of the said parties of the first part of
in and to the same, and every part and parcel
thereof, with the appurtenances. To Have and To
Hold the above granted bargained and ~~assigned~~
described premises and every part and parcel
thereof with the Hereditaments and appurtenan-
ces unto the said parties of the second part their
heirs and assigns to the sole and only proper
use benefit and behoof of the said parties of the
second part their heirs and assigns forever,
And the said Thomas J. V. Owen for himself his
heirs Executors and administrators, Doth Cove-
nant, grant, promise and agree to and with
the said parties of the second part, their heirs
and assigns in manner and form following,
that is to say. As the said Thomas J. V. Owen
at the time of the sealing and delivering of these
presentes was lawfully seized in himself of a
good, sure, absolute, and indefeasible Estate
of inheritance in fee simple of and in all and
singular the above granted, bargained and des-
cribed premises, with the appurtenances, and has

good right - full power and lawful authority to
grant, bargain, sell and convey the same in
manner and form aforesaid. And that the
said parties of the second part their heirs and
assigns shall and may at all times hereafter
peaceably and quietly have hold, use, occupy,
possess and enjoy the above granted premises
and every part and parcel thereof with the her-
editaments and appurtenances, without any let,
suit, trouble, molestation, eviction or disturbance
of the said parties of the first part their heirs and
assigns or of any other person or persons lawfully
claiming or to claim the same or any part thereof.
And that the same now and fore, clear, discharged
and unincumbered of and from all former
and other grants, titles, charges, estate frag-
ments, taxes, assessments, and incumbrances of
what nature or kind soever. And also that the
said parties of the first part and their heirs and
all and every other person or persons whosoever
lawfully or equitably deriving any estate, right,
title or interest of in or to the herebefore grant-
ed premises, or any part or parcel thereof by,
from, under or in trust for them shall & will
at any time or times hereafter upon reasonable
request & at the proper costs and charges in the
law of the said parties of the second part their
heirs and assigns, make do and execute or
cause and procure to be made, done & executed

all and every such further and other lawful and
reasonable acts conveyances and assurances in
the law for the better and more effectually test-
ing and confirming the premises hereby intended
to be granted in and to the said parties of the
second part their heirs and assigns forever
as by the said parties of the second part their heirs
or assigns or their counsel learned in the law
shall be reasonably devised, advised or required,
And the said Thomas J. V. Owen the above des-
cribed and hereby granted and released prem-
ises and every part and parcel thereof with the
hereditaments and appurtenances unto the said
parties of the second part their heirs and af-
signs against the said parties of the first part
and their heirs, and against all and every per-
son and persons whomsoever lawfully claiming
or to claim the same or any part thereof, shall
and will warrant and by these presents forever
defend.

In Witness Whereof the parties to these
have hereunto interchangeably set their hands
and seals the day and year first above writ-
ten.

Th. J. V. Owen Seal
Emeline Owen Seal

Stated and delivered in the presence of
R. C. Hancock

State of Illinois }
Cook County } This day came before me

Thomas J. V. O'Neil and Emeline his wife, both
to me personally known to be the real persons
who executed the within instrument of writing,
and acknowledged the within to be their act &
deed for the purposes contained, and the said

being by me examined separ-
ate and apart from her husband acknowl-
edged that she executed the same of her own
free will without the coercion of her husband.

In testimony whereof I have hereunto
set my hand and seal this 21st day of May
Eighteen Hundred and thirty five.

R. E. Heacock J. P. Seal.

Recorded 18th June 1835

Richard J. Hamilton

Recorder

And afterwards to wit. on the Ninth day of July in the year last aforesaid. the said Petitioner by her said Solicitor filed in the office of the Clerk of said Court her Amended Petition in the words and figures following to wit.

State of Illinois

Cook County Court of Common Pleas

To the Hon. John W. Wilson, Judge of the Cook County Court of Common Pleas, in Chancery sitting.

The amended Petition of Emily Omer respectfully sheweth that she is the widow of Thomas J. Omer deceased, late of the County of Cook, and that as such widow she is entitled to Dower in the following pieces or parcels of land, namely Blocks No. One Hundred and Eight (108), and One Hundred and five (105) in School Section Addition to Chicago Illinois. That your petitioner and the said Thomas were married in the year Eighteen Hundred and twenty three, and lived together as husband and wife until about the 15th day of October A.D. 1885. When the said Thomas died leaving the following children heirs

of his body by your petitioner, namely Thomas Owen then aged Eleven years, William Owen aged Eight years, George Owen aged four years, and Elias Owen aged ten months, all of whom are still living.

And your petitioner represents that during her coverture with the said Thomas as aforesaid to wit on the day of October A.D. 1821, at a sale of School lands made in pursuance of the laws of Illinois then existing, by the Commissioner of School lands at public auction, her husband the said Thomas bid in said Blocks of land and paid to said Commissioner one fourth of the purchase money and received from said Commissioner a certificate of such purchase in due form, setting forth that one fourth of the purchase money had been paid therefor by the said Thomas, and that the said Thomas his heirs and assigns would be entitled to patents for said premises upon the payment of the balance of such purchase money, payable in equal instalments with interest in one two and three years from the time of such purchase.

