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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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CHAPTER XLVIII.

ESTATES IN DOWER AND BY THE CURTESY.

c 36 C. S. D. 407, Sect. 1.
Amended.

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

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

1 SECT. 3. When a person seized of an estate of inherit-
2 ance in lands executes a mortgage of such estate before
3 marriage, his widow shall be entitled to dower out of the
4 lands mortgaged, as against every person except the mort-
5 gagee, and those claiming under him.

1 SECT. 4. When a husband purchases lands during cover-
2 ture, and shall, at the same time, mortgage his estate in
3 such lands to secure the payment of the purchase money,
4 his widow shall not be entitled to dower out of such lands
5 as against the mortgagee, or those claiming under him, al-
6 though she did not join in such mortgage; but she shall be
7 entitled to dower as against all other persons.

1 SECT. 5. When, in either of the cases mentioned in the
2 two preceding sections, or in case of a mortgage in which
3 she joined with her husband, the mortgagee, or those claim-
4 ing under him, shall, after the death of the husband, cause
5 the mortgaged premises to be sold by virtue of such mort-
6 gage; and if any surplus remains after payment of the mo-
7 neys due thereon, and the costs and charges of the sale,
8 such widow shall be entitled to the interest or income of
9 one-third part of such surplus for her life as dower.

1 SECT. 6. If, in either of the cases above specified, the

2 heir, or other person claiming under the husband, pays and
 3 satisfies the mortgage, the amount so paid shall be deduct-
 4 ed from the value of the land, and the widow shall have set
 5 out to her, for her dower in the mortgaged lands, the value
 6 of one-third of the residue, after such deduction.

1 SECT. 7. When a widow is entitled to dower out of any
 2 lands aliened by the husband in his life time, and such lands
 3 have been enhanced in value after the alienation, such lands
 4 shall be estimated in setting out the widow's dower, accord-
 5 ing to their value at the time when they were so aliened.

1 SECT. 8. When a widow is entitled to dower in the
 2 lands of which her husband died seized, and her right to
 3 dower is not disputed by the heirs or devisees, or any per-
 4 son claiming under them, or either of them, it may be as-
 5 signed to her, in whatever counties the lands may lie, by
 6 the judge of probate for the county in which the estate of
 7 the husband is settled, upon the application of the widow,
 8 or any other person interested in the lands; notice of which
 9 application shall be given to such heirs, devisees, or other
 10 persons, in such manner as the judge of probate shall direct.

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

1 SECT. 10. The commissioners shall be sworn to the faith-
 2 ful discharge of their duties, and shall, as soon as may be,
 3 set off the dower according to the command of such war-
 4 rant, and make return of their doings, with an account of
 5 their charges and expenses, in writing, to the probate court;
 6 and the same being accepted and recorded, and an attested
 7 copy thereof filed in the office of the register of deeds of the
 8 county where the lands are situated, the dower shall remain
 9 fixed and certain, unless such confirmation is set aside or
 10 reversed on appeal, and one-half of the costs of such pro-
 11 ceedings shall be paid by the widow, and one-half by the
 12 adverse party.

1 SECT. 11. When the estate out of which dower is to
 2 be assigned, consists of a mill, or other tenement which can-
 3 not be divided without damage to the whole, and in all ca-
 4 ses where the estate cannot be divided by metes and bounds,
 5 the dower may be assigned of the rents, issues and profits
 6 thereof, to be had and received by the widow as a tenant in
 7 common with the owners of the estate.

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

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C. S. D. 408, Sect. 13.
Amended.

1 SECT. 13. A married woman may bar her right of dow-
2 er in any estate conveyed by her husband, or by his guar-
3 dian, if he is a minor, by joining in the deed of conveyance,
4 and acknowledging the same, or by joining with her hus-
5 band in a subsequent deed, acknowledged as in other
6 cases.

1 SECT. 14. A woman may also be barred of her dower in
2 all the lands of her husband, by a jointure settled on her
3 with her assent before the marriage: *Provided*, such joint-
4 ure consists of a freehold estate in lands for the life
5 of the wife at least, to take effect in possession or profit im-
6 mediately on the death of the husband.

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

1 SECT. 16. Any pecuniary provision made for the bene-
2 fit of an intended wife, and in lieu of dower, shall, if assent-
3 ed to as provided in the preceding section, bar her right of
4 dower in all the lands of her husband.

