

## DOWER AS AFFECTED BY STATUTE OF LIMITATIONS

the expiration of the forty days of *quarantine*. And upon this point the observations of Mr. Justice Gould are especially noteworthy. In *Goodtitle v. Newman*, 3 Wils., 519, he is reported thus: "If dower be not assigned to her within forty days may she not continue until it be assigned to her? I think the court would not turn her out, until dower was assigned to her." Whereunto counsel for the defendant responded: "It must be admitted that the heir has no right to turn her out before dower be assigned to her." The possession of the widow, in the case put, will be attributed to a rightful entry or continuance in possession in her character of guardian to her infant children, upon whom the estate has descended. In the case already cited, the court say the mother has the right to possession as being the guardian by law of her infant son. She is the guardian in soccage; that is, the person next of blood to whom the inheritance cannot descend: 3 Wils. 527-8.

Now, by Imp. Stat. 31 Geo. 3., c. 13, s. 43, lands in Upper Canada are to be granted in free and common soccage in like manner as lands are held in free and common soccage in England. And it has been held that soccage guardianship is recognized by Canadian law, just as in England. In *Doe v. Moak v. Empey*, 3 O. S. 488, it was decided that the possession of a mother during her son's minority was a possession for him, as his guardian. And in *Doe v. Murphy v. McGuire*, 7 U. C. R. 311, the mother of an infant on whom lands had devolved by descent from the father was said to be the guardian in soccage, and would have the right to make leases, &c. The same law obtains in many of the States: *Jackson v. Vredenberg*, 1 Johns. R. 163, n; *Combs v. Jackson*, 2 Wend. 153; *Jackson v. Combs*, 7 Cowen, 36. This

guardianship may determine when the ward is fourteen, but not necessarily so. Upon this rather obscure subject, it is said in *Re v. Pierson*, Andr. 313, when the Court of Chancery appoint a guardian, such guardianship doth not cease on the ward's attaining fourteen, unless another guardian be then appointed. And so it is of a guardianship in soccage, though at that age the ward hath a right to choose another guardian.

In the case put by us, it may fairly be contended, then, that till the heirs attain majority, the mother remains in possession of the land as their lawful guardian. Then, are her rights as doweress gone by lapse of time? It will be observed that the Dower Act (Rev. Stat., c. 55, s. 7,) provides that every action for dower shall be commenced by writ of summons, which shall be addressed to the person in actual possession of the land out of which dower is claimed. Sec. 12 provides for service on the tenant of the freehold if no person is in actual occupation of the land. The mother, in actual possession and occupation as guardian, cannot be defendant in a suit wherein she claims as doweress against herself. The statute as framed evidently does not contemplate the case of the claimant being in possession on behalf of her children. But the Dower Act and the Limitation Act (Rev. Stat. c. 108, s. 25,) must be read together as *in pari materia*, and for the reason also given by Lord Westbury, that we are to deal with the Consolidated Statutes as one great Act, and to take the several chapters as being enactments which are to be construed collectively and with reference to one another, just as if they had been sections of one statute, instead of being separate Acts: *Boston v. Lelièvre*: L. R. 3 P. C. 152.

But without laying undue stress upon the frame of the Statutes as indicating a suspension of the right of suit for dow-