

A

CODIFICATION

OF THE

Robert M. Griffith

STATUTE LAW OF GEORGIA,

INCLUDING THE

ENGLISH STATUTES OF FORCE:

IN FOUR PARTS.

TO WHICH IS PREFIXED A

COLLECTION OF STATE PAPERS,

OF

ENGLISH, AMERICAN, AND STATE ORIGIN;

TOGETHER WITH AN

APPENDIX, AND INDEX.

COMPILED, DIGESTED, AND ARRANGED, BY

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BY AUTHORITY OF THE LEGISLATURE.

SAVANNAH:

PUBLISHED BY JOHN M. COOPER.

NEW-YORK:

JOHN F. TROW & CO., PRINTERS,

• No. 33 ANN-STREET.

MDCCCLV.

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ART. I. MARRIAGE.

SEC. I. RIGHTS OF HUSBAND.

1. *On marriage, the real estate of the wife rests in the husband.*—In cases of intermarriage, since the twenty-second day of February, one thousand seven hundred and eighty-five, the real estate belonging to the wife shall become vested in and pass to the husband, in the same manner as personal property doth; and in cases of the death of the husband thereafter, intestate and without will, the said estate shall descend and become subject to distribution, in the same manner as personal property.

2. *Husband sole heir of intestate wife.*—In every case where a feme-covert has died within this state, intestate since the said twenty-fifth of December, one thousand eight hundred and twenty-one, or may hereafter die intestate, the husband shall and may demand and have administration of their rights and credits, and of other real and personal estates, and recover and enjoy the same without being subject to distribution.*

3. *Husband may recover rent due in the right of wife.*—If any man which now hath, or hereafter shall have, in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband,

1. Dec. 23, 1789, sec. 2, *Prince* 225.
2. Dec. 26, 1827, sec. 1, *ib.* 251.

3. 32 Hen. VIII, 1540, xxxvii, 3, *Schley* 204.

* The preamble to this act declares that doubts have been entertained as to the constitutionality of the second section of the act of Dec. 25, 1821, by which the husband is entitled to administration on the estate of his intestate wife, without being subjected to distribution. See *Prince* 251.

after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

4. *Dower barred in lands conveyed by husband during coverture.*—All conveyances of lands and tenements made by the husband alone during the coverture, shall be legal and valid, and effectually convey the entire premises therein described, except such lands as the husband may have become possessed of by his intermarriage with said feme-covert; any law, usage, custom, or rule of court, to the contrary notwithstanding: Provided, that nothing herein contained shall prevent the widow from her right to dower in all lands of which her husband may have died seized and possessed.

5. *Dower barred in lands conveyed by officers under execution.*—All conveyances of real estate, made by any sheriff, or other officer, in pursuance of sale made under execution, other legal process, or order of court, in the lifetime of the husband, shall be as good and effectual, in bar of the right of dower, as if the conveyance were made by the husband himself.

SEC. II. RIGHTS OF WIFE.

6. *Husband dying without issue, wife to inherit.*—Whereas, it is provided in the second section of the act of the twenty-third of December, one thousand eight hundred and twenty-six, "That whenever it shall so happen that any person shall die intestate and without issue, his wife shall inherit the whole estate, both real and personal, of her deceased husband, after paying his just debts;"* and whereas, doubts are entertained of the constitutional validity of said enactment, on account of a want of conformity between the title and the body of the act, Be it therefore enacted, That the said recited second section of the act of one thousand eight hundred and twenty-six, shall be, and it is hereby declared to be in full force and effect after the passage of this act, so far as the same may affect any case or cases that may hereafter arise.

7. *Wife shall not have both jointure and dower.*—Whereas, divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements and hereditaments, unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of life of the said wife; or where any such estate or purchase of any lands, tenements or hereditaments, hath been or hereafter shall be made to any husband and to his wife, in manner and form

4. Dec. 26, 1826, sec. 1, *Prince* 249.
5. Dec. 23, 1842, sec. 1. *Pam.* 75.

6. Dec. 21, 1829, sec. 1, *Prince* 253.
7. 27 Hen. VIII, 1535, x, 6, *Schley* 186.

* See *Dawson* 225.

expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then in every such case, every woman married, having such jointure made, or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements, or hereditaments that at any time were her said husband's by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have, and demand her dower by writ of dower, after the due course and order of the common laws of this realm.

