

No. 13530

Supreme Court of Illinois

Woolley.

vs.

Magie.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 157.

*Wadley
vs
Magie*

1861

13530

SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1861.

Betsey Woolley,

Plaintiff in Error,

vs.

William H. Magie,

Defendant in Error.

ERROR
FROM COOK COUNTY.

ARGUMENT AND AUTHORITIES

FOR DEFENDANT IN ERROR.

This proceeding was instituted by plaintiff in error, to recover dower in the premises described in the petition.

The marriage of petitioner and death of her husband are admitted as stated in the petition, by the demurrer, and the only question to be decided is — Whether the petition shows such a title to the premises in her deceased husband, during the coverture, as entitles her to dower on his decease.

Her husband's title and connection with these premises appears by the petition to have been as follows:

On the 20th day of October, 1834, he executed a deed, of that date, of

the premises described in the petition, to Hiram Pearsons, in consideration of three hundred dollars.

This deed contained covenants of seizin, for quiet enjoyment, against incumbrances, for further assurance, and a full, explicit covenant of warranty to the grantee against all persons claiming said premises. (See the deed in the record.)

On the 17th November, 1834, Woolley received the usual Receiver's certificate that he had paid the United States one hundred dollars for said premises, which appears to have been paid under the Pre-emption Act of Congress of 1834. (Exhibit A in record.)

A patent for these premises was issued to him by the United States, dated May 17th, 1836. (Exhibit B in record.)

The certificate of the acknowledgment of the deed from Woolley and wife to Pearsons is nearly like that in the case of *Owen vs. Robbins*, 19 Illinois 545, which this Court decided to be bad.

The case, then, stands thus: Woolley having no title whatever, save that the petition alleges he was in possession of the premises, having a pre-emption right to them, under the Acts of Congress then in force—(which interest would not entitle his widow to dower, as was decided in the case of *Davenport et al. vs. Farrar*, 1 Scam. 314)—made a full warranty deed of them to Pearsons, for an expressed valuable consideration, in which the petitioner joined. A few days afterwards, he paid the United States for the land, and two years afterwards a patent was issued to him for it.

Petitioner claims that her right of dower attached upon the estate or interest which Woolley acquired by his entry and payment of the purchase money to the United States, on the 17th November, 1834.

She admits, by her petition, that the legal estate which he acquired by the patent enured to Pearsons, the grantee of her husband, by virtue of the operation of the statute of Illinois, then in force, passed July 1, 1827, upon the covenants in the deed from Woolley to him—(as it would have done at Common Law by estoppel)—yet subject to her incho-

If, then, the Court adheres to the doctrine of the cases of

Owen vs. Robbins, 19 Illinois 545,
Porter vs. Ewing, 24 Illinois 617,
Davenport et al. vs. Farrar, 1 Scam. 314,

it must affirm the decision of the Court below ; for in this case, Woolley never was seized or possessed of any legal or " equitable estate of inheritance " in the premises to his own use, but held all the title he acquired from the United States in trust for his grantee, Pearsons.

The statute of Illinois, then in force, made the certificate of the Register of the United States Land Office, of the entry of any tract of land, evidence of title in the party who made such entry ; and he might maintain ejectment upon it, &c. (See Laws of United States, 1827.)

This has always been held to give the holder of the Register's certificate the legal title or estate in the land, for all purposes of conveyance by deed, sale on execution, taxation, and inheritance, or the recovery of possession of the land by ejectment, which can only be maintained on a legal title.

If the analogies of the law are to be preserved, then, so far as the law within this State is concerned, Woolley, by his entry, acquired the legal title to the land at that date ; and if so, it instantly enured to his grantee, leaving no estate or scintilla of interest in him, which would of course bar this claim of dower.

Another answer to the claim of dower, as attached to the estate or interest acquired by Woolley under his entry on the 17th November, 1834, is this : That when the patent issued to him, in 1836, it took effect by *relation*, as and from the date of the entry. on the principle that " when there are divers acts concurrent to make a conveyance, estate, or " other thing, the original act shall be preferred ; and to this act the " other shall have relation."

Jackson vs. McMichael, 3 Cowen 75.
Landes vs. Brant, 10 Howard's U. S. 372.

In the case last cited, the Court say : " There is no rule better founded " in law, reason, and convenience, than this, that all the several parts " and ceremonies necessary to complete a conveyance shall be taken together, as one act, and operate from the substantial part by relation."

The petition admits, and so the law is, that as soon as Woolley acquired the legal title from the United States, it enured to Pearsons ; but, to give him the clear absolute estate, Woolley attempted to convey to him, as he had no title when he made the deed. The law says, that when he gets the legal title, he shall " hold it in trust for the use of his " grantee " — (Statute of Illinois) — and thus his grantee is deemed invested with the title from the date of his deed.

Having made his warranty deed of the land to Pearsons, Woolley goes to the Land Office and enters the land ; if, at the time he pays the money, the patent is delivered him, and the legal estate thus acquired is instantly vested in his grantee, he is not deemed seized even for an instant, and his widow shall not have dower.

