DEVELOPEMENT

OF THE

LAW OF DOWER IN ILLINOIS.

THESIS

PRESENTED BY R. C. DONOHUE

IN CONNECTION WITH HIS APPLICATION

FOR THE DEGREE OF L. L. B.

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1899.
Authorities Cited on the General Common Law Doctrine of Dower.

4. Williams on Real Property.
5. Tiedeman on Real Property. Sec. 5.
6. Boone on Real Property, pp. 52 to 71.

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2. An Act for the Speedy Assignment of Dower and Partition of Real
   Estate, R.L. 1827,p.183, Feb. 6, June 1.
4 An Act in Relation to Certain Decrees in Chancery and Orders of
   the Court, Lien for Dower, L. 1839, p.48, Feb. 19.
5. An Act to Reform the Probate System (Assignment of Dower),
   p.92, Feb. 21.
7. An Act Authorizing a Wife, where Husband is a Lunatic, or
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8. An Act to Amend Chap. 34, R.S. 1845, Entitled Dower, L.1865, p.107 Feb.16.


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PART I.

SOURCE AND COMMON LAW DOCTRINE OF DOWER.

Among the Romans, this term meant that which the wife brought the husband at marriage, and to which his right to enjoyment lasted only during marriage, whether it consisted of lands or personalty, and at his death it again reverted to the wife. According to the Civil Law this term corresponded to some extent with dower at common law.

In the early part of the Saxon constitution, dower out of lands seems to have been unknown, and the wife is directed to be supported wholly out of the personal estate. Lateron the widow became entitled to a conditional estate in one half of the lands, upon condition that she remain chaste and unmarried. By some introduction of dower has been ascribed to the Normans, as a branch of their local tenures, but there does not seem to be any good reason for it, because it was not a part of the simple law of feuds, but was first introduced into that law by Emperor Frederic II. It may be that dower is the relic of an old Danish custom, for some historians of that country say that it was introduced into Denmark, by Swein the father of Canute the Great, out of gratitude to the Danish ladies, who sold all their jewels to ransom him when taken prisoner by the Vandals. But whatever the different reasons ascribed by different countries for its introduction
may be, the reason which the common law gives is a very good one, namely the sustainence of the wife, and the nurture and education of the younger children. The wife, is the proper object of the kindness and care of the husband, and he is bound by the law of God and man to provide for her during her life and after his death the moral obligation should not end. But he ought to provide for her during her own life after he dies. From the earliest period of the existence of the common law a great deal of favor was given this provision for the support of a wife surviving her husband. Reason for this was, that, by the old law, if there had been no such provision, for the wife, in case she survived her husband, she would have been left without any means of support. The right of the widow to dower did not originate from any legislative or other law, but as Blackstone says, from that ancient collection of unwritten maxims and customs, called the common law, however compounded, or from whatever fountains derived, which had subsisted immemorially. Along with her right to dower the widow is entitled to reside in her husband's dwelling house for forty days after his death and during this time to receive reasonable support; this is called quarantine. This right extends only to the dwelling house and not to any other part of the premises. The widow is also entitled during the forty days to what is termed the paraphernalia. Originally dower was divided into five parts namely: 

(1) Dower by the common law, (2) Dower ad ostium ecclesiae, (3)
Dower ex assensu patris, (4) Dower by custom, and (5) Dower dea plus belle. But the only kind generally adopted in the United States was that known as dower at common law. This kind of dower is fully described to be, where a man is seized of an estate of inheritance and dies in the lifetime of his wife, in which case she is at common law entitled to dower for her life, of the third part of all the lands of which her husband was seized, at any time during the coverture, and of which any issue she might have had, might by possibility have been heir. From this definition of dower it will be seen that the wife's enjoyment of her dower cannot begin until the death of her husband, and even then not until the part of the estate to which she is entitled is allotted to her. During her husband's lifetime her right is said to be inchoate upon his death the right becomes consummated. After her dower has been set apart she becomes a tenant for life of the portion so set apart for her. The inchoate right of the wife to dower is as much entitled to protection as the vested rights of the widow's. It is an interest and right of which she cannot be divested except by her consent or by her dying before her husband, and she may, during the lifetime of her husband maintain an equitable action for the protection of her inchoate right of dower from the fraudulent acts of her husband. The right of the widow to dower is to be determined by the law of the place where the subject matter of the claim is located.
We will now consider the requisites to perfect the widow's right to dower. These are (1) marriage, (2) seizen of the husband at some time during the existence of the coverture, (3) death of the husband. The right of dower attaches upon the land immediately upon marriage or as soon after as the husband becomes seized but the marriage must be a legal one, for a void, there shall be no dower. If voidable only and not dissolved in the life of the husband, the widow will be entitled to dower. In order to entitle the widow to dower at common law there must have been a seizen in the husband during coverture. A title to dower cannot arise except in respect to lands or tenements, of which the husband was seized and that seizen must be during coverture and this rule is based upon sound reasoning for it would be absurd that a title commencing with the marriage contract should relate back to all property of which the husband had at any time, at any period of his lifetime, been seized, and his seizen of which was previously determined.

During the life of the husband the right to dower is inchoate. Upon his death this right becomes consummated. It is the natural death and not the civil death that is here referred to. Where a person goes abroad and has not been heard from for seven years he will be presumed to be dead, and rule applies to persons away from their usual places of resort and of whom no account can be given, and also, under some circumstances, if the party whose death is assumed is aged, infirm or ill, when last heard from, or had been
exposed to great danger, as by shipwreck, or if he had gone to sea in a vessel that had never been heard from.

But there are some classes of cases in which even when these requisites are found, the widow would not be entitled to dower. For instance, first, if divorced a vinculo matrimonii during coverture, second, voluntary elopement and adultery, third, if the husband has been attainted of treason, fourth, if the husband is an alien.

A divorce a vinculo matrimonii makes the marriage void ab initio and bars the wife's right to dower, and therefore the person claiming dower must have been the wife of the husband at the time of his death. A divorce a mense et thoro at common law does not alter the relation of the parties and is not therefore a bar of dower. A divorce, dissolving the marriage contract on the ground of the adultery of the husband does not deprive the wife of her right of dower in his estate. But if a wife commits adultery and elopes she forfeits her dower, unless the husband is willingly reconciled to her and permits her to cohabit with him again. If the wife be forcibly taken away from her husband, and continue with the man against her will, her right to dower will not be forfeited, but although taken away by force, if she afterwards remain with the adulterer she will be barred of her dower. Whether the wife leave her husband with or without his consent, and live in adultery, she will nevertheless forfeit her dower, if there be no
subsequent reconciliation between them. So adultery is a bar to dower although committed after the husband and wife have separated, by mutual consent. If the wife leaves her husband’s house in consequence of his cruelty and commits adultery without reconciliation she is barred of her right to dower. The husband will not be obliged to take his wife back again after she has eloped from him and committed adultery. If during the elopement, the husband purchase lands and alien them, or sell those of which he was seized at the time of his wife’s leaving him, and he afterwards becomes reconciled to her, she will be entitled to dower of all such lands.

By the common law if a man was attainted of treason or felony his widow was thereby barred of her dower. But by an early statute, an exception was made in favor of aliens, married to Englishmen, by licence from the King. And by a later English statute all subjects or persons naturalized are entitled to the rights of natural born subjects.