8. *Wife endowed whose jointure is recovered.*—Provided always, that if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled shall amount or extend unto.

9. *Jointure after marriage may be taken or refused.*—Provided also, that if any wife have, or hereafter shall have any manors, lands, tenements or hereditaments, unto her given and assured after marriage, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of parliament, and the said wife after that fortune to overlive her said husband, in whose time the said jointure was made or assured unto her, that then the same wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed or assured during the coverture, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of parliament, as is aforesaid; and thereupon to have, ask, demand and take her dower by writ of dower or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments as her husband was and stood seized of any state of inheritance at any time during the coverture.

10. *Dower not barred in lands mortgaged.*—Nothing in this act* contained shall be so construed, deemed, or extended to bar any widow of any mortgager of lands or tenements, from her dower and right in and to the said lands and tenements, who did not legally join with her husband in such mortgage, or otherwise lawfully bar or exclude herself from such her dower or right.

11. *Deforcement of dower.*—Widows which after the death of their husbands are deforced of their dowers, and cannot have their dowers or quarantine without plea, whosoever deforce them of their dowers or quarantine of the lands whereof their husbands died seized, and that the same widows after shall recover by plea; they that be con-

8. 27 Hen. VIII, 1535, x, 7, *Schley* 187,
9. Ib. x, 9, ib.

10. Dec. 24, 1768, sec. 3, *Prince* 161.
11. 20 Hen. III, 1235, i, 1, *Schley* 78.

* Act of Dec. 24, 1768. See ante, ch. xv. ¶ 83.

vict of such wrongful deforcement shall yield damages to the same widows ; that is to say, the value of the whole dower to them belonging, from the time of the death of their husband unto the day that the said widows, by judgment of our courts, have recovered seisin of their dower, &c., and the deforcers nevertheless shall be amerced at the king's pleasure.

12. *Dower lost by covin or default.*—In case when a man doth lose by default the land which was the right of his wife, it was very hard that the wife, after the death of her husband, had none other recovery but by a writ of right ; wherefore our lord the king hath ordained, that a woman after the death of her husband, shall recover by a writ of entry (whereto she could not disagree during his life) which shall be pleaded in form underwritten. If the tenant do except against the demand of the wife, that he entered by judgment, and it be found that his entry was by default, whereto the tenant must of necessity make answer, if it be demanded of him, then he shall be compelled to make further answer, and to show his right according to the form of the writ that he purchased before against the husband and the wife. And if he can verify that he hath or had right in the land demanded, the woman shall gain nothing by her writ, which thing if he cannot show, the woman shall recover the land in demand ; this being observed, that if the husband absent himself, and will not defend his wife's right, or against his wife's consent will render the land, if the wife do come before judgment, ready to answer the demandant, and to defend her right, the wife shall be admitted. Likewise if tenant in dower, tenant by the law of the land, or otherwise for term of life, or by gift, where the reversion is reversed, do make default, or will give up ; the heirs, and they unto whom the reversion belongeth, shall be admitted to their answer if they come before judgment ; and if upon such default or surrender, judgment hap to be given, then the heirs, or they unto whom the reversion belongeth after the death of such tenants, shall have their recovery by a writ of entry, in which like process shall be observed as is aforesaid, in case where the husband loseth his wife's land by default. And so in the cases aforesaid two actions do concur, one between the demandant and tenant, and another between the tenant, showing his right, and the demandant.