Your petitioner further represents that the said Thomas in his life time paid the instalments on said purchase as they became due, the last payment falling due and

being paid on the day of October Eighteen
Hundred and thirty five. Whereby the said
Thomas became and was entitled to a patent
from the State of Illinois to be executed by the
Governor as provided by law in such cases.

That afterwards and about the 15th day of
October A.D. 1835. the said Thomas died, and
that subsequent to his death or about the 7th
day of December A.D. 1835 a patent was issued
by the Governor to said Thos J. Omen
or in his name in ignorance of his death.

Your petitioner avers that she has
never conveyed, aliened, released, discharged
nor in any manner relinquished her right of
Dower in said lands. either during the life
of the said Thomas nor since his death, but
on the contrary your petitioner avers that she
is now entitled to her reasonable Dower in
said lands to wit, to the one third part thereof
for and during her natural life.

Your petitioner further represent that one
George S. Robbins, as your petitioner is in-
formed, claims some interest in said prem-
ises by virtue of some conveyance from her
said husband, and that said Robbins has
been in possession of the same for some
time past and is still in possession of the
same. claiming an interest therein.

Your petitioner therefore prays that

the said Thomas Owen, William Owen,
George Owen, Elias Owen, the State of Illinois
with George S. Robbins. who has heretofore
answered, may be made parties defendants
to this petition and proceeding, that process
issue against them, and that they be required
to answer herein fully and particularly,
And that upon a final hearing she may be
allowed her dower in the lands and blocks
hereinbefore described, and have such
other and further relief, in this behalf
as to justice and equity shall appertain.

Isaac G. Wilson &

Hoyne & Miller
for Petitioner

And afterwards, to wit on the said day and
year last aforesaid, the State of Illinois by
Carlos Haven its Solicitor, filed in the office
of the Clerk of said Court, its authority to said
Carlos Haven to appear &c. and its answer
to said Petitioner's Amended Petition in the
words and figures following to wit.

State of Illinois
Cook County Court of Common Pleas.

Emilie Owen	} In Chancery	
^{vs}		
George S. Robbins Thomas		} Petition for Dower
Owen William Owen		
George Owen, Elias Owen		
+ The State of Illinois		

In the above case O. B.

Harvey Esq. States Attorney in and for the 7th
Judicial Circuit is hereby appointed and author-
ized to enter the appearance of the State of
Illinois and answer for them in this behalf.

By the Governor	Wm. A. Bissell
Esq.	O. W. Hatch
State	Governor
	Secretary of State

Cook County Court of Common Pleas

Emilie Owen	} In Chancery	
^{vs}		
George S. Robbins Thomas		} Petition for Dower
Owen William Owen		
George Owen, Elias Owen		
The State of Illinois		

And the State of
Illinois by Carlos Harow its Solicitor for
Answer to the petition filed in said cause.

admits the allegations in said petition contained
so far as they respect the purchase of the prem-
ises in the Petition described, from the State
and the issuing of a patent after the death of
said Owen. And the State submits its rights
and interests in the premises to the decision
of this Honorable Court

C. Haven
State Attorney

And afterwards, to wit, on the same day and
year last aforesaid, the said defendants, Thomas
Owen, William Owen, George Owen & Elias
Owen by Stephen Miller and Lewis their
Solicitors, filed in the Office of the Clerk of said
Court, their Answer to the said Petitioners
Amended Petition in the words and figures
following, to wit.

Cook County Court of Common Pleas

Emilie Owen
vs
George S. Robbins, Thomas
Owen, William Owen,
George Owen, Elias Owen
& The State of Illinois

And the said defend-
ants Thomas Owen, William Owen George Owen

+ Elias Owen, by Hogue Miller & Lewis their
Solicitors for answer to the petition filed in said
cause. Say that they admit the several allega-
tions in said petition to be true, and submit
their rights and interests in the premises to
the Honorable Court.

Hogue Miller & Lewis
Solicitors for above Defts

And afterwards, to wit on the same day and
year last aforesaid, said day being one of the
days of the July Term of said Cook County
Court of Common Pleas, the following among
other proceedings was had in said Court and
entered of Record, to wit,

Emilie Owen,	} In Chancery
vs	
George S. Robbins	
	Petition for Power

And now comes the said
Complainant by Isaac S. Wilson & Hogue and
Miller her Solicitors, and the said defendant
by Morris & Blackburn his Solicitors also comes,
and this cause came on to be heard, on the
petition answered and Replication herein and
on a statement of the facts of the case agreed up-
on between the said parties. And after a full
hearing thereof, the Court here being now fully
advised in the premises, it is Ordered ad-

judged and decreed. That the Petition of the said Complainant filed herein be dismissed, And that the said Complainant do pay to the said defendant his Costs and Charges by him about his defence in this behalf expended, and that the said defendant do have execution therefor as upon Judgment at law. To which decree of the Court the Complainant excepts and prays an appeal to the Supreme Court. Which is allowed on Condition that she file Bond in the sum of Five Hundred Dollars with security within twenty days.

