

being that they are incompetent and antiquated. Willoughby, Principals of Judicial Administration, page 302-306. Some judicial tendency in this direction is indicated by the decision in *Tumey v. State*, 273 U.S. 510, 71 L.Ed. 749, 50 A.L.R. 1243, 47 Sup. Ct. 437, 25 O.L.Rep. 236 (1926), where it was held that pecuniary interest in the case disqualifies the justice, as where he gets no fee except in case of conviction. In view of this sentiment, the interpretation of the Court of Appeals in the principal case might be justified, as tending to cut down the jurisdiction of justices of the peace.

But there is another side to the picture. Although the prosecutor, under section 13437-34 of the General Code, may go directly to the Common Pleas court on information, such is not the common practice. The result is increased expense on the counties for grand juries. An added burden of litigation is also placed directly upon the Common Pleas courts, perhaps necessitating further delays under the present set-up. Recent decisions in Ohio have tended to limit the *Tumey* decision. *Tarr v. State*, 117 Ohio St. 481, 57 A.L.R. 284, 159 N.E. 594 (1928), *State v. Guyton*, 8 Abs. 349 (1930), *Testa v. State*, 8 Abs. 333 (1929).

Without entering this controversy further, suffice it to say that it seems better to leave it to the legislature to make some decisive change in our present set-up, which would eliminate the possibility of further congestion and complications in the courts. It would seem, therefore, that under the most logical interpretation of sections 13433-9 and 13433-10 of the General Code, final jurisdiction is conferred upon a justice of the peace where there has been a written waiver of a jury trial by the accused, although the complaint has been brought by someone other than the party injured and there has been a plea of guilty.

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Dower

WIDOW'S RIGHT OF DOWER IN PERPETUAL LEASEHOLD ESTATE—MERGER OF LEGAL AND EQUITABLE INTERESTS IN SAME PERSON

In 1913, a trust agreement was entered into between John Swift and others, the corpus of the trust being a ninety-nine year lease renewable forever. Swift later acquired eleven-twelfths of the equitable interests and the legal title of the former trustee. Such was the situation on April 23, 1931, at which time Swift assigned the property to H. N.

Ragland for the benefit of creditors, without his wife's release of dower. An action in partition was commenced May 10, 1931. Swift died January 16, 1932, and his wife sought dower rights in his eleven-twelfths interest. The court decided that dower of the trustee's wife attached to his interest because, upon the acquisition of the legal title, the equitable interest merged with the legal interest making the statutory provision concerning legal interests apply. *Ragland v. First National Bank of Cincinnati*, 48 Ohio App. 441, 194 N.E. 389, 2 Ohio Op. 19, 17 Abs. 104 (1934).

At common law, a widow was entitled to dower only in lands in which her husband was seized of an estate of inheritance during coverture. There was no right of dower in perpetual leaseholds as an estate for whatever number of years was a mere chattel interest. *Tiffany*, Real Property (2nd Ed.), Vol. 1, page 748 (1920); *Spangler v. Stanler*, 1 Md. Ch. 36 (1847); *Goodwin v. Goodwin*, 33 Conn. 314 (1866); Cf. *Lenow v. Fones*, 48 Ark. 557, 4 S.W. 56 (1886). Some states have changed the common law rule by enacting statutes, as in Missouri, where a statute expressly gives dower, as in real estate, in a leasehold for a term of twenty years or more; if the term is for less, dower is given as for personal property. *Orchard v. Wright-Dalton-Bell-Anchor Store Co.*, 225 Mo. 414, 125 S.W. 486 (1910); *Phillips v. Hardenburg*, 181 Mo. 463, 80 S.W. 891 (1904). In Ohio, a permanent leasehold, is by statute to be treated as real property for certain purposes. Section 8597 General Code provides, "Permanent leasehold estates, renewable forever, shall be subject to the same law of descent as estates in fee are subject to by the provisions of this chapter." However, early Ohio cases held that although a permanent leasehold estate by express statutory provision was to be treated as real property for certain purposes, that did not make it real property for the purpose of dower. *Oliver v. Jones*, 3 Nisi Prius 129, 6 Ohio Dec. 194 (1896); *Kampmann v. Schaaf*, 8 O. Dec. Rep. 351, 7 Ohio L. J. 159 (1882); *Abbott v. Bosworth*, 7 O. Dec. Rep. 300, 2 Ohio L. J. 92 (1877). In 1925, the Supreme Court of Ohio, in *Ralston Steel Car Co. v. Ralston*, 112 Ohio St. 306, 147 N.E. 513, held that a perpetual leasehold is real property within the meaning of section 8606 General Code so that a widow has dower rights therein. This case overruled former Ohio decisions on the subject and reached a conclusion contrary to that held in most other jurisdictions. *Spangler v. Stanler*, supra; *Goodwin v. Goodwin*, supra. The decision in the *Ralston* case is criticized by Professor Lewis M. Simes in 20 Ill. L. Rev. 290 (1925). In the principal case the court followed the holding of this case and permitted dower rights in a perpetual leasehold.

