

# 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)

# REPORT

OF THE

## COMMISSIONERS

APPOINTED TO REVISE THE

# PUBLIC LAWS

OF THE

## STATE OF MAINE.

---

---

### TITLE VII.

---

---

**Augusta:**

WM. R. SMITH & Co., PRINTERS TO THE STATE.

---

1840.



# TITLE SEVENTH.

---

## OF ACQUISITION OF TITLE TO REAL AND PERSONAL ESTATE.

---

- Chap.* 91. Of conveyances by deed, their form, acknowledgment, proof, registry, operation and construction.  
92. Of wills, testaments and devises.  
93. Of title by descent.  
94. Of title to real estate, taken by execution.  
95. Of estates in dower, by courtesy and at will.
- 

### CHAPTER 91.

#### OF CONVEYANCES BY DEED, THEIR FORM, ACKNOWLEDGMENT, PROOF, REGISTRY, OPERATION AND CONSTRUCTION.

---

- Sect.* 1. What may be conveyed, and how.  
2. Lands purchased by alien, he may convey when naturalized.  
3. Also a person deriving a title under an alien, if such person was in actual possession on or before January first, eighteen hundred and thirty-four.  
4. What may be conveyed, and how.  
5. Mode of conveyance by a married woman.  
6. By tenant in tail.  
7. Of life estate and vested remainder.  
8. Effect of quit-claim deed.  
9. Effect of a deed of a tenant for life or years undertaking to convey a greater estate than he owns.  
10. No expectant estate defeated by destruction of a precedent estate.  
11. Not to effect provisions in 5th and 6th sections.  
12. Effect of a conveyance to one for life, and after his death, to his right heirs.  
13. Conveyance to two or more, makes them tenants in common, except, &c.  
14. Deeds executed by agent or attorney, their effect.  
15. Conveyances to counties.  
16. Deeds must be acknowledged by the grantors—or by one of them, where there are two or more.  
17. Who are authorized to take acknowledgments.  
18. Proof of deed, when grantor is dead, and the same not acknowledged by subscribing witnesses.  
19. How proved, when witnesses are all dead, &c.  
20. Proceedings when grantor refuses to acknowledge it.  
21. Same subject.  
22. Same subject.  
23. No deed to be proved unless it has one witness.

- Sect. 24. Proof of deed to be endorsed on it.  
 25. Register must certify when a deed is offered for registry.  
 26. No deed effectual, if not recorded, except against grantor, his heirs, &c.  
 27. No deed defeated by bond, if bond is not recorded, except, &c.  
 28. All pews deemed real estate.  
 29. Deeds of them, and levies on them how recorded.  
 30. No estate or interest in lands can be conveyed, but by some writing signed by the grantor or his attorney, and all estates not so made, are only estates at will.  
 31. All trusts, excepting resulting trusts, must be created in writing declaring the same.  
 32. No trust shall defeat the title of a bona fide purchaser, upon valuable consideration, ignorant of the trust.  
 33. But the record of the instrument, creating the trust, is to be deemed equal to actual notice against purchasers, or creditors taking by execution.

SECT. 1. When any person shall make a deed of any lands or  
 2 other real estate, owned by him in severalty or in common with  
 3 others, acknowledged and recorded, in the manner prescribed  
 4 in this chapter, whether at the time of the execution and deliv-  
 5 ery of the deed, he is seized or not seized of such lands or  
 6 estate, but to or for which, he has a right of entry, such lands  
 7 or estate, or all the title or interest, which the grantor has in,  
 8 or to the same, shall pass by such deed of conveyance, as effect-  
 9 ually, as if the grantor was, at the time of the conveyance seized  
 10 of the same.

SECT. 2. Any person who has purchased real estate, during  
 2 alienage, and afterwards become naturalized, shall have power  
 3 and be entitled to hold the same in fee simple, and to convey  
 4 or devise the same in like manner, as if he had been a native  
 5 born citizen. 1834, 105, § 1.

SECT. 3. No title or claim of any citizen of the State, who  
 2 was in actual possession of lands on the first of January eighteen  
 3 hundred and thirty-four, shall escheat or be defeated on account  
 4 of the alienage of any person, through or from whom his title to  
 5 such lands was derived, but he may sell and dispose of the same.  
 1834, 105, § 3.

SECT. 4. When any contingent remainder, or executory de-  
 2 vise or other estate in expectancy, has been so granted or  
 3 limited to such person, that in case of his death, before the  
 4 happening of the contingency, the estate would descend to his  
 5 heirs in fee simple, such person may, before the happening of  
 6 the contingency, sell, assign or devise the premises, subject to  
 7 such contingency. M. R. S.

SECT. 5. The joint deed of husband and wife, shall be effec-  
 2 tual to convey her real estate, but not to bind her to any cov-  
 3 enant, or estoppel therein. M. R. S.

SECT. 6. Any person actually seized of lands as tenant in  
 2 tail, may convey the same in fee simple, and such conveyance  
 3 shall bar the estate tail and all the remainders and reversions  
 4 expectant thereon. M. R. S.

SECT. 7. When lands are held by one person for life, with a vested remainder in tail to another, the tenant for life and remainder man may convey the same in fee simple, by their joint deed, and such conveyance, shall bar the estate tail and all the remainders and reversions expectant thereon. M. R. S.

SECT. 8. A deed of release or quit-claim of the usual form in this State, shall pass all the estate which the grantor had and could convey by a deed of bargain and sale.

7 Mass. R. 381, 1821.

SECT. 9. A conveyance by a tenant for life or years of a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantor all the estate which the tenant could lawfully convey. M. R. S.

SECT. 10. No expectant estate shall be defeated or barred, by any alienation or other act of the owner of the precedent estate, nor by any destruction of such precedent estate by disseizen, or the forfeiture, surrender or merger thereof. M. R. S.

SECT. 11. The two preceding sections shall not be construed to control or affect the provisions in the fifth and sixth sections of this chapter, as to estates tail.

SECT. 12. When lands are given by deed or will to any person for life, and after his death to his heirs in fee, or by words to that effect the conveyance or devise, shall be construed to vest an estate for life only, in such first taker, and a remainder in fee simple in his heirs. *Rever* 1821, 37, § 3.

SECT. 13. All conveyances and devices of land made to two or more persons (except conveyances in mortgage) shall be construed to create estates in common, unless it shall be expressed therein, that the grantees or devisees shall take the lands jointly or as joint tenants or in joint tenancy, or to them and the survivor of them; but where any estate has vested in the survivor or survivors on the principle of joint tenancy it shall be so held.

1821, 35, § 1.

SECT. 14. All deeds and contracts executed by an authorized agent for an individual or corporation, either in the name of the principal by such agent, or in the name of such agent for the principal, shall be considered as the deed or contract of such principal. 1823, 220.

SECT. 15. All conveyances or grants to the inhabitants of a county their successors and assigns forever; or which have been made to such inhabitants or their treasurer, or committee, or other person, by any form of conveyance, for the use and benefit of such county, shall be construed as valid as though made to such inhabitants by their corporate name. 1821, 46.

SECT. 16. The acknowledgment of deeds, shall be by the grantors, or by one of them, or by the attorney executing the same. 1821, 36, § 1.

SECT. 17. The acknowledgment may be made before any justice of the peace in this State, or any justice of the peace, magistrate or notary public within the United States, or in any

4 ~~foreign country~~, or any commissioner appointed for that purpose  
5 by the governor of this State, or before any minister or consul  
6 of the United States in any foreign country. 1821, 36, § 1.

SECT. 18. When any grantor or lessor shall die or depart  
2 from this State, without having acknowledged his deed, the  
3 execution thereof may be proved by any subscribing witness,  
4 before any court of record in this State. 1821, 36, § 1.

SECT. 19. When any such witnesses are dead or out of  
2 the State the hand writing of the grantor and such subscribing  
3 witnesses may be proved by the testimony of one or more wit-  
4 nesses. 1821, 36, § 1.

SECT. 20. If any grantor shall refuse to acknowledge his  
2 deed, the grantee or person claiming under him, may leave with  
3 the register of deeds, a true copy thereof, and such copy so left  
4 in his office shall be a caution to all persons for forty days, and  
5 during that time have the same effect as recording said deed.

1821, 36, § 2.

SECT. 21. Any such grantee or person claiming under him,  
2 may apply to a justice of the peace of the county where the  
3 land lies, or where the grantor resides, who may summon the  
4 grantor to appear at a certain time and place, before him, to  
5 hear the testimony of the subscribing witnesses; which sum-  
6 mons shall state the date of the deed, the names of the parties  
7 thereto, and of the subscribing witnesses, and shall be served  
8 seven days before the time assigned for proving the deed.

1821, 36, § 2.

SECT. 22. At such hearing, it being made to appear by the  
2 testimony of such witnesses that they saw such deed duly exe-  
3 cuted by the grantor, and such being satisfactory to such justice,  
4 he shall certify the same thereon, and in his certificate, shall  
5 state the presence or absence of the grantor, as the facts may  
6 be. 1821, 36, § 2.

SECT. 23. No deed, hereafter made, not having at least one  
2 subscribing witness, shall be proved as aforesaid before any  
3 court of justice. M. R. S.

SECT. 24. A certificate of the acknowledgment or proof of  
2 the execution of the deed in either of the modes before stated,  
3 shall be endorsed on the deed or annexed to it, and such deed  
4 and certificate may then be recorded at length in the registry of  
5 deeds; and no deed shall be recorded without such certificate.

1821.

SECT. 25. The register shall certify on every deed recorded  
2 by him, the day and hour when it was received; and every  
3 deed shall be considered as recorded at the time so noted.

