

**AMERICAN BAR
ASSOCIATION**

GEORGIA L. COLE for herself and her Grandsons,
Appellant, v. ELLA M. DIXON, Widow of the late
R. EMMONS DIXON, and THOMAS C. LOMAX,
Curator for Montserrado County, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued December 5, 6, 1938. Decided December 16, 1938.

The inchoate right of dower is so vested in the wife as against the husband immediately on the marriage that no conveyance or act of the husband can deprive her of it.

Appellant brought a proceeding in the Probate Division of the Circuit Court of the First Judicial Circuit to have certain property struck from the inventory of property of the estate of appellees' intestate. From judgment for appellees appellant appealed to this Court. *Judgment modified and affirmed* as modified.

William B. Dennis for appellant. *S. David Coleman* for appellee.

MR. JUSTICE DOSSEN delivered the opinion of the Court.

This cause originated in the Probate Division of the Circuit Court of the First Judicial Circuit, Montserrado County, Republic of Liberia, at its November term, 1937. As there is only one point raised in the case, and that is a point of law, we do not deem it necessary to deliver a lengthy opinion, but will confine ourselves to the issue raised by both contending parties in support of their contention.

But before proceeding to consider the issue thus raised in the bill of exceptions, we desire to give a brief synopsis of the case as appears from the records filed.

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The late R. Emmons Dixon, a citizen of the County and Republic aforesaid, died intestate, and according to law his estate was taken over by the Curator of this County to be administered. Thereupon an inventory was taken of the assets of the said decedent, among which was a piece of real property, lot No. 288, which petitioners claimed was their property by virtue of a deed of gift which the said decedent had executed during his lifetime, and which property they contended should not be put on the inventory of the assets of said estate; but not being able to convince the Curator of that fact, said petitioners made and filed in the said Probate Division of the aforesaid Circuit Court, November term, 1937, a petition which reads as follows:

“That by inspection of the inventory taken and filed by the Curator of Montserrado County of the estate of the late R. Emmons Dixon, of the city, county and Republic aforesaid, she has discovered that their real property, lot No. 288 in Monrovia, has been included on the list of properties of the late R. Emmons Dixon, which is not a part of the said estate of the aforesaid estate of the decedent.

“2. That she and her aforesaid grandsons acquired title to the said lot No. 288, Monrovia, by a deed of gift from R. Emmons Dixon the deceased which has been duly probated and registered according to law. A copy of said deed is hereby made a part of this petition.

“3. Therefore petitioner prays that Your Honour will cause the said lot No. 288, Monrovia, the property of her and her grandsons to be struck from the inventory of the late R. Emmons Dixon, and will grant unto them such further and other relief which they are legally entitled to.”

Respondents in answering the said petition, in counts 2 and 3 of their answer, said *inter alia*, to wit:

“2. And also because respondents further say that

the said purported deed of gift executed by the said R. Emmons Dixon is of no legal validity in that there is no monetary consideration mentioned as set out said deed.

“Wherefore respondents pray that the petition of the said Georgia L. Cole for herself and for her grandsons be denied.

“3. And also because said respondents further say that said petition should be denied for the reasons that in said deed the said Mrs. Ella M. Dixon, wife, now widow of the said R. Emmons Dixon, did not relinquish her dower in the said property as by inspection thereof it will very clearly appear. Therefore respondents pray that the said petition be denied and the property lot No. 288, Monrovia, be permitted to remain on the inventory of the estate of the late R. Emmons Dixon, as part of his property.”

To which answer the said petitioners filed the following reply *inter alia*, to wit:

“2. And also because petitioners in further replying to the answer of the respondents say, that the recital in the deed of gift, namely: ‘for filial love and affection’ for the mother of the said R. Emmons Dixon, late of Monrovia, is sufficient in law to give validity to the said deed of gift.

“3. And also because petitioners, further replying to the answer of respondents, say that petitioners denied that the contention raised in count three of said answer is tenable in law; in that, the widow Ella M. Dixon during the natural life of her husband R. Emmons Dixon had no dower right in his property since indeed the right of dower accrues only after death of the husband. Wherefore petitioners pray this Honourable Court to dismiss the answer of the respondents with costs against the said respondents. And this the petitioners are ready to prove.”

The pleadings having been rested, the said cause came

on for hearing at the February term of the aforesaid court 1938. And the trial judge after carefully examining the records, law and hearing arguments *pro et con*, handed down the following ruling on the law pleadings, in which he said *inter alia*, that:

“The inchoate right of dower is so vested in the wife as against the husband immediately on the marriage that no conveyance or act of the husband can deprive her of it. The court has already intimated that the court, not being a court in Equity, could not cancel and declare void a deed duly probated and registered. That is the province of the court of equity, etc. For these legal reasons set forth in this opinion, the court is of conclusion that the property in question should not be stricken from the inventory but same is to remain in the estate and be operated upon in common with the estate of the late R. Emmons Dixon so that the vested one third interest of the widow of said estate may remain secured. Costs against the estate; and it is so ordered.”

