

# **MAINE STATE LEGISLATURE**

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FIRST ANNOTATED REVISION

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IN FIVE VOLUMES

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA

## Chapter 175.

### Actions of Dower.

**Editor's note.**—The right of dower has been abolished, for all practical purposes, by the provisions of c. 170, § 8. The following cases, which arose under the provisions of this chapter, are cited simply for their historical interest: Smith v. Follansbee, 13 Me. 273; Kirby v. Wood, 16 Me. 81; French v. Crosby, 23 Me. 276; French v. Pratt, 27 Me. 381; Carter v. Parker, 28 Me. 509; Johnson v. Shields, 32 Me. 424; Manning v. Laboree, 33 Me. 343; Luce v. Stubbs, 35 Me. 92; Barker v. Blake, 36 Me. 433; Young v. Tarbell, 37 Me. 509; Purrington v. Pierce, 38 Me. 447; Freeman v. Freeman, 39 Me. 426; Curtis v. Hobart, 41 Me. 230; Purrington v. Pierce, 41 Me. 529; Walker v. Gilman,

45 Me. 28; Ford v. Erskine, 45 Me. 484; Tarbox v. Fisher, 50 Me. 236; Stetson v. Day, 51 Me. 434; Lothrop v. Foster, 51 Me. 367; Drown v. Smith, 52 Me. 141; Merrill v. Shattuck, 55 Me. 370; Dela v. Stanwood, 62 Me. 547; Hunt v. Hotchkiss, 64 Me. 241; Rackliff v. Look, 69 Me. 516; French v. Lord, 69 Me. 537; Stevens v. Rollingsford Savings Bank, 70 Me. 180; Cook v. Walker, 70 Me. 232; Low v. Grand Trunk Ry., 72 Me. 313; Chase v. Alley, 82 Me. 234, 19 A. 397; Skolfield v. Skolfield, 90 Me. 571, 38 A. 530; McAllister v. Dexter & P. R. R., 106 Me. 371, 76 A. 891; Cheney v. Cheney, 110 Me. 61, 85 A. 387.

**Sec. 1. Widow may sue for dower.**—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. (R. S. c. 161, § 1.)

**Sec. 2. Demand and time of bringing action.**—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 1 month nor after 1 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 1 year after the first demand. (R. S. c. 161, § 2.)

**Sec. 3. Demand on corporation.**—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 60 days; but a second demand may be made as aforesaid. (R. S. c. 161, § 3.)

**Sec. 4. Nontenure.**—The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold. (R. S. c. 161, § 4.)

**Sec. 5. Damages for detaining dower.**—If the defendant 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. (R. S. c. 161, § 5.)

**Sec. 6. Suit against tenant of freehold, but prior tenant liable for damages.**—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. (R. S. c. 161, § 6.)

**Sec. 7. Defendant dying, pending action for dower, executor or administrator may prosecute.**—If the defendant 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 en-

tituled up to the time of her decease. He may commence an action, or prosecute one commenced by her under the provisions of the preceding section, and recover the damages to which she would be entitled, if any. (R. S. c. 161, § 7.)

**Sec. 8. Writ of seizin, and proceedings in setting off dower.**—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 3 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. (R. S. c. 161, § 8.)

See c. 171, § 1, re levy by appraisal.

**Sec. 9. Assignments of rents and profits.** — 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. (R. S. c. 161, § 9.)

**Sec. 10. Costs apportioned.**—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. (R. S. c. 161, § 10.)

**Sec. 11. Waste.**—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. (R. S. c. 161, § 11.)

**Sec. 12. Remedy, if evicted of dower.**—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. (R. S. c. 161, § 12.)

See c. 170, § 8, et seq., re rights of surviving husbands and wives.