No. 13442

Supreme Court of Illinois

Schnebly et al

vs.

Schnebly

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ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 93.

Schnebly
vs
Schnebly

1861

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IN THE

SUPREME COURT---STATE OF ILLINOIS.

Third Grand Division—April Term, A. D. 1861.

JOHN C. SCHNEBLY, et al.
vs.
ELIZABETH SCHNEBLY.
Error to Peoria County.

Reply of Plaintiff's Counsel.

If in the following reply, statements should be found that are not contained in the record, I give as my apology, the fact that some things contained in the record cannot well be understood without explanation; and the further fact that the defendant's counsel, in his argument, has not only traveled out of the record to drag in foreign matters, of which there is not the slightest proof, but he has said many things which have no connection with the facts in issue, and are so destitute of proof, and are withall so absolutely untrue, that they appear to have been dictated by deliberate malice, and seem to justify a simple statement of facts on my part, by way of replication. I am, however, willing out of abundant charity to attribute it not to malice, but to the action of a much abused stomach upon a naturally good brain. And so confident was I, when at Ottawa, that Mr. Manning, if his attention were called to it when duly sober would strike out the objectionable parts, that I deemed it most advisable not to file this until I had given him an opportunity to do so. And to enable him to do it I called at his office as soon as I had returned home, and again to-day, but was told on both occasions, he was at Ottawa. I therefore deem it proper to wait no longer.

This was an amicable suit, brought for the benefit of the defendant as well as the plaintiffs, and was made necessary by the defendant relinquishing her right under the will. Mr. Cooper was her friend—was made administrator at her request, and not at the request of any of the plaintiffs, and for her he acted when he filed the partition for dower. It is true that those of the heirs who knew of the transaction, made no objection to the use of their names and to Mr. Cooper, representing both sides, because they were willing she should have her dower assigned and were not particular as to the amount. If they had given her one half, instead of one-third, of the estate, and the fourteen children the other half every one of them, in my opinion, would have acquiesced. None of the plaintiffs interfered with the proceeding in any of its stages, nor did they go near the commissioners who assigned the dower, nor did any of them assist in discussing the roast turkeys and other viands with which the widow is said to have bountifully feasted the commissioners, when performing their important functions.

When the report came in, giving her virtually all, or more than all, (for the part assigned to the children, not only yields nothing, but is subject to several hundred dollars tax annually,) it was proposed to her that if she would permit the field, across the way, to be rented to keep down the taxes, or if she would undertake to support her own minor children and pay the taxes on their part of the land, the report of the commissioners might be confirmed. Both these propositions she declined, and Mr. Cooper withdrew from the case.

It was then proposed that she should have the two-thirds (?) set apart for the children, and they would take the one-third (?) set apart to her, which proposition she also declined. I perceive however, that none but the latter proposition is contained in the record.

Mr. Cooper made the heirs, and not the widow, petitioners, because a portion of them were non-residents (one living in Oregon) and some were minors and could not consent, nor could a default be taken against them, and he was desirous of avoiding the expense and delay in obtaining service on them, and, also, full proof against them.

There was evidence, on the trial of the motion to set aside the assignment of dower, proving nearly all the facts set forth in the statement signed by me, but from the same motive of economy, they were embodied in said statement, and copied into the record without objection of the said Manning, who scrutanized said bill before it was signed. Every affirmative fact, in said statement, was proved either by documents or witnesses—mostly by Smith Frye, who had lived in the neighborhood for many years. The only facts testified to by me, were of a negative character and are on page 21, and marked in pencil with a bracket.

The question of law, arising in this case, is attempted to be evaded, by an assertion that no motion was made to set aside the assignment of dower. If all that was done does not appear in the cumbrous manner indicated by the English forms of the dark ages, the fact may still plainly enough appear to a sensible judge of the nineteenth century. At the bottom of the fifteenth page it is stated that certain evidence was introduced "on the *trial* of the above entitled cause, upon the motion of the said plaintiff, to set aside the report of the commissioners assigning to said defendant her dower in said premises."

And on page 27th, the bill of exceptions says "Afterwards and *on the trial of said motion*, said plaintiff put upon the files of said count the following paper:"

And on page 28th. "No other evidence was given to the court in the case." What case? manifestly "The above entitled cause upon the motion of the said plaintiff to set aside" said report.

I commend to this Hon. Court and the gentlemen, the following from the opinion of the court in the case of Armstrong vs. Armstrong, 2 Mylne & Keene, 45, "There were times when the courts took a delight in vain subtleties, and absurd refinements, as if their duty was, what certainly was their frequent object, rather to show their ingenuity than to get at the truth, and to astonish ordinary minds by coming at unexpected conclusions, founded on bare possibilities, rather than satisfy the justice of

the case, by deciding as all mankind besides would decide undoubtingly." "Happily we have out-lived these follies, the pride of the olden times, and the dark ages. Judges are now content to see things as other men see them."

Defendant's counsel would have the court disregard the bill of exceptions, because it *excepts* to nothing. He seems to have been misled by the sound of the name, and to have forgotten what the court said in the case of Lowe vs. Moss, 12 Ill. 478, that "The object of a bill of exceptions is to place upon the record some fact or ruling of the court, which would not appear without it."

The word folio originally meant a leaf. Afterwards a sheet of paper, and now a certain number of words that may be written on a sheet of paper. If I should say a certain document contained so many folios, and the gentleman should object that there were no leaves in it, he would be no more captious than he is in objecting that this is not a bill of exceptions because it excepts to nothing.

In chancery proceedings there is no such thing as a bill of exceptions, according to the ancient common law sense of the term; yet since our evidence, in chancery cases, by statute, may be taken *ore tenus*, on the trial, the statement containing the evidence, for want of a better name may be called a bill of exceptions; but if the gentleman prefers it, I will call it "a certificate of the Judge. In the case of White vs. Morrison *et. al.* 11th Ill. 365, the court said, when this statute is acted on the testimony of the witnesses, or the facts proved by them, ought still to sppear on the record. It may be stated in the decree, or in a bill of exceptions; in a certificate of the Judge, or in a master's report."

The report of the commissioners contains enough to show that the assignment of dower was not on right principles. Instead of showing that they assigned said dower according to the profits of said lands they did it according to "quality and quantity" without any reference to the profits.

I have examined all the authorities referred to on pages 2 and

3 of defendant's brief, and find that with the exception of the case of White vs. Morrison, above quoted, not one of them has any reference to a case like the one under consideration, and that case contains the law as I nnderstand it.

The real questions in the case are these, is there any dower in wild and unimproved lands, which yield no revenue, but are subject to a heavy tax. Secondly, if there is, is it just to give the widow all those which yield an income and leave to the children those which yield no income, but are subject to a heavy tax?

These questions I have so presented in my brief, that they remain unanswered, and are as I conceive unanswerable. Instead of endeavoring to answer my argument, Mr. Manning takes up a large portion of the document called his argument in making statements altogether gratuitous, untrue and slanderous, with regard to myself. The charitable motives above referred to, inclined me to pass by all this without notice, but justice to myself, my children, and the cause of truth, seems to require that an unqualified negative at least, should accompany charges apparently so base and certainly unfounded.

The following are contradictions of statements that are untrue, and have nothing in the record nor in the universe to sustain them.

1st. It is not true that many of the lands were prairie lands, and so situated as to be valuable for present use. They were nearly all timber lands, and situated in a prairie country where their principle value consisted in the timber.

2d. It is not true that one of these tracts of land is worth $300 per acre.

3d. It is not true that said land could be leased for out-lots and residences. It is too far from the city to be worth a dime for that purpose as the accompanying plat will show but the heirs are perfectly willing that she shall use it for that or any other purpose till they all become of age, if she will pay the taxes.

4th. It is not true that either in my argument, or the statement of facts, is there anything malicious said about said defendant.

5th. It is not true that deceased left an estate worth $100,000, nor the half that sum.

6th. It is not true that she raised Mrs. Ballance, or had any hand in that interesting operation.

7th. It is not true that deceased came to Illinois poor. He brought more actual cash with him than any one I know of, who came in those early times.

8th. It is not true that defendant did more than her husband in accumulating his property. Neither of them did any thing towards making it except in the way of the rise of property and nearly all of that was procured through my services, as herein after mentioned. They were both industrious people, and each did a faithful share towards supporting a large family. Although he was somewhat lame, he was a good farmer, and was industrious in superintending his farm. She like other good housewives, taking care of her children and house-hold affairs.

It is not true that I spoke contemptuously with regard to defendants "old wheel" or anything else pertaining to her. I have treated her with uniform kindness, and respect, and have always endeavored to act the part of a peace-maker between her and the older children. Aye, and between her and her husband.

10th. It is not true that $30.000 worth of these wild lands would yield an annual sum of $1500 to $2000, nor any other sum beyond the taxes.

It is not true that I dictated the will. It was concocted and made up between her and her son Joseph, with the consent, (I presume, of the deceased: not only without consulting me, but when the family physician notified her that her husband would soon die, and advised her to send for me to write his will, she replied that she did not want me, and sent for one Chauncy Wood for that purpose.

12th. It is not true that the deed to a lot in Peoria, was made to defendant, in consideration of $1,100 obtained from her father's estate.

13th. It is not true that I never aided in accumulating said property. Said deceased was unacquainted with law and land titles. I was a lawyer by profession, and was acquainted with Illinois land titles, and for more than twenty years transacted

his legal business, without fee or reward. All his purchases of land except one tract that he bought during my absence from Peoria, and one tract bought before I married his daughter, were made by me, or with my advice. So little did he know of the trickery and devices of sharpers, that the tract bought in my absence was sold to him in this manner. Two land agents and partners, acted in concert, but the one as the agent of the owner and the other as the friend of the deceased. The one persuaded the owner, that it would be so great a bargain to sell the tract for $1200, that he could afford to pay him a large fee for selling it. The other persuaded the deceased that to obtain the land at that price, would be so great a bargain, that he could afford to pay him a good fee to get it at that price. The purchase was made, and said agents got a fee from each party. But after half the money was paid, the deceased became so thoroughly convinced of the badness of the bargain, that he employed me to offer to the vender to give up the land, and lose all he had paid, but the vender would not accept the offer, but exacted the whole sum.

Whatever any of these lands are worth, over and above the trifling sum which they cost, except the tracts aforesaid, is due entirely to my gratuitous exertions. The tract of land the deceased gave to his son John C. Schnebly, and for which he has to account in the settlement of the estate, was obtained by me in this wise: Like most of the lands in the military tract, it had two titles to it. I bought one for, I believe, $600, and had him go into possession. Afterwards the owner of the other title, finding that it had been bought by me, and possession had been taken, under my advise, knocked under, and sold to me his title for $100, whereas under other circumstances it could not have been bought for less than $500. The forty acre tract that the will provided should be sold to educate the minors, was by my management obtained for $280, although it was then worth and could have been sold at auction for $1200. Said tract that said Manning says is worth $300 per acre, or $48,000 for the whole, was obtained by me in this wise: There was two titles to it, both of which were defective, and either being out of possession could not disposses the other. I determined which of these titles was the better title, in equity, and traveled one hundred

and thirty miles on horse-back to buy it, and bought it for a few hundred dollars and advised possession to be taken, which was done.

These proceedings gave rise to litigation that lasted for sometime--perhaps two years—but I finely established the title in my father-in-law. And neither for this service, nor any other I ever rendered him did I ever demand or receive any compensation whatever.

For all this it seems I receive no gratitude. No reward but that of an approving conscience. If the defendant whose family owes the most they are worth, to my kind assistance, could induce a man when as (I charitably presume) he was not himself, to put forth the unkind and untrue statements her attorney has made with regard to me, I have no recrimination to make.

Hilliard in his treatise on real property vol. 1, p. 141, sec. 12, collects all the authorities on both sides and from them deduces the rule that if under the law and circumstances of the case, the widow may cut down trees, she may be endowed of wild and uncultilands. but otherwise not. I suppose the court will take notice of the fact that Illinois is a prairie country, and that consequently to cut down a forest in the immediate vecinity of a flourishing city, standing in a prairie, would be an act of waste. It is admitted that the E. hf. of sec. 27, T. 9 N., 7 E. and the N. W. of 34, in the same township, are covered with timber. Now if the widow could not be endowed of these tracts, I submit that they should not be set apart to the heirs, at their appraised value, in lieu of appraised lands granted to her.

Now the object of dower is support: not only the support of the widow, but also the support of the children. If the children take the whole, who is to support the widow? or if the widow takes the whole, who is to support the children? A widow is not bound to support her children, who own wild lands, but she may make out a bill against them for their food, clothing and tuition, and procure it to be allowed by the court of probate, and have their land sold, and buy it in at a nominal price and thus disinherit the heirs.

C. BALLANCE.

93

Schuebley
&
Schuebley

Pfeffs agt

Filed Jan. 30-1861
L. Leland
Clerk

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C. BALLANCE.

93

Schneblay

as

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Riffs arg.t

Filed Apr. 30 - 1861

L. Leland

Clerk

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Reply of Plaintiff's Counsel.

