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Tuck v. Fitts.

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is nothing apparent on the face of the writ that gives jurisdiction to any court. It falls, therefore, into the general and residuary jurisdiction of the superior tribunal, and not into the limited and inferior jurisdiction within which nothing is presumed to be, till it is shown.

The case is, therefore, within the jurisdiction of the court in which the action was brought, and the amendment, like other amendments of form or of substance, may, in the discretion of that court, be allowed.

*The plaintiff has leave to amend.*

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TUCK v. FITTS.

If a demandant in dower die pending an action, it will not survive in favor of her administrator to recover damages for the detention, as provided by the Revised Statutes, chapter 205, section 4.

**DOWER.** The plaintiff brought this action to recover her dower of a certain farm, of which she alleged that she was dowable; and also to recover damages for the detention of the same, alleging a demand upon the defendant on the 2d day of January, 1845. The writ was dated July 22, 1845.

After the commencement of the term the plaintiff deceased, and her counsel moved the court that the action be continued, in order that an administrator might be appointed on the estate of the plaintiff, and have an opportunity to come in and prosecute this action for the recovery of the damages.

The defendant objected, contending that the action was

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discontinued by the decease of the plaintiff, and that the cause of action to recover the damages did not survive.

*Bell & Tuck*, for the demandant.

*Emery*, for the tenant.

WOODS, J. In general, damages are not awarded in real actions for the detention of land demanded; but in the action of dower, which is of this class, the statute provides for the recovery of damages in a particular case.

By the Revised Statutes, chapter 205, section 4, "If the demandant recovers judgment for her dower, she shall also, in the same action, recover reasonable damages for the detention thereof by the tenant," &c.

In the case before us, by the death of the demandant the action has become abated, and the estate has determined. The recovery of dower has, therefore, been rendered impossible, and the only condition upon which the statute gives the demandant a right to recover damages has irretrievably failed. It is not certain that the demandant, if she had lived, would have shown herself entitled to dower, and that question cannot be tried when there is no party who can recover.

*Motion denied, and action discontinued.*

# STRAFFORD,

JULY TERM, A. D. 1846.

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## LORD v. THE STATE.

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A respondent, indicted for a crime punishable by imprisonment for life, may object, on the trial, that he has not been furnished with information of the place of abode of a witness called for the prosecution, if the objection is not equally applicable to the whole list of witnesses, so as to be in effect an objection that no list, such as the statute requires, has been furnished to him. An objection that no list has been furnished must be taken before the trial, or it will be held to be waived; unless the court, in its discretion, should receive it for the purpose of postponing the trial until a list is furnished.

If, following the name of the witness in the list, there is a designation of a town and State, that is a sufficient designation of the place of abode of the witness.

The respondent, in an indictment for a crime punishable by imprisonment for life, cannot, after proceeding to trial, object that no copy of the indictment was furnished to him before he was arraigned, and thereupon require the court to instruct the jury that he can be convicted only of such lesser offence as may be comprehended in the indictment, and which would not require a copy to be furnished.

**ERROR** to the court of common pleas. The plaintiff in error was tried upon an indictment for carnally knowing and abusing a female child under the age of ten years. The defendant pleaded not guilty. Counsel were assigned him in pursuance of the statute for that purpose, and a day appointed for his trial. Upon the trial, the first witness called by the government was Catharine Hughes, described in the list of witnesses furnished to the plaintiff in error as "Mrs. Hughes, wife of said Ed-