

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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or within five years from the removal of such disabilities as are described in section ten.

CHAP. 102.

R. S., c. 102,
§ 15.

WRITS OF MANDAMUS.

SEC. 16. A petition for a writ of mandamus may be presented to a justice of the supreme judicial court in any county in term time or vacation, who may, upon notice to all parties, hear and determine the same, or may reserve questions of law arising thereon, upon exceptions or otherwise, for the determination of the full court, which may hear and determine the same at any time in any county, as justice shall require. If on such hearing such writ is ordered, it may be issued from the clerk's office in any county and be made returnable as the court directs.

Petition, to whom and when presented. 1883, c. 225, § 1. —questions of law, reserved for full court. —first writ, whence issued, and how returnable.

SEC. 17. When a writ of mandamus issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or may demur. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered that he recover the same with costs, and that a peremptory writ of mandamus be granted; otherwise the party making the return shall recover costs. No action shall be maintained for a false return to a writ of mandamus.

Return to writ, how to be answered. 1883, c. 225, § 2.

—judgment and peremptory writ.

—costs.

—no action for false return.

SEC. 18. The court may make rules, on a petition for the writ or upon and after the issuing of the first writ, calling upon any person having or claiming a right or interest in the subject matter, other than the party to whom the writ is prayed to be or has been directed, to show cause against the issuing thereof. If such person appears, he shall be heard in such manner as the court may direct, and in proper cases he may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

Third person may be cited to show cause. 1883, c. 225, § 3.

—may be heard, and stand as real party.

SEC. 19. If such third person is admitted, the proceedings shall not abate or be discontinued by the death, resignation, or removal from office by lapse of time or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

Proceedings do not abate by death, resignation or removal. 1883, c. 225, § 4.

CHAPTER 103.

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

ESTATES IN DOWER AND BY COURTESY.

- SEC. 1. Of what lands, a woman is dowable.
 2. Of what, she is not dowable.
 3. Special assignment, when division cannot be made by metes and bounds.
 4. Rights of widow, before dower is assigned.
 5. Widow of naturalized alien is entitled to dower.
 6. A married woman may bar her right to dower by deed; how executed. She is not deprived of dower by levy or sale on execution.

- CHAP. 103. SEC. 7. A woman may bar her dower, by accepting a jointure before marriage.
8. Also, by a provision made for an intended wife, instead of dower.
 9. Widow may waive jointure, in certain cases.
 10. She may waive provision in her husband's will.
 11. Remedy, if she is evicted of her dower.
 12. When dowable of an equity of redemption.
 13. Penalty, if she commits waste.
 14. Tenancy by courtesy. Husband has dower in a deceased wife's estate.

ACTIONS OF DOWER.

- SEC. 15. Right of widow to sue for dower.
16. Previous demand, and time for bringing the action.
 17. Demand upon a corporation, and time for bringing the action.
 18. Defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.
 19. Damages for detaining dower.
 20. Suit must be against the tenant of the freehold; but he is liable for damages only while he held possession. She may afterwards have a separate action against prior tenant, of whom the demand was made.
 21. If demandant dies pending an action for dower, her executor or administrator may prosecute for the damages.
 22. Writ of seizin, and proceedings in setting off dower.
 23. Assignments of rents and profits, in certain cases.
 24. Costs, when there has been no refusal to set out dower, how apportioned.

ESTATES IN DOWER AND BY COURTESY.

Of what lands a woman is dowable.
R.S., c. 103, § 1.

Of what, not dowable.
R.S., c. 103, § 2.
15 Me., 372.
50 Me., 230.
See c. 65,
§§ 1, 2.

Special assignment.
R.S., c. 103, § 3.
27 Me., 391.

Rights of widow, before dower is assigned.
R.S., c. 103, § 4.

Widow of naturalized alien.
R.S., c. 103, § 5.
22 Me., 303.

How right of dower may be barred.
R.S., c. 103, § 6.
See c. 76, § 49.
—not affected by levy or sale on execution against husband.

SEC. 1. Every woman is, with the exceptions hereafter mentioned, entitled to her dower at common law in the lands of her husband to be assigned to her after his death, unless lawfully barred. (a)

SEC. 2. A widow shall not be endowed of wild lands of which her husband dies seized, nor of wild lands conveyed by him, although afterwards cleared; but she shall be endowed in any woodlot or other land used with the farm or dwelling-house, although not cleared.

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.

SEC. 4. The widow is 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. (b)

SEC. 5. The widow of a citizen of the United States who was an alien when she married him, is entitled to dower in her husband's estate.

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, 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. (c)

(a) 5 Me., 481; 14 Me., 291; 18 Me., 41; 19 Me., 144; 20 Me., 244; 24 Me., 333; 25 Me., 93, 103; 31 Me., 91, 245, 406; 32 Me., 415, 426; 37 Me., 13; 39 Me., 26; 43 Me., 489; 49 Me., 46; 61 Me., 377; 65 Me., 177; 69 Me., 252, 534, 546.

(b) 32 Me., 425; 34 Me., 429; 62 Me., 295.

(c) 3 Me., 64; 29 Me., 417; 30 Me., 193; 32 Me., 423; 33 Me., 410; 34 Me., 137; 51 Me., 369, 487; 61 Me., 55, 504; 69 Me., 534, 542, 551.

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.

CHAP. 103.

Dower barred by accepting jointure before marriage.
R. S., c. 103, § 7.
21 Me., 369.
69 Me., 534.

SEC. 8. A pecuniary provision made for the benefit of an intended wife instead of dower, consented to by her as provided in the preceding section, bars her right of dower in her husband's lands.