If in the following reply, statements should be found that are not contained in the record, I give as my apology, the fact that some things contained in the record cannot well be understood without explanation; and the further fact that the defendant's counsel, in his argument, has not only traveled out of the record to drag in foreign matters, of which there is not the slightest proof, but he has said many things which have no connection with the facts in issue, and are so destitute of proof, and are withall so absolutely untrue, that they appear to have been dictated by deliberate malice, and seem to justify a simple statement of facts on my part, by way of replication. I am, however, willing out of abundant charity to attribute it not to malice, but to the action of a much abused stomach upon a naturally good brain. And so confident was I, when at Ottawa, that Mr. Manning, if his attention were called to it when duly sober would strike out the objectionable parts, that I deemed it most advisable not to file this until I had given him an opportunity to do so. And to enable him to do it I called at his office as soon as I had returned home, and again to-day, but was told on both occasions, he was at Ottawa. I therefore deem it proper to wait no longer.

This was an amicable suit, brought for the benefit of the defendant as well as the plaintiffs, and was made necessary by the defendant relinquishing her right under the will. Mr. Cooper was her friend—was made administrator at her request, and not at the request of any of the plaintiffs, and for her he acted when he filed the partition for dower. It is true that those of the heirs who knew of the transaction, made no objection to the use of their names and to Mr. Cooper, representing both sides, because they were willing she should have her dower assigned and were not particular as to the amount. If they had given her one half, instead of one-third, of the estate, and the fourteen children the other half every one of them, in my opinion, would have acquiesced. None of the plaintiffs interfered with the proceeding in any of its stages, nor did they go near the commissioners who assigned the dower, nor did any of them assist in discussing the roast turkeys and other viands with which the widow is said to have bountifully feasted the commissioners, when performing their important functions.

When the report came in, giving her virtually all, or more than all, (for the part assigned to the children, not only yields nothing, but is subject to several hundred dollars tax annually,) it was proposed to her that if she would permit the field, across the way, to be rented to keep down the taxes, or if she would undertake to support her own minor children and pay the taxes on their part of the land, the report of the commissioners might be confirmed. Both these propositions she declined, and Mr. Cooper withdrew from the case.

It was then proposed that she should have the two-thirds (?) set apart for the children, and they would take the one-third (?) set apart to her, which proposition she also declined. I perceive however, that none but the latter proposition is contained in the record.

Mr. Cooper made the heirs, and not the widow, petitioners, because a portion of them were non-residents (one living in Oregon) and some were minors and could not consent, nor could a default be taken against them, and he was desirous of avoiding the expense and delay in obtaining service on them, and, also, full proof against them.

There was evidence, on the trial of the motion to set aside the assignment of dower, proving nearly all the facts set forth in the statement signed by me, but from the same motive of economy, they were embodied in said statement, and copied into the record without objection of the said Manning, who scrutanized said bill before it was signed. Every affirmative fact, in said statement, was proved either by documents or witnesses—mostly by Smith Frye, who had lived in the neighborhood for many years. The only facts testified to by me, were of a negative character and are on page 21, and marked in pencil with a bracket.

The question of law, arising in this case, is attempted to be evaded, by an assertion that no motion was made to set aside the assignment of dower. If all that was done does not appear in the cumbrous manner indicated by the English forms of the dark ages, the fact may still plainly enough appear to a sensible judge of the nineteenth century. At the bottom of the fifteenth page it is stated that certain evidence was introduced "on the *trial* of the above entitled cause, upon the motion of the said plaintiff, to set aside the report of the commissioners assigning to said defendant her dower in said premises."

And on page 27th, the bill of exceptions says "Afterwards and *on the trial of said motion*, said plaintiff put upon the files of said count the following paper:"

And on page 28th, "No other evidence was given to the court in the case." What case? manifestly "The above entitled cause upon the motion of the said plaintiff to set aside" said report.

I commend to this Hon. Court and the gentlemen, the following from the opinion of the court in the case of Armstrong vs. Armstrong, 2 Mylne & Keene, 45, "There were times when the courts took a delight in vain subtleties, and absurd refinements, as if their duty was, what certainly was their frequent object, rather to show their ingenuity than to get at the truth, and to astonish ordinary minds by coming at unexpected conclusions, founded on bare possibilities, rather than satisfy the justice of

the case, by deciding as all mankind besides would decide undoubtingly." "Happily we have out-lived these follies, the pride of the olden times, and the dark ages. Judges are now content to see things as other men see them."

Defendant's counsel would have the court disregard the bill of exceptions, because it *excpts* to nothing. He seems to have been misled by the sound of the name, and to have forgotten what the court said in the case of Lowe vs. Moss, 12 Ill. 478, that "The object of a bill of exceptions is to place upon the record some fact or ruling of the court, which would not appear without it."

The word folio originally meant a leaf. Afterwards a sheet of paper, and now a certain number of words that may be written on a sheet of paper. If I should say a certain document contained so many folios, and the gentleman should object that there were no leaves in it, he would be no more captious than he is in objecting that this is not a bill of exceptions because it excepts to nothing.

In chancery proceedings there is no such thing as a bill of exceptions, according to the ancient common law sense of the term; yet since our evidence, in chancery cases, by statute, may be taken *ore tenus*, on the trial, the statement containing the evidence, for want of a better name may be called a bill of exceptions; but if the gentleman prefers it, I will call it "a certificate of the Judge. In the case of White vs. Morrison *et. al.* 11th Ill. 365, the court said, when this statute is acted on the testimony of the witnesses, or the facts proved by them, ought still to sppear on the record. It may be stated in the decree, or in a bill of exceptions; in a certificate of the Judge, or in a master's report."

The report of the commissioners contains enough to show that the assignment of dower was not on right principles. Instead of showing that they assigned said dower according to the profits of said lands they did it according to "quality and quantity" without any reference to the profits.

I have examined all the authorities referred to on pages 2 and

3 of defendant's brief, and find that with the exception of the case of White vs. Morrison, above quoted, not one of them has any reference to a case like the one under consideration, and that case contains the law as I nnderstand it.

The real questions in the case are these, is there any dower in wild and unimproved lands, which yield no revenue, but are subject to a heavy tax. Secondly, if there is, is it just to give the widow all those which yield an income and leave to the children those which yield no income, but are subject to a heavy tax?

These questions I have so presented in my brief, that they remain unanswered, and are as I conceive unanswerable. Instead of endeavoring to answer my argument, Mr. Manning takes up a large portion of the document called his argument in making statements altogether gratuitous, untrue and slanderous, with regard to myself. The charitable motives above referred to, inclined me to pass by all this without notice, but justice to myself, my children, and the cause of truth, seems to require that an unqualified negative at least, should accompany charges apparently so base and certainly unfounded.

The following are contradictions of statements that are untrue, and have nothing in the record nor in the universe to sustain them.

1st. It is not true that many of the lands were prairie lands, and so situated as to be valuable for present use. They were nearly all timber lands, and situated in a prairie country where their principle value consisted in the timber.

2d. It is not true that one of these tracts of land is worth $300 per acre.

3d. It is not true that said land could be leased for out-lots and residences. It is too far from the city to be worth a dime for that purpose as the accompanying plat will show but the heirs are perfeotly willing that she shall use it for that or any other purpose till they all become of age, if she will pay the taxes.

4th. It is not true that either in my argument, or the statement of facts, is there anything malicious said about said defendant.

5th. It is not true that deceased left an estate worth $100 000, nor the half that sum.

6th. It is not true that she raised Mrs. Ballance, or had any hand in that interesting operation.

7th. It is not true that deceased came to Illinois poor. He brought more actual cash with him than any one I know of, who came in those early times.

8th. It is not true that defendant did more than her husband in accumulating his property. Neither of them did any thing towards making it except in the way of the rise of property and nearly all of that was procured through my services, as herein after mentioned. They were both industrious people, and each did a faithful share towards supporting a large family. Although he was somewhat lame, he was a good farmer, and was industrious in superintending his farm. She like other good housewives, taking care of her children and house-hold affairs.

It is not true that I spoke contemptuously with regard to defendants "old wheel" or anything else pertaining to her. I have treated her with uniform kindness, and respect, and have always endeavored to act the part of a peace-maker between her and the older children. Aye, and between her and her husband.

10th. It is not true that $30.000 worth of these wild lands would yield an annual sum of $1500 to $2000, nor any other sum beyond the taxes.

It is not true that I dictated the will. It was concocted and made up between her and her son Joseph, with the consent, (I presume, of the deceased: not only without consulting me, but when the family physician notified her that her husband would soon die, and advised her to send for me to write his will, she replied that she did not want me, and sent for one Chauncy Wood for that purpose.

12th. It is not true that the deed to a lot in Peoria, was made to defendant, in consideration of $1,100 obtained from her father's estate.

13th. It is not true that I never aided in accumulating said property. Said deceased was unacquainted with law and land titles. I was a lawyer by profession, and was acquainted with Illinois land titles, and for more than twenty years transacted

his legal business, without fee or reward. All his purchases of land except one tract that he bought during my absence from Peoria, and one tract bought before I married his daughter, were made by me, or with my advice. So little did he know of the trickery and devices of sharpers, that the tract bought in my absence was sold to him in this manner. Two land agents and partners, acted in concert, but the one as the agent of the owner and the other as the friend of the deceased. The one persuaded the owner, that it would be so great a bargain to sell the tract for $1200, that he could afford to pay him a large fee for selling it. The other persuaded the deceased that to obtain the land at that price, would be so great a bargain, that he could afford to pay him a good fee to get it at that price. The purchase was made, and said agents got a fee from each party. But after half the money was paid, the deceased became so thoroughly convinced of the badness of the bargain, that he employed me to offer to the vender to give up the land, and lose all he had paid, but the vender would not accept the offer, but exacted the whole sum.

Whatever any of these lands are worth, over and above the trifling sum which they cost, except the tracts aforesaid, is due entirely to my gratuitous exertions. The tract of land the deceased gave to his son John C. Schnebly, and for which he has to account in the settlement of the estate, was obtained by me in this wise: Like most of the lands in the military tract, it had two titles to it. I bought one for, I believe, $600, and had him go into possession. Afterwards the owner of the other title, finding that it had been bought by me, and possession had been taken, under my advise, knocked under, and sold to me his title for $100, whereas under other circumstances it could not have been bought for less than $500. The forty acre tract that the will provided should be sold to educate the minors, was by my management obtained for $280, although it was then worth and could have been sold at auction for $1200. Said tract that said Manning says is worth $300 per acre, or $48,000 for the whole, was obtained by me in this wise: There was two titles to it, both of which were defective, and either being out of possession could not disposses the other. I determined which of these titles was the better title, in equity, and traveled one hundred

and thirty miles on horse-back to buy it, and bought it for a few hundred dollars and advised possession to be taken, which was done.

These proceedings gave rise to litigation that lasted for some-time—perhaps two years—but I finely established the title in my father-in-law. And neither for this service, nor any other I ever rendered him did I ever demand or receive any compensation whatever.

For all this it seems I receive no gratitude. No reward but that of an approving conscience. If the defendant whose family owes the most they are worth, to my kind assistance, could induce a man when as (I charitably presume) he was not himself, to put forth the unkind and untrue statements her attorney has made with regard to me, I have no recrimination to make.

Hilliard in his treatise on real property vol. 1, p. 141, sec. 12, collects all the authorities on both sides and from them deduces the rule that if under the law and circumstances of the case, the widow may cut down trees, she may be endowed of wild and uncultilands, but otherwise not. I suppose the court will take notice of the fact that Illinois is a prairie country, and that consequently to cut down a forest in the immediate vecinity of a flourishing city, standing in a prairie, would be an act of waste. It is admitted that the E. hf. of sec. 27, T. 9 N., 7 E. and the N. W. of 34, in the same township, are covered with timber. Now if the widow could not be endowed of these tracts, I submit that they should not be set apart to the heirs, at their appraised value, in lieu of appraised lands granted to her.

Now the object of dower is support; not only the support of the widow, but also the support of the childreu. If the children take the whole, who is to support the widow? or if the widow takes the whole, who is to support the children? A widow is not bound to support her children, who own wild lands, but she may make out a bill against them for their food, clothing and tuition, and procure it to be allowed by the court of probate, and have their land sold, and buy it in at a nominal price and thus disinherit the heirs.

C. BALLANCE.

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Schuebley
&
Schuebley

Pffs. arg't.

Filed apr. 30-1861
L. Leland
Clerk

IN THE SUPREME COURT OF ILLINOIS.

April Term, A. D., 1860.

JOHN C. SCHNEBLY, AND OTHERS,
HEIRS AT LAW OF
HENRY SCHNEBLY, Dec'd.
versus
ELIZABETH M. SCHNEBLY.

ERROR TO PEORIA COUNTY.

This was a petition filed in the Peoria Circuit Court, by the heirs at law of Henry Schnebly deceased, to have his widow's
1 dower assigned to her. The petition sets forth in substance that Henry Schnebly died on the fourth day of August, 1858, leaving the defendant, Elizabeth M. Schnebly his widow, and the petitioners (a long list) his heirs at law: all of whom are of age except Tryphena C. Schnebly, Calvin Schnebly, Elizabeth E. Schnebly and Ann Louisa Schnebly: and that Hugh W. Reynolds was the legally appointed guardian of the minors.