1 *Greenleaf's Cruise*, vol. 1, 171.

4 *Kent's Com.*, 37.

But the argument for the plaintiff in error is, that the payment of the money, and the receipt of the Receiver's certificate, creates an intermediate equitable estate in the purchaser, to which the dower attached.

To this it is answered, that the payment of the money is the act that entitles the party to the patent conveying him the legal estate ; and the certificate is only evidence to him that he has paid the money, and is entitled to a patent at and from that instant ; and the practice of the government is not to deliver the patent at the date of the entry, but, on information from the Land Office that a certain person has paid for a particular tract of land, to prepare and issue to him the patent to which he was entitled at the instant he paid his money into the Land Office. This is all one act or transaction, in contemplation of law. The patent takes effect from the date of the entry ; and doing so, the legal estate is

deemed to have passed from the United States at that date to the patentee, and instantly enures, by the operation of the statute and the covenants in his deed, to his grantee.

"It is the settled doctrine of the Supreme Court of the United States, that an entry in a United States Land Office, on which a patent issues (no matter how long after the entry is made), shall relate to the entry and take date with it."

Lessee of French & Wife et al. vs. Spence et al., 21 How.
U. S. R., 240.

See also *Snapp vs. Pierce et al.*, 24 Illinois, 156.

The other ground on which this claim of dower is sought to be supported is, that Woolley's deed to Parsons was void under acts of Congress relating to pre-emption rights, citing and relying upon the prohibition contained in sec. 3, page 421, U. S. Statutes at Large, vol. 4, which is in these words: "All assignments and transfers of the *right of pre-emption* given by this Act, prior to the issuance of the patent, shall be null and void."

This prohibition was repealed January 23, 1832.

V ol. 4, p. 496 U. S. Statutes at Large.

These Acts having expired by their own limitation, the first one was revived by Act of June 19, 1834 (vol. 4, page 678); and while this last Act was in force, and under it, Woolley made his entry.

The Act of January 23, 1832, was supplementary to the Act of May 29, 1830; and the Act of June 19, 1834, was in terms an Act to revive the Act of May 29, 1830, and the Supreme Court of the United States decided in *Marks vs. Dickens et al.*, 20 How. 501, that it also revived, as part of the original Act, the supplementary Act of January 23, 1832, and so under the Act of June 19, 1834, there was no prohibition of the transfer of the right to a pre-emption either when Woolley conveyed to Pearsons or made his entry at the Land Office, in October and November, 1834.

But Woolley did not assign or attempt to assign his right of pre-emp-

tion, or his certificate of entry ; he conveyed the land itself absolutely ; there was no law against that, either then or at any subsequent time.

Had he never acquired the title from the United States, Pearsons would have taken nothing by the deed to him ; but as he afterwards did get the title "in due form of law," he, his heirs, and widow, who joined in the deed, ought not now to be allowed to say that the conveyance was void, which would in fact be alleging their own turpitude to obtain an estate in fraud of Pearsons' rights as grantee of Woolley.

There was no restriction upon the right of alienating any interest in land which a party might have, except that in the Act of 1830, which was fully repealed by the Act of 1832 ; and when the Act of 1830 was revived in 1834, "the intention of Congress was to confer on the purchaser the power to sell before the patent issued," as held by the United States Court, 21 Howard's Rep. 505 ; and the laws of Illinois not in any way restraining the sale and conveyance of these interests in lands, the deed of Woolley to Pearsons was prohibited by no law, in fraud of no right, and must be held good — and if held good, the title which it assumed to convey, was conveyed, when Woolley afterwards acquired it.

SCAMMON, McCAGG & FULLER,

Solicitors for Defendants in Error.

APRIL 15, 1861.

157
Woolley
Hogin
Pres of Dep't in 1861

Filed Apr 14, 1861
A. Deland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

ERROR TO SUPERIOR COURT OF CHICAGO.

Betsey Woolley,	}	PETITION FOR DOWER.
Plaintiff in Error,		
vs.		
William H. Magie,		
Defendant in Error.		

ABSTRACT OF RECORD.

—...—
The Petition for Dower of the plaintiff in error sets forth:

p. 2 That petitioner married Jeddiah Woolley, Jr., at Cook County, Illinois,
January 30, 1832.

2 That said Jeddiah Woolley, Jr., died February 4, 1857.

That by Act of Congress approved May 29, 1830, certain settlers on the public lands were entitled to pre-empt a quarter-section, on paying the minimum government price therefor; which Act further provided

that "all assignments and transfers of the right of pre-emption given by this Act, prior to the issuance of patents, shall be null and void."

That by Act of Congress approved July 19, 1834, the Act last aforesaid was revived and continued in force for two years in favor of persons therein described.

