

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAPTER 65.**ASSIGNMENT OF DOWER, PARTITION OF REAL ESTATE, AND DISTRIBUTION OF PERSONAL ESTATE.****ASSIGNMENT OF DOWER AND OTHER LIFE INTERESTS.**

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ASSIGNMENT OF DOWER AND OTHER LIFE INTERESTS.

In what cases the judge of probate may assign dower. R. S. c. 103, §§ 2, 3. 23 Me. 276. 44 Me. 45. 45 Me. 493. 46 Me. 121. 53 Me. 238. Commissioners to be appointed and sworn. R. S. c. 103, § 4.

SEC. 1. The judge of probate, having jurisdiction of the settlement of a deceased husband's estate, may assign dower to the widow, when her right of dower is not disputed by the heirs or devisees, in the lands of which the husband died seized, in any county, including a wood lot or other land used with the farm or dwelling house, though not cleared, but not including wild lands.

SEC. 2. He may issue his warrant to three discreet and disinterested persons to assign the dower by metes and bounds, when it can be done without prejudice to the whole estate; who shall be duly sworn, and shall assign the same equally and impartially, without favor and affection, as conveniently as may be, in one or more parcels, for the best interest of the parties.

Special assignment of dower. R. S. c. 103, § 5.

SEC. 3. When a division by metes and bounds cannot be conveniently made, dower shall be assigned in a special manner, as of a third part of the rents and profits; in which case the judge may, if he deems it necessary, require the parties having the estate to secure the widow's share by mortgage or otherwise.

Widow may waive jointure in certain cases. R. S. c. 103, § 11. 49 Me. 460.

SEC. 4. When a jointure or pecuniary provision has been made before marriage for the benefit of an intended wife, without her consent, or has been made after marriage, she may, within six months after her husband's death, elect, in writing filed in the probate court, to waive such provision, and claim her dower; otherwise her dower shall be barred.

Widow may waive provision in her husband's will. R. S. c. 103, § 12. 1 Me. 148. 32 Me. 132. 36 Me. 211.

SEC. 5. When a specific provision is made for a widow in her husband's will, she shall, within six months after probate thereof, make her election, whether to accept it or claim her dower; but shall not be entitled to both, unless it appears by the will that the testator plainly so intended.

Rights of surviving husband in his wife lands and how to be assigned.

SEC. 6. Upon the decease of a wife whose estate is solvent, the judge, unless she made provision for her husband in her will which he has not duly waived, or unless his right is disputed by her heirs or devisees, may cause one-third of any real estate of which she died

seized to be assigned to the husband for his use during life, in the manner and with the rights of dower. CHAP. 65.

SEC. 7. When a husband or wife dies intestate, leaving no issue, and the estate is solvent, the judge, if the right of the survivor is not disputed by the heirs, may cause one-half of any real estate of which the deceased died seized, to be assigned to the survivor for use during life, in the manner and with the rights of dower.

R. S. c. 103,
§ 17.
1857, c. 8.
1870, c. 113,
§ 21.

Use of one-half of deceased husband or wife's real estate, when to be assigned to survivor.

R. S. c. 103,
§ 17.
1870, c. 113,
§ 21.

In what cases the judge may make partition of real estate.

R. S. c. 65, § 1.
35 Me. 414.

PARTITION OF REAL ESTATE.

SEC. 8. The court of probate, having jurisdiction of the estate of any deceased person, may make partition of all his real estate in this state, among his heirs, or devisees, and all holding under them, when the proportions of the respective parties are not in dispute between them, or do not appear to the judge to be uncertain, depending upon the construction of any devise or other conveyance, or upon other questions that he thinks proper for the consideration of a jury and a court of common law.

SEC. 9. Any reversion or remainder vested in his heirs, expectant on the determination of any particular estate under his will or otherwise, may be in like manner divided, either during the existence of such particular estate, or after its determination.

Reversions or remainders may be divided.
R. S. c. 65, § 2.

SEC. 10. The partition shall be made by three disinterested commissioners, appointed by said judge, who shall first be duly sworn, and make such partition pursuant to the will of the deceased, or the laws regulating the descent of intestate estates, as the case may be, among all the parties owning shares, whether they joined in the petition therefor or not.

Appointment, oath and duties of commissioners.
R. S. c. 65, § 3.