That said Henry, before his death, made his last will and testament, which was duly proved and admitted to probate, but that the widow in due form renounced all claims under said will, and elected to take her dower, in her husbands estate, in lieu thereof.

Further that said Henry Schnebly was possessed during coverture, and died seized in fee simple, of the following described lands and real estate, in all of which the said widow is entitled to her dower, or estate of one third part thereof, during her natural life, to wit

N. E. qr. of Sec. 17 T. 11 N. 4 E.—W. ½ of N. W of Sec. 4 T. 11 N. R. 6 E.—E. ½ N. E. Sec. 9, T. 9 N. R. 8 E.—S. E. Sec. 21 T. 9 N. R. 8 E.—N. E. Sec. 27, T. 9 N. R. 8 E.—E ½ of N. W. Sec. 27, T. 9 N. R. 8 E.—N. E. qr of S. W. qr Sec. 27 T. 9 N. 8 E.—N. W. Sec. 34, T. 9 N. R. 8 E.—N. W. qr of Sec. 20, T. 10 N. R. 8 E.—All of the fourth principal meridian. Titles supposed to be perfect.

That he also had certain tax titles, that are supposed to be of "no assignable value."

That petitioners and said widow are the only persons interested in said estate.

Prayer that said widow may be made defendant, and that her dower be assigned.

5 To the petition are attached as exhibits the widows renunciation of all right to take under said will, also letters of guardian-
6 ship to H. W. Reynolds, which as there is no dispute about them I deem unnecessary to be inserted or abstracted here.

The widow answered admitting the truth of the allegations of the petition, and joined in the prayer that her dower might be set off to her.

On the 9th of December, 1858, a decree was made appointing Jacob Darst, Tobias S. Bradley and William M. Dodge, Commissioners, to assign to said widow her dower in said lands.

Said Commissioners, on the 11th day of March, 1855, reported to the Court that they had set apart to said widow, in lieu of her dower, in all of said property: "the East half of the northwest quarter of section twenty-seven, in Township nine North, of range eight East, and also eighty-eight acres off the West side of the northeast quarter of said section." They add to the description, "including the residence and homestead of her late husband, at the time of his decease."

A motion was made by the petitioners, to set aside the report of the Commissioners, and in support of that motion, the following statement of facts, sworn to and not disputed was submitted to the Court, to wit: Henry Schnebly died on the 4th of August, 1858, leaving defendant his widow, and plaintiffs his heirs at law. Before dying, he made the following will (which was proved and admitted to record, on the 17th day of August, 1858,) to wit:

"In the name of God, Amen, I, Henry Schnebly, being sound in mind, but feeble in body, and impressed with the danger of a speedy dissolution, do make and ordain this my last will and testament, to wit:

Item 1st. I desire that all my just debts be paid, out of the first money that comes into the hands of my administrators.

3d. I will that the northeast quarter of section twenty-seven, and the East half of the northwest quarter of the same section, in township No. nine North of range No. eight East, of the 4th principal meridian, together with all houses and other improvements and appurtenances of every kind thereunto appertaining, shall be possessed and occupied by my beloved wife, Elizabeth, for and during her natural life, upon the condition that she shall raise, and in all respects properly bring up my children that are now under age; and the better to enable her to perform this sacred duty, I also give and bequeath to her three horses, such as she shall select of those I now have, six cows, in like manner to be selected. All the sheep and hogs I now own, one wagon, the family carriage, such farming utensils and harness as she may want of those belonging to me. All my household and kitchen furniture, and a musical instrument called a melodeon.

4th. It is my desire that my children, Tryphena, Calvin, Elizabeth and Louisa, shall make their homes with their mother, but that they be well educated, and if need be, for that purpose, that they be sent to any good institution abroad. My said daughter Tryphena I desire shall continue one year longer at the seminary at Steubenville.

5th. For the purpose of defraying the expenses of educating said four children, I desire and hereby authorize and empower my administrator to sell, upon such terms of payment as he may judge to be for the best interest of said children, and at public vendue, after having advertised the same for thirty days, in some public newspaper published in Peoria, the northeast of the southwest quarter, of section twenty-seven, in said township: and the money arising from said sale (after defraying the expenses of one year's schooling of said Tryphena), shall be used by the guardian or guardians of said other children, under the direction of the County Court, of Peoria county, for their education, so far as necessary. And the balance, of the price of said land, if any be left, shall return to and compose a part of my general estate.

6th. I will that as to all and every part of my estate, not above provided for, that the laws of descent of the State of Illinois, shall have their full and entire effect the same as though I had died intestate. Provided, however, that so far as my said wife is concerned, the above provisions, if accepted by her, shall be in full of her right of dower.

7th. I have a book of accounts, in which I have charged sundry of my children advances heretofore made to them. It is my will, that when a division of my property is made, that all such advances be taken into hotch pot and those of my heirs be charged with so much charged on account of their proportions. In witness of all which, I have hereunto set my hand and seal, this 2nd day of August, 1858. H. SCHNEBLY, (L.S.)

In presence of C. C. Wood, John S. Keller.

On the 25th of August, 1858, John C. Schnebly and Jonathan K. Cooper were appointed administrators, with the will annexed, of his estate.

On the 13th of November, 1858, the widow filed her relinquishment under the will.

On the 11th day of November, 1858, H. W. Reynolds was appointed guardian for the minor heirs.

On the 14th day of March, 1859, the Commissioners filed their report, in which they gave the widow the East half northwest twenty-seven, township nine North range eight East, and eight acres of the east half, and the West half of the northeast of same section. All the improved land belonging to the estate which can yield an income is included in the part assigned to said widow except a portion of the forty acre tract which has been set apart, and is now advertised to be sold to educate minor children, and a few acres (perhaps twenty) which have been put into a state of cultivation on the northwest quarter of section twenty, of township ten North, of range eight East of the fourth principal meridian. All the rest of the real estate, except an acre or two on said section 34, is wild unimproved land, yielding no revenue, but subject to a large annual tax.

The West half of the northeast quarter of section twenty-seven, township nine north range eight East, is in a high state of cultivation, having on it a large and well finished brick dwelling house, and a large frame barn and some outhouses. Also a well and two large brick cisterns for rain-water. Also an orchard of bearing fruit trees.

The East half of the northwest quarter of section twenty-seven, is divided from the last tract by a highway. It is also improved, by having about thirty-one acres of it cleared and fenced, and about eleven acres of the cleared part, set in grass for a meadow ; but there are no buildings on it, except that in the southeast corner there is a district school house.

It was in the dwelling house on the said West half of the northeast quarter, that the deceased lived, and in which he died. This tract was heavily covered with wood and timber, but it has been nearly all cleared, and put into a high state of cultivation, by the deceased. This half quarter section, and the East half of the northeast of sec. twenty-seven form one quarter section, with no road or fence between them, but both constitute part and parcel of the same farm, and of the homestead of the deceased. The East half is mostly wood, well calculated for pasture, but the fence between the two half quarters was not built with reference to the line between them, but was run in such a manner that a long strip (perhaps, in amount, three acres), of the East half has been enclosed, cleared, and for many years cultivated with the rest of the farm.

The West half of the northeast of twenty-seven, is worth about four hundred dollars per year. The East half of the northwest quarter of section twenty-seven is worth about one hundred and fifteen dollars per year. A field on the quarter section in ten North of range eight east, is worth about sixty dollars per year. An inclosure of an acre or two, on section thirty four, may be worth six dollars, certainly not more than ten dollars per year. A lot in the city of Peoria, which is worth about three thousand dollars, and yields one hundred dollars annual rent, free of taxes, (which amount to about thirty-seven dollars) and the West half of the S. W. quarter of section five township eleven North, of range six East, of the fourth principal meridian were for many years the property of said Henry Schnebly, but before his death his wife procured him to make a deed of both said pieces of property to her son Joseph S. Schnebly, in trust for her use and benefit, which deed was not recorded until the 25th of August, 1858.

Said deceased left fourteen chidren, his widow being his second wife and being much younger than he, is the mother of seven of his youngest children. John C. Schnebly, Julia Ballance, David J. Schnebly, George W. Schnebly, James H. Schnebly, Susan E. Edwards, and Amanda R. Reed are children of his former wife, and are all of age.

I know of no one who ever saw said deed before the death of

said deceased, and suppose no one ever did see it before, except the grantors and grantee, and the officer who wrote it. I am sure no one of said older children ever saw it, before his death.

I know of no one who had ever seen said book, which is referred to in said will and made part of it, before the death of said deceased. I know that I who am one of his heirs, never saw it before his will was written. I further know that it ought never to have seen the light, if for no other reason, because I who never owned a negro in my life, am charged in said book for one several hundred dollars.

The appraisement bill of said estate marked (A.) A bill of such property as the appraisers report the widow ought to have marked (B.) A list of such property as the widow selected at the appraisement, marked (C,) and the sale bill marked (D,) are all hereunto attached and prayed to be made a part hereof.

The above bills are omitted here, because they would occupy much space, and if the court should deem them material it will be but little trouble, with the aid of the following references, to turn to them.

On the second day of July 1859 the court overruled said motion and made a decree establishing said report.

At the trial a proposition, in writing, was made on the part of the heirs, to settle the controversy by giving the widow the two thirds, set apart to them, for the one third set apart to her, which proposition was not acceeded to and the trial progressed.

After said decree was pronounced an order was made allowing an appeal, by the filing of an appeal bond, by Charles Ballance and John C. Schnebly, but this is deemed immaterial, and omitted in the record.

By the time your Honors have read this abstract you are no doubt ready to exclaim, "It is the old story of the officers of the court sympathising with, and aiding a widow, the mother of a younger set of children to cheat the older children out of their share of the estate; and your Honors are no doubt lead to the conclusion that it is to protect the latter I appear before you. Nothing however is further from the truth, I am aware that a second wife can usually wheedle a superanuated husband, and him set against his own offspring, and that she generally is not only inclined to cheat the older children out of their just rights, but in any effort of this kind she always has the sympathy and aid of judges, jurors, commissioners, and in fact, of all who are *men*. Knowing this so well I would not have had the temerity to appear against this widow, for my own protection, or for the protection of the rights of any of the older children. I appear for the minor heirs—to protect this woman's children, against their mother. But for their sakes, she might have carried off the whole estate, and I would not have interfered.

And such was my reluctance to appear in this controversy

that I offered. 1st. That she might take for her dower the two thirds, set apart to the heirs in lieu of what the commissioners set apart to her as one third. 2d. If she would give up the field on the other side of the highway, which was not given her by the will, that it might be rented for money to pay the taxes, on the unimproved land, I would with-draw my opposition. 3rd. If she would obligate herself to feed and clothe her own infant children and pay the taxes, on their part of the land, until they were of age, she might have all the commissioners had given her; but to none of the propositions would she accede. The first of these propositions, I perceive is in the record, but the others are not.

As the case now stands, the widow after clandestinely procuing from the old gentleman, before his death, a deed for a valuable lot in the centre of the City of Peoria, and a tract of land in the country, she has been permitted to swallow up the whole of the personal estate, leaving nothing to feed, clothe and educate the minors, and pay the taxes on their real estate, and by giving her virtually all the real estate, that is capable of yielding a revenue, and giving the children wild lands yielding no revenue, but on which heavy taxes are annually assessed, the result may be, that said lands will be sold for the taxes, or for their food and clothing, or both.

But am I to be told that the widow having all the property, and woman's affection for her offspring, they are safe? But suppose she should marry, what guarrantee have we that the stepfather would not charge the children for their support, and have their lands sold to pay the bills, and he himself the purchaser, at a nominal prices, and when he had secured their lands, turn them out of doors.

That the widow has swallowed up all the personality and how she did it, will appear by comparing the value the appraisers put upon the property, belonging to the family, and to which they had been used, and with which they had no doubt been satisfied (See page 23) with the list of things the appraisers say she ought to have to support the family in proper dignity.—(See page 24.) For example. The four best beds are put at $ 80. but such as she ought to have at $100, the cook stove and kitchen furniture, with which the family has got along very well, were appraised at $25, but such as they henceforth were to have, were worth $200, the spinning wheel, with which she previously spun her flax, was appraised at one dollar, but such as she ought to have, at five dollars. She had, it seems, never had a loom, but now she is to have one worth $ 15. She had had no cards, but now she is to have a pair worth a dollar. The stoves she had always found sufficient to warm the house (four in number) were all appraised at but $ 15, but now she is to have a single one worth $25. The wearing apparel on hand, was appraised at nothing, but the administrators are now to furnish her $300, worth. The cows the family had on hand, were appraised at from $12 to $16, but now she is to have cows worth $25. Her saddle and bridle on hand they permit her to take without appraisement, but give her another worth $15.—

The provisions on hand she gets without appraisement, but in addition the appraisers give her $200 worth. The sheep on hand were appraised at $1,50 per head, but those she ought to have at $2,25. No price was put on the fuel on hand, but $50, allowed her to buy fuel, &c.