That on June 19, 1834, said Jeddiah Woolley, Jr., was, by possession and cultivation of the west half of N. E. $\frac{1}{4}$ of sec. 4, township 39 N. of range 14 E. of 3d P. M., in said Cook County, within the purview of said Acts of Congress; and that on November 17th, 1834, he duly made his proofs, paid his money, and took from the Receiver a pre-emption certificate (Exhibit A) for said half quarter-section.

p. 5 That by virtue of the premises, petitioner's said husband became seized of an equitable estate of inheritance in said land, and petitioner became seized of an inchoate right of dower therein.

pp. 5, 6 That on May 17, 1836, the petitioner's said husband deposited his said pre-emption certificate in the General Land Office, and received a patent, dated on the day and year last aforesaid, from the President, for said land, a copy whereof is annexed, marked "Exhibit B."

p. 6 That by means thereof, petitioner's said husband, on May 17, 1836, became seized of a legal estate of inheritance in said land, and the petitioner of an inchoate right of dower therein.

p. 6 That petitioner has never released or waived her right of dower in said land, but is now entitled to dower therein.

p. 6 That by deed made October 30, 1834, petitioner's said husband undertook to grant and convey said land to one Hiram Pearsons, a copy of which deed, marked "Exhibit C," is annexed.

p. 7 That at time of making said deed, petitioner's said husband had not paid the United States for said land, had not received nor was entitled to receive a pre-emption certificate therefor, had no legal or equitable title therein, nor any interest therein which he had the legal right to convey under the prohibition of said Acts of Congress.

p. 7. That by a law of Illinois approved July 1, 1827, it is provided that

when a person, not having the legal estate in land, conveys it in fee-simple absolute, and afterwards acquires the legal estate, it shall be taken to be in trust for the grantee, and the conveyance shall be deemed as valid as though the grantor held the legal estate when he conveyed.

- p. 8 That after the issuance of the patent aforesaid, the legal estate in the land passed to said Hiram Pearsons, by virtue of the law last aforesaid, but subject to the petitioner's rights of dower.
- p. 8 That the defendant is and has been since February 4th, 1857, in possession of and the owner of a legal estate in fee simple in a portion of said land (deriving his title through said Hiram Pearsons) to wit: of the west 221 29-100 feet of lots 81 to 90 inclusive, of Bronson's Addition to Chicago, in said Cook County.
- p. 9. That on March 21, 1860, petitioner applied to defendant and requested him to set off and let her into the possession and enjoyment of one-third part of the land last described, as her dower therein, but defendant refused.
- p. 9. That petitioner therefore prays the Court that one-third part of the last described land may be assigned and set off to her as her dower, and that she may be let into the full and immediate possession thereof and be decreed to hold the same for her life.
- p. 10 **Exhibit A**, annexed to petition, is dated "Receiver's Office at Danville, Illinois, Nov. 17, 1834," is marked "Pre-emption Act, 1834,"—"No. 1480,"—is signed "Samuel McRoberts, Receiver," and sets forth that the signer has received of Jeddiah Woolley, of Cook County, Ills., \$100, in full payment for the W. H. of N. E. $\frac{1}{4}$ of sec. 4, township 39 N. of range 14 E., containing 80 acres, at \$1.25 per acre.
- 11 & 12 **Exhibit B** is the patent, which is headed "Pre-emption Certificate No. 1480,"—bears date May 17, 1836,—recites deposit by Jeddiah Woolley, Jr., in the General Land Office, of the pre-emption certificate aforesaid, whereby it appears that full payment has been made by said Woolley for the half quarter-section aforesaid, and that in consideration thereof, and in conformity with the Acts of Congress in such cases provided, the United States of America gives and grants to said Woolley and his heirs the said half quarter-section, to have and to hold the same to him, and his heirs and assigns, forever; is sealed with the seal of the

General Land Office, and signed by the President and Commissioner of the General Land Office.

13 *et seq.* **Exhibit C** is a warranty deed, dated October 20, 1834, signed by Jeddiah Woolley and Betsey Woolley, and running from them, as parties of the first part, to Hiram Pearsons, as party of the second part; in consideration of \$300, parties of first part grant, bargain, sell and convey to party of second part the half quarter-section of land aforesaid, to have and to hold the same to him, his heirs and assigns forever.

Jeddiah Woolley covenants, that he is seized of an absolute estate of inheritance in fee simple, has good right to sell, and that Pearsons, his heirs and assigns, shall quietly possess the premises against all persons lawfully claiming the same; that the premises are free from incumbrance; that the parties of first part, and all persons lawfully deriving any estate in said premises under or in trust for them, will, at any future time, on reasonable request, and costs paid, do any further acts and make any further conveyances required by the party of the second part, his heirs or counsel, for the better vesting of the premises in the party of the second part, his heirs and assigns forever.

16 & 17 **The Certificate of Acknowledgment** to above deed is in the usual form; *except* that it does not state that the contents of the deed were made known or explained to Mrs. Woolley, nor that she released her dower in the premises.

18 & 19 **General demurrer** to amended petition.

19 & 20 **Order** sustaining demurrer.

20 & 21 **Petitioner** elects to stand and abide by amended petition; and Court, on motion, dismiss the petition.

ERRORS ASSIGNED.

