

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

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PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

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BANGOR:  
WHEELER & LYNDE.

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1857.

## CHAP. 102.

## WRITS OF CERTIORARI.

How writs of certiorari to be issued.

R. S., c. 143, § 11.

Costs.

R. S., c. 143, § 12.

Limitation of applications for certiorari.

R. S., c. 143, § 13.

SEC. 11. All writs of certiorari, to correct errors in proceedings that are not according to the course of the common law, shall be issued from the supreme judicial court according to the practice heretofore established, and subject to such further regulations, as are made, from time to time, by such court. (a)

SEC. 12. Upon every application for a certiorari, and on the final adjudication thereof, the court may award costs against any party, who appears and undertakes to maintain or object to the proceedings.

SEC. 13. No application for a writ of certiorari shall be sustained, unless made within six years next after the proceedings complained of, or within five years from the removal of such disabilities as are described in section ten.

## CHAPTER 103.

## ESTATES IN DOWER, AND BY CURTESY, AND ACTIONS OF DOWER.

## ESTATES IN DOWER AND BY CURTESY.

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 3. When judge of probate may assign dower.  
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(a) 8 Greenl. 292; 19 Maine, 46, 338; 23 Maine, 9, 511; 25 Maine, 69; 26 Maine, 353; 28 Maine, 121; 29 Maine, 196; 30 Maine, 19, 270, 302, 351; 31 Maine, 578; 32 Maine, 450, 452; 33 Maine, 237, 260; 35 Maine, 373; 36 Maine, 74; 37 Maine, 561; 38 Maine, 492; 39 Maine, 52, 355.

- SEC. 24. If demandant dies pending an action for dower, executor or administrator may prosecute for the damages.
25. Writ of seizin, and proceedings in setting off dower.
26. Assignments of rents and profits in certain cases.

CHAP. 103.

## ESTATES IN DOWER AND BY CURTESY.

SEC. 1. Every woman shall be entitled to her dower at the common law in the lands of her husband, with the exceptions hereafter mentioned, to be assigned to her after his decease, unless lawfully barred. (a)

Of what lands a woman is dowerable.  
R. S., c. 95, § 1.

SEC. 2. A widow shall not be endowed of wild lands of which her husband dies seized, nor of wild lands conveyed by him, though afterwards cleared; but she shall be in any wood lot or other land used with the farm or dwellinghouse, though not cleared.

Of what she is not dowerable.  
15 Maine, 371.  
R. S., c. 95, § 2.

SEC. 3. The judge of probate, for the county in which the husband's estate is settled, may assign dower to the widow in the lands of which the husband died seized, in any county, when her right of dower is not disputed by the heirs or devisees.

When judge of probate may assign dower.  
23 Maine, 276.  
R. S., c. 95, § 3.

SEC. 4. He may issue his warrant to three discreet and disinterested persons to assign the dower by metes and bounds, when it can be done without prejudice to the whole estate; who shall be first sworn to assign the same equally and impartially, without favor and affection, as conveniently as may be, in one or more parcels, for the best interest of the parties.

Mode of proceeding in assignment of dower.  
R. S., c. 95, § 4.  
R. S., c. 108, § 14.

SEC. 5. When a division by metes and bounds cannot be conveniently made, dower shall be assigned in a special manner as of a third part of the rents and profits.

Special assignment, &c.  
R. S., c. 95, § 5.

SEC. 6. The widow shall be entitled to receive one undivided net third part of the rents and profits of the estate, of which her husband died seized, until her dower is assigned either by the heirs, the judge of probate, or judgment of court.

Rights of widow, before dower is assigned.  
19 Maine, 66.  
34 Maine, 428.  
R. S., c. 95, § 6.

SEC. 7. The widow of a citizen of the United States, who was an alien when she married him, shall be entitled to dower in her husband's estate, which was not conveyed by him or taken from him by execution prior to the twenty-third day of February, eighteen hundred and thirteen.

Widow of naturalized alien entitled, &c.  
22 Maine, 300.  
R. S., c. 95, § 7.

SEC. 8. A married woman may bar her right of dower in an estate conveyed by her husband, by joining in the same deed or in a subsequent deed; and by her sole deed when her husband is under guardianship. (b)

A married woman may bar her right.  
R. S., c. 95, § 9.  
1853, c. 33.