In considering this subject it is necessary to keep in mind the distinction between the class of property upon which this right may attach, and the amount of interest required to exist therein, as a requisite. Land is, as a general rule, subject to dower, but dower does not attach upon every interest in land. Thus, an estate for life is an interest in land and is called real property, but according to the rules of common law it is not subject to dower. The widow is entitled to dower not only in the land, but also in all incorporeal hereditaments that savor of reality. And
the widow's dower rights extend to equities of redemption. The widow is also entitled to dower in base or qualified fee and estates tail. Having considered the kinds of property subject to dower, we will now consider the amount of interest the husband must have in order to entitle the wife to dower.

The estate must be one the issue of the wife might inherit it. It is not necessary to the attachment of dower that issue capable of inheriting should actually be born, but the possibility is enough. But the wife must, however, at the death of her husband be of such an age as to have had a possibility of bearing issue and at common law this age was nine years. But on the other hand the law does not set any bounds to the possibility of having issue at the most advanced age. And it has even been held that if a man marry a woman one hundred years old she shall have her dower, though by nature she can not have issue. The estate of the husband must confer a right to the immediate freehold, and dower is not allowed in estates of remainder or reversion expectant upon an estate of freehold and hence if the estate of the husband be subject to an outstanding freehold estate which remains undetermined during the marriage, no right of dower attaches for the seize of the freehold is in the tenant for life, and the remainder is not an estate of inheritance in possession. Where there is a vested freehold estate in a third party between the freehold and the inheritance of the husband, during the continuance of that
estate, dower will not attach. It is not enough that the husband is seized of an estate of freehold in possession and an estate of inheritance in remainder or reversion, the inheritance as well as the freehold must be in possession. In other words it must be the immediate inheritance and not an inheritance expectant upon an estate of freehold in any other person between the freehold and inheritance of husband. An estate for years or other chattel interest going between the freehold and inheritance of the husband will not prevent dower from attaching, subject to the term of years or other intervening chattel interest and her dower does not take effect until this interest is determined.

To let in the title of dower, however, the particular estate must determine in the lifetime of the husband and if the wife should survive the husband and afterwards during her lifetime the particular estate should determine she would not thereby acquire any right to dower, because there was no seizen during the coverture of such an estate as her title could attach upon. A widow is not entitled to dower of a mere annuity granted to the husband and his heirs nor is she dowable of lands assigned to another woman in dower. A widow is not entitled to dower of a trust estate at common law and she never was allowed dower of a use. A woman, divorce a vinculo matrimoni, on the ground of the adultery of the husband, is not entitled to dower in the lands of which he became seized after, and of which he was not seized before divorce. As the wife is only
entitled to dower in such estates as the husband was seized at some time during coverture, it follows that any effectual alienation before marriage places the estate beyond the reach of the wife's right to dower. But where a conveyance is made on the same day of the marriage, although before it is solemnized it is nevertheless held that the wife's right to dower attaches. In considering the effect upon the right of dower of conveyances made before marriage, it is sometimes necessary to distinguish between alienation which are voidable only, and those which are void, for although the alienation was voidable if it was not avoided during the coverture there will be no right of dower. But if alienation is wholly void the seize never having been transferred to the aliennee, remain in the husband and became subject to the wife's right to dower. Now after the wife's right to dower has once attached it is not in the power of the husband alone to defeat it, by any act in the nature of an alienation. It is a right which attaches by operation of law, which although it may never become consummated, for the wife may die before the husband, yet it is a right which attaches upon the land the moment there is marriage and seize. Therefore the alienation of the husband whether voluntary or involuntary, will confer no title on the aliennee, as against the wife in respect of her dower, but she will be entitled to recover against such aliennee in the same manner as she would have recovered against the heir of the husband, had the husband died seized.
PART II.

ILLINOIS STATUTES ON THE LAW OF DOWER.

Dower in Illinois is a common law, not a statutory right. It has been enforced in Illinois as a part of the common law of the State. From the beginning of its existence as a state, excepting wherein it has been modified or extended by statute, beyond the limits of the common law. In order to investigate this subject, it is necessary to inquire into the nature and origin of the estate of dower and to do this the all of the common law must be invoked as the right of dower is given by that law, and in this state remains the same and is unimpaired by legislative innovation.

Having discussed in Part I, the common law doctrine of dower and the principles therein involved, I will proceed to discuss the anomalous forms which the law of dower has assumed in Illinois in addition to or in limitation of the common law theory.

The earliest act in this state in relation to dower is the act of Feb. 12, 1819, entitled An Act for the Speedy Assignment of Dower. The first section provides that when the heir or other person having the next immediate estate of inheritance, does not assign to the widow within one month after the death of her husband her dower interest, then the widow is entitled to recover her dower by the writ of dower, against the tenant in possession, or against such person as claimed the right of inheritance.
Sec. 2 of this act provides that after the widow has recovered judgment for the recovery of her dower, she shall also be awarded reasonable damages from the time of demand and refusal to assign to her, her dower, and a writ of seizen shall issue to the sheriff or coroner of the county whose duty it is to see that her dower be properly assigned to her by three disinterested freeholders of the county and they must take an oath before a justice of the peace to the effect that they will assign to the widow her dower without showing any partiality, also that they will assign it as conveniently as possible.

Sec. 3 provides that if there can be no division of the estate by meets and bounds, she shall receive as her dower one-third of the rents and profits and if she allow waste to be committed after her dower has been assigned she shall forfeit that part on which the waste has been committed to the one who has the immediate estate of freehold. And it shall be the duty of the widow to keep the part assigned to her as dower in as good repair as it was when assigned to her. And when the waste is caused by negligence, or suffered to be done by her the damages are to be recovered by an action of waste. The second act in Illinois relating to this subject was an act for the speedy assignment of dower and partition of real estate. It was approved Feb. 6, 1827 and in force June 1st, 1827. Section I of this act corresponds with Sec I of the previous act. Sec. II provides that a widow claiming dower may file
her petition in the Circuit Court of the county stating her claim, and the lands in which she claims dower, stating the names of the parties against whom the petition is filed and praying that dower be assigned to her. And the clerk shall issue a summons to the parties named in the petition and against whom it is filed to appear in the next term of court and answer the complaint. This summons is to be served by the sheriff the same as other writs. If any of the parties are unknown or do not reside in the county it is the duty of the clerk to advertise in the nearest newspaper in the state for four successive weeks, notifying them that a petition has been filed requiring them to appear at the next term of court, and show cause why dower should not be assigned. Sec. III provides that where the widow's claim to dower may be contested, the parties wishing to contest must enter their appearance and when they do so the court shall proceed to try the cause.

Sec. 14 provides that when any of the parties, defendants or minors, and without guardian, the court shall appoint a guardian ad litem for such minor.

Sec. V provides that when the Court, adjudges that the widow is entitled to dower it shall together with a description of the land allotted to her, be entered of record. This section as regards the appointment of commissioners and their duties, corresponds with Sec. II of the previous act. By this section the widow is entitled to the homestead of the husband. After the commissioners
have allotted to the widow her dower, they must make a return to the court showing the part allotted and if the court approves it, he takes the part allotted for her natural life. Sec. VI of this act corresponds with Sec. III of the previous act. Sec. VII provides that where the land to which the widow has claim lies in different counties she may proceed in a circuit court of the county where the lands lie and when the court has approved the report, assigning dower it shall cause the widow to have possession by a writ for that purpose and she shall be entitled to damages from the time of her demand and the refusal to assign her dower and these damages may be assessed by the court or if necessary by a jury.

Sec. VIII provides that the widow may claim the possession of the dwelling house free from rent or molestation until her dower is assigned to her.

