

No. 8669

# Supreme Court of Illinois

Branson & Romelia J. York,  
Admrs.

---

vs.

John Davis, Admr.

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At a Supreme Court of the State of Illinois, begun  
and held at Mount Vernon, within and for the first  
Grand Division of said State, On Tuesday the sev-  
enth day of November, in the year of our Lord  
one thousand eight hundred and sixty five, to-wit:  
On Monday the thirteenth day of November in the  
year of Our Lord one thousand eight hundred  
and sixty-five.

Present. the Hon J. H. Walker Chief Justice  
" " Sidney Breese associate "  
" " L. B. Lawrence " "

" Branson York and Romeo

" York. Admr. Admr of Ely

" York. deceased. Appellants

" do vs

" John Davis. Admr. of Bushby

" York deceased. Appellee

} Appeal from Hamilton

" On this day came again the said parties and their  
" agent having diligently examined and inspected, as  
" well the record and proceedings aforesaid as the  
" matters and things therein assigned for error, and being  
" now sufficiently advised of and concerning the prin-  
" ciple, are of opinion, that in the record and proceed-  
" ings aforesaid and in the rendition of the judg-  
" ment aforesaid, there is manifest error; Therefore  
" it is considered by the Court, that for that error,  
" and others in the records and proceedings aforesaid

" Said, the Judgment of the Circuit Court in this behalf  
" rendered, be reversed, annulled, set aside, and wholly  
" for nothing esteemed, and that this cause be remanded  
" to the Circuit Court for such other and further pro-  
" ceedings as to law and justice shall appertain. The  
" whole with the Costs against the said Appellee"

Opinion by

B. Reese,

" On the fifteenth of August 1864, the Appellee, John  
" Davis, as Administrator of Barbara York, de-  
" ceased, filed in the County Court of Hamilton County,  
" a claim against the estate of Eli York, on whose estate,  
" Appellants are administrators, for the value of specific  
" articles of property allowed by the <sup>Statute</sup> ~~State~~, to the widows  
" of persons dying in this State intestate.

" The County Court disallowed the claim, and  
" rendered a judgment against the appellee for the costs.  
" On appeal to the Circuit Court of Hamilton County,  
" the case was tried by the Court without a jury,  
" and a verdict found for him, as such administrator,  
" for two hundred and forty-six dollars, being the as-  
" certained value of the specific articles of property thus  
" allowed to widows of intestates, and for which, the  
" Circuit Court entered up judgment.

" From this judgment, the Appellants have taken  
" this appeal to this Court, assigning this finding  
" of the Circuit Court as error.

" The facts appear to be, that Eli York died,

" in this State on the 23<sup>d</sup> of June 1863 intestate, leaving  
" Barakuba his wife surviving who on the 3<sup>d</sup> day of July  
" 1863, ~~and~~ <sup>and</sup> before administration was granted on his hus-  
" bands estate also died and in this State. There were no  
" children between them, nor had Barakuba any family  
" living with his, or children under the age of twenty-one.  
" Letters of Administration on Eli Njor's estate, were  
" granted to the appellants, on the 11<sup>th</sup> day of July 1863,  
" by the County Court of Hamilton County, and on the  
" estate of his widow, Barakuba, on the eleventh day of  
" July 1864 to the appellee, John Davis, and by the same  
" Court

" On these facts, the question arises, is the estate  
" of Eli Njor's liable for this claim?

" The provisions of the Statute on which the claim is  
" founded, are as follows: Widows living in this State,  
" of persons whose estates are administered upon in this  
" State, shall be allowed in all cases, in exclusion of Cred-  
" itors, as their sole and exclusive property forever: nec-  
" essary beds, bedsteads and bedding for themselves and  
" families, necessary household and kitchen furniture,  
" one spinning wheel, one loom and its appendages, one  
" pair of Cards, one stove and the necessary fuel therefor,  
" the wearing apparel of themselves and families, one  
" milk Cow and calf for every four persons in the fam-  
" ily, one horse of the value of forty dollars, one woman's  
" saddle and bridle of the value of fifteen dollars,  
" provisions for themselves and families for one year,

" two sheep for each member of the family and the  
" pieces taken from the same, food for the hogs above  
" described for six months, fuel for themselves and  
" families for three months, and sixty dollars worth  
" of other property. Deates Comp. 1203.

" By Section three, the appraisers are required  
" to make out and certify to the Court of Probate,  
" an estimate of the value of each article of specific  
" property, allowed to the widow. Ibid.

" By Section 4, if the widow desires to take other prop-  
" erty in lieu of this, <sup>specified</sup> she shall take it at the valuation  
" fixed by the appraisers, and by Section 2, of the Act  
" of 1845 Appr. R. S. 597. where the intestate leaves  
" no property of the description mentioned, the widow  
" is entitled to retain other property of equal value,  
" or the value of the same in money, and it is made  
" the duty of the administrator or Judge of Probate  
" to allow the value of the articles specified either in money  
" or other <sup>personal</sup> property. Deates Comp. 1202.

" The Appellants insist, that as the Statute requires  
" the appraisers to set apart these specific articles to the  
" widow, and, as there was no widow at the time Letters of  
" administration were granted on the estate of Eli York,  
" and no appraisers, a compliance with the Statute was  
" impossible, and they deny, that the administrators or,  
" and the appraisers of, that estate, had any right to  
" set apart the specified articles to the administrator  
" of the widow.

" The Statute does not so require, it requires only, that  
" the appraisers shall make out and certify to the Court of  
" Probate an estimate of the value of each article of  
" specific property, in order, as we understand, that the  
" administrator may not include them as assets and may  
" have credit for their value, on the settlement of his  
" administration, with the Court.