- 23
1. Court erred in sustaining demurrer to amended petition.
 2. Court erred in dismissing amended petition.
 3. Court erred in giving judgment for defendant instead of petitioner.
- Prays a reversal of the judgment.

F. B. PEABODY,

Solicitor for Petitioner, Plaintiff in Error.

157

Woolley vs. Magie

- Abstract of record

Filed April, 19, 1861

A. Deland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

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That by Act of Congress approved July 19, 1834, the Act last aforesaid was revived and continued in force for two years in favor of persons therein described.

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p. 6 That by deed made October 30, 1834, petitioner's said husband undertook to grant and convey said land to one Hiram Pearsons, a copy of which deed, marked "Exhibit C," is annexed.

p. 7 That at time of making said deed, petitioner's said husband had not paid the United States for said land, had not received nor was entitled to receive a pre-emption certificate therefor, had no legal or equitable title therein, nor any interest therein which he had the legal right to convey under the prohibition of said Acts of Congress.

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- p. 9. That petitioner therefore prays the Court that one-third part of the last described land may be assigned and set off to her as her dower, and that she may be let into the full and immediate possession thereof and be decreed to hold the same for her life.
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19 & 20 **Order** sustaining demurrer.

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ERRORS ASSIGNED.

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1. Court erred in sustaining demurrer to amended petition.
 2. Court erred in dismissing amended petition.
 3. Court erred in giving judgment for defendant instead of petitioner. Prays a reversal of the judgment.

F. B. PEABODY,

Solicitor for Petitioner, Plaintiff in Error.

157 - 109

Woolley v. Magie

Abstract of record

Filed April 19, 1861

A. L. Leland

clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Cook Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Betsy Wasley Betsy Wasley

plaintiff, and William H. Magie

defendant....., it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by her complaints..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said William H. Magie

that he..... be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1861 ~~next~~ to hear the record and proceedings aforesaid, and the errors assigned, if he..... shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William H. Magie

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 2nd day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

145. 157-139

Betty Woolley

No.

vs.

William H. Magee

SCIRE FACIAS.

FILED Apr. 6. A. D. 1861

L. Deland

Clerk.

State of Illinois Cook County do
serve by reading to the
within named defendant the
5th day of April 1861

sum 50
sailage 10
return 10
50

paid by Plaintiff Adly
J. C. Hervey & Co

By Wm P. Smith D. C.

State of Illinois
Cook County ss

In the Superior Court of Illinois
Betsey Woolley
vs.
William H. Magie } In Chancery

Dec. Term 1861. order entered
that deponent to amended bill be
sustained.

Apr. Term 1861. Complaint
directed to abide by her bill, & on
motion of deft. judgment was
entered that bill be dismissed

To L. Leland Esq.,

Clerk Supreme Ct. Ottawa, Ills.,

Will you please issue writs of error in behalf
of Complainant in above entitled cause to
the Clerk of the Superior Ct. of Illinois, ^{as aforesaid} requiring
him to file ^{certified copy of the} record of above entitled cause at
the April Term 1861 of the Superior Court of
Illinois, to be held at Ottawa in & for the
third division on April 16th 1861 - & also a
scire facias to the above named William H.
Magie, defendant in error, to be directed
to the Sheriff of Cook County, Illinois, commanding
him to summon said defendant to appear at said
April Term of said Supreme Court to be held at Ottawa as
aforesaid to show cause why the judgment aforesaid should not
be reversed

Witness my hand April 1. 1861

J. P. Peabody
Clerk for Complainant

157

Supreme Ct of Illinois
April Term 1861

Betty Woolley
vs.

Mrs H Magie

Receipts

Filed April 2, 1861
L. Leland
Clerk

F B Peabody
Attorney for Complainant

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
of Chicago
To the Clerk of the ~~Superior~~ Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgments of a plea which was in the Superior
Court of Chicago Cook County, before the Judge thereof, between
~~Betsy Woolley~~
Betsy Woolley

plaintiff, and William H. Magie

defendant, it is said manifest error hath intervened, to the injury of
the aforesaid plaintiff

as we are informed by her —
complainant and we being willing
that error should be corrected, if any there be, in due form and manner,
and that justice be done to the parties aforesaid, command you that if
judgment thereof be given, you distinctly and openly, without delay, send
to our Justices of the Supreme Court the record and proceedings of
the plaint aforesaid, with all things touching the same, under your seal,
so that we may have the same before our Justices aforesaid at Ottawa, in
the County of La Salle, on the first Tuesday after the third Monday
in April, ~~next~~ 1861, that the record and proceedings, being inspected, we may
cause to be done therein, to correct the error, what of right ought to be done
according to law.

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 2nd day of
April in the Year of Our Lord
One Thousand Eight Hundred and Sixty one

L. Seland

Clerk of the Supreme Court.
J. R. Nichols

Betsy Woolley

No.

vs.

William H. Mazie

WRIT OF ERROR.

FILED

A. D. 186

Clerk.



UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the first day of April in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty first

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Sam H. Higgins }
Grant L. Smith } Judges.

Charles Brown Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, Walter Kimball Clerk.