Sec. IX provides that if the lands cannot be divided without injury a jury may be empaneled for the purpose of estimating the yearly value of the widow's dower therein and the court shall give judgment that there be paid to the widow in lieu of dower on a day named the sum so assessed as the yearly value of her dower, and she shall receive the same sum on the same day in every year thereafter, until her death. And a jury may also assess the damages which may have occurred down to the time of rendering the verdict.

Sec. IO provides that the heirs or any person interested in the land may petition the court to have the widow's dower assigned
to her, and the procedure is the same as in the same as in other cases.

Sec. II relates to the effect of divorce on dower and provides that if a woman be divorced from her husband for the fault of the husband she shall not lose her right to the dower, except where the marriage was void from the beginning. But if divorce be for her fault she forfeits her right to dower and where divorce is for the fault of the husband he shall lose his right to curtesy.

Sec. 12 provides that if the wife of her own will, leave her husband and commit adultery she shall forfeit her dower unless the husband be voluntarily reconciled to her and allow her to dwell with him again. Sec. 12 provides that when any person, by last will or testament, devise his or her real estate to two or more persons, such persons may petition the court and have a division of the lands made agreeable to the meaning of the will and commissioners are appointed for this purpose. And after they make the partition and make their report to the court and it is approved by the court, it shall be entered of record and shall be conclusive to all concerned.

Sec. 14 provides that where the real estate of any person dying intestate shall descend to two or more children and the same be not divided and they are desirous of having the same divided the circuit upon application may order a division of such land agreeable to the parties interested. This partition is also
done by commissioners, and their report when approved by the court shall be conclusive of all parties concerned.

Sec. 15 provides that all the devisees, heirs, or owners of lands, tenements, or hereditaments, as aforesaid, or guardians of such as are under age, not applying for such division, shall have notice of the application for such divisions to be published by summons duly served or by advertisement to be published for four successive weeks, in the nearest newspaper, to the premises, printed in this state.

Sec. 16 provides that when the lands are not capable of division they are to be sold and money paid to the owner, as the Court shall direct.

By Sec. 17 the act of Feb. 12 1819, entitled An Act for the Speedy Assignment of Dower and also An Act for the Partition of Land, approved Feb. 20, 1819, are repealed.

Sec. 18 provides for the compensation of the commissioners.

The revised law of 1835 relating to this subject is exactly the same as the act of 1827 entitled An Act for the Speedy Assignment of dower and Partition of Real Estate.

The act of 1845 entitled "Dower" approved March 3rd, 1845, provides in Sec. 1 that a widow shall receive as dower one third of all the lands of which her husband was seized of an estate of inheritance, at any time during marriage, unless she relinquished her right in legal form.
Also that equitable estates and all real estates contracted for by the husband in his life time and the title to which may be completed after his death are subject to dower.

By Sec. II the widow is entitled to dower of the estate of her alien husband the same as if her husband had been a native born citizen of the United States.

Sec. III provides that when a person seized of an inheritance in land, executes a mortgage before marriage, his widow is not deprived of her dower against any person except the mortgagee and those claiming under him.

Sec. IV provides that when the husband purchased lands during coverture the widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him although she did not join in the mortgage. When the mortgagee or those claiming under him shall after the death of the husband cause the land mortgaged to be sold, the widow is entitled to the income of one-third part of the land for life.

Sec. VI provides that a widow is not entitled to dower in lands mortgaged to her husband, unless he gets the absolute title during marriage.

Sec. VII When an estate in lands is conveyed to a person and his intended wife, or to such intended wife alone, or to some one in trust for them, or wife alone, for the purpose of creating a jointure and by her consent taken in lieu of dower, this bars her
right to dower.

Sec. VIII provides that the wife shall be concluded to have assented to the jointure if she be of full age, by becoming a party to the conveyance and if she is an infant by her joining with her father or guardian in the conveyance.

Sec. IX provides that if the jointure is without her consent she shall be entitled to make an election whether to accept the jointure or take her dower but she is not entitled to both.

Sec. 10 provides that where land is devised to the widow she has an election whether to take under such devise or to renounce it and take her dower and her share in the personal estate.

Sec. 12 provides that the widow shall be deemed to have taken such devise or jointure unless she renounce such devise or jointure within one year after the probate of the will, and she shall deliver a written renunciation to the probate court of the proper county and this written renunciation is filed in the office of the probate justice of the peace and bars any claim which she may afterwards set up. After this is done she is entitled to her dower in the lands or share in the personal estate of her husband.

Sec. 12 provides that where a woman is divorced from her husband on account of his misconduct, except when the marriage is void from the beginning, she does not lose her dower nor jointure. But if the divorce is for her fault she loses her dower and if the divorce is for the fault of the husband he loses his right to cur-
Sec. 13 provides that the wife's right to dower and jointure is barred if she voluntarily leave her husband and commit adultery unless the husband afterwards becomes reconciled to her and allow her to live with him again.

Sec. 14 provides that no conveyance executed by the husband without his wife's joining with him, and no judgment against him and no negligence, default, or crime of the husband shall bar her right to dower or jointure or prevent her from recovering it if she is otherwise entitled to it.

Sec. 15 provides that where the wife survives the husband and there are no children nor descendents of children the widow may if she wish, take in lieu of her dower one half of all the real estate remaining after the payment of claims against the estate, but this section also provides that if the dower has already been assigned to her she must make such new election one month after the payment of such claims, that is after she has been notified.

Sec. 16 provides that if the husband exchange his lands for other lands the widow cannot have dower in both but must make an election, and if within one year no proceedings are commenced for the recovery and assignment of dower in the lands given in exchange, she is deemed to have elected to take dower in the lands taken in exchange.

Sec. 17 provides that the person having the next estate of
inheritance in which estate the widow is entitled to dower, must assign such dower as soon as possible, after the death of such husband.

Sec.18 provides that if the heir or other person does not assign the widow her dower within one month after the death of the husband, she may sue for and recover same in the manner described against anyone claiming right of possession in the estate.

Sec.19 provides that the widow claiming dower may file her petition in chancery in the circuit court of the county against the parties stating their names if known, stating also the nature of her claim, and the lands in which she claims dower and praying that her claim be allowed. The clerk then issues a summons to the parties to appear, and answer the complaint. This summons is as other writs of process served by the sheriff. If the parties do not reside in the county the clerk shall cause an advertisement to be published notifying them of the filing of the petition against them and require them to appear at the next term of the circuit court, and show why dower should not be assigned. And this publication is deemed sufficient notice and anyone interested may appear and contest the widow's right to dower.

Sec.20 provides that if the names of any of the parties interested are known, they may be proceeded against under the name of persons unknown and in this case an affidavit must be filed by the person wishing to make any unknown person a party to the effect that the names of such persons are unknown, and process shall issue
accordingly. And notice given by publication as required is sufficient to authorize the court to hear the suit and all judgments etc., shall be as binding as if the parties had been proceeded against in their proper names. It is also provided by this section that if any of the parties reside out of the state they shall within one year after notice in writing or within three years after such decree if notice has not been given, appear in court and petition to be heard in regard to such decree and they shall pay the costs which the court deems reasonable in that behalf. The person petitioning may appear and answer, and such proceedings had as if the defendant had appeared at the proper time and no decree had been made. If the decree is not set aside, in the manner aforesaid, after three years from the making it is deemed confirmed against such non-resident defendant or any person claiming under him and at the end of three years the court may make such farther order in the premises as shall be required and shall be just.

Sec. 21 provides that the answer to such petition shall be sworn to and where the widow's claim to dower may be contested the parties contesting must enter their appearance and then the court will proceed to try the cause as the circumstances require. When any of the defendants are minors and without guardians the court shall appoint guardians for such minors.