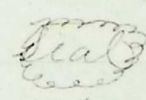
And afterwards, to wit on the Tenth day of July in the year last aforesaid the said Complainant by her said Solicitors filed in the office of the Clerk of said Court her Appeal Bond in the words and figures following to wit.

Know all Men by these Presents, That We Emelie Owen, Isaac G. Wilson & Henry G. Miller, are held and firmly bound unto George S. Robbins, The State of Illinois, Thomas Owen, William Owen, George Owen and Elias Owen, in the sum of Five Hundred Dollars, for the payment of which sum well and truly to be made, we do hereby bind our selves, our Heirs, Executors, administrators and

assigned freely by these Presents. Sealed with
our Seals and dated this 10th day of July
A.D. 1857.

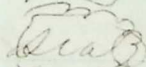
The condition of the above obligation
is such, that whereas on the 9th day of July
A.D. 1857 a final decree was duly made in
the Cook County Court of Common Pleas
in a suit depending on the Chancery side of
said Court, wherein the said Emelie Owen
was Complainant, and the above named
obligors were defendants in favor of said de-
fendants and against said Complainant,
dismissing the Petition of said Complain-
ant filed therein, from which final decree
the said Emelie Owen has taken an appeal
to the Supreme Court of the State of Illinois,

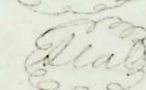
Now therefore the Condition of this Obligation
is such that if the said Emelie Owen shall well
and truly prosecute her said appeal with
effect, and shall well and truly pay all
such costs interest and damages, as shall
be awarded against her in case such de-
cree shall be affirmed, then this obligation
to be void, otherwise to remain in full force
and effect.

Emelie Owen by 
Isaac G. Wilson her atty in fact

Isaac G. Wilson

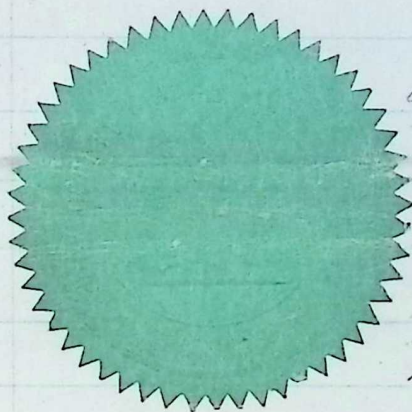
Henry G. Miller





State of Illinois }
County of Cook } ss.

J. Walter Kimball, Clerk
of the Cook County Court of Common Pleas
in and for said County. do hereby certify
that the above and foregoing is a full and
true transcript of the papers on file in my
office, and the proceedings entered of record
in said Court in the case wherein Emily's
Owen is Complainant, and George S. Robbins,
defendant.



In Testimony whereof I hereunto
subscribe my name and affix
the Seal of said Court at the
City of Chicago in said County
the 18th day of March A.D. 1858

Walter Kimball
Clerk

State of Illinois
Supreme Court

Emelia Owen
appellant

^{vs.}
George S. Robbins
State of Illinois & others
appellees.

Afterwards
to wit on the day of April
AD 1858, at the same term of the
Court, before the Justices then of course
the said Emelia Owen by Isaac G.
Wilson Grant Goodrich & Wayne
Miller & Lewis her Solicitors and
says that in the record and proceed-
ings aforesaid there is manifest
error in this to wit that by the record
& proceedings aforesaid it appears
that by the final judgment and
order of the court the petition
of the said Emelia Owen the com-
plainant in said suit was dis-
missed and that a final decree

Therein was made by said Court,
in favor of the defendants in said
suit and against said complain-
ant whereas by the laws of the
land said petition ought to have
been retained and the final
judgment and decree thereon
ought to have been given in favor
of said Complainant and her
prayer therein granted to her,
and the said Justice Over-
rules that the final judgement
and decree aforesaid for the
Errors aforesaid and for other
Errors ^{apparent} on the record and proceed-
ings aforesaid may be reversed
and set aside. - &c -

Isaac H. Wilson, Grant
Godrich, & Wayne Miller
Solicitors for Appellants.

Supreme Court

Petition for Issuance

Emilia Owen

George H. Robbins
vs

The Petitioner Mrs. Owen is a lady of French extraction. She was born in Kaskaskia in this State where her parents resided and when very young was married to Major Owen Indian Agent at Chicago. In 1835 her husband died when she returned with her children of whom she had four to her friends in Kaskaskia. She has resided there and at Springfield ever since—

At the sale of the School Section in Chicago in 1832 Owen purchased Blocks 10105 & 106 the premises described in the Petition, paying one quarter down and the balance in instalments, all of which were paid by him before his death which took place in October 1835. In December thereafter a patent was issued to him or in his name, the State authorities not being aware of his death.