SEC. 11. If there is estate in different counties to be divided, the judge may appoint separate commissioners for each county and issue warrants accordingly; and in such case, the partition shall be made of the estate in each county, as if there were no other to be divided.

Partition of estate in different counties.
R. S. c. 65, § 4.

SEC. 12. When the whole or any part of the premises, of greater value than any party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept it and pay to the others such sums of money, as the commissioners award to make the partition just; but such partition shall not be established by the court, until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto; nor if inconsistent with the condition of the devise, under which they claim; but in such assignment males shall be preferred to females, and the elder to the younger children of the same sex.

Proceedings when equal division cannot be made.
R. S. c. 65, § 5.
47 Me. 259.

SEC. 13. No conveyance of the interest of any heir or devisee, in the lands of the deceased, by deed, levy of execution, or otherwise, shall take from the judge of probate his jurisdiction to divide and

Proceedings when interest of heir or devisee has

CHAP. 65. assign such lands in manner aforesaid; but the same shall enure to the equitable owner of the part so conveyed; and in case of the unequal division provided for in the preceding section, such owner may make written application to the judge, before he accepts such division, for the share of such heir or devisee, and after notice to such heir or devisee, the judge may decide in favor of such owner, and he shall be entitled to receive said share of the money, or so much thereof, as is proportional to his equitable interest.

When such interest is under attachment.
R. S. c. 65, § 7.

SEC. 14. If the share of any such heir or devisee is under attachment, the judge, on like application from the plaintiff in the suit or the attaching officer, shall require the money, not exceeding the amount of the attachment, to be paid to the officer, who shall be answerable therefor in his official capacity, subject to the rights of the parties, as if originally attached.

What estate shall be included in the partition.
R. S. c. 65, § 8.
12 Me. 463.

SEC. 15. When such partition is made on the application of an heir or one holding under him, it shall be made among all the owners, and include all the ancestor's estate, which any interested party requires to have included; and when made on the application of a devisee or one holding under him, it shall be made of all the estate held by him jointly or in common with others holding under the testator, which any devisee requires to have included.

Any owner may apply for partition.
Notice.
R. S. c. 65, § 9.

SEC. 16. Such partition may be ordered on the petition of any of the owners of any share, after giving personal notice to each of the other owners in the state, and public notice if any reside out of the state.

PROVISIONS APPLYING TO ASSIGNMENT OF DOWER, AND TO PARTITION OF REAL ESTATE.

Warrant may be revoked.
Proceedings.
1864, c. 225.

SEC. 17. The judge may, for sufficient cause, revoke any warrant issued by him for the assignment of dower, or for making partition, or for settling or determining other interests in real or personal estate, and grant a new warrant, or proceed otherwise, as circumstances may require.

Guardians to be appointed for minors, and agents for owners out of the state.
R. S. c. 65, § 10.

SEC. 18. If it appears to the court that any minor or insane person, who has no guardian in the state, is interested in the premises, the court shall assign him a guardian for the suit, to appear for him and defend his interest; and if any owner reside without the state, having no agent therein, the judge shall appoint an agent to act for him.

Proceedings when land is owned in common with other parties.
R. S. c. 65, § 11.
31 Me. 107.

SEC. 19. When any of the real estate, of which partition or the assignment of dower is prayed for, is held in common with that of other persons, the judge shall order notice of the intended partition or assignment of dower to be given to the co-tenant, which shall contain a description of the premises to be divided, and of the proportion claimed as belonging to the estate of the deceased; specify the time and place of hearing the case, and be served by delivering it to him, or

leaving at the place of his abode an attested copy thereof, at least fourteen days before the time of hearing; but if the co-tenant does not reside in this state, such notice shall be given as the judge requires. At the time appointed in the notice, the judge shall hear the parties, determine their respective rights in such estate, and direct the commissioners first to divide and set off the estate of the deceased from that of such other persons, and then make the partition or assignment of dower prayed for. CHAP. 65.

SEC. 20. The judge may set aside the return of the commissioners, and commit the case anew to the same or other commissioners. The return, when accepted by the court, shall be recorded in the probate office, and in the registry of deeds for the county in which the lands lie, and be binding, to all intents and purposes, upon all persons interested, saving to them the right of appeal to the supreme court of probate.

Return of commissioners may be set aside, or re-committed. Record, and effect when accepted. R. S. c. 65, § 12. 17 Me. 198.

ALLOWANCES TO WIDOWS AND OTHERS.