SECT. 26. No conveyance of any estate in fee simple, fee  
2 tail or for life, and no lease for more than seven years from the  
3 making thereof, shall be good and effectual against any person,  
4 other than the grantor, his heirs and devisees, and persons hav-  
5 ing actual notice thereof, unless it is made by a deed recorded,  
6 as provided in this chapter. 1821, 36, § 1.

SECT. 27. A deed purporting to convey an absolute estate of any kind in lands, but which is intended to be defeasible by any bond, or other instrument of defeasance, shall not be defeated by means of such bond or other instrument, against any other than the maker of such defeasance, his heirs and devisees, unless the instrument of defeasance, shall have been duly recorded in the registry of deeds, in which the deed referred to in the bond or defeasance shall have been recorded. 1821, 36, § 3.

SECT. 28. All pews and rights in houses of public worship shall, in law be deemed real estate; but this shall not be construed to affect the titles to such pews and rights heretofore considered and acquired as personal estate. 1821, 36, § 7.

SECT. 29. All deeds of and execution extended on such pews or rights may be recorded by the town or plantation clerk where situated and shall have the same effect, as if recorded in the registry of deeds. 1821, 36, § 8.

SECT. 30. No estate or interest in lands, unless created by some writing and signed by the grantor or his attorney shall have any greater force or effect than an estate or lease at will; and no estate or interest in lands shall be granted, assigned, or surrendered, unless by some writing signed as aforesaid, or by operation of law. 1821, 53, § 2.

SECT. 31. All trusts concerning lands, excepting those which arise or result by implication of law, must be created and manifested by some writing signed by the party creating and declaring it, or by his attorney. 1821, 53, § 2.

SECT. 32. No such trusts, whether created or declared by the parties, or implied by law, shall defeat the title of a purchaser for a valuable consideration, and without notice of the trust; nor prevent a creditor, who has no notice of the trust, from attaching the premises and taking them in execution, in like manner as if no such trust existed. M. R. S.

SECT. 33. When such a trust is created, or declared by an instrument in writing, the recording of it in the registry for the county or district where the land lies, shall be considered equal to actual notice thereof to all persons claiming under a conveyance attachment, or execution made or levied after such recording. M. R. S.

---

## NOTES.

---

SECT. 1. Since the commissioners made their former report, to which this chapter was annexed as a specimen, they have in some measure altered the language of this section, as may be seen by a comparison of the two. In the section as it now stands, it more distinctly expresses the principle intended to be proposed as an amendment of the law upon this important subject. By adverting to the chapter of wills and devise of real property, it will be seen that a new principle is there introduced of the same character as that now in force in Mass. namely



that a testator may devise real property, though not seized of it at the time of making his will: that is, if, at that time, he has a right of entry and of action, (which amount to the same thing,) to recover the land. In such case the devise shall pass all the right which the devisor has, to the devisee, who may bring an action in his own name. The commissioners propose to establish the same principle in respect to conveyances by deed, and they respectfully and earnestly recommend its enactment. Indeed, there seems to be the same reason in both cases. The object is to give uniformity as to the modes and circumstances in which an owner's power over his property may be exercised. In the trial of real actions it is common to meet with objections to the effect of a deed on the ground that the grantor was not seized at the time of the conveyance. The consequence has been that the action has failed, expense has been incurred and lost, and a new suit was necessarily brought, in the name of such grantor, for the use and benefit of his grantee, or some person claiming under him. If a man has a right of action against a disseizor, that is if he has not been disseized twenty years, his deed shall pass that right of action to the purchaser who may sue in his own name, and for his own benefit. When the defendant has not the legal title, it can make no difference to him in whose name a judgment is recovered against him. Such a change in the law will save thousands in mere bills of costs.

SECT. 4. This is only an extension of the power given in the first section to the case of a contingent right, and seems to fall within the principle of that section; it is taken from the code of Mass.

SECT. 5. This is merely an enactment of a settled principle of law, as recognized in Massachusetts and this State.

SECT. 6 and 7. These two sections do not change the existing law, any farther than by simplifying its provisions, and producing the same result in clear language and with less form.

SECT. 9. This is designed to give the conveyance the effect which it may lawfully have and prevent it from doing an injury to any one else.

SECT. 8. This describes the law as now understood and applied.

SECT. 10. This section is designed to guard a part of an estate from destruction by him who owns the other part. It is to express the law clearly and prevent certain common law consequences. It is taken from N. York and Mass. codes.

SECT. 17. This gives power to certain other persons abroad to take the acknowledgment of deeds, as notaries public, ministers and consuls or commissioners appointed, who reside in other States. The advantage is that the official character of such certifying officers, may be proved by records in our own country.

SECT. 23. A new section borrowed from Mass. code. A cautionary provision designed to prevent fraud.

SECT. 25. This makes it the express duty of registers to do what they generally do of their own accord.

SECT. 26. The latter clause of this section is new, but it contains an established principle of law; and devisees are inserted as within the same reason.

SECT. 32. Though the principle of this section is perfectly clear, and established in books and by decisions, it is highly proper and useful that it should be declared in statute form.

SECT. 33. The same may be observed of this section, the record shall amount to actual notice of the trust. Both these sections are from Mass. code.

---

## CHAPTER 92.

### OF WILLS, TESTAMENTS AND DEVISEES.

---

- Sect.* 1. Who may make a will.  
 2. Form of will and mode of execution.  
 3. How a will can be revoked, expressly.

- Sect.* 4. Implied revocation.  
 5. Devises, &c. to a witness, void except, &c.  
 6. But if witness has been paid, or has released the legacy he may be sworn.  
 7. And a witness who died before the probate of a will, or before being paid or before realizing, is a good witness.  
 8. No person to whom any property has been given, and who has been admitted as a witness, shall ever recover the property.  
 9. Nuncupative will, what and how proved.  
 10. Soldier's will an exception.  
 11. No proof of such will admitted, six months, unless, &c.  
 12. What estate a testator can devise.  
 13. Same subject.  
 14. When any estate devised is taken away from devisee, other devisees to contribute to make up his loss.  
 15. So, if by making a specific devise or legacy, he has virtually exempted it from contribution, &c.  
 16. Qualification of the two preceding sections.  
 17. A posthumous child, for whom no provision is made in will—what share he shall have.  
 18. When a child or issue of a deceased child has no provision—the consequence.  
 19. A child having a devise, and dying leaving issue, before testator's death—the consequence.  
 20. In such cases the share liable to contribution, in case of loss, &c.  
 21. When any liable to contribute, are insolvent, &c.  
 22. When any undevised property descends, the effect and proceedings.  
 23. Meaning of words "real estate."  
 24. How questions arising under this chapter may be settled.  
 25. No will can pass title, until duly proved.  
 26. Every devise deemed to convey all devisor's estate, unless, &c.

SECT. 1. Every person of the age of twenty-one years, and of  
 2 sound mind, lawfully seized of any lands, tenements or heredi-  
 3 taments, or of any right or interest therein in his own right in  
 4 fee simple, or for the life of another person, or being the owner  
 5 of any personal estate may dispose of the same, by his last will  
 6 and testament; and all such estate not so devised or bequeathed  
 7 by any will, shall be distributed as the estate of an intestate.

1821, 38, § 1.

SECT. 2. All wills of lands or personal estate shall be in  
 2 writing and signed by the devisor, or by some person in his  
 3 presence, and by his express direction; and shall be attested  
 4 and subscribed by three credible witnesses, or the same shall  
 5 be void; and if the witnesses are competent at the time of  
 6 attestation, their subsequent incompetency shall in no case pre-  
 7 vent the probate of the will, if it be otherwise satisfactorily  
 8 proved.

1821, 38, § 2.

SECT. 3. No will in writing of real or personal estate, or any  
 2 part of it, shall be revoked, except by some subsequent will,  
 3 codicil or other writing, declaring the same, or by burning,  
 4 cancelling, tearing or obliterating the same by the testator, or  
 5 in his presence and by his direction with the intention of revok-  
 6 ing; or unless the same be altered by some writing of the  
 7 testator, by him signed and attested, as in case of a will.

1821, 38, § 2.

SECT. 4. Revocations of wills implied by law, from subsequent changes in the condition and circumstances of the testator, shall not be deemed or construed as embraced in the provisions of the preceding section.

SECT. 5. All devises and legacies to a subscribing witness to a will or codicil, shall be void, unless there be three *other* competent subscribing witnesses to the same, but a mere charge on the lands of the devisor, for the payment of his debts, shall not prevent any of his creditors whose debt is so charged from being a competent witness. 1821, 38, § 8.

SECT. 6. But if any such subscribing witness shall, before he give his testimony, have been paid, or have accepted or released or shall refuse to accept any legacy given to him in the will upon tender thereof he shall be admitted as a witness to the execution of the will; the credit of such witness being a subject for the consideration of the court or jury who may try the cause. 1821, 38, § 10.

SECT. 7. And any such subscribing witness to a will who shall have died before having refused, received or released any legacy given him by such will, shall be deemed a legal witness to the execution of the same. 1821, 38, § 11.

SECT. 8. No person to whom any property or beneficial interest, in this chapter declared null and void, and who has refused to receive the same, and has been admitted a witness concerning the execution of the will or codicil in which it was given, shall ever after receive any benefit from such legacy or bequest, or receive from any person any satisfaction or compensation for the same. 1821, 38, § 12.

SECT. 9. No nuncupative will, excepting those of soldiers and mariners, as hereinafter mentioned, shall be good and allowed, where the property bequeathed, shall exceed the value of one hundred dollars, unless proved by the oath of three witnesses who were present at the making; nor unless the testator, at the time of pronouncing the same, requested the persons present or some of them, to bear witness that such was his will; nor unless the will was made in the last sickness of deceased, and at his home, or the place where he had resided for ten days or more, next before the making of the will, except where the person is suddenly taken sick, being from home, and dies before returning to his home. 1821, 38, § 5.