Before his death he had executed a deed of Conveyance for the premises to C. N. Hubbard, through whom the defendant derives his title. The deed purports upon its face to have been executed by the

petitioner - She denies its execution and denies positively that she ever acknowledged it -

On the part of the petitioner we insist 1st that the certificate of acknowledgment is wholly defective

That as to the wife there is no certificate whatever

2^{dly} That the petitioners dower is not barred by the Statute of limitations - 3^{dly} That it is not barred by the Statute of Conveyances

1 On the part of the defendant it is claimed that the deed is a bar

2^d That

her claim is barred by the Statute of limitations (20 years Stat)

3 That

it is barred by the 8th & 9th sections of the Statute of Conveyances which are in effect Statutes of limitations -

4 That

there was no estate or interest in the husband of which the wife is dowerable.

The facts are all agreed upon

Dower is a right unusually favored by
Courts and is guarded with jealous care
nothing being allowed to defeat it by implication.

4 Kent Com 35. 2 Bl Com-

Law on Dower 1 Gel 510

So highly was the right of Dower ^{estimated} ~~estimated~~ ^{estimated} say,
Judge Kent and so anxious were our forefathers
to secure its undisputed establishment as
applying to all lands of which the husband
was seized during coverture that it was incor-
porated amongst the provisions of Magna
Charta and it has continued in the English
law to the present time; and with some
modifications it has been everywhere adopted
as a part of the municipal jurisprudence
of the United States.

The maxim of Lord Coke "there are three things
that be favored in the law life liberty & dower"
has been universally received and acted upon.

I

As to the 20 years Statute of limitations

Dower before assignment is not within the
6th & 7th sections of the Statute of limitations

[vide R P page 347]

By a uniform course of decisions in England
and in most of the United States it has been
established that dower is not barred by general
statutes of limitations

Park on Dower pp 311, 342 - 3 John 104 Hylke Dower
3 Kent Com Editt 51 p 101 - 7 Metcalf 24
Barnhard v Edwards 4 CV 11 109
Wells v Beall 2 Gil & John 468
May v Burnsey 1 Mich 1
Swifts Dig Ed. 1822 p 85.
Guthrie v Owen 10 Yerq 339
1 Dec & Bat 213. Angell on Lien 33
1 Dudley (Georgia) Rep 123

Statutes of limitations operate to bar either a
right or a remedy - The 6th section of our
Limitation act bars a right of entry in 20 years
The 7th section bars certain specified actions
in the same period -

Dower not within the 6th section -

That section limits the making of an entry
to within 20 years from the accruing of the right
of entry

But - The widow cannot enter before
the assignment of dower

Chancellor Kent lays down the general doctrine "the widow cannot enter for her dower until it be assigned to her nor can she alienate it. It is a mere chose or right ⁱⁿ of action &c" and so are the authorities universally alleg 4 Kent Comm

1 Mich Repl 1. 11 Ill 384

9 Mass 13. 4 Ibid 388

7 John 247. 17 Ibid 167

20 Ibid 411- 5 Murfoid 346

16 Mass 173- Park on Dower

It follows that as the widow has no right of entry before assignment the statute of limitations cannot begin to run until a signment has been made

The 7th section limits the bringing of certain actions, "real" "possessory" "concurrent" "mixed" or "rights of right"

In neither can dower be included.

A "Real action" is defined to be, an action whereby the demandant claims title to have any lands &c and it is said that by these actions formerly all disputes concerning land or real estate were decided but they are laid aside on account of the great nicety required in their management and the inconvenient length of their process, a much

more expeditious method of trying titles being
since introduced by other actions personal or
mixed

3 Black Comm 118

"Mixed actions" are suits wherein some real
property is demanded and also personal
damages for a wrong sustained -

Ibid 118

In "Ancestral actions" the demandant must Count
upon the Seizin of his ancestor at the time
of his death and of his inheritance -

Ibid 186

The term "possessory action" embraced three different
forms of proceeding to recover the possession of
land in cases where possession was wrongfully
withheld from the person having the right
of entry. It embraced

The writ of entry

The writ of assize

The writ of Novel disseizin

In neither of which was Dower recoverable

3 Black Comm 183 & 4 they being possessory
actions based upon the right of entry

The right of Dower was specially excepted & the

3

Heir or people did not assign it. the widow had
her action by Writ of Dower, or Writ of right of
Dower which was a more general remedy than
the Writ of Dower extending to the withholding of
a part as well as the whole of the Dower.

3 Black Com 183.

Thus it will be seen that a proceeding to recover
dower whether by Exemption or Petition is not
only not within any of the actions limited in
the 7th section but that the right for the recovery
of which those actions are used are wholly different
from the right of dower.

