

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SIXTH REVISION

THE
REVISED STATUTES

OF THE

STATE OF MAINE

PASSED SEPTEMBER 29, 1916, AND TAKING
EFFECT JANUARY 1, 1917



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT
1916

pears, 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.

Sec. 20. Proceedings do not abate by death, resignation or removal. R. S. c. 104, § 20. 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.

Quo Warranto.

Sec. 21. Quo warranto proceedings regulated. 1911, c. 63, § 1. Petitions, informations and other processes in quo warranto proceedings may be made returnable before the supreme judicial court, in term time or in vacation, as and when the court or any justice thereof may order, and by like order the cause may be heard in vacation if the justice hearing the same shall determine that justice so requires.

Sec. 22. Proceedings when attorney-general need not be a party. 1911, c. 63, § 2. When in quo warranto proceedings the title to office in a private corporation is involved, the petition or information may be brought in the name of the interested party and the attorney-general need not be a party thereto.

CHAPTER 108.

Actions of Dower.

Sec. 1. Widow may sue for dower. R. S. 105, § 1. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold, she may recover it by a writ of dower as herein provided.
39 Me. 428; 69 Me. 546.

Sec. 2. Demand and time of bringing the action. R. S. c. 105, § 2. 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.

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; 82 Me. 236; 106 Me. 379.

Sec. 3. Demand on a corporation. R. S. c. 105, § 3. 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; but a second demand may be made as aforesaid.

70 Me. 181; 106 Me. 379.

Sec. 4. Non-tenure. R. S. c. 105, § 4. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

33 Me. 346; 106 Me. 379.

CHAP. 108

Sec. 5. Damages for detaining dower. R. S. c. 105, § 5. 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.

28 Me. 510; 41 Me. 531; 69 Me. 518, 547.

Sec. 6. Suit to be against tenant of the freehold, but prior tenant is liable for damages. R. S. c. 105, § 6. 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.

62 Me. 576; 70 Me. 234.

Sec. 7. Demandant dying, pending action for dower, executor or administrator may prosecute. R. S. c. 105, § 7. 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.

Sec. 8. Writ of seizin, and proceedings in setting off dower. R. S. c. 105, § 8. 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 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.

See c. 81, § 1; 16 Me. 81; 27 Me. 394; 38 Me. 449; 45 Me. 30; 69 Me. 519, 546; 72 Me. 313; 90 Me. 571.

Sec. 9. Assignments of rents and profits in certain cases. R. S. c. 105, § 9. 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. 10. Costs, how apportioned. R. S. c. 105, § 10. 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.

Sec. 11. Penalty, if waste committed. R. S. c. 105, § 11. 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.

13 Me. 278; 51 Me. 435; 52 Me. 142.

Sec. 12. Remedy, if evicted of dower. R. S. c. 105, § 12. 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.

23 Me. 277; 27 Me. 392.

CHAPTER 109.

Real Actions.

Sec. 1. Recovery of estates by writ of entry; mode of service. R. S. c. 106, § 1. Any estate of freehold, in fee simple, fee tail, for life, or any term of years, may be recovered by a writ of entry; and such writs, and the writ in an action of dower, shall be served by attachment and summons, or copy of the writ, on the defendant, but if he is not in possession, the officer shall give the tenant in hand, or leave at his place of last and usual abode, an attested copy of the writ; and if the defendant is not an inhabitant of the state, the service on the tenant shall be sufficient notice to the defendant, or the court may order further notice.

6 Me. 439; 7 Me. 232; 17 Me. 220; 20 Me. 279; 24 Me. 527; 32 Me. 175; 51 Me. 366; 66 Me. 250.

Sec. 2. Declaration. R. S. c. 106, § 2. The demandant shall declare on his own seizin within twenty years then last past, without naming any particular day or averring a taking of the profits, and shall allege a disseizin by the tenant.

20 Me. 284; 58 Me. 335; 84 Me. 324, 435; 95 Me. 245.

Sec. 3. Demandant shall set forth the estate that he claims in the premises. R. S. c. 106, § 3. He shall set forth the estate which he claims in the premises, whether in fee simple, fee tail, for life, or for years; and if for life, then whether for his own life or that of another; but he need not state in the writ the origin of his title, or the deduction of it to himself; but, on application of the tenant, the court may direct the demandant to file an informal statement of his title, and its origin.

50 Me. 143; 57 Me. 344; 58 Me. 105; 59 Me. 133, 254; 63 Me. 475; 64 Me. 57; 73 Me. 472.

Sec. 4. Proof of seizin. R. S. c. 106, § 4. He need not prove an actual entry under his title; but proof that he is entitled to such an estate in the premises as he claims, and that he has a right of entry therein, is sufficient proof of his seizin.

23 Me. 419; 24 Me. 526; 38 Me. 79; 58 Me. 335; 59 Me. 450; 84 Me. 435; 113 Me. 528.

Sec. 5. Demandant must have right of entry. R. S. c. 106, § 5. No such action shall be maintained, unless, at the time of commencing it, the demandant had such right of entry; and no descent or discontinuance shall defeat any right of entry for the recovery of real estate.

83 Me. 49; 100 Me. 562; 106 Me. 219; 112 Me. 474.