SECT. 10. But any soldier, being in actual military service and any mariner, being at sea, may dispose of his personal estate and wages as he might have done before. 1821, 38, § 4.

SECT. 11. No testimony shall be received to prove any testamentary words as a nuncupative will after the lapse of six months from the time they were spoken, unless the words or the substance of them, were reduced to writing, within six days after they were spoken.

SECT. 12. When any person shall devise lands of which he  
2 may not then be seized, but to or for which he has any right of  
3 entry, or when after the making of any devise, the devisor shall  
4 be disseized or ousted of the devised premises, they shall never-  
5 theless pass to the devisee in like manner as they would  
6 have descended to the heirs of the devisor, if he had died intes-  
7 tate, and the devisee shall have the like remedy for the recovery  
8 thereof, either by entry or action, as the heirs might have had.

M. R. S.

SECT. 13. Any estate, right or interest in lands, acquired by  
2 the testator after the making of his will, and of which he died  
3 seized as aforesaid, shall pass thereby, in like manner as if owned  
4 by him at the time of making the will, if such clearly appear  
5 by the will to have been the testator's intention.

M. R. S.

SECT. 14. When any real estate or personal estate devised,  
2 shall be taken from the devisee by execution, or sold by order of  
3 court for payment of the testator's debts, all the other legatees,  
4 devisees and heirs shall refund their average proportion of such  
5 loss to the person from whom such estate shall be taken, so as  
6 to make the loss fall equally on such devisees, or legatees,  
7 according to the value of the property received by each, subject  
8 to the exception in the following section.

1821, 38, § 15.

SECT. 15. If in such case the devisor shall, by making a specific  
2 devise or bequest, have virtually exempted any devisee or legatee  
3 from his liability to contribute with the others for the payment  
4 of the debts; or if he shall by any provisions in his will, have  
5 prescribed or required any appropriation of his estate, for the  
6 payment of his debts, different from that in the preceding section,  
7 the estate shall be appropriated in conformity to the will.

M. R. S.

SECT. 16. Nothing in the two preceding sections, shall impair  
2 or affect the liability of the whole estate of the testator, for the  
3 payment of all his debts; but the provision in these sections  
4 shall apply only to the marshaling of the assets as between  
5 those holding and claiming under the will.

M. R. S.

SECT. 17. When any child of a testator, born after the  
2 father's death, shall have no provision made in his will or other-  
3 wise, he shall take the same share of his father's estate, as he  
4 would have been entitled to, if his father had died intestate;  
5 and the same shall be assigned him by the judge of probate, as  
6 in case of intestate estates; and the same shall be taken equally  
7 from all the devisees and legatees, in proportion to the value of  
8 what they shall respectively receive under the will; unless in  
9 consequence of a specific devise or bequest, or some other pro-  
10 visions in the will, a different apportionment among the devisees  
11 and legatees, shall be found necessary to give effect to the  
12 intention of the testator as to that part of his estate which shall  
13 pass by the will.

1821, 38, § 14.

SECT. 18. Any child, or the issue of any deceased child, not  
2 having any devise or legacy to him in his father's or mother's

3 will, shall have the same share of the testator's estate as he  
4 would have been entitled to if he had died intestate, unless it  
5 shall appear that such omission was intentional or not occa-  
6 sioned by any mistake, or unless such child or grandchild shall  
7 have had an equal proportion of the testator's estate, bestowed  
8 on him during the life of the testator. 1821, 38, § 15.

SECT. 19. If any child or other relation of a testator, having  
2 a devise of real or personal estate made to him in the will, shall  
3 die before the testator, leaving lineal descendants, they shall  
4 take the estate devised in like manner, as such devisee would  
5 have taken it, if he had survived the testator. 1821, 38, 15.

SECT. 20. When any part of the estate of a testator descends  
2 to a child or other descendant, by reason of his having no pro-  
3 vision made for him in the will, or when it descends to a posthu-  
4 mous child, such child shall be bound to contribute with the  
5 devisees and legatees as provided in this chapter, and shall be  
6 entitled to claim contribution from them accordingly.

1821, 38, § 15.

SECT. 21. When any person liable to contribute toward the  
2 discharge of a debt of the testator, according to the provisions  
3 of the third section, shall be insolvent or unable to pay his just  
4 proportion thereof, the others shall be severally liable for the loss  
5 occasioned by such insolvency, each one in proportion to the  
6 value of the property received by him from the estate of the  
7 deceased; and if any one of the persons so liable, shall die  
8 without having paid his proportion of such debt, his executors  
9 and administrators shall be liable therefor in like manner, as  
10 though it had been his proper debt to the extent of which he  
11 would have been liable if living. M. R. S.

SECT. 22. When any part of the real estate of a testator, shall  
2 descend to his heirs, not having been devised or disposed of by  
3 his will, and his personal estate shall be insufficient for the  
4 payment of his debts, the undivided real estate shall be first  
5 chargeable with the debts, in exoneration as far as it will go, of  
6 the real estate devised, unless it shall appear from the will that  
7 a different arrangement of his assets for the payment of his  
8 debts was made by the testator, in which case they shall be  
9 applied for the purpose according to the provisions of the will.

M. R. S.

SECT. 23. The words "real estate" as used in this chapter  
2 include lands, tenements, and hereditaments, and all rights to  
3 and interests therein which by law are devisable. M. R. S.

SECT. 24. All cases arising under this chapter in which  
2 devisees or legatees may be required to contribute to make up  
3 the share of any child of the testator, or of the issue of any  
4 such child, or in which contribution is to be made among devi-  
5 sees, legatees and heirs, or any of them, may be decided in an  
6 action at law, when the case is such as to allow it, or may be  
7 heard and determined in the probate court, allowing an appeal  
8 to the supreme court of probate as in other cases, or may be

9 originally brought and finally determined in the supreme judicial  
10 court, as a court of equity jurisdiction. M. R. S.

SECT. 25. No will shall be effectual to pass real or personal  
2 estate, unless it shall have been duly proved and allowed in the  
3 probate court; and the probate of such will, shall be conclu-  
4 sive as to the due execution thereof.

SECT. 26. Every devisee of land, in any will hereafter made,  
2 shall be construed to convey all the estate of the devisor therein,  
3 which he could lawfully devise, unless it shall clearly appear by  
4 the will that the devisor intended to convey a less estate.

M. R. S.

---

## NOTES.

---

SECT. 3. This section relates to express revocations of wills, in the various modes mentioned therein; one of which modes may be by a conveyance of the property devised or a part of such property; and thus may be a total or a partial revocation.

SECT. 4. This section refers exclusively to implied revocations, to which the provisions above mentioned have no respect.

SECT. 12, 13. These are new and important sections, taken from the code of Massachusetts. The commissioners have gladly adopted them, as they mentioned in their former report, and they now respectfully submit them to the Legislature as containing very valuable provisions and doing away certain rules and principles of the common law, which often in their operation have defeated the intention of the devisor. As our laws now stand in relation to this subject, lands purchased or acquired in any other mode by a testator, after he has made his will, do not pass by the will. The law is otherwise as to personal property. The design is to abolish this distinction. Many a testator has not been aware of such distinction. When such is the fact, and a portion of the estate was owned when the will was made, and a portion bought afterwards, the whole arrangement made by him might be disturbed, and injustice be the consequence. Again as the law now exists, if a devisor is disseized of the lands devised though unknown to him, such lands do not pass by the devise; but as the twelfth section now stands, whether he is seized or not seized, if he has a legal right of entry upon and into such lands, then *that right*, and all the devisor's interest, which he professed to devise, shall pass—and the devisee may enter and recover possession, just as the heirs might, provided no will had been made. See note one to the chapter on conveyances by deed; chapter 91.

SECT. 15. This section changes no principle; but only prescribes the mode in which the provisions of the preceding sections are to be carried into effect, when the usual course pointed out in that section is changed by means of a specific legacy, which is exempt from contribution.

SECT. 20. This section is necessary in the cases mentioned, in order to subject to contribution that part of the estate which by reason of the happening of some unforeseen events, descends as intestate estate.

SECT. 21. The provision in this section in cases of insolvency is required for the purposes of justice.

SECT. 22. This section is also new, applicable to descended property. The design is to disturb the arrangements of the will as little as possible.

SECT. 23. This is a new section—its object is evident.

SECT. 24. The principle of this section is settled—but it should be known to all.

SECT. 26. New—a mere rule of construction—several of the foregoing sections as noted in the margin, have been taken from the Massachusetts code; founded on principles of construction which have been settled by decisions.

## CHAPTER 93.

### OF TITLE BY DESCENT.

- Sect. 1. How it descends when intestate leaves children, &c.  
 How if he leaves no issue.  
 How if he leaves no issue, nor father.  
 How if he leaves no issue, nor father, nor brother or sister.  
 How if neither of those.  
 Proviso.  
 If no kindred it escheats to State.
2. Degrees computed according to civil law—half blood.
3. What an illegitimate child can inherit.
4. If he die intestate without issue, who inherits his property.
5. Estate of an alien purchased, how it descends, if naturalized.
6. How if alien dies, after filing intention of becoming a citizen.
7. Certain property shall not escheat.
8. Advancement, what.
9. To be considered as part of the estate.
10. As to same subject.
11. How, if it exceeds a child's share.
12. How, if made in real estate.
13. What, if a child advanced, die before intestate.
14. This chapter not to affect tenant by courtesy.
15. How personal estate shall descend.
16. If intestate is a married woman, husband shall have the residue after debts paid.
17. How if intestate leave a widow and issue.
18. How if no issue.
19. How if no kindred.
20. How if no husband, widow or kindred.
21. Debt due from an heir to an intestate, shall be a lien on such heir's share of the estate until paid.
22. Mode in which the benefit is to be realized.