It is remembered that Hartford, to wit, on the 14th day of September, in the year of our Lord One Thousand eight hundred and sixty. Peter Wooly Complainant, by J. S. Peabody, her solicitor, filed in the office of the Clerk of the Superior Court of Chicago, her certain Amended Bill or Petition, in the words of figures following, to wit:

Pg. 2.

State of Illinois
Cook County of

In the Superior Court of Chicago

Betsy Woolley

vs

William H. Magie

By leave of the Court the Petitioner in the above entitled case amends her petition by striking out all after the first four lines and inserting in the place thereof the following

To the Honourable the Judges of the Superior Court of Chicago in and for the County of Cook and State of Illinois

Respectfully shows your petitioner Betsy Woolley that on or about January 30. A.D. 1832 at the then County of Cook in the State aforesaid your petitioner was duly & legally married to Jedediah Woolley, Junior, her late husband, and from the date last aforesaid up to the time of the death of said Jedediah Woolley, Junior, your petitioner lived and cohabited with him as his wife and that on the fourth day of February A.D. 1837 her said husband departed this life leaving your petitioner, his widow, him surviving

And your petitioner further sheweth that by an act of the Congress of the United States approved by the President May 29. 1830 entitled "An act to grant

presumption rights to settlers on the public lands" it was amongst other things enacted "That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession and cultivated any part thereof in the year one thousand eight hundred and twenty nine, shall be, and he is hereby authorized to enter with ~~with~~ the Register of the Land office for the District in which such lands may lie by legal subdivisions, any number of acres not more than one hundred and sixty or a quarter section, to include his improvements upon paying to the United States the then minimum price of said Lands" and it was by said ^{act} further enacted that "All assignments and transfers of the right of presumption given by this act, prior to the issuance of patents shall be null & void."

And your petitioner further sheweth that by an act of the Congress of the United States approved by the President July 19, 1834 entitled "An act to revive the act entitled 'An act to grant presumption rights to settlers on the public lands' approved May twenty nine one thousand eight hundred and thirty" it was amongst other things enacted as follows, to wit: "That every settler or occupant of the public lands prior to the passage of this act, who is now in possession and cultivated any part thereof in the year one thousand eight hundred and thirty three, shall be entitled to all the benefits and privileges provided by the act entitled 'An act to grant presumption rights

to settlers on the public lands' approved May twenty nine, one thousand eight hundred and thirty; and the said Act is hereby revived and shall continue in force two years from the passage of the act and no longer.

And your petitioner further sheweth that on said June 19th A.D. 1834 her said husband Jeddiak Woolley Junior was a settler and occupant of the land first hereinafter described and was in possession thereof and cultivated a part thereof in the year one thousand eight hundred and thirty three, and that on November 17th A.D. 1834 the said Jeddiak Woolley, Junior, made proof of his settlement and improvement of said Land to the satisfaction of the Register and Receiver of the Land district in which such lands lay agreeably to the rules prescribed by the Commissioner of the general Land office for that purpose, and on the day last aforesaid paid by the United States the then minimum price of said land, to wit the sum of one hundred dollars, which said land, ^{is} described as follows, to wit the West half of the North East quarter of section four (4) in township thirty nine (39) North of Range fourteen (14) East of the third principal Meridian, situate and lying in said Cook County and State of Illinois, - and that on the same day last aforesaid the said Jeddiak Woolley, Junior, took from the receiver of the general Land office of the United States at Hannibal Illinois,

that being the District within which said land lay, a receipt setting forth that said Jeddiah Woolley, Junior, had on the day last aforesaid, paid to said Receiver the said sum of one hundred dollars in full payment for the land hereinbefore described, being 80 acres, at one Dollar and twenty five cents per acre, which said receipt was on January 21st A.D. 1835 duly recorded in the registry of Deeds of said Cook County in Book B. at page 303 and a copy whereof marked exhibit A is herewith annexed which your petitioner prays may be taken as a part of this her petition

And your petitioner further sheweth that by virtue of the premises her said husband Jeddiah Woolley, Junior, on said November 17th A.D. 1834 became and was seized of an equitable Estate of inheritance in the land hereinbefore described, and your petitioner by the same means and at the same time became and was seized of an inchoate right of dower in said Land

And your petitioner further sheweth that afterwards, to wit on 17th of May A.D. 1836 the said Jeddiah Woolley, Junior, deposited in the general Land office of the United States this preemption Certificate of said land and thereupon, to wit on the day last aforesaid a Patent under the seal of the General Land office aforesaid and signed by the President of the United States and dated on the day last aforesaid was duly issued to the said Jeddiah Woolley

Junior, wherein and whereby the United States of America gave, granted & conveyed unto the said Jeddiak Woolley Junior, his heirs and assigns forever, the land hereinbefore described, which said Patent was on the 18th day of July A.D. 1836 duly recorded in the registry of deeds, of said Cook County in Book D, at page 175, a copy whereof marked Schedule B. is hereby unto annexed, which your petitioner prays may be taken as a part of this petition.