" Appellants insist if, the administrator of the widow  
" had no right to appear and demand to have the spe-  
" cific articles set apart to him, there is no foundation  
" for this claim, they contending, that the widow, on the  
" death of her husband, had a mere naked right to the  
" specific articles, the legal title to which, vested in the  
" personal representatives of the husband, has never been  
" reformed into a title, until the articles are set apart to her.

" It is difficult to perceive, by what process of reason-  
" ing, Appellants have reached this conclusion, with the  
" statute before them. The language of the act, is em-  
" phatic, and declares in the most express terms, that  
" the specific articles, in exclusion of creditors, shall  
" be the sole and exclusive property of the widow forever.  
" From this language, it seems very clear, that the  
" widow has something more than a mere naked  
" right, and that the legal title to the specific articles  
" passed, not to the representatives of the husband, but  
" immediately on his death, to her. The title does not  
" depend upon the actions of the appraisers, nor for a  
" dereliction of duty on their part could she be made

to Buffin. Her title is absolute and being so, must,  
at her death vest in her legal representatives. They  
are not assets in the hands of the administrator  
of the husband, else, why should the appraisers be  
required to certify their value to the court? If they  
were assets, the court could have no concern with them.

The only reason, we can imagine, for this certificate  
of the appraisers, is, to exclude them from the assets  
of the estate, so that the administrator may not  
be chargeable with them as assets.

If then, they are not assets, and are the exclusive  
property of the widow forever, it is not difficult  
to determine, to whom they go, on the death of the  
widow. To no one else, but to her personal representa-  
tives, and on their demand, the administrator of the  
husband, is required to set them off to them. If he  
fails to do so, it would be evidence of a conversion,  
and the administrator would be responsible for their  
value, if such articles or their value, belonged to  
the estate of the husband.

On these points we are not without the authority  
of adjudged cases. In *Heating vs Myers* 21 Missouri  
519, the Supreme Court of Missouri held, under a Sim-  
on Statute of that State, that on the death of the  
widow the specific articles did not revert to the estate  
of the husband, but went to the personal repre-  
sentatives of the widow. And it was further held,  
in that case, if the administrator of the husband

failed to set apart, this Statutory allowance to the widow,  
The Court of Probate had power to compel him to  
pay the value in money. To the same effect is the case  
of *Stellogg vs Graves* 5 Indiana 509, and *Beldon vs*  
*Blies* 4 Beldon (N. Y.) 34. The fact that no admin-  
istration on the estate of Eli York had been granted,  
before the death of his widow is immaterial. In the  
case of *Cross vs Leaney and wife* 25 Ill 562, this Court  
held, that a widow whose husband died intestate, leav-  
ing no child or descendants, might recover in assump-  
sit, for the property of her deceased husband, although  
letters of administration had not been issued on the  
estate. The law cast the property upon her and admin-  
istration was unnecessary. The law vested this property  
in the widow and on her death, like any other property  
to which she was entitled, passed to her legal representa-  
tives and they can sue for it, and receive its value.

The Appellants liken this case to a claim of dower  
in a deceased husband's real estate. There is a great  
difference between them. The right of dower is inchoate  
and vesting in action, whilst this right to the specific  
articles is absolute and exclusive. Depending upon  
no contingency - it is here in the emphatic language  
of the Statute "forever". We think then, that immediately  
on the death of the husband, the right of the widow  
accrues and she having died before she received  
the specific articles and they not having been set  
apart to the administrator, their value must be



" accounted for to him as assets of her estate.

" The right of the widow being established, it is  
" unfortunate for her representatives in this case, that  
" the record does not show that the estate of Eli York  
" was possessed of these specific articles at his death,  
" or their value in other property or money. It is not shown  
" that he did possess of any property whatever. In  
" the absence of this proof, the finding of the Court be-  
" low was not justified. If there was evidence proving  
" that fact, it is not to be found in this record and  
" for that reason, the judgment must be reversed and  
" the cause remanded. On another trial, the proof  
" can be made, if the absent fact exists."

State of Illinois, S.S.

Supreme Court of said State.

First Grand Division.

I, Noah Johnston, Clerk of said Supreme Court,  
do hereby Certify that the foregoing is a true Copy  
of the final order and of the Opinion of the said  
Supreme Court, in the above entitled Cause,  
of record in my Office.

In Testimony Whereof, I have hereunto set my  
hand and affixed the Seal of the Supreme  
Court, of Illinois, at Mount Carmel, this  
twenty seventh day of April - A. D. 1866.

Noah Johnston, Clerk

B + R York -  
Adm. Ho -  
or

John Davis -  
Adm. Ho -  
1866

Cost bill for which  
Tanner has receipt of 26-35

2639

State of Illinois  
Hamilton County

Hamilton Circuit Court  
October Term 1864

Please held in the Circuit Court of Hamilton County Illinois, at the October Term thereof AD 1864 before the honorable Silas L Bryan at the time presiding in said court and holding said term by invitation of Hon J S Marshall judge of the 12<sup>th</sup> judicial circuit. Present Honorable Silas L Bryan judge

J W Buolow - Clerk

V M Bowers

John Davis admr of  
the estate of Basha York Appeal for  
vs probate

Braman York & Romelia York Court  
Yorks of estate of Eli York deceased  
from County Court

Appeal Bond filed in Circuit Court on the  
20<sup>th</sup> day of Sept 1864 which is in the words  
and figures following to wit

Justice Appeal Bond - Illinois

Know all men by these presents that we  
John Davis, Wilson Rankin Henry M  
Sneed are firmly bound unto Braman  
York & Romelia York Adms of Eli York  
in the penal sum of

lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals, this 20<sup>th</sup> day of September 1864

The condition of the <sup>above</sup> obligation is such, that whereas, the said Brauson & Romelia of York, did on the 20<sup>th</sup> day of September A.D. 1864 before the County Court for the County of Hamilton recover a judgment against the above-bounded John Davis as Adm<sup>r</sup> of Beshops York for the sum of Five Dollars and ten Cents from which said judgment the said John Davis has taken an appeal to the Circuit Court of the County of Hamilton aforesaid, and State of Illinois. Now if the said John Davis shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Revenue Stamp  
to the amt  
of 50 cts on  
this bond

