

ions of the act of 1836, ch. 43. The bill charges that the defendant is a resident-citizen of the state of Mississippi, and is indebted to the complainant by bill single in the sum of \$1,100; that she is the owner of a negro man named Randal, and a tract of land of 600 or 700 acres in Williamson county, state of Tennessee, and prays for a writ of attachment against said property, and for a subpoena to answer, but nothing further. And it is now contended that no relief against this property can be granted, because none is asked.

It is not to be denied that, as a general rule of chancery practice, no relief can be granted in chancery if none be asked; but the proceeding by this bill is not according to the usual course of chancery practice, but is under a statute making provision for a particular class of cases the practice upon which is regulated by the statute. By the 1st section it is provided "that, when any person or persons who are non-residents of this state have any real or personal property of either a legal or equitable nature, or choses in action, in this state, and such non-residents shall be indebted to any citizen of this state or any other state or states, it shall be lawful for such creditor, without first having obtained a judgment at law, to file a bill in chancery to have said real or personal property or choses in action and debts attached, and that it shall be the duty of the sheriff or other officer to attach and take into his possession the personal property, or so much thereof as is necessary to satisfy the complainant's claim, and to levy such attachment upon the real estate of the defendants, which said property shall be sold to satisfy said claim in the manner after directed."

[537] now, under this statute, all that is necessary to authorize a court of chancery to grant relief is that the bill should show an indebtedness on the part of the defendant, that he or she is a non-resident, and has property, real or personal, or debts or choses in action, in this state, and pray that the same may be attached, which shall be accordingly done by the order of a chancellor, and the same sold by a decree of the court to satisfy the demand, without a prayer to that effect, because the statute specially provides that the property when attached shall be sold for that purpose.

We are, therefore, of opinion that the bill is not defective in not praying for specific relief against the property, and affirm the decree of the chancellor.

LEWIS et ux. v. JAMES et al.

NASHVILLE, DECEMBER, 1847.

**Dower—Equitable Estate Sold by Decree—Improved by Purchaser.**

Where lands, valuable for the purpose of manufacturing iron, and in which the husband had an undivided half, were conveyed by the husband, with other property, to secure creditors, and, after his death, were sold under decree of the chancery court by virtue of proceedings to which his personal representative, heirs, and secured creditors were parties, and were purchased in good faith by a person who supposed he was getting a good title, and whose vendee, acting in like good faith, put valuable improvements on the land with a view to its use in the manufacture of iron, and the widow afterwards claimed, and was held entitled to dower, by reason of the payment of the debt by the other property in the deed of trust, consisting of personality which the widow had a right to have thus applied, the court directed the annual rental value of the entire land at the time the complainant's right to dower accrued, and when the defendant took possession to be ascertained, and decreed her the one-sixth of such value to be charged on the land, and further decreed that should the property, at any time, cease to yield sufficient income to pay this charge, then the widow was to have dower allotted to her in the land by metes and bounds. [Cited in *James v. Field*, 5 Heisk. 397, and *Summers v. Donnell*, 7 Heisk. 566.]

Cited in: 3 Pickle, 26.

Jesse A. Brunson, William B. Bartee, and C. M. Shelby were partners in 1835, in the Byrn Forge Iron Works. In June, 1836, Shelby sold his interest to Brunson and Bartee. On the 6th day of January, 1837, Bartee conveyed his moiety, together with four negroes, to one James H. Bingham as trustee, to secure a debt of \$3,000 to Shelby, due 1st January, 1839. In 1837 Brunson died, and his moiety of the forge was sold under order of court, and Louisa L. Brunson, his [538] widow, became the purchaser. On the 19th June, 1837, the said Louisa L. resold said moiety to Bartee for the consideration of \$12,000 and the payment by Bartee of the partnership debts; and on the same day Bartee conveyed to Shelby, as trustee, the said moiety interest so purchased, and sundry negroes, including the four negroes embraced in the deed to Bingham, to secure the payment of the \$12,000 and the partnership debts. Bartee died in March, 1838, leaving the complainant Elizabeth G., his widow (and three children him surviving), who subsequently intermarried with complainant James M. Lewis. Robert Tompkins qualified as ad-

