

NEW YORK SUPREME COURT, GENERAL TERM

Taggart v. Wade

1 N.Y.S. 900 (1888) · Decided June 25, 1888

SUMMARY

This case considers whether a wife who was not personally served in a foreclosure action can maintain an action to protect her inchoate right of dower during her husband's lifetime. The court holds that the wife has a right to redeem the mortgaged premises to protect her inchoate dower interest, distinguishing prior case law. The judgment is affirmed.

CASE DETAILS

COURT	New York Supreme Court, General Term
WRITING FOR THE COURT	Barnard; Pratt
JURISDICTION	New York
DECIDED	June 25, 1888
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an interlocutory judgment of the special term, Kings County, which found plaintiff had a right to redeem and ordered a reference to compute the amount due on the mortgage.
PRECEDENTIAL VALUE	Published
PARTIES	George Wade, as executor, John B. Wade, and Mary G. Rogers v. Mary P. Taggart

TOPICS

- foreclosure
- mortgages
- real estate
- civil procedure
- service of process

PRACTICE AREAS

- Real Property
- Civil Procedure

QUESTIONS PRESENTED

- Whether a wife who was not served in a mortgage foreclosure can maintain an action to redeem the premises based on her inchoate right of dower during her husband's lifetime.

HOLDINGS

1. A wife who was not personally served in a mortgage foreclosure has an inchoate right of dower that gives her the right to maintain an action to redeem the premises during her husband's lifetime.

KEY QUOTATIONS

“an inchoate right of dower in lands is a subsisting and valuable interest which will be protected and preserved to her, and that she has a right of action to that end.” (901)

FACTUAL BACKGROUND

The plaintiff joined with her husband in executing a mortgage. Upon foreclosure, she was not served with process. The judgment against her was void as to her. She has an inchoate right of dower in the premises. She brought an action to redeem the mortgaged premises during her husband's lifetime.

PROCEDURAL HISTORY

The plaintiff joined with her husband in a mortgage. Upon foreclosure, she was not served. She brought an action to redeem. The special term found she had a right to redeem and ordered a reference. Defendants appealed.

DISPOSITION

affirmed

CASES CITED

- White v. Coulter, 59 N.Y. 629
- Mills v. Van Voorhies, 20 N.Y. 412
- Simar v. Canaday, 53 N.Y. 298
- Witthaus v. Schack, 105 N.Y. 332, 11 N.E. Rep. 649

OPINION

BARNARD, J.

Barnard, P. J. The plaintiff joined with her husband in the execution of a mortgage, and upon its foreclosure she was not served with process. The judgment against her was not proper, and she had the right to vacate it.

The old chancery rule that a husband could enter an appearance for his wife without service being made upon her seems to have been completely abolished. White v. Coulter, 59 N. Y. 629. If the wife was not personally served it follows that as to her the judgment is void. She still has an inchoate right of dower in the premises. Can she maintain a cause of action on this inchoate right to redeem the mortgaged premises during the life of her husband?

If the mortgage be a purchase-money mortgage, the plaintiff was endowed in the equity of redemption. *Mills v. Van Voorhies*, 20 N. Y. 412. In the case of *Simar v. Canaday*, 53 N. Y. 298, the court of appeals declared the law settled that “an inchoate right of dower in lands is a subsisting and valuable interest which will be protected and preserved to her, and that she has a right of action to that end.” The case of *Witthaus v. Schack*, 105 N. Y. 332, 11 N. E. Rep. 649, does not change this rule.

A wife had been induced by the fraud of her husband to execute a deed. She, after his death, brought her action to set aside the conveyance. The court of appeals held that the estate conveyed was the estate of the husband, and that the dower right was inchoate and a mere chose in action, contingent upon her surviving her husband, and that she, therefore, could not be a witness to prove the fraud, under section 829 of the Code.

The question presented in this case was not the wife’s right to protect her possible dower, but what it was after it had become vested and absolute. It was held to be a continuation merely of the estate of her husband. Judgment affirmed, with costs. Pratt, J., concurs.