

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:
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CHAP. 103.

CHAPTER 103.

ESTATES IN DOWER, AND BY CURTESY, AND ACTIONS OF DOWER.

ESTATES IN DOWER AND BY CURTESY.

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ACTION OF DOWER.

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 20. Damages for detaining dower.
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 22. If demandant dies pending an action for dower, executor or administrator may prosecute for the damages.
 23. Writ of seizin, and proceedings in setting off dower.
 24. Assignments of rents and profits in certain cases.

ESTATES IN DOWER AND BY CURTESY.

Of what lands a woman is dowable. R. S. c. 103, § 1. SEC. 1. Every woman shall be entitled to her dower at the common law in the lands of her husband, with the exceptions hereafter mentioned, to be assigned to her after his decease, unless lawfully barred. (a)

Of what she is not dowable. R. S. c. 103, § 2. SEC. 2. A widow shall not be endowed of wild lands of which her husband dies seized, nor of wild lands conveyed by him, though
 15 Me. 371.
 50 Me. 227.

(a) 5 Me. 479; 14 Me. 290; 18 Me. 39; 19 Me. 141; 20 Me. 242; 24 Me. 332; 25 Me. 94; 101; 31 Me. 91, 243, 403; 32 Me. 412, 424; 37 Me. 11; 39 Me. 25; 43 Me. 439.

afterwards cleared; but she shall be in any wood lot or other land used with the farm or dwellinghouse, though not cleared. CHAP. 103.

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. See c. 65,
§§ 1, 2.
Special assign-
ment, when
cannot be by
metes and
bounds.
R. S. c. 103, § 5.
27 Me. 381.

SEC. 4. The widow shall be entitled to receive one undivided net third part of the rents and profits of the estate, of which her husband died seized, until her dower is assigned either by the heirs, the judge of probate, or judgment of court. Rights of
widow, before
dower is as-
signed.
R. S. c. 103, § 6.
19 Me. 66.
34 Me. 428.

SEC. 5. The widow of a citizen of the United States, who was an alien when she married him, shall be entitled to dower in her husband's estate, which was not conveyed by him or taken from him by execution prior to the twenty-third day of February, eighteen hundred and thirteen. Widow of nat-
uralized alien
entitled to
dower.
R. S. c. 103, § 6.
22 Me. 300.

SEC. 6. A married woman of any age may bar her right of dower in an estate conveyed by her husband, by joining in the same deed or a subsequent deed, or by her sole deed, but she shall not be deprived of dower, by a levy or sale of his real estate on execution; but she may, after the right of redemption has expired, release such dower by her sole deed. (a) How a married
woman may
bar her right
of dower. Not
deprived by
sale or levy
on execution
against hus-
band.
R. S. c. 103, § 8.
See c. 76, § 44.
1863, c. 215,
§§ 1, 2.

SEC. 7. A woman may be barred of her dower in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands, for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian. A woman may
bar her right
by deed, and
by accepting
jointure be-
fore marriage.
R. S. c. 103, § 9.
21 Me. 364.

SEC. 8. A pecuniary provision made for the benefit of an intended wife in lieu of dower, consented to by her as provided in the preceding section, shall bar her right of dower in her husband's lands. Also by a pro-
vision made in
lieu of dower.
R. S. c. 103,
§ 10.

SEC. 9. If such jointure or pecuniary provision is made before marriage, without the consent of the intended wife, or if made after marriage, it shall bar her dower, unless, within six months after the husband's death, she makes her election to waive such provision, and files the same in writing in the probate court. Widow may
waive jointure
in certain
cases.
R. S. c. 103,
§ 11.

SEC. 10. When a specific provision is made in her husband's will for the widow, within six months after probate thereof, she shall 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. She may waive
provision in
her husband's
will.
R. S. c. 103,
§ 12.
1 Me. 148.
32 Me. 132.
36 Me. 211.

SEC. 11. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as a jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be Remedy if
evicted of dow-
er.
R. S. c. 103,
§ 13.

(a) 3 Me. 63; 29 Me. 415; 30 Me. 192; 32 Me. 424; 33 Me. 396; 34 Me. 135; 51 Me. 367, 480.

CHAP. 103. endowed anew, as though no such assignment or provision had been made.

23 Me. 276.

27 Me. 381.

When down-
ble of an equi-
ty of redemp-
tion.

R. S. c. 103,

§ 14.

7 Me. 102, 241.

20 Me. 111.

24 Me. 332.

34 Me. 50.

45 Me. 386, 493.

53 Me. 138.

SEC. 12. If the wife has released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person, or by himself before their marriage, she shall be entitled to dower in the mortgaged premises as against every person except the mortgagee and those claiming under him; and if the heirs of the husband, or other person claiming under him, redeems the mortgage, she shall repay such proportion of the money paid by him, as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to dower only according to the value of the estate, after deducting the money paid for its redemption.

Penalty if she
commits
waste.

R. S. c. 103,

§ 15.

13 Me. 273.

SEC. 13. If any woman, endowed of lands, commits or suffers any waste thereon, she shall forfeit the place wasted, and the amount of the damages done to the premises, to be recovered in an action of waste by the person having the next immediate estate of inheritance therein; but taking fuel necessary for her own use, and materials for the repair of buildings, and for fences thereon, from any woodlands of which she is endowed, shall not be considered waste.

Right of
widow to re-
main in her
husband's
house ninety
days without
expense.

R. S. c. 103,

§ 16.

Tenancy by
curtesy. Dow-
er of hus-
band or wife.

R. S. c. 103,

§ 17.

1870, c. 113,

§ 21.

