

8824

No. _____

Supreme Court of Illinois

Cain Hoots

vs.

Serena Graham

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Cain Hoots,
vs.
Serena Graham.

In Supreme Court, 1st Grand Division, November Term, A.
D. 1859. Appeal from Washington.

This was an action of Trespass for damages to Real Estate, commenced before a J. P. by said Graham vs. Hoots.

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William Weaver died seized of North East North West Sec. 15 Town. 2 South Range 4 West, 3d P. M., unimproved land, had never lived on it, but lived at time of his death about two miles therefrom on public land, and left said Serena, his widow, and some children, said Serena, after the death of said Weaver, built on said land a Cabin worth ten or fifteen dollars and lived thereon sometime and then removed to Ashley, leaving some furniture in said house, authorizing one Weaver to have said Cabin used as a School-House, some Stools of Serena's were in said Cabin, when there was no school said Agent nailed up the Door. Whilst said Serena lived at Ashley she petitioned and by order of the Circuit Court of said county in partition said land was sold and purchased by James Hoots, son of appellant. After said sale said Serena came back into the neighborhood of said land and went one day to said Cabin and was fixing it when said Cain Hoots came, on behalf of said James Hoots, and by his leave and approbation ordered said Serena away and kicked the door open and pulled out a couple of the logs and so caused said Serena to leave. Quite a number of sapplings were cut on said land, and Cain Hoots was seen cutting some, and did cut some by leave of his said son, and other persons cut some. Some witness stated that all the damage to house and cutting sapplings would amount to \$25, but could not say Cain Hoots did all the cutting. Another witness stated that he examined house after the logs were pulled out and that he could have put them back for \$2 as good as ever, and saw nothing wrong with the door. Court below excluded all evidence of the ownership of said land by James Hoots aforesaid, and all evidence of Cain Hoots doing as above set forth on behalf of and by leave of said James Hoots. Jury found Defendant guilty and assessed damages at \$25. Motion for new trial overruled, bill of exceptions filed and case brought by appeal to this Court.

POINTS AND AUTHORETIES OF APPELLANT.

At common law and under our Statutes a widow has no right to enter upon unimproved lands where her husband never lived or in any way occupied, until dower is assigned, and if she do so she is a trespasser and may be ousted by the owner of the fee and driven to her action to have dower assigned, 4th Kents Com., 61 and 62 Revised Statute Dower Sec. 27 I G. Cruise on R. Prop. Page 168. A person wrongfully holding possession of land cannot treat the rightful owner who enters thereon as a trespasser, nor one who enters by the true owners leave, 1st Chit P. Page 204. 177

Right of dower is a mere right of action until assigned, 11th Illinois, 385.

P. E. HOSMER,

ATTY. FOR APPELLANT.

THE STATE OF VERMONT

IN SENATE,
January 14, 1859.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE,
FOR THE YEAR 1858.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR 1858.

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Filed Nov. 14, 1859.
A. S. Johnston, Clerk

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S. S. Graham

Abstract &c

THE STATE OF VERMONT,
IN SENATE,
January 14, 1859.