

8760

No. \_\_\_\_\_

# Supreme Court of Illinois

Ann H. & Thomas Osborn

---

vs.

Jacob Horine

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71641 7



State of Illinois }  
Monroe County } Plea and pleadings had in  
the Monroe Circuit Court

Illinois, in the case of Ann M Osborn and  
Thomas Osborn her husband vs Jacob Koenig  
Be it remembered, that heretofore to wit: on  
the 13<sup>th</sup> day of April A D 1854 Ann M Osborn  
& Thomas Osborn her husband filed their Bill in  
Chancery in said Court against Jacob Koenig,  
(It appearing from the record in my office that the  
original Bill was filed vs Jacob Koenig & Et al  
whose names will appear hereafter in the transcript  
from the record but not in the ~~to~~ in bill at present  
on file) - in the words and figures to wit:

State of Illinois } (copy of the Bill)  
Monroe County } Of the Monroe Circuit Court  
April Term A D 1854.

To the Hon Wm H Underwood Judge of the 2<sup>d</sup>  
Judicial Circuit Court of the State of Illinois in  
Chancery sitting -

The petition of Ann M Osborn  
and Thomas Osborn her husband would respectfully  
represent to your honor that the said Ann M  
Osborn is the widow of John Moore late of said  
County deceased and who died intestate on or  
about the day of 183 and such is entitled  
to dower of the third part of all the lands whereof  
her said husband was seized during coverture that  
during said period of time her husband was  
seized in fee simple of the following described  
Real Estate to wit: a certain tract of land situate



in Monroe County state of Illinois & known as  
the North part of Claim No 223 & Survey No  
327 & bounded as follows to wit: beginning at the  
North east corner of S N Johnsons 11 1/2 acre tract  
on east line of said Claim & Survey, thence in  
North westerly direction along said east line to  
a tract of land formerly sold to Thos Sterrett, thence  
on south line of said tract to the most westerly  
corner thereof, thence in an easterly direction to  
the said east line of said Claim & Survey thence  
along said Survey line to a post in North east  
corner of said Claim thence in a westerly direc-  
tion along the old North line of said Survey to  
the before said to H Walcott by W W Moore thence  
in a southerly direction along said H Walcotts  
east to a post in North west corner of S M John-  
sons land thence in an easterly direction with  
said Johnsons North line to place of beginning  
containing one hundred and fifty acres, as  
will more fully appear by deed from S Milton  
Moore & wife & Nelson S Moore to Jacob Herrie  
recorded in Book P page 430 and which said  
tract of land said defendants claim and is  
now in possession of & that the Estate of freehold  
in the lands above described is at this time claimed  
& the possession thereof held by Jacob Herrie  
the above named defendant. and your petitioner  
further prays that process may issue against ~~them~~  
him the said defendant and that he may be  
compelled to answer this petition fully and  
particularly and that upon a final hearing thereof  
the said New Mo may be allowed per dollar in



the lands and tenements before described and such other and further relief as to Justice and Equity shall appertain & your petitioners will ever pray &c

Ann M Osborn &  
Thomas Osborn her husband

And afterwards to wit a Summons was issued out of the said Clerk's office in the words & figures following - to wit:

(copy of summons)

State of Illinois  
Monroe County <sup>ss</sup> The people of the state of Illinois  
to the Sheriff of said County greeting;  
We command you that you summon, Jacob Monroe  
Geo W Johnson, John Nixon, Andrew Steyer, Wm  
Eberman, Jacob Motes, Conrad Stoker & N L Kertthoff  
if they may be found in your County that they be &  
appear personally in the Circuit Court next to be holden  
in Waterloo, within and for said County on the 14<sup>th</sup>  
Monday of April 1854 next on the first day of  
said term then and there in our said Court in  
chancery sitting, to answer unto the petition for  
assignment of Lamer filed against them by  
Ann M Osborn & Thomas Osborn her husband  
and how you then and there this writ with  
your return thereon.

