

No. 14162

Supreme Court of Illinois

Babb

vs.

Decker et al.

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Nancy Babb }
vs } 25 Apt term 1851
John Decker & others }

This case is submitted to the court upon bill and answer showing the state of facts

Babb was the owner in fee of the lands mentioned in Decker's answer, and while he was largely in debt and judgments against him he made a fraudulent sale ^{by deed} of said lands to Butterworth in which deed his wife joined (but the acknowledgment is objected to) and for the present objects it is admitted that said deed and acknowledgments are in due form of law

The creditors of Babb immediately filed a bill called a creditors bill and procured a decree against him setting aside said deed to Butterworth as fraudulent and ordering said land to be sold, and they were all sold to pay Babb's debts, and the present owners hold under their title.

Shortly after this decree and perhaps after the sale ^{under the decree} Butterworth and wife reconveyed all this land back to Babb thus reinstating him ^{Babb} with all the title that he had before he made said fraudulent deed

It is now contended that by this fraudulent conveyance of Babb and wife to Butterworth she is barred of her dower upon the ground that altho this deed was fraudulent & void as to Babb's creditors yet Babb and wife are bound by it and consequently that she conveyed her dower ^{to Butterworth} _{= worth} ⁱⁿ _{compliance with} ^{it} _{is} contended that this deed being fraudulent and being set aside by a decree of the court of Equity and the fee simple title in the land reinstated in Babb that she ^{the wife} was restored to all her rights upon the principle that the dower in trust follows with and is dependent upon the legal fee simple estate 2^d That these creditors having reinstated the title in Babb and admitted by their bill & decree that Babb was the owner of the fee and the purchasers under that decree having admitted the same thing by answer ⁱⁿ _{is} _{not} _{an} _{innocent} _{purchase} _{in} _{good} _{faith} Who ever purchases land under ^{an} _{execution} _{sale}

purchase and possession under the decree cannot now be permitted to set up ~~Babb's~~ ^{Butterworth's} title under that deed to him the validity of which they by their well decreed sale and purchase they had denied and thereby defeat the widow's dower.

3^d That if Mrs Babb the present complainant is coerced by this fraud about deed to Butterworth and as between Butterworth & Babb and wife Mr Butterworth was the owner of said land dower and all then said Butterworth reconveyed said right to Babb and wife and in all things placed the dower and title in the same situation it would have been in if said deed to ^{Butterworth} had never been made.

4th Those creditors under their decrees and purchases of Babb's right got no rights under Butterworth and consequently can not set up any rights under him and have no right whatever to this dower.

The next question to be decided by the court is. Suppose the complainant is entitled to dower in those lands, and the lands have been improved by the present owners of the fee by the extension of the farms and the erection of valuable and lasting improvements since their purchase and before the death of Babb whereby the ^{aggregate value and the} yearly value has been greatly increased is she entitled to have one third of the land set off to her as it now is and without regard to this increased value, or shall she be endowed only of what the lands would have been worth had none of those improvements been made.

On the part of the complainant it is contended that whatever may be the common law rule that might govern this question yet the Statute of Illinois fixes a rule by which it must be settled.

By sections 24 & 25 of the chapter relative to Dower (State of Ill 1845. p. 201 & 202) it is expressly provided

That commissioners shall be appointed who shall go upon the land and set off the widows dower by metes and bounds according to quality and quantity of the lands in which the court shall adjudge she is entitled to dower giving her the homestead and best dwelling house.

Now this is a fixed Statutory rule and repeals all other rules upon this subject and is the only rule known to the laws of Illinois whereby dower is to be allotted out of lands and tenements in which she is adjudged to have ^{Dower}

The commissioners (nor the court) have no power to value improvements when or by whom made, but they are to take the land as it is when they allot the dower

We are not called upon to vindicate the Justice of this rule. It is sufficient for us to point to the law and demand that it shall be executed. But the rule is a just and equitable one. First suppose the owner of the fee by his neglect or by his misfortune should destroy or let go to waste all the improvements upon the land when he went into possession or by any design or casualty the value of the land had great by diminished, at the time the widows dower was to be set off. Would she have a right to go back to the period of time when the purchaser of the fee simply acquired his title and have the value of the property including ^{improvements} those destroyed adopted as the rule of the then valuation or would she not be bound to take her dower out of the land as she found it when her dower accrued to her.

