

town, village or city shall be permitted to connect its sewers with or use any main sewers, such sewers shall be approved as provided by paragraph (n) of subsection (6) of section 59.96.

SECTION 2. This act shall take effect upon passage and publication.

Approved June 20, 1929.

No. 103, S.]

[Published June 22, 1929.

CHAPTER 210

AN ACT to amend various provisions of the statutes relating to estates of dower, so as to harmonize them with section 233.01 of the statutes, which declares dower to be an estate in fee.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 276.02 of the statutes is amended to read: 276.02 COMPLAINT; PARTIES. (1) The complaint in such action shall particularly describe the lands sought to be partitioned, and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the plaintiff, including the interest of any tenant for years, for life, or by the curtesy * * * and of the persons entitled to the reversion, remainder or inheritance, after the termination of any particular estate therein; and of every person who by any contingency, contained in any devise, grant or otherwise, or as having an inchoate right of dower may be or become entitled to any beneficial interest in the premises; but in case any such person or his share or interest be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, so that such person or his interest cannot be named or set forth, the same shall be stated in the complaint; but no person whose title or interest appears of record, or who is in the actual possession or occupancy of any of such lands, shall be considered or proceeded against as an unknown owner.

(2) The complaint shall demand judgment for a partition of the premises according to the respective rights of the parties interested therein and for a sale thereof, if it shall appear that partition of the land cannot be made without great prejudice to the owners thereof; and when the complaint does not pray

partition of all the lands owned by the parties either of them may have the complaint so amended as to effect all the lands so owned. Every person having an interest, as aforesaid, whether in possession or otherwise, and every person having an estate * * * by the curtesy, or having a homestead right, * * * in such premises or in any part thereof, may be made a party to such action.

SECTION 2. Section 276.14 of the statutes is amended to read: 276.14 POWERS OF COMMISSIONERS; HOMESTEAD; REVERSION; SALE; CONVEYANCE. (1) In case actual partition of the premises shall be directed by the court, the commissioners shall first set off to any party to the action, who may be entitled to a homestead * * * or an estate by the curtesy in the premises, * * * or any part thereof, * * * such homestead * * * or estate, and thereafter said commissioners shall, in dividing said real estate among the parties to the action, as directed by the judgment, and as provided by section 276.13, include in such division and partition, the reversionary interest in the real estate held in common by the parties, so set off as a homestead, * * * or held by any tenant by the curtesy, they determining the value of such reversionary interest or estate for the purpose of such partition, by deducting from the entire value of the land, the value of the life estate so created or existing therein ascertained by section 314.06, and they may allot the whole or any part of such reversionary estate to any of the parties to the action in severalty, having due regard to the value thereof ascertained as aforesaid as the whole or as a part of the share or allotment of any such party or parties in the real estate to be partitioned.

(2) If the court shall have determined that actual partition of the premises cannot be made between the parties, without great prejudice to the owners, in that case if the person or persons entitled to a homestead * * * or an estate by the curtesy, in the said real estate or any part thereof, shall file with the clerk of the court where such partition proceedings are pending, written consent therefor, signed, witnessed and acknowledged, as deeds are required to be, if entitled to record, in that case the entire estate may be sold, as provided by the judgment of the court, free and clear * * * of any such life estate, * * * and the value of any such life estate shall be ascertained * * * as provided in subsection (1), and the value of such estate or

estates shall be paid to the owner or owners thereof from the avails of the sale and such owner or owners shall execute therefor a release in writing which shall be witnessed, executed and acknowledged by such party, so as to be entitled to record, of all estate right or claim in the premises so sold, describing them, which may be recorded, and shall constitute a perfect bar to any further claim by any such releasor, or any person claiming under him or her, to any such life estate or right in the premises in such release described.

(3) In case the owner of any such homestead right, * * * or any person so entitled to * * * an estate by the curtesy in the real estate to be partitioned or any part thereof, refuses or fails to file any such written consent, or from minority or other incapacity cannot do so, and the court finds that the lands sought to be partitioned cannot be actually partitioned among the owners thereof according to their respective interests, and such homestead * * * has not been set off, * * * the court shall first appoint commissioners to set off such homestead, * * * which, when confirmed by the court, shall be final and conclusive between the parties, and binding upon them and all persons claiming under them. The court shall then direct the remaining premises, together with the reversionary estate in the lands so set off to tenants for life as aforesaid, to be sold as in other cases, and shall order the proceeds of such sale to be divided among the owners thereof according to their respective rights therein as determined and fixed by the court, they giving such receipts or releases therefor as the court may direct.

(4) Any purchaser receiving a deed from the sheriff or other officer conducting such sale, shall be vested with all the estate, title and interest of all the parties to the action and those claiming under them, to all the real estate sold, subject only to the life estates therein set off * * * as herein provided. And such purchasers shall be entitled to the possession of such real estate as provided in other cases of sales of real estate in partition proceedings, except as to such real estate so set off * * * to life tenants thereof, of which the said purchaser shall be entitled to the possession at the termination of such life estate therein and not before.

SECTION 3. Section 276.18 of the statutes is amended to read: 276.18 WHOM JUDGMENT NOT TO AFFECT. Such judgment shall not affect any tenants or persons having claims as

tenants * * * by the curtesy, for life or for years in the whole of the premises; nor shall it preclude any person, except those mentioned in section 276.17 and not excepted in this section, from claiming any title to such premises or from controverting the title or interest of the parties between whom partition is made.