ministrator of said Bartee, and as such suggested the insolvency of his estate. At the July term, 1838, of the circuit court at Dover, a petition was filed in the name of the children and personal representative of said Bartee, in which petition the trustees and beneficiaries in the two deeds mentioned also joined, praying a sale of the said forge and works as manifestly for the interest of all concerned. Upon this petition a sale was had, and Louisa L. Brunson became the purchaser for the sum of \$5,687. This sale was confirmed at the March term, 1839, of said court, and the purchaser executed her notes for the purchase-money. No final disposition has been made of this fund.

Shortly after this sale the forge and premises attached were sold to defendant James L. James by Mrs. Brunson, for \$6,000 and thereupon he took possession of the same and has remained in possession ever since, having made large and valuable improvements. In the meantime Mrs. Brunson intermarried with Tompkins, the administrator of Bartee, having first purchased and taken an assignment of Shelby's debt of \$3,000, and trust-deed made to secure the same. In the meantime, also, as the instalments of the \$12,000 purchase, and the partnership debts agreed to be paid by Bartee, respectively, fell due, Shelby sold the negroes in the deed to him [539] as trustee, including the four negroes embraced in the deed to Bingham, and paid the proceeds in satisfaction of the debts secured in said deed. The four negroes mentioned sold for more than sufficient to satisfy the \$3,000 secured by the deed to Bingham, but the proceeds were paid to Mrs. Brunson on the \$12,000. The lands and negroes conveyed by the several deeds brought \$18,040. The debts secured to be paid amounted to \$10,013. This bill was filed on the 23d October, 1843, by James L. Lewis and wife, Elizabeth, to obtain dower in the moiety of the Byrn Forge and works conveyed to Bingham, as trustee, to secure the \$3,000 due to Shelby. The cause came on for final hearing on the 29th April, 1847, at the chancery court at Clarksville, before the Hon. Terry H. Cahal, chancellor, who decreed in favor of complainant. The decree, after reciting the facts as hereintofore detailed, proceeds thus:

"And the court being of opinion that the widow's right to dower in the equitable estates in said forge and lands attached on the death of her husband, the said Bartee, and that the money arising from the sale of the four negroes conveyed to said Bingham ought to be applied to the discharge of Shelby's debt, and

that Mrs. Louisa L. Brunson, now Mrs. Tompkins, cannot force Shelby to a satisfaction of his debt out of the moiety of the forge and lands, to let her into the benefit of the proceeds of the four negroes, to the defeat of the widow of her dower; and the court being likewise of opinion that the sale of the forge and lands by decree of the circuit court of Stewart county, and purchase thereof by Mrs. Brunson, and sale by her to defendant James, cannot deprive the widow of her dower in said forge and lands, so far as encumbrance were removed by the personalty conveyed by said deed of trust; and it appearing to the court that the encumbrance upon the moiety conveyed to Bingham for Shelby's benefit was wholly removed and discharged, and complainant declining any account as to the other moiety, the court doth [540] order and decree that complainants are entitled to have dower in one moiety of said forge and lands. And it is, therefore, ordered that ——— be commissioners to allot and assign said dower, and that, when assigned, the complainant be let into the possession and enjoyment thereof by said James. It is further decreed that complainants are entitled to one-sixth of the rents of said forge and lands from the death of said William B. Bartee. It is, therefore, ordered that the clerk and master of this court take an account of the rents with said James from the time he took possession, with annual interest, and of the improvements and meliorations; should the improvements exceed the rents and profits, set off the rents and profits so far as they go; should the rents and profits exceed the improvements, state the balance of rents, and make report to the next term of this court."

T. Washington, G. A. Henry, and E. H. Foster, Jr., for complainants.

F. B. Fogg, Shackelford, and Bailey, for defendants

Turley, J., delivered the opinion of the court.

In this case we are satisfied that the complainant is entitled to dower in one-half of the premises in the pleadings mentioned—that is, one-sixth of the whole—and affirm the decree of the chancellor thus far.

