

MAINE STATE LEGISLATURE

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Sixty-Seventh Legislature.

SENATE.

No. 229.

STATE OF MAINE.

**IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND NINETY-FIVE.**

AN ACT to amend section one of chapter seventy-five of the Revised Statutes, relating to Title by Descent, and to establish the rights of Widows and Widowers in the real estate of deceased Husbands and Wives.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. Section one of chapter seventy-five of the 2 Revised Statutes is hereby amended, so as to read as follows :
3

4 'Section 1. The real estate of a person deceased intes-
5 tate, being subject to the payment of debts, including a
6 woodlot or other land used with the farm or dwelling-house,
7 although not cleared, but excepting wild lands of which
8 he dies seized, and wild lands conveyed by him, though
9 afterwards cleared, descends according to the following
10 rules :

I. If he leaves a widow and issue, one-third to the
12 widow. If no issue, one-half to the widow. And if no
13 kindred, the whole to the widow. And to the widower
14 shall descend the same shares in his wife's real estate.
15 There shall likewise descend to the widow or widower the
16 same share in all such real estate of which the deceased
17 was seized during coverture, and which has not been
18 barred or released as herein provided.

II. The remainder of which he dies seized—and if no
20 widower or widow, the whole,—together with all wild
21 lands, shall descend in equal shares to his children, and
22 to the lawful issue of a deceased child by right of repre-
23 sentation. If no child is living at the time of his death,
24 to all his lineal descendants; equally, if all are of the same
25 degree of kindred; if not, according to the right of repre-
26 sentation.

III. If no such issue, it descends to his father and
28 mother in equal shares.

IV. If no such issue or father, it descends one-half to
30 his mother, and the remainder in equal shares to his
31 brothers and sisters, and when the brother or sister has
32 died, to his or her children or grandchildren by right of
33 representation.

V. If no such issue, father, brother or sister, it
35 descends to his mother, to the exclusion of the issue of
36 deceased brothers and sisters.

VI. If no such issue, father, mother, brother or sister,
38 it descends to his next of kin in equal degree; when they
39 claim through different ancestors, to those claiming
40 through a nearer ancestor, in preference to those claiming
41 through an ancestor more remote.

VII. When a minor dies unmarried, leaving property
43 inherited from either of his parents, it descends to the
44 other children of the same parent, and the issue of those
45 deceased ; in equal shares if all are of the same degree of
46 kindred ; otherwise, according to the right of representa-
47 tion.

VIII. If the intestate leaves no widower, widow or
49 kindred, it escheats to the state.

SECT. 2. Except as hereinafter provided, the right of
2 widows to dower in the real estate of their deceased hus-
3 bands, and the right of widowers as tenant by the courtesy
4 in the real estate of their deceased wives are hereby
5 abolished. Section fourteen of chapter one hundred and
6 three of the Revised Statutes is hereby repealed. But the
7 passage of this act, and the repeal of such laws as may be
8 repealed thereby, shall not be held to affect, modify,
9 enlarge or limit the rights and interests which any
10 widower or widow now has in the estate of a wife or hus-
11 band already deceased, nor any of the remedies by which
12 the same may be enforced. Nor shall a widower have
13 any interest in the real estate of his wife heretofore con-
14 veyed by her during coverture.

SECT. 3. A husband or wife of any age, may bar the
2 right and interest by descent, provided for in this act in
3 an estate conveyed by the other, by joining in the same, or
4 a subsequent deed, or with the guardian of the other ; or
5 by sole deed ; but shall not be deprived of such right and
6 interest by levy or sale of the real estate on execution ;
7 but may, after the right of redemption has expired, release
8 such right and interest by sole deed.

SECT. 4. Such right and interest by descent may be
2 barred by jointure, pecuniary provision, or an antenuptial

3 settlement, in the same manner, and to the same extent,
4 and with the same effect that dower may be thus barred in
5 accordance with the provisions of sections seven, eight and
6 nine of chapter one hundred and three of the Revised
7 Statutes.

SECT. 5. When a specific provision is made in a will,
2 for the widow or widower of a testator or testatrix, such
3 legatee or devisee shall within six months after probate
4 thereof or within such further time, and under such circum-
5 stances, as is allowed by chapter 88 of the Public Laws of
6 1887, and not afterwards, make election and file notice
7 thereof in probate court whether to accept it or claim the
8 right and interest by descent, herein provided; but is not
9 entitled to both, unless it appear by the will that the tes-
10 tator or testatrix plainly so intended.

SECT. 6. All releases of dower in any manner hereto-
2 fore or hereafter made, in estates conveyed or mortgaged
3 by husbands, shall be deemed to be releases of such right
4 and interest by descent, and shall have the same effect.

