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CHAPTER 49.

OF ESTATES IN DOWER, BY THE CURTESY, AND GENERAL PROVISIONS CONCERNING REAL ESTATE.

SECTION

1. Widow entitled to dower.
2. Dower in case of exchange of land by husband.
3. Dower in mortgaged land.
4. Same in land mortgaged to secure purchase money.
5. When widow entitled to dower after sale on mortgage.
6. When widow entitled to dower of residue after deducting amount paid on mortgage.
7. Dower in lands aliened by husband, how estimated.
8. When dower may be assigned by probate court.
9. Warrant for assignment of dower.
10. Commissioners to be sworn, &c.; recording assignment—costs.
11. When estates consist of mill, &c., how dower assigned.
12. When widow may occupy with heirs.
13. How dower may be barred.
14. How dower may be barred.
15. How dower may be barred.
16. How dower may be barred.
17. Election in case of jointure.
18. Election in case of provision by will.
19. When widow deemed to have elected, to take jointure, &c.
20. When widow to be endowed anew.

SECTION

21. Woman being an alien, or residing out of territory, to have dower.
22. Woman not to commit waste; to keep house, &c., in repair.
23. How long widow may remain in dwelling house, and have sustenance.
24. When to recover damages.
25. Measure of damages, &c.
26. Not on improvements.
27. Damages against heir alienating lands, &c.
28. Claim when barred by assignment of dower.
29. Collusive recovery not to prejudice infant heirs, &c.
30. When husband to hold as tenant by the curtesy.
31. Liability of person in possession of land out of which rent is reserved.
32. How rent recovered.
33. Construction of preceding sections.
34. Determination of estates at will, and by sufferance.
35. Aliens may hold, convey and devise land, &c.
36. Title to lands heretofore conveyed, not to be questioned on account of alienage.
37. Remainder man, &c., may sue for injuries to inheritance.
38. When joint tenant may maintain action against co-tenant.

ESTATE IN DOWER.

SEC. 1. The widow of every deceased person shall be entitled to dower, or the use, during her natural life, of one-third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

Widow entitled to dower.

SEC. 2. If a husband, seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a 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 be 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.

Dowers in case of exchange of land by husband.

SEC. 3. When a person seized of an estate of inheritance in lands shall have executed 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 mortgaged land.

SEC. 4. When a husband shall purchase 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

Same in land mortgaged to secure purchase money.

dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

When widow entitled to dower after sale on mortgage.

SEC. 5. When, in either of the cases mentioned in the last two preceding sections, or in case of a mortgage in which she shall have 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 any surplus that shall remain 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.

When widow entitled to dower after residue after deducting amount paid on mortgage.

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, shall pay and satisfy 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 lands aliened by husband, how estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his life time, and such lands shall 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.

When dower may be assigned by probate court.

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.

Warrant for assignment of dower.

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 sworn, &c.; recording assignment—costs.

SEC. 10. The commissioners shall be sworn before a judge or justice of the peace 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 be set aside or reversed on appeal, and one-half of the costs of such proceedings shall be paid by the widow, and the other half by the adverse party.

When estates consist of mill, &c.; how dower assigned.

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

When widow may occupy with heirs.

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.

How dower may be barred.

SEC. 13. A married woman, residing within this territory, may have her right of dower in any estate conveyed by her husband, or by

his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same, as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner.

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 on lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.

How dower may be barred.

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

How dower may be barred.

SEC. 16. Any pecuniary provision that shall be 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.

How dower may be barred.

SEC. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be 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 jointure.

SEC. 18. If any lands be devised to a woman, or other provisions be 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 in case of provision by will.

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

When widow deemed to have elected, to take jointure &c.

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.

When widow to be endowed anew.

SEC. 21. A woman being an alien, shall not on that account be barred of her dower; and any woman residing out of the territory shall be entitled to dower of the lands of her deceased husband, lying in this territory, of which her husband 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 territory at the time of his death.

Woman being an alien, or residing out of territory, to have dower.

SEC. 22. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed 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 inheritance therein for all damages occasioned by any waste committed or suffered by her.

Woman not to commit waste; to keep houses, &c., in repair.

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.

How long widow may remain in dwelling house, and have sustenance.

SEC. 24. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands in which her husband shall have died

When to recover damages.

seized, she shall be entitled also to recover damages for the withholding of such dower.

Measure of damages, &c.

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

Not on improvements.

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 such lands.

Damages against heir alienating land, &c.

SEC. 27. When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to 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 shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such 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.

Claim when barred by assignment of dower.

SEC. 28. When the widow shall have accepted 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 shall have been lawfully evicted of the lands so assigned to her as aforesaid.

Collusive recovery not to prejudice infant heirs, &c.

SEC. 29. When a widow, not having right to dower shall, during the infancy of the heirs of her husband, or any of them, or of any person entitled to the lands, recover 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.

ESTATES BY THE CURTESY.

When husband to hold as tenant by the curtesy.

SEC. 30. When any man and his wife shall be seized in her right 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 curtesy: *Provided*, That if the wife, at her death, shall leave 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.

GENERAL PROVISIONS.

Liability of person in possession of land out of which rent is reserved.

SEC. 31. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount of proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

How rent recovered.

SEC. 32. Such rent may be recovered in a civil action, and the deed of demise, or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Construction of preceding sections.

SEC. 33. Nothing contained in the preceding sections shall deprive landlords of any legal remedy for the recovery of their rent, whether secured to them by their leases, or provided by law,

SEC. 34. All estates at will or by sufferance, may be determined by either party, by three month's notice given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen day's notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Determination of estates at will, and by sufferance.

SEC. 35. Any alien may acquire and hold lands, or any right there-to or interest therein, by purchase, devise, or descent; and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this terri-tory or of the United States.

Aliens may hold, convey and devise land, &c.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person from or through whom such title may have been devised.

Title to lands here-tofore conveyed, not to be questioned &c.

SEC. 37. A person seized of an estate in remainder or reversion, may maintain a civil action for any injury done to the inheritance, not-withstanding any intervening estate for life or years.

Remainder man, &c., may sue for in-juries to inherit-ance.

SEC. 38. One joint tenant, or tenant in common, and his executors or administrators, may maintain a civil action against his co-tenant, for receiving more than his just proportion of the rents or profits of the es-tate owned by them as joint tenants, or tenants in common.

When joint tenant may maintain ac-tion against co-ten-ant.

CHAPTER 50.

OF TITLE TO REAL PROPERTY BY DESCENT.

SECTION

1. How lands, &c., to descend.
2. Illegitimate children when to inherit.
3. Estate of illegitimate child, to whom to de-scend.
4. Degrees of kindred, how computed; half-blood to inherit.
5. Advancement, how to be considered.
6. When advancement to exclude heir from further portion.

SECTION

7. Advancement, how estimated.
8. When gifts, &c., to be deemed advance-ment.
9. Value of advancement, how estimated.
10. In case of death of heir, advance to be al-lowed by the representatives.
11. Construction of this chapter.
12. Inheritance "by right of representation;" posthumous children.

SEC. 1. When any person shall die, seized of any lands, tene-ments, or hereditaments, or of any right thereto, or entitled to any in-terest therein, in fee simple, or for the life of another, not having law-fully devised the same, they shall descend, subject to his debts, in the manner following:

How land, &c., to descend.

1. In equal shares to his children, and to the lawful issue of any de-ceased child by right of representation; and if there be no child of the intestate, living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same de-