

DOWER ACT OF 1858.

she shall be entitled to sue out a writ of assignment of dower, founded upon such judgment, directed to the sheriff of the County in which the lands lie, in which writ shall be set forth the lands out of which the demandant has recovered judgment to recover her dower.

27. The sheriff, on receipt of such writ, shall by writing under his seal of office, appoint two resident freeholders of his county who are rated on the assessment roll for real estate of a value not less than two thousand dollars each, and a licensed deputy provincial surveyor, and each of whom would in other respects be eligible to serve as a juror between the parties named in the said writ, to be Commissioners to admeasure the dower, and the sheriff shall in such writing set out a copy of the writ of assignment, and shall name therein a day on or before which the Commissioners shall make and return to him a report of their proceedings and determination in the execution of the duty assigned to them.

28. In case of the death of, or refusal by any or all of the Commissioners so appointed, the sheriff shall, from time to time, in like manner appoint another or others to perform the duty of such as die or refuse.

29. Every Commissioner so appointed shall, before entering upon the execution of his duty, take and subscribe an affidavit in the form or to the effect following, which oath any person duly authorized and appointed to take affidavits in the Superior Courts of Common Law, is hereby empowered to administer, and the said Commissioners shall annex to their report the affidavits sworn by them, and return them to the sheriff.

"I —, do swear that I am not of kin "to the demandant (*naming her*) nor to the "defendants (*naming him or them*) nor in any "way interested in the lands out of which the "assignment of dower is to be made by me, "and that I will honestly, impartially, and to "the best of my skill and ability, execute and "perform the duties imposed upon me by the "appointment of — Esquire, Sheriff of "the county of — as a Commissioner for "the admeasurement of dower between the "said demandant and the said defendants according to law."

30. After taking and subscribing such affidavit, the Commissioners and each of them shall, for all purposes in the fulfillment of the duties by law required of them, be considered as officers of the Court out of which the writ of assignment issued, and shall be entitled to the same immunities and protection and be subject to the same liabilities and proceeding as a Sheriff in the discharge of his duty.

31. It shall be the duty of the Commissioners—

(1.) To admeasure, designate and lay off without delay, by sufficient marks, descriptions, boundaries or monuments, one-third of the lands and premises mentioned in the writ of assignment, according to the nature of the land, whether meadow, arable, pasture or wood-

land, being a part of the lot or parcel of land and premises mentioned in the writ, and having always due regard to the nature and character of the buildings and erections on such lands and premises.

(2.) To ascertain and determine what permanent improvements have been made upon such lands and premises since the death of the demandant's husband, or since the time her said husband alienated the same to a purchaser for value, and if it can be done, they shall award the dower out of such part of the lands as do not embrace or contain such permanent improvements, but if that cannot be done, they shall deduct either in quantity or value from the portion to be by them allotted or assigned to the demandant in proportion to the benefit she may or will derive from the assignment to her as part of her dower of any part of such permanent improvements;

(3.) If, from peculiar circumstances, such as there being a mill or mills or manufactory upon the land, the Commissioners cannot make a fair and just assignment of dower by metes and bounds, they shall assess a yearly sum of money being as near as may be one-third of the clear yearly rents of the premises after deducting any rates or assessments payable thereon, and in assessing such yearly sum they shall make allowances and deductions for permanent improvements, as above provided for, and in their report to the Sheriff, they shall state the amount of such yearly sum and set forth all the evidence taken by them in relation to the same, such evidence to be reduced to writing and taken upon oath (which any one of the Commissioners is hereby authorized to administer), and to be subscribed by the witness examined;

(4.) Such yearly sum shall be a lien upon the lands mentioned in the writ of assignment, unless the Commissioners specially direct otherwise and make the same issuable and payable out of some specific portion of such lands, and the same shall be recoverable by distress as for rent or by action of debt against the tenant of the freehold for the time being;

(5.) The report of the Commissioners shall be in writing, subscribed by them and directed to the