By this process they bring the estate indebted to her for things necessary, to the amount of $1,158. (See page 25.) Then she is permitted to select all the best of the property at the above nominal prices, to the above amount. (See page 26.) The refuse that she left was sold for $ 861,75 (See page 27) one third of this, she got as dower, and the residue was swallowed up (as I have been informed) in administration and probate fees, funeral expenses &c. Not one cent of it have the heirs received.

It is not denied that is was the design of the commissioners to give the widow all the improved land, that could yield an income, and give to the heirs the wild land that could yield no income but which requires a large yearly disbursement to pay taxes. The homestead was on the N. E. of Sec. 27. The will gave this and no more to the widow, but that upon condition that she support the minor children. The commissioners gave her the improved part of it, leaving the unimproved part of it, to the heirs, and in lieu of that they gave her the improved eighty, beyond the highway, and that too discharged of the obligation to support the minors.

Now after this much premised, I take these positions.

1st. This whole proceeding is at first blush fraudulent and void. If any circuit judge, sitting as a chancelor, will permit so plain a fraud to be perpetrated, in his presence—will permit the children of a wealthy man through the machinery of a court of justice to be swindled out of their patrimony, and cast pennyless upon the world, a prompt decision of this court ought to teach the world that the orphan child has still a friend on earth.

2d. It was wrong, after the widow had relinquished her rights, under the will to deem the will in force in regard to the tract that the will provided should be sold to raise money to educate the younger children, and give the widow a greater amount of dower out of other lands, in consequence thereof. The will was a bargain tendered to the widow, that if she would, in lieu of the dower the law would give her, accept the homestead as her share, and raise the minor children, she should have said tract of land to raise funds to educate them. She repudiated the offer, made to her and claimed under the law; yet the commissioners appointed to assign her dower, treated said tract as beyond their reach, and endowed her of other lands in lieu thereof.

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may be found such as where a forest of pines are kept for gathering rosin or turpentine, or a grove of sugar maples for the purpose of making sugar, but none of these exceptions apply in Illinois.

This state was from the hand of nature, in the same situation of England, and the older State after ages have been spent in clearing off the timber, and putting the land in a state of cultivation, so that here as there, to destroy timber is *prima facie* waste. Mr. Schnebly, emigrating from a state where timber was valuable, selected and purchased heavily timbered land, in the neighborhood of Peoria, and only cleared so much as was necessary to support his family, and left the rest as a legacy to his children. The homestead he gave to his wife upon the condition that she would feed and clothe the younger children. A portion of the improved land he left, by his will, to the heirs, to enable them to pay the taxes on the wild land, until the minors should become of age and a division take place; and now the question is whether in assigning dower you are to be governed by the profits, that may be obtained from the land, or the price for which it might be sold; and whether you may give the widow all the income, and leave the children to starve. In the case of Connor vs. Shepherd, 8 Ohio 160, the court say "It is well understood by the common law, and the principle has been repeatedly settled in this Court, that the dower of the widow is not to be assigned so as to give her one third of the land in quantity, but so that she may enjoy one third of the rents and profits or income of the estate. Now of a lot of wild land, not connected with a cultivated farm, there are no rents and profits. On the contrary it is an expense to the owner by reason of the taxes."

In the case of Leonard vs. Leonard, 4 Mass. 533, the Court say: "In the assignment of dower, Commissioners are to regard the rents and profits only, of the several parcels of the estate, out of which the dower is to be assigned. When they have ascertained the annual income of the whole estate, they ought to set off to the widow such a part as will yield her one third part of such income, in parcels best calculated to the convenience of herself and the heirs. The rule is adopted equally to protect widows from having an unproductive part of estates assigned them, and to guard heirs from being left, during the life of the widow, without the means of support." See, also, Webb vs. Townsend, 1 Pick. 21, and White vs. Willis, 7 Pick. 144.

But the case of Allen vs. McCoy, 8 Ohio, from 418 to 494, has been relied upon, as conclusive against me, in this case. Nothing is further from the fact. First, That case is not good authority of anything, because Judge Hitchcock dissented and gave stronger reasons for his dissent, than the majority did for their opinion.

2d. That decision is not only contrary to all the common law decisions, and the current of American decisions, but contrary to all the Ohio decisions, except one previous to that time.

3d. The question on which this case depends was neither discussed nor decided in that case. That case was briefly this, Mr. Allen, a non-resident, speculator, in 1801, bought large quantities of wild lands. in Ohio. In 1803 he married. In 1805 he conveyed the lands, without his wife joining in the conveyance, and in 1809 he died. Neither he nor his wife ever saw the land. Through the energy and acuteness of Allen's vendees, the Capitol of Ohio was placed on one of these tracts, and the tract itself cut up into city lots, and the flourishing city of Columbus built, in part, on it. Lot 264 was in the heart of the city, and was covered with large and costly buildings, made by the defendant. Twenty-eight years after the death of her husband, the widow brought suit for her dower in this lot, and the question was not whether she was entitled to dower, but whether in assigning the dower, the commissioners should be governed by the value of the property, when the dower accrued, or whether she might lie by for more than a quarter of a century, until millions of dollars had been expended on the land, and then ask that her dower be assessed according to the valuation at that time. But here no such question arises. Here are no lackes on the part of any one. As the widow did not immediately ask to have her dower set off, the heirs petitioned in her behalf. It is not a question here as to *when* the appraisement ought to be made. We agree as to that, but the question is *what* shall be appraised. We say the rents and profits; our opponents say the land itself. This point, however, we are willing to yield, provided they will give us *some* of the improved land—enough to pay the taxes on the timber. We insist, however, that by law, we are entitled to two thirds of the improved land.

But I was asked, in the Court below, with an air of triumph, "May the widow not cut prairie grass, and if she may cut prairie grass, may she not be endowed of prairie land." I answer, if she can find any prairie land, belonging to the estate, she may not only cut the grass off a third part of it, but all of it; and she may not only have dower in a third of it, but in all of it. She may have as much of it as she will pay the taxes on. Not only so, I would be willing to buy all the prairie land my means would enable me to. and give it to any one, for life, who would pay the taxes, for the privilege of mowing it. The rule is that prairie grass is of no value; its value is certainly not equal to the taxes; but if a case can be shown where the right to cut grass, on a tract of land, will bring more than the taxes, an exception to the rule has arisen, and the widow is entitled to one-third of all it will bring, over and above the taxes.

It has been said our Statute is the same as that of Ohio, and of course should receive the same construction. Suppose I admit our Statute to be the same as that of Ohio, and see how the case will stand. The case of Allen vs. McCoy was decided in 1838. We adopted the Statute long before this. No such construction had ever been put upon the Ohio Statute, when we adopted it, but one directly the reverse, 8 Ohio 470. Then I rely on the rule that when we adopt a Statute that had received

a construction, we adopt the construction as a part of it, and a change of construction afterwards, does not effect us. But as have shown before, this decision is not in point.

But we are told that by the Statute, a widow is entitled to claim dower of *all* her husband lands. Granted; but suppose she finds a piece of land that has no dower in it, a tract that pays a large tax but yields no rent. What is she to do? If she wants it she can have it, but she surely cannot turn every such one over to the heirs, and take only those that yield a revenue. The heirs are as much entitled to two-thirds of the profits, as she is to one third. Then why give her all?

When a man dies leaving, as in this case, fourteen living children, the law that gives one member of his family one third of all his property, and the fourteen only the two-thirds, or to her seven times as much as to any other one, is monstrously unjust; but when that one is permitted by the machinery of a Court of justice to take it all—even to snatch from the mouths of her own infant children, the bread prepared by the sweat of the brow of their aged father, the iniquity becomes intolerable.

CHARLES BALLANCE,
For Plaintiff.

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John Schnebly

vs

Elizabeth Schnebly

Filed Mch 17, 1866

H. Leland

Clerk

IN THE SUPREME COURT OF ILLINOIS.

April Term, A. D., 1860.

JOHN C. SCHNEBLY, AND OTHERS,
HEIRS AT LAW OF
HENRY SCHNEBLY, Dec'd.
versus
ELIZABETH M. SCHNEBLY.

ERROR TO PEORIA COUNTY.

This was a petition filed in the Peoria Circuit Court, by the heirs at law of Henry Schnebly deceased, to have his widow's
1 dower assigned to her. The petition sets forth in substance that Henry Schnebly died on the fourth day of August, 1858, leaving the defendant, Elizabeth M. Schnebly his widow, and the petitioners (a long list) his heirs at law: all of whom are of age except Tryphena C. Schnebly, Calvin Schnebly, Elizabeth E. Schnebly and Ann Louisa Schnebly: and that Hugh W. Reynolds was the legally appointed guardian of the minors.

That said Henry, before his death, made his last will and testament, which was duly proved and admitted to probate, but that the widow in due form renounced all claims under said will, and elected to take her dower, in her husbands estate, in lieu thereof.

Further that said Henry Schnebly was possessed during coverture, and died seized in fee simple, of the following described lands and real estate, in all of which the said widow is entitled to her dower, or estate of one third part thereof, during her natural life, to wit

N. E. qr. of Sec. 17 T. 11 N. 4 E.—W. $\frac{1}{2}$ of N. W of Sec. 4 T. 11 N. R. 6 E.— E. $\frac{1}{2}$ N. E. Sec. 9, T. 9 N. R. 8 E.— S. E. Sec. 21 T. 9 N. R. 8 E.—N. E. Sec. 27, T. 9 N. R. 8 E.—E $\frac{1}{2}$ of N. W. Sec. 27, T. 9 N. R. 8 E.—N. E. qr of S. W. qr Sec. 27 T. 9 N. 8 E.—N. W. Sec. 34, T. 9 N. R. 8 E.—N. W. qr of Sec. 20, T. 10 N. R. 8 E.—All of the fourth principal meridian. Titles supposed to be perfect.

That he also had certain tax titles, that are supposed to be of "no assignable value."

That petitioners and said widow are the only persons interested in said estate.

Prayer that said widow may be made defendant, and that her dower be assigned.

5 To the petition are attached as exhibits the widows renunciation of all right to take under said will, also letters of guardian-
6 ship to H. W. Reynolds, which as there is no dispute about them I deem unnecessary to be inserted or abstracted here.

The widow answered admitting the truth of the allegations of the petition, and joined in the prayer that her dower might be set off to her.

On the 9th of December, 1858, a decree was made appointing Jacob Darst, Tobias S. Bradley and William M. Dodge, Commissioners, to assign to said widow her dower in said lands.

Said Commissioners, on the 11th day of March, 1855, reported to the Court that they had set apart to said widow, in lieu of her dower, in all of said property: "the East half of the northwest quarter of section twenty-seven, in Township nine North, of range eight East, and also eighty-eight acres off the West side of the northeast quarter of said section." They add to the description, "including the residence and homestead of her late husband, at the time of his decease."

A motion was made by the petitioners, to set aside the report of the Commissioners, and in support of that motion, the following statement of facts, sworn to and not disputed was submitted to the Court, to wit: Henry Schnebly died on the 4th of August, 1858, leaving defendant his widow, and plaintiffs his heirs at law. Before dying, he made the following will (which was proved and admitted to record, on the 17th day of August, 1858,) to wit:

"In the name of God, Amen, I, Henry Schnebly, being sound in mind, but feeble in body, and impressed with the danger of a speedy dissolution, do make and ordain this my last will and testament, to wit:

Item 1st. I desire that all my just debts be paid, out of the first money that comes into the hands of my administrators.

3d. I will that the northeast quarter of section twenty-seven, and the East half of the northwest quarter of the same section, in township No. nine North of range No. eight East, of the 4th principal meridian, together with all houses and other improvements and appurtenances of every kind thereunto appertaining, shall be possessed and occupied by my beloved wife, Elizabeth, for and during her natural life, upon the condition that she shall raise, and in all respects properly bring up my children that are now under age; and the better to enable her to perform this sacred duty, I also give and bequeath to her three horses, such as she shall select of those I now have, six cows, in like manner to be selected. All the sheep and hogs I now own, one wagon, the family carriage, such farming utensils and harness as she may want of those belonging to me. All my household and kitchen furniture, and a musical instrument called a melodeon.

4th. It is my desire that my children, Tryphena, Calvin, Elizabeth and Louisa, shall make their homes with their mother, but that they be well educated, and if need be, for that purpose, that they be sent to any good institution abroad. My said daughter Tryphena I desire shall continue one year longer at the seminary at Steubenville.

5th. For the purpose of defraying the expenses of educating said four children, I desire and hereby authorize and empower my administrator to sell, upon such terms of payment as he may judge to be for the best interest of said children, and at public vendue, after having advertised the same for thirty days, in some public newspaper published in Peoria, the northeast of the southwest quarter, of section twenty-seven, in said township: and the money arising from said sale (after defraying the expenses of one year's schooling of said Tryphena), shall be used by the guardian or guardians of said other children, under the direction of the County Court, of Peoria county, for their education, so far as necessary. And the balance, of the price of said land, if any be left, shall return to and compose a part of my general estate.

6th. I will that as to all and every part of my estate, not above provided for, that the laws of descent of the State of Illinois, shall have their full and entire effect the same as though I had died intestate. Provided, however, that so far as my said wife is concerned, the above provisions, if accepted by her, shall be in full of her right of dower.

