LEGAL STATUS OF WOMEN IN MISSOURI.

PART II.

The Married Women's Acts have destroyed the common law unity of husband and wife with respect to the wife's contract and property rights, but they have not modified or impaired it with respect to the duties owed by husband and wife to each other. It is still the duty of a husband to love, respect and protect his wife; to provide her with shelter, food and clothing; to furnish her with medicines and physicians when she is sick, and decently to inter her dead body, if he survive her. Indeed, it is now a criminal offense if a husband without sufficient reason therefor, abandon his wife and leave her without support.[2] She, on the other hand, is in duty bound to live with her husband in the domicile he has chosen,[3] as long as he reasonably performs his duty to her, even though he do it with coolness and without expression of affection,[4] and to contribute her services in the keeping of the home and the rearing of children born of the marriage.

At common law the natural guardian of an illegitimate child is its mother, of a legitimate child, the father, to whom is given the custody and care of its person, education and estate. Such was the statutory law of this state until 1913, when by amendment the preferences in favor of the father were swept away, and both parents were made natural guardians of their children, with equal rights and powers as to their custody and rearing.[5] In cases of separation or divorce the best interests of the child are the tests

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[1]Part 1, published in St. Louis Law Review, Vol. 1, p. 1, * * * treats of the legal incapacity of women in general as to suffrage, holding public office, and serving as jurors; of their right to contract, carry on business, sue and be sued, and to acquire, control and dispose of property by assignment, conveyance or will; and also of the status of married women as to domicile, torts and crimes, both under the common law and the statutes of Missouri.

[2]Sec. 4495, as amended by Laws, 1911, p. 193.

All citations by section and number are to the 1909 Revision of the Statutes of Missouri, unless otherwise stated.

[3]The domicile of the husband is that of the wife. Messenger v. Messenger, 56 Mo. 329. But a wife who has left her husband for good cause may have a separate domicile, at least for the institution of an action for divorce or maintainance. Wyrick v. Wyrick, 162 Mo. App. 723.

[4]Schuman v. Schuman, 93 Mo. App. 99.

[5]Sec. 403.

to be applied in awarding the care and custody of it to either parent.[7] For the support of the children the father is primarily liable, and the mother may recover from him any moneys of her own expended in their behalf.[8] When the mother is the sole natural guardian of her children, as in the event of their father's death, she is entitled to their earnings, and is to that extent responsible for their support.[9] In like manner the sole right of the father to bind out his children as apprentices has been abrogated, and the power to apprentice a legitimate child is now conferred on its parents equally.[10] Any person in this state may adopt a child or children as his or her heir or heirs,[11] but it seems that no person having a husband or wife living and competent to act can adopt a child without the concurrence of such husband or wife.[12] A child adopted by a husband as his heir is not an heir of the wife, unless she join in the deed of adoption,[13] which she may do and thus make the adopted child her heir also.[14]

Although the status of husband and wife contemplates cohabitation, they cannot by law be compelled to live together. Merely living apart, however, does not affect the status of either spouse, or relieve him or her from marital duties. The husband must support his wife in cases of separation by mutual consent,[15] and also when she has left him because his wrongful conduct has made her condition intolerable;[16] but she is not entitled to support if she leave him without such cause as would justify granting her a divorce.[17] If a husband drive his wife from their home,[18] or, without good cause therefor, abandon her and refuse her support, she

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[6]Laws, 1913, p. 92, Sec. 1.

[7]Idem. Secs. 5, 6. Lusk v. Lusk, 28 Mo. 91; Knepper v. Knepper, 139 Mo. App. 493.

[8]Rankin v. Rankin, 83 Mo. App. 335.

[9]Laws, 1913, p. 92, Sec. 1.

[10]Sec. 1680, as amended by Laws, 1913, p. 93, Sec. 3.

[11]Sec. 1671.

[12]Peck on Dom. Rels., Sec. 106.

[13]Hockaday v. Lynn, 200 Mo. 456.

[14]Sec. 1672.

[15]Lindenschmidt v. Lindenschmidt, 29 Mo. App. 295; McKinney v. Guhman, 38 Mo. App. 344.

[16]Hooper v. Hooper, 19 Mo. 355; Grant v. Grant, 171 Mo. App. 317.

[17]Droege v. Droege, 52 Mo. App. 84.

[18]Kindorff v. Kindorff, 178 Mo. App. 635.

may, as in the other cases where she is entitled to support, sue for separate maintenance.[19]

Contracts or deeds of separation entered into by husbands and wives are void as being against public policy, and they cannot be enforced in a court of law or equity.[20] In Fisher v. Clopton,[21] the court states that it decided in the case of Robert v. Hardy,[22] that there may be a valid contract of separation and settlement of property rights between husband and wife. This pronouncement of law is broader than the court is believed to have intended; for the point really decided in Robert v. Hardy is that a contract of separation is avoided by reconciliation. The true rule seems to be that contracts of separation are void as enforceable contracts, but are valid as estoppels or defenses when fully performed.[23]

Coverture is terminated by an absolute divorce of husband and wife, or by the death of either. But a termination of coverture does not extinguish all the rights and duties which arise from the marriage relation. The status of a widow is that of a *feme sole,* with a continuance of the right to support which her husband owed during his lifetime. This right is secured to her by specified allowances and interests in her deceased husband's real and personal property, which may be designated as allowances, quarantine, homestead and dower. The interests of a woman in the estate of her deceased, divorced husband will be stated under each of these topics.