Now if that would be the rule and she would be bound to receive the property in its reduced state why would not she be entitled to the increased value if such happened to be the case.

The answer to this last proposition is that it would be unjust to take one third of the value of improvements made in good faith by the owner of the fee and which never cost her or her husband any thing.

This seems plausible but when examined it will be found without foundation. He is not an innocent purchaser in good faith Who ever purchases land under ^{an} execution
Jale

or in any other manner where there is a living wife that may at some future day be entitled to dower, and the purchaser neglects to get a relinquishment of that dower. Such purchaser takes his title and makes his improvements at his own risk with a full knowledge of the pending danger and must bide by the consequences. Just as much as he who purchases and improves under a quit claim and with a full knowledge of an out standing adverse claim to the same land.

It is contended on the part of the complainant that the court has no discretion but is bound to order the one third of the lands according to quality (which means value) and quantity at the time the dower is set off, and there is no way or rule given by law whereby the court can go into the investigation as to when fences houses wells drains &c were made and as to what would have been the value of the land without them or whether the same ^{imparts} any additional value to the land. Such a practice would lead to thousands of enquiries all of which would so trouble and impede the setting off of dower as to render the same of little or no value to the complainant and would be in direct violation of the spirit and evident intention of the Statute the object of which evidently was to adopt a ready plain and short method for assigning dower.

If the court shall be of opinion that the complainant is entitled to dower, a decree can be prepared in a few words ordering and adjudging that the complainant be endowed of all the lands in said petition mentioned except those lots and tracts as to which the said petition was dismissed at the said September term of the last circuit Court (for there were several lots included in said petition which upon examination it was found the complainant was not entitled to dower and those tracts have been struck out and the agreed order of the court at said term show what lots they are)

And if the court shall be of opinion as aforesaid the decree will provide that commissioners be appointed to set off the dower (naming the commissioners) and if the court shall be of the

Opinion that the Commissioners shall be instructed to exclude the value or yearly value of all improvements made by the present occupants or owners of the fee or to make any deduction from the dower because of said improvements, well so provide in the decree and will fix some rule by which the Commissioners are to be governed in their duties

If the Court shall be of opinion that the complainant is entitled to dower in the lands and tenements as the same now are without reference to improvements made since the sale of the fee simple, then the Court in said decree is only to say that said complainant shall be endowed and have her dower set off out of the lands as the same now is without reference to the destruction or loss of improvements or the creation of improvements since the sale and conveyance of the fee simple estate

It is desirable to have the decree (as of the last term as agreed upon by the recorded order) in time for either party to take the case to the Supreme Court at the next term at Springfield as per our agreement

Wm. C. Bonnet atty for
Complainant

Authorities

as to the first point made whether Mrs Babb is not barred by her deed to Butterworth, see the case of Blain vs Harrison 11 Illinois Rep p 384, which is conclusive upon this question upon the same point see Walker vs Griswold 6 Pickering 47

Linn vs Sumner 9 Massachusetts reports, 143.

Robbison vs Bates 3 2d Mass Rep. p. 45

In Stat Sec 1845, page 200, Sec 14

as to the 2^d point made the Statute in relation to dower page 201, & 202, Stat 1845, Sec 24 & 25 is impliedly relied upon as overruling all other authorities

See also the 1st Sec of the same Chapter page 198

See also the case of Lisk vs Smith vol 1st Illinois Rep p. 503

This question as to subsequent improvements being subject to dower has never been decided by our Supreme Court or so far as I can learn has never been decided by any other Court

Statement of the
Questions to be decided
and arguments by
Wm Cornell Sr
for complainant

Nancy Babble
vs { In chancery
John Decker & others

Cass county in co. $\frac{t}{11}$

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