The petitioners being dissatisfied with the said ruling of the trial judge, excepted and removed the cause to this Judicature of last resort for review, upon a bill of exceptions which reads as follows, to wit:

“Georgia L. Cole for herself and her grandsons, petitioners in the above entitled cause, being dissatisfied with the ruling of Your Honour on their said petition rendered on the 18th day of January 1938 *inter alia*:—For these legal reasons set forth in this opinion the court is of this conclusion that the property in question should not be stricken from the inventory but same is to remain in the estate and be operated upon in common with the rest of the estate of the late R. Emmons Dixon, so that the vested one third interest of the widow may remain secured. . . . To which ruling petitioners excepted, and being now on

appeal to the Honourable the Supreme Court of the Republic of Liberia, April Term 1938 for review, submits this as their bill of exceptions."

We shall now examine the law governing this cause and apply it to the case to see how far the said ruling of the trial judge is supported.

Our Constitution declares that:

"In all cases in which estates are insolvent, the widow shall be entitled to one third of the real estate during her natural life, and to one third of the personal estate, which she shall hold in her own right subject to alienation by her, by devise or otherwise."

This provision of the Constitution has to be so construed as to read: 1) subject only to alienation by herself by devise or otherwise; and 2) even in all cases in which estates are insolvent, she shall be entitled to one-third thereof even before the payment of any debts. Lib. Const., Art. 5, sec. 11.

Judge Bouvier in volume 3, page 3454, of his *Law Dictionary* defines a widow as an unmarried woman whose husband is dead.

"The very essence of the dower right [says another author] is the security which it affords to the wife against impoverishment by the losses or acts of her husband. It may be generally stated that her dower cannot be defeated or impaired by any act of the husband, or by any title emanating from him. Not only does the wife's right prevail over any conveyance made by the husband in the execution of which she does not share, but her right remains unaffected by any lien or other claim based on a contract made by him, or by execution sale on a judgment against him, or by a creditor's bill. Nor is her right affected by his bankruptcy, or, although on this point there is some conflict, by adverse possession gained by another against the husband. . . ." 9 R.C.L.,

“Dower,” ¶27 citing the case *Sykes v. Chadwick*, 18 Wall. 141 (U.S.), 21 L.Ed. 824, the relevant portion of which reads:

“Still her right of dower is a valuable interest, which she cannot be compelled to resign, and which the law very carefully protects from the control of her husband. When she does part with it an officer must examine her apart from her husband, to ascertain whether she does it freely and voluntarily. And whilst this interest is a valuable right of the wife, it is a corresponding incumbrance upon the land to which it attaches. By the aid of modern science it is capable of a definite valuation. Hence it is easy to ascertain whether an undue valuation is placed upon it.” (p. 145.)

Our own Supreme Court has made the following pronouncement in the case, *Brown v. Allen*, 2 L.L.R. 115, 118, 2 Lib. Semi-Ann. Ser. 10 (1913), by His Honor Chief Justice Dossen speaking for this Court:

“The first exception is to the administrator and administratrix, defendants in error, disposing of real property without first showing to the lower court that the personal assets of the estate were insufficient to liquidate the claims against it; and also for selling lands to pay widow’s dower.

“. . . With respect to the admeasurement of a widow’s dower, we hold that real property cannot be lawfully sold, or converted into money, to enable her to obtain a greater amount of personal property out of an estate. The Constitution settles upon a widow one-third of the personal estate of which her husband is seized at the time of his death.”

This Court having very carefully gone through the records filed in this case, examined and applied the statute law, has no hesitancy in saying that the ruling handed down by the trial judge on the 18th day of January, 1938, is fully supported by law as cited above, and

should be affirmed with the modification which follows: That the right of grantee to enter into possession of lot No. 288, the subject of this suit, be postponed until either 1) the death of the widow; or 2) her dower in the estate of her late husband shall have been fully ad-measured, and she shall have acknowledged the receipt of same by a deed of acquittance; in which event, after probation and registration of said deed, the court will be permitted to put grantees in possession; and that inas-much as the Curator of intestate estates has been shown to be in possession of the assets of the estate, he shall be re-quired to pay *all* costs out of the said assets without prej-udice to any portion of the widow's dower; and it is so ordered.

Affirmed.