13. *Wife when entitled to dower in lands recovered against her husband.*—In case where the husband, being impleaded for land, giveth up the land demanded unto his adversary by covin ; after the death of the husband, the justices shall award the wife her dower, if it be demanded by writ ; but in case where the husband loseth the land in demand by default, if the wife, after the death of her husband, demandeth her dower, it hath been proved that some justices have awarded unto the woman her dower notwithstanding the default which her husband made, other justices being of the contrary opinion, and judging otherwise. To the intent that from henceforth such ambiguity shall be taken away, it is thus ordained in certain, that in both cases the woman demanding her dower shall be heard : and if it be alleged against her, that her husband lost the land, whereof the dower is demanded by judgment, whereby she

ought not to have dower, and then it be inquired by what judgment, and it be found that it was by default, whereunto the tenant must answer; then it behooveth the tenant to answer further, and to show that he had right and hath in the foresaid land, according to the form of the writ that the tenant before purchased against the husband; and if he can show that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the wife shall recover nothing of her dower, which thing if he cannot show, the wife shall recover her dower.

14. *Remedy of tenants for life, &c., who lose their land by default.*—And so in these cases, and in certain other following, that is to say, when the wife being endowed loseth her dower by default, and tenants in free marriage, by the law of England, or for term of life, or in fee-tail, divers actions do concur for such tenants, when they must demand their land lost by default. And when it is come to that point that the tenants must be compelled to show their right, they cannot make answer without them to whom the reversion of right belongeth; therefore it is granted unto them to vouch to warranty as if they were tenants, if they have a warranty. And when the warrantor hath warranted, the plea shall pass between him that is seized and the warrantor, according to the tenor of the writ that the tenant purchased there, and by which he recovered by default; and so from many actions at length they shall resort to one judgment, which is this, that the demandants shall recover their demand, or the tenant shall go quit; and if the action of such a tenant, which is compelled to shew his right, be moved by a writ of right, though that the great assize or battail cannot be joined by the words accustomed, yet it shall be joined by words convenient; for, when the tenant, in that he sheweth his right which belongeth to him by the writ that he before purchased, instead of a demandant, the warrantor may well defend the right of the tenant, which is accountable in place of the demandant, as before is said, and offer to defend the seisin of his ancestors by the body of his freemen, or put himself in the great assize, and pray recognizance to be made, whether he hath more right to the land in demand, or else the party before named; or otherwise the great assize may be joined thus, *Talis defendit jus*, etc., and so the warrantor may defend the right, and knowledge the seisin of his ancestor, and put himself in the great assize, etc., and pray recognizance to be made, whether he hath more right in the foresaid land, as in that whereof he infeoffed such a man, or that such a one released and quitclaimed, etc., or else the aforesaid party, etc.

15. *Fraudulent recovery of dower; remedy of heir.*—And where sometime it chanceth that a woman not having right to demand dower, the heir being within age, doth purchase a writ of dower against a guardian, and the guardian endoweth the woman by favor, or maketh default, or by collusion defendeth the plea so faintly, whereby the woman is awarded her dower in prejudice of the heir; it is provided, that the heir when he cometh to full age, shall have an action to demand the seisin of his ancestor against such woman, like as he should have against any

14. 13 Edw. I, 1285, iv, 1, *Schley* 99.

15. 13 Edw. I, 1285, iv, 1, *Schley* 101.

other deforcere; yet so, that the woman shall have her exception saved against the demandant, to show that she had right to her dower, which if she can show, she shall go quit and retain her dower, and the heir shall be grievously amerced, according to the discretion of the justices; and if not, the heir shall recover his demand, etc. In like manner the woman shall be aided, if the heir or any other do implead her for her dower, or if she lose her dower by default, in which case the default shall not be so prejudicial to her but that she shall recover her dower, if she have right thereto, and she shall have this writ:* and to this writ the tenant shall have his exception, to show that she had no right to be endowed, which if he can verify, he shall go quit; if not, the woman shall recover the land whereof she was endowed before. And whereas beforetime, if a man had lost his land by default, he had none other recovery than by a writ of right, which was not maintainable by any that could not claim of meer right, as tenants for term of life, in free marriage, or in tail, in which estates a reversion is reserved. It is provided, that from henceforth their default shall not be so prejudicial but that they may recover their estate by another writ than by a writ of right, if they have right.