But, inasmuch as the defendant is an honest purchaser of the premises and in good faith believed that he had acquired the same free from any claim for dower on the part of the complainant, and has since put valuable improvements, by additions to the

iron-works erected upon the land previous to his purchase, both in machinery and other things, to the amount of several thousand dollars, whereby the annual value thereof [541] has been greatly increased, and that since the complainant's right to dower has accrued; and it appearing to us that it is inequitable to allow her to be benefited out of the defendant's expenditures without paying her portion thereof, and that to do this may be impossible for her; and it being impossible so to allot her dower, with fairness to herself, without letting her into an enjoyment of a part of the works, which cannot be done by making her a tenant in common, to the extent of her interest, with the defendant, without making her his copartner to that extent which justice to him will not permit, on the account of his individual outlay for the improvement of the property.

We therefore direct that the clerk and master take an account, showing what was the annual value of the property at the time the complainant's right of dower accrued, and what it was when the defendant took possession under his purchase from Mrs. Brunson; and from that time we decree against the defendant the one-sixth part thereof annually, with interest up to the time of this decree, for which judgment will be given against him in favor of the complainant. And from this time forward we decree that she be allowed annually the one-sixth part of the same valuation during her life as her dower, and that the same be charged upon the estate. And if, at any time hereafter, said works should cease to secure to her the amount from any cause whatever, that she may then have her interest of one-sixth part of the whole tenement laid off to her by metes and bounds, and be let into possession of the same.

### BEAUMONT & IRWIN v. YEATMAN et al.

NASHVILLE, DECEMBER, 1847.

1. Probate by Deputy Clerk. A certificate of probate of a deed which states that the bargainor appeared before the deputy clerk, and is signed by the deputy clerk, without naming the principal, is good. [Cited in *Ament v. Brennan*, 1 Tenn. Ch. 433.]
2. Mortgage of Steamboat—Registration. The registration of the mortgage of a steamboat, made to secure the purchase-money, in the county of this state in which the sale and mortgage were

made, is good in Tennessee, whatever it may be elsewhere, and the boat being found in Tennessee will be subjected to the satisfaction of the mortgage debt as against a purchaser claiming under a subsequent judicial sale made by the commercial court of the city of New Orleans by attachment of the boat, in the State of Louisiana, for debt.

Cited in: 10 Heis., 565; 13 Pickle, 288.

[542] On the 2d day of February, 1844, Joseph Irwin sold to A. D. Wetherspoon, of Montgomery county, the one-fifth part of the steamboat "Water Witch," for \$500, payable on the 1st day of October, 1844. And on the same day Wetherspoon made a mortgage or conveyance to Beaumont as trustee, to secure the note given for the purchase-money as above. This deed was acknowledged before the deputy clerk of Montgomery county court on the 10th February, and registered in the register's office of said county on the same day. The certificate of probate was as follows:

State of Tennessee, Montgomery County:

Personally appeared before me, John H. McFall, deputy clerk of the county court of Montgomery county, A. D. Wetherspoon, the within named bargainor, with whom I am personally acquainted, and acknowledged that he executed the within mortgage for the purpose therein contained. Witness my hand at office, this 10th day of February, 1844.

John H. McFall, Deputy Clerk.

This deed was not registered on, nor filed with, the title-papers of the steamboat. The boat proceeded from the port of Clarksville, where it was lying at the time of the sale and mortgage, to New Orleans, and was there attached by Yeatman & Co. for a debt due to them from other part owners of the boat, on the 13th February, 1844, by attachment issued from the commercial court of the city of New Orleans. After the boat was attached the crew and officers filed their claims [543] for wages, etc., claiming preference over the attaching debt; and subsequently, to wit, on the 13th of March, 1844, the said boat was sold by the sheriff of the commercial court, under a decree of the court settling the priority of debts, etc., and the said Yeatman & Co. became the purchasers, at \$1,300, and received a deed from the sheriff. Upon the return of the boat to Nashville, on the 17th June, 1844, Irwin and Beaumont commenced their attachment suit to enforce their mortgage lien on said boat. The cause came on to be heard at the October term of the chancery court at Clarksville, before