

NEW YORK SUPREME COURT, GENERAL TERM

Taggart v. Wade

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

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 **901Simar 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.