

MAINE STATE LEGISLATURE

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CHAPTER 111

ESTATES IN LIEU OF DOWER AND CURTESY

Sec.

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§ 1051. Dower and curtesy abolished; vested rights and antenuptial settlements not affected

Except as otherwise provided, the right of widows to dower in the real estate of their deceased husbands and the right of widowers as tenant by curtesy in the real estate of their deceased wives are abolished. This chapter and Title 33, section 9, shall not be held to affect, modify, enlarge or limit the rights and interests which any widower or widow married before the first day of May, 1895 has in the estate of a wife or husband deceased prior to the first day of January, 1897, nor any of the remedies by which the same may be enforced, nor affect any jointure or antenuptial settlement or pecuniary provision made for such widow by any such husband; nor shall a widower married before the first day of May, 1895 have any interest in the real estate of his wife conveyed by her during coverture prior to the first day of January, 1897.

R.S.1954, c. 170, § 8.

§ 1052. Husband or wife may bar right by deed

A husband or wife of any age may bar his or her right and interest by descent in an estate conveyed by the other by joining in the same, or in a subsequent deed, or in a deed with the guardian or conservator of the other, or by giving a sole deed with or without covenants or warranty; but he or she shall not be de-

prived of such right and interest by levy or sale of the real estate on execution, but may, after the right of redemption has expired, release such right and interest by giving or joining in a deed, with or without covenants or warranty, as aforesaid.

R.S.1954, c. 170, § 9; 1963, c. 298.

§ 1053. Right barred by accepting jointure before marriage

A woman may be barred of her right and interest by descent 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.

R.S.1954, c. 170, § 10.

§ 1054. Right barred by pecuniary provision

A pecuniary provision made for the benefit of an intended wife instead of her right and interest by descent, consented to by her as provided in section 1053, bars her right and interest by descent in her husband's lands.

R.S.1954, c. 170, § 11.

§ 1055. Waiver of jointure by widow

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 right and interest by descent unless, within 6 months after the husband's death, she makes her election to waive such provision and files the same in writing in the registry of probate. In case she so makes such election, she shall be entitled to her right and interest by descent in her husband's lands.

R.S.1954, c. 170, § 12.

§ 1056. Election to take intestate share

When a specific provision is made in a will for the widow or widower of a testator or testatrix who was married before the first day of May, 1895, and died since the first day of January, 1897, or who was married on or after said first day of May, such legatee or devisee may within 6 months after probate of said will and not afterwards, except as otherwise provided, make election,

and file notice thereof in the registry of probate, whether to accept said provision or claim the right and interest by descent; but is not entitled to both, unless it appears by the will that the testator or testatrix plainly so intended. Such election may be made by a mentally ill widow or mentally ill widower by his or her guardian or by a guardian ad litem appointed for the purpose. If such election is not made within 6 months after probate of a will and the estate is thereafter rendered insolvent and commissioners are appointed by the judge of probate, such election may be made at any time within 6 months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within 30 days after demand therefor in writing, $\frac{1}{3}$ of any sums received from real estate sold before such waiver was filed. Whenever the widow or widower is advised that the legal construction of the provisions of the will for her or him is doubtful or uncertain, the time for making such election shall be extended to 30 days after certificate is returned to the probate court in the county where the probate proceedings are had, of the final decision in a civil action, commenced by said legatee or devisee within 30 days after the probate of the will, to obtain the decision of the court as to his or her rights under it, but in no case shall the time for election be less than 6 months after probate. The clerk of courts for the county in which civil action is commenced, within 3 days after receipt of the decision therein, shall send notice of the same to the widow or widower, or her or his solicitor of record, and transmit a certified copy of the decree to the proper probate court, where it shall be recorded, with the time of its reception.

R.S.1954, c. 170, § 13; 1959, c. 242, § 8; 1961, c. 317, § 562.

§ 1057. Amount of intestate share

When a provision is made in a will for the widow of a testator who died after the 26th day of April, 1897, or for the widower of a testatrix who died after the first day of June, 1903, and such provision is waived, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no kindred, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator

or testatrix as is provided by law in intestate estates of persons deceased who die leaving kindred. When no provision is made for his widow in the will of a testator who died after the 26th day of April, 1897, or for her widower in the will of a testatrix who died after the first day of June, 1903, such widow or widower shall likewise have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates, except that if such testator or testatrix died leaving no kindred, such widow or widower shall have and receive the same share of the real estate and the same distributive share of the real and personal estate of such testator or testatrix as is provided by law in intestate estates of persons deceased who die leaving kindred, provided such widow or widower shall within 6 months after the probate of such will file in the registry of probate written notice that she or he claims such share of the real and personal estate of such testator or testatrix. Such notice may be filed by a mentally ill widow or widower by his or her guardian, or by a guardian ad litem appointed for the purpose. Any notice filed under this section or section 1056 shall be recorded by the register of probate in the record books of the probate court where such notice is filed, but a failure to record such notice shall not in any way affect the rights of any widow or widower.

R.S.1954, c. 170, § 14; 1959, c. 242, § 8.

§ 1058. Copy of notice filed in registry of deeds

Within 30 days after any notice provided for in sections 1055 to 1057 is filed in the registry of probate, the register of probate shall file in the registry of deeds for the county or registry district in which any real estate of the deceased is situated an attested copy of such notice, and the register of deeds shall receive and record the same as abstracts of wills are received and recorded. The fees for making and recording said copy shall be the same as for making and recording abstracts of wills.

R.S.1954, c. 170, § 15.

§ 1059. Scope of release of dower or curtesy

All releases of rights to dower or curtesy in any manner heretofore or hereafter made, in estates conveyed or mortgaged by husbands or wives, shall be deemed to include and shall be construed to include all rights and interests by descent.

R.S.1954, c. 170, § 16.

§ 1060. Rights of wife in mortgaged property

If the wife has heretofore 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 her right and interest by descent, as provided, in the mortgaged premises, as against every person except the mortgagee and those claiming under him. 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 her right and interest by descent only according to the value of the estate, after deducting the money paid for its redemption.

R.S.1954, c. 170, § 17.

§ 1061. Right of wife who has not released dower

If the wife of the grantor or mortgagor of lands conveyed or mortgaged prior to the first day of May, 1895, or in case of persons then married, prior to the first day of January, 1897, has not released or barred her right of dower in the same, she shall be entitled, as against the grantee or mortgagee and those claiming under him, to her right of dower only as then existing. The wife of an insolvent debtor, married prior to the first day of May, 1895, decreed to be insolvent under the Insolvent Law, prior to the first day of January, 1897, shall be entitled, as against the assignee and those claiming under him, to her right of dower only as aforesaid.

R.S.1954, c. 170, § 18.