It has been decided in this state, indirectly perhaps, in accord with the generally recognized rule, that a husband may inter his deceased wife in his own tomb or burial lot;[24] and for the same reasons it ought to be a widow's prerogative to determine when where, and, within reasonable limits as to expenditure therefor, how the body of her dead husband should be laid away. Having decently buried or burned him, at his own expense, the widow may claim priority of right if he died intestate, to administer his

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[19]Simpson v. Simpson, 31 Mo. 24; Youngs v. Youngs, 78 Mo. App. 225; Polster v. Polster, 145 Mo. App. 606.

[20]Maxwell v. Boyd, 123 Mo. App. 334. The contract in this case was held to be void as to the separation, but valid as to the husband's agreement to pay fifty dollars a year for the support of a child.

[21]110 Mo. App. 663.

[22]89 Mo. App. 86.

[23]McBreen v. McBreen, 154 Mo. 323; Fisher v. Clopton, 110 Mo. App. 663.

[24]Guthrie v. Weaver, 1 Mo. App. 136.

estate,[25] excepting that part which is co-partnership property.[26] This right is a personal one which the widow may waive,[27] neglect or renounce without prejudice; but she cannot delegate it to another, or waive it on condition of a person named by her being appointed, or recover it if it has been lost or renounced.[28]

On the death of a husband the law vests in his widow three cognate interests in his real estate, namely, quarantine, homestead and dower, if the basic facts exist.[29] Quarantine, at common law, is a widow's right to occupy, free of rent, the mansion house of her husband for forty days after his death, within which period dower was supposed to be assigned. Under our statute a widow may remain in the mansion and messuages or plantation thereunto belonging, until dower has been assigned, however long the period may be,[30] or until she elects to take a child's part of the real estate,[31] or an undivided interest under her husband's will.[32] Quarantine is an assignable, possessory right,[33] dependent on the right to dower,[34] upon the possession of the husband at the time of his death,[35] and upon his use of the land as part of the plantation.[36] While enjoying her quarantine a widow is not chargeable with repairs,[37] taxes,[38] or interest on incumbrances.[39] If the widow does not occupy the mansion house she is entitled to all of the rents and profits thereof, unless there is an outstanding lease.[40] Quarantine is not forfeited by re-marriage of the widow,[41] or by living apart from the husband at the time of his death,[42] unless

[25]Sec. 15.
[26]Sec. 88.
[27]In re Estate of Evans, 117 Mo. App. 629. In this case the waiver was by stipulation in a marriage contract.
[28]State ex rel. v. Romjue, 136 Mo. App. 650.
[29]Phillips v. Presson, 172 Mo. 24.
[30]Sec. 366. Stokes v. McAlister, 2 Mo. 163; Holmes v. Kring, 93 Mo. 452.
[31]Keeney v. McVoy, 206 Mo. 43. Enjoyment of quarantine does not bar an election to take a child's part of the real estate.
[32]In re Tyler, 40 Mo. App. 378.
[33]Phillips v. Presson, 172 Mo. 24.
[34]Casteel v. Potter, 176 Mo. 76. An election to take lands in lieu of dower will terminate quarantine. Keeney v. McVoy, 206 Mo. 43.
[35]McClurg v. Turner, 74 Mo. 45.
[36]Sell v. McAnaw, 138 Mo. 267.
[37]Nelson v. Barnett, 123 Mo. 564.
[38]Graves v. Cochran, 68 Mo. 74.
[39]Gentry v. Gentry, 122 Mo. 202.
[40]Roberts v. Nelson, 86 Mo. 21. One holding a widow's quarantine is not chargeable with taxes or required to account for rents. Shoultz v. Lee, 168 S. W. (Mo.) 1146.
[41]Westmeyer v. Gallenkamp, 154 Mo. 28.
[42]King v. King, 155 Mo. 406.

the wife was also living in adultery.[43] Quarantine is not an adverse possession, and it will not, however long continued, ripen into a title by prescription.[44]

Quarantine is succeeded by, or rather merged in, the homestead.[45] When a married man dies in possession of a homestead, it passes *eo instanti* to his widow, or minor children, if there be no widow, or to both.[46] The widow and children take the homestead as a vested interest and not as a continuation of the husband's exemption, the widow's interest being a vested determinable life estate, and the children's, an estate for years.[47] The homestead belongs to the widow and children jointly, and the children cannot be deprived of it by any act or conveyance of their mother.[48]

The right to a homestead inheres in the head of the family, and the law of homesteads recognizes the husband as such and gives him the privilege of claiming this exemption.[49] There cannot be two homesteads in the same family,[50] and therefore, a wife cannot have a homestead in her own property, unless her husband has failed to claim one in his own.[51] If a widow elect to take one-half of her childless husband's real estate, she may have a homestead in the remainder;[52] and if her husband devise lands to her, she may have both homestead and the devise, unless the will in express term make the devise in lieu of homestead.[53]

A homestead passes to the widow and children free from the operation of the deceased husband's will,[54] deed or mortgage,[55] and free from seizure and sale for the satisfaction of his debts which

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[43]Lyons v. Lyons, 101 Mo. App. 494.

