

**NEW-JERSEY.**  
**COURT OF ERRORS & APPEALS.**

NANCY THOMPSON, widow of  
ROBERT THOMPSON,  
*Plaintiff in Error.*  
*vs.*  
JAMES BOYD, *Defendant in*  
*Error.*

In Dower.  
State of Case.

This cause was tried at Warren Circuit Court in August term, 1844, before his Honor, Justice Nevius.

The pleadings in this cause are, 1st, The common count in dower, pro ut the same.

2d, Plea that the said husband was not seized of the said premises during coverture, and pro ut the plea.

This cause coming on to be heard before his Honor, Justice Nevius, at the term aforesaid, the said defendant produced the following evidence to the court and jury :

A deed from John M. Young and Andrew Shiner, executors of the said Robert Thompson, deceased, to the said James Boyd, bearing date twenty-third day of June, 1832, duly acknowledged on the twenty-seventh of the same month of June, and recorded the twenty-fourth day of September, 1832, conveying a certain farm or tract of land, situate in the township of Independence, in the said county of Warren, and containing, by estimation, two hundred and twenty-five acres of land, being the premises on which the dower is demanded ; pro ut a certified copy of said deed.

A deed from William Thompson to said Robert Thompson, bearing date the 9th November, 1826, duly acknowledged and recorded ; pro ut a certified copy of said deed.

A certain act of the Legislature of the State of New-Jersey, passed the 13th of March, 1832, entitled, An Act to empower the executors of Robert Thompson, of the township of Independence, in the county of Warren, deceased, to sell and convey certain tracts of land ; pro ut the said act.

The defendant proved by Jacob Swisher that he was acquainted with the farm in question ; knew James Thompson and Robert Thompson, deceased ; that Robert Thompson took possession of the farm after his father's death, he thinks in 1827, and rented it to one Linaberry, who lived in it three years ; then he rented it to George Wilhelm, who lived on the place at the time of the death of Robert Thompson ; when Robert Thompson had possession of the farm he sold off several wood lots. The farm was worth \$200 a-year rent ; there were two frame houses on the place ; one old, the other new ; a barn, a wagon house, corn house, and cooper shop ; thought it was sold cheap by the executors ; thought it was worth four thousand dollars ; Mr. Boyd now lives on the farm ; has built a new house upon it. David Vreeland says the farm would now rent for \$250 a-year. In 1832, it would have rented for 200 ; the land was worth about 25 dollars per acre.

William Thompson said that he is the son of Robert Thompson ; at the death of my grandfather, my uncle William had the possession of the farm for a short time ; my father then took possession ; thinks this was in 1825 ; he rented it to Linderberg ; after that he rented it to Wilhelm for three years ; Wilhelm was in possession as tenant under my father when my father died. My father died on the fourth of January, 1831 ; my grandfather died in the year

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1825; the place was worth \$200 a year at the death of my father. Hoyd took possession of the farm a short time after he bought of the executors. He was present when his mother demanded her dower of Mr. Hoyd; it was two years last spring, about the first of May. Mr. Hoyd refused to give her the dower. The defendant admitted the lawful marriage of the said Nancy with her late husband, Robert Thompson, deceased.

The said defendant having tested the evidence on her side, the said defendant produced to the court and jury the following evidence: a bond and mortgage given by James Thompson to Thomas Shields, bearing date 17th February, 1817, to secure the principal sum of \$ . . . The said mortgage covers the said premises in dispute. Also, the several assignments of said bond and mortgage from said Shields and others, to said defendant.

The execution of the said bond and mortgage and assignments were admitted by the said defendant. John M. Young, examined by the defendant, said he was one of the executors of Robert Thompson, deceased; Andrew Spiner was the other; they sold the farm to the defendant, at public vendue.

The farm was considerably out of repair. It had been badly farmed. The farm was struck to the defendant for the sum mentioned in the deed, \$3271 34. He paid us the purchase money by the amount due on the Shields' mortgage, and the balance in cash. The amount due on the Shields' mortgage was \$3150 4-100. This is the amount we charged the estate with, as having paid on the Shields' mortgage. We did not know that the defendant had the Shields' mortgage before the sale; we expected to pay off the

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The said demandant having rested, the evidence on her side, the said defendant produced to the court and jury the following evidence: a bond and mortgage given by James Thompson to Thomas Shields, bearing date 17th February, 1817, to secure the principal sum of \$ . The said mortgage covers the said premises in dispute. Also, the several assignments of said bond and mortgage from said Shields and others, to said defendant.

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mortgage from the proceeds of the sale. When we came to give the deed, defendant produced the mortgage. I expected he would give it up to us; he said he had been advised not to do so; said he would release the estate, which he did. The witness here produced the release signed by the said James Boyd, and bearing date the 7th day of July, 1832, which was read in evidence; pro ut the same. Land was very low when we sold the farm to the defendant; he gave us the best price we could get for it; he has improved the property since; built a new house; made new fence; thinks that \$150 would be a stiff rent for the farm.

*Examined by the Demandant.*—Defendant also held a second mortgage, which had been given by James Thompson to Thomas Shields upon another farm as collateral security for the first mortgage. This mortgage the defendant delivered up to me at the time of the execution of our deed to him; he received nothing—account of that mortgage. It has been cancelled of record. The witness here produced the second mortgage, bearing date the 5th of May, 1822; pro ut the same.