The Rev Stat of Mass provide that "no
person shall commence an action for the
recovery of any lands nor shall make any entry
thereon unless within 20 years &c"

In the case of Parker v O'Beary & Metcalf 24,
a writ of dower was brought the tenant denied
his title to the premises from the husband of
the demandant of Dower, and he relied upon
the above recited Statute of limitation as a bar
to the action. The Court say,

"The language of the Statute is very broad.
That a writ of Dower is a writ for the recovery
of lands and taking the language of the Statute

without any qualification it would seem to be a bar" But after some comments the Court say - "We are clear that the Statute of limitations was made with another purpose and however broad the general words may be they are not applicable to claims for Dower"

In the case of May as Rumney already quoted the law of limitations as applied to dower rights is thoroughly and very ably discussed and all the authorities bearing upon the question are referred to the case in fact is a summary of the law as it stood at the time of that decision (1841)

Amongst other things the Court say "the right of dower is unlike any other right to land known to the law and its peculiar nature is such as to exempt it from all general Statutes of limitation however broad & comprehensive in which this action is not named or by unavoidable implication included. These statutes apply only to those persons whose right of entry is lost by their own laches or by the laches of those under whom they claim but the widow has no right of entry. The estate of the widow arises by general operation

of law and is not created by grant " &c.

Again "It will also be perceived that the reasons why the action for dower is not held to be within the Statutes are, that the action for dower is not expressly named - that no implication can be raised against such action on account of the favor with which courts have regarded the widows rights, and because the peculiar nature of the right and the general object of such statutes is such as to exempt this action from their influence

And it will be found that all the decisions that have been made, are made upon Statutes as Comprehensive as ours and most of them more comprehensive

The Statute of Michigan provides "that no writ
" of right or other real action or action of ejectment
" or other possessory action of whatsoever name or
" nature shall be brought unless &c

It was held to be no bar to a proceeding for dower

And it is observable that in Michigan their Statute in relation to the assignment of Dower & proceeding by petition is an exact copy of ours,

So in Mass & Metcalf & C. H. it has been held
that dower is not barred, and so in New
York. & John. Hoyle & Stewart

Dower is not within the Statute of Tennessee
which provides "that no person shall have or
maintain any action or suit in law or
equity for any lands &c but within seven yrs &c.

The Georgia Statute enact that all writs of
Formedon &c (enumerating those of 21 Jas.) or
any other writ, suit or action whatever, at
any time hereafter, to be sued or brought by
means of any title or cause hereafter accrued
&c shall be sued or brought within seven
years, ~~next~~ after the passing of this act or
after the title or cause of action shall or
may descend or accrue to the same &c.

The Supreme Court of Georgia in
Wakeman & Hoache / Dudley / 23 which was
an action for the recovery of dower in which
the Statute was pleaded say "these words
would seem sufficiently comprehensive
to embrace every remedy and unless the
Case of Dower is excepted because of its over
distinguishing peculiarities it must be included"

The Court make Dower an excep-
tion and hold that ^{it} is not barred

1
4
The Statute of North Carolina provides "that no person nor their heirs which shall hereafter have any right or title to lands &c shall enter or make claim but within seven years &c.

In that State it has been decided that a Widow's right of Dower is not subject to the Statute of limitations until after it has been assigned.

And so in England Judge Kent says "In the English laws the wife's remedy by action for her dower is not within the ordinary Statutes of limitations."

4 Kent Com 70 and cases cited

{ Remark not aware of any conflicting
authority except Carolina & for
Comments on that Case see Mich. }

II

Dower not within the 8th & 9th sections
of the Statute of Conveyances

Those are substantially Statutes of limitations and therefore the same reasons that exclude dower from the 6th & 7th sections of the limitation act would exclude it from the operation of these sections —

But an equally conclusive answer ~~under~~ is
that under these sections the possession must
be adverse.

1 Dower or the right of Dower is not adverse to the
legal ownership of the land.

The Statute ^{to be} says that the occupant shall
"be adjudged ~~to be~~ the legal owner of the land to
the extent ~~according~~ to the purport of his paper title

It is said in Adamson Ejectment 48 "A
possession under claim or color of title to be a
good bar under the Statute must be founded on
an adverse possession; and an adverse possession
will be negated when the parties claim under
the ~~Statute~~ same title or where the possession
of one party is consistent with the title of the other

In Park's treatise on Dower p. 133 it is said that
although a title of Dower is nothing more than
a right of action and consequently transferable
in no other mode than by release to the tenant
by way of extinguishment, yet it differs from all
other mere rights of action in not being the
subject of any adverse possession acquired by
the heir or feoffee, and as a consequence the
possession of the heir or feoffee can never become a
bar to the right of the wife.

"The estate of the widow arises by operation of law and is not created by grant, and as the lands when held by the husband are subject to the incident or inchoate rights of the wife; if the husband deeds them the purchaser takes them in the same way, subject to the same legal incidents, of which they cannot be divested except by the act or death of the wife. The purchaser enters into possession not under a perfect title but under a title subject to the dower of the wife with which his title well consists to which it is in no wise opposed.

1 Mich 12

The claim for Dower is not adverse to but ^{is} based upon the title of the husband and the seizin of the husband's grantee is but the continuation of the seizin of the husband.