7th. I have a book of accounts, in which I have charged sundry of my children advances heretofore made to them. It is my will, that when a division of my property is made, that all such advances be taken into hotch pot and those of my heirs be charged with so much charged on account of their proportions. In witness of all which, I have hereunto set my hand and seal, this 2nd day of August, 1858. H. SCHNEBLY, (L.S.)
In presence of C. C. Wood, John S. Keller.

On the 25th of August, 1858, John C. Schnebly and Jonathan K. Cooper were appointed administrators, with the will annexed, of his estate.

On the 13th of November, 1858, the widow filed her relinquishment under the will.

On the 11th day of November, 1858, H. W. Reynolds was appointed guardian for the minor heirs.

On the 14th day of March, 1859, the Commissioners filed their report, in which they gave the widow the East half northwest twenty-seven, township nine North range eight East, and eight acres of the east half, and the West half of the northeast of same section. All the improved land belonging to the estate which can yield an income is included in the part assigned to said widow except a portion of the forty acre tract which has been set apart, and is now advertised to be sold to educate minor children, and a few acres (perhaps twenty) which have been put into a state of cultivation on the northwest quarter of section twenty, of township ten North, of range eight East of the fourth principal meridian. All the rest of the real estate, except an acre or two on said section 34, is wild unimproved land, yielding no revenue, but subject to a large annual tax.

The West half of the northeast quarter of section twenty-seven, township nine north range eight East, is in a high state of cultivation, having on it a large and well finished brick dwelling house, and a large frame barn and some outhouses. Also a well and two large brick cisterns for rain-water. Also an orchard of bearing fruit trees.

The East half of the northwest quarter of section twenty-seven, is divided from the last tract by a highway. It is also improved, by having about thirty-one acres of it cleared and fenced, and about eleven acres of the cleared part, set in grass for a meadow ; but there are no buildings on it, except that in the southeast corner there is a district school house.

It was in the dwelling house on the said West half of the northeast quarter, that the deceased lived, and in which he died. This tract was heavily covered with wood and timber, but it has been nearly all cleared, and put into a high state of cultivation, by the deceased. This half quarter section, and the East half of the northeast of sec. twenty-seven form one quarter section, with no road or fence between them, but both constitute part and parcel of the same farm, and of the homestead of the deceased. The East half is mostly wood, well calculated for pasture, but the fence between the two half quarters was not built with reference to the line between them, but was run in such a manner that a long strip (perhaps, in amount, three acres), of the East half has been enclosed, cleared, and for many years cultivated with the rest of the farm.

The West half of the northeast of twenty-seven, is worth about four hundred dollars per year. The East half of the northwest quarter of section twenty-seven is worth about one hundred and fifteen dollars per year. A field on the quarter section in ten North of range eight east, is worth about sixty dollars per year. An inclosure of an acre or two, on section thirty four, may be worth six dollars, certainly not more than ten dollars per year. A lot in the city of Peoria, which is worth about three thousand dollars, and yields one hundred dollars annual rent, free of taxes, (which amount to about thirty-seven dollars) and the West half of the S. W. quarter of section five township eleven North, of range six East, of the fourth principal meridian were for many years the property of said Henry Schnebly, but before his death his wife procured him to make a deed of both said pieces of property to her son Joseph S. Schnebly, in trust for her use and benefit, which deed was not recorded until the 25th of August, 1858.

Said deceased left fourteen chidren, his widow being his second wife and being much younger than he, is the mother of seven of his youngest children. John C. Schnebly, Julia Ballance, David J. Schnebly, George W. Schnebly, James H. Schnebly, Susan E. Edwards, and Amanda R. Reed are children of his former wife, and are all of age.

I know of no one who ever saw said deed before the death of

said deceased, and suppose no one ever did see it before, except the grantors and grantee, and the officer who wrote it. I am sure no one of said older children ever saw it, before his death.

I know of no one who had ever seen said book, which is referred to in said will and made part of it, before the death of said deceased. I know that I who am one of his heirs, never saw it before his will was written. I further know that it ought never to have seen the light, if for no other reason, because I who never owned a negro in my life, am charged in said book for one several hundred dollars.

The appraisement bill of said estate marked (A.) A bill of such property as the appraisers report the widow ought to have marked (B.) A list of such property as the widow selected at the appraisement, marked (C,) and the sale bill marked (D,) are all hereunto attached and prayed to be made a part hereof.

The above bills are omitted here, because they would occupy much space, and if the court should deem them material it will be but little trouble, with the aid of the following references, to turn to them.

On the second day of July 1859 the court overruled said motion and made a decree establishing said report.

At the trial a proposition, in writing, was made on the part of the heirs, to settle the controversy by giving the widow the two thirds, set apart to them, for the one third set apart to her, which proposition was not acceeded to and the trial progressed.

After said decree was pronounced an order was made allowing an appeal, by the filing of an appeal bond, by Charles Ballance and John C. Schnebly, but this is deemed immaterial, and omitted in the record.

By the time your Honors have read this abstract you are no doubt ready to exclaim, "It is the old story of the officers of the court sympathising with, and aiding a widow, the mother of a younger set of children to cheat the older children out of their share of the estate: and your Honors are no doubt lead to the conclusion that it is to protect the latter I appear before you. Nothing however is further from the truth, I am aware that a second wife can usually wheedle a superanuated husband, and him set against his own offspring, and that she generally is not only inclined to cheat the older children out of their just rights, but in any effort of this kind she always has the sympathy and aid of judges, jurors, commissioners, and in fact, of all who are *men*. Knowing this so well I would not have had the temerity to appear against this widow, for my own protection, or for the protection of the rights of any of the older children. I appear for the minor heirs—to protect this woman's children, against their mother. But for their sakes, she might have carried off the whole estate, and I would not have interfered.

And such was my reluctance to appear in this controversy

that I offered. 1st. That she might take for her dower the two thirds, set apart to the heirs in lieu of what the commissioners set apart to her as one third. 2d. If she would give up the field on the other side of the highway, which was not given her by the will, that it might be rented for money to pay the taxes, on the unimproved land, I would with-draw my opposition. 3rd. If she would obligate herself to feed and clothe her own infant children and pay the taxes, on their part of the land, until they were of age, she might have all the commissioners had given her: but to none of the propositions would she accede. The first of these propositions, I perceive is in the record, but the others are not.

As the case now stands, the widow after clandestinely procuing from the old gentleman, before his death, a deed for a valuable lot in the centre of the City of Peoria, and a tract of land in the country, she has been permitted to swallow up the whole of the personal estate, leaving nothing to feed, clothe and educate the minors, and pay the taxes on their real estate, and by giving her virtually all the real estate, that is capable of yielding a revenue, and giving the children wild lands yielding no revenue, but on which heavy taxes are annually assessed, the result may be, that said lands will be sold for the taxes, or for their food and clothing, or both.

But am I to be told that the widow having all the property, and woman's affection for her offspring, they are safe? But suppose she should marry, what guarrantee have we that the stepfather would not charge the children for their support, and have their lands sold to pay the bills, and he himself the purchaser, at a nominal prices, and when he had secured their lands, turn them out of doors.

That the widow has swallowed up all the personality and how she did it, will appear by comparing the value the appraisers put upon the property, belonging to the family, and to which they had been used, and with which they had no doubt been satisfied (See page 23) with the list of things the appraisers say she ought to have to support the family in proper dignity.—(See page 24.) For example. The four best beds are put at $ 80. but such as she ought to have at $100, the cook stove and kitchen furniture, with which the family has got along very well, were appraised at $25, but such as they henceforth were to have, were worth $200, the spinning wheel, with which she previously spun her flax, was appraised at one dollar, but such as she ought to have, at five dollars. She had, it seems, never had a loom, but now she is to have one worth $ 15. She had had no cards, but now she is to have a pair worth a dollar. The stoves she had always found sufficient to warm the house (four in number) were all appraised at but $ 15, but now she is to have a single one worth $25. The wearing apparel on hand, was appraised at nothing, but the administrators are now to furnish her $300, worth. The cows the family had on hand, were appraised at from $12 to $16, but now she is to have cows worth $25. Her saddle and bridle on hand they permit her to take without appraisement, but give her another worth $15.—

The provisions on hand she gets without appraisement, but in addition the appraisers give her $200 worth. The sheep on hand were appraised at $1,50 per head, but those she ought to have at $2,25. No price was put on the fuel on hand, but $50, allowed her to buy fuel, &c.

By this process they bring the estate indebted to her for things necessary, to the amount of $1,158. (See page 25.) Then she is permitted to select all the best of the property at the above nominal prices, to the above amount. (See page 26.) The refuse that she left was sold for $ 861,75 (See page 27) one third of this, she got as dower, and the residue was swallowed up (as I have been informed) in administration and probate fees, funeral expenses &c. Not one cent of it have the heirs received.

It is not denied that is was the design of the commissioners to give the widow all the improved land, that could yield an income, and give to the heirs the wild land that could yield no income but which requires a large yearly disbursement to pay taxes. The homestead was on the N. E. of Sec. 27. The will gave this and no more to the widow, but that upon condition that she support the minor children. The commissioners gave her the improved part of it, leaving the unimproved part of it, to the heirs, and in lieu of that they gave her the improved eighty, beyond the highway, and that too discharged of the obligation to support the minors.

Now after this much premised, I take these positions.

1st. This whole proceeding is at first blush fraudulent and void. If any circuit judge, sitting as a chancelor, will permit so plain a fraud to be perpetrated, in his presence—will permit the children of a wealthy man through the machinery of a court of justice to be swindled out of their patrimony, and cast penny-less upon the world, a prompt decision of this court ought to teach the world that the orphan child has still a friend on earth.

2d. It was wrong, after the widow had relinquished her rights, under the will to deem the will in force in regard to the tract that the will provided should be sold to raise money to educate the younger children, and give the widow a greater amount of dower out of other lands, in consequence thereof. The will was a bargain tendered to the widow, that if she would, in lieu of the dower the law would give her, accept the homestead as her share, and raise the minor children, she should have said tract of land to raise funds to educate them. She repudiated the offer, made to her and claimed under the law; yet the commissioners appointed to assign her dower, treated said tract as beyond their reach, and endowed her of other lands in lieu thereof.

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But the case of Allen vs. McCoy, ~~8 Ohio, from 418~~ to 494, has been relied upon, as conclusive against me, in this case. Nothing is further from the fact. First, That case is not good authority of anything, because Judge Hitchcock dissented and gave stronger reasons for his dissent, than the majority did for their opinion.

2d. That decision is not only contrary to all the common law decisions, and the current of American decisions, but contrary to all the Ohio decisions, except one previous to that time.

3d. The question on which this case depends was neither discussed nor decided in that case. That case was briefly this, Mr. Allen, a non-resident, speculator, in 1801, bought large quantities of wild lands, in Ohio. In 1803 he married. In 1805 he conveyed the lands, without his wife joining in the conveyance, and in 1809 he died. Neither he nor his wife ever saw the land. Through the energy and acuteness of Allen's vendees, the Capitol of Ohio was placed on one of these tracts, and the tract itself cut up into city lots, and the flourishing city of Columbus built, in part, on it. Lot 264 was in the heart of the city, and was covered with large and costly buildings, made by the defendant. Twenty-eight years after the death of her husband, the widow brought suit for her dower in this lot, and the question was not whether she was entitled to dower, but whether in assigning the dower, the commissioners should be governed by the value of the property, when the dower accrued, or whether she might lie by for more than a quarter of a century, until millions of dollars had been expended on the land, and then ask that her dower be assessed according to the valuation at that time. But here no such question arises. Here are no lackes on the part of any one. As the widow did not immediately ask to have her dower set off, the heirs petitioned in her behalf. It is not a question here as to *when* the appraisement ought to be made. We agree as to that, but the question is *what* shall be appraised. We say the rents and profits; our opponents say the land itself. This point, however, we are willing to yield, provided they will give us *some* of the improved land—enough to pay the taxes on the timber. We insist, however, that by law, we are entitled to two thirds of the improved land.

But I was asked, in the Court below, with an air of triumph, "May the widow not cut prairie grass, and if she may cut prairie grass, may she not be endowed of prairie land." I answer, if she can find any prairie land, belonging to the estate, she may not only cut the grass off a third part of it, but all of it: and she may not only have dower in a third of it, but in all of it. She may have as much of it as she will pay the taxes on. Not only so, I would be willing to buy all the prairie land my means would enable me to, and give it to any one, for life, who would pay the taxes, for the privilege of mowing it. The rule is that prairie grass is of no value: its value is certainly not equal to the taxes; but if a case can be shown where the right to cut grass, on a tract of land, will bring more than the taxes, an exception to the rule has arisen, and the widow is entitled to one-third of all it will bring, over and above the taxes.

It has been said our Statute is the same as that of Ohio, and of course should receive the same construction. Suppose I admit our Statute to be the same as that of Ohio, and see how the case will stand. The case of Allen vs. McCoy was decided in 1838. We adopted the Statute long before this. No such construction had ever been put upon the Ohio Statute, when we adopted it, but one directly the reverse, 8 Ohio 470. Then I rely on the rule that when we adopt a Statute that had received

a construction, we adopt the construction as a part of it, and a change of construction afterwards, does not effect us. But as have shown before, this decision is not in point.