SEC. 9. A woman may be barred of her dower in her husband's lands, by a jointure settled on her with her consent before marriage; such jointure shall consist of a freehold estate in lands for the life of the wife at least, to take effect immediately on the husband's death; if of full age, she shall express her consent by becoming a party to the conveyance; if under age, by joining with her father or guardian.

A woman may bar her right by accepting jointure before marriage.  
21 Maine, 364.  
R. S., c. 95, § 10.

(a) 5 Greenl. 479; 14 Maine, 290; 18 Maine, 39; 19 Maine, 141; 20 Maine, 242; 24 Maine, 332; 25 Maine, 94, 101; 31 Maine, 91, 243, 403; 32 Maine, 412, 424; 37 Maine, 11; 39 Maine, 25.

(b) 3 Greenl. 63; 29 Maine, 415; 30 Maine, 192; 33 Maine, 396; 34 Maine, 135.

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Also by a provision made in lieu of dower.  
R. S., c. 95,  
§ 11.

Widow may waive jointure in certain cases.

R. S., c. 95,  
§ 12.

She may waive provision in her husband's will.

1 Greenl. 148.  
32 Maine, 132.  
36 Maine, 211.  
R. S., c. 95,  
§ 13.

Remedy if evicted of dower.

23 Maine, 276.  
R. S., c. 95,  
§ 14.

When dowerable of an equity of redemption.

7 Greenl. 102.  
20 Maine, 111.  
24 Maine, 332.  
34 Maine, 50.  
R. S., c. 95,  
§ 15.

Penalty if she commits waste.

13 Maine, 273.  
R. S., c. 95,  
§ 16.

Rights of widow to remain in her husband's house.

R. S., c. 95,  
§ 17.

Tenancy by curtesy.

2 Greenl. 400.  
R. S., c. 95,  
§ 18.  
1857, c. 8.

SEC. 10. A pecuniary provision made for the benefit of an intended wife in lieu of dower, consented to by her as provided in the preceding section, shall bar her right of dower in her husband's lands.

SEC. 11. If such jointure or pecuniary provision is made before marriage, without the consent of the intended wife, or if made after marriage, it shall bar her dower, unless, within six months after the husband's death, she makes her election to waive such provision, and files the same in writing in the probate court.

SEC. 12. When a specific provision is made in her husband's will for the widow, within six months after probate thereof, she shall make her election, whether to accept it or claim her dower; but shall not be entitled to both, unless it appears by the will that the testator plainly so intended.

SEC. 13. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as a jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, as though no such assignment or provision had been made.

SEC. 14. If the wife has released her right of dower in a mortgage made by her husband, or if her husband is seized of land mortgaged by another person or by himself before their marriage, she shall be entitled to dower in the mortgaged premises as against every person except the mortgagee and those claiming under him; and if the mortgager, or other person claiming under the husband, redeems the mortgage, she shall repay such proportion of the money paid by him, as her interest in the mortgaged premises bears to the whole value; else she shall be entitled to dower only according to the value of the estate, after deducting the money paid for its redemption.

SEC. 15. If any woman, endowed of lands, commits or suffers any waste thereon, she shall forfeit the place wasted, and the amount of the damages done to the premises, to be recovered in an action of waste by the person having the next immediate estate of inheritance therein; but taking fuel necessary for her own use, and materials for the repair of buildings, and for fences thereon, from any woodlands of which she is endowed, shall not be considered waste.

SEC. 16. A widow may remain in the house of her husband ninety days next after his death, without being chargeable with rent therefor; and in the meantime, she shall have her reasonable sustenance out of the estate.

SEC. 17. When a man and his wife are seized of lauds in fee, in her right, acquired before March twenty-second, eighteen hundred and forty-four, which are under improvement, and issue is born alive of her body that may inherit the same, the husband shall hold such estate after his wife's decease, during his life, as tenant by the curtesy. When a wife dies intestate, if her estate is solvent, and she leaves issue, he shall have the use of one third, if no issue, one half of her real estate for his life, to be recovered and assigned in the manner and with the rights of dower.

## ACTIONS OF DOWER.

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SEC. 18. When a woman is entitled to dower, and it is not lawfully set out to her by the heir or tenant of the freehold, nor assigned to her by the judge of probate, she may recover it by a writ of dower as herein provided.