Such is the language of the books universally
And the case of Hoyle v Stewart & John cited upon the other branch of the case is a very strong case. That was a case where the land had been forfeited to the State, Hoyle the owner having been attainted for adhering to the enemies in the Revolutionary War. The land was sold by the State and the widow of Hoyle brought an action for dower against the purchaser

It was urged that as the purchaser entered under a deed from the State which had caused the land to be forfeited the purchaser must be considered as having entered under a title adverse to all others. But it was said by the Court

"The right of Dower is neither adverse to the right forfeited nor is it against the right & title granted by the State, but it is in concurrence with both. The seizin of the purchaser from the state is derived from the husband and is a continuation of that seizin upon which the claim of Dower is founded.

In the case in *J. Metcal* already quoted the court say the reasons in this case of *Hoyle v Stewart* are applicable to the case before them.

4th An adverse possession will be negatived where the parties claim under the same title or where the possession of one party is consistent with the title of the other party. *Adams on Eject. 148*

The language of the statute is "he shall be deemed and adjudged to be the legal owner to the extent & according to the purport of his paper title."

Dower does not interfere with this legal ownership or title, but is consistent with it. It is at most

but an incumbrance. The owner still owns according to the purport of his ^{paper} legal title -

a person might acquire title under these statutes as against the owner in fee yet not discharge the land from an outstanding mortgage.

again

Suppose a person were to acquire title under these sections during the ~~the~~ lifetime of the original owner, would it bar the wife's right of Dower?

Clearly not,

Nor could it after the death of the original owner before the dower had been assigned -

III

If it is insisted that the Certificate of acknowledgment is sufficient we submit in reply -

That neither under the provisions of the revised Statutes nor under the Act of 1853 is there shown to be a compliance with the law (See acts of 45 & 53.)

A sufficient objection in my judgment to the Act of 53, or as much of it as refers to prior conveyances would be that it impairs the obligation of contracts. A Statute that should affect a grant, which is only an executed contract, either by extending or restricting its

operation would be negatory,
Now by all the authorities the acknowledgment
and certificate of a deed of a feme sole is a
part of the deed and goes to make up the
grant. It can no more be dispensed with
than the signature to the deed. It is substituted
for the Common law mode of divesting the
interest of a feme covert in land by the buying
of a fine, and without it her signature is
presumed to have been obtained by fraud
or coercion -

In the case of Mannier vs Saunders & Gil
135 the Court say "without such an act^t the deed
"was absolutely void and had no more vitality than
"a piece of blank paper, only by virtue of such
"act^t & certificate could the deed become operative
"Its execution could be proved in no other possible
"way, and in no other way could she convey,
"The test^t of act^t of a deed from a feme covert is
"as much part of the execution as her seal or
"signature, and without it the law presumes
"that it was obtained by fraud or coercion"
And such is substantially the language of all
the cases on this point -

[See the language of the 21st section
of the Stat of Conveyances]

It is unlike the case of a deed by a person labouring under no disabilities. In such cases the deed is as effectual without acknowledgment as with. The acknowledgment is only the evidence of the execution of the deed & undoubtedly the legislature has the power to pass laws changing a rule of evidence but they cannot help the deed.

The distinction is that in the one case the law affects only the evidence of the grant; in the other the grant itself.

In a case in 13 Ohio, The Lessee of Christian Good vs Elizabeth Zercher 367, the Court takes the true distinction and says in reference to a statute in all respects like our Act of 1853 - "if the act of the legislature makes operative a deed, void as against the wife, by reason of a defective acknowledgment; which passes the wife's interest, her own act or the act of the legislature?" and the Court held the law to be unconstitutional and void. I am aware of the decision in 8 Peters in which a similar statute was held to be valid, but notwithstanding the high ^{source} ~~source~~ from which that decision came I cannot help thinking that this point of the case was not fully considered.

The reasoning of Judge Story is that the Statute goes to confirm not to impair the contract.

But can the legislature create any more than they can "impair" a contract? ~~and~~ and does not the learned Judge assume the very thing at issue, namely, whether there be a contract. If the deed without an act, be an absolute nullity or as our Superior Court say "a mere blank piece of paper" where is the contract to confirm?

And again does it follow that an act of the Legislature is necessarily valid because it is not prohibited in terms by the Constitution. Would a law arbitrarily declaring the property of A to belong to B be a valid law merely because there was no clause in the Constitution to forbid it? or on the contrary would not such a law be void as in conflict with the principles of natural justice & opposed to the spirit of all constitutions. See 5 page Ch. R. p. 159.

2 But I do not wish to urge this point & am willing to concede for the purposes of the present argument that the Certif. of act not. shall be construed and governed by the provisions of the Act of 1853.

The Act provides that "it must appear

in substance that the wife was examined separately and apart from her husband and that she knew the contents of the deed. Now this must appear from the Certificate and not otherwise. It is a Stat in relation to the Certificate and what must appear therein and it ought to appear from that part which relates to the wife. for as to the other part her name need not be mentioned. The first part which speaks of husband and wife together gives no efficacy, and has no effect as to the wife - it is the separate examination and what takes place there which alone can effect her interests. But the fact that she knew the contents of the deed is not certified to in any part of the Certificate. The officer is silent upon that point.

