

THE *J. Rogers*  
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND  
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,  
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE  
ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

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Edited and Published under the authority of Chapters 15 and 16 of  
the Laws of 1866.

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Attested copy to be recorded in registry of deeds.

SEC. 35. An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands lie.

Term "executor" defined.

SEC. 36. The word "executor" in this and subsequent chapters, shall be construed to include an administrator with the will annexed.

CHAPTER XLVIII.

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Widows to have dower—in what lands.

SECTION 1. Every woman is entitled to dower, in the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, to be assigned to her after his decease, unless she is lawfully barred thereof.

Dower in lands exchanged.

SEC. 2. If a husband, seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election is not evinced by commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Dower in lands mortgaged.

SEC. 3. When a person seized of an estate of inheritance in lands, executes a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

Dower in lands mortgaged to secure purchase money.

SEC. 4. When a husband purchases lands during coverture, and shall, at the same time, mortgage his estate in such lands to secure the payment

of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she did not join in such mortgage; but she shall be entitled to dower as against all other persons.

SEC. 5. When, in either of the cases mentioned in the two preceding sections, or in case of a mortgage in which she joined with her husband, the mortgagee, or those claiming under him, shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage; and if any surplus remains after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus for her life as dower.

Dower in surplus on sale of lands mortgaged.

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, pays and satisfies the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue, after such deduction.

Dower in residue of lands mortgaged after payment of mortgage.

SEC. 7. When a widow is entitled to dower out of any lands, aliened by the husband in his life time, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower, according to their value at the time when they were so aliened.

Lands aliened, how estimated for purposes of dower.

SEC. 8. When a widow is entitled to dower in the lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon the application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons, in such manner as the judge of probate shall direct.

Dower assigned by probate court, when.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Commissioners to be appointed to set off dower.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation is set aside, or reversed on appeal, and one-half of the costs of such proceedings shall be paid by the widow, and one-half by the adverse party.

Commissioners to be sworn, and make report to probate court—costs, how paid.

SEC. 11. When the estate out of which dower is to be assigned, consists of a mill or other tenement, which can not be divided without damage to the whole, and in all cases where the estate can not be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the owners of the estate.

Dower assigned out of rents, issues and profits, when.

SEC. 12. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs, or others interested, do not object, without having the dower assigned.

Widow may occupy lands with heirs.

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Dower, how barred by deed.

SEC. 13. A married woman may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he is a minor, by joining in the deed of conveyance, and acknowledging the same, or by joining with her husband in a subsequent deed, acknowledged as in other cases.

Dower, how barred by jointure.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage: *provided*, such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.

Assent to jointure in bar of dower, how expressed.

SEC. 15. Such assent shall be expressed, if the woman is of full age, by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in such conveyance.

Assent to any pecuniary provision in lieu of dower, is a bar.

SEC. 16. Any pecuniary provision made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Election after jointure, in certain cases.

SEC. 17. If any such jointure or pecuniary provision is made before marriage, and without the assent of the intended wife, or if it is made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband, but she shall not be entitled to both.

Election in case of will.

SEC. 18. If any lands are devised to a woman, or other provisions made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provisions so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

Election, when deemed to have been made.

SEC. 19. When a widow is entitled to an election under either of the two preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless within one year after notice of the death of her husband, she commences proceedings for the assignment or recovery of her dower.

Widow endowed anew, when.

SEC. 20. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Alienage does not bar dower, nor non-residence.

SEC. 21. A woman shall not be barred of her dower on account of alienage; and any woman residing out of the state shall be entitled to dower of the lands of her deceased husband lying in this state, of which he died seized; and the same may be assigned to her or recovered by her in like manner as if she and her deceased husband had been residents within the state at the time of his death.

Waste not to be committed.

SEC. 22. No woman endowed of any lands, shall commit or suffer waste on the same, but she shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein, for all damages occasioned by any waste committed or suffered by her.

Widow may remain in house and have sustenance, one year.

SEC. 23. A widow may remain in the dwelling-house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate for one year.

May recover damages, when.

SEC. 24. Whenever, in an action brought for the purpose, a widow recovers dower in lands in which her husband died seized, she shall also recover damages for the withholding of such dower.

SEC. 25. Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she so recovers her dower, to be estimated in an action against the heirs of her husband, from the time of his death, and in actions against other persons from the time of her demanding her dower of such persons.

Damages, how estimated.

SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to any lands.

Not to be estimated for use of permanent improvements.

SEC. 27. When a widow recovers her dower in any lands alienated by the heir of her husband, she may recover of such heir in a civil action her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she is entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from his grantee, and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Widow may recover damages for withholding dower, when.

SEC. 28. When the widow accepts an assignment of dower in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow is lawfully evicted of the lands so assigned to her as aforesaid.

Effect of acceptance of assignment of dower.

SEC. 29. When a widow, not having a right to dower, during the infancy of the heirs of her husband, or any of them, or of any person entitled to the lands, recovers dower by the default or collusion of the guardian of such infant heir, or other person, such heir, or other person so entitled, shall not be prejudiced thereby; but when he comes of full age, he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

Dower recovered by collusion or default of guardian of infant heir, such heir not prejudiced.

#### ESTATES BY THE CURTESY.

SEC. 30. When any man and his wife are seized in her right, and when a married woman is seized to her sole and separate use free from the control of her husband, of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy: *provided*, that if the wife, at her death, leaves issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

Husband to hold lands of deceased wife as tenant by the curtesy, when.