Sec. 17 provides that petitions for the recovery of dower shall be heard and determined upon petition answer, exhibits, and other
testimony, without the necessity of formal pleadings.

Sec. 24 provides that where the court adjudges that the widow shall recover her dower, it together with the description of the lands shall be entered of record and the court shall appoint three disinterested commissioners, and they shall take an oath before a justice of the peace that they will impartially allot to the widow her dower.

Sec. 25 provides that the commissioners shall allot to the widow her dower by meets and bounds, according to quality and quantity but the widow shall have the homestead if she so desire, and they shall make return to said court under their hands and seals. And if the return is approved by the court, she takes an estate for her natural life, of the part allotted to her. If the estate has been allotted to the widow by virtue of section 15 of this chapter she shall take such an estate in fee simple forever.

Sec. 26 provides that if the widow claims dower in lands lying in different counties she may proceed in the circuit court of the county where the lands lie and if the lands lie in different counties, in the county where the greatest part of the land lies. But if the greatest part does not lie in any one county then in any county in which any of the lands lie. When the report assigning dower has been approved the court causes the widow to have possession. And the widow is also entitled to damages from the time of her demand and refusal to assign her her dower. These damages may
either be assessed by the court or a jury and if necessary a jury may be appointed for that purpose.

Sec. 27 provides that in all cases the widow is entitled to the dwelling house in which her husband most usually dwelt before his death, together with the outhouses and plantation belonging to it, free from rent and molestation, until her dower is assigned.

Sec. 28 provides that if the commissioners report that the land or other estate is not capable of division, without injury, a jury may be empaneled for the purpose of finding out the yearly value of the widow's dower therein, and after they have done this the court shall render judgment that there be paid to the widow in lieu of dower, on a day named therein, the sum assessed as the yearly value of her dower, and the same sum on the same day in every year thereafter during her natural life. And the jury may at the same time assess the damages which may have occurred down to the time of rendering the verdict.

Sec. 29 provides that the commissioners appointed to assign dower may make reports to the court during the same term at which they were appointed; and the court may at such term make all such orders upon such return as may be necessary to a final dispensation of the case.

Sec. 30 provides that no woman endowed of any land tenements, or hereditaments shall wantonly commit or allow any waste thereon; if she does she forfeits that part of the estate upon which such
waste is made, to the person having the immediate estate of in-
heritance, in remainder or reversion. And in case of negligence
or inadvertent waste done or suffered to be done by her, damages
assessed are to be recovered by an action of waste.

Sec. 31 provides that the heirs, or their guardians if they
are under age, or any person interested may also petition the court
to have the widow's dower assigned.

Sec. 32 provides that the commissioners appointed to assign
the widow her dower shall each receive one dollar a day each to
be taxed as other costs.

Sec. 33 provides that at the death of the widow such land or
estate descends in accordance with the will of the husband and if
he did not have a will, it will descend according to the law, pro-
viding for the distribution of intestate estates.

Sec. 34 provides that no widow who, as executrix or administr-
rix, sells and conveys, for the payment of debts, real estate of
her husband by order of the court and which she is by law entitled
to dower, shall be deemed to relinquish her right to dower by rea-
son of such conveyance, unless her relinquishment shall be speci-
fied in such deal or conveyance. The next act in this state is
an act in relation to certain decrees in chancery and orders of
court. It was in force Feb. 18, 1859, and approved the same
date.

It provided that in all cases where an order of a court of
record is made a lien on lands of a part of such order or decree
in any courts in this state, to secure the payment of the yearly value of the widow's dower, and sales of land may become necessary to satisfy any such sum or sums of money and costs, as they may become due, such sales shall not extinguish or release the lien upon such land for the money that may become due after proceedings are instituted to sell lands under such order or decree, and executions may issue to enforce such order or decrees as payments may become due according to the practice in courts of law or equity.

The act to reform the probate system was in force Feb. 21, 1859 and approved the same date. This act gives the county courts of this state concurrent jurisdiction with the circuit court in the assignment of dower. Where petition is presented for the sale of real estate to pay debts of deceased and it appears that there is a dower interest in the lands sought to be sold, it shall be lawful for the court under the petition of the person entitled to dower, to appoint commissioners to assign dower to person entitled. The same as provided by the circuit court of this state. This act also provides that the county courts shall provide themselves with a book and keep it in the form required, and failure to do this shall be deemed contempt of court.

It provides for the fees and when the county court will transact probate business.

The act of Feb. 16, 1865 entitled An Act in Relation to Assignment of dower provided that where commissioners are directed to
allot dower in several tracts of land, it is not necessary for them to allot dower in each tract, but they may allot such dower in the whole of such lands in such manner as they deem best but subject to the approval of the court.

The act of Feb. 16, 1865 entitled an act to authorize a wife whose husband is a lunatic or distracted to realize dower in certain cases.

It provides that when the husband is disabled the wife may join in deed and relinquish dower and homestead of husband's estate and she may also join and convey her own real estate the same as if the husband were under no disability, and in case of such sale the proceeds of the wife's land are to be paid to her. And in case of any such conveyance or release by the wife of her right to dower or homestead, the proceeds of the sale of any such interest of the wife may with the consent or order of the court be paid to the wife as sole property. The interest if in dower to be determined by the annuity tables, based upon the life of the wife or the proceeds may be so invested under order of the court as to secure to the wife the same right and benefit in the same, and the income thereof as she would have if the same had not been sold and her husband had died. And any agreement made between the wife and the guardian or conservator for disposing or investing such proceeds be approved by the court and any order or decree made in relation thereto shall be binding on all interested in the lands sold or the
proceeds of such sale and may be enforced by an action at law or equity and the wife has these remedies in her own name alone. This act is applicable to guardians of idiots.

The act of Feb. 13th, 1865 entitled An act to amend Chap. 34, Revised Statutes, entitled dower, provides how dower is to be assigned when there are several tracts of land in which the widow may be entitled to dower. The lands not being incumbered by a deed of trust or mortgage the commissioners may assign her her dower in a body.

The act of April 16, 1869 entitled an act to amend Chapter 79 revised Statutes of 1845, provides for solicitor's fees in suits for partition and assignment of dower.

The last act in this state relating to this subject and the act now in force is the act approved March 4th, 1874, and in force July 1, 1874, entitled an act to revise the law in relation to dower. As this act corresponds in many sections with the act of 1845 and having already stated that act, I will simply state the modifications and extensions made.

Sec. 1 is the same as sec. 1. of the dower act of 1845, with the provision abolishing curtesy added, thereby giving the husband dower the same as the wife.

Sec. 2 to 9 corresponds with the same sections of the act of 1845 and they are extended so as to apply to the dower of the husband the same as to the wife.
Sec. 10 provides that any devise of land or interest in land or any provision made by the will of deceased husband or wife for a surviving wife or husband shall unless otherwise expressed in the will bar dower in the lands of the deceased unless he or she shall elect to renounce the benefit of the devise or other provision, in which case he or she shall be entitled to dower in the lands and to one third of the personalty after the payment of all debts.

Sec. 11 provides that the election to take jointure devise or other provision must be made within one year after probate of will.

Sec. 12 is the 15th section of the act of 1845 extended to dower of husband. It has the following changes. It requires the descendant to die testate, leaving no child or descendants of a child, in which case the surviving husband or wife may, if he or she elect, take in lieu of dower whether the right to such dower has accrued by renunciation or otherwise, and of any share of the personal estate which he or she may be entitled to take with such dower absolutely and in his or her own right one half of all the real or personal estate which remains after the payment of debts, and claims against the estate of such deceased husband or wife. This section also provides that the election be made within two months after the payment of debts, whether dower has been assigned or not.