SECT. 1. When any person shall die seized of any lands,  
 2 tenements or hereditaments, or any right thereto, or entitled to  
 3 any interest therein, in fee simple, or for the life of another not  
 4 having lawfully devised the same, the same shall descend (sub-  
 5 ject to his debts) in the following manner:  
 6 *First*, In equal shares to his children, and to the lawful issue  
 7 of any deceased child, by right of representation; and when  
 8 there is no child of the intestate at the time of his death, his  
 9 estate shall descend to all his lineal descendants; and if they  
 10 are all in the same degree of kindred to the intestate, they shall  
 11 share the estate equally; otherwise they shall take according to  
 12 the right of representation.

13 *Secondly*, If he shall have no issue his estate shall descend to  
14 his father.

15 *Thirdly*, If he shall leave no issue nor father, his estate shall  
16 descend in equal shares to his brothers and sisters and to the  
17 children of any deceased brother or sister, by right of represen-  
18 tation; provided if he shall leave a mother also, she shall take  
19 an equal share with his brothers and sisters.

20 *Fourthly*, If the intestate shall leave no issue, nor father and  
21 no brother or sister, living at his death, his estate shall descend  
22 to his mother, to the exclusion of the issue, if any, of deceased  
23 brothers and sisters.

24 *Fifthly*, If the intestate shall leave no issue, nor father, mother,  
25 brother or sister, his estate shall descend to his next of kin in  
26 equal degree; excepting when there are two or more collateral  
27 kindred in equal degree, but claiming through different ances-  
28 tors, those who claim through the nearest ancestor, shall be  
29 preferred to those claiming under an ancestor more remote.

30 *Sixthly*, Provided however that if any person shall die leaving  
31 several children, or leaving one child, and the issue of one or  
32 more others, and any such surviving child shall die under age,  
33 not having been married all the estate, which came to the  
34 deceased child, from such deceased parent, shall descend in  
35 equal shares to the other children of the same parent, and to the  
36 issue of such other children, who shall have died, by way of  
37 representation and provided also, that when the issue or next of  
38 kin to the intestate child to whom the estate came by inherit-  
39 ance from his father, as above stated, are all in the same degree  
40 of kindred they shall share the said estate equally, otherwise  
41 they shall take according to the right of representation.

42 *Seventhly*, If the intestate shall leave no kindred, his estate  
43 shall escheat to the State. 1821, 33, § 17.

SECT. 2. The degrees of kindred shall be computed accord-  
2 ing to the rules of the civil law; and the kindred of the half  
3 blood shall inherit equally with those of the whole blood in the  
4 same degree. 1821, 38, § 17.

SECT. 3. Every illegitimate child, shall be considered as an  
2 heir of the person who shall have been adjudged the putative  
3 father of such illegitimate child by any court of competent  
4 jurisdiction, or who shall in writing have acknowledged himself  
5 to be the father of such child, and shall in all cases be consid-  
6 ered as heir of his mother, and shall inherit his or her estate, in  
7 whole or in part, as the case may be, in the same manner, as if  
8 he had been born in lawful wedlock; but he shall not be  
9 allowed to claim, as representing his father or mother, any part  
10 of the estate of his or her kindred either lineal or collateral;  
11 unless before his death his parents shall have intermarried and  
12 had other children, and his father, after such marriage shall have  
13 acknowledged him as his child and by him begotten; in which  
14 case, such child and all the legitimate children, shall be consid-  
15 ered as brothers and sisters, and on the death of them intestate



16 and without issue, the others shall inherit his estate and be  
17 theirs as provided in the first section of this chapter in like  
18 manner as if all the children had been legitimate; saving to the  
19 father and mother respectively their rights in the estates of all  
20 the said children, as provided in the first section, in like manner  
21 as if all had been legitimate.

1833, 338, § 1. M. R. S. and statute of Mass. 1832.

SECT. 4. If any illegitimate child shall die intestate, without  
2 lawful issue, his estate shall descend to his mother or in case of  
3 her decease to his heirs at law. 1838, 338, § 2.

SECT. 5. Any alien who has purchased real estate, and after-  
2 wards become naturalized, shall have power to hold the same in  
3 fee, if no claim shall have been interposed by the State previous  
4 to his naturalization, and in case he should make no disposition  
5 of it in his life time, on his dying seized thereof, or of any right  
6 or interest therein or thereto, the same shall descend to his heirs,  
7 subject to his debts in like manner as he were a native born  
8 citizen. 1834, 105.

SECT. 6. Any alien who shall have filed in any court of  
2 record a declaration of his intention to become a citizen of the  
3 United States, and shall die before the expiration of three years,  
4 if during that time he shall have become seized and possessed  
5 of any real estate, the same shall descend to his heirs or follow  
6 the disposition thereof in his will in like manner as he were a  
7 native citizen. 1834, 105, § 2.

SECT. 7. No title or claim of any citizen of this State, who  
2 was in actual possession of any lands on or before the first day  
3 of January, eighteen hundred and thirty-four, shall escheat or  
4 be defeated on account of the alienage of any person through  
5 or from whom such title or claim, shall have been derived.  
1834, 105, § 3.

SECT. 8. All gifts and grants of real or personal estate shall  
2 be deemed to have been made in advancement to a child or  
3 grand child, if they are expressed in such gift or grant to be so  
4 made, or charged by the intestate in writing as an advancement,  
5 or acknowledged in writing as such by the child or grand child.  
1821, 51, § 40.

SECT. 9. Any real or personal estate thus given by way of  
2 advancement, to a child or grand child, shall be considered as a  
3 part of the intestate's estate, so far as it regards the division and  
4 distribution thereof, and shall be taken by such child towards  
5 his share of the intestate's estate. 1821, 51, § 40.

SECT. 10. The value of the estate advanced, if expressed, by  
2 the intestate in his gift or charge, or in the acknowledgment of  
3 the child or grand child, shall be considered the value to be  
4 allowed in the distribution of the estate; if no value be so  
5 expressed, then it shall be estimated according to its value when  
6 given. 1821, 51, § 40.

SECT. 11. If the amount of the advancement shall exceed  
2 the share of such child or grand child, he shall be excluded from

3 any further portion in the division and distribution of the estate ;  
4 but he shall not be required to refund any part of such advance-  
5 ment ; and if the amount so received shall be less than his share,  
6 he shall be entitled to as much more as will make all the shares  
7 equal. M. R. S.

SECT. 12. If any such advancement shall be made in real  
2 estate, the value thereof shall, for the purposes of the preceding  
3 section, be considered as part of the real estate to be divided ;  
4 and if it be in personal estate, it shall be considered as part of  
5 the personal estate ; and if in either case it shall exceed the  
6 share of real or personal estate respectively that would have  
7 come to the party so advanced, he shall not refund any part of  
8 it, but shall receive so much less out of the other part of the  
9 estate, as will make his whole share equal to those of the other  
10 heirs, who are in the same degree with him. M. R. S.

SECT. 13. If any child or grand child so advanced shall die  
2 before the intestate, leaving issue, the advancement shall be  
3 taken into consideration in the division and distribution of the  
4 estate ; and the amount thereof shall be allowed accordingly by  
5 the representatives of the heir so advanced, as so much received  
6 towards their share of the estate, in like manner, as if the ad-  
7 vancement had been made directly to them. M. R. S.

SECT. 14. Nothing contained in this chapter, shall affect the  
2 title of a husband as tenant by the courtesy, nor that of the  
3 widow, as tenant in dower.

SECT. 15. When any person shall die possessed of any per-  
2 sonal estate, or right or interest therein, not lawfully disposed of  
3 by his will, the same, after allowing to the widow, if any, her  
4 wearing apparel, according to the degree and estate of her hus-  
5 band, and such further necessities as the judge of probate shall  
6 order, having regard to the state of the family, and also such  
7 sum (when she rejects the provision made for her in her hus-  
8 band's will) as by law, she shall be entitled to, shall first be  
9 applied to the payment of the debts of the intestate, and the  
10 charges of his funeral and settlement of his estate ; and the  
11 residue shall be distributed to the same persons in the same  
12 proportion, to whom the real estate shall descend, but subject  
13 however to the provision contained in the following section.

1821, 38, § 19.

SECT. 16. If the intestate were a married woman, the husband  
2 shall be entitled to the whole of such residue.

1821, 38, § 19.

SECT. 17. If the intestate leave a widow and issue, the widow  
2 shall be entitled to one third part of said residue.

1821, 38, § 19.

SECT. 18. If he leave no issue then she shall be entitled to  
2 one half part thereof.

SECT. 19. If he leave no kindred, the widow shall be entitled  
2 to the whole of said residue.

SECT. 20. If there be no husband, widow nor kindred of the  
2 intestate, the whole shall escheat to the State.

SECT. 21. When any person shall die intestate, whose estate  
2 shall not be insolvent, and any heir to whom a share of such  
3 estate, whether real or personal, by law descends, was indebted  
4 to the intestate at the time of his decease, in such case, the debt  
5 so due, shall be and remain a lien upon such share, until the  
6 debt shall be paid, which lien shall have priority to any attach-  
7 ment on said share.

SECT. 22. The administrator on such estate may realize the  
2 the benefit of such lien on the descended share of such heir by  
3 an attachment of the same in a suit, brought within two years  
4 after the grant of administration, for the recovery of the debt,  
5 and a levy and satisfaction of the execution issued on the judg-  
6 ment in such suit, within thirty days after such judgment; and  
7 in such action, if the heir has any claim against the estate, he  
8 shall file the same by way of set off; or if the heir should claim  
9 to be a creditor of the estate, and shall bring his action for the  
10 recovery of the same, against the administrator within said two  
11 years, then the administrator may file his claim of the intestate  
12 against such heir by way of set off; and in this manner both  
13 claims shall be settled, and the balance be established.