Approved, by me at my office } John Davis Seal  
in Hamilton this 20 day } Wilson Parker Seal  
of September 1864 approved } W M Sneed Seal  
James Laie C of H J [L S]

which said bond is endorsed as follows,

Filed 21<sup>th</sup> Sept 1864

J W Marshall Clerk

Filed September 20<sup>th</sup> AD 1864

G. W. Buxton - clk

Transcript of proceedings in county court filed in circuit court on the 10<sup>th</sup> day of October 1864, which transcript is in the words and figures following to wit

Hamilton County, County (Probate) Court  
July Term 1864

John Davis Administrator of the estate of Bertha York dec'd  
vs  
Branson York & Rowely York Administrators of the estate of Edg York dec'd  
Demand \$1000

Continued by consent until next term

August Term 1864

parties appeared & cause continued until next term

September Term 1864 July 20<sup>th</sup>

again this day come the parties & Townshend for Plaintiff & Carpenter & Goodridge for Defendants & joined issue.

the evidence & argument, it is considered by the court, that Plaintiff has no cause of action, It is therefore ordered that the Defendants recover of the plaintiff their costs in this behalf expended &c

State of Illinois  
Hamilton County

J. W. Marshalee Clerk  
of the County Court in & for said County  
Certify the foregoing to a correct transcript of the judgment & proceedings had before the County court of said county in the above entitled cause

Revenue Stamp  
to the amt  
of 5 cents  
on this cert



In Testimony whereof I have hereunto set my hand and affixed the seal of said court at Hamilton this 20<sup>th</sup> day of Sept 1864

J. W. Marshalee - Clerk

Filed October 10<sup>th</sup> 1864

G. W. Burton Clerk

Summons Issued out of the circuit court on appeal on the 20<sup>th</sup> day of September 1864 which summons is in the following words and figures to wit

The State of Illinois } ss  
Hamilton County }

The People of the State of Illinois to the Sheriff of Hamilton County Greeting: We command you to Summon Brauson York and Rowely - of York Adm of Eli York deceased if they may be found in your county, personally to be and appear before the Circuit Court of Hamilton County on the second day of the Term (the day on which the suit is set for trial) to be holden at McLeansboro on the 3<sup>d</sup> Monday of October (1864) next then and there to prosecute a certain suit brought into our said Court by appeal from the judgment of the County Court of said County wherein John Davis Administrator of Beshoba York Deed is Plaintiff and Brauson York & Rowely of York Administrators of Eli York deceased are defendants; in which suit judgment was rendered in favor of the Defendants for five dollars and ten cents cost of suit and have you there this writ with an endorsement in what manner you shall have executed the same.

Witness G W Burton clerk of said Court and the seal thereof at McLeansboro in said County this 20<sup>th</sup> day of September AD 1864. G W Burton

on which said summons is the following  
 endorsement of file marks " filed in  
 circuit court this 10<sup>th</sup> day of October A D 1864  
 G W Burston Clerk  
 which summons was returned with the  
 following indorsement to wit

State of Illinois }  
 Hamilton County }

I have duly served this writ  
 by reading the same to Branson York +  
 Romelia of York Adm &c

this 24<sup>th</sup> day of September A D 1864

J M Bowers Sheriff

Copy of a/c filed in the cause  
 The Estate of Eli York Deceased  
 To

1864 John Davis administrator of the estate of  
 Barbara York Dr

" necessary bed bedstead + bedding for self and family	\$100.00
" necessary household and kitchen furniture	200.00
" one Spinning wheel	5.00
" one Loom and its appendages	25.00
" " one pair of cards	3.00
" " stove and the necessary pipe therefor	40.00
" the wearing apparel for self and family	
" one milk cow and calf	30.00
" one horse	40.00
" " woman's saddle & Bridle	15.00
Provision for self and family for one year	300.00



" 5 8 sheep	25,00
" 8 fleeces of wool	16,00
" Food for stock six months	70,00
" fuel for self and family for 3 months	20,00
" other property	<u>6000</u>
	843,00

filed 15<sup>th</sup> augt 1864

J W Marshall Clerk

whereupon proceedings were had in said circuit court as follows to wit:

United States of America  
State of Illinois  
Hamilton County

at a regular term of the Circuit Court of said County of Hamilton, begun and holden at the Court house, in McLeansboro in said county of Hamilton on Monday the 17<sup>th</sup> day of October A D 1864 it being the third Monday in said month

Present the Hon Silas G Bryan Judge

Attest J W Burton

J M Bowers - Sheriff

J W Burton - Clerk

Hamilton Circuit Court Record fourth Day  
October 20<sup>th</sup> Term 1864

John Davis Administrator of the  
estate of Beshaba York Deceased.

vs  
Branson York & Rowley J York  
Administrators of the estate of Eli York dec'd




And now comes  
the plaintiff and defendants with their attorney  
and join Issue and the cause submitted to  
the Court on the evidence and Court being  
fully advised order and decrees that the plaintiff  
have and recover a judgment against the  
defendants for the sum of two hundred and  
fifty Six Dollars, and all the costs in and  
about this suit by them expended to be  
paid by said Administrators in the due course  
of Administration. Then comes the defendant  
and prays an Appeal, which is granted by  
said, defendants filing an appeal Bond  
within 30 days from this date in the Penalty  
of Five hundred Dollars, to be approved by  
the Clerk of this Court and further that the  
bill of exceptions at Supreme Court in  
November may then be signed at Mt Vernon and  
the Defendants also prays a new trial which  
was overuled &c