[44]Moran v. Stewart, 246 Mo. 462; Fisher v. Sukmann, 125 Mo. 165.

[45]One's homestead is his residence and the tract of land on which it is situated. The tract is generally limited to a specified area, and in Missouri pend upon its location, whether it be in the country, or in a city, and, if in a city, upon the population of the city. See Sec. 6704.

[46]Sec. 6708.

[47]Brewington v. Brewington, 211 Mo. 48.

[48]Phillips v. Presson, 172 Mo. 24.

[49]Whilst a marriage de jure exists the husband is the head of the family, though it consists only of his wife who is living apart from him. Brown v. Brown's Adm's, 68 Mo. 388.

[50]Gladney v. Berkley, 75 Mo. App. 98.

[51]Sec. 8304. White v. Smith, 104 Mo. App. 199.

[52]Adams v. Adams, 183 Mo. 396; Coleman v. Coleman, 122 Mo. App. 715.

[53]Ball v. Ball, 165 Mo. 312; Bogart v. Bogart, 138 Mo. 419.

[54]Kaes v. Gross, 92 Mo. 647; Rockhey v. Rockhey, 97 Mo. 76.

[55]Sec. 6704.

were incurred after the accrual of the homestead right.[56] A widow may be the head of a family, and as such, may have a homestead in her own property.[57]

A widow's right to her husband's homestead may be lost in various ways. A homestead may be conveyed or mortgaged during coverture by the joint deed of husband and wife.[58] Such an alienation of the homestead would bar, not only the widow's, but the children's right to it. In case of a mortgaged homestead, it passes to the widow and children subject to the mortgage or deed of trust; or, in other words, the homestead is assigned in the equity of redemption.[59] A widow's homestead in her husband's property is not forfeited by having lived apart from him, even in adultery, at the time of his death,[60] but it is terminated by her re-marriage.[61] In cases of divorce the guilty wife unquestionably loses homestead rights in her husband's property,[62] and very probably so, if she be the innocent party;[63] but a divorce obtained by a wife will not deprive her of the homestead which her husband abandoned and which she continues to occupy.[64] Removal from the homestead by a widow does not terminate her homestead estate.[65] She is entitled to all of the rents and profits thereof, and may have a lien on the homestead for moneys of her own expended in paying off other liens.[66]

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[56]Sec. 6704. A homestead right accrues to a grantee when the deed is properly filed for record; to an heir or devisee at the time he becomes invested with title. Sec. 6711.

Creditors can not sell a homestead under execution subject to the homestead right. Bank v. Guthrie, 127 Mo. 189.

[57]Clark v. Thias, 173 Mo. 628; Chapman v. McGrath, 163 Mo. 292; Leake v. King, 85 Mo. 413.

[58]Sec. 6704.

[59]Houf v. Brown, 171 Mo. 207; Meyer v. Nickerson, 101 Mo. 184.

[60]Lyons v. Lyons, 101 Mo. App. 494.

[61]Christman v. Linderman, 202 Mo. 605; Jordan v. Rudluff, 264 Mo. 129.

[62]Sec. 2378.

[63]Stamm v. Stamm, 11 Mo. App. 598, memorandum.

[64]Blandy v. Asher, 72 Mo. 27.

[65]Hufschmidt v. Gross, 112 Mo. 649, overruling on this point Kaes v. Gross, 92 Mo. 647.

[66]Mahowy v. Nevins, 190 Mo. 360. In this case the widow applied to the payment of a lein on the homestead the four hundred dollars worth of personal property allowed her under Sec. 116, supra.

Paramount among the interests given by law to a widow in the property of her deceased husband is dower,[67] that "jewel of the common law" which Lord Coke linked with life and liberty as three things to be highly favored.[68] Dower is a positive institution of the state, founded on reason of policy.[69] The widow's title thereto rests, not on a contract with her husband under whom she takes dower as a result of her status, but on the statutes, which are a re-enactment of the common law of dower as adopted by the state.[70]

"Every widow shall be endowed of the third part of all the lands whereof her husband, or any other person to his use, was seized of an estate of inheritance, at any time during the marriage, to which she shall not have relinquished her right of dower, in the manner prescribed by law, to hold and enjoy during her natural life."[71] The essentials of dower are, first, a lawful marriage;[72] second, seizure of the husband or some one to his use; and, third, death of the husband.[73] It will be observed that this statute excludes no particular classes of widows or husbands from its operation. If the above named essentials exist, a widow may have dower whether or not she be, or her deceased husband were, a citizen of Missouri or an alien, a resident or a non-resident thereof. This view of the statute is partially supported by one case[74], and also by the failure of a diligent search to discover any Missouri statute or decision to the contrary.