SEC. 21. In the settlement of any intestate estate, or of any testate estate which is insolvent or in which no provision is made for the widow in the will of her husband, or she duly waives the provision made, the judge may allow the widow so much of the personal estate, besides her ornaments and wearing apparel, as he deems necessary, according to the degree and estate of her husband, and the state of the family under her care; and he may also allow her any one pew in a meeting-house, of which the deceased died seized, and such allowance, when recorded, shall vest the title in her; and when an estate, which, at the time of said allowance, was considered insolvent, ultimately appears to be solvent, the judge by a subsequent decree may make the widow a further reasonable allowance. And when, after an allowance has been made from any estate, additional personal property belonging to said estate comes to the knowledge of the judge, he may make a further allowance to her from such additional property.

Allowances to widows from personal estate. R. S. c. 65, § 13. 1870, c. 113, § 7. 31 Me. 65. 39 Me. 15. 46 Me. 537. 50 Me. 236. 52 Me. 198. 53 Me. 184. 54 Me. 531.

SEC. 22. When any allowance to a widow wholly or partly consists of a debt due the estate, secured by a mortgage of real or personal property, the executor or administrator, under the direction of the judge of probate, shall assign said mortgage and deliver the evidence of such debt to her.

Mortgage debts allowed may be assigned. R. S. c. 65, § 14. 54 Me. 531.

SEC. 23. In the settlement of any testate estate, where no provision is made for the widow in the will of her husband, or she duly waives the provision made, the judge shall make her suitable allowances from the personal estate, from time to time, for the support of herself and family under her care, during any litigation concerning the will; and on the final probate of the will he shall make her a final reasonable allowance from the personal estate, according to the degree and estate of her husband and the state of the family under her care.

Temporary allowances during litigation. 1861, c. 22, § 2.

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Widow may have 90 days' support in husband's house. R. S. c. 103, § 16.

Allowance to minor children, if no widow. When allowance may be divided. R. S. c. 65, § 15. 1869, c. 15.

Allowance to husband from his wife's estate. R. S. c. 65, § 16. 1870, c. 113, § 8.

Remainder of personal estate, how to be distributed. Proceedings in order of distribution is not executed. R. S. c. 65, § 17. 1870, c. 126. 50 Me. 188.

Distribution of specific articles. R. S. c. 65, § 18.

Debts may be assigned; conditions. R. S. c. 65, § 19.

SEC. 24. A widow may remain in the house of her husband ninety days next after his death, without being chargeable with rent therefor; and in the meantime, she shall have her reasonable sustenance out of the estate.

SEC. 25. In all insolvent estates, if there is no widow, the judge may make a like allowance from the personal estate to the minor children of the deceased, who are under fourteen years of age, and to those between fourteen and twenty-one years of age, who from ill health are unable to labor. And if there is a widow and such children by a former wife, the judge may, at his discretion, divide such allowance among the widow and such children of a former wife.

SEC. 26. Upon the decease of a wife whose estate is solvent, the judge may make an allowance to her husband from her personal estate, in the same manner as to a widow from the estate of her husband.

DISTRIBUTION OF PERSONAL ESTATE AMONGST HEIRS AND DEVISEES.

SEC. 27. When on the settlement of any account of an administrator or executor, there appears to remain in his hands any property not necessary for the payment of debts and expenses of administration, nor specifically bequeathed, the judge shall order the same to be distributed according to the will of the deceased, if any, so far as it directs, otherwise according to the provisions of law; but before any order, determining who are heirs, and the share of each, shall be passed, public or personal notice shall be given to all interested; and alienage shall be no bar to any person who in other respects is entitled to receive any part of such property. If an executor or administrator neglects to distribute the property in his hands in pursuance of such order, and the parties in interest reside out of the state, and had no actual notice of any such settlement of account, the judge, on petition of any such party, may, within six years after such settlement, order such executor or administrator to render a new account of his doings.

SEC. 28. When such surplus consists of any other property besides money, the judge may order a specific distribution of the same in proportion to the value thereof; and for this purpose he may appoint one or more appraisers to value and make such distribution under oath, and make report thereof to him for his acceptance.

SEC. 29. If any evidence of debt, or any account due to the deceased is thus assigned, the assignee is authorized to use the name of the executor or administrator to collect the same, by suit or otherwise, on giving such indemnity against the costs, as the judge orders; saving to all supposed debtors the right to set off any claim, which they have against the estate of the deceased.