Or by provision made.
R. S., c. 103, § 8.
61 Me., 398.
69 Me., 534.

SEC. 9. If such jointure or provision is made before marriage, without the consent of the intended wife, or if it is made after marriage, it bars 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.

When widow may waive jointure.
R. S., c. 103, § 9.
61 Me., 398.
69 Me., 534.

SEC. 10. When a specific provision is made in her husband's will for the widow, she shall, within six months after probate thereof, make her election, whether to accept it or claim her dower; but she is not entitled to both, unless it appears by the will that the testator plainly so intended. (a)

She may waive provision in husband's will.
R. S., c. 103, § 10.

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 instead of dower, she may be endowed anew, as though no such assignment or provision had been made.

Remedy, if evicted of dower.
R. S., c. 103, § 11.
23 Me., 277.
27 Me., 392.

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, redeem 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.

When dower of an equity of redemption.
R. S., c. 103, § 12.
7 Me., 42, 103.
20 Me., 118.
24 Me., 334.
34 Me., 51.
45 Me., 390, 498.
53 Me., 140.

SEC. 13. If any woman, endowed of lands, commits or suffers any waste thereon, she forfeits 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 the taking of 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, is not waste.

Penalty, if she commits waste.
R. S., c. 103, § 13.
13 Me., 278.

SEC. 14. When a man and his wife are seized of lands in fee, in her right, acquired before March twenty-two, eighteen hundred and forty-four, which are under improvement, and issue is born alive of her body, who may inherit the same, the husband shall hold such estate after his wife's decease, during his life, as tenant by the courtesy. 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

Tenancy by courtesy.
R. S., c. 103, § 15.
57 Me., 303.
69 Me., 253.
—dower of husband.

(a) 1 Me., 150; 32 Me., 133; 36 Me., 215; 69 Me., 534.

CHAP. 103.

—he may
waive
provision.

the manner and with the rights of dower, and he 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.

Widow may
sue for
dower.

R. S., c. 103,
§ 16.

39 Me., 428.
69 Me., 546.

Demand, and
time of bring-
ing the
action.

R. S., c. 103,
§ 17.

SEC. 15. 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. 16. 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 one month, nor after 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. (a)

Demand on
a corporation,
how to be
made and
when suit
brought.

R. S., c. 103,
§ 18.

SEC. 17. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom a writ in a civil action against it may be served; and the time between the demand and the suit shall be sixty days, instead of thirty; but a second demand may be made as aforesaid. (b)

Non-tenure.
R. S., c. 103,
§ 19.

33 Me., 346.
Damages for
detaining
dower.

R. S., c. 103,
§ 20.

SEC. 18. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

SEC. 19. If the demandant recovers judgment for her dower, she may, at the same time, recover damages for its detention to the time when the action was commenced, and subsequent damages, in a separate action. (c)

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

R. S., c. 103,
§ 21.

62 Me., 576.
70 Me., 234.

SEC. 20. 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 that 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.

Demandant
dying, pend-
ing action for
dower, execu-
tor or admin-
istrator may
prosecute.

R. S., c. 103,
§ 22.

SEC. 21. 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, up 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.

Writ of
seizin, and
proceedings

SEC. 22. When judgment for dower is rendered in her favor, a writ of seizin shall be issued, requiring the proper officer to cause her dower

(a) 35 Me., 95; 36 Me., 435; 37 Me., 514; 41 Me., 231; 45 Me., 487; 51 Me., 368; 55 Me., 372; 64 Me., 242; 70 Me., 180, 234.

(b) 70 Me., 181.

(c) 28 Me., 510; 41 Me., 531; 69 Me., 518, 547; 71 Me., 543.

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 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, is conclusive. (a)

SEC. 23. 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 and profits thereof, to be received by the demandant as tenant in common with the other owners of the estate.

SEC. 24. In actions of dower, when it appears to the court that there has been no refusal to set out dower, the costs accruing on the assignment of dower shall be apportioned according to the interests of the parties.

CHAP. 103.
in setting off
dower.
R. S., c. 103,
§ 23.
See c. 76, § 1.

Assignments
of rents and
profits in
certain cases.
R. S., c. 103,
§ 24.

Costs in
action of
dower, how
apportioned.
1861, c. 31.

CHAPTER 104.

REAL ACTIONS.

- SEC. 1. Recovery of estates by writ of entry; mode of service.
2. Demandant shall declare on his own seizin, within twenty years, and allege a disseizin by tenant.
3. Demandant shall set forth the estate that he claims in the premises.
4. Proof of seizin.
5. Demandant must have a right of entry; such right is 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, although he claims less than a freehold.
8. Proof to entitle the demandant to recover on trial.
9. Joinder of demandants.
10. What 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 is not liable for more than six years' rent, unless by set-off.
15. Recovery of damages against other persons.
16. Real actions do not abate by death or intermarriage of a party, but shall be tried after notice.
17. Appointment of guardians for minors. Amendments.
18. If demandant prevails, writ of possession shall issue; judgment is conclusive against all persons interested, who were notified.
19. Allowance of costs, and stay of execution in such cases.
20. Betterments shall be allowed after six years' possession.
21. The premises shall be clearly defined and described, in such action.
22. Tenant may consent that demandant may recover a specified part; effect.
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 shall allow for no improvements, except those made by tenant, or those under whom he claims, and such as were judicious and proper.

(a) 16 Me., 81; 27 Me., 394; 38 Me., 449; 45 Me., 30; 69 Me., 519, 546; 72 Me., 313.