9  
On appeal to the Supreme Court of Illinois  
on appeal Bond was filed in the said Circuit  
Court on the 19<sup>th</sup> day of November 1864 which  
appeal Bond is in the words and figures. to wit

Know all men by these presents that we the  
undersigned Brauson York, Romeley J York  
Administrators of the estate of Eli York  
Deed and Erum B York of the County of  
Hamilton in the State of Illinois, are held  
and firmly bound unto John Davis  
Administrator of the estate of Basha's York  
Deed, in the penal sum of five thousand  
Dollars lawful money of the United States  
for the payment of which well and truly  
to be made we bind our selves our  
executors and administrators jointly severly  
and firmly by these presents: Witness our  
hands and Seals this 19<sup>th</sup> day of November 1864

The condition of the above obligation  
are such that whereas the said John Davis  
Plaintiff. on the 20<sup>th</sup> Day of October 1864 in  
the Circuit Court of the County of Hamilton  
in said State of Illinois, at the October Term  
thereof recover a judgment against the above  
bondmen Brauson York and Romeley J York  
Administrators of Eli York Deed Defendants  
in an action at law for the sum of

hundred and forty six Dollars and cent  
of Unit. from which judgment the said  
Branson and Romeley of York have taken an  
Appeal to the Supreme Court of the State  
of Illinois. Now if the above bounden  
Branson York and Romeley of York. shall  
duly prosecute their Appeal and shall pay  
said judgment, costs interest, and dam-  
ages in case the said judgment shall be  
affirmed, the above obligation to be void -  
Otherwise to remain in full force and effect

Branson York   
Romeley of York   
Iraam B York 

Approved 19<sup>th</sup> day of November AD 1864  
S. W. Burton Clerk

Approved also by me  
Silas L. Bryan. Presiding judge

Filed in my office November 19<sup>th</sup> AD 1864  
S. W. Burton - Clerk

Bill of exceptions filed in said circuit court on  
the 24<sup>th</sup> day of December 1864 which bill of  
exceptions is in the following words & figures to wit

John Davis Administrator of the estate

of Basha's York Deceased, "vs" Brauns  
York and Remely of York administrators  
of Eli York Deceased.

In the circuit court of  
Hamilton County State of Illinois

Appeal from the Probate Court of the County  
of Hamilton in the said State

This was a claim presented in the Probate Court  
by the Plaintiff against the Defendants for  
the recovery of the value of the specific articles  
of property allowed by the statute to the wid-  
ow of persons dying intestate.

The cause came on for hearing at the October  
Term of the said Circuit Court AD 1864, and  
was by agreement of parties tried by the  
Honorable Silas Boyer presiding judge  
Pro Tem, without the intervention of a jury.

Justice Malone was produced and sworn on the  
part of the Plaintiff by whom he proposed  
to prove the value of the specific articles allo-  
wed by the laws of Illinois to widows of persons  
dying intestate and Defendant objected to all witness  
proving or ~~or~~ tending to prove the value of  
said articles. The court overruled the objection.

admitted the testimony and the defendant  
then and there excepted to the said ruling  
of the Court, and the admission of said items.

The said witness being examined stated  
that a bed and bedding to which the widow  
was entitled under the statute in cases  
where it was allowed would be worth  
forty Dollars, Household Furniture twenty  
five to thirty dollars. Spinning wheel four  
dollars Loom eight dollars, and pair of card  
two dollars. Stove & Pipe twenty to twenty five  
dollars, Milk Cow and calf twenty to twenty  
five dollars Saddle and Bridle twenty to twenty  
five dollars Provisions for herself forty dollars  
Two Sheep four dollars. Feed for said stock -  
eighteen to twenty dollars and fuel three dollars  
He further stated that the said Baskaba Jones  
was the Widow of Eli York deceased, and  
that she died on the third day of July A.D.  
eighteen hundred and sixty three and that  
she had no Family living with her at  
the date of her death and also that Eli  
York died on the twenty third day of June  
A.D. eighteen hundred and sixty three  
Lewis L Moore a witness for the Plaintiff  
was produced and sworn by whom it was  
proposed to prove the same facts as by  
the former witness and the Defendants  
objected to the introduction of all testimony

for that purpose,

The Court overruled the objection and admitted the testimony whereupon the Defendants then and there excepted to the said ruling,

The said witness being examined testified as follows - that a bed and bedding would be worth forty Dollars Household and Kitchen furniture twenty five to thirty dollars spinning wheel four to six dollars, a loom eight to ten dollars, one pair of card two to three dollars, stove and pipe twenty to twenty five dollars, Milch Cow and calf twenty five dollars, Saddle and Bridle fifteen to twenty dollars provisions forty dollars, two sheep four dollars, feed for stock eighteen to twenty dollars and fuel three to five dollars, which was all the testimony offered on the part of the Plaintiff and to all of which the Defendants then and there excepted, It was admitted on the trial by the parties plaintiff and defendant as a matter of evidence in the cause, that the said widow had no children by the said Eli York decd and that she had no family living with her at the date of her death and any children under twenty one years of age -

The Defendants then offered in evidence

the records of the Probate Court of the said County which were admitted and which shows that Eli York died intestate on the twenty third day of June in the year A D eighteen hundred and sixty three and that letters of administration were granted by the said Court on his estate on the seventh day of July A D eighteen hundred and sixty three to the Defendants which facts were on the trial admitted by the Plaintiff to be correct see copy of record attached, the same Record also shows that Basha York Widow of the said Eli York died intestate on the third day of July A D eighteen hundred and sixty three before her husband's estate was administered upon and that letters of administration were by the said Court granted to the Plaintiff on her estate on the eleventh day of July A D eighteen hundred and sixty four which fact were also admitted by the Plff to be true - see copy of the record hereto attached and that no other letters of administration were ever granted upon the estate of either of said decedents, and this was all the evidence offered or given in the case

the court entered a judgment for the Plaintiff and against the defendants for the sum of



two hundred and forty six dollars with costs  
 to which judgment the Deft by his counsel then and  
 there excepted; whereupon the Defendants moved  
 the Court for a new trial and also in arrest  
 of judgment which motions the court overruled  
 and the defendants then and there excepted  
 to said ruling of the court and prayed that  
 their Bill of exceptions might be signed  
 by the said judge, and made a part of the  
 record in the said cause, which is according  
 by done, at the same time, at the said term  
 of the said Court