Sec. 16 is the same as Sec. 11 with the provision extending it to surviving husband added.
Sec. 14 is the same as section 12 except as adapted to substitution of husband's dower for curtesy.

Sec. 15 is the same as section 13 except that it is made to apply to husband equally with wife.

Sec. 16 corresponds with Sec. 14, except as extended to protect husband's dower or jointure in wife's lands as well as her dower or jointure in his.

Sec. 17 and 18 correspond with sec 16 and 17 with the extension of dower to husband added.

Sec. 19 is the same as sec 18 with remedy by petition added. It says that such survivor may sue for and recover dower by petition in chancery against such heir or other person or any tenant in possession or any other person claiming right or possession in said estate.

Sec. 20 is in lieu of first part of section 19 which required petition in circuit court. This section says petition may be filed in any court of record of competent jurisdiction in the county where the estate or some part of it is situated.

Sec. 21 This section provides that infants may petition by guardian or next friend or by conservator. When a person under guardianship is defendant he may appear by guardian or conservator or the court may appoint a guardian ad litem for such person and compel the person appointed to act.

Sec. 22 is the 19 section rewritten and provides that the
petition set forth the nature of the claim and specify the premises in which dower is claimed, also setting forth the interest of all parties interested so far as known to the petitioner, and praying for the assignment of dower.

Sec. 20 provides that occupants and all interested parties not petitioners shall be made defendants to such petition.

Sec. 24 provides that when the minor or the amounts of their interests is unknown to the petitioner or their interests uncertain or their ownership depends upon an executory devise or the remainder shall be contingent or, that the parties cannot be named the same must be stated in the petition.

Sec. 25 This section is part of sec. 20 of the act of 1845 rewritten. It provides that when the person interested in the premises are unknown they are to be made parties in the style of unknown owners or as the unknown heirs of any person who may have been interested in the same.

Sec. 26 is in lieu of Sec. 20 of act of 1845. It provides that defendants be summoned the same as in suits in chancery.

Sec. 27 is also part of Sec. 20 rewritten and provides that the unknown parties may be notified the same as in cases in chancery by advertisement.

Sec. 28 provides that the parties are to be notified the same as in cases in chancery, when it appear by affidavit filed as required in chancery that the defendant is out of the state or cannot be found after due inquiry, or conceals himself in this state,
so that process cannot be served on him and the affiant shall state the residence of the defendant, or if it cannot be found out after diligent inquiry, he may be notified the same as in such cases in chancery.

Sec. 29 Where the defendants are non-residents they may be served the same as defendants in chancery.

Sec. 30 This section provides that when any of the parties defendant shall not be summoned, served with a copy of the petition or does not receive the notice required to be sent him by mail, any of the parties may appear and answer the petition the same as other cases in chancery.

Sec. 31 provides that petitioner may require defendants to answer petition on oath and this oath shall have the same effect as an answer under oath in chancery.

Sec. 32 provides that the party interested may during the pendency of any such suit or proceedings appear and answer the petition and assert their rights by way of interpleader and the court shall decide upon the parties appearing the same as though they had been made parties in the first place.

Sec. 33 This section corresponds with section 23 of the act of 1845 with the provision that the petition shall also be heard upon the replication. It also says that the court may direct the issue or issues to be tried by a jury as in other cases in equity.

Sec. 34 is the same as sec. 24 of the act of 1845, extended to dower of husband.
Sec. 35 This section is the first part of sec. 25 of the act of 1845.

Sec. 36 This section corresponds with the first part of section one of the Act of Feb. 13, 1865.

Sec. 37 provides as in section 25 of act of 1845 for the husband or wife taking homestead and if he or she does take homestead it shall not affect his or her estate of homestead. But if to the dower is allotted out of the land such allotment if accepted, shall be a waiver and release of the estate of homestead of the person entitled to dower and his or her children unless it shall be otherwise ordered by the court.

Sec. 38 is the same as the first part of the 25th section of the act of 1845. It provides that the report of the commissioner shall be in writing and signed by at least two of them, showing what they have done, if they have made a division and they shall describe the part allotted by metes and bounds and if this report is approved by the court it shall give to the person to whom the estate is allotted an estate for his or her natural life. And the court by a writ directed to the sheriff shall cause the person to have possession.

Sec. 39 corresponds in most particulars with section 28 of the act of 1845. It provides that when the estate consists of a mill or other tenement which cannot be divided without injury and damage to the whole, the dower may be assigned of the rents, issues,
and profits thereof to be had and received by the person entitled thereto as tenant in common with the owners of the estate, or a jury may be empannelled for the purpose of inquiring of the yearly value of the dower therein and they shall assess the same accordingly and the court shall decree that there be paid to such person in lieu of dower on a day named, the sum assessed as the yearly value of such dower and the same amount on the same day of every year following until his or her natural death and the same may be made a lien on any real estate of the party against whom such decree is rendered or cause the same to be otherwise secured.

Sec. 40 provides that whenever such lien is made on any real estate and it becomes necessary to sell the real estate to satisfy any such installment, the property shall be sold subject to the lien of the installments, not then due, unless the court shall at the time direct otherwise. And subsequent sales may from time to time be made to enforce such liens as the installments may become due until all the installments are paid.

Sec. 41 This section is the same as the last part of sec. 26 of the act of 1845 relating to the recovery of damages from the time of his or her demand and refusal to assign dower. The damages may be assessed by the court or by a jury impaneled for the purpose.

Sec. 42 The commissioners are at all times subject to the direction of the court and any of them may be removed and others appointed before the final confirmation of the report.
Sec. 43 corresponds with section 31 of the act of 1845.

Sec. 44 provides that when application is made to the county court to sell the real estate of the deceased for the purpose of paying debts or for the sale of real estate of any ward as authorized by law and it appears that there is a dower or homestead interest in the land, the court may in the same proceeding, on petition of the person entitled to dower or homestead or upon the petition of the executor, administrator, guardian or conservator, cause the dower or homestead to be assigned.

Sec. 45. This section corresponds with section 30 of the act of 1845 with the provision for general liability substituted for liability for waste. It is also changed so as to apply to husband endowed.

Sec. 46. This section takes the place of the 34 section of the act of 1845. It provides that no person shall be deemed to have relinquished any right to dower, who sells and conveys lands by order of the court for payment of debts, unless his or her relinquishment is specified in the deed or conveyance.
PART III.

DEVELOPMENT OF THE LAW OF DOWER IN ILLINOIS.

The earliest case coming before the Supreme Court of the United States, involving this subject, was the case of Sisk vs. Smith, decided by the Court in the year 1844. In this case the Court in a lengthy opinion discuss the adoption of the common law theory in Illinois. And they say that as a part of the common law it has always been a part of the law of this state, except as it has been extended by statute, beyond the limits of the common law.

The husband and wife are by the first section of the Act of 1874, entitled An Act to Revise the law in relation to Dower in Illinois, placed upon an equality in their rights to each other's property, except as to the widow's award, the estate of curtesy being abolished by this act. Neither can by will deprive the other of his or her right to dower in the real estate and one third of all the personal estate, after the payment of debts and costs of administration.