By means whereof, the said Jeddiak Woolley Junior on the said May 17 A.D. 1836 became and was seized of a legal Estate of inheritance in and to the land hereinbefore described, and your petitioner became and was seized of an inchoate right of dower therein.

And your petitioner says that she did not during the lifetime of her said husband nor at any time since his death relinquished, ~~through~~ transfer, assign, and convey or in any manner waive her right of dower in said Land or any part thereof, but is now entitled to dower in the whole of said Land.

And your petitioner further sheweth that her said husband, the said Jeddiak Woolley, Junior, by deed dated executed & delivered October 30th A.D. 1834 undertook to grant and convey unto one Hiram Pearson his heirs and assigns, the land hereinbefore described, which said deed was on June 8th A.D. 1835 duly recorded in the registry of deeds of said Cook County in Book H. at page 50, and a copy of said deed marked exhibit C. is herewithunto annexed which your petitioner prays may

be taken as a part of this her petition.

But your petitioner sheweth that at the time of the execution and delivery of the deed last aforesaid, her said husband, Jeddiak Woolley, Junior, had not paid the United States for said land, had not received any preemption certificate therefor nor entitled to receive any, and had no legal or equitable title to said land whatsoever, nor had he any interest in said land which he had the legal right to convey, he being prohibited from conveying his inchoate right to said land as a preceptor & occupant thereof, by the act of Congress first hereinbefore set forth.

But your petitioner further sheweth that by the seventh section of an Act of the general Assembly of the State of Illinois approved by the Governor July 1. 1827 entitled "An Act concerning Conveyances of real property" (which said seventh section is identical with the seventh section of Chapter 24 of the Revised Statutes of Illinois, ^{published} in 1845) it is provided as follows to wit: "Of any person shall ^{sell} and convey to another by deed or conveyance purporting to convey an Estate in fee simple absolute in any tract of land or real Estate lying and being in this State not then being possessed of the legal Estate or interest therein at the time of the sale and conveyance, but after such sale and conveyance, the vendor shall become possessed of and confirmed in the legal Estate to the land or real Estate so sold and conveyed it shall be taken and held to be in trust and for the use of the grantee or vendee; and the conveyance aforesaid shall

be held and taken as valid as if the grantor or vendor had the legal Estate or interest at the time of said sale or conveyance

And your petitioner therefore sheweth that by virtue of said Act last aforesaid a legal Estate of inheritance in the land hereinbefore described passed and became vested in said Hiram Pearsons his heirs and assigns subject to the right of dower of your petitioner therein, as soon as the Patent aforesaid was issued to said Jeddiak Woolley, Junior

And your petitioner further sheweth that William H. Magic is and has been from February 4th A.D. 1857 during and until the date of the filing of this petition the owner of a legal estate of inheritance in fee simple in & to the land hereinafter described and is & has been ever since said February 4th 1857 in the legal possession of the same, and derives his title thereto, by divers intermediate conveyances, from said Hiram Pearsons who conveyed the same to said Magic's grantors by deed subsequently to the date of said Patent to said Jeddiak Woolley, Junior, which said land so owned and held by the said Magic is part and parcel of the land so preempted as aforesaid, & which said land is bounded and described as follows to wit

Commencing at the North East Corner of Wells and Goethe Streets in the City of Chicago in said Cook County and State of Illinois, thence running North on the East line of said Wells Street six hundred and sixty feet (660) to the South East

Corner of Wells and Schiller Streets, thence East on the South line of said Schiller Street two hundred & twenty one ^{29/100} feet (221.29), thence South to a point in the North ^{line} of said Goethe Street two hundred & twenty one ^{29/100} feet (221.29) East of the North East Corner of Wells and Goethe Street aforesaid, thence West on the North line of Goethe Street aforesaid to the place of beginning the same land being and constituting the West two hundred & twenty one ^{29/100} feet (221.29) of Lots Eighty one (81) Eighty two (82) Eighty three (83) Eighty four (84) Eighty five (85) Eighty six (86) Eighty seven (87) eighty eight (88) Eighty nine (89) ninety (90) of Brousons Addition to Chicago in said County of Cook

And your petitioner further sheweth that to wit on the twenty first day of March A.D. 1860 at said County of Cook, she applied to the said William H. Magic to lay off, assign & set out to your petitioner and let your petitioner into the absolute possession & enjoyment of one third part of the land last hereinbefore described, as her dower therein, but the said William H. Magic refused & still refuses so to do

Wherefore your petitioner prays that one third part of the land last hereinbefore described may be assigned & set off to your petitioner for her dower and your petitioner let into the full & immediate possession & enjoyment thereof & decreed to hold the same for her life— and in duty bound will ever pray

A. W. Arrington
of Counsel

Betsy Woolley
by her atty & solicitor
F. B. Peabody

Page 10.

Exhibit A.

Preemption Act 1834

Receivers office at Danville, Illinois

No. 1480

Nov. 17. 1834

Received from Jeddiak Woolley of Cook Co. Ill
the sum of one hundred dollars and cents being in
full payment for the W. H. of the N. E. quarter of section
No. four in Township No thirty nine North of Range No
fourteen East containing eighty acres at \$1.25 per acre
\$100.00

Samuel Mc Roberts Receiver

Recorded Jan'y 21. 1835

Exhibit B.