SECT. 7. If the wife has heretofore released her right
2 of dower in a mortgage made by her husband, or if her
3 husband is seized of land mortgaged by another person,
4 or by himself before their marriage, she shall be entitled
5 to her right and interest by descent, as herein provided,
6 in the mortgaged premises, as against every person except
7 the mortgagee and those claiming under him. And if the
8 heirs of the husband, or other person claiming under him,
9 redeem the mortgage, she shall repay such proportion of
10 the money paid by him as her interest in the mortgaged
11 premises bears to the whole value; else she shall be
12 entitled to her right and interest by descent only accord-

13 ing to the value of the estate, after deducting the money
14 paid for its redemption.

SECT. 8. If the wife of the grantor or mortgagor of
2 lands heretofore conveyed or mortgaged has not released
3 or barred her right of dower in the same, she shall be
4 entitled, as against the grantee or mortgagee and those
5 claiming under him, to her right of dower only, as now
6 existing. The wife of one, heretofore decreed to be insol-
7 vent under the provisions of chapter seventy of the Re-
8 vised Statutes, shall be entitled, as against the assignee,
9 and those claiming under him, to her right of dower only,
10 as aforesaid.

SECT. 9. The passage of this act shall not affect any
2 jointure or antenuptial settlement or pecuniary provision
3 heretofore made.

SECT. 10. If the owner of real estate contracts to sell
2 the same, and the husband or wife of the owner refuses to
3 release his or her interest and right by descent, the owner
4 may apply to a justice of the supreme judicial or superior
5 court, who, after such notice to the other party as he may
6 order, and hearing, may, in his discretion, approve the
7 sale and price, and order the owner to pay to the clerk of
8 court, for such husband or wife of the owner, such sum
9 as would amount to one-third of the price approved, if
10 the owner has issue, and one-half if he has no issue, at the
11 expiration of the owner's expectancy of life, computed at
12 three per cent, compound interest. The clerk shall give
13 a certificate of such approval by the court and of the fact
14 that said money has been paid as aforesaid, to be filed
15 with the register of deeds in the county or registry dis-
16 trict where the land lies, with the owner's deed thereof,

17 and such register shall record the same ; and thereafter
18 such interest or right by descent, in such real estate, shall
19 be barred. Said clerk shall receive fifty cents for making,
20 and said register twenty-five cents for recording such cer-
21 tificate.

SECT. 11. Section nine of chapter sixty of the Revised
2 Statutes is hereby amended so as to read as follows :

‘Section 9. When a divorce is decreed for impotence,
4 the wife’s real estate shall be restored to her, and the
5 court may enter judgment for her against her husband for
6 so much of her personal property as came to him by the
7 marriage, or its value in money, as it thinks reasonable ;
8 and may compel him to disclose, on oath, what personal
9 estate he so received, how it has been disposed of, and
10 what then remains. When a divorce is decreed to the
11 wife for the fault of the husband for any other cause, she
12 shall be entitled to one-third, in common and undivided,
13 of all his real estate, except wild lands, which shall descend
14 to her as if he were dead ; and the same right to a restora-
15 tion of her real and personal estate, as in case of divorce
16 for impotence. The court may also decree to her reason-
17 able alimony out of his estate, having regard to his ability ;
18 and to effect the purposes aforesaid, may order so much
19 of his real estate, or the rents and profits thereof, as is
20 necessary, to be assigned and set out to her for life ; or
21 instead of alimony, may decree a specific sum to be paid
22 by him to her ; and use all necessary legal processes to
23 carry its decrees into effect.’

SECT. 12. Section six of chapter sixty-one of the Re-
2 vised Statutes is hereby amended so as to read as follows :

‘Section 6. When a married woman dies intestate, her
4 property, real and personal, descends as provided in chap-

5 ter seventy-five of the Revised Statutes as amended by
6 this act; and administration and distribution may take
7 place accordingly; but a husband and wife, by a marriage
8 settlement executed in presence of two witnesses before
9 marriage, may determine what rights each shall have in
10 the other's estate during the marriage, and after its dis-
11 solution by death, and may bar each other of all rights
12 in their respective estates not so secured to them.'

SECT. 13. This act shall take effect May 1, 1895,
2 except as to such persons as are then married, and as to
3 all such persons, it shall take effect January 1, 1897.

STATE OF MAINE.

IN SENATE, March 13, 1895.

Reported by Mr. SAVAGE, from Committee on Judiciary, and laid
on table to be printed under joint rules.

KENDALL M. DUNBAR, *Secretary.*