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[67]At common law the word dower signifies an interest in real estate. The widow's interests in her husband's personal estate is spoken of in a number of decisions as her personal dower. The expression is a solecism, but it persists The difference between dower and the widow's allowances and distributive share of her deceased husband's personal property is clearly stated by Feriss, J., in Howard v. Strode, 242 Mo. 210.

[68]Chrisman v. Linderman, 202 Mo. 605. Dower is favored by the law, and is awarded in case of doubt. Donaldson v. Donaldson, 249 Mo. 228.

[69]Holt v. Hanley, 245 Mo. 352.

[70]Blevins v. Smith, 104 Mo. 583. In LeLeompt v. Wash, 9 Mo. 551, the opinion of which contains a brief history of early legislation relating to dower, the court said that dower as defined at common law never existed in Missouri as a territory.

[71]Sec. 345. A widow has dower in all of the lands of which her husband was seized, and not alone in those seized at his death. Hall v. Smith, 103 Mo. 289.

[72]Higgins v. Breen, 9 Mo. 497. A widow of a common law marriage is entitled to dower. Davis v. Stouffer, 132 Mo. App. 555.

[73]Murray v. Scully, 259 Mo. 57. Dower does not depend upon proof of actual possession in the husband. Bartlett v. Tinsley, 175 Mo. 319.

[74]Widows of alien residents who die in this state are entitled to dower. Stokes v. O'Fallon, 2 Mo. 32.

The co-existence of a valid marriage and seizure of husband invests the wife with a contingent right called inchoate dower, which, during the lifetime of the husband is subject to legislative control.[75] This right is a substantial thing possessing many of the incidents of property,[76] but it does not rise to the dignity of an estate or interest in land which may be granted or assigned.[77]

An inchoate right of dower dies with the death of the wife, if not previously terminated by her act or operation of law. It is lost by a devotion of land to burial purposes,[78] by dedication as a public street,[79] by condemnation, or sale by the husband for public use,[80] by a sale of land in a partition proceeding,[81] or by appropriation by a railroad company for a right of way, whether taken by condemnation proceedings,[82] or by a deed of the fee, even though the wife did not join therein.[83]

A wife may relinquish her inchoate right of dower by joining with her husband in a deed of conveyance duly acknowledged and certified by law,[84] if she be named as a grantor therein;[85] by an ante-nuptial marriage contract, or jointure, which makes adequate provision for the support of the widow, expressed to be in lieu of dower,[86] and which provides for the widow during her life, and not widowhood merely;[87] by post-nuptial agreements or jointures, made for a good consideration and providing equivalent support for the widow in lieu of dower, but the widow may, if she so elect, renounce such a jointure and take dower.[88] Inchoate dower

[75]Choteau v. Ry. Co., 122 Mo. 394.
[76]Vantage Mining Co. v. Baker, 170 Mo. App. 457.
[77]Durrett v. Piper, 58 Mo. 551; Cassity v. Pound, 167 Mo. 605.
[78]Sec. 1307.
[79]Benton v. St. Louis, 217 Mo. 687.
[80]Venable v. Ry. Co., 112 Mo. 103.
[81]Lee v. Lindell, 22 Mo. 202.
[82]Choteau v. M. P. Ry. Co., 122 Mo. 375.
[83]Venable v. Wabash, etc., Ry. Co., 112 Mo. 103; Baker v. A. T. & S. F. Ry. Co., 122 Mo. 396; Choteau v. Ry. Co., supra.
[84]Secs. 345, 2788. Vantage Mining Co. v. Baker, 170 Mo. App. 457. Dower is defeated by a conveyance by the husband, with the wife's participation and knowledge, made for advancements to children, and not for the purpose of defeating dower. Pollman v. Schaefer, 258 Mo. 710.
[85]Young v. Hyde, 255 Mo. 496; Golden v. Tyer, 180 Mo. 196; Bradley v. Ry. Co., 91 Mo. 493.
[86]Sec. 362. Mack v. Heiss, 90 Mo. 578; Carr v. Lackland, 112 Mo. 442; Ferris v. Coleman, 103 Mo. 352; Coulter v. Lyda, 102 Mo. App. 401. In this case the jointure was void because it gave to the wife only that which she already had under the Married Women's Act.
[87]Moran v. Stewart, 173 Mo. 207; also deciding that such a contract, if valid, can not be renounced after the husband's death, unless the woman was an infant when the contract was executed.
[88]Sec. 363. Garbut v. Bowling, 81 Mo. 214.

is not prejudiced by any act, laches, default, covin or crime of the husband,[89], or by a divorce granted for his fault;[90] but otherwise, if granted for her fault.[91] A wife may live apart from her husband, or with him and be guilty of adultery, without prejudice to her dower rights;[92] but if she live apart from him and in adultery, her dower rights will be extinguished thereby, unless there be a subsequent reconciliation and cohabitation.[93]