But we are told that by the Statute, a widow is entitled to claim dower of *all* her husband lands. Granted; but suppose she finds a piece of land that has no dower in it, a tract that pays a large tax but yields no rent. What is she to do? If she wants it she can have it, but she surely cannot turn every such one over to the heirs, and take only those that yield a revenue. The heirs are as much entitled to two-thirds of the profits, as she is to one third. Then why give her all?

When a man dies leaving, as in this case, fourteen living children, the law that gives one member of his family one third of all his property, and the fourteen only the two-thirds, or to her seven times as much as to any other one, is monstrously unjust; but when that one is permitted by the machinery of a Court of justice to take it all—even to snatch from the mouths of her own infant children, the bread prepared by the sweat of the brow of their aged father, the iniquity becomes intolerable.

CHARLES BALLANCE,
For Plaintiff.

93

John Schraeby

vs

Elizabetta Schraeby

Filed May 19, 1860

A. Lebeuf

Clerk

John C Schnebly et al
Heirs of Henry Schnebly dec'd
vs
Elizabeth M Schnebly
} Error to Peoria

It is hereby agreed that the above entitled cause shall be submitted to the court upon printed briefs to be filed during the present term

Witness our hands this 16th day of May 1867

C Ballance
For Appellants

Manning & Merriman
For Appellee

~~907~~ 93

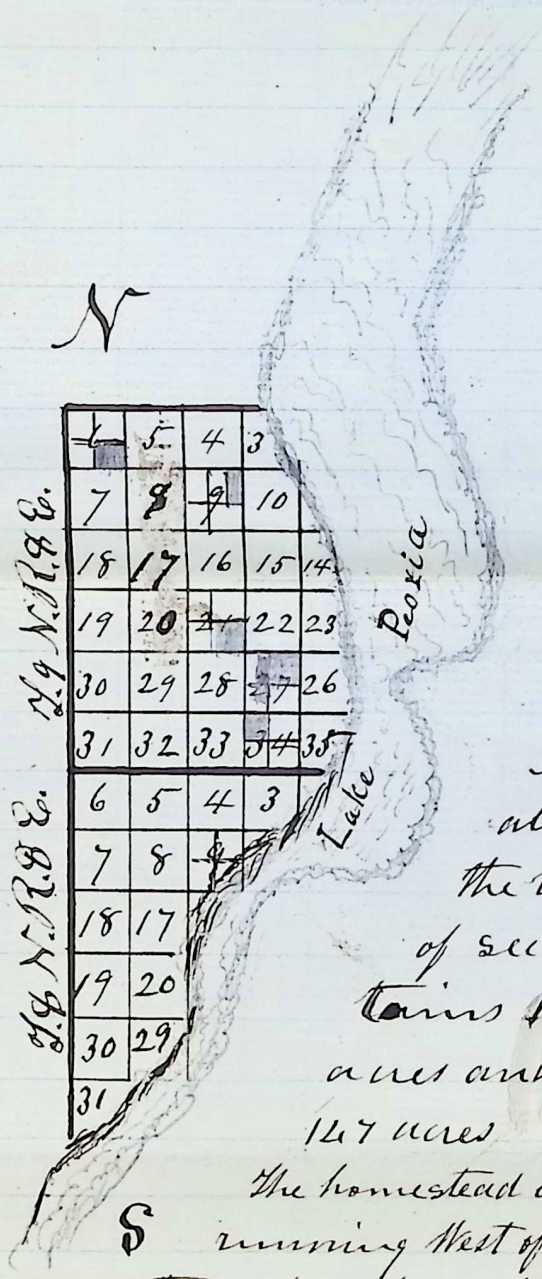
Schnebly et als
vs
Schnebly

~~Stipulation~~

Filed May 21. 1861
L. Leland
Clerk

John C Schnebly et al
vs
Elizabeth Schnebly
In the Supreme court

Plat of T. 9 N. R. 8 East and T. 8 N. of R. 8 East.



An act of the legislature passed about thirty four years ago located the town of Peoria on the N.E. quarter of section nine T. 8 N. R. 8 E which contains 146 acres. The S.E. qr contains 24 acres and the S.W. qr. (my addition) contains 147 acres

The homestead is on the N.E. 37 having a highway running West of it that is through the centre of the section from North to South. The N.W. of 34 is the tract Mr. Manning represents to be worth $300 per acre. From the above map the court will see that it is two miles from Peoria air measure. There is not a foot of prairie on any of the tracts of land which the public Surveys of the county show.

The S.E. 6 T. 9 N. R. 8 E is the tract conveyed to J. C. Schnebly for which he has to account to the estate

C Ballance

D. C. Schnebly et al

vs

E. M. Schnebly

Plat

Filed April 30, 1861
L. Leland
Clerk

Be it remembered that heretofore to wit: on the twenty
sixth day of November in the year of our Lord one thousand
eight hundred and fifty eight there was filed in the office
of the clerk of the Circuit Court of Peoria County in the State
of Illinois on the Chancery side thereof a Petition for
Assignment of dower in the words and figures following
to wit;

"State of Illinois }
Peoria County, &c } To the Hon. Elihu N. Powell Judge of the
Circuit Court of said County —
In Chancery —

The Petition of John C. Schnebly, Charles Ballance, Julia
Ballance, George W. Schnebly, Susan E. Edwards, David D.
Schnebly, James H. Schnebly, William H. Reed, Amanda R.
Reed, Joseph S. Schnebly, Henrietta A. Schnebly, John
Field, Mary Ann Catharine Field and Hugh W. Reynolds as
guardian at law of Zyphena C. Schnebly, Calvin Schnebly,
Elizabeth E. Schnebly, & Ann Louise Schnebly, infants
under lawful age respectfully represent unto your Honor
that the said John C. Schnebly, Julia Ballance wife of
said Charles Ballance, George W. Schnebly, Susan E. Edwards,
widow of Edward D. Edwards, dec'd. David D. Schnebly, James H.
Schnebly, Amanda R. Reed, wife of said William H. Reed,
Joseph S. Schnebly, Henrietta A. Schnebly, Mary Ann C. Field
wife of said John Field, Zyphena C. Schnebly, Calvin Schnebly,
Elizabeth E. Schnebly, & Ann Louise Schnebly, are the only

Surviving Children & heirs at law of Henry Schnebly late of said County, deceased - That said Sylphena C. Schnebly, Edwin Schnebly, Elizabeth C. Schnebly, & Ann Louise Schnebly are all minors under the age of 18 years and that said Hugh W. Reynolds has been duly appointed their guardian by the County Court of said Peoria County as will more fully appear by the letters of guardianship issued to him, Copies of which are attached & made part hereof = said letters are dated Nov. 11/58 = That said Henry Schnebly departed this life testate on or about the 24th day of August A.D. 1858 leaving Elizabeth M. Schnebly his widow, him surviving - Petitioners further represent that said Testator died in said Peoria County, & that his will was on or about the 17th day of August 1858 duly admitted to Probate & is now on file & of Record in the office of the Clerk of the County Court of said County - They further represent that since the Probate of said will, to wit: on the 13th day of November A.D. 1858 & less than one year after the Probate thereof, the said Widow elected not to take under said will & filed her written renunciation of the bequests & devises made to her in & by said will, and her election to take in lieu thereof, her dower in the estate of which her said husband died seized, in the said County Court - as will more fully appear by the said renunciation & election in writing, signed by said widow & a copy of which is attached marked "A" & made part hereof, and the original of which or a certified copy will be exhibited to the Court,

if required, on the hearing of this petition =
That Petitioner show, that by reason of said renunciation and election, the said Widow has ~~become~~ become & is restored to her right of dower in and to all & singular the lands, tenements of her said husband =
Petitioner further represent that said Henry Schneeby was possessed during Coverture & died seized in fee simple of the following described lands & real estate, in all of which the said Widow is entitled to her dower, or estate of the one third part thereof during her natural life, viz; the North East quarter of Section Seventeen (17) in Township Eleven (11) North, of Range Four (4) East in Knox County, Illinois - The West half of the North West of quarter of Section Four (4) in Township Eleven (11) North, Range Six (6) East - The East half of the North East quarter of Section Nine (9) Township Nine (9) North Range Eight (8) East - The South East quarter of Section Twenty one (21) = The North East quarter of Section Twenty Seven (27) = The East half of the North West quarter of Section Twenty Seven (27) = The North East quarter of the South West quarter of said Section Twenty Seven (27) And the North West quarter of Section thirty four (34) all in the said township Nine (9) North Range Eight East — and the North West quarter of Section Twenty (20) in township Ten (10) North of Range Eight East, all except said tract first named being situate in said Peoria County = and the titles to all which are supposed to be perfect titles in fee simple = Said decedent was also seized by ~~lay~~ title

& not otherwise, of an interest in the following lots & parcels of land, all in said Pena County, viz: 8 acres off the East side, part of the South East quarter of section Thirty Two (32) in Township 9 North Range 5, East — 22 acres East side S.E. 10, T. 10 N. R. 6. E. = 4 acres East side S.W. 2. T. 11. N. R. 6. E. = 30 acres East side, S.W. 8. T. 11 N. R. 6. E. = 4 acres East side of the undivided half S.W. 36. T. 9. N. R. 7. E. = 1/8 acres, East side, S½, N.W. 17. T. 8. N. R. 8. E. - Lots 6. 7. 8. 9. 10 in Block 27 - and lots 1. 2. 3. 5. 6. 7. 8. 9. 10 in Block 28 in the Town of Chillicothe - in which said widow is also entitled to a dower interest, but the titles to which as held by said decedent are of little or no assignable value = That your petitioners and said widow are the only persons interested in the assignment of dower in said estate = And that there are no other lands pertaining to said estate or in which the said widow is entitled to dower than as herein described —

Petitioners therefore pray that the said widow, to wit; the said Elizabeth M. Schnelly, be made party defendant hereto, and required to answer this petition, and that upon the hearing thereof Commissioners be appointed by the Court to assign, allot & set off to her, her dower in & to the lands, tenements & hereditaments above described and that such other proceedings be had & your petitioners have such further relief in the premises, as to justice & equity shall appertain & the nature of the case require — and Your petitioners will ever pray &c.

by. J.K. Cooper their Sol.

John C. Schnebly, Charles Ballance,
Julia Ballance, George W. Schnebly,
Susan C. Edwards, David D. Schnebly,
James H. Schnebly, William H. Reed,
Amanda M. Reed, Joseph S. Schnebly,
Henrietta A. Schnebly, John Field,
Mary Ann C. Field & Hugh W. Reynolds
Guardian of Josephena C. Schnebly,
Calvin Schnebly, Elizabeth C. Schnebly,
& Ann Louise Schnebly - Minors

vs

Elizabeth M. Schnebly

For Assignment of dower.

Copy of Exhibit (A) referred to in foregoing petition

" I, Elizabeth M. Schnebly widow of Henry Schnebly
" late of the County of Peoria and State of Illinois
" deceased, do hereby renounce and quit all claim to
" the benefit of any jointure, bequest or devise made to
" me by the last will and testament of my said deceased husband,
" which has been exhibited and proved according to law,
" and I do elect to take in lieu thereof, my dower or legal
" share of the estate of my said husband " Given under my hand
" at said County this 13th day of November A. D, 1858" (Signed) "Elizabeth M. Schnebly

Which said letter of renunciation is endorsed by the clerk of the County Court of said Peoria County "Filed this 13th day of November A. D, 1858 " Charles Kettells" clk"

(6)

Exhibit "B" referred to in foregoing petition

" Letters of Guardianship — State of Illinois, Peoria County, ss.
In County Court, November Term 1858 -

The People of the State of Illinois to Reuph W. Reynolds of said County, Greeting: Whereas at the — Term of the County Court of said County A.D. 1858 holden at Peoria you were, by order of said court duly entered of record on the eleventh day of said month, duly appointed Guardian for Tryphena C. Schnebly, of the age of 15 years on the 22nd day of March A.D. 1858, Calvin Schnebly of the age of 13 years on the 10th day of March 1858, Elizabeth E. Schnebly aged 11 years on the 10th day of March 1858 and Ann Louisa Schnebly of the age of six years on the 24 day of February A.D. 1858 trusting in your fidelity, therefore the said court doth by these presents Constitute and appoint you to be guardian unto said minors and authorize and empower you to take and have the care of their persons and the custody and management of their property, frugally and without waste or destruction to improve and account for the same in all things according to law. Witness Charles Kettelle, Clerk of the said County Court and the Corporate Seal of said Court hereunto affixed at Peoria this eleventh day of November in the year of our Lord one thousand eight hundred and fifty eight

Charles Kettelle, Clerk, "

And afterwards to wit: on the third day of December in the Year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said court in said cause the Answer of Elizabeth M. Schnebly, in the words and figures following, to wit:

"State of Illinois
County of Peoria } Peoria Circuit Court
November Term A. D. 1858

John C. Schnebly and others
vs
Elizabeth M. Schnebly } Petition to assign dower

The Answer of the said Elizabeth M. Schnebly to the petition of the said petitioners

This Respondent for Answer unto the said petition says

She has examined the said petition and the allegations therein and she is informed and believes and therefore admits that the same are true in substance and in fact

Wherefore she also desires that her dower may be duly assigned under the order and decree of this Court, according to the prayer of said petition

Elizabeth M. Schebly
pr Manning & Merriman
her attys "

(7)

Proceedings in Chancery before the circuit court at a term thereof begun and held at the court house in the city of Peoria within and for the County of Peoria and State of Illinois on the third Monday of the month of November (it being the on the fifteenth day of said month) in the year of our Lord one thousand eight hundred and fifty eight — Present the Honorable Elihu N. Powell judge of the sixteenth judicial circuit of said State, to wit:

Thursday December 9th A.D. 1858

John C. Schnebly, Charles Ballance,
Julia Ballance, George W. Schnebly,
Susan C. Edwards, David J. Schnebly,
James L. Schnebly, William McReed,
Amanda R Reed, Joseph S. Schnebly
Henrietta A. Schnebly, John Field,
Mary Ann Catharine Field and
Hugh W. Reynolds Guardian at law
of Seyfihena C Schnebly, Calvin Schnebly,
Elizabeth C Schnebly, & Ann Louise Schnebly

vs For Assignment of dower

Elizabeth W. Schnebly.