Rights of widow to sue for dower.

R. S., c. 144, § 1.

R. S., c. 95, § 8.

SEC. 19. She must demand her dower of the person who is, at the time, seized of the freehold, if in the state, otherwise, of the tenant in possession, and shall not commence her action of dower before the expiration of one month, nor after the expiration of one year, from the time of demand; but she may make a new demand and commence an action thereon, if an action is not brought within one year after the first demand.

Previous demand, and time of bringing the action.

35 Maine, 92.

36 Maine, 433.

37 Maine, 509.

R. S., c. 144, § 2.

SEC. 20. When a corporation is the tenant of the freehold, she must demand her dower in writing of any officer thereof, on whom by law a writ in a civil action against it may be served; and the time shall be sixty, instead of thirty days, between the demand and the suit; but a second demand may be made as aforesaid.

Demand upon a corporation, &c.

R. S., c. 144, § 3.

SEC. 21. The defendant may plead in abatement, but not in bar, that he is not tenant of the freehold.

Plea in abatement, &c.

33 Maine, 343.

R. S., c. 144, § 4.

SEC. 22. If the demandant recovers judgment for her dower, she may recover damages for its detention, in the same action, to the time of its commencement, and the subsequent damages, in a separate action.

Damages for detaining dower.

R. S., c. 144, § 5.

SEC. 23. The action shall be brought against the person who is at the time tenant of the freehold; but if he is not the person of whom demand was made, he shall be liable for damages only for the time he held the possession; and if the demandant recovers her dower and damages, she may afterwards maintain an action on the case against the prior tenant of whom her demand was made, for the rents and profits while he held the premises after the demand.

Suit to be against the tenant of the freehold, &c.

R. S., c. 144, § 6, 7.

SEC. 24. If the demandant dies during the pendency of an action of dower, her executor or administrator may prosecute the action to final judgment, and recover therein the damages to which she would be entitled to the time of her decease. He may commence an action, or prosecute one commenced by her, under the preceding section, and recover the damages to which she would be entitled, if any.

If demandant dies pending an action for dower, &c.

1852, c. 259, § 1.

SEC. 25. When judgment for dower is rendered in her favor, a writ of seizin shall be issued, requiring the proper officer to cause her dower to be assigned and set out to her by three disinterested persons, to be appointed by the plaintiff, defendant, and officer, as in the levy of an execution on land; who shall be duly sworn to set it out equally and impartially, as conveniently as may be, and according to their best skill and judgment; and the officer shall make return of the writ and doings thereon to the court, with the assignment of dower indorsed thereon, or annexed thereto; which, being accepted, shall be conclusive.

Writ of seizin and proceedings in setting off dower.

16 Maine, 80.

27 Maine, 381.

38 Maine, 447.

R. S., c. 144, § 8.

SEC. 26. When the estate, out of which the dower is to be assigned, consists of a mill or other tenement which cannot be

Assignments of rents and

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profits in certain cases.

R. S., c. 144,  
§ 9.

divided without damage to the whole; the dower may be assigned of the rents and profits thereof, to be received by the demandant as tenant in common with the other owners of the estate.

## CHAPTER 104.

## REAL ACTIONS.

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7. If defendant has ousted demandant, he may be considered a disseizor, though he claims less than a freehold.
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9. Joinder of demandants.
10. Demandant may recover, on proof of title.
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15. Recovery of damages against other persons.
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23. Tenant may have betterments upon demurrer or default.  
Request of tenant for appraisal of improvements, and by demandant for appraisal of the land; the jury to allow for no improvements, except those made by tenant, or those under whom he claims, and that were judicious and proper.
25. The difference between the appraised value of the land, when tenant entered, and the value of it with improvements, at the time of trial, to be taken for the value of betterments.
26. Demandant may elect to abandon; and if so must give bond to tenant, to refund, if ousted by better title.
27. Tenant allowed to pay one-third the value of the land, the first year, interest on the whole, and costs.
28. At the end of two years, he may pay another third, with interest.
29. And at the end of three years, he may pay the balance, or the demandant have his execution, and a lien on the premises. When execution or writ of possession may issue.
30. Tenant's remedy if he is evicted.
31. If the demandant does not abandon, he cannot have writ of possession, till he pays for the improvements.
32. Restriction of the right to betterments.