Page 11.

Pre-emption {
Certificate { The United States of America
No 1480 { To all to whom the presents shall come
Greeting

Whereas Jeddiah Woolley, Junior, of Cook County Illinois, has deposited in the general land office of the United States, a certificate, of the Register of the land office at Danville, whereby it appears that full payment has been made by the said Jeddiah Woolley, Junior according to the provisions of the Act of Congress of the 24th of April 1820 entitled an act making further provision for the sale of the Public lands. for the West half of the North East quarter of section four in township thirty nine North of Range fourteen East, in the district of lands subject to sale at Danville, Illinois containing eighty acres according to the official plat of the survey of the said lands, returned to the general land office by the surveyor General, which said tract has been purchased by the said Jeddiah Woolley Junior

Now therefore know ye that the United States of America in consideration of the premises and in conformity with the several acts of Congress in such case made & provided, have given & granted, and by these presents do give and grant unto the said Jeddiah Woolley, Junior, and to his heirs the said tract above described, To have and to hold the same together with all the rights privileges, immunities and appurtenances of whatsoever nature thereunto belonging

Page 12.

unto the said Jedediah Woolley Junior and to his heirs assigns forever

In testimony whereof I Andrew Jackson President of United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed

Given under my hand at the City of Washington the seventeenth day of May in the year of our Lord one thousand eight hundred and thirty six and of the Independence of the United States the sixtieth

By the President

Andrew Jackson

By A. J. Woolson Secy

Ethan A Brown Commissioner of the General Land Office

Recorded Vol. 3. page 160 E^d

Recorded July 18, 1836

This Indenture made the twentieth day of October in the year of our Lord one thousand eight hundred and thirty four between Jeddiah Woolley and Betsey Woolley his wife of Cook County and State of Illinois of the first part and Abram Pearsons of said County of the second part Witnesseth That the said parties of the first part for and in consideration of the sum of three hundred dollars lawful money of the United States of America to them in hand paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part his heirs Executors and administrators forever released and discharged from the same, by these presents have granted, bargained sold, aliened, remised, released, and confirmed, and by these presents do, grant, bargain, sell, alien, remise, release and confirm unto the said party of the second part and to his heirs and assigns forever, all that Lot or parcel of Land known and described as follows to wit, the West half of the North East Quarter of section Number four in township Number thirty nine North of Range No fourteen East, containing Eighty acres, in the State of Illinois, together with all and singular the tenements rights numbers privileges, and appurtenances unto the said above mentioned and described

premises belonging or in anywise appurtenant, and the reversion and the reversions, remainder and remainders, rents issues, & profits thereof and also all the Estate rights, title interest property possession claim and demand whatsoever as well at Law as in equity of the said party of the first part in and to the same and every part and parcel thereof with the appurtenances

To have and to hold the above granted, bargained and described premises and ^{sover} part and parcel thereof with the hereditaments and appurtenances unto the said party of the second his heirs and assigns to the sole and only proper use benefit and behoof of the said party of the second part his heirs and assigns forever

And we said Jeddiah Woolley, for himself his heirs Executors, Administrators doth covenant, grant promise and agree to and with the said party of the second part his heirs and assigns in manner and form following, that is to say, that he the said Jeddiah Woolley at the time of the sealing and delivery of these presents was lawfully seized in himself of a good pure absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted bargained and described premises with the appurtenances, and both good right full power and lawful authority to grant bargain sell and convey the same in manner and form aforesaid

And that the said party of the second part his heirs and assigns shall and will at all times here-

Page 15.

after peaceably and quietly have hold, use, occupy possess and enjoy the above granted premises and every part and parcel thereof with the hereditaments and appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part their heirs and assigns or of any other person or person whomsoever lawfully claiming or to claim the same — and that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges Estates, judgements taxes assessments and encumbrances of what nature or kind soever. And also that the said parties of the first part and their heirs and all and every other person or persons whomsoever lawfully or equitably deriving any Estate, right, title or interest of in or to the hereinbefore granted premises or any part or parcel thereof by from under or in trust for him or them shall and will at any time or times hereafter upon reasonable request and at the proper costs and charges in the Law of the said party of the second part his heirs and assigns, make do and execute or cause or procure to be made done and executed all and every such further and other lawful and reasonable acts conveyances and assurances in the Law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part his heirs and assigns forever

Page 16.

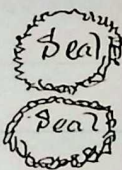
as by the said party of the second part their heirs or assigns or his or their counsel learned in the law shall be reasonably devised, advised or required.

And he the said Jeddiah Woolley, the above described and hereby granted and released premises and every part and parcel thereof with the hereditaments and appurtenances unto the said party of the second part his heirs and assigns against the said parties of the first part and their heirs and against all and every person and persons whosoever lawfully claiming or to claim the same the said Woolley shall and will warrant and by these presents forever defend.

In Witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written

Sealed and delivered
in the presence of
Reason Hailey
Amel Chipman
John Blackhouse

Jeddiah Woolley
Betsey Woolley



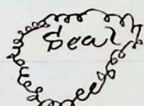
State of Illinois

Cook County P.S. } This day personally came before me the undersigned a Justice of the Peace in and for said County, Jeddiah Woolley and Betsey Woolley his wife who are personally known to me to be the real persons who executed the within deed of conveyance

Page 17.

and who then before me acknowledged that they executed the same freely and voluntarily for the uses and purposes therein contained. and she the said Betsy Woolley wife of the said Jeddiah on a private examination before me separate and apart from her said husband acknowledged that she executed the same freely and without being induced thereto through fear or compulsion of ^{her} said husband

Given under my hand and seal this day
of October A.D. 1834

Reazon Gailey 

And afterwards to wit on the 17th
day of September in the year aforesaid
the said defendant by his Attorneys
filed in the Office of the Clerk of
said Court his certain Remuneration
in the words & figures following, to wit:

Superior Court of Chicago
September Term A.D. 1860.

State of Illinois
Cook County

Peter Worley }
vs } Petition for Remedy
William H. Magie }

The demurrer of William H. Magie
defendant to the amended bill or petition
of Peter Worley Complainant filed Sep-
tember 14th 1860.

This defendant by protestation not
confessing or acknowledging all or any of
the matters and things in the said Complain-
ant's Amended bill or petition to be true
in such manner and form as the same
are therein set forth and alleged, demurs
therein. For cause of demurrer shows that
the said Complainant has not in and
by her said Amended bill or petition
made or stated such a case as does or
ought to entitle her to any such relief
as is hereby sought and prayed for, from
or against this defendant.

Wherefore this defendant demands the

Page 19.

judgment of this Honorable Court, whether
he shall be compelled to make any further
or other answer to the said amended bill
or petition, or any of the matters and things
therein contained and pray to be taxed
dismissed with his reasonable costs in this
behalf sustained.

John G. Rogers & Taylor
& Scammon McLagg & Fuller
Solicitors for Defendant.

And afterwards to wit, on the 25th day
of March in the year of our Lord one thousand
eight hundred and sixty one. said day being
one of the days of the March Term of said
Court. the following among other proceedings
were had and entered of record in said Court.
to wit.

Deputy Hollar
vs Pet^r for Dower
William H. Magie

And now comes the said Com.

Plaintiff by J. B. Penhag, and the said defendant by Samuel McLaughlin & Fuller his solicitors also comes, and this cause coming on to be heard upon the demurrer put in and filed by the said defendant to the Petition as amended filed in this cause, and arguments of Counsel being heard, the Court being now fully advised in the premises after due deliberation sustains the said demurrer of the said defendant to the petition filed herein.

And afterwards, to wit, on the 1st day of April in the year aforesaid, said day being one of the days of the April Term of said Court, the following among other proceedings were had and entered of record in said Court to wit,

Setey Woolley
vs
William H. Magie Pet^r for Answer.

And now again comes the parties to this cause by their solicitors

Page 21.

And the Court having sustained the demand of the said defendant to the amended petition of the said Complainant filed in said Cause, the Complainant elects to stand by his said Amended Petition. Whereupon on motion of defendant and solicitors it is ordered that, the Amended petition be and is hereby dismissed at costs of the said Complainant.

Therefore it is contended that the said defendant do have and recover of and from the said Complainant his costs and charges about his defence in this behalf expended and thereof have execution.

Page 22.

State of Illinois
Cook County J. Walter Kimball
Clerk of the Superior Court of Chicago, within
and for the County of Cook State of Illinois.
To hereby certify the foregoing to be a full,
true and complete transcript of the Amended
Petition, & demurrer thereto, together with the
Order of Court made and entered of record,
in a certain cause wherein Peter Woolley
was Complainant and William H. May is
Defendant.



Witness my hand and seal
of said Court at the City
of Chicago in said County
this 9th day of April A.D.
1861.

Walter Kimball Clerk

And the said Petitioner, Betsey Woolley, now comes & says that in the record & proceedings aforesaid, there is error in this, to wit:

1. That the Court erred in sustaining the demurrer to the amended petition

2. That the Court erred in dismissing the amended petition

3. That the Court erred in giving judgment in favor of the said William H. Magie, when by the laws of the land it ought to have been given in favor of the said Petitioner, Betsey Woolley

Wherefore the said Betsey Woolley prays that the said judgment may be reversed and that she may be restored to all things which she has lost by reason thereof

By her solicitor

F. B. Peabody

And the said Magie, Deft in error comes in above entitled cause, and says, that there is no error in the record and proceedings aforesaid, there is no error

Wm. H. Magie & Fuller
April 18, 1861. For Deft in error

157-139

Bekinsley
for
William H. Major
Transcript

Filed April 15, 1861
L. Leland
Clerk

See per J. C. Leland
Per Leland