## NOTES.

SECT. 8. The latter part of this section is new, and taken from M. R. Statutes; it is founded on the husband's acknowledging the illegitimate to be his child—and his treatment of it as such.

SECT. 11, 12 and 13 are taken from the Mass. code. Their only object is to furnish certain rules and modes of proceeding respecting advancements made to children as described in the 8th section. The provisions of the three first named sections are simply to cause justice to be done in the settlement of the estate; no new principle is introduced.

SECT. 21, and 22, are both new which the commissioners have prepared, and submit them to the consideration of the Legislature, as furnishing a principle and course of proceeding, which seem necessary to prevent manifest injustice. The case provided for, in some respects resembles an advancement, but not in others.

Suppose a father dies leaving three sons; and, say, real estate of the value of three thousand dollars. Suppose also that one of the sons owed his father, at the time of his death, one thousand dollars; and several other creditors to the amount of a thousand dollars more. Now, on this statement, the indebted son ought not to receive any part of his father's estate because he owes to it the full amount of his share; yet, on the death of the father, an undivided third part descended to this indebted son; and those creditors of this son may instantly attach his share and hold it; and thus the son realizes the value of his share by those attaching creditors. All this may be done before any administration could be granted on the father's estate, so that his administrator could sue the note due from the son. To prevent these consequences, the 20th Section creates a lien upon the indebted son's share, until the debt due from him is paid; and this lien shall have priority to any attachment; the 22d Section points out particularly the manner in which the benefit of the lien may be realized, and disputed claims be finally adjusted.

CHAPTER 94.

OF TITLE TO REAL ESTATE, TAKEN BY EXECUTION.

- Sect. 1. What kind of an estate can be levied upon.  
 2. Same subject.  
 3. Exception.  
 4. Mode of proceeding by creditor and officer.  
 5. Officer to proceed after notice given, &c.  
 6. Appraisers to view, &c.  
 7. Estate appraised, of what nature, and its description.  
 8. Several tracts may be appraised separately, &c. and by different appraisers.  
 9. Levy valid, though signed by two appraisers, &c.  
 10. What shall pass by levy.  
 11. When levy must be in common, &c.  
 12. How, when it cannot be set off by metes and bounds.  
 13. When the premises are a mill and privilege.  
 14. How levy made on a life estate.  
 15. When under a lease.  
 16. When only a reversion of part of the premises is taken.  
 17. How officer is to deliver seizin, in such case.  
 18. How, when levied on right of entry.  
 19. Officer's return, &c. record of it.  
 20. Effect, if not recorded, within three months.  
 21. Same subject.  
 22. If levy be found defective, or useless *before* the same is completed, what, &c.  
 23. If levy be so found after completion, what measures.  
 24. Form of officer's return.  
 25. When debtor may redeem.  
 26. Mode of settling sum due.  
 27. Consequence of not releasing the land, after tender.  
 28. Equity process may be used in adjusting claims.  
 29. Mode of proceeding in such case.  
 30. Rule of proceeding, where levy is on rents and profits.  
 31. Land under mortgage may be levied on.  
 32. What proceedings, when there is a mortgage discovered, or larger than was supposed.  
 33. Land so levied on, may be redeemed.  
 34. Lands owned, or mortgaged to banks, may be levied on, and mode of proceeding.  
 35. No conveyance of such mortgage, after notice to the corporation, &c. good.  
 36. Equities of redemption may be sold on execution, &c.  
 37. Mode of proceeding in such case.  
 38. Officer may adjourn auction, &c.  
 39. Sale shall be by auction, and deed given.  
 40. When a right shall be considered as *seized*, on execution.  
 41. Right of redemption.  
 42. Purchaser must release the lands after tender.  
 43. The right of redeeming, an equity of redemption—may be *seized*, and sold on execution, and how.  
 44. Charges of levy to be added to execution.  
 45. Executors and administrators may do any thing which testator or intestate could.  
 46. Real estate of deceased persons may be taken on execution.  
 47. When heirs redeem lands sold for payment of ancestors' debts, it shall not be sold again, &c.  
 48. Widow entitled to dower, &c.  
 49. Mode of levying execution in favor of the State.

SECT. 1. All the real estate of a debtor, in possession, reversion or remainder, or fraudulently conveyed, or of which he had been colorably or fraudulently disseized, for the purpose of defrauding his creditors and all rights of entry into land, and rights of redeeming land mortgaged, may be taken in execution for his debts, in the manner mentioned in this chapter.

1821, 52, § 1.

SECT. 2. All estates tail may be taken in execution for the debts of the tenants in tail, in the same manner as estates in fee simple; and the person lawfully holding such premises under the execution, shall have an estate in fee simple.

1821, 36, § 8.

SECT. 3. But the preceding sections shall not be construed to include any piece of land, not exceeding half an acre, appropriated by any number of individuals, as a place of burial, constantly enclosed with a fence, and not used for the purposes of cultivation; a description of which under the hands of the individuals who appropriated the same, attested by two disinterested witnesses, shall have been recorded in the registry of deeds, in the county where the land lies, within six months from the eleventh day of February, in the year eighteen hundred and thirty-five.

1835, 14, § 8.

SECT. 4. Whenever a creditor thinks proper to have his execution levied on the real estate of the debtor, the officer holding the execution, and empowered to serve it, shall cause such estate to be appraised by three discreet and disinterested men, one to be chosen by the creditor, one by the debtor, and the third by such officer, or if the debtor shall neglect to appoint one, after notice given to him by the officer, if the debtor or his attorney be living in the county where the land lies, the officer shall appoint one for him, and such appraisers shall be sworn before a justice of the peace, faithfully and impartially to appraise such real estate as shall be shown to them, to be taken by said execution; and such justice shall make his certificate on the bank of said execution, of his having administered such oath.

1821, 50, § 27.

SECT. 5. After the officer has taken land in execution and given notice to the debtor thereof, if he or his attorney be residing in the same county, and allowed him a reasonable, specified time, within which, to appoint an appraiser, as mentioned in the preceding section, he shall then proceed without unnecessary delay, to have the estate appraised, and the levy completed; and it shall be considered as made when the land is taken in execution; and the subsequent proceedings and return shall be valid, though made and done after the return day, or after the removal or other disability of the officer.

SECT. 6. The appraisers shall proceed with the officer to view and examine the land, so far as may be necessary to a just estimate of its value; and the description and appraisal of the land, shall be endorsed on the execution and signed by them.

1821, 50, § 27.

SECT. 7. The nature of the estate appraised, whether in severalty or undivided, a fee simple or less estate; in possession, reversion or remainder, shall be described either by metes and bounds, or such other mode that the same may be distinctly known and identified; and this description may be referred to and adopted by the officer as a part of his return.

1821, 50, § 27.

SECT. 8. The appraisers may appraise several parcels of land separately, or the whole together, and where several pieces of land are taken at different times there may be distinct sets of appraisers, if more convenient for those concerned. M. R. S.

SECT. 9. The levy of the execution shall be valid, though the certificate of appraisement be signed by only two of the appraisers, if the third was sworn and acted with the others under the appointment. 14, Mass. 143.

SECT. 10. All the debtor's interest in the premises, shall pass by the levy, unless it be larger than the estate mentioned, in the appraisers' description. M. R. S.

SECT. 11. When the debtor's estate is held in joint tendency, or in common with others, the whole estate must be described by the appraisers, and the debtor's share or part thereof, so held, be so stated by them; and the whole, or such part of the debtor's interest, as may be necessary, to satisfy the execution, may be taken, and thereafter held in common with the cotenants.

1821, 50, § 27.

SECT. 12. When the estate levied upon cannot be set out by metes and bounds, or the description before mentioned, the execution shall be extended on the rents of such estate, and the officer shall give seizin thereof to the creditor, and cause the person in possession to attorn and become tenant to such creditor, and pay the rent to him accordingly; or on his refusal, so to do, the officer shall turn him out of possession, and give seizin and possession to the creditor, until redeemed by such debtor, in the manner mentioned in a subsequent section.

1821, 50, § 28.

SECT. 13. When the premises to be levied on, consist of a mill, mill privilege, or other real estate, which cannot be divided, without damage to the whole, and which is more than sufficient to satisfy the execution, it may be levied in the manner prescribed in the preceding section, or upon such undivided part of the whole as may be sufficient to satisfy the execution; and in the certificate of the appraisers, the whole of the property must be described, of which, the undivided portion is taken.

1821, 50, § 29.

SECT. 14. When an execution is levied on a life estate, the value thereof may be estimated by the appraisers, and the same may be taken and set off, to the creditor like other real estate; or the execution may be levied on the rents and profits, at the creditor's election; in which latter case, the appraisers shall estimate the rents and profits, for such length of time, as shall

7 be sufficient to satisfy the execution, and for such term of time,  
8 the premises shall be set off to the creditor, if the life shall so  
9 long continue; computing interest on the sum due on the exe-  
10 cution, and deducting the rents and profits, as so much paid  
11 from time to time, when the rents and profits fall due; and if  
12 the life estate shall expire before the end of the term fixed, by  
13 the appraisers, the creditor may have a new action, on the  
14 judgment to recover the balance due. M. R. S.

SECT. 15. When the premises levied on, are under lease to  
2 a third person, and the reversion of the whole is taken on any  
3 execution, the lessee shall pay the rent to the creditor from the  
4 time of the levy. M. R. S.

SECT. 16. When the reversion of a part only of the premises  
2 is taken, the appraisers shall determine what proportion of the  
3 whole annual rent shall be paid to the creditors; and the lessee  
4 shall be bound to pay the same to him accordingly. M. R. S.