Witness Wm B Morrison Clerk of said <sup>Circuit</sup> Court  
and the seal thereof hereunto affixed at  
the office in Waterloo the 13<sup>th</sup> day of  
April 1854

Wm B Morrison Clerk,

And afterwards to wit the above recited said was  
returned with the following return on the back of  
the same to wit: Executed the within Summons



by delivering a true copy of the within said to  
each of the within named defendants also by  
reading the same April the 14 1854

John H Wilson  
Sh. M. C.

And afterwards to wit: at the April Term 1854 of said  
Circuit Court on Monday the 24 the first day of  
said term to wit:

Ans W Osborn &  
Thos Osborn her husband.

Jacob Hornie, Geo. W Johnson,  
John Nixon, Andrew L Nixon,  
Wm Emerson, Jacob Wates,  
Conrad Acker, Nelson S Moore,  
& H L Kerkhoff  
Term by Arnheim & Abbott their Solicitors & asks  
for a rule on the defendant to demur plead or  
answer Tuesday the 3<sup>d</sup> day of this term which  
ruled is granted

Bill in chancery for  
assignment of  
Dower.

Now comes the  
complainant on  
the first day of the

Tuesday 25

Now on this day comes the defendants by Kaerue  
their Solicitor and moves the Court herein that the  
said complainants be required to give bond and  
security for costs whereupon it is by the Court ordered  
that the said complainants show cause by Wednesday  
next why they should not give bond & security for  
cost

Wednesday 26<sup>th</sup>

Now this day comes the complainants by Arnheim  
& Abbott their Solis and file bond of complainants for  
cost, and asks leave to amend bill of complaint  
which is by the Court allowed and this case continues



which bond is in words and figures as follows to wit: In the Monroe Circuit Court April Term 1854

Thos Osborn &  
Ann M Osborn his wife } In chj for Dower

vs  
Jacob Morine & Etal } I do hereby enter myself  
Security for cost in this cause and acknowledge  
myself bound to pay or cause to be paid all costs  
which may accrue in the above action either to  
the opposite party or to any of the officers of this  
Court in pursuance of the law of this State  
dated this 27 day of April 1854,  
approved by me apt 28 1854, John A. Reid (Seal)  
Wm R. Morrison Clk

And afterwards to wit the left in this cause by Koerner  
his rule on the 28<sup>th</sup> day of April 1854 files the following  
demurrer, to wit:

Thomas Osborn & wife }  
vs } And now this day comes  
Jacob Morine & others } the said defendants, and  
demurr to the bill filed by  
complainant for the reason that the bill does not  
show that the said defendants claim and are in  
possession of the several tracts of land in said  
bill set forth as tenants in common, or joint tenants  
and that there is a misjoinder of parties defendants  
in the said bill whereupon the said defendants  
pray to be dispensed at their cost

Koerner for defendants



And afterwards to wit at the September Term of said  
Circuit on the third day of the term to wit  
Ann M Osborn & Thos  
Osborn her husband

Wednesday 27

vs  
Jacob Horne George H  
Johnson & Et al

Bill for Dower.

Now comes the complain-  
ant by Orndorff & Abbott their Solicitors and by  
leave of the Court dismiss their bill of complaint  
as to all the defendants except Jacob Horne  
whereupon the said complainants by their Solicitors  
asks a rule on said to plead answer or demurr  
to the Bill of complaint by the first day of next  
Term of this Court.

And whereas afterwards to wit on the 24 day  
of April A.D. 1855 the said by his solicitor filed  
an answer to the said bill in the words  
& figures as follows to wit:

Answer of Jacob Horne to the petition of Ann  
M Osborn & Thos Osborn.

