

**CHAPTER 533**  
**DOWER AND CURTESY**

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### Note

Sections 533-2 through 533-16 are applicable to rights accruing prior to July 1, 1977, and such law shall continue in full force and effect as to any such rights notwithstanding the provisions of chapter 560, and the revisor of statutes is instructed to retain these sections in the Hawaii Revised Statutes. L 1976, c 200, §1(8-102(18)).

### Cross References

Intestate succession and wills, see chapter 560, Article II.

" **§533-1 REPEALED.** L 1997, c 244, §17.

" **§533-2 Election in case of exchanged lands.** If a husband seized of lands in fee simple, in freehold, or in leasehold, exchanges them for other such lands, his widow shall not have dower to both, but shall make her election to be endowed of the lands given, or of those taken in exchange, within six months after the death of her husband. If the election is not made, she shall take her dower of the lands received in exchange. [CC 1859, §1300; RL 1925, §3018; RL 1935, §4831; am L 1939, c 33, §2; RL 1945, §12101; RL 1955, §319-2; HRS §533-2; am L 1970, c 31, pt of §1]

" **§533-3 In lands mortgaged before marriage.** Where any person seized of lands, as aforesaid, has executed a mortgage of the lands before marriage, the widow shall, nevertheless, be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him. [CC 1859, §1301; RL 1925, §3019; RL 1935, §4832; RL 1945, §12102; RL 1955, §319-3; HRS §533-3]

" **§533-4 Not in lands mortgaged for purchase money during coverture as against mortgagee.** When a husband purchases lands during coverture, and at the same time mortgages his estate in the lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of the lands, as against the mortgagee or those claiming under him, although she has not united in the mortgage, but she shall be entitled to her dower as against all other persons. [CC 1859, §1302; RL 1925, §3020; RL 1935, §4833; RL 1945, §12103; RL 1955, §319-4; HRS §533-4]

### Case Notes

See 16 H. 489, 495.

" **§533-5 In surplus after purchase-money mortgage paid.** Where in such case the mortgagee, or those claiming under him, after the death of her husband, causes the land mortgaged to be sold, and any surplus remains, after the payment of the moneys due on the mortgage, and the costs and charges of the sale, the widow shall be entitled to the interest or income of the one-third part of the surplus, for her life, as her dower. [CC 1859, §1303; RL 1925, §3021; RL 1935, §4834; RL 1945, §12104; RL 1955, §319-5; HRS §533-5]

" **§533-6 Not in lands held by husband as mortgagee.** A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he acquired an absolute estate therein during marriage. [CC 1859, §1304; RL 1925, §3022; RL 1935, §4835; RL 1945, §12105; RL 1955, §319-6; HRS §533-6]

" **§533-7 Widow's right to occupy lands while dower unassigned.** When a widow is entitled to dower in the lands of which her husband died seised, she may continue to occupy the same, with the children or other heirs of the deceased, or to receive one-third part of the rents, issues, and profits thereof, so long as the heirs do not object thereto, without having her dower assigned. [CC 1859, §1305; RL 1925, §3023; RL 1935, §4836; RL 1945, §12106; RL 1955, §319-7; HRS §533-7]

#### Case Notes

Before enactment of this section no right of occupancy before dower assigned, and where widow occupied her possession might be adverse. 4 H. 536, 538; 11 H. 755.

Right of occupancy as including right to plant crops, see 5 H. 182.

Heir who objects to widow's occupancy under this section may bring ejectment. 17 H. 525, 527.

Effect of this section on doctrine that dowress not a tenant in common, see 21 H. 431, 434; compare 15 H. 284, 286.

" **§533-8 Widow's right to remain in husband's house.** A widow may remain in the house of her husband sixty days after his death, without being chargeable with rent therefor. In the meantime she shall have her reasonable sustenance out of his estate. [CC 1859, §1306; RL 1925, §3024; RL 1935, §4837; RL 1945, §12107; RL 1955, §319-8; HRS §533-8]

" **§533-9 Barred by divorce or misconduct.** In case of divorce dissolving the marriage contract, the wife shall not be endowed.

No wife who has for one year or upwards, previous to the death of her husband, wilfully and utterly deserted her husband, shall be endowed or be entitled by way of dower to any property owned by him at the date of his death. [CC 1859, §1307; RL 1925, §3025; RL 1935, §4838; RL 1945, §12108; am L 1945, c 212, §1; RL 1955, §319-9; HRS §533-9]

#### Case Notes

Divorce cuts off dower though obtained by wife for misconduct of husband. 12 H. 265.

Though appeal from divorce decree pending at time of death, no dower. 35 H. 440.

"Wilful and utter desertion," establishment of. 61 H. 236, 602 P.2d 521.

" **§533-10 Barred by deed.** A woman may bar her right of dower, in any land conveyed by her husband, by joining with him in the deed conveying the same, and therein releasing her claim to dower, or by a separate deed releasing the same, made at the time of the conveyance by her husband, or subsequently; or she may delegate to an attorney in fact other than her husband, the power to execute such release, either by general or special power of attorney, and her execution and acknowledgment of the power of attorney may be in the same manner as if she were sole; or by agreement made in contemplation of divorce or judicial separation as provided by section 572-22.