SECT. 17. The officer serving the execution, shall deliver  
2 seizin and possession of the premises taken, to the creditor or  
3 his attorney, so far as the nature of the estate taken, and the  
4 title of the debtor will admit; where a remainder, reversion or  
5 right of redemption is taken, the officer shall not oust the debtor  
6 who is in possession, but only assign to the creditor the debtor's  
7 right therein, and may make his return accordingly. M. R. S.

SECT. 18. When an execution is levied on land, into which  
2 the debtor has, or is supposed to have, a right of entry; and of  
3 which any other person is then seized, the officer shall deliver  
4 to the creditor, a momentary seizin and possession of the land,  
5 so far as to enable the creditor to maintain an action therefor,  
6 in his own name, and on his own seizin; but he shall not  
7 actually expel and keep out the tenant, then in possession  
8 against his will. M. R. S.

SECT. 19. The officer shall return the execution with a cer-  
2 tificate of his doings endorsed thereon, into the clerk's office,  
3 to which it is returnable; and shall also within three months,  
4 after the completion of the levy cause the execution and return  
5 thereon, to be recorded in the registry of deeds, for the county  
6 wherein the land lies; the expense of which recording, shall be  
7 paid by the creditor. 1821, 50, § 27.

SECT. 20. If the execution and levy are not recorded as pre-  
2 scribed in the preceding section, it shall be void against any  
3 creditor, who shall have attached or taken in execution, the  
4 same premises, without notice of such levy; or against any per-  
5 son who shall have purchased them in good faith, and for a val-  
6 uable consideration, without such notice; but if the levy is  
7 recorded, though after the expiration of said three months, it  
8 shall be valid and effectual, against any conveyance, attachment  
9 or levy, made after such recording. M. R. S.

SECT. 21. The levy of an execution, though neither returned  
2 nor recorded as aforesaid, shall be so far valid against the cred-  
3 itor, that he shall not be permitted to waive the levy, and to

4 have a new execution of his judgment, except as provided in  
5 the following section. M. R. S.

SECT. 22. If, before the execution is returned or recorded, it  
2 should appear that there is any error or defect in the proceed-  
3 ings, which would render the levy void ; or that the estate levied  
4 upon was not the property of the debtor, or not liable to be  
5 seized on execution or that for any reason it cannot be held  
6 thereby, the creditor may waive the levy, and it shall be consid-  
7 ered null and void ; and he may resort to any other remedy for  
8 satisfaction of the judgment. M. R. S.

SECT. 23. If after the execution is returned or recorded, it  
2 should appear to the creditor, that the estate levied upon, was  
3 not the property of the debtor or not liable to be seized on exe-  
4 cution, or that it cannot be held thereby, the creditor may sue  
5 out of the clerk's office, of the court, from which the execution  
6 issued a writ of *scire facias* to the debtor, requiring him to shew  
7 cause why an alias execution, should not be issued on the same  
8 judgment ; and if the debtor, after having been duly summoned,  
9 shall not shew sufficient cause to the contrary, the levy of the  
10 former execution may be set aside, and an alias execution, shall  
11 be thereupon issued for the amount then due on the original  
12 judgment, but without interest or further costs ; but, if it shall  
13 appear to the court, that the creditor had no just cause for such  
14 suit, the debtor shall recover his costs. 1823, 210.

SECT. 24. The officer shall state in his return, on the execu-  
2 tion, substantially the following facts—

3 *First*—The time when the land was taken in execution.

4 *Second*—How the appraisers were appointed.

5 *Third*—That they were duly sworn, unless a certificate of the  
6 oath shall be endorsed upon the execution, and signed by the  
7 justice who administered it.

8 *Fourth*—That they appraised and set off the premises, after  
9 viewing the same, at the price specified.

10 *Fifth*—That the officer delivered seizin and possession to the  
11 creditor or his attorney, or assigned the same to him, as in case  
12 of remainder, or other incorporeal estate.

13 *Sixth*—The description of the premises, unless they are suffi-  
14 ciently described in the certificate of the appraisers ; in which  
15 case the officer may refer to, and adopt that as part of his  
16 return.

17 *Seventh*—If the appraisement is signed by only two of the  
18 appraisers, he must state that all three were present and acted  
19 therein. 1821, 50, § 27.

SECT. 25. When lands are taken and set off, on execution  
2 the debtor may redeem the same at any time, within one year  
3 after the levy, by paying or tendering to the creditor, the sum  
4 at which they were appraised, and interest from the time of the  
5 levy—with the reasonable expenses incurred, in improving the  
6 same, or in repairs after deducting the rents and profits received  
7 by the creditor, or which he might have received, and with



8 which he is chargeable, and the creditor shall thereupon, by his  
9 deed, prepared at the debtor's expense, release to said debtor,  
10 all his right and title to the premises levied on. 1821, 60, § 30.

SECT. 26. The amount due for redemption, may be ascer-  
2 tained, at the desire of the debtor, by three justices of the  
3 peace, chosen thus; one by the debtor, a second by the cred-  
4 itor, if he inclines to choose him, if not, he also may be chosen  
5 by the debtor, and the third chosen by the two justices, as afore-  
6 said chosen; and after a hearing of the case before all three of  
7 the justices, they, or any two of them, shall make and sign a  
8 certificate, of the sum that shall be adjudged due, and payable  
9 for the redemption of the premises; which shall be final and  
10 conclusive, between the parties; and the debtor may tender that  
11 sum which shall be valid and effectual, though he may have  
12 made a tender before, of a different sum. 1821, 60, § 30.

SECT. 27. If, on tender of the sum due for redemption,  
2 whether it has been adjudicated as aforesaid, or not, the creditor  
3 shall not release the premises, within ten days next following, to  
4 the debtor, he may recover the same by writ of entry on his own  
5 seizin; but before entry of judgment, he shall bring into court,  
6 for the use of the creditor, the money so tendered. 1821, 60.

SECT. 28. Instead of a writ of entry, the debtor may bring a  
2 bill in equity for redemption, in the supreme judicial court, at  
3 any time, within one year after the levy, whether he has made  
4 any tender or not; setting forth in such bill, his offer to pay  
5 such sum, as may be found due to the said creditor; and the  
6 court shall ascertain the amount due, (unless the same shall have  
7 been adjudged, by three justices of the peace, as before men-  
8 tioned) and require the debtor to bring such amount into court  
9 for the creditor's use; and the debtor thereupon, shall be enti-  
10 tled to a decree in his favor and a writ of possession, for his  
11 seizin of the premises. 1821, 60, § 72.

SECT. 29. In the preceding case the court may award costs  
2 for either party, as justice may require, excepting that the cred-  
3 itor shall never be subjected to costs, unless he has unreasonably  
4 refused, on request, to render an account of rents and profits  
5 received by him, and expenses incurred by him, in improvements  
6 and repairs, or unless he had refused to execute to the debtor a  
7 deed of release of the premises for the term of ten days, on  
8 tender of a sufficient sum by him, or excepting also that if the  
9 creditor shall before the filing of the bill in equity, have ten-  
10 dered such a deed of release to the debtor, and in his answer  
11 shall rely on such tender, and bring the same into court, to be  
12 delivered to the debtor, he shall recover his costs.

M. R. S.

SECT. 30. The provisions of the preceding section, shall be  
2 the rule of proceeding in those cases where execution was  
3 levied, on the rents and profits of an estate for life in respect to  
4 the redemption of such rents and profits.

M. R. S.

SECT. 31. A right of redeeming mortgaged premises may be  
 2 taken and set off on execution for the mortgager's debts, in like  
 3 manner as though they were not mortgaged excepting that the  
 4 appraisers shall deduct the amount of the mortgage debt, when  
 5 known, from the estimated value of the premises, and the sum  
 6 so deducted, shall be stated in the return on the execution.

M. R. S.

SECT. 32. If after the levy of an execution, in the usual form,  
 2 it should be ascertained that there was a mortgage upon the  
 3 premises, not known to the creditor at the time of the levy; or  
 4 if the levy was made in the manner prescribed in the preceding  
 5 section, but the full amount due on the mortgage, was deducted  
 6 as therein required; still the creditor shall hold the premises in  
 7 virtue of the levy, and may recover of the debtor, in a new  
 8 action, the amount he shall pay on account of such unknown  
 9 mortgage, or so much thereof as should have been, but was  
 10 not, deducted or allowed for, in the appraisement.

M. R. S.

SECT. 33. Any estate levied upon in the manner prescribed  
 2 in the two preceding sections, may at any time within one year  
 3 after the levy, be redeemed, in the same manner as though the  
 4 estate had not been under mortgage, at the time of the levy.

M. R. S.

SECT. 34. The lands belonging to any manufacturing cor-  
 2 poration, and the lands of any bank, and all the title and interest  
 3 which any manufacturing company or bank, has in lands, which  
 4 have been, or may be, mortgaged for security of any debt due  
 5 or assigned to such corporation or bank, may be seized and sold  
 6 on execution at public auction; and the officer having such  
 7 execution, shall first give notice of the time and place of sale  
 8 fourteen days previous thereto, in two or more public places, in  
 9 the town or place, where the lands lie, and also in some news-  
 10 paper printed in the county, if there be any, otherwise, in some  
 11 one published at the seat of government, and such officer may  
 12 give an effectual deed of conveyance of such lands, titles, and  
 13 interests, and the debt secured to such corporation by such  
 14 mortgage and then due, shall pass to the purchaser of the  
 15 mortgaged premises; and he, or his legal representatives may,  
 16 in his or their own name, recover such debt or such premises;  
 17 and in such action, a copy of the mortgage deed, duly certified  
 18 by the register of deeds, shall be considered prima facie evidence  
 19 of such deed, and of the note or obligation on which it is  
 20 founded, and that the same were remaining due, and unsatisfied  
 21 at the time of trial; and the cashier or clerk of such bank, shall,  
 22 on reasonable request by the officer, serving the execution, fur-  
 23 nish him with a certified copy of such note or obligation, and a  
 24 statement of all payments made thereon by such debtor.