The said Jacob Horne saving to himself all  
manner of exception to the said petition for  
answer says that he believes the said Ann M  
to be the widow of John Moore deceased and  
that she is married to said Thomas Osborn  
and therefore admits said allegations; that  
he believes the said John Moore died seized  
of the lands described in said petition and  
consequently admits it that he purchased  
the said land in question from the heirs



at law of said John Moore for and in consid-  
eration of the sum of twenty eight hundred  
dollars paid for the dower of the said Ann  
W that the said Ann W on the 22<sup>d</sup> day of  
September A D 1834, by an instrument under  
Seal in and for the consideration of two hundred  
and twenty five dollars paid to her on behalf  
of the said heirs at law of the said John Moore  
released and renounced her claim and title  
to dower in the estate both real and personal  
of her deceased husband and that therefore  
in equity and good conscience the said  
Ann W Osborn is not entitled to dower in  
the premises set forth in said petition, and  
now owned by this respondent -

This defendant further shews and presents to  
the Court that at the time of the death of said  
John Moore, there were only about 12 acres in  
cultivation, and that since that time some  
33 acres have been improved at a large  
expense, that this defendant since his purchase  
has expended some eighty dollars in im-  
provements, and that ever since the death of  
said John Moore the have been paid  
by the said heirs at law and those claiming  
under them, that if for some reason or another  
the said release of said Ann W should be of no  
avail the Court will direct the assessment of  
dower in said lands only so were they at the time  
of the death of said Moore improved, and in  
lands not yet improved, and direct an amount



to be taken concerning the payment of taxes assess-  
ments and so forth and also direct the said Ann  
M her husband to pay to this defendant such  
sum of money and interest as may have been  
paid her by the heirs at law in consideration  
of her release of her dower as to the premises  
in question.

And this defendant further shows  
that the said John Moore died prior to the year  
1834, and that this petition was filed some  
time in April 1834 and that it was not filed  
and proceeding commenced in this twenty years  
of the death of said John Moore whereupon  
this defendant insists that the statute of limita-  
tion in case at common law, may be  
applied in this proceedings by way of an-  
alogy and that the said Ann M be forever  
barred from having her said assessments of  
Dower, and this defendant having fully  
answered asks to be dismissed without  
costs

Jacob Hornie by  
G. Kucenas Solicitor

I Jacob Hornie being first duly sworn depose and  
say that the facts above stated as far as the rest in  
his own knowledge are true and as far as he has  
been informed thereof by others he believes them to  
be true

Sworn to and subscribed  
before me this 24 day of  
April AD 1835

Wm Erskine Clerk

Jacob Hornie



And afterwards to wit, the complainants by their  
Solicitor at the April Term 1855 of said Court  
filed his replication in words and figures as  
follows to wit:

State of Illinois }  
Monroe County } Of the April Term of the Monroe  
Circuit Court AD 1855

Ann M Osborn  
& husband

Petition for Answer,

vs  
Jacob Morris

The repliant answering & reserves  
ing to themselves all manner of advantages which  
may be had & taken to the errors uncertainties and  
inefficiencies of answer of said debt for replication  
thereto with that they doth and will ever maintain  
& prove their said bill to be true certain and suf-  
ficient and that they answer of the said debt is very  
uncertain & insufficient without that any other  
matter or thing in the said answer contained  
material - in the law to be replied unto is un-  
true, and that the bill of complaint is true as this  
repliant is ready to ever maintain and prove  
as this Honorable Court shall direct and humbly  
they pray as in & by their said bill he hath already  
prayed

Jes Albott  
for complt.

And afterwards to wit: on the 25 of April 1855  
the Compts by their Sals filed the following excep-  
tion to answer & demurrer to Cross bill in the words  
& figures as follows to wit:



State of Illinois } Of the April Term of the Monroe  
Monroe County } Circuit Court AD 1852

Ans W. Osborn & husband

vs

Jacob Horine

} Petition for Dower

And now comes the  
deft by Abbott their atty and say that the  
answer of said defnt as far as it sets up new  
matters to said complainants bill is insufficient  
in law or Equity for the said defnt to have &  
maintain his said action therefore excepted  
thereto.

And for further causes of Exception says  
that the Cross bill which sets up the statute  
of limitation does not bar dower

See Abbott for  
deft

And afterwards to wit: at the April <sup>1852</sup> Term of said  
Circuit Court the following proceedings were had  
in said cause as follows:

Ans W. Osborn &  
Thomas Osborn her husband

vs

Jacob Horine

} Thursday 26

} Bill in chy for dower

Now on this day comes  
the parties complainants by G. Abbott their solis  
and defnt by G. P. Kaerner his solis, and the said  
court by their said solis filed their exceptions to  
the defnt answer which exception were sustained  
by the Court as to so much of the said answer  
as sets up statute of limitation whereupon defnt



upon leave, attends his said answer and there is upon this cause is by the Court set for hearing on pleadings and evidence at the next term of this Court

And afterwards to-wit: at the September Term 1855 of the said Circuit Court: to-wit:

Geo W. Osborn &  
Thomas Osborn his  
husbands

Bill in ch, for dower

vs  
Jacob Harvie

And now again comes the parties complainants and defendants, by their solicitors, and this cause having been set for hearing at this term of the Court, and the Court having heard the same on the bill, answer and replication, and also heard the testimony of witnesses as to the release of the complainants dower in the land described in said com-plainants bill, and submitted by the defendant to the Court. It is thereupon considered by the Court that this bill be dismissed at the complainants costs



State of Illinois }  
Monroe County } ss I the undersigned Clerk  
of the Circuit Court within and for the County  
of Monroe, in the state of Illinois hereby  
certify the foregoing to be true and correct  
transcript of the proceedings had in the  
foregoing cause, as the same appears of  
record in my office.

In testimony whereof I William  
Erd Clerk of said Court have  
hereunto set my name and affixed  
the seal of said Circuit Court at  
office in Waterloo this 11<sup>th</sup> day  
of October A D 1855

William Erd Clerk.



Ann M. Osborn &  
Thomas Osborn  
her husband  
vs.  
Jacob Horine

In the Supreme Court  
November Term 1835  
Error to Monroe

And now comes the plffs in error & says that in the record & proceedings aforesaid there is manifest error in this to wit,

1st- The court below erred in dismissing said bill at counth costs.

2<sup>d</sup>- The court below erred in not rendering a decree as prayed for in said bill.

Wherefore they pray that the decree below may be reversed & held for naught & will ever pray &c

Abbott, Underwood & Quirk  
Attys. for plffs. in error

And the defendt in Error by Kuersten comes & says there is no error in the above record & proceedings & pray for the Judgment to be affirmed

G. Kuersten  
for defendt in error



No 29

Ann M. Osborn &  
Thomas Osborn her  
husband,

vs.

Jacob Hoar

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Error to Moore

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The Clerk of the  
Supreme Court will  
issue a *sub po.* to  
the Sheriff of Mon-  
roe county & oblige

Yours respy

Abbot, Underwood &  
Smith Atty. for ptff.  
in error

Filed 23<sup>rd</sup> October 1855.

A. Johnston clk

Dispaid by Judge Underwood  
\$5.00

1855



Book Johnson or copy

Bellville, Oct. 29, 1855

Friend Johnson:

Please file the record  
in this case & send a sic. fa. by  
return mail to the Shiff of Mon-  
roe county. The agent of ptiff.  
will advance the \$5 if we  
see him soon. If not we will  
pay the costs as the case pro-  
grees next court.

Yours truly

Wm. Woodward & Quirk

Atty to pay fees at court



Answered 1. March 1886  
 saying - the case of  
 M'Clure vs English & Co  
 has been sent some days  
 ago - full of paper  
 with it -

The case of Osborn  
 & wife ~~vs~~ the  
 Judgment & Opinion  
 is sent to Woodward  
 with the answer to  
 this - saying cost \$11.30 -  
 and as you say it will be  
 paid as soon as known,  
 I do not send bill.

In the case of  
 Lane vs Bondman  
 the opinion is not yet  
 filed -

B. Kille, Feby, 1886.

Dear Sir: -

Please send down the opinion  
 and the judgment in the following  
 cases:

- 1- Lane vs Bondman
- 2- M'Clure vs English & Co
- 3- Osborn & wife vs Florine.

The fees will be paid when the amount  
 is known.

I am Sir,

Yours truly,

C. W. Woodward,



State of Illinois

Supreme Court First Grand Division. 3<sup>rd</sup> Mo.

The People of the State of Illinois, To the Clerk of the Circuit Court of Monroe County, Greeting:

Whereas in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Monroe County, before the Judge thereof, between Ann M. Osborn and Thomas Osborn her husband, plaintiffs, versus Jacob Spring Defendants it is said manifest error hath intervened, to the injury of the aforesaid Ann M. Osborn and Thomas Osborn her husband, as we are informed by their complaint, and we being willing that error, should be corrected if any there be in our form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to the Justices of the Supreme Court the record and proceedings, of the said plea, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the County of Jefferson, on the second Monday of November next, that the record and proceedings being inspected, we may see to be done therein, to correct the error, what of rights ought to be done according to Law;

Witness the Hon. Walter B. Scates,  
Chief Justice of our said Court,



Osborn

by

Horino

with green

Julia Oct. 23, 1855.

At Johnston Me

"

and the last thing, at Mount  
Osborn, this 23<sup>rd</sup> day of October  
in the year of our Lord one  
Thousand eight hundred  
and fifty five.  
Joshua H. Osborn  
Clerk of the Supreme Court



STATE OF ILLINOIS, }  
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Monroe* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Monroe* County, before the judge thereof, between *Ann M Osborn and Thomas Osborn her husband, Plaintiffs,* and *Jacob Horner*

defendant, it is said that manifest error hath intervened to the injury of said *Ann M Osborn and Thomas Osborn, her husband,* as we are informed by *this* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Jacob Horner*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jacob Horner* notice, together with this writ.

*Walter B. Scates*  
Witness, the Hon. ~~SAMUEL H. TRACY~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *23<sup>d</sup>* day *October* in the year of our Lord, one thousand eight hundred and fifty-*five*  
*Leah Johnston*  
Clerk of Supreme Court.



Ann M Osborn &  
Thos. Osborn

by  
Jacob Horine

Executed the within  
Writ by reading the  
same to Jacob Horine  
~~the~~ the within defendants  
October 30<sup>th</sup> A.D. 1855.

Charles Frick  
Shy of M. Co

fees	
Serving	50
milage	10
return	10
portage	10
	<hr/>
	80

Please send my fees immediately.



STATE OF ILLINOIS  
CLERK OF THE SUPREME COURT



As to the points that proceedings in  
dower are sui generis, and not  
subject to ~~the~~ the rules relating to  
bills in Chancery except where it is  
specially provided.  
Revised Statutes. ~~45~~ Page 198

sect. 19. summonses to be served as other  
process

also providing for publication in case of  
non residence which would be unnecessary  
if it was purely *quasi terminum* a chancery  
proceeding

§ 20. As to unknown defendants.  
which is already provided for in the  
Chancery practice

speaks of decess, orders, judgments,

§ 21. § 23. no replication required

§ 24. where court adjudges that the widow,  
shall recover dower

§ 26. writ of possession to be awarded  
provided where lands lie in different  
counties, which is provided for in  
the Chancery act -

29. Judgments of assumpsit -

See also 2 Green (Lombard) 105 & other  
pages



A. M. Horn &

Phil Horn

by

Lawl Horn

Refused

by

Refused

in



Osborn & wife  
vs.  
Hoove

- 1- Dower is a legal right & a court of equity cannot set off payments made on a void assignment Blain vs. Harrison 11 Ill R. 388.
- 2- Dower is not barred by the statute of limitations, Parker vs. Bear 7 Mich R. 267.
- 3- If other evidence in writing was given it should have been preserved in the record White vs. Morrison 11 Ill R. 361, 365.
- 4-



Osborne's wife

1771

Horine

*[Decorative flourish]*

*[Faint vertical handwriting in the left margin]*

*[Faint vertical handwriting in the right margin]*

*[Faint circular scribbles]*



No 29

Ostom

by

Hornie

1 Opinion

1 Record

2 At

4

Prepared

No 29

Ostom

vs

Hornie  
Rev. Hornie

Fragment of Opinion in  
this case copied and  
sent down to Judge  
Barnard - 1<sup>st</sup> March 1860

1855

8760