The plaintiff-in-error, in the principal case, claimed that Swift had merely an equitable interest and, since the property had been conveyed before Swift's death, his widow would be entitled to no dower. The statutory provision, sought to be applied, provided that in order for dower to attach to an equitable interest, it must be in the possession of the husband at the time of his decease. The court decided that by the terms of the trust agreement, Swift's subsequent acquisition of the trustee's interests clearly gave him the legal title. As a general proposition, where the legal and equitable estate in the same land become vested in the same person, the equitable will merge with the legal interest to the extent of the equitable interest. Perry, *Trusts and Trustees*, (7th Ed.), Vol. 1, section 347; Bogart, *Trusts*, page 258 (1920); *Langley v. Conlan*, 212 Mass. 135, 98 N.E. 1064 (1912); *Ogden v. Ogden*, 60 Ark. 70, 28 S.W. 796 (1894); *James v. Morey*, Cowen (N.Y.) 246, 14 Am. Dec. 475 (1823). That the above holds true in a situation involving dower rights to such merged estate has been affirmed in the following cases: *Robison v. Codman*, 1 Sumner's Rep. 121, 20 Fed. Cas. 1056, No. 11, 970 (1931); *Hopkinson v. Dumas*, 42 N.H. 296 (1861); *Cockrill v. Armstrong*, 31 Ark. 580, 591 (1876). Some cases hold that estates only merge if equally coextensive or if the legal estate is more extensive. *Donalds v. Plumb*, 8 Conn. 453 (1831); *Murray v. Murray*, 62 Ind. App. 132, 112 N.E. 835 (1916); *Seaboard Air-Line Ry. Co. v. Holliday*, 165 Ga. 200, 140 S.E. 507 (1927); *Wilson v. Linder*, 21 Idaho 576, 123 P. 487 (1912). It is also sometimes held there will be no merger if the intention is otherwise. *Chase v. Van Meter*, 140 Ind. 321, 39 N.E. 455 (1894); *Weidemann v. Crawford*, 158 Ky. 657, 166 S.W. 185 (1914); *Milwaukee Loan and Finance Co. v. Grundt*, 207 Wis. 506, 242 N.W. 131 (1932); or if it is necessary for the justice of the case that there be no merger. *Warner, Administrator v. York*, 1 O.C.C.N.S. 73, 15 C.D. 310 (1903). Quaere, as to whether these exceptions would apply to cases involving dower rights.

The property involved in this case was conveyed April 23, 1931. The action in partition was commenced May 10, 1931, and Swift died Jan. 16, 1932. As the present dower statute became effective Jan. 1, 1932, the interesting question arises as to whether the case was decided under section 8606 or 10502-1 General Code, the present dower statute. Apparently the result would have been the same in either case because under both the old statute and the present one, dower is given in legal estates conveyed before the death of the husband.

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