Vilas G Bryan Clerk  
 Judge 2<sup>d</sup> Judicial Circuit Ill. now  
 sitting with 12<sup>th</sup> circuit I

Filed in Hamilton Circuit Court  
 December 24<sup>th</sup> AD 1864

A. W. Vourshend  
 Clerk

State of Illinois  
 Hamilton County

The People of the State of Illinois  
 to all to whom these presents shall come  
 Greeting; — Know Ye that whereas such  
 a person of the aforesaid County and  
 State died intestate on or about the

Day of July A D 1863, having been informed  
of her decease Personal Property in the  
which may be lost, destroyed or diminished  
in value, if speedy care be not taken of  
the same. To the end therefore that said  
property and debts may be collected and  
preserved for those who shall appear to have  
a legal right or interest therein, we do  
hereby appoint John Davis - of the aforesaid  
County and State, Administrator of all  
and singular the Goods chattels, rights credit  
and effects which were of the said Bashaba  
York at the time of her decease, with full  
Power and authority to secure and collect  
the said property and debts wheresoever the  
same may be found in this state and in  
general to do and perform all other acts,  
which now are or hereafter may be required  
of him by Law -

Done by order of the County Court  
of Hamilton County, Illinois at  
the — Term A D 18

In Witness whereof I have here-  
unto set my hand and affixed  
the seal of said Court at McSe-  
anhoro the 1<sup>st</sup> day of June  
A D 1864.

See  
Stamp

J. W. Marshall - Clerk

Hamilton County Court June Term 1864  
Monday June 20<sup>th</sup> 1864  
" " " "

Court in session, present Hon J<sup>d</sup> Law  
presiding judge - J. W. Marshall clerk & E.  
M. Bowers Sheriff.

The clerk of this Court reports that he  
issued Letters to John Davis as Administrator  
of the estate of Bashaba York decd. (on the  
1<sup>st</sup> day of June 1864) ordered that the  
Bond of said Administrator be approved, &  
the acts of the clerk

State of Illinois } ss {act no stamp}  
Hamilton County }

J. W. Marshall clerk of  
the County Court, in & for said county  
certify that the foregoing is a true copy  
of the letters issued of Bashaba York  
decd. also of the order of court subsequently  
made in relation thereto



In testimony whereof I have  
hereunto set my hand and  
affixed my official seal  
being the seal of said county  
this 23<sup>rd</sup> day of June 1864  
J. W. Marshall

Filed in Hamilton - Circuit Court  
Dec 24<sup>th</sup> 1864

R. W. Townshend

State of Illinois<sup>335</sup>  
Hamilton County

The People of the State of Illinois  
to all to whom these presents shall come  
- Greeting - Know ye that whereas Eli York  
of the aforesaid County and State died in tes-  
tate on or about the 23<sup>rd</sup> day of June A  
D 1863 having at the time of his decease -  
Personal Property in this State, which may be  
lost, destroyed or diminished in value, if  
speedy care be not taken of the same,

To the end therefore that said property and  
debts may be collected and preserved for  
those who shall appear to have a legal  
right or interest therein, we do hereby -  
appoint Brauser York & Powell  
& York of the aforesaid County and State  
Administrator of all and singular the Goods  
Chattels, Rights, Credits and effect which  
were of the said Eli York - at the time  
of his decease, with full power and authority  
to secure and collect the said property and  
debts wheresoever the same may be found

in this State, and in general to do and perform all other acts which now are or hereafter may be required of them by law done by order of the County Court of Hamilton County, Illinois at the Term A.D. 1863

In witness whereof I have hereunto set my hand and affixed the Seal of said Court at McLeanboro the 11<sup>th</sup> day of July A.D. 1863

J. H. Marshall - Clerk

Hamilton County Court July 3 1863

Monday, July 20<sup>th</sup> 1863

Court in Session, Present Hon - James Lane - presiding judges - &c

Came J. H. Marshall Clerk of this Court and reported the following estates Administered upon since last Term - viz -

Estate of Eli York - Amelia J York & Brouson York appointed Administrators, the Bond dated 10<sup>th</sup> July 1863, (\$6000) Letters granted 11<sup>th</sup> July 1863 - ordered that

approved - & the acts of the clerk herein  
be confirmed

State of Illinois }  
Hamilton County }

{ etc No Stamp }

J. J. Marshall Clerk of the  
County Court in & for said County certify that  
foregoing is a true copy of the Letters issued to B &  
R York as Administrators of the estate of Eli York  
Decd. also of the order of court - subsequently made  
in relation thereto



In Testimony whereof I have hereunto  
set my hand & affixed the seal of said court at  
Morganston this 23<sup>rd</sup> day of July 1864

J. J. Marshall - Clerk

Filed in Hamilton Circuit Court Dec 24<sup>th</sup> 1864

R. W. Townshend Clerk

State of Illinois }  
Hamilton County }

Richard W Townshend clerk of  
of the Circuit Court in and for said County do here  
by certify that the foregoing Transcript of the Records,  
proceedings & papers had in above cause are truly copied  
from the books & files of my office & that the same is a  
full & complete copy of the records of the proceedings had  
in the said cause,

Given under my hand & seal of said court at my office  
in Morganston this 28<sup>th</sup> day of October A.D. 1865.