But there is another omission which is in any event fatal to this Certificate. That part intended to apply to the wife's relinquishment is left blank. As a matter of fact Mrs. Owen never acknowledged the deed, and the Certificate is according to the fact -

Upon this point there is a case in 11th Conn R directly in point and it is the only case I have been able to find where the facts were the same as in the case at bar. The acknowledgment

was as follows, "Personally appeared
and acknowledged this instrument by him
sealed and subscribed to be his free act and
deed" &c. Held not to import an acknowledgment
by the grantor p. p. 131-2. - There are a great
variety of other cases in which the same prin-
ciple is recognized in different states to which I
will not stop to refer. There is another case
in 2 Conn p 528 Stanton v Button, where the act
was as follows, "Personally appeared Shapley
Mugan signer to the above and within written
instrument _____ to be his free act & deed
&c. Held defective and void.

It will be observed that the case in the
11th Ct. was an acknt. by a person under no
disability and is therefore a stronger case than
the one before the Court, now while I do not
claim that the exact language prescribed by
the Statute should be used, I at the same time
insist that the law is and that all the
authorities show that nothing of substance
can be omitted and the Certificate of acknt.
be good. And especially should the Court
be slow in construing a law or a deed so as
to defeat by implication the rights of married
women, 13 Barbou 53-4 Ellwood v Klock
Nor can the Court supply the name

of the wife in the blank as is sometimes done
in giving effect to a deed where the name
of the grantee has been omitted in the
Habendum clause. There the grant is
created by the previous words of the Conveyance
and the name of the grantee already inserted.
Here the omission of the name is the omission
of the whole, and it would be a very large not
to say dangerous implication for a Court to
imply that the wife was examined separate
and apart from the husband and that she
knew the contents of the deed, or that she was
examined at all when the officer has not
certified that she was.

In the present Case it would be
assuming the existence of a thing which in
point of fact never had ~~an~~ existence

J. H. Miller
Counsel for Robt

If Robt's widow and by virtue of the title he obtained
under the deed of Owen, unaided by any other con-
veyance, can maintain ejectment, then he is
estopped from denying the origin of Owen, this
title as against his widow on a claim of
dower

G. Goodrich

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Supreme Court

Emilie Owen

vs

Allen Roberts

Brief
on appeal

Filed May 14. 1888

L. Leland

82

CLM

Attorney for

Appellants

George S. Robbins } Supreme Court,
advs } In Chancery Appeal
Ernest Owen } from Cook

And the ~~Appellant~~

Robbins comes & for reply to the
assignment of errors, says, there is
no error in the ^{recd} record and
proceedings in the court below
in manner & form as
alleged by the Appellant

Morris for
Appellee

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Geo. I. Robbins
att.,
Emeline Owen

Rejoinder

Filed April 23, 1858
S. Leland
clerk

Supreme Court
Emilie Owen

vs
George S Robbins & others

Petition for Dower

Petitioner's husband purchased from the State in October, 1832, paying the cash balance in one, two and three years. He made the payments as they became due. The last falling due early in October 1835. died October 14th 1835. and in December 1835, patents were issued in his name running to him and his heirs — Previous to his death in May 1835, he conveyed the property by deed with full covenants of warranty (Set forth in printed Abstract) to E. N. Hubbard — The premises were subsequently conveyed by Hubbard to Merins and by Merins to defendant Robbins. This defendant took possession of the premises under the deed from Merins and under these conveyances still holds possession claiming to hold the title in fee simple.

Shall petitioner's husband such a Seizin of the premises in his life time as to entitle petitioner to dower? —

The Common Law mode of conveyance by feoffment and livery of Seizin is no longer necessary to complete the transfer of real property — A conveyance by deed duly acknowledged and recorded is equivalent to livery of Seizin —

It gives to grantee legal investiture of the land conveyed and has the same effect as if the grantor entered upon the land and gave actual Seizin by a formal delivery thereof -

11. Map. 225, 15 Map. 214.

And in the absence of other evidence raises a presumption that the grantor had sufficient Seizin to enable him to convey -

15. Pickering 185, - 187.

The land at the time of the conveyance by Owen to Hubbard was vacant and unoccupied. And the possession of such property follows the title, and when the wife is devisee of unoccupied lands, upon which neither she nor her husband had ever entered, held that she ^{had} such a Seizin in fact as entitled her husband to a tenancy by curtesy

8 John. 202, 5. Cow. 98.

And that the devisee of such lands without entry has such a Seizin as will enable him to maintain a writ of right -

15. Pick. 185. 24. Pick 71.

The deed from Owen to Hubbard is a deed with full covenants and purports to convey the fee - The defendant claims his title through this Deed, is in possession and enjoyment of the

land, and insists in his answer that by virtue of this deed and the subsequent conveyances and the patents which have been issued he has a perfect title to the premises - he is therefore estopped from denying the seizin of demandant's husband -

Bancroft v. White. 1 Cairnes Rep. 185

Embra v. Ellis 2 John. 119.