And now this cause coming on to be heard, upon the petition and exhibits of the said petitioners herein, and the answer of the said defendant, admitting the truth of the several matters in said petition named — and it appearing satisfactorily to the court that the said petition is in all respects true, in manner and form as therein stated

and that said defendant Elizabeth M. Schnebly as widow of the said Henry Schnebly deceased is entitled to her dower in the lands and tenements in said petition named, to wit: the N.E. qr. of Sec. 17. T. 11 N. R. 4. E. in Knox County Illinois - The W½ N.W. qr of Sec. 4. T. Eleven (11) N. R. 6. E. - The E½ N.E. qr Sec. 9 - The S.E. qr Sec. 21 - The N.E. qr - The E½ N.W. qr and the N.E. of the S.W. qr of Sec. 27 and the N.W. qr of Sec. 34, in T. 9. N. R. 8. E. and the N.W. qr of Sect. 20. in township 10 N. Range (8) Eight East in said Peoria County - and to all of which lands said Henry Schnebly died seized of perfect titles in fee - that said defendant is also entitled to her dower in the following lands and lots, which were held by said deceased by tax titles only, to wit: 8 acres off the East side part of the S.E. qr of Sec. 32. T. 9. N. R. 5. E. = 22 acres off the East side part of the S.E. 10. T. Ten (10) N. R. 6. E. = 4 acres, East side, part of the S.W. 2. T. 11 N. R. 6. E. = 30 acres off the East side part of the S.W. 8. T. 11 N. R. 6. E. = 4 acres, East side, undivided half S.W. 36. T. 9 N. R. 7. E. = 1/8 acres East side, E½ N.W. 17. T. 8 N. R. 8. E. = Lots 6. 7. 8. 9. 10 in Block 27, and Lots 1. 2. 3. 5. 6. 7. 8. 9. 10 in Blocks 28 in the Town of Chillicothe, all in said Peoria County = and it further appearing to the Court, that said N.E. S.W. 27. T. 9 N. R. 8. E has been set apart by the will of said deceased to provide a fund for the education of the minor children above named, and that it is desirable that the dower interest of said defendant therein, be set apart and allowed her out of the other lands above named = And the court now here being

sufficiently advised in the premises do order adjudge and decree that the said defendant be and she hereby is allowed her dower of the one third part of all the said lands and tenements above described, for and during her natural life = It is further ordered by the court that Jacob Dast, Tobias S. Bradley and William M. Dodge three disinterested persons, in no way connected by consanguinity or affinity with either of the parties to this suit, be and they hereby are appointed Commissioners to go upon said premises and set off and allot to said defendant her said dower in and out of the said lands and lots, by metes and bounds, according to quality & and quantity in case the same can be done consistently with the interests of the estate of said deceased, that in allotting the said dower they distinguish between the lands held by perfect and those held by tax titles only, by said deceased, as herein above declared, and that they assign to her, her dower in each class separately. It is further ordered that said Commissioners set off and award to said widow her dower in the said N. E. S. W. 27. 98 out of other lands held by perfect titles as aforesaid. It is further ordered by the Court that said Commissioners make return of their proceedings herein to this court for its approval or otherwise & for such further proceedings therein as the nature of the case may require.

And afterwards, to wit: on 11th day of March A.D. 1859 there was filed in the office of the clerk aforesaid, the report of said Commissioners which report was made part and parcel of the following decree

Proceedings in Chancery before the Circuit Court at a Special term thereof begun and held at the court house in the city of Peoria within and for the county of Peoria and State of Illinois on the Second Monday of June (it being the thirteenth day of said month) in the year of our Lord one thousand eight hundred and fifty nine - Present the Honorable Elihu N. Powell Judge of the 16th Judicial circuit of said state, to wit:

Saturday July 2d A.D. 1859

John C. Schnebly v. ads

vs Petition for dower

Elizabeth M. Schnebly

And now on this Second day of

(11)

July 1859 this Cause Come on to be heard upon the Report of Tobias S. Bradley, Jacob Dart and William M. Dodge, Commissioners heretofore appointed to set off and allot to said defendant her dower in the lands specified in the decree rendered in said cause at the November term 1858 of said Court and which report was heretofore filed in said cause, and is as follows to wit:

And afterwards to wit: on the eleventh day of March in the year of our Lord one thousand eight hundred and fifty nine there was filed in the office of the clerk of said Court in said cause the Report of Commissioners which is in the words and figures following to wit:

"John C. Schnebly et al
vs
Elizabeth M. Schnebly } In the Circuit Court Peoria County, Dec for Assessment of dower

The report of Silvias S. Bradley, Jacob Darst & William M. Dodge Commissioners appointed by the order & decree of said Court at the November term A.D. 1858 thereof, to assign to said Elizabeth M. Schnebly her dower in the lands and tenements of her deceased husband in said decree mentioned, represent to said Court that after having been first duly sworn to set off and allot to said widow her dower in said lands, they went upon the premises in said decree named, and after due consideration and estimateing the said lands according to quality and quantity they allotted, set off & assigned to said widow by metes & bounds as & for her dower of the one third part in all said lands of which her said husband died seized of perfect titles, as follows, to wit: the East half of the North West quarter of Section Twenty Seven in Township Nine (9) North of Range Eight (8) East in said Peoria County, and also eighty eight (88) acres off of the West side, part of the North East quarter of said Section Twenty Seven, including the residence & homestead of her said husband at the time of his decease which premises so allotted and set off to said

widow are, in the judgement of the undersigned, the one third part in value, having due regard to quality and quantity of all the lands in said decree named as having perfect titles —

Said Commissioners further report that they have allotted set off & assigned to said widow by metes & bounds as & for her dower of one third part in all said lands, named in said decree as being held by her said husband by tax titles only, as follows, to wit: thirty (30) acres off the East side, part of the S.W. 8. S. 11. N. R. 6. E. in said Peoria County which premises so allotted & set off to said widow are in the judgement of the undersigned the one third part in value having due regard to quantity and quality, of all the lands in said decree named as being held by tax titles only. Said Commissioners attach hereto a certified copy of said decree together with the oath administered to and subscribed by them as aforesaid and make the same part of this their report.
all which is respectfully submitted — Peoria March 7th 1859.

Tobias S. Bradley (Seal)
Jacob Darst (Seal)
William M. Dodge (Seal)

And the court being fully advised in the premises, it is ordered, adjudged and decreed that the said report be in all things approved, and that the lands therein described, to wit; the East half of the North West quarter of Section twenty seven in township nine North in Range Eight East of the 4th principal Meridian, and also eighty eight

Acres off of the West side part of the North East quarter of said Section Twenty Seven including the residence and homestead of the said Husband of said defendant at the time of his decease, and also thirty acres off the East side part of the South West quarter of Section eight in township eleven North in Range Six East all in Peoria County in the State of Illinois be allotted and set off to the said defendant as her dower interest in the real estate of her said Husband deceased.

And on the Same day, to wit: on the Second day of July in the Year of our Lord one thousand eight hundred and fifty Nine there was filed in the office of the Clerk of said Court in said Cause the following

"John C. Schnebly et al
vs
Elizabeth M. Schnebly
} Petition for the assignment of dower

Be it remembered that on the trial of the above entitled Cause, upon the motion of said plaintiff to set aside the report of said Commissioners assigning to said defendant her dower in said premises, said defendants to sustain said Motion on their part, introduced in evidence the following Statement of facts

" John C. Schnebly et al
vs
Elizabeth M. Schnebly } Petition to assign dower

Henry Schnebly died on the 4th of August 1858 leaving defendant his widow and plaintiffs his heirs at law Before dying he made the following will (which was proved and admitted to record, on the 17th day of August 1858) to wit,

"In the name of God, Amen. I Henry Schnebly being found in mind, but feeble in body and impressed with the danger of a speedy dissolution, do make and ordain this my last will and testament to wit,

Item 1st I desire that all my just debts be paid out of the first money that may come into the hands of my administrator.

3rd I will that the North East quarter of Section twenty seven and the East half of the North West quarter of the said same section, in township No Nine North of Range No Eight East of the fourth principal meridian, together with all houses and other improvements and appurtenances of every kind thereunto appertaining, shall be possessed and occupied by my beloved wife Elizabeth for and during her natural life, upon the condition that she shall raise, and in all respects properly bring up my children that are now under age; and the better to enable her to perform this

Sacred duty I also give and bequeath to her three horses such as she shall select of those I now have, Six cows in like manner to be selected. All the sheep and hogs I now own, One wagon, The family Carriage, such farming utensils and harness as she may want of those belonging to me - All my household and Kitchen furniture, and a Musical instrument called a Melodion.

4th It is my desire that my desire Children Dryphena, Calvin, Elizabeth and Louisa shall make their homes with their mother, but that they be well educated, and if need be, for that purpose that they be sent to any good institution abroad. My said daughter Dryphena I desire shall continue one year longer at the Seminary at Steubenville.

5th. For the purpose of defraying the expenses of educating said four children I desire and hereby authorize and empower my administrator to sell, upon such terms of payment as he may judge to be for the interest of said children, and at public vendue, after having advertised the same for thirty days, in some public newspaper published in Peoria, the North East of the South West quarter of Section twenty seven, in said township; and the money arising from said sale, (after defraying the expenses of one years Schooling of said Dryphena) shall be used by the guardian or guardians of said other children, under the direction of the County Court, of Peoria County, for their education

so far as necessary and the balance of the price of said land (if any be left) shall return to and compose a part of my general estate.

6th I will that as to all and every part of my estate not above provided for that the laws of descent of the State of Illinois shall have their full and entire effect, the same as though I had died intestate: Provided however, that so far as my said wife is concerned, the above provision if accepted by her, shall be in full of her right of dower.

7th I have a book of accounts in which I have charged sundry of my children advances heretofore made to them, it is my will that when a division is made of my property, that all such advances be taken into hotch-pot, and those of my heirs be charged with so much received on account of their proportions. In witness of all which I have hereunto set my hand and seal this 2nd day of August 1858.

H. Schnebly [Seal]

In presence of
L.L. Wood, John S. Keller

On the 25th of August 1858, John C. Schnebly and Jonathan K. Coopers were appointed administrators (with the will annexed) of his estate.

On the 13th day of November 1858 the widow filed her relinquishment under the will.

On the 11th day of November 1858 F.W. Reynolds was appointed

for the Minor heirs.

On the 12th March 1859, the Commissioners filed their report in which they gave the widow the E½ N.W. 27. T.9. N. R.8. E. eight Acres of the East half and the W½ of the N.E. of Same Section. All the improved land belonging to the estate, which can yield an income, is included in the part assigned to said widow, except a portion of the forty acre tract which has been set apart and is now advertised to be sold to educate minor Children and a few acres (perhaps twenty) which have been put into a state of Cultivation on the North west quarter of Section twenty of township ten North of Range Eight East of the fourth principle meridian. All the rest of the real estate except an acre or two on said Section 34 is wild unimproved land, yielding no revenue but subject to a large annual tax.

The W½ of the North East quarter of Section 27. T.9. N.R.8.E. is in a high state of cultivation, to having on it a large and well finished brick dwelling house and a large frame barn and Some out houses. Also a well and two large brick Cisterns for rain water. Also an Orchard of Bearing fruit trees.

The East half of the North West quarter of Section 27 is divided from the last named tract by a highway. It is also improved by having about thirty one acres of it cleared, fenced and about eleven acres of the cleared part in grass for meadow, but there are no buildings

on it, except that in the South East Corner there is a district School house.

It was in the dwelling house on the said W.½ of the N.E. quarter that the deceased lived and in which he died. This tract was heavily covered with timber and wood but has been nearly all cleared and put into a high state of cultivation, by the deceased. This ½ quarter section, and the East half of the N.E. of section 27 form one quarter section, with no road or fence between them but both constitute part and parcel of the same farm and of the homestead of the deceased. The East half is mostly wood, well calculated for pasture, but the fence between the two half quarters were not ~~built~~ built with reference to the line between them but were run in such a manner that a long strip (perhaps in amount three acres) of the East half has been inclosed, cleared and for many years cultivated, with the rest of the farm.