1821, 60, § 13, 14. 1823, 221, § 2. 1821, 60, § 15.

SECT. 35. And no conveyance or transfer of such mortgage  
 2 or of the debt thereby secured, made by such bank or company

3 after notice filed in the registry of deeds for said county, or other-  
4 wise given to the party to be affected thereby, of the seizin  
5 thereof on execution by such officer, for the purpose of sale,  
6 shall have any force or validity against the purchaser of such  
7 lands, or in interest at auction as aforesaid. 1821, 60, § 16.

SECT. 36. All the right, title or interest any person owns,  
2 holds or claims, in virtue of a possession, and improvement of  
3 lands, as expressed and described in the chapter on real actions,  
4 being chapter one hundred and forty-five—and also all rights of  
5 redeeming mortgaged real estate, may, at the election of the  
6 creditor be taken and sold on execution, as hereinafter pre-  
7 scribed, instead of being appraised and set off on execution to  
8 the creditor; and the officer shall stand accountable for the sur-  
9 plus of the proceeds of the sale, if any, after satisfying the  
10 execution and legal charges. 1821, 60, § 19, 17.

SECT. 37. In such case the officer shall give notice of the  
2 time and place of sale, to the debtor in person, or by leaving  
3 the same at his last and usual place of abode if he is an inhabi-  
4 tant of the State, and shall also cause notifications thereof to be  
5 posted in some public place in the town or place, where the  
6 land lies, and in the two adjoining towns, if there be so many in  
7 the county, all which shall be done thirty days at least before  
8 the day of sale; and shall also cause an advertisement, of the  
9 time and place of sale, to be published three weeks successively  
10 before the sale, in some public newspaper, printed in the county  
11 where the land lies, if there be any such. 1821, 60, § 17.

SECT. 38. When the officer shall deem it for the interest of  
2 all parties concerned to postpone the auction, for want of pur-  
3 chasers or other sufficient cause, he may adjourn the sale for any  
4 time not exceeding seven days and so from time to time, for  
5 like good cause, until the sale shall have been made, giving  
6 notice of each adjournment, by public proclamation, made at  
7 the same time. 1821, 60, § 17.

SECT. 39. The right to redeem shall be sold by the officer, at  
2 public auction, to the highest bidder, and he shall execute and  
3 deliver to the purchaser, a good and sufficient deed thereof;  
4 which being recorded in the registry of deeds, for the county  
5 where the land lies, within three months of the sale, shall convey  
6 to the purchaser all the title which the debtor had in the premi-  
7 ses. 1821, 60, § 17.

SECT. 40. The seizure of the right, on the execution, shall  
2 be considered as made on the day when the notice of the  
3 intended sale is given as above prescribed, and hold the estate  
4 by force of the attachment, if any had been made thereon,  
5 though the levy should not be completed within thirty days next,  
6 after the judgment; and the subsequent proceedings, and the  
7 return shall be valid, the return day, or after the removal or other  
8 disability of the officer. M. R. S.

SECT. 41. The right of redemption being so sold, may be  
2 redeemed by the debtor from the purchaser, or the person hold-

3 ing under him, at any time within one year by paying or tender-  
4 ing the sum for which the same was sold, and on like conditions  
5 as to improvements and repairs and rents and profits as in case  
6 of redemption of lands appraised and set off on execution ; and  
7 the person holding the right, shall release the same to the debtor,  
8 the deed to be prepared at his expense. 1821, 60, § 18.

SECT. 42. If the purchaser or person holding under him, shall  
2 not within ten days after a tender by the debtor, release to him  
3 the right of redemption as before provided ; or if there has been  
4 no tender, the debtor may have the same remedy for recovering  
5 his right of redemption as is provided in like cases for the  
6 redemption of land mortgaged. M. R. S.

SECT. 43. And the right which any debtor may have of  
2 redeeming from the purchaser, any equity of redemption, which  
3 may have been sold on execution against such debtor ; and also  
4 the right which any such debtor may have, of redeeming from  
5 a judgment creditor, any real estate which may have been  
6 appraised, and set off on execution, against such debtor, may  
7 be attached on mesne process, and sold on execution, and the  
8 same proceedings shall be had in respect to the sale, and con-  
9 veyance of either of said rights, as in the sale of an equity of  
10 redeeming mortgaged estate, and the purchaser shall have, and  
11 exercise all the rights and remedies, which the debtor might, if  
12 no sale of it had been made ; provided, however, that the debtor  
13 may have the same right of redeeming it, as is allowed by law,  
14 of redeeming mortgaged real estate. 1833, 87.

SECT. 44. The lawful charges and fees of levying an execu-  
2 tion, in any of the above mentioned modes, shall be added to  
3 the amount of the execution, and in setting off, and the sale of  
4 estates on execution, shall be considered as part thereof, and  
5 also in the redemption of the estate. 1833, 609.

SECT. 45. Every thing in this chapter, which a creditor or  
2 debtor, is required to do, or may do, may be done by their res-  
3 pective heirs, or assigns, executors or administrators, as the case  
4 may be, or by any person lawfully claiming under them respec-  
5 tively. M. R. S.

SECT. 46. The real estate of a deceased testator or intestate,  
2 may be taken in execution, on a judgment recovered against his  
3 lawful executor or administrator for the proper debt of the  
4 deceased, and shall be appraised and set off or sold and  
5 redeemed, in like manner as if the same estate had been levied  
6 on, in the lifetime of such testator or intestate. 1821, 52, § 23.

SECT. 47. When the estate of a deceased person, has been  
2 set off or sold on execution, and has been redeemed by the  
3 heirs or devisee, or the assigns of either, as provided in the pre-  
4 ceding section, the same shall not again be taken in execution  
5 for any other debts of the deceased, or in any manner be liable  
6 therefor.

SECT. 48. Every widow shall be entitled to dower, in lands  
2 taken by execution from her husband, or by execution on a

3 judgment against his executors or administrators, in like manner  
4 as though conveyed by the husband. 1821, 60, § 27.

SECT. 49. When real estate is taken to satisfy an execution,  
2 issued on a judgment, in the name or for the use of the State,  
3 for any sum of money, the officer shall give notice of the intended  
4 sale, in like manner as is prescribed in the thirty-sixth section of  
5 this chapter, except that such notice shall be published also in  
6 the newspapers employed by the State, and that the last publi-  
7 cation in both newspapers, shall be six days before the sale;  
8 and the officer making such sale, shall make and execute to the  
9 purchaser a sufficient deed of the land sold; and the debtor  
10 shall have the same rights, to redeem the same in like manner,  
11 and on the same conditions as a judgment debtor has, to redeem  
12 lands taken and set off on execution. 1821, 60, § 33.

---

## NOTES.

---

SECT. 7. A new section, merely to remove doubts and save expense.

SECT. 8. The principle of this section was decided in the construction of the  
act of Mass; (of which our statute is a copy) in the year 1817.

SECT. 9. This is merely to remove all possible doubt.

SECT. 11. The same remark applies to this section. The subject was exam-  
ined, 10 Mass. R. 260—15 Mass. 439—doubts are removed by this section.

SECT. 13. The statutes of this State as to the mode of levying execution on  
real estate, are generally mere copies of the acts of Mass. as they existed at the  
time of separation; and those provisions have not been found so explicit and dis-  
tinct as was desirable; hence many doubts have existed and different modes have  
been adopted in the proceedings under the statutes. The provisions contained in  
this section and the next four following, have been taken from the Mass. code;  
and they are designed and adapted to remove all uncertainties as to the mode of  
reaching the debtor's interest in the lands; and prescribe, in plain terms, the course  
of proceeding; so that creditors, officers and appraisers may know what their rights  
and duties are, and how those rights may be exercised and secured. The com-  
missioners have not believed that they could amend the above mentioned sections,  
or omit them, without disadvantage.

SECT. 19. This is also taken from the same code. The record of a levy is to  
give notice and secure the creditor's rights against the attachments or levies of  
other creditors, or purchases *without notice* of the levy; but the debtor *has notice*.  
And, for that reason the levy shall be good *against such debtor, his heirs and devisees*,  
though not recorded within three months; but not against other persons.

SECT. 20, 21, 22. These sections have been proposed as a part of this chapter.  
Experience has shown that certain provisions are necessary which were not sup-  
posed to be necessary when the statute was originally enacted in Mass. above 50  
years ago. They show, when a creditor shall be *bound* by an unrecorded levy, and  
when he may *waive* it.

SECT. 29, 30. These change no principle, but simplify the adjustment of  
respective claims by a court of equity.

SECT. 31. An equity of redemption is generally sold on execution at auction;  
but a creditor still may levy on the lands subject to the mortgage, and this section  
and the two following prescribe the course of proceeding. The practice not being  
usual, a distinct direction seems useful. Several of the sections are taken from  
Mass. code.

SECT. 40. Merely declarative, and removing all doubts.

SECT. 42. The existing statute, limits no time within which a release shall be given. This section fixes one and provides a remedy for redress. It seems to be a useful section.

SECT. 45. This simply states a principle of law, and in a manner that every one may understand it.

SECT. 47. This is a new section; and it is introduced as a protection of the rights of him who has paid for the property. Its justice seems strongly to recommend it for enactment.

