

ELLIOTT v. LOCKLAR.

Opinion delivered March 7, 1932.

1. DOWER AND HOMESTEAD—FRAUDULENT CONVEYANCE.—Where a conveyance of a homestead executed by a husband and joined in by his wife is set aside as fraudulent as to the husband's creditors, the wife's dower and homestead rights are restored, whether she participated in the fraudulent intent or not.
2. ELECTION OF REMEDIES—WHEN NOT REQUIRED.—A wife, by intervening in a suit to set aside a conveyance in which she joined with her husband as in fraud of creditors, waived no right and was not required to elect whether she would claim the conveyance as valid or claim her dower and homestead rights upon cancellation of the conveyance as fraudulent.

Appeal from Ouachita Chancery Court, Second Division; *George M. LeCroy*, Chancellor; reversed.

R. K. Mason and Gaughan, Sifford, Godwin & Gaughan, for appellant.

Haynie, Parks & Westfall, for appellee.

KIRBY, J. The only question for determination here is whether the setting aside and cancellation of a deed made in fraud of judgment creditors bars the wife's inchoate right of dower, she having joined in such conveyance relinquishing her right of homestead and dower.

Appellants insist that the court erred, after cancelling the deed executed by herself and husband conveying the lands to Miss Audrey Marks, and the one from Miss Audrey Marks to intervener, Mrs. Flote Elliott, as fraudulent conveyances, in decreeing that her right of homestead and dower be subjected to the lien of appellee's judgment and sold with the land in satisfaction thereof, foreclosing and barring her rights therein.

The statutes provide for the endowment of the wife in the lands whereof her husband was seized of an estate of inheritance unless the same shall have been relinquished in legal form, and also that no conveyance of such lands by the husband without the assent of his wife evidenced by acknowledgment of such conveyance as required by law shall pass the estate of a married woman, and no judgment or decree recovered against him shall prejudice the right of his wife to her dower or preclude her from recovery thereof if otherwise entitled thereto.

The general rule applicable herein is set out in 19 C. J., page 529, as follows:

"Although there is authority to the contrary, it is very generally held that where a conveyance or deed executed by a husband or wife is set aside as fraudulent as to the husband's creditors, the wife's dower in the land is restored. It is not material whether she participates in the fraudulent intent or not; in either case her right to dower is revived." See also *Rickett v. Bolton*, 173 Ky. 739, 191 S. W. 471; and *Huntzicker v. Crocker*, 153 Wis. 38, 115 N. W. 340, and cases cited therein.

Certainly when the deeds executed by her in relinquishment of her dower and homestead in his lands under

the statute are held to be void and set aside as fraudulent, they could be of no binding effect to convey her dower and homestead interest therein, and her status remained as though no such deeds had been executed so far as his said creditors are concerned.

Appellant waived no right by intervening in the cause nor was she put to any other action to determine whether she would defend the action as claiming to be the owner of the lands under a valid conveyance or claiming only the right to her dower and homestead interest therein upon the cancellation of the conveyance as fraudulent, the remedies being in no wise inconsistent.

The court erred in holding otherwise, and the decree is reversed and the cause remanded with directions to enter a decree in accordance with this opinion.