SECTION 4. Section 276.20 of the statutes is amended to read: 276.20 SALE IF PARTITION CANNOT BE MADE. If the person to whom the reference is made * * * shall report that the premises or any distinct portion thereof are so situated that partition thereof cannot be made without great prejudice to the owners, and if the court is satisfied that such is the fact, or if the court is so satisfied without a reference, it may make an order directing the sheriff or a referee to sell the premises so situated at public auction to the highest bidder. Such order shall direct the terms of credit which may be allowed for any portion of the purchase money, of which the court shall think proper to direct the investment, or as is required by the provisions hereinafter contained to be invested for the benefit of any unknown owners, infants, nonresidents or tenants for life, years * * * or by the curtesy.

SECTION 5. Section 276.22 of the statutes is amended to read: 276.22 WHAT MAY BE SOLD OR WITHHELD. Whenever the estate of any tenant * * * by the curtesy, for life or for years in the whole or any part or share of the premises has been ascertained by the court and is existing at the time of the order for such sale, and the person entitled to such estate is a party to the action the court shall determine whether, under all the circumstances of the case, such estate ought to be excepted from such sale and may so provide in such order. If a sale of the premises, including such estate, is ordered such estate shall pass thereby, and the purchaser, his heirs and assigns shall have the same discharged from all claim by virtue of such estate.

SECTION 6. Section 276.35 of the statutes is amended to read: 276.35 SHARES OF TENANTS. When the proceeds of a sale belonging to any tenant * * * by the curtesy, for life or for years shall be brought into court as hereinbefore provided the court shall direct the same to be invested in permanent securities, at interest, so that such interest shall annually be paid to the parties entitled to such estate during *its existence*, * * * respectively, except as otherwise provided in section 276.36.

SECTION 7. Section 276.36 of the statutes is amended to read: 276.36 GROSS SUM IN LIEU OF INCHOATE DOWER, LIFE ESTATES, ETC. Any party to the action who has a right of * * * inchoate *dower* or is a tenant * * * by the curtesy, for life or for years shall be entitled to receive from the proceeds of the sale a gross sum, to be fixed according to the principles of law applicable to annuities, in satisfaction of his or her estate or interest. The written consent, sealed, witnessed and acknowledged as a conveyance of such party to receive such gross sum, must be filed at or before the filing of the report of sale; otherwise the court shall direct that out of the proceeds of sale, * * * in case of estates by the curtesy or for life the entire proceeds, or in case of an inchoate right of dower its proportionate value according to the principles of law applicable to annuities and survivorships, and in case of an estate for years such proportionate part thereof as fairly represents the interest of the holder of the estate, shall be vested for his or her benefit; and if any person entitled to any such estate is unknown the court shall provide for the protection of his rights in the same manner as if he was known and had appeared. In all cases the proper proportion of expenses shall be deducted from the proceeds of sale.

SECTION 8. Section 296.18 of the statutes is amended to read: 296.18 WARD'S ESTATE SUBJECT TO PARTICULAR ESTATES. (1) If the real estate or interest therein of any *minor* * * * or any incompetent person *which is* directed to be sold is subject to * * * an estate for life or for years in the whole or any part thereof, * * * the * * * order for the sale may, in the discretion of the court or presiding judge, direct that such * * * estate shall be sold, * * * with the *reversionary* estate or interest of the *minor* * * * or incompetent person.

(2) After such sale the court or judge must ascertain the *present value* of such * * * estate *according to the law applicable to annuities* and direct the payment of such sum in gross, or the investment of * * * the proceeds *or the proper portion thereof* and the payment of the interest * * * *therefrom* to the person having such * * * *particular* estate until the expiration thereof. * * *

SECTION 9. Section 316.12 of the statutes is amended to read: 316.12 DOWER, CONTRACT FOR SALE. (1) Whenever an

order shall be made by the county court for the sale of any real estate for the payment of the debts of the deceased and charges of administration and such real estate shall be subject to the right of dower in the widow it shall be lawful for the executor or administrator to enter into a contract in writing with the widow by which she may agree to accept in lieu of dower * * * *one-third* of the amount realized on the sale, * * * which said contract shall be sealed and witnessed by two witnesses and filed with the county court. * * *

(2) The said contract, when acknowledged and assented to by said widow before the county court and approved by said court, and the acknowledgment indorsed thereon, shall operate as a * * * *consent to the sale of her dower* * * * *estate* in the real estate, and the same shall be sold * * * *with the rest of the title and the deed given pursuant to such sale shall pass her estate to the purchaser.* Immediately after the sale so ordered shall have been made the executor or administrator shall file with the county court the receipt of the widow for the said * * * *one-third* taken in lieu of dower, or he shall deposit the same amount with the county court for her use, to be paid to her when she indorses a receipt for the same on said contract.

SECTION 10. Section 318.22 of the statutes is amended to read: 318.22 PARTITION OF REVISION. When the term of a widow entitled to a homestead right * * * or other life estate in the lands of a deceased person shall expire, the reversion may be assigned to the persons entitled to the same and partition thereof be made in the manner prescribed in this chapter in relation to the estates of deceased persons.

SECTION 11. This act shall take effect upon passage and publication.

Approved June 20, 1929.