

HOUSE No. 351.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, April 23, 1873.

The Committee on the Judiciary, to whom was recommitted the report of the same Committee on an order of inquiry relative to amending the General Statutes so that a widow should in certain cases receive the whole of her husband's real estate in lieu of dower, with a bill offered as a substitute for the same, with instructions to consider the expediency of legislation upon the rights of husband and wife in each other's property, report the accompanying Bill, but recommend that the whole subject be referred to the next General Court.

By order,

JOHN B. D. COGSWELL.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Seventy-Three.

AN ACT

In relation to the Property and Rights of Husbands
and Wives.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

1 SECT. 1. The dower of a widow hereafter shall
2 be a life-estate in one-half of the lands of which
3 her husband was seized of any estate of inheritance
4 during the coverture, which may be set off to her
5 as dower now is. But this shall not make any
6 land heretofore conveyed by any husband without
7 his wife's releasing dower, subject to any other
8 claim of dower than the same would have been
9 had this act not been passed.

1 SECT. 2. When all the inheritable real estate
2 left by a man at the time of his death does not
3 exceed thousand dollars in value, his
4 widow shall have the use and enjoyment of the
5 whole thereof during her natural life; and in all

6 cases the widow shall be entitled to the use and
7 enjoyment during her natural life of her husband's
8 principal residence with the lot of land or farm
9 usually occupied with it, provided the husband is
10 the owner of it at the time of his death, the same
11 to be taken by her as a part of her half of his land
12 or as the whole thereof if the same equals or ex-
13 ceeds such half in value.

1 SECT. 3. Every husband who survives his wife
2 shall have the use and enjoyment for the term of
3 his natural life, of one-half of the lands of which
4 his wife may be seized of any estate of inheritance
5 during her coverture, and the same may be en-
6 joyed by him in common with the heirs of his wife
7 or set off to him by three commissioners appointed
8 by the probate court. This shall be in lieu of all
9 claims as tenant by the curtesy. But if any man
10 now married shall within twelve months after his
11 wife's death file in the probate court of the county
12 where she resided at the time of her decease, a
13 declaration that he claims right as tenant by the
14 curtesy, he shall have the same rights as tenant
15 by the curtesy, as he would have if this act had
16 not been passed.

1 SECT. 4. When the value of all the lands left
2 by a married woman at her death does not exceed
3 thousand dollars, her husband shall be
4 entitled to the use and enjoyment of the whole of
5 the same during his natural life; and in all cases
6 the surviving husband shall have, during his nat-
7 ural life, the right to the use and enjoyment of the
8 principal residence of his wife, with the lot of land

9 or farm usually occupied with it: *provided*, she is
10 the owner of it at the time of her death, the same
11 to be taken by him as a part of his half of her
12 lands, or as the whole thereof, if the same equals
13 or exceeds such half in value.

1 SECT. 5. No conveyance of land hereafter
2 made by a husband or wife, shall deprive the sur-
3 vivor of his or her life interest in one-half of the
4 land so conveyed, unless he or she shall have
5 joined in the deed conveying the land, or by some
6 other instrument have released his or her contin-
7 gent interest in the same.

1 SECT. 6. A married woman shall have the same
2 power of making contracts, both verbal and writ-
3 ten, sealed and unsealed, and as well with her hus-
4 band as with strangers, to appoint attorneys, and
5 do all other acts which she would have power to
6 do if sole; and all work and labor performed by
7 her for others than her husband and children shall
8 be presumed to be done on her separate account,
9 unless there is an express agreement on her part
10 to the contrary. A married woman may convey
11 her shares in corporations, and lease and convey
12 her real property without her husband joining in
13 the conveyance or lease, subject, however, as to
14 real property, to his contingent interest therein
15 should he survive her. A married woman may sue
16 and be sued at law or in equity as if she were sole.

1 SECT. 7. The one hundred and sixty-fifth
2 chapter of the acts of the year one thousand eight
3 hundred and sixty-three is hereby repealed.

1 SECT. 8. If a man die leaving a widow, after
2 the allowance to the widow and minor children of
3 the deceased, and payment of debts and charges
4 of administration, the widow shall be entitled to
5 one-half of the residue of his personal estate,
6 whether he die testate or intestate; and if he die
7 intestate, leaving no issue, she shall be also entitled
8 to the other half of such residue.

1 SECT. 9. If a woman die leaving a husband
2 surviving her, after payment of debts and all ex-
3 penses of administration, he shall be entitled to
4 one-half of the residue of her personal estate,
5 whether she die testate or intestate; and if she die
6 intestate, leaving no issue surviving her, he shall
7 be also entitled to the other half of such residue.

1 SECT. 10. No will of a deceased husband or
2 wife shall deprive the surviving wife or husband of
3 the interest in the real estate of the deceased here-
4 in before given, or of one-half of the residue of the
5 personal estate of the deceased as herein before
6 expressed; but a surviving husband or wife may
7 accept any provision in a will made by the deceased
8 in lieu of, or in addition to, the provisions for the
9 survivor made by this act.

1 SECT. 11. If a person die intestate, leaving a
2 father and mother and no issue, his estate, both
3 real and personal, shall descend in equal shares to
4 his father and mother, and if he leave no father the
5 whole shall descend to his mother, and if he leave
6 no mother the whole shall descend to his father;

7 subject, however, in either case, to the rights of
8 the widow or surviving husband of such intestate.

1 SECT. 12. Nothing herein contained shall im-
2 pair the validity of any ante-nuptial or post-nuptial
3 settlement.

1 SECT. 13. Any woman having a family may
2 acquire a homestead in the farm or lot of land and
3 buildings thereon, owned and occupied by her as a
4 residence, in the same manner, and to the same ex-
5 tent, and with the same effects to all intents and
6 purposes, as any other householder could; and on
7 her death her husband shall have the same right
8 of homestead therein as the wife of a householder
9 now has in his homestead.

1 SECT. 14. A married woman who owns separ-
2 ate property shall be liable to the maintenance of
3 her minor children, as well as her husband, and
4 the husband and wife shall be joint guardians of
5 their minor children in regard to the custody of
6 the persons and care of the education of such
7 minors.

1 SECT. 15. A married woman or widow may
2 by her last will appoint a guardian of her minor
3 children, but this shall not deprive the father,
4 while living and competent to transact his own
5 business, of the custody of the persons and the
6 care of the education of such minors; she may
7 also by such will direct that the guardian shall
8 not be required to give any bond to the judge of
9 probate; in other cases guardians appointed by

10 mothers shall give the same bonds, and in all
11 other respects shall have the same powers and
12 perform the same duties as guardians appointed
13 by the will of a father over his minor children.

1 SECT. 16. All the part of the first section of
2 the four hundred and ninth chapter of the acts of
3 the year eighteen hundred and sixty-nine after
4 and including the word "*provided*," is hereby
5 repealed.

