

COURT OF APPEALS OF KENTUCKY

McKean v. Brown

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

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 the 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 Chan■cellor, 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.