No release of dower duly executed by the attorney in fact of any married woman prior to April 18, 1898, shall be invalid or inoperative merely by reason of its not having been executed by the married woman in person. [CC 1859, §1308; am L 1898, c 13, §§1-2; RL 1925, §3026; RL 1935, §4839; am L 1939, c 33, §3; RL 1945, §12109; RL 1955, §319-10; HRS §533-10]

#### Revision Note

Section "572-22" substituted for "573-2".

#### Case Notes

See 6 H. 72 (single justice).

" **§533-11 Barred by jointure before marriage.** A woman may also be barred of her dower in the lands of her husband, by a

jointure settled on her with her assent before her marriage; provided the jointure consists of an estate in lands, for the life of the wife at least, to take effect immediately on the death of her husband; her assent to the jointure being expressed, if she is of full age, by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in the conveyance. [CC 1859, §1309; RL 1925, §3027; RL 1935, §4840; RL 1945, §12110; RL 1955, §319-11; HRS §533-11]

" **§533-12 Barred by pecuniary provision before marriage.** Any pecuniary provision that is made for the benefit of an intended wife, and in lieu of her dower, shall, if assented to as provided in section 533-11, bar her right of dower in all the lands of her husband. [CC 1859, §1310; RL 1925, §3028; RL 1935, §4841; RL 1945, §12111; RL 1955, §319-12; HRS §533-12]

" **§533-13 Election between dower and jointure or pecuniary provision, when.** If any jointure or pecuniary provision in lieu of dower is made before the marriage and without the assent of the intended wife, or if it is made after marriage, it shall bar her dower, unless within six months after receiving notice of the death of her husband, and of the jointure or pecuniary provision, she makes her election to waive the jointure or provision, and to be endowed of the lands of her husband. [CC 1859, §1311; RL 1925, §3029; RL 1935, §4842; RL 1945, §12112; RL 1955, §319-13; HRS §533-13]

#### Case Notes

See 6 H. 72, 85 (single justice).

" **§§533-14, 15 REPEALED.** L 1977, c 144, §54.

" **§533-16 Curtesy; election between curtesy and will.** In case the wife dies first and intestate, then except as in this section provided, her property shall immediately descend to her heirs, but shall be in all cases, whether she die testate or intestate, subject to a life interest in the husband in one-third of the wife's lands owned by her in fee simple, in freehold, or in leasehold, at the date of her death. The husband shall also, whether the wife die testate or intestate, be entitled, by way of curtesy to an absolute property in the one-third part of it all the wife's remaining property owned by her at the date of her death, after the payment of all her just debts. During the life of the wife the husband shall have no curtesy right inchoate or otherwise in the wife's property. If

any provisions are made for the widower in the will of his wife, he shall be subject to the same requirements with respect to election between his curtesy and the provisions of the will, or taking under both, as is a widow in similar circumstances under sections 560:2-205 to 560:2-207.

No husband who has, for one year or upwards, previous to the death of his wife, wilfully and utterly deserted his wife, or wilfully neglected or refused to provide suitable maintenance for his wife, shall be entitled to any right or interest in his wife's property by way of curtesy.

The interests to which the husband is entitled in accordance with this section in the wife's real and personal property shall not apply to, and nothing in this section shall be deemed to give the husband any interest in, the wife's interest in community property, real or personal. [L 1888, c 11, §7; RL 1925, §3000; am L 1933, c 68, §1; RL 1935, §4845; am L 1939, c 33, §4; RL 1945, §12115; am L 1945, c 212, §2 and c 273, §4; RL 1955, §319-16; HRS §533-16; am L 1970, c 31, pt of §1; am L 1987, c 283, §50]

#### **Note**

Sections 560:2-205 to 560:2-207 referred to in text are repealed.

#### **Cross References**

Community property, see chapter 510.

#### **Case Notes**

Husband takes curtesy though marriage was voidable because the wife was under legal age. 6 H. 289 (single justice).

No curtesy in property in which wife prior to marriage had reserved power of appointment, subsequently exercised in favor of son. 35 H. 59.

" **§533-17 Standard of values; dower, etc.** Whenever it becomes expedient or necessary to determine the value of any right of dower or any other life estate or interest in any property, in any proceeding for partition or for the admeasurement of dower, or wherein the value of any estate is required to be provided for out of the proceeds of sale of the property subject thereto, the value thereof shall be determined by the rule, method, and the standards of mortality and of value that are set forth in the standard annuity tables of mortality for ascertaining the value of policies of life insurance and

annuities, using five per cent a year as the rate of interest in connection therewith.

When the dower in real estate cannot be set apart without great injury to the owners, the court may ascertain the value of the dower in money, and order the same to be paid on such terms as shall be just and reasonable. [L 1929, c 19, §1; RL 1935, §4846; RL 1945, §12116; RL 1955, §319-17; am L 1957, c 26, §1; HRS §533-17; am L 1972, c 108, §3; am L 1976, c 200, pt of §1]