And by the 10th section of the act of 1874 in relation to dower, where no provision is made in the will of a descendant, leaving descendants, for his or her wife or husband. The estate as to such survivor is intestate, and he or she takes one third of the personal property after the payment of debts, and dower in the land according to the provision of the statute. The right of such
husband or wife to one third of the personal estate remaining rests on a basis as solid as the right to dower in land. The case of In re Taylor's Will, 55 Ill. 252, and Rawson et. al. vs. Rawson, 52 Ill. 62, establish this principle.

The 12th section of the act of 1874, in relation to dower provides, that if the husband or wife die testate leaving no children or descendants of a child, he or she is entitled to renounce under the will, and take as dower one half of the real and personal estate, absolutely, after the payment of debts. And by the rules of descent in this state, if the husband or wife die intestate, without issue, he or she takes one half of the real estate and all the personal estate absolutely after the payment of all just debts.

The definition of dower at common law has not been changed by our statute and is the same as given by Blackstone, Vol. 2, 129, and Kent's Comm. Vol. 35.

The incidents of dower in this state are the same as at common law, namely, there must have been a lawful marriage, seizure of the husband at some time during the marriage, and death of the husband.

In this state dower is barred by the fault or misconduct of the husband or wife, where the marriage was void ab initio; and by the acceptance of other provisions for her by the will of the husband; by an anti-nuptial contract; and by jointure.

In Rendleman vs. Rendleman, 118 Ill. 257, the Court say in their opinion, referring to the 14th Section of the Dower Act, that they...
regard it as conclusive as regards the parties. It is as follows:

"If any husband or wife is divorced for the misconduct or fault of the other, except where the marriage was void from the beginning he or she shall not thereby lose the dower nor the benefit of any such jointure, but if the divorce was for his or her own fault or misconduct, such dower or jointure and any estate granted by the laws of this state, in the real or personal estate of the other, shall be forfeited.

In Collins vs. Woods et al., 63 Ill 285, the Court held that a bequest with provisions made expressly in lieu of dower, will bar her dower if accepted, with a proper understanding of her position.

In Gordon vs. Dickison, 131 Ill 141, the Court say that the statute provides that where a wife leaves her husband and commits adultery she is barred of her right of dower, but she is not barred by her adultery committed after she has been wrongfully deserted by her husband.

In Barth vs. Lines, 118 Ill 374, wherein there was an anti-nuptial agreement entered into by the parties of mature years, and at the time understood what they were doing, they each released and waived their right of dower in the land and estate of the other, and each should retain their separate property, which they then had or which they would afterwards acquire, free from any claims growing out of the marriage. In this case the Court held that this agreement amounted to and operated as a bar to the wife's claim of
dower in the lands of the husband, resting upon a consideration of his release of his legal rights in her separate estate.

In McGee vs. McGee, 91 Ill 548, the Court say that any reasonable provision, secured out of either realty or personalty, which an adult, before marriage, agrees to accept in lieu of dower may be regarded in equity, though not a statutory jointure, as in the nature of a jointure, and operates as a bar to dower. This applies where, in the contemplation of marriage, parties agree that each shall retain and possess his own property forever, free from the right of the other, and forever renounce all claims in law and equity by way of dower or curtesy. Where under the law the husband, but for this agreement would succeed to the absolute ownership of the personal property of the wife, and would be entitled to curtesy in her real estate, it cannot be said the husband parts with nothing which the wife can accept in lieu of dower.

By the second section of the act of 1874 in relation to dower the right of dower is extended to husband or wife of an alien. In this state the right of dower attaches to all lands of which the husband or wife was seized of an estate of inheritance at any time during the marriage, unless relinquished in legal form. This was held in Scribling vs. Ross, 16 Ill 122, and in Davenport vs. Farrar, 1 Scam. 314.

By the first section of the act of 1874 in relation to dower equitable estates are made subject to dower, which is an extension of the common law. This statute making equitable estates subject
to dower, clearly refers to equitable estates of inheritance only.

In considering the subject of dower in Illinois it is important to keep in view that property upon which that right may attach, and the amount of interest which may subsist therein as a requisite to its inception.

There are classes of property which are not subject to dower because they are strictly personal in their nature, and as regards to these it makes no difference what the extent of the interest or the nature of the title may be.

Probably the best mode of classification, and the one least liable to lead to confusion and most likely to give a clear idea of the kind of property upon which dower attaches in Illinois, is to divide the cases into two classes. First, those cases which show the kind of property upon which dower attaches and secondly, those cases which show the kind of property upon which this right of dower does not attach.

The cases on these two classes respectively will be cited in order. First cases showing property upon which dower attach.

In Atkin vs. Merrell, 39 Ill 62, the Court say that they regard the doctrine as settled, that an equitable estate of inheritance in real estate, is subject to dower, and if the husband during marriage is seized of an equitable estate in fee, which would on his death descend to his children, it answers the requirements of the statute, giving an equitable estate of inheritance, which becomes at once subject to the dower of the wife.
This principle that dower attaches to equitable estates, is also supported by the cases of Stow vs. Steel, 45 Ill. 328, and Steel vs. Magie, 48 Ill. 396.

In Lenfers vs. Henke, 73 Ill. 405, the question involved was whether the widow's right of dower attaches to mines. On this subject, Mr. Justice Scott, delivering the opinion of the Court, says, that the general rule is that where mines have been opened and worked during the lifetime of the husband, a wife is entitled to dower, but not in mines not opened, and it makes no difference if the mines have been temporarily abandoned, it is only necessary that they were opened in the lifetime of the husband.

The leading case upon this subject is Stoughton vs. Leigh in which it was held that the widow was dowable of all her husband's mines of lead and strata or lead ore and coal in the lands of other persons which had in fact been opened before his death and in which he had an estate of inheritance, and that her right to be endowed of them had no dependence upon the subsequent continuance or discontinuance of working them, wither by the husband in his lifetime or those claiming under him since his death.

Dower is not due of mines unopened at the death of the husband. But if once opened it is not necessary that the husband should have worked them down to the time of his death. Where the deceased is entitled to a conveyance the right to dower attaches. In Owen vs. Robbins, 19 Ill. 554, it was said that under the revised code of 1833...
the right of dower did not attach to a mere contract of purchase, which was not so far executed as to enable the purchaser, while he held it to enforce a specific performance of the agreement. That until a contract for the purpose of lands was executed to that extent, the vendee did not hold such equitable title as gave the wife the right to claim dower in the premises. But under that law if the husband died holding such a contract, and the payment of the purchase money was completed for the benefit of the heirs after his death then she was entitled to dower in the premises, but she was not entitled to dower if the husband assigned or transferred the contract before receiving the conveyance.

In Nicol vs. Ogden, 29 Ill 323, the Court held that a widow's right of dower attached to an executed trust estate in land, but would not on an executory trust.

This case fully recognized the rule which controlled in Owen's case that the husband must hold such an executed equitable estate as to entitle him to be invested with the legal title. To vest the wife with the right of dower in the premises the cases of Stow v. Steel, 25 Ill 328, and Strawn vs. Strawn, 26 Ill 412, and Taylor vs. Kern, 68 Ill 339, illustrate this same principle.

In this state dower attaches to wild and unimproved land. In Schnelby vs. Schnelby 26 Ill 176, the question involved was whether wild and unimproved land was under our statute subject to dower.

The first section of the dower act provides that the widow
shall be endowed of one third part of all the land whereof her hus-
band was seized of an estate of inheritance at any time during
the marriage unless the same shall have been relinquished in legal
form. By this provision it is the character of the title of the
property which determines the right. It is not the accidental con-
dition of the property which controls but the interest or extent
of the title.