Hayden Case Sir Wm Jones Rep. 317.

Hitchcock v. Hamington 6 Johns. 290

Collins v. Torgy 7 John. 278

Davis v. Darrow 12 Wend. 65.

Brown v. Potter 17 Wend 169

~~Ray~~ Gayle v. Price 5 Richardson (Law) R. 525

Hains v. Gardner 1 Fairfield 383

Hamblin v. Bank of Cumberland 10 Maine 69

Temple v. Thompson Bank 28 Maine 289

1 Manning (Mich) 187.

Kimball v. Kimball 2 Greenleaf 226. 4mo

Nason v. Allen 6 Greenl. 343.

The case of Sparrow v. Kingman. 1 Conn. 243.

only decides that the grantee of husband by quit-claim deed is not estopped from showing in an action for dower that an estate less than a fee passed to him by the conveyance -

In this case the defendant can successfully defend his title and possession against all the world. He can never be evicted by a paramount title - even

treating the title of the State as still subsisting, for the reason that Owens was ~~still~~^{not} living when the patents issued, the whole of the consideration money has been paid by Owen and equity considering that done which ought to be done will treat that title as extinguished.

The heirs of Owen are stopped by the covenants in the deed to Hubbard. The defendant has acquired this position by means of the conveyances of demandants husband. He will not then be allowed to dispute the title under which he enters and can hold the premises -

17 Wend. 167. 1 Manning (Mich) 18. 187.

2 Greenl. 226 note -

Had the patents issued in the life time of Owen, the defendant succeeding to the title of the of the grantee in the Owens Deed could without any further conveyance recover the premises by ejectment out of the hands of an intruder -

17 Alab. 773. 4 Kent Com. 98. 4th Ed.

The patents would take effect by relation and operate upon the Owens Deed, confirming the title in Owen as an estate of inheritance in fee simple, and making this deed as effectual in passing the fee, as if it had been conveyed to him before the execution of the deed.

1. Manning Mich. Rep. 187.

Rev Stat. 1845. Sec. 7. Conveyances

13 Misauri 378. 9. - 80. - 81.

This is wholly unlike the case where a person takes an assignment of a contract for the conveyance of land, and himself pays a portion or all of the purchase money as in 14 Alab. 377. or the case of the conveyance by Quit-Claim of the interest of the grantor when the grantor has some inferior estate and the grantee is compelled to purchase in some outstanding and paramount title or to do some other act: to protect his title to the land. as in the case of 1 ^{Cornstock} Greenl (N.Y.) Rep. 243.

All the cases cited on the other side are cases where it was conceded that the grantee did not obtain a good title and the question was as to whether he was estopped from showing the facts - Here it is conceded that he gets a perfect title by virtue of the deed from demandant's husband alone -

The demandant's claim for dower rests upon the title derived from the State. the defendant claims that he has succeeded to this title not independent of but through the deed executed by demandant's husband, and through that law - This is a clear recognition of the title of demandant's husband, and is evidence of his ~~Acq~~ ^{Acq} seizin - 2. John. Rep. 119; 2. Greenl. 326 + note.

But we insist that if the legal title shall be considered ~~as~~ still remaining in the State, ^{there} ^{estate} demandants husband had such an equitable in the premises as would under the 15th Section of the 34th Chapter of the Statutes entitle demandant to dower -

Her husband in his lifetime paid to the State the full amount of the purchase money for the land -

He did not transfer to Hubbard his equitable interest by assignment of his certificate. He sold to him the land and Hubbard secured himself by the covenants in the deed. For a failure of title the remedy of Hubbard would have been not against the State but against Owen on these covenants.

Hubbard paid the consideration money on his purchase from Owen and had as between himself and Owen a perfect equity. He had nothing to do with Owens purchase from the State.

When Owen paid to the State the full amount of the purchase money he had a perfect equity and ~~could~~ ^{secured} himself and in his own name have compelled a deed from the State - He had an interest in procuring this conveyance, for he could not otherwise perform the covenants in his deed.

The same with his heirs - The fact that he executed the deed to Hubbard before he paid the full amount of the purchase money to

the State can really make no difference -

The parties would have stood precisely in the same situation with respect to the land, their remedies would have been the same if Owen had first paid to the State the amount of the purchase money and then conveyed the land to Hubbard for a new consideration -

The demandant in this case is seeking to enforce a strictly legal right by the aid of a court of equity - because courts of equity have concurrent jurisdiction with courts of law in the assignment of dower. She is not asking equitable relief or any relief which would not be granted by a court of law. - No equitable defense can therefore be interposed -

11 Ill. 388

Hope Muller & Leach
for Petitioner -

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Supreme Court

Emilie Owen

vs 82

George S. Robbins
vs others

— " —

Attorney for Deft

Brief for Appellant
— " —

Filed May 12, 1858
in Seland
Blk

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Hayne Miller & Lewis