SEC. III. ADMEASUREMENT OF DOWER.

16. *Writ of admeasurement of dower; process.*—A writ of admeasurement of dower shall be from henceforth granted to a guardian; neither shall the heir, when he cometh to full age, be barred by the suit of such a guardian that sueth against the tenant in dower feignedly and by collusion, but that he may admeasure the dower after, as it ought to be admeasured by the law of England.†

17. *Assignment of dower; proceedings.*—The superior courts of this state shall have power and authority, upon the written application of any person entitled to dower in any lands and tenements in this state, to appoint five fit and discreet freeholders of the county in which the application is made, and cause to be issued by the clerk of said court a writ for that purpose, to be devised and framed according to the nature of the case, directing said freeholders, or a majority of them, to enter upon such lands and tenements, and to admeasure, lay off, and assign the one-third part of said lands, including the tenements, having regard to the shape and valuation of such lands: Provided, the said land should be without any corporate city, village, or public place of business. And all lands within any corporate city, village, or public place of business, it shall be the duty of said freeholders, or a majority of them, to admeasure, lay off, and assign one-third part of all the lands and tenements to which the applicant is entitled, according to quantity or valuation, as they

16. 13 Edw. I, 1285, vii, *Schley* 102.

17. Dec. 21, 1839, sec. 1, *Pam.* 148.

* Form of writ inapplicable. Omitted.

† The remainder of this statute which provides for the admeasurement of dower, is superseded by the acts of 1824 and 1839. See ¶ 17—23. Also omitted.

may think proper, just, and equitable. The persons so appointed, shall take the following oath: "I do solemnly swear, or affirm, that I will duly and impartially execute the law to the best of my understanding: so help me God."

18. *Notice by applicant.*—Provided, that the persons so applying shall give notice of twenty days,* if they reside within the state; and if they reside without the state, three months' notice, in one of the public gazettes of this state, [of] their intended application for such assignment of dower; and provided, also, the application shall not be made until the expiration of three months after the death of the person to whom the said lands and tenements belonged.

19. *Right of dower traversable.*—In case any person or persons who may be interested in said land, shall traverse or deny the right of the applicant to such dower, (the grounds of which traverse or denial shall be plainly and distinctly set forth in writing,) the court shall order an issue to be made up, and the same shall be tried by a special jury at the same term, unless it should appear to the court that the principles of justice should require a continuance, which may be allowed for one term, and no longer; and the verdict of the jury shall be final and conclusive between the parties.

20. *Lands being in different counties.*—When any person is entitled to dower in lands and tenements situate in different counties of this state, application shall be made in the manner and under the restrictions hereinbefore pointed out by the superior courts in each of such counties, and the writs granted by said courts shall only extend to the laying off and assigning dower in the lands and tenements situate within the county in which such application is made.

21. *Returns when made; proceedings.*—The persons appointed for the purposes hereinbefore expressed, shall return their proceedings on such writs to the term of the superior court next ensuing the one at which they were granted, there to remain of record, and which shall be final and conclusive between all the parties concerned, unless some person interested shall show a good and probable matter in bar of the confirmation of such assignment, or that the applicant is not entitled to so much as hath been assigned; in which case the court shall permit an issue to be made up and tried by a special jury without delay, unless good and sufficient cause should be shown to the court for a continuance, which may be granted for one term, and no longer; and if the jury shall find in favor of the return and assignment already made, the same shall stand confirmed; but if they should find against it, the court shall forthwith award another writ directing a new assignment, which shall be executed and returned as before directed, and which shall be final and conclusive to

18. Dec. 21, 1839, sec. 1, *Pam.* 158.

19. Dec. 7, 1824, sec. 2, *Prince* 459.

20. Dec. 7, 1824, sec. 3, *Prince* 459.

21. *Ib.* sec. 4, *ib.*

* "To all the parties in interest, their agents, attorneys, or guardians, twenty days' written notice." Act of Dec. 7, 1824, sec. 1, *Prince* 459. These being the only words not contained in the act of 1839, the first section of the act of 1814 is omitted.