The legislature does not say that the widow is entitled to
dower of all the improved lands of which the husband was seized,
but it says of all the lands of which he was seized of an estate of
inheritance. The Court therefore held that the widow is dowable
of wild or unimproved lands. Dower attaches to accretions, to ri-
parian estates. This was held in the case of Gale vs. Kinzie, 50
Ill 132.

In Brown vs. Peterson, 44 Ill 353, the question involved was
whether the widow was entitled to dower in compensation received
by heirs from property of descendent, condemned under power of
eminent domain. The Court held that where lands are condemned
for public improvement, the assessment of the damages therefore,
unless the contrary appears, satisfies all the title to the proper-
ity including the fee simple. And all lesser estates and the widow
having dower in the lands appropriated by the city for public use,
must in equity be held to have dower in the proceeds paid in satis-
faction of a judgment against it, as damages for such appropriation.
In Lieb vs. Montague, 102 Ill 446, the court held that where a person purchasing from the mortgagor assumes to pay the mortgage as a part of the purchase money, if he obtains a discharge of the mortgage.

The Court in the case of Ravenport et al. vs. Farar, in discussing the question as to what estate the husband must have in land to entitle his wife to dower say, at common law a woman is entitled to be endowed of all the lands and tenements of which her husband was seized in fee simple or fee tail general at any time during coverture and of which any issue which she might have had, might by possibility have been heir. In addition to this provision in the common law, equitable estates are now subject to dower and all real estate of every description, contracted for by the husband in his lifetime, the title to which may be completed after his decease. By equitable estates is understood equitable estates of inheritance.

Having considered the first division or the property on which the right of dower attaches, we will now consider the second division, or the property on which dower does not attach.

The estate must confer the right to the immediate freehold. Dower is not allowed in estates of remainder or conversion expectant upon an estate of freehold. And if the estate be subject to an outstanding freehold estate, which remains undetermined during marriage, no right of dower attaches, for the seize of the free-
hold is in the tenant for life, and the remainder is not an estate of inheritance in possession. It is not enough that the husband or wife is seized of an estate of freehold in possession, and an estate of inheritance in remainder or reversion, but the inheritance as well as the freehold must be in possession.

In Strawn vs. Strawn, 50 Ill 333, the Court in delivering the opinion say, that such an estate though it be in fee will not give the wife a right of dower unless by the death of the intermediate freeholder, or a surrender of that estate to the husband, the inheritance becomes entire in the husband during coverture. In this case the surrender never took place, as the reversioner died first and the rule is well settled that a widow is not dowerable of land in which her husband had only a vested remainder expectant upon an estate for life.

This principle was also held in the case of Kellet vs. Shepard, 139 Ill 433.

An estate for years between the freehold and inheritance will not prevent the title of dower from attaching. But the dower attaches subject to the intervening estate.

In Nicol vs. Miller, 37 Ill 387, the Court held that real estate, the stock in trade of a partnership, dealing in land and held in trust, by one of their number for the purpose of their business, is personal property of which the wife of the partner is not dowerable. The same principle is also held in the case of Nicol vs. Ogden, 29 Ill 323.
In order to entitle the husband or wife to dower there must have been a seizen in the husband or wife during coverture.

In Cobb vs. Oldsfield the Court held that to entitle the widow to dower, the burden of proof is upon her to show that her deceased husband was during coverture seized of a legal or equitable estate of inheritance in the premises.

In Gordon vs. Dickson, 101 Ill. 141, it was held that possession of land under claim of ownership, affords prima facie evidence of seizen in fee and the fact that a party has had possession of land under such claim of ownership and has used it for several years and finally sells and conveys the same, affords sufficient evidence of seizen to entitle the widow to dower. This principle is also held in the cases of Nicol vs. Ogden, 29 Ill. 323, Bailey vs. West, 21 Ill. 290, and Nicol vs. Todd, 70 Ill. 295.

An estate in fee simple is the highest interest in land known to law and it is unnecessary to add that such an estate is subject to dower in Illinois.

By the 17th section of the act of 1874, the widow is not entitled to dower in lands both taken and given in exchange. She is in such case put to her election as to what lands she shall be endowed.

An estate for life is not subject to dower. It is plain that dower does not attach upon an estate which the husband or wife holds for his or her own life, as the right is but a continuation of a husband's estate.
Where an estate is created for the life of the tenant and the life of one or more third persons it is hardly necessary to add that in this case dower does not attach.

Nothing is better established than the principle that money directed to be employed in the purchase of land, and land directed to be sold and turned into money are to be considered as that species of property into which they are directed to be converted. And this, in whatever manner the direction is given.

Since the statute giving dower in equitable estates, there can be no reasonable doubt of the right to dower in money impressed in equity with the qualities of real estate. And therefore, if a husband or wife contracts to sell and then marry before payment of the purchase money or conveyance, by this contract the land is deemed to be money, and his widow will not be entitled to dower.

In the case of Stookey vs. Stookey et al, 89 Ill 40, the Court said we perceive no difference in principle in the legal effect of an agreement to convey to a stranger for a valuable consideration and an agreement to convey to a child for a good consideration. Long before the testator's marriage to his widow his son had by a full compliance with the terms of the agreement on his part become the equitable owner of the premises and was entitled to a deed from his father who held the naked legal title in trust for him and the subsequent marriage and death of the testator did not invest his widow with a right of dower in the premises as against the son.
Dower as against the vendor's lien for unpaid purchase money.

By purchase money within the meaning of the dower law is money due the vendor of the land purchased on credit, not money borrowed of a third person to pay for the land. In the case of Himgumin vs. Cochrane, 51 Ill 382, the Court held that the widow's right to dower is subordinate to the lien of the vendor for the purchase money. And if the purchaser conveys the property back to the vendor in good faith in order to cancel the indebtedness, his widow, although she does not join in the conveyance is barred of her right of dower.

We shall now consider the right of dower as affected by act of the husband before marriage and during coverture. By the third section of the dower act of 1874, where a person seized of an estate of inheritance before marriage execute a valid mortgage, the surviving husband or wife shall be entitled to dower out of the lands mortgaged as against every person except the mortgagee and those claiming under him.

The widow is entitled to dower immediately after her husband's death. It is provided by statute that the heir or person having the next estate of inheritance of which any person is entitled to dower shall lay off and assign such dower as soon as practicable after the death of the husband or wife of such person. It is also provided that if the dower is not assigned within one month after the death of husband or wife then the survivor may sue for and
recover the same by petition in chancery.

In Whiting vs. Nicol, 45 Ill. 230, the Court say that where the person goes abroad and has not been heard of for a long time the presumption that he still lives ceases at the expiration of seven years, from the period when he was last heard from, and at the expiration of seven years, the widow has a right to sue for her dower.

By statute in all cases in which quality and condition of the property will permit, it is provided that dower be assigned by metes and bounds. In Atkin vs. Merrel the Court held that where commissioners are appointed to allot dower it is their duty to set off to the widow her dower by metes and bounds, according to the quality and quantity of the property. But the widow may retain possession as provided by statute, the dwelling house in which her husband dwelt next before his death. By statute dower need not be assigned out of each tract separately but may be assigned in a body. But the statute does not authorize allotment of dower in one body where different purchasers hold separate tracts.

