

GLADNEY v. RUSH.

Opinion delivered March 31, 1900.

ATTORNEY'S LIEN—RECOVERY OF LAND.—Where, in an action by a widow and heirs to recover land which belonged to their deceased, defendant, by showing a purchase from the widow, defeated her claim to the land, and had her dower set apart to him, this was, in effect, only a partition of the land between him and the heirs, and his attorney was not entitled to a lien as for land recovered. (Page 81.)

Appeal from Crittenden Chancery Court.

Edward D. Robertson, Chancellor.

STATEMENT BY THE COURT.

B. F. Bush, as guardian of certain minor heirs, children of John W. Roman, and the widow of Roman brought ejectment against W. C. Stephenson to recover possession of certain lands alleged to have been owned by Roman. Before the commencement of this action, Mrs. Roman had sold and conveyed the land to Stephenson. On the trial the circuit court found in favor of the right of the heirs to recover the land. This ruling was affirmed on appeal, but it was also held that Stephenson was in equity entitled to the dower interest in the land held by the widow of Roman under his purchase of the land from her, and that the recovery in favor of the heirs was subject to the rights of Stephenson in this respect. The case was reversed on that point, and afterwards on motion it was transferred to the equity docket, and Stephenson filed his petition, asking that dower be assigned to Mrs. Roman for his use and benefit. In accordance with this petition, dower was assigned and set aside to Stephenson by virtue of his purchase of the lands from Mrs. Roman. Upon these facts W. G. Weatherford, the attorney of Stephenson, set up a claim for attorney's lien on the land assigned as dower. This claim was resisted by Hill, Fontaine & Co., to whom Stephenson had mortgaged the land after the litigation commenced. The court

refused to sustain the claim of Weatherford, and he appealed.

T. H. Heiskell, of Tennessee, for appellants.

As to attorney's liens in general, see Sand. & H. Dig., §§ 4223-27; 13 Ark. 195; 36 Ark. 604; 33 Ark. 235; 42 Ark. 402; 38 Ark. 233. Appellant's intestate was entitled to a lien on the dower interest.

W. D. Wilkerson, of Tennessee, for appellees.

There can be no attorney's lien for services in merely protecting an existing right. There must be a recovery. 47 Ark. 86; 56 Ark. 324; Sand. & H. Dig., §§ 4223-7; 1 Lea, 398.

RIDDICK, J., (after stating the facts.) We are of the opinion that the judgment of the chancellor was right. Stephenson was in possession of land which was claimed in an action against him by the widow and heirs of Roman. The plaintiffs recovered, except the widow. As to her, Stephenson had a valid defense, and defeated her claim to the land. It is immaterial that, in order to avail himself of that defense, the case had to be transferred to the equity docket, or that this dower interest which he had successfully defended was, on his petition, filed in the same action, assigned, and set apart to him. This was, in effect, only a partition of the land between him and the other plaintiffs, and in this state an attorney acquires no lien on land by obtaining a partition thereof. *Gibson v. Buckner*, 65 Ark. 84.

Stephenson, as before stated, was in possession of all the land at the commencement of the action, and the facts show that he recovered nothing by the litigation, but only succeeded in maintaining his right to a small portion of that which he already held. Under former decisions of this court his attorney held no lien on the land set apart to him. *Hershy v. DuVal*, 47 Ark. 86; *Gibson v. Buckner*, 65 Ark. 84.

Judgment affirmed.

BUNN, C. J., dissents.