On occurrence of the third essential of dower, namely, the death of the husband, the wife's inchoate right of dower is transformed into a vested estate termed dower consummate. This estate, whether assigned or unassigned, she may alien or transfer,[94] or waive.[95] Dower should be set out or admeasured to her as soon as practicable after the husband's demise, an if not done within two years, she may institute an action therefor.[96] Pending assignment of dower the widow is entitled to the rents and profits of the real estate in proportion to her interest,[97] unless she be in the enjoyment of quarantine.[98]

Dower is not restricted to estates of inheritance, legal titles or sole ownership. A widow may have dower in leaseholds,[99] in an equity of redemption,[1] in lands held by an inchoate title,[2] in partnership lands, subject to partnership debts,[3] in lands bought by her husband on contract and subsequently paid for out of the assets of his estate,[4] in lands conveyed by her and her husband to defraud his creditors, when the conveyance has been set aside,[5] in lands for which her husband had paid but had received no deed,[6] in lands purchased by the guardian of her insane husband with

[89]Sec. 358.
[90]White v. Ingram, 110 Mo. 474; Scales v. Scales, 65 Mo. App 292. At common law a widow can not have dower, unless coverture continued until the death of the husband. Weindell v. Weindell, 126 Mo. 640.
[91]Gould v. Crow, 57 Mo. 200.
[92]Sec. 365. Payne v. Dotson, 81 Mo. 145.
[93]Wilson v. Craig, 175 Mo. 362.
[94]Sec. 346. Young v. Thrasher, 115 Mo. 222; Phillips v. Presson, 172 Mo. 24.
[95]Sweaney v. Mallory, 62 Mo. 485.
[96]Sec. 357.
[97]Sec. 257.
[98]Gentry v. Gentry, 122 Mo. 203.
[99]Sec. 345. Phillips v. Hardenberg, 181 Mo. 463.
[1]Phillips v. Hardenberg, 181 Mo. 463. The widow is a proper party to a bill to redeem from a mortgage made by her and her husband.
[2]Thomas v. Hesse, 34 Mo. 13.
[3]Duhring v. Duhring, 20 Mo. 174; Young v. Thrasher, 115 Mo. 222.
[4]Sec. 347.
[5]Bradshaw v. Halpin, 180 Mo. 666.
[6]Howell v. Jump, 140 Mo. 441.

the latter's money,[7] and in lands purchased subject to a mortgage, or subsequently mortgaged by husband and wife, where such mortgages have been paid by the husband's executor or administrator, even though paid out of the proceeds of his sale of the lands.[8] But dower is not recoverable in land held by the husband as trustee,[9] or conveyed to him as a conduit for the passage of title to a third person,[10] or in lands ordered by her husband's will to be sold for the purpose of raising money to pay the widow a legacy.[11]

A widow is entitled to her dower discharged from the debts of her husband and judgments and decrees rendered against him,[12] and from liability for damages for a breach of covenant in her husband's deed of conveyance of the land in which dower is claimed.[13] She takes dower, however, subject to vendors' liens,[14] and taxes,[15] and any mortgages or deeds of trust in the execution of which she joined with her husband as a grantor.

Dower consummate is not divested by re-marriage of the widow,[16] parol proof of a trust,[17] gift *causa mortis* made to defeat dower,[18] or by delay in the administration of the deceased husband's estate, even though imputable to the widow.[19] And the same is true respecting an administrator's sale of lands,[20] an execution sale, or sheriff's deed under an execution sale.[21] A husband cannot defeat dower by buying land and taking a life estate in himself, with remainder in fee to his daughter,[22] or by bequeathing personalty only to his wife, notwithstanding she accepts said bequest;[23] conveyance made without consideration and for the purpose of depriv-

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[7]Rannels v. Isgrigg, 99 Mo. 19.

[8]Casteel v. Potter, 176 Mo. 76. In such cases the wife's relinquishment of dower dies with the mortgage. Jones v. Bragg, 33 Mo. 337.

[9]Miller v. Miller, 148 Mo. 113; White v. Drew, 42 Mo. 561.

[10]Fontaine v. Boatman, 57 Mo. 552.

[11]McKee v. Stuckey, 181 Mo. 719.

[12]Sec. 358.

[13]Bartlett v. Tinsley, 175 Mo. 319; follows Bartlett v. Ball, 142 Mo. 28.

[14]Duke v. Brandt, 51 Mo. 221; Hart v. Logan, 49 Mo. 47; Worsham v. Callison, 49 Mo. 206.

[15]Rohrer v. Oder, 124 Mo. 24.

[16]Chrisman v. Linderman, 202 Mo. 605.

[17]Bartlett v. Tinsley, 175 Mo. 319.

[18]Dunn v. Bank, 109 Mo. 90.

[19]Keeney v. McVoy, 206 Mo. 42.

[20]Casteel v. Potter, 176 Mo. 76; Atkinson v. Stewart, 46 Mo. 510; Thomas v. Bridges, 73 Mo. 1.

[21]Davis v. Green, 102 Mo. 170; Davis v. Evans, 102 Mo. 164.

[22]Crecelius v. Horst, 11 Mo. App. 304.