In the case of Schnebly vs. Schnebly, 26 Ill. 116, the Court say that except by agreement, dower must be apportioned out of each part of the land and not in a part for the whole, and that the commissioners in assigning dower should have reference to quantity and quality. In the case of Haines vs. Herrott, 12 Ill. 447, the question involved was the partition of a certain number of
acres of land between two heirs and the assignment of the widow's dower. In this case the commissioners set off a certain number of acres to each of the heirs and out of one of the heirs share they assigned to the widow her dower, leaving the other heir's part free from dower and the court held that the whole burden of the dower cannot be assigned to the estate of one heir, leaving the estate of the other heir entirely free. The provision of the dower act of 1845, that the widow might retain possession of the dwelling house until her dower was assigned merely afforded additional remedy to enable the widow to enforce her dower and conferred on her no vested right. This was held in Toole vs. Jackson, 16 Ill. Ap. 560.

In Jones vs. Gilbert, 120 Ill. 127, the court said that the widow was not entitled to take homestead and also one third of the entire estate, but she is entitled to dower only in one third of the residue after deducting homestead, and where the entire estate is within the homestead and of less value than one thousand dollars, the widow may claim both homestead and dower, but properly she takes her dower subject to the homestead.

In Walker vs. Duan 106 Ill. 236, the court held that the acceptance of dower from lands other than homestead waives her right of homestead. In Steel vs. Larrambols, 60 Ill. 456, the court say that where a person acquire land subject to a right of dower and afterwards dies, and dower is allotted to his widow, upon the assignment of dower on the elder right, a proportionate part only should be taken from the dower first assigned and the residue from
In Meyer vs. Pffiefer, 50 Ill 485 the court says that the widow cannot complain that the yearly value of her dower in several parcels of land is charged upon all, and not in several amounts on separate parcels. It gives her a higher and better security.

I will now consider the doctrine of estoppel as affecting the right of dower. In the case of McKee vs. Brown, 48 Ill 130, it was held that where a wife joined in a conveyance with her husband releasing her right of dower, she is afterwards, in the absence of fraud, estopped to set up her right to dower. The case of Adams vs. Adams, 79 Ill 517, establish this same principle.

In the case of Allen vs. Allen, 112 Ill 223, the court held that where the widow was a party to a proceeding in which a decree is entered by consent for sale of land free from dower and joins in the conveyance and receives her share of the proceeds, she is estopped afterwards to assert a right of dower in that portion of the proceeds to which the purchaser is entitled.

In the case of Gilbert vs. Reynolds, 11 Ill 130, the court says that a divorced wife is equitably estopped after a delay of fifteen years, with knowledge of the divorce and her husband’s remarriage, both effected twenty years before to assert the invalidity of the divorce and so to claim dower in lands acquired by the husband since the divorce, and by him sold, the second wife
joining in the deed. But the widow is not estopped to assert her right of dower where a purchaser at an administrator's sale pays of a mortgage releasing dower, by any statements made by the administrator at the time of sale that the sale is free from her claim of dower she not being present and he having no authority to make them. This was held in Cox. et.al. vs. Garst,105 Ill 342.

It is also important to consider the statute of limitation as affecting dower in this state.

The present statute in this state, section six, is taken from law 1839. It provides that every person in possession of lands and tenements under claim and color of title made in good faith and who shall for seven successive years continue in such possession and shall also during said time pay all taxes legally assessed on such lands and tenements shall be held to be the legal owner of such lands and tenements to the extent and according to the purport of his or her paper title. All persons holding under such possession devise or descent before said seven years shall have expired and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession, and payment of taxes for the time required shall be entitled to the benefit of this section.

The first case on this subject was the case of Owen vs. Peacock, 38 Ill 33, in this case the court held that under the first section of the limitation act of 1839, a widow must pursue
her remedy as against the party, whose possession conforms to the requirements of the act, within seven years therein prescribed or her claim will be barred.

In the case of Bryan vs. Melton, 125 Ill 647, the Court says that the remedy to enforce the right of dower is embraced within the provision of section six of the act of 1872, in relation to this subject: and a widow must pursue her remedy within the seven years prescribed or her claim will be barred as against the party who has been in adverse possession, for seven successive years, under and claim of title acquired in good faith, and has also during that time paid all taxes on the land. The case of Stowe vs. Steele refer to this same principle.

The next subject to be considered will be damages in actions of dower.

By statute in this state is provided that whenever an action is brought for the purpose of recovering dower, he or she shall be entitled to recover reasonable damages from the time of demand and refusal to assign same, and they may be assessed by the Court or a jury may be empaneled for that purpose.

Damages under the 26th section of the dower act are discussed in the case of Strawn vs. Strawn, 50 Ill 256. In this case the Court says that the widow is not entitled to damages for non-assignment of dower until she makes demand. But an actual formal demand has not been held necessary, if facts appear from which it can be seen
that the heir or remainder man is unwilling and that such demand would have availed nothing, then it is not necessary. Or if the heirs or remainder man are minors then it may be dispensed with, as they or their guardian cannot assign dower. Such a demand would be useless, and a suit commenced by the widow will be a sufficient demand.

But the damages against the minor heir for not assigning dower can be recovered only from the date of bringing the suit. This was held in Bonner vs. Peterson, 24 Ill. 253. This case also establishes the principle that beginning suit is a valid demand under statute.

In the case of Bedford vs. Bedford, 136 Ill. 354, the Court says that the dower act allows damages from the time of demand and refusal to assign dower. And a third of the rents of the land in which there is dower may constitute a proper measure of such damages. But until demand is made the surviving husband or wife is not entitled to damages.

The last subject in relation to dower and one of much importance, is that relating to procedure in actions of dower in this State. They are started by petition, and the petition may be filed in any court of competent jurisdiction in the county where the estate or any part of it is situated.

The petition must set forth the nature of the claim and carefully name the lands in which dower is claimed. They must also set forth the interest of all parties interested as far as they are
In the case of Davenport vs. Farmer the Court held that the words "owner" or "proprietor" do not sufficiently describe the estate of the deceased husband. Infants may petition by guardians or next friend, and other persons, under guardianship, by conservator. Also heirs or any person interested may petition the Court to have dower assigned to the person entitled to it. Every person interested in the premises and who is not a petitioner is made a defendant to the petition.

And where there are any persons interested whose names are unknown, or the amount of their interest in the property is not known, it must be stated in the petition, and where their names are unknown they are made parties to the petition by the description of the unknown owners of the premises, or as the unknown heirs of any person who may have been interested in the suit.

The summons is the same as in chancery and where the parties in interest are unknown, they are notified as in cases in chancery by advertisement, and the defendant may be notified in the same manner, when it appear by affidavit that defendant resides or is gone out of the State, or is concealed within this State so that process cannot be served on him. The affidavit must state the place of residence of such defendant if known.

Non-resident defendants may be served by a copy of the petition in the same manner that such defendant in chancery may be served and any defendant who is not summoned, served with a copy of
the petition, or does not receive the notice required to be sent him by mail, may appear and answer the petition within the time and upon the same conditions and with like effect as in other cases in chancery.

The petitioner may in his petition require the defendants to answer his petition under oath. In this case the answer has the same effect as an answer under oath in chancery.

Any person interested may interplead and the court decides upon the rights of persons thus appearing the same as though they had been parties in the first place.

This petition is to be heard and determined by the court, upon the petition, answer, replication, exhibits, and other testimony, without the necessity of formal pleading.

When the Court adjudges that a person is entitled to dower, it shall be entered of record with a description of the land out of which he or she is to be endowed, and the Court then appoints three commissioners, not in any way connected with the parties interested, and each must take an oath that they will allot to the widow her dower, without showing any partiality, and to the best of their ability.

In Heisen vs. Heisen, 145 Ill. 638, the Court says that when the land is of such a nature that it would be impracticable to set it out by meets and bounds, the Court should without appointing commissioners, allot dower out of the rents and profits as provided by Sec. 39 of the Dower Act of 1874.