The farm covered by the second mortgage had been sold by us as executors, and we have agreed with the purchaser to clear it of the incumbrance. We sold the farm to the defendant, as executors, under the authority of a special act of the Legislature. Our object in selling the property was to raise money to pay off the Shields' mortgage, and the other debts of the estate. The conditions of the sale were, that we were to clear the property of incumbrance. We did not sell it subject to the mortgage. The mortgage was to be cancelled by us to the purchaser. I expected it

would have been done so after the sale, when Esq. Hoyd said he would keep the mortgage and give us a release. Our calculation was that the property would at the sale bring more than the mortgage; we had been offered more than the amount of the mortgage sometime before the day of sale. When we settled our account with the surrogate, we gave the estate credit for the full amount of the purchase money for the farm, and charged the estate with the amount paid Mr. Hoyd on the Shields' mortgage.

Amos Robertson knows the property well. In 1827 and 1828 would not have valued more—\$3000; worth a little more in 1832; thinks it was sold at a fair price—in 1832, it would not have rented for more than \$150.

Abraham Hance knew the farm in 1831 and 1832; it was in a poor condition—not worth more than \$100 a year rent. Mr. Hoyd took possession of it in 1832; has improved it since. It is now worth \$200 a year.

William Darnot knew the property in 1831 and 1832; would not then have given over \$125 money rent for it; thinks it would not have rented for any more at that time.

The defendant read in evidence the last will and testament of James Thompson, deceased; proved a verified copy thereof.

The evidence being closed, and the above stated case having been agreed upon between the parties, when, upon the suggestion of his Honor, Justice Nevens, and by consent of the parties, a verdict was found for the plaintiff, as follows: That the said Robert Thompson, deceased, the husband of the said Stewardman, on the fourth day of January, 1831, died seized in fee of the said lands and premises; that the

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The evidence being closed, and the above stated case having been agreed upon between the parties, when, upon the suggestion of his Honor, Justice Nevius, and by consent of the parties, a verdict was found for the plaintiff, as follows: That the said Robert Thompson, deceased, the husband of the said demandant, on the fourth day of January, 1831, died seized in fee of the said lands and premises; that the

said James Boyd became tenant of the freehold in the said premises on the 23d day of June, 1832; that the said premises are of the clear yearly value on all issues beyond repairs, of one hundred and forty dollars, and that the said demandant has sustained damages by reason of the detention of the said dower beyond the value aforesaid, and also over and above her cost and charges to six cents," to be subject to the opinion of this Court after advisement with the Supreme Court, upon the foregoing case, and if this Court shall, after such advisement, be of opinion that the said plaintiff is, upon the foregoing case, entitled in law to recover her dower, &c. in the said lands and premises, the judgment is to be entered for the demandant, but, if the court should be of the contrary opinion, then the said verdict to be set aside, and a judgment to be entered for the defendant. And it is also further agreed that either party have liberty to turn the foregoing case into a special verdict; that the same be made part of the record in this case, and that either party dissatisfied with the opinion and judgment of this Court, have liberty to bring a writ of error thereon.

JAMES S. NEVIUS.

J. W. MILLER, Atty. and  
of counsel with demandant.

A. WURTZ, Att'y of defd't.

WARREN CIRCUIT MINUTES

NOVEMBER TERM, A. D. 1847.

JAMES BORN  
 v. NANCY THOMPSON  
 In Power, on case certified to the Supreme Court for advisory opinion, and verdict rendered by consent for the defendant.

This cause having been certified to the Supreme Court of the State of New-Jersey by this Court at the term of August, A. D. one thousand eight hundred and forty-four, for an advisory opinion, and a verdict by consent for the defendant, and now at this term, the said Supreme Court having certified to this Court, that the said Supreme Court having seen and inspected the case certified, and heard the arguments of counsel, as well for the plaintiff as for the defendant thereupon, and duly considered the same, and being of opinion that the plaintiff is not entitled to recover the lower claimed and demanded in this case, and that they do therefore advise the Circuit Court of the county of Warren, to set aside the verdict in this case rendered by consent of the plaintiff, and to give judgment for the defendant, in conformity with the agreement of the parties, with costs, including the costs of the said defendant in the Supreme Court; pro ut the same filed.

It is thereupon ordered by the Court that the verdict rendered by the jury in this case by consent for the plaintiff, be and the same hereby is set aside and for nothing holden, and that judgment be entered for the defendant in conformity with the agreement of the parties, with costs to be taxed. On motion of A. Wurts, Atty. of defs.

Therefore it is considered that the said plaintiff



## WARREN CIRCUIT MINUTES,

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JAMES BOYD,  
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It is thereupon ordered by the Court that the verdict rendered by the jury in this case by consent, for the plaintiff, be and the same hereby is set aside and for nothing holden, and that judgment be entered for the defendant in conformity with the agreement of the parties, with costs to be taxed. On mo. of  
A. WURTS, Atty. of defts.

Therefore it is considered that the said plaintiff

take nothing by his said suit, but that defendant go quit, and also that the defendant do recover against the plaintiff the sum of forty-six dollars and five cents for his costs and charges, by him about his suit in his defence expended, and now here to him by the Court adjudged, and with his assent, and the plaintiff in mercy, &c. Judgment signed the 27th day of August, A. D. 1844.

NANCY THOMPSON, Widow of	} In Dower.
ROBERT THOMPSON, dec'd.	
<i>Demandant.</i>	
<i>vs.</i>	
JAMES BOYD, <i>Def't.</i>	

A writ of error from the Court of Errors and Appeals of the State of New-Jersey, directed to this Court, in the above stated cause, returnable to the third Tuesday of January next, having been presented in open Court, it is ordered that the proceedings and judgment aforesaid, with all things touching the same be sent to the said Court of Errors and Appeals, and that the Clerk make out the usual return to said writ. On motion of JACOB W. MILLER, Atty. of demandant.

Plaintiff assigned errors.

Defendant joined.

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James Miller  
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