The W.½ of the N.E. of 27 is worth about four hundred dollars per year. The ~~East~~ E.½ of the North West quarter of Section 27 is worth about one hundred and fifteen dollars per year. A field on the quarter section in T. 10. N.R. 8. E. is worth about sixty dollars per year. An inclosure of one acre or two on the said section thirty four, may be worth six dollars certainly not more than ten dollars per year. A part of lot two in block two on Washington street, in the City of Peoria which is worth about three thousand dollars and yields $100 rent free of taxes which amount to about $37.50 and the West half of the S.W.

quarter of Section five in township eleven N of R. 6. E. of the fourth principal meridian, were for many years the property of said Henry Schnebly, but before his death his wife procured him to make a deed of both of said pieces of property to her Son Joseph L. Schnebly, in trust for her use and benefit, which deed was not recorded until the 25th of August 1858.

Said Henry Schnebly died leaving fourteen children, his present widow being his second wife, and much younger than he, is the mother of seven of the younger children. The older ones, to wit, John C. Schnebly, Lelia Ballance, David D. Schnebly, George W. Schnebly, James M. Schnebly, Susan E. Edwards and Amanda R. Reed are the children of his former wife. (I know of no one who ever saw said deed before the death of said deceased and suppose no one ever did see it before, except the grantor and grantee and the officer who wrote it. I am sure no one of said older children ever saw it before his death.

I know of no one who had ~~ever~~ ever seen said book, which is refered to in said will and made part of it, before the death of said deceased, I know that I, who am one of his heirs never saw it before his will was written, I further know that it ought never to have seen the light, if for no other reason, because in it I who never owned a negro in my life am charged several hundred dollars for one in said book.)

The appraisement bill of said estate Marked (A)

is hereto annexed and made a part hereof, A bill of such property as the appraisers report that the widow ought to have marked (B) is also hereto annexed and prayed to be made a part hereof, A list of the property which the widow selected at the appraisement marked (C) is also hereto annexed, and prayed to be made a part hereof. A copy of the Sale bill marked (D) is also hereto annexed and prayed to be made a part hereof

C Ballance

I Charles Ballance that the above facts are true so far as they are stated from my own knowledge and that all other statements therein contained I believe to be true.

C Ballance

Sworn to before me this 29th March 1859

E P. Sloan, Clk.

Appraisement (A)

Bill of Estate Henry Schnebly, Dec'd

			428.00
1 Brindle Cow	16.00	1 Bay horse Charley	100.00
1 White Cow long legs	14.00	1 " Mare Lize	75.00
1 Heifer Duckey	10.00	1 Grey "	100.00
1 Cow blue long legs	15.00	1 Bay horse Jim 18 yrs old	50.00
1 do do	15.00	1 Rucking colt horse	40.00
1 do Bell Cow	12.00	1 fanning Mill	10.00
1 do Molly	12.00	1 Square harrow	5.00
2 year old Black Heifer	10.00	about 15 tons hay in barn	75.00
" " Red	10.00	Wheat in barn	5.00
1 Brindle Heif Red head	10.00	lot old Tools	3.00
White head heifer	8.00	6 hay forks	2.00
Spotted do	8.00	1 double shovel plow	2.50
Red "	6.00	1 Breaking Plow, R hand	2.50
White do	6.00	1 do do Left "	2.50
1 Red White steer 1 year	8.00	Lot Broken Plows	2.00
1 Roan do 4 years	16.00	1 Carriage	125.00
1 White " 3 years	16.00	1 old carriage	15.00
" " "	16.00	1 double hornes waggon	40.00
1 Red steer Bighead	5.00	1 old do do	20.00
1 Roan Bull 3 years	30.00	1 single light waggon	15.00
5 Spring calves	20.00	1 set double harness	10.00
16 head hogs	65.00	1 " Single "	5.00
Blick horse George	100.00	1 lot old harness	2.00
	428.00		1134.50

Set Carriage harness	20,00	2 Arm Rocking Chairs	5,00
8 Sheep	12,00	Stove & Kitchen furniture	25,00
3 Young pigs	3,00	4 Stoves ———	15,00
Lot old irons	3,00	1 Sofa ———	10,00
4 grass Scythes & Snaths	1,50	1 Lounge	2,00
1 grain Cradle	1,50	1 Melodian	40,00
1 wheel barrow	1,00	2 Clocks	1,00
1 Grind Stone	1,00	2 pictures	2,00
Undivided ½ Roller	5,00	1 Cider Mill	25,00
7 Stacks hay at 12,00	84,00	7 Barrels Sour cider	10,00
1 Small " Stay	2,00	2 Spinning wheels large & small	2,00
7 Stacks hay 12,00	84,00	1 Map U. S. A.	2,00
2 do " at 12	24,00	1 Safe	2,00
1 Greens old Reaper	15,00	2 Wash Stands	2,00
4 Stacks Wheat	50,00	Undivided ½ Sausage Cutter &c	5,00
1 Horse rake	1,00	1 old lumber waggon	5,00
4 Bead Steads, beads & bedding	80,00	10 acres Corn more or less	90,00
3 Straw beads " " "	15,00		243,00
½ good Chairs	7,00		454,00
1 doz Common do	5,00		697,00
2 Bureaus	15,00		1134,50
2 dining tables	6,00		1831,50
3 Mirrors & looking glasses	5,00		
1 centre table	10,00		
3 Stands	3,00		
	454,00		

Articles which the appraisers Day is necessary for the widow and family

4 Necessary beds, bedsteads and bedding for the widow and family #100.00

Necessary household and kitchen furniture & cooking stove & fix 200,00

1 spinning wheel 5,00

one loom and its appendages 15,00

One pair of cards 1,00

one stove and necessary pipe 20,00

Wearing apparel for widow and family 300,00

for the minor heirs.

On the 12th March 1859, the Commissioners filed their report in which they gave the widow the E½ N.W. 27. T.9.N. R.8. E. eight Acres of the East half and the W½ of the N.E. of Same Section. All the improved land belonging to the estate, which can yield an income, is included in the part assigned to said widow, except a portion of the forty acre tract which has been set apart and is now advertised to be sold to educate minor Children and a few acres (perhaps twenty) which have been put into a state of Cultivation on the North west quarter of Section twenty of township ten North of Range Eight East of the fourth principle meridian. All the rest of the real estate except an acre or two on said Section 34 is wild unimproved land, yielding no revenue but subject to a large annual tax.

The W½ of the North East quarter of Section 27. T.9. N.8.E. is in a high state of cultivation, to having on it a large and well finished brick dwelling house and a large frame barn and Some out houses. Also a well and two large brick Cisterns for rain water. Also an Orchard of bearing fruit trees.

The East half of the North West quarter of Section 27 is divided from the last named tract by a highway. It is also improved by having about thirty one acres of it cleared fenced and about eleven acres of the cleared part in grass for meadow, but there are no buildings

on it, except that in the South East Corner there is a district School house.

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The appraisement bill of said estate Marked (A)

2, one of Milch cow & calf for every four in the family	50.00
one horse	40,00
one Roman's Saddle and bridle	15,00
Provisions for one year	200,00
12 two sheep for each member of the family one fleece	24,00
food for the above stock Six months	70.00
fuel for three month	50 00
other property	60,00
	1158,00

6

Widows election at appraisement

1 Cow White long legs	14,00	1 grain cradle 1.50 Wheelbarrow 1.00	2.50
1 heifer Lucy	10,00	Undivided 1/2 field Roller	5,00
1 brindle Cow	16,00	1 horse rake	1.00
5 Summer calves at $4.	20,00	3 straw beds 15,00 1 stoves pipe 15,00	30.00
1 – 2 year old Mr. head brindle	8,00	1 Melodion 40.00 Cider Mill 25,00	65,00
1 " " "	10,00	5 Barrels Cider Vinegar	10.00
1 " " Red	10.00	9 acres corn in field	80,00
1 Roan steer 4 yrs old	16.00	4 Bead steads bedding	80.00
1 horse Jim	50.00	lot shovels shoes	2,00
1 do George	100,00	8 sheep 12.00 Bureau 7.00	19,00
1 Grey Mare	100,00	6 chairs 7.00 Common chairs 5,00	12.00
1 Spring colt	40,00	1 dining table 3,00, 3 stands 3.00	6.00
1 lot chains	2,00	3 Mirrors 5.00 1 centre table 10.00	15,00
1 Square harrow	5,00	2 arm chairs 5,00 1 lounge 2,00	7.00

(26)

Hay in barn	75,00	1 clock 1,00	1 spinning wheel 1,00 — 2,00
6 forks	2,00	1 safe 2,00	lot Carpetting 25,00 — 27,00
1 Breaking plow	2,50	16 hogs	65,00
1 Double shovel plow	2,50	Kitchen stove & fur.	35,00
1 Carriage & Harness	145,00		453,50
1 Waggon & harness	50,00		700.00
1 single Waggon Harness	20,00		#1153.50
3 pigs 3,00	1 grind stone 1,00	4,00	
		700,00	

(2)

List of property sold belonging to estate of Henry Schnebly Dec'd this 13th day of Oct. 1858

Lot of old iron 75, Old axes 60, old scyths 15	1,50
1 good Scyth 60, 1 do 80. old horse shoes 30	1.70
1 Chest 10, 1 spining Wheel 25. 1 stand 60	.95
1 Red stand 1,00 Sausage Grinder & stuffer 4.50	5,50
part of Bbl Veg Vinegar 1.25. do do 3,00 do do 1.75	6.00
1 Iron bound Bbl 1,00, 1 hand corn planter 30	1.30
Barrell Churn & 6, 10, 1 Bureau 4,75, 1 Sofa 10,50	15,35
1 dining table 1.75, 1 settee 1,25, 1 Map of U.S. 1,00	4,00
1 old carriage 18,25, 1 2 horse waggon 31,50	49,75
1 old broken waggon 5,00 6 old ploughs 2,00	7,00
1 do breaking plough 2,00, 1 set old harness 4,00	6,00
1 lot old harness 3,00, 1 fanning Mill 5,00	8,00
Wheat in barn 5,00, 1 2 year Bull 32,00	37,00
1 Red cow 25,00, 1 Red heifer 17,00, 1 White heifer 22,50	64,50

1 Blk heifer 17,00, 1 Motty heifer 17,75, 1 spotted heifer 10,00	44,75
1 White roan heifer 10,50, 1 Cow roan Motty 15,50	26,00
1 White steer 24,00 1 do. 28,50, 1 speckel steer 11,00	63,50
1 Bighead steer 1,50, 1 Ram 1,50, Brown Mare 67,00	70,00
1 Bay horse 108,00, 17 stacks hay 235,50	343,50
4 stacks wheat 90,50, 1 Reaper & mower 10,00	100,50
1 Hay rack 25, old house logs 4,00, 6 Bbl 70	1,95
Amt of sale eight hundred & sixty one dolls 75/100	861,75

I hereby certify that the above is correct

Andrew W. Pinkney Clk,

" Oct. 13, 1858

" Cried "

Which statement of facts were read in evidence to the court without objections.

Afterward and on the trial of said Motion said plaintiffs put upon the files of the said court the following paper

"Schnebly
vs
Schnebly et al } Petition for the assignment of dower,

I, Charles Ballance in behalf of myself and the other heirs at law of Henry Schnebly, deceased, parties defendants in the above proceeding, propose that all that portion of said Henry Schneblys real property that has been set apart to them, by said Commissioners as two thirds of said real estate, shall be given to said widow as her third, and they agree to accept in lieu thereof, the

portion set apart by said Commissioners to said Widow, because said portion set apart to said Widow, as one third is worth much more in value, than the part given to them as two thirds.

C. Ballance in behalf of himself and the residue of said heirs

July 1st 1859."

No other evidence was given to the Court in the Case.

E. N. Powell

State of Illinois }
Peoria County } ss

I, Enoch D. Sloan, clerk of the circuit court in and for said county and state do certify that the foregoing is a full true and complete transcript of papas filed in the cause wherein John C. Schnebly et als are complainants and Elizabeth M. Schnebly is defendant, and also of the decrees of said court appertaining to said cause as the same appears of record and on file in my office.

Given under my hand and seal of said court at Peoria, this 1st day of May A.D. 1860.

Enoch D. Sloan, clerk

Said petitioners John C. Schnebly et al. by Ballance their attorney, come and as to said record and proceedings say there is manifest error therein, in this to wit said court erred in refusing to grant the motion of said petitioners to quash the report of said commissioners in assigning dower to said widow. Said court also erred in approving and confirming said report. For which and for other errors apparent in said ~~report~~ record said petitioners pray that said decree may be reversed, disannulled and wholly for nothing held.

C. Ballance,
for Appellants.

93 ~~285~~ 407

John Schneebly
& others
vs
Elizabeth Schneebly

Record as
Segment of Errors

Filed May 21. 1860
L. Leland
Clerk