Richard W Townshend - Clerk  
J. J. Marshall - Deputy



The State of Illinois  
Hamilton County  
Hamilton Circuit Court  
October Term 1864

John Davis Adm & C

D & A. W. York Adm & C

Plaintiff cost & Defendant cost

Looking suit 10, entering appearance of party 10, entering appearance of Adm 20, entering satisfaction of judgment 15, entering final judgment or decree 25, filing papers on appeal 50,	10	30	15	75
Issuing original writ and filing same 40,	40			
Printing and docket fee 100, making bill of cost & copy of same 30, order buying cert 20,	100	50		
order for execution 20, Sheriff fees, 210,	230			
Swearing to 2 affidavits for Piff 10,	10			
County Clerks fees 740, Sheriff fee in Co Court 265, Townshend's Clerks fees for making record to Supreme Court 650	740	265	650	
& certificate & seal 50, copy of fee bill & making 50,	50	50		

Name of Witnesses  
L. L. Moore

Receipt

100

1824.15

State of Illinois  
Hamilton County

J. R. W. Townshend  
of Circuit Court in and for

do hereby certify that the above is a true  
 and correct copy of the fees in said cause  
 as appears of the the record in my office  
 In Witness whereof I have here-  
 unto set my hand & the seal  
 of my office this 28<sup>th</sup> day of  
 October A.D. 1865

A. M. Townsend - Clerk  
 Per D. Manshore - Deputy



State of Illinois }  
First Grand Division } In the Supreme Court  
November Term 1868

Branson York and Romelia J. York admrs of the estate of Ely York, decd. appellants  
vs.  
John Davis, admr of the estate of Basheba York, appellee } assignment of errors.

And now the said Branson York, and Romelia J. York, appellants, come and say, that in the record and proceedings aforesaid, there is manifest error in this, to wit.

- 1st The circuit court erred in giving judgment for appellee's, and against appellants
- 2nd The circuit court erred in overruling the motion of appellants for a new trial.

Pollock & Marshall  
for appellants.

State of Illinois.  
Justices Division

ss

Supreme Court  
November Term 1865

John Davis Adm of the  
Estate of Bashaba York  
decd

vs  
Branson York + Remely  
of York Adms of  
Ely York decd

Journal in  
1865

And to said John Davis,  
Adm + c ~~Defendant~~ Appellee  
+ now comes ad says that in  
the record as proceedings aforesaid  
there is no error, or in <sup>the</sup> judgment  
aforesaid in the manner and form  
as above assigned.

And therefore he prays  
that the said judgment may be  
affirmed. And that he may  
have judgment for his costs  
and t.

By R. W. Tourishend +  
J. W. Tanner & Co. Attys  
Attys. for appellee

Make  
index

<sup>49</sup>  
Branson York, and  
Romelia J. York, admin-  
istrators of the estate of  
Ely York.. Deed. appel-  
lants.

vs.

John Davis, administra-  
tor of the estate of Bash-  
eba York, - appellee.

---

Appeal from Hamilton

Filed Nov. 8. 1865.

St. Johnston Ct

Paid by Jury \$500

[31-658]

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

BRANSON YORK and ROMELIA J. }  
YORK. Administrators of the Estate }  
of Eli York, Dec'd, Appellants, }  
vs. } Appeal from Hamilton.  
JOHN DAVIS, Administrator of the }  
Estate of Basheba York, Deceased, }  
Appellee. }

BRIEF.

This is a suit commenced in the Probate Court by the adm'r of the widow to recover of the estate of her husband the value of the specific articles allowed by statute to the widows of persons dying intestate.

The provisions of the statute on which the claim is founded are: "That widows shall be allowed in all cases, in exclusion of creditors, as their sole and exclusive property forever" certain enumerated articles.—Scates' Statutes, p. 1203.

Sec. 5. "The appraisers shall make out and certify to the Court of Probate an estimate of the value of each article of specific property herein allowed to the widow id.

"The widow may elect whether she will take that part of the personal estate to which she may be entitled by right of *dower* or otherwise, out of the articles mentioned in such bill of appraisal, according to the appraised value thereof, or the amount thereof in money. \* \* \* And in all such cases it shall be the duty of the executor or administrator to notify the widow as soon as such appraisal is made, and to set apart to her such article or articles of property as she may prefer or select. \* \* \* Within 30 days after written application shall be made for that purpose by such widow; and if any executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow the sum of twenty dollars per month for each months delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered in the name of the People of the State of Illinois for the use of such widow. Scates' Statutes, p 1201, sec 88.

The requirement of the statute is that the appraisers shall set apart the property to the widow. But in the case at bar, at the time of the administration there was no widow, and hence a literal compliance with the provisions of the statute by the administrator was impossible.

The appraisers and administrators are not required, and we submit, would have no right to set apart the specific articles of property to the administrator of the widow.

If the administrator of the widow had no right to appear and demand to have the specific articles set apart to him, there is no foundation for the claim here set up.

The widow, by the death of her husband, has a mere naked right to the exempt articles. The *legal title* vests in the personal representative of the husband, and this right does not ripen into a title until the articles are set apart to her.

Willard on executors, p 253-254. Voelckner vs. Hudson, 1 Sandford Sup. C. R., p 215.

"It is clear that the widow could have no right or title to any specific chattel until it had been inventoried and set apart by the appraisers for her use."—Voelckner vs. Hudson, 1 Sandford's Sup. Court R., p 219.

The right of the widow is an *inchoate* one, and if the property is not recovered or reduced to possession, is lapsed or lost by the death of the widow, as in the familiar case of legacies, where the legatee dies during the life of the testator, the legacy is lapsed, and the representatives of the legatee take nothing; and ~~even~~ <sup>even</sup> where the legatee survives the testator, if the legatee dies before the ~~time~~ <sup>time</sup> when by the will the legacy is to vest in the legatee the legacy is lapsed or extinguished.