SEC. 30. When an executor or administrator pays to a creditor, heir, or legatee, a sum exceeding thirty dollars on account of a debt, legacy, or decree of distribution, the judge of probate may authorize him to require of the payee a sufficient bond to refund so much of said sum, as it may exceed such payee's equitable proportion on final settlement of the estate; unless such payment is made to a creditor under an order of distribution of an insolvent estate.

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Bond may be required in certain cases. R. S. c. 65, § 20.

SEC. 31. Any legatee of a residuary or specific legacy under a will, may sue for and recover the same of the executor, in an action of debt at common law, or other appropriate action.

Legatee may sue for legacy. R. S. c. 65, § 21. 30 Me. 137.

DISTRIBUTION OF LANDS HELD IN MORTGAGE OR TAKEN ON EXECUTION.

SEC. 32. Real estate held by an executor or administrator in mortgage, or taken on execution, until the right of redemption has expired, shall be deemed personal assets, and held in trust for the persons who would be entitled to the money if paid; and if it is paid, he shall release the estate; but if it is not paid, he may sell it as he could personal estate at common law, and assign the mortgage and debt; and the purchaser shall have the same rights and liabilities as the purchaser of personal property, sold by license of the probate court. All sales so made heretofore shall be valid.

Lands held in mortgage or taken on execution, before foreclosure, to be treated and sold as personal estate. R. S. c. 65, § 22. 1863, c. 212, § 2, 3. 1870, c. 113, § 25. 6 Me. 127. 52 Me. 566. 54 Me. 531.

SEC. 33. Any such real estate may, for the purpose of paying debts, legacies or charges of administration, be sold by a license of the probate court as personal estate is sold; and the judge may, if he deems it necessary, require due notice to be given before granting such license, and also an additional bond from the executor or administrator.

To be sold by license for payment of debts, &c. R. S. c. 65, § 23. 1870, c. 113, § 9.

SEC. 34. When any executor or administrator has taken land on execution for debt due the estate, and dies without disposing thereof, the judge may license his executor or administrator to sell and convey it, to carry into effect the trust whereby it is held, or for any other legal purpose.

In case of death of executor or administrator, proceedings. 1866, c. 16.

SEC. 35. If such real estate is not so redeemed or sold, it shall be distributed among those who are entitled to the personal estate, but in the manner provided in this chapter for the partition of real estate; or the judge of probate or supreme judicial court, if it would be more for the benefit of the parties in interest, may order it sold by the executor or administrator, and the money distributed as in other cases of personal estate.

Distribution if not redeemed or sold for debts. R. S. c. 65, § 24. 54 Me. 531. See c. 71, § 1, spec. 8.

DISTRIBUTION OF THE ESTATES OF PERSONS DECEASED OUT OF THE STATE.

SEC. 36. When administration is taken in this state on the estate of any person, who, at the time of his decease, was not an inhabitant thereof, his estate found here, after payment of his debts, shall be dis-

Estates of persons deceased out of state, how to be disposed of. R. S. c. 65, § 26.

CHAP. 65. posed of according to his last will, duly executed according to the laws of this state, if he left any; but if not, his real estate shall descend according to the laws of this state; and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant; and the judge of probate, as he thinks best, may distribute the residue of said personal estate as aforesaid, or transmit it to the foreign executor or administrator, if any, to be distributed according to the law of the place where the decease had his domicile.

Proceedings if
such person
died insolvent.
R. S. c. 65, § 27.

SEC. 37. If such person died insolvent, his estate found in this state, shall, as far as practicable, be so distributed that all his creditors here and elsewhere may share in proportion to their debts; and to this end his estate shall not be transmitted as aforesaid, until all his resident creditors have received the proportion that they would, if the whole estate applicable to the payment of creditors, wherever found, was divided among all said creditors in proportion to their debts without preferring any one kind of debt to another; and in such case, no foreign creditor shall be paid out of the assets found here, till all the resident creditors have received their proportion as herein provided.

If any residue,
how distribut-
ed.
R. S. c. 65, § 28.

SEC. 38. If there is any residue, after such payment to the citizens of this state, it may be paid to any other creditors who have proved their debts here, in proportion to the amount, but no one shall receive more than would be due to him, if the whole estate were divided ratably among all the creditors as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator, or if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the resident and foreign creditors who have proved their debts in this state.