[23]Martin v. Norris, 91 Mo. 465.

ing the widow of dower,[24] or by a conveyance directly to his wife of a certain tract out of his lands, the conveyance containing no stipulation that it was made in lieu of dower.[25] Dower may be defeated, however, by the statute of limitations,[26] or by estoppels *in pais*;[27] but it cannot be defeated by her deceased husband's will.[28] So, a widow's right to dower cannot be impaired or defeated by her husband's devises of his lands to others, but it may be extinguished by substituting therefor a devise of land to her. At common law a devise of lands by a husband to his wife is deemed to be in addition to dower, unless the will exclude the presumption by express terms or necessary implication. This rule has been changed by our statute, but only as to lands whereof the husband died seized.[31] Therefore, a widow, by accepting a devise in her husband's will, does not thereby waive her right to dower in lands conveyed by him in his lifetime without her assent as prescribed by law, unless the will express a contrary intention on the testator's part.[32] Such a devise does not bar the widow's right to select four hundred dollars worth of husband's chattels;[33] or to take the homestead, unless her acts indicate a choice to accept under the will.[34] If a testator devise real estate to his wife without an expression of intention that it shall not be in lieu of dower, she will be deemed to have accepted the devise in lieu of dower, unless

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[24]Newton v. Newton, 162 Mo. 173; Rice v. Waddell, 168 Mo. 99; Hach v. Rollins, 158 Mo. 182.

[25]Martin v. Norris, 91 Mo. 465.

[26]Harrison v. McReynolds, 183 Mo. 533. An action for dower is one for the "recovery of real estate." Null v. Howell, 111 Mo. 273. Unassigned dower is an adverse claim to which an action to quiet title relates. Benoist v. Murrin, 47 Mo. 537. Widow's ignorance of her right of dower is immaterial. Ferris v. Coleman, 103 Mo. 352. Remarriage of the widow does not toll the statute. Investment Co. v. Curry, 264 Mo. 483. All action for the recovery of dower must be commenced within ten years from the death of the husband through whom dower is claimed. Sec. 391.

[27]Hart v. Giles, 67 Mo. 175, in which a widow was held estopped to claim dower, by her announcement of an administrator's sale of land that she had and claimed no dower therein. In McCreary v. Lewis, 114 Mo. 582, it was decided that a widow who had not joined in a bond for a deed was not estopped to demand dower by accepting as a part of her share of her husband's personal estate money which was paid on the notes of the purchaser which he gave as a part of the price of the land.

[28]Lilly v. Menke, 143 Mo. 137.

[31]Sec. 360. This section does not apply to personalty; Bryant v. McCune, 49 Mo. 546, or to homesteads; Schorr v. Etling, 124 Mo. 42.

[32]Schorr v. Etling, 124 Mo. 42; Hall v. Smith, 103 Mo. 289; Kaes v. Gross, 92 Mo. 647; Bryant v. McCune, 49 Mo. 546.

[33]Glenn v. Gunn, 88 Mo. App. 423; Hill v. Evans, 114 Mo. App. 715.

[34]Davidson v. Davis, 86 Mo. 440; Stoepler v. Silberberg, 220 Mo. 258.

she shall, within twelve months after the probate of said will, renounce its provisions in the manner prescribed by statute.[35] Inasmuch as re-marriage of the widow terminates her homestead in her husband's property, a devise of an absolute life estate in a homestead will, if accepted by her, be a waiver of dower.[36] Acceptance of a homestead of equal or greater value than dower is a waiver of dower, for the widow cannot have both;[37] but if the dower exceeds the homestead in value, the widow may take the homestead and claim dower in other lands to the extent of the difference in values, for she is entitled to a life estate in one-third of her husband's lands.[38] Dower and homestead rights never merge; and where the homestead is the only real estate left by a deceased husband, dower is suspended; but if the widow terminate her homestead by re-marriage, dower in it revives and may then be assigned.[39]

If a husband die leaving a descendant or descendants, the widow, if she has a child or children by such husband living, may, in lieu of dower in her husband's lands, elect to be endowed absolutely in a share of such lands equal to the share of a child of her husband, subject to the payment of his debts.[40] This right of election is dependent on the right to dower, and is extinguished by a valid renunciation of dower.[41] A widow who elects to take a child's part ceases to be a doweress, and becomes seized of an interest in fee which is subject to attachment in an action against her.[42] In addition to a child's share in lieu of dower the widow may also have a homestead whether or not it exceed in value one-third of the dowable lands.[43]

When a husband shall die without a child or other descendant living, capable of inheriting, the widow shall have her election[44] to take dower proper, discharged of debts, or the provisions of section

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[35]Sec. 361.
[36]McKee v. Stuckey, 181 Mo. 719.
[37]Ball v. Ball, 165 Mo. 312.
[38]Cassity v. Pound. 167 Mo. 605.
[39]Chrisman v. Linderman, 202 Mo. 605.
[40]Sec. 356.
[41]Payne v. Payne, 119 Mo. 174.
[42]Wigley v. Beauchamp, 51 Mo. 544, overruling Orrick v. Robbins, 34 Mo. 226.
[43]Quail v. Loumas, 200 Mo. 674.
[44]The procedure relating to a widow's elections is omitted as being unnecessary to an understanding of her status. See, however, Secs. 354, 355. 357, 361, 363.