SEC. 14. 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. 15. When a man and his wife are seized of lands in fee, in her right, acquired before March twenty-second, eighteen hundred and forty-four, which are under improvement, and issue is born alive of her body, that may inherit the same, the husband shall hold such estate after his wife's decease, during his life, as tenant by the curtesy. The husband of a deceased wife whose estate is solvent, shall have the use for life, of one-third of her real estate, to be recovered and assigned in the manner and with the rights of dower, and shall have the same right to waive any provision made for him in her will, that a widow has with regard to her husband's will. When a husband or wife dies intestate, leaving no issue, and the estate is solvent, the survivor shall have the use for life of one-half of the real estate of the deceased, to be recovered and assigned in the manner and with the rights of dower.

ACTIONS OF DOWER.

Rights of
widow to sue
for dower.

R. S. c. 103,

§ 18.

R. S. c. 95, § 8.

39 Me. 426.

SEC. 16. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold, nor assigned to her by the judge of probate, she may recover it by a writ of dower as herein provided.

SEC. 17. She must demand her dower of the person who is, at the time, seized of the freehold, if in the state, otherwise, of the tenant in possession, and shall not commence her action of dower before the expiration of one month, nor after the expiration of one year, from the time of demand; but she may make a new demand and commence an action thereon, if an action is not brought within one year after the first demand.

SEC. 18. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom by law a writ in a civil action against it may be served; and the time shall be sixty, instead of thirty days, between the demand and the suit; but a second demand may be made as aforesaid.

SEC. 19. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

SEC. 20. If the demandant recovers judgment for her dower, she may recover damage for its detention, in the same action, to the time of its commencement, and the subsequent damages, in a separate action.

SEC. 21. The action shall be brought against the person who is at the time tenant of the freehold; but if he is not the person of whom demand was made, he shall be liable for damages only for the time he held the possession; and if the demandant recovers her dower and damages, she may afterwards maintain an action on the case against the prior tenant of whom her demand was made, for the rents and profits while he held the premises after the demand.

SEC. 22. If the demandant dies during the pendency of an action of dower, her executor or administrator may prosecute the action to final judgment, and recover therein the damages to which she would be entitled to the time of her decease. He may commence an action, or prosecute one commenced by her, under the preceding section, and recover the damages to which she would be entitled, if any.

SEC. 23. When judgment for dower is rendered in her favor, a writ of seizin shall be issued, requiring the proper officer to cause her dower to be assigned and set out to her by three disinterested persons, to be appointed by the plaintiff, defendant, and officer, as in the levy of an execution on land; who shall be duly sworn to set it out equally and impartially, as conveniently as may be, and according to their best skill and judgment; and the officer shall make return of the writ and doings thereon to the court, with the assignment of dower indorsed thereon, or annexed thereto; which, being accepted, shall be conclusive.

SEC. 24. When the estate, out of which the dower is to be assigned, consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents

CHAP. 103.

Previous demand, and time of bringing the action. R. S. c. 103, § 19.

35 Me. 92.

36 Me. 433.

37 Me. 509.

41 Me. 230.

45 Me. 484.

51 Me. 367.

55 Me. 370.

Demand upon a corporation, how made and when suit may be brought. R. S. c. 103, § 20.

Plea of non-tenure in abatement, but not in bar. R. S. c. 103, § 21.

33 Me. 343. Damages for detaining dower.

R. S. c. 103, § 22.

28 Me. 509.

41 Me. 529.

Suit to be against the tenant of the freehold, but prior tenant liable for damages.

R. S. c. 103, § 23.

If demandant dies pending an action for dower, executor or administrator may prosecute. R. S. c. 103, § 24.

Writ of seizin and proceedings in setting off dower. R. S. c. 103, § 25.

16 Me. 80.

27 Me. 331.

38 Me. 447.

45 Me. 28.

Assignments of rents and profits in certain cases. R. S. c. 103, § 26.

CHAP. 104. and profits thereof, to be received by the demandant as tenant in common with the other owners of the estate.

CHAPTER 104.

REAL ACTIONS.

- SEC. 1. Recovery of estates by writ of entry; mode of service.
2. Demandant to declare on his own seizin, within twenty years, and disseizin by tenant.
3. To set forth the estate he claims in the premises.
4. Proof of seizin.
5. Demandant must have right of entry; such right not defeated by descent or discontinuance.
6. Who may be considered a disseizor. Disclaimer.
7. If defendant has ousted demandant, he may be considered a disseizor, though he claims less than a freehold.
8. Proof to entitle the demandant to recover on trial.
9. Joinder of demandants.
10. Demandant may recover, on proof of title.
11. Demandant may recover damages in the same action.
- 12, 13, 14. Estimation of rents and profits. Tenant not liable for more than six years, unless by set-off.
15. Recovery of damages against other persons.
16. Real actions not to abate by death or intermarriage of a party, but tried after notice.
17. Appointment of guardians, for minors. Amendments.
18. Writs of possession to conform to the case; judgment conclusive against all persons interested, who were notified.
19. Allowance of costs, and stay of execution in such cases.
20. Betterments allowed after six years possession.
21. The premises to be clearly defined and described, in such action.
22. Tenant may consent that demandant may recover a specified part; effect thereof.
23. Tenant may have betterments upon demurrer or default.
24. Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury to allow for no improvements, except those made by tenant, or those under whom he claims, and that were judicious and proper.
25. The difference between the appraised value of the land, when tenant entered, and the value of it with improvements, at the time of trial, to be taken for the value of betterments.
26. Demandant may elect to abandon; and if so, must give bond to tenant, to refund, if ousted by better title.
27. Tenant allowed to pay one-third the value of the land the first year, interest on the whole, and costs.
28. At the end of two years he may pay another third, with interest.