

COURT OF APPEALS OF KENTUCKY

McKean v. Brown

83 Ky. 208 (1885) · Decided September 24, 1885

SUMMARY

The Kentucky Court of Appeals held that a divorce bars a former wife's claim to dower, including in land conveyed by her former husband while they were married. Because the appellant was no longer the grantor's wife or widow at his death, she had no dower interest in his estate under the applicable statute.

CASE DETAILS

COURT	Court of Appeals of Kentucky
JURISDICTION	Kentucky
DECIDED	September 24, 1885
DISPOSITION	affirmed
PROCEDURAL POSTURE	The appellant sought reversal of a judgment sustaining a demurrer to her petition seeking to recover dower in land conveyed by her former husband during the marriage.
STANDARD OF REVIEW	Review of a judgment sustaining a demurrer to the petition.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Kentucky
PARTIES	Elizabeth McKean v. Brown

TOPICS

- divorce
- family law
- real estate
- statutory interpretation
- family law procedure

PRACTICE AREAS

- Family law
- Real property
- Statutory interpretation

QUESTIONS PRESENTED

- Whether a divorce bars the former wife's claim to dower in land that her husband conveyed during the marriage.
- Whether the allegation that the plaintiff had been divorced should be construed as alleging only a divorce from bed and board.

HOLDINGS

1. A divorce bars the former wife's claim to dower, including dower in land conveyed by the husband while the marital relationship existed.
2. The petition must be construed as alleging a divorce terminating the marriage, not merely a divorce from bed and board, because the plaintiff expressly alleged that she was not Hiram McKean's wife at the time of his death.

KEY QUOTATIONS

“The statute makes no such exception, but provides that “a divorce bars all claim to curtesy or dower.””
(208)

“At his death the appellant was not his wife or widow, and, therefore, has no interest in his estate.” (209)

FACTUAL BACKGROUND

Elizabeth McKean alleged that she was Hiram McKean's wife when he owned the land and conveyed it to Brown. She further alleged that she was no longer his wife at the time of his death because she had obtained a divorce several years earlier. She sought dower in the land despite the divorce.

PROCEDURAL HISTORY

Elizabeth McKean alleged that she was married to Hiram McKean when he owned and conveyed the land to Brown, but that she was divorced from Hiram before his death. The circuit court sustained a demurrer to her petition, and the Court of Appeals of Kentucky affirmed.

DISPOSITION

affirmed

OPINION

PBYOB, J.

JUDGE PBYOB delivered the opinion of the court. The appellant, Elizabeth McKean, is seeking to recover dower in a tract of land owned by the appellee, Brown, alleging that on the 25th of September, 1870, she was the wife of the grantor, Hiram McKean, who was the owner in fee of the land, and after the marriage sold and conveyed it to the appellee. It is also alleged in the petition that at the death of Hiram McKean the appellant was not his wife, but had obtained a divorce from him several years prior thereto.

A demurrer was sustained to the "petition, and the appellant asks a reversal, because the judgment for a divorce does not bar such a recovery where the marital relation existed at the time of *209the conveyance. The statute makes no such exception, but provides that “a divorce bars all claim to ■curtesy or dower.” (General Statutes, chapter 52, article 4, section 14.)

The wife had no vested interest in the husband's lands during the coverture, and at his death, the marriage relation having been dissolved by the Chancellor, it can not be said that as the survivor she is entitled to dower in the land conveyed while she was the wife of the grantor, and at the same time denied the right to dower in the land of which he died possessed.

At his death the appellant was not his wife or widow, and, therefore, has no interest in his estate. It is urged that the statement in the petition, that she had been divorced from her husband, should be construed as meaning that she was divorced from bed and board only. Such a construction would not only favor the pleader, but is in direct conflict with appellant's own averment, viz: "That she was not the wife of McKean at the time of his death, having been divorced from him several years before." Judgment affirmed.