351 just cited.[45] Election to take one-half of the estate vests the title in her;[46] failure to elect gives her a right to dower only.[47]

The remaining right of a widow respecting her deceased husband's real estate arises under the general statute of descents. This statute provides that if any person shall die intestate, leaving no children or their descendants, father, mother, brother or sister, nor their descendants, then his estate shall pass to the surviving husband or wife.[48] Descents under this statute are subject to the intestate's debts and widow's dower. Inasmuch as a widow cannot by law or logic take both by descent and under a claim of dower, she doubtless may elect between the two accordingly as her husband died insolvent or free from debts.[49] But if a wife murder her husband, she cannot inherit from him;[50] and by parity of reasoning ought to be denied dower and personal property allowances.

The widow's absolute allowances and shares of her deceased husband's personal estate will now be stated. If he die without heirs as described in the preceding paragraph, his personal property also descends to his widow subject to his debts; if, however, he leave any such heirs, his widow will share with them under the conditions and in the proportions fixed by other statutes presently to be cited. Before, however, any of his debts are paid, or any distribution of his personal assets is made, whether he died testate or intestate, solvent or insolvent,[51] if he were a resident of this state,[52] his widow is allowed as her absolute property, in addition to her so-called personalty dower,[53] the family Bible and other books to the value of two hundred dollars; all the wearing apparel of the family, her wheels, looms and other implements of industry (which includes a sewing machine[54]); all yarns, cloth and clothing made up in the family for their own use; all grain, meat, vegetables, groceries and other provisions on hand and provided and necessary for the subsistence of the widow and her family for twelve months; the household, kitchen and table furniture, including beds, bedsteads

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[45]Sec. 353.
[46]Matney v. Graham, 50 Mo. 559.
[47]Hamilton v. O'Neill, 9 Mo. 11; Welch v. Anderson, 28 Mo. 293.
[48]Sec. 332.
[49]Sec. 332. In re Estate of Elliott, 98 Mo. 379.
[50]Perry v. Strawbridge, 209 Mo. 621.
[51]Glenn v. Gunn, 88 Mo. App. 442.
[52]In re Austin, 73 Mo. App. 61.
[53]Bryant v. McCune, 49 Mo. 546.
[54]State ex rel. v. Taylor, 72 Mo. 656.

and bedding, not to exceed in value five hundred dollars;[55] and if such grain, meat and other provisions are not on hand the court shall make a reasonable appropriation out of the assets of the estate to supply such deficiency.[56] Under this section a widow living apart from her husband, without good cause, when he died, is entitled to take,[57] but not if she be divorced.[58]

In addition to the foregoing articles the widow of a resident of Missouri,[59] even though she deserted her husband without cause,[60] may also take as her absolute property, free from her husband's debts,[61] such other chattels as she may choose, not to exceed the appraised value of four hundred dollars.[62] Unlike the foregoing specified articles, the property thus given, or the value thereof, must be deducted from the widow's share of the general personal estate, if there be any.[63] An election by a widow to take a child's share in the real estate does not deprive her of this four hundred dollar allowance;[64] but it is otherwise if she elect to take one-half of her childless husband's estate, for such an election changes her status from doweress to distributee.[65] The widow's absolute right to the personal property allowed under sections 114, 116 of the administration statutes may be waived by a valid marriage contract or settlement,[66] agreement of separation,[67] or an acceptance of the provisions of a will which unequivocally bar such right,[68] or are wholly inconsistent therewith.[69]

If the widow do not receive the four hundred dollars worth of chattels, she may have the proceeds thereof if the chattels have been sold by the administrator.[70] And, in case of no administration, if the widow has applied such chattels to the payment of a lien on the homestead, she may be subrogated to the lien.[71]

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[55]Sec. 114.
[56]Sec. 115.
[57]King v. King, 64 Mo. App. 301; Comerford v. Coulter, 82 Mo. App. 362.
[58]Weindell v. Weindell, 126 Mo. 640.
[59]Richardson v. Lewis, 21 Mo. App. 531.
[60]Mowser v. Mowser, 87 Mo. 437.
[61]Sec. 117.
[62]Sec. 116.
[63]McFarland v. Baze. 24 Mo. 156.
[64]Hill v. Evans, 114 Mo. App. 715.
[65]Griffith v. Canning, 54 Mo. 280.
[66]Coulter v. Lyda, 102 Mo. App. 401.
[67]Roberts v. Hardy. 89 Mo. App. 86. also deciding that a subsequent reconciliation and living together annuls the waiver.
[68]Glenn v. Gunn, 88 Mo. App. 423.
[69]Schwatken v. Daudt, 53 Mo. App. 1.
[70]Sec. 118.
[71]Mahoney v. Nevins, 190 Mo. 360.