all the parties; and in all cases where the assignment so made is confirmed by the court, writs of possession, on the application of the person to whom dower is so assigned, shall be issued by the clerk of the superior court from which the writ originally issued for such assignment, to give such person possession of the lands and tenements so assigned to them.*

22. *Authority and compensation of persons making assignments.*—The persons making such assignment shall be authorized to appoint and employ a surveyor to assist in executing the writ to them directed, who, together with themselves, shall be entitled to such compensation for their services as the court shall deem reasonable and just; and in case the person applying for said writ shall refuse or neglect to pay the sum awarded by the court, execution shall be issued therefor as on a judgment.

23. *Time limited for application for dower.*—In all cases hereafter where any husband shall die, application for the assignment of dower shall be made by his widow, within seven years after his death; otherwise her right to dower shall be absolutely barred.

SEC. IV. ELECTION AND FORFEITURE OF DOWER.

24. *Time limited for election of dower.*—It shall be the duty of all widows, within one year after the death of their husbands, to make their election or portion out of the estate of the deceased; and any such widow so failing to make her election, shall be considered as having taken her dower or thirds, and shall forever after be debarred from taking any other part or portion of the said estate.†

25. *Time to be reckoned from the granting letters testamentary.*—So much of the above recited act‡ as requires all widows within one year after the death of their husbands, to make their election or portion out of the estate of the deceased, be and the same is hereby repealed; and in lieu thereof, that it shall be the duty of every widow, within one year after letters testamentary or of administration have been granted on her husband's estate, to make her election or portion out of the estate of the deceased, and failing so to do, shall be subject to the disability in the above recited act specified.

26. *Dower may be sold; proceeds how appropriated.*—Each and every widow, after having made her election of dower, may have her dower assigned out of such land or lands as she may be endowable, according to the laws now of force in this state, or by and with the consent of the executor or administrator, or take one-third part of the proceeds of the sales thereof, which shall be held by such executor or

22. Dec. 7, 1824, sec. 6, *Prince* 460.

23. Dec. 21, 1839, sec. 1, *Pam.* 145.

24. Dec. 10, 1807, sec. 4, *Prince* 238.

25. Dec. 9, 1841, sec. 1, *Pam.* 138.

26. *Ib.* sec. 2, *ib.*

* The fifth section superseded by the act of 1839. See ante ¶ 17.

† See next ¶ 26.

‡ Act of Dec. 10, 1807. See 4 *Prince* 238.

administrator in trust for the benefit of said widow, and after her death, to revert to the estate of her deceased husband: Provided, that nothing herein contained shall authorize said executor or administrator to lessen said third part, but that the interest only thereof shall be paid annually to the widow of such deceased husband; and provided further, that the account between the widow and the executor or administrator, shall be in writing, and shall be recorded and filed in the office of the clerk of the court of ordinary.

27. *Forfeiture of dower by alienation.*—If a woman sell or give in fee, or for term of life, the land that she holdeth in dower, it is ordained that the heir, or other to whom the land ought to revert after the death of such woman, shall have present recovery to demand the land by a writ of entry made thereof in the chancery.

28. *Adultery forfeits dower.*—If a wife willingly leave her husband, and go away, and continue with her avowterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convicted thereupon, except that her husband willingly, and without coercion of the church, reconcile her, and suffer her to dwell with him, in which case she shall be restored to her action.

ART. II. PERSONAL CONTRACTS.

SEC. I. CONTRACTS IN WRITING.

29. *When necessary.*—No action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

30. *Contracts for ten pounds or more.*—No contract for the sale of any goods, wares, and merchandises, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

27. 6 Edw. I, 1278, vii, *Schley* 96.
28. 13 lb. 1285, xxxiv, ib. 109.

29. 29 Ch. II, 1676, iii, 4, *Schley* 254.
30. lb. iii, 17, ib. 258.