## CHAPTER 95.

### OF ESTATES IN DOWER, AND BY COURTESY AND AT WILL.

- Sect.* 1. Every woman entitled to dower at common law.  
 2. But not of wild lands except, &c.  
 3. Judge of probate may assign dower when husband dies seized.  
 4. Mode of proceeding in the assignment.  
 5. How assigned in special cases.  
 6. The widow shall have one-third of rents, till the assignment.  
 7. Widow of a citizen, who was an alien at the time of her marriage, shall have dower—except.  
 8. If not assigned within one month after demand she may sue for it.  
 9. How a married woman may bar herself of dower.  
 10. Same subject.  
 11. Pecuniary provision in certain cases may bar her.  
 12. Such provision or jointure, made before marriage shall bar, unless, &c.  
 13. Widow must waive provision made for her in the will of her husband, within six months, &c.  
 14. If widow is lawfully evicted or deprived of her dower, she may be endowed anew.  
 15. How widow may redeem lands mortgaged by her husband, when she signed the deed.  
 16. Widow must not commit waste on the land assigned to her, penalty, &c.  
 17. Widow may remain forty days after her husband's death, in her husband's house.  
 18. What constitutes a tenant by courtesy.  
 19. How tenancies at will may be terminated, and rents apportioned.  
 20. The above not to apply to forcible entry and detainer.

SECT. 1. Every woman shall be entitled to her dower, at  
 2 common law, in the lands of her husband, with the exception  
 3 hereafter mentioned, to be assigned to her, after his death,  
 4 unless lawfully barred thereof. 1821, 40, § 1.

SECT. 2. A widow shall not be endowed of wild lands of  
 2 which her husband shall die seized, nor of wild lands conveyed  
 3 by him, although they should be cleared afterwards, but this  
 4 shall not bar her right of dower, in any wood lot or other land,  
 5 used with the farm or dwelling house, though such wood lot or  
 6 other land, should have never been cleared.

15 Mass. 167. 7 Pick, 143.

SECT. 3. The judge of probate for the county, in which the  
 2 estate of the husband is settled, may assign dower to the widow

3 in the lands of which the husband died seized, in whatever  
4 counties they may be, where her right of dower is not disputed,  
5 by the heirs or devisees. 1821, 40, § 2.

SECT. 4. For the above purpose, the judge of probate may  
2 issue his warrant to three discreet and disinterested persons,  
3 empowering them to assign the dower by metes and bounds,  
4 when it can be so done without prejudice to the whole estate.  
5 The commissioners to be first duly sworn, before the judge of  
6 probate, or a justice of the peace, to assign the same equally  
7 and impartially, and without favor and affection, as conveniently  
8 as may be. 1821, 40, § 2.

SECT. 5. Where no division can be conveniently made by  
2 metes and bounds, dower shall be assigned in a special manner,  
3 as of a third part of the rents and profits to be computed and  
4 ascertained, in manner as aforesaid. 1821, 40, § 5.

SECT. 6. Such widow, where her husband died seized, shall  
2 be entitled to receive one undivided net third part of the rents,  
3 and profits, of such estate, until the heir or heirs shall assign her  
4 dower, or the same shall be assigned by the judge of probate,  
5 or judgment of court. 1821, 40, § 5.

SECT. 7. The widow of a citizen of the United States, who  
2 was an alien, at the time of her intermarriage with such citizen,  
3 shall be entitled to dower in her husband's estate, as other  
4 widows, except, as to land conveyed by him, or taken from him,  
5 by execution, before twenty-third of February eighteen hundred  
6 and thirteen. 1821, 110, § 4.

SECT. 8. When the heir or other tenant of the freehold, shall  
2 not within one month after demand, assign to the widow of the  
3 deceased her dower, in his estate, she may sue for and recover  
4 the same, at common law by writ of dower; and she may also  
5 recover her reasonable damages, in the manner prescribed in the  
6 one hundred forty-fourth chapter. 1821, 40, § 1.

SECT. 9. A married woman, may bar her right of dower, in  
2 any estate by him conveyed, by joining with him as a party in  
3 the deed of conveyance, and thereby releasing her claim of  
4 dower, or by a subsequent deed, executed jointly with her hus-  
5 band, or legal guardian of her husband. M. R. S.

SECT. 10. A woman may also be barred of her dower, in her  
2 husband's lands, by a jointure settled on her, with her consent  
3 before marriage; such jointure consisting of a freehold estate  
4 in lands for the life of the wife at least, to take effect immedi-  
5 ately on the husband's death, her assent to such jointure being  
6 expressed, if she be of full age, by becoming a party to the con-  
7 veyance by which it is settled, and if under age by her joining  
8 with her father or guardian. 1823, 38, § 4.

SECT. 11. Any pecuniary provision made for the benefit of  
2 an intended wife, and in lieu of dower, shall, if assented to—in  
3 the manner provided in the last section, bar her right of dower  
4 in her husband's lands. 1821, 40, § 6.

SECT. 12. If any such jointure, or pecuniary provisions, be  
2 made before marriage, and without the assent of the intended  
3 wife, or if made after marriage, it shall bar her dower, unless  
4 she shall within six months, after the husband's death, make her  
5 election to waive such provision, and file the same in writing,  
6 in the probate court. M. R. S.

SECT. 13. Where any such provision shall be made in the  
2 will of a husband, for the widow, she shall within six months,  
3 after probate of the will, make her election whether to accept  
4 it, or claim her dower, but shall not be entitled to both, unless  
5 it appears by the will, that the testator plainly so intended.

1821, 48, § 15.

SECT. 14. If a woman be lawfully evicted of lands, assigned  
2 to her as dower, or settled upon her as a jointure, or be deprived  
3 of the provision made for her by will or otherwise, in lieu of  
4 dower, she may be endowed anew—in like manner, as though  
5 no such assignment or provision had been made.

M. R. S. 13. Mass. 168.

SECT. 15. If upon any mortgage made by a husband, the  
2 wife shall have released her right of dower, or if the husband  
3 shall be seized of land, subject to a mortgage, made by another  
4 person, or made by himself before their intermarriage, his wife  
5 shall nevertheless be entitled to dower in the mortgaged premi-  
6 ses, as against every person, except the mortgagee, and those  
7 claiming under him; provided that if the heir or other person,  
8 claiming under the husband, shall redeem the mortgage, the  
9 widow shall repay such part of the money paid by him, as shall  
10 be equal to the proportion, which her interest in the mortgaged  
11 premises bears to the whole value thereof—or else she shall be  
12 entitled to dower only, according to the value of the estate,  
13 after deducting the money so paid for the redemption thereof.

7 Greenleaf, 102.

SECT. 16. If any woman endowed of lands, shall commit or  
2 suffer any waste thereon, she shall forfeit the place wasted, and  
3 also the amount of the damages done to the premises, to be  
4 recovered in an action of waste by the person having the next  
5 immediate estate of inheritance therein.

5 Pick. 192—7 do. 152—8 do. 309. M. R. S.

SECT. 17. A widow may remain in the house of her husband,  
2 forty days next after his death, without being chargeable with  
3 rent therefor, and in the mean time, she shall have her reasona-  
4 ble sustenance out of the estate. M. R. S.

SECT. 18. When a man and his wife, shall be seized of lands  
2 in fee in her right, and issue shall be born alive of the body of  
3 such wife, that may inherit the same and such shall die, the hus-  
4 band shall have and hold such estate, during his natural life, as  
5 tenant by the courtesy. 1821, 48, § 18.

SECT. 19. All tenancies at will may be determined by either  
2 party by three months notice, in writing, for that purpose given  
3 to the other party; and when the rent due upon such lease is



4 payable at periods of less than three months, the time of such  
 5 notice shall be sufficient, if it be equal to the interval, between  
 6 the days of payment; and in all cases of neglect or refusal to  
 7 pay the rent due on a lease at will, thirty days' notice to quit,  
 8 given in writing by the landlord to the tenant, shall be sufficient  
 9 to determine the lease. M. R. S.

SECT. 20. But the preceding section shall not be construed  
 2 to extend, or be applicable, to the proceedings in cases of forci-  
 3 ble entry and detainer, or the notice required in such cases.

---

## NOTES.

---

SECT. 2. The principles stated in this section are firmly established as part of the law of Massachusetts and this State; and the first decision referred to in the margin is itself founded on the principle that, as a tenant for life only, a widow would have no right to cut any timber or wood on *wild* land, and, of course, an assignment of dower in such land would be useless. The second decision referred to in the margin furnishes the ground for the *limitation* contained in this section.

SECT. 6. The commissioners have in all instances dispensed with the necessity of commissioners, appraisers and other agents being *freeholders*. In early times it was a significant qualification.

SECT. 9. There have been differing opinions on the subject of a married woman's release of her right of dower, as to the mode. The *better* and the *received* opinion *now* is, that the law on the subject is correctly stated in this section.

SECT. 12, 13. Are new and taken from the Mass. R. S. They define with precision under what circumstances a pecuniary provision made before or after marriage shall be a bar of dower; and limit the time of her election. Certainty on these points is very desirable.

SECT. 14. Our existing statute makes no provision in such a case as is stated in this section. The legal principle should be known to all.

SECT. 16. See the note to section one (as to waste) of chapter one hundred twenty-nine.

SECT. 17. This is new, taken from New York and Mass. R. S.—as a widow must always, remain for *some days* in the house of her deceased husband when he dies at home, forty days may be deemed a reasonable time for her to remain there after so severe an affliction. A time certain seems best.

SECT. 19. Tennancies at will must generally be determined by notice; but there seems to be no particular *time* prescribed, except in case of forcible entry and detainer. A *reasonable* time is an *uncertain* one. Three months are proposed as the term of notice to quit, except the rent be payable at shorter periods; for which provision is made in this section; and also as to the term of notice on non-payment of rent when due.