Having considered the widow's absolute allowances under the statutes of administration, the subject of dower may be concluded by a recital of her rights in the remaining personal estate. When a husband shall die, leaving a child, children or other descendants, the widow shall be entitled absolutely to a share in the personal estate belonging to the husband at the time of his death, equal to the share of a child of such decedent.[72] The widow's right under this statute is so absolute that she takes without election,[73] and may have in addition a devise of real estate without renouncing the will or electing to take under it.[74] The property, however, must be in the husband's possession at the time of his death,[75] for he is not restrained from disposing of it in his lifetime, unless he do so in expectation of death and for the purpose of defrauding his widow.[76] The widow may take this allowance even though her husband's only descendant by her is a grandchild,[77] and even though all of his children were by a former wife.[78] This allowance is subject to debts, even though the state does not so expressly provide,[79] and the widow takes it, not as a doweress, but as a distributee.[80]

When a husband shall die without any descendants in being, capable of inheriting, his widow shall be entitled, first, to all the property which came to her husband in right of the marriage, and to all the personal property of the husband which came to his possession with the written assent of his wife, remaining undisposed of, absolutely and not subject to the husband's debts; second, to one-half of the real and personal estate belonging to the husband at the time of his death, absolutely subject to the payment of the

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[72]Sec. 349.

[73]Lich v. Lich, 158 Mo. App. 400.

[74]Orchard v. Store Co., 264 Mo. 554 (see same case), 225 Mo. 414); follows Egger v. Egger, 225 Mo. 1.

[75]Brandon v. Dawson, 5 Mo. App. 237; Crecilius v. Horst, 89 Mo. 356.

[76]Brandon v. Dawson, 51 Mo. App. 237; Straat v. O'Neil, 84 Mo. 68.

[77]Keeney v. McAvoy, 206 Mo. 43.

[78]Haniphan v. Long, 70 Mo. App. 351; Skeen v. Johnson, 55 Mo. 24.

[79]Cox. v Dunn, 3 Mo. App. 348.

[80]Weindell v. Weindell, 126 Mo. 640; Howard v. Strode, 242 Mo. 210, in which the court distinguishes dower from a child's part as follows: "Dower is something that belongs to the wife absolutely, and independent of her husband and his creditors. As a distributee under Section 349, she takes subject to debts, and her interest can be ascertained only upon final settlement of the estate." In Hoyt v. Davis, 21 Mo. App. 235, it was decided that personal estate allowed to a widow as a child's share was dower within the meaning of the statute relating to dower being barred by a wife leaving her husband and living in adultery.

husband's debts.[81] The first part of this section is intended to restore to a widow, free from her husband's debt, the property which she brought to the marriage.[82] The right to take under the second part of the statute is defeated by the existence of an adopted child,[83] children of a void marriage,[84] and widow's lack of right to dower, for she takes as a doweress, in lieu of dower, and not by descent.[85] The provisions of this statute cannot be defeated by the husband's will;[86] and as to personalty she is not required to elect.[87]

It is obvious that under the statute just cited a childless widow could not have restored to her the property which she brought to the marriage relation, if her husband died leaving children by a former wife, capable of inheriting. This defect of the statute is remedied by section 352, which provides that under such circumstances a widow may elect to take, in lieu of dower, subject to the husband's debts, in addition to her real estate, the personal property in possession of the husband that came to him in right of the wife by means of the marriage, or by her consent in writing.

A consideration of the interest of a widower in the property of his deceased wife is not strictly germane to this article. Nevertheless, it may not be amiss to state that the statutes evince a purpose to equalize the rights of widow and widower in the property of the deceased spouse. This purpose has been accomplished, substantially at least, respecting the personal property, but not so as to real estate. The laws of Missouri recognize common law curtesy. This gives to a widower a life estate in *all* of his deceased wife's estates of inheritance, excepting those from which it is excluded by express terms in the grant or trust—an interest three times as large as dower. Notwithstanding a widower has not the widow's elections and is charged with the burden of the support of minor children, from which the widow who takes dower is free, it is the

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[81]Sec. 351.

[82]Herndon v. Herndon, 27 Mo. 421; Hockensmith's Legatees v. Executor, 57 Mo. App. 374.

[83]Moran v. Moran, 151 Mo. 558.

[84]Green v. Green, 126 Mo. 17. In this case there were two marriages of the husband, the second being void. There were three children by the void marriage, none by the legal one. Widow of the legal marriage was denied the right to take half of the husband's estate.

[85]Von Arb v. Thomas, 163 Mo. 33.

[86]Lilly v. Menke, 126 Mo. 190.

[87]Brown v. Tucker, 135 Mo. App. 598.

opinion of the writer that dower and curtesy ought to be made equal.

The conclusion of the whole matter seems to be that the women of Missouri have few grounds of complaint concerning their legal status. Barring their incapacity to vote, sit on jury, and hold some of the public offices, they stand, substantially, side by side with men under the motto, "Equality before the Law." The same is true regarding the relation of husband and wife to each other and to their children. It has been feared that the enlargement of women's rights would weaken the state and destroy that family unity which is necessary for the maintenance of the home, but as yet the fear appears to be groundless.

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