Bouvier Law Dict., title Legacy. sec. 11. Bacon Abr., Legacy E. Com. Dig. Chan., 3 Y., 13. Willard on Executors, 253-255. Lownd on Leg., chap 12, p 408 to 419. 1 Rep. on Leg., chap 8, p 319 to 341.

The estate granted by the Statute is analogous to the right of the widow to dower in the real estate of her husband, and like it is simply a provision for the personal support of the widow and her infant children. In deed it is called her dower in the Statutes. Scates Statutes, p 1201, sec 88, and page 1203 sec 6.

It is settled that until assignment the right of dower is clearly *inchoate* and the dowress does not even have a right of entry. Hoots vs Graham 23d Ills p 81; and if she dies while she has a suit for dower pending, her representatives cannot have damages assessed. Turney vs Smith 84 Ills 243.

And if this is so in regard to her interest in lands which could be identified immediately on the death of the husband by the widow as easily as by the heir, for a stronger reason should it be so in regard to the property in dispute here, for though called specific articles they are not and cannot be identified, and in no sense can the title thereto vest in the widow, until they are appraised and set apart and selected or received by such widow. 1st Sandford Sup C R, p 219.

There are many cases in which an interest similar to the one in controversy is lost by death, as in the case of a husband who had a right to all the personal property of his wife, yet if he fails to reduce the property to possession during lifetime his right is lapsed, and his representatives have no right thereto.

The reason and object of the law fails by the death of the widow immediately after the death of the husband, and before administration on his estate. The provision is for the personal support of the widow and her infant children. But there being no such persons in existence at the time of administration there should be no good reason why the law should stand. The maxim: "*Cessante Ratione legis cessat ipsa lex*," is peculiarly applicable.

But if the widow were still living, we insist that on the case presented there would be no right to recover against the appellants. There is no proof that Ely York, the husband, left one particle of property of any kind, or that there has been any appraisement, or any appraisers appointed. If there was property it was the duty of the Probate Court to appoint appraisers. If this duty is neglected, application should be made to the court to have them appointed. If the appraisers fail to act, proceedings should be instituted to compel them to act, or for the appointment of others. And after the appraisement she must make a selection, and the administrators are not in default until the expiration of thirty days after written application to them by her for such articles. Scates Statutes, p 1201, sec 88.

The burthen of proof was upon the appellee to show facts authorizing a recovery. There must be property—an appraisement—a selection by the widow—a demand in writing by her—and a failure by the administrators for thirty days after such written demand before they are in default. And there is no proof of any of these facts in this case. Scates Stat. p 1201, sec 88.

And even in case of such default the remedy would not be by filing a claim against the estate. See same statute.

Doubtless if there was proof of property, and that the property to which the widow was entitled had been converted into money by the administrators, the Court of Probate might order that the money should be paid to her—even though there had been no appraisement. But this is as far as the courts have gone. Bliss vs Sheldon, 4 Seld. 31.

MARSHALL & POLLOCK, *For Appellants.*

Branson York et al  
adms. v.

John Davis, admr.

Brief of appellants

8669

Filed Nov 10/65  
W Johnston  
Clerk

IN THE SUPREME COURT OF ILLINOIS;

First Grand Division ..... November Term A. D. 1865.

ABSTRACT.

Branson York and Romelia J. York  
Administrators of the Estate of Ely York.  
Deceased. Appellants

} Appeal from Hamilton.

VS.

} John Davis Administrator of the estate of  
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ERRORS ASSIGNED.

1st. The Circuit Court erred in giving Judgment for appellee, and against appellants.

2nd. The Circuit Court erred in overruling the motion of appellants for a new trial.

POLLOCK & MARSHALL. for Appellants



Braunon York &  
Romelia J. York  
vs.

John Davis adms

abstract

40

1865

Filed Nov. 8. 1865.  
N. Johnston Clk  
11

Third Grand Division  
THE SUPREME COURT OF JUDICATURE  
November Term A. D. 1865

BRIDGE VERMONT

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

BRANSON YORK and ROMELIA J. YORK, Administrators of the Estate of Eli York, Dec'd, Appellants,

vs.

JOHN DAVIS, Administrator of the Estate of Basheba York, Deceased, Appellee.

Appeal from Hamilton.

APPELLEE'S BRIEF.

The provision of the statute relied upon by the appellee reads as follows: "That widows, living in this State, of persons whose estates are administered upon in this States, shall be allowed in all cases in exclusion of creditors as their sole and exclusive property forever, necessary beds," &c. Scates' Statute, page 1203, sec 1. Leshar vs. Worth, XIV Ill., 39.

The widow's right to the property vests in her absolutely, the moment the intestate dies. Her title is absolute and is in exclusion of her husband's debts or the claims of any other person whatever. This right at her death vests in her heirs and legal representatives. These specific articles are not regarded as assets in the hands of the administrator of her dece'd husband. On the death of the widow the exempt articles do not fall back into the estate of her deceased husband, but go to her personal representatives. Hastings vs. Myers, 21 Miss (6 Bennett) 519. Willard on Executors, page 257. Kellogg vs. Graves, 5 Indiana (Porter) 509. Sheldon vs. Bliss, IV Seldon 35. Bliss vs. Sheldon, VII Barbour 152. Cross vs. Carey, XXV Ill., 564. Riley vs. Loughrey, XXII Ill., 97. Note D, III P. Williams, 50. Reeve on Descent, 57.

The administrator in this case is the representative of the widow, and it is his duty to collect all claims due the estate of his intestate. Willard on Executors, 267. Bouvier's Institutes. vol. 2, 143.

It is the duty of the adm'r of the deceased husband to set apart to the widow her allowance under the statute. Scates' Statute 1202, sec 5. Sheldon vs. Bliss, IV Seldon 35.