1 SECT. 17. If any such jointure or pecuniary provision is
2 made before marriage, and without the assent of the intend-
3 ed wife, or if it is made after marriage, she shall make her
4 election after the death of her husband, whether she will
5 take such jointure or pecuniary provision, or be endowed
6 of the lands of her husband, but she shall not be entitled to
7 both.

1 SECT. 18. If any lands are devised to a woman, or oth-
2 er provisions made for her in the will of her husband, she
3 shall make her election whether she will take the lands so
4 devised, or the provisions so made, or whether she will be
5 endowed of the lands of her husband; but she shall not be
6 entitled to both, unless it plainly appears by the will to have
7 been so intended by the testator.

1 SECT. 19. When a widow is entitled to an election un-
2 der either of the two preceding sections, she shall be deem-
3 ed to have elected to take such jointure, devise, or other

4 provision, unless within one year after notice of the death
5 of her husband, she commences proceedings for the assign-
6 ment or recovery of her dower.

1 SECT. 20. If a woman is lawfully evicted of lands as-
2 signed to her as dower, or settled upon her as jointure, or
3 is deprived of the provision made for her by will or other-
4 wise, in lieu of dower, she may be endowed anew in like
5 manner as if such assignment, jointure, or other provision
6 had not been made.

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

1 SECT. 22. No woman endowed of any lands, shall com-
2 mit or suffer waste on the same, but she shall maintain the
3 houses and tenements, with the fences and appurtenances
4 in good repair, and shall be liable to the person having the
5 next immediate estate of inheritance therein, for all dama-
6 ges occasioned by any waste committed or suffered by her.

1 SECT. 23. A widow may remain in the dwelling house
2 of her husband one year after his death, without being
3 chargable with rent therefor, and shall have her reasonable
4 sustenance out of the estate for one year.

1 SECT. 24. Whenever, in an action brought for the pur-
2 pose, a widow recovers dower in lands in which her hus-
3 band died seized, she shall also recover damages for the
4 withholding of such dower.

1 SECT. 25. Such damages shall be one-third part of the
2 annual value of the mesne profits of the lands in which she
3 so recovers her dower, to be estimated in an action against
4 the heirs of her husband, from the time of his death, and
5 in actions against other persons from the time of her de-
6 manding her dower of such persons.

1 SECT. 26. Such damages shall not be estimated for the
2 use of any permanent improvements made after the death
3 of her husband, by his heirs, or by any other person claim-
4 ing title to any lands.

1 SECT. 27. When a widow recovers her dower in any
2 lands alienated by the heir of her husband, she may recover

3 of such heir in a civil action her damages for withholding
 4 such dower, from the time of the death of her husband to
 5 the time of the alienation by the heir, not exceeding six
 6 years in the whole; and the amount which she is entitled
 7 to recover from such heir shall be deducted from the amount
 8 she would otherwise be entitled to recover from his grantee,
 9 and any amount recovered as damages from such grantee,
 10 shall be deducted from the sum she would otherwise be en-
 11 titled to recover from such heir.

1 SECT. 28. When the widow accepts an assignment of dower
 2 in satisfaction of her claim upon all the lands of her hus-
 3 band, it shall be a bar to any further claim of dower against
 4 the heir of such husband, or any grantee of such heir, or
 5 any grantee of such husband, unless such widow is lawfully
 6 evicted of the lands so assigned to her as aforesaid.

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

ESTATES BY THE CURTESY.

1 SECT. 30. When any man and his wife are seized in her
 2 right, and when a married woman is seized to her sole and
 3 separate use free from the control of her husband, of any
 4 estate of inheritance in lands, the husband shall, on the
 5 death of his wife, hold the lands for his life, as tenant there-
 6 of by the curtesy: *provided*, that if the wife, at her death,
 7 leaves issue by any former husband, to whom the estate
 8 might descend, such issue shall take the same, discharged
 9 from the right of the surviving husband to hold the same as
 10 tenant by the curtesy.

c 36
 C. S. p. 410, Sect. 30.
 Amended.

CHAPTER XLIX.

PROBATE COURTS.

1 SECTION 1. There is established in each organized coun-
 2 ty in this state, a probate court, which shall have and use a
 3 seal.

c 58
 C. S. p. 489, Sect. 1.
 Amended.