If the adm'r fails to set apart the statutory allowance to the widow, the Probate Court has power to compel the adm'r to pay out of the assets of the estate the value thereof in money. Sheldon vs Bliss, 4th Seldon, 34. Hastings vs Myers, 21 Miss. (6 Bennett) 519.

In this case, the widow having died a few days after her husband, and before the specific property was set apart to her by the adm'r of her deceased husband, the right thereto vested in the adm'r of her estate; and the adm'r of the husband's estate having failed to set apart the specific property to the appellee, but having converted the same he is liable as adm'r for the value thereof. Hastings vs Myers, 21 Miss. (6 Bennett) 519; Kellogg vs Graves 5 Ind. (Porter) 509; Willard Executors, 257; Sheldon vs Bliss, 4 Sel. 35.

The authorities referred to in appellant's brief are solely applicable to the dower interest of a widow in real estate.

This right of the widow to specific property is not in the nature of real estate dower, but is a right, absolute and definite; whilst a dower is an *inchoate* right, resting in action, only at the death of the husband, and measured by the duration of the life of widow, even when assigned.

The widow has a right to this property immediately after the death of the husband, and when the widow dies without receiving it, it must be paid to her administrator. Hastings vs Myers, 21 Miss. (6 Bennett) 519; Kellogg vs Graves, 5 Ind. (Porter) 509.

R. W. TOWNSHEND, TANNER & CASEY,

Att'ys for Appellees.

The bill of exceptions, is imperfect in not showing a basis containing a copy of the records of the Probate Court. The existence of assets was shown by the introduction of the inventory; hence should the record in this Court fall short of showing a basis for the judgment of the Court below; the Cause should be remanded

W. M. JOHNSON, JAMES V. CRYST.

No 40

Braunton York and  
Cornelia J York  
Adms of Ely York  
and

vs

John Davis Adm  
&c

Appellee's Brief

Filed Nov. 10<sup>th</sup> 1865-

A. Johnson Clk

NOVEMBER 10 1865

Third Division - State of Illinois

IN THE SUPREME COURT

1865

IN THE SUPREME COURT OF ILLINOIS;  
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Romelia J. York adms

vs

John Davis, admr.

abstract

40

8669

Filed Nov. 8. 1865

A. Johnston Clk

First Grand Division

IN THE SUPREME COURT OF ILLINOIS

November Term A. D. 1865

ABSTRACT

ERRORS ASSIGNED

ATTORNEY & MARSHALL for Appellants

IN THE SUPREME COURT,

First Grand Division,---State of Illinois.

NOVEMBER TERM, A. D., 1865.

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Adms of the Estate  
of Eli York decd

vs

John Davis Adm.  
of the Estate of  
Racheba York decd  
Plff & Appellee

Filed Nov 10 1865  
A. Johnston Clerk

RECORDED DECEMBER 11 1865

THE CLERK OF THE DISTRICT COURT OF ILLINOIS

IN THE SUPREME COURT

IN THE SUPREME COURT,

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The estate granted by the Statute is analagous to the right of the widow to dower in the real estate of her husband, and like it is simply a provision for the personal support of the widow and her infant children. In deed it is called her dower in the Statutes. Scates Statutes, p 1201, sec 88, and page 1203 sec 6.

It is settled that until assignment the right of dower is clearly *in choate* and the dowress does not even have a right of entry. Hoots vs Graham 23d Ills p 81; and if she dies while she has a suit for dower pending, her representatives cannot have damages assessed. Turney vs Smith 44 Ills 243.

And if this is so in regard to her interest in lands which could be identified immediately on the death of the husband by the widow as easily as by the heir, for a stronger reason should it be so in regard to the property in dispute here, for though called specific articles they are not and cannot be identified, and in no sense can the title thereto vest in the widow, until they are appraised and set apart and selected or received by such widow. 1st Sandford Sup C R, p 219.

There are many cases in which an interest similar to the one in controversy is lost by death, as in the case of a husband who had a right to all the personal property of his wife, yet if he fails to reduce the property to possession during lifetime his right is lapsed, and his representatives have no right thereto.

The reason and object of the law fails by the death of the widow immediately after the death of the husband, and before administration on his estate. The provision is for the personal support of the widow and her infant children, But there being no such persons in existence at the time of administration there should be no good reason why the law should stand. The maxim: "*Cessante Ratione legis cessat ipsa lex*," is peculiarly applicable.

But if the widow were still living, we insist that on the case presented there would be no right to recover against the appellants. There is no proof that Ely York, the husband, left one particle of property of any kind, or that there has been any appraisement, or any appraisers appointed. If there was property it was the duty of the Probate Court to appoint appraisers. If this duty is neglected, application should be made to the court to have them appointed. If the appraisers fail to act, proceedings should be instituted to compel them to act, or for the appointment of others. And after the appraisement she must make a selection, and the administrators are not in default until the expiration of thirty days after written application to them by her for such articles. Scates Statutes, p 1201, sec 88.

The burthen of proof was upon the appellee to show facts authorizing a recovery. There must be property—an appraisement—a selection by the widow—a demand in writing by her—and a failure by the administrators for thirty days after such written demand before they are in default. And there is no proof of any of these facts in this case. Scates Stat. p 1201, sec 88.

And even in case of such default the remedy would not be by filing a claim against the estate. See same statute.

Doubtless if there was proof of property, and that the property to which the widow was entitled had been converted into money by the administrators, the Court of Probate might order that the money should be paid to her—even though there had been no appraisement. But this is as far as the courts have gone. Bliss vs Sheldon, 4 Seld. 31.

MARSHALL & POLLOCK, *For Appellants.*

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*Scates Stat. p 1201, sec 88*  
*Bliss vs Sheldon, 4 Seld. 31*

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Branson York & al  
admsrs.

vs.  
John Davis admr.

appellants' Briefs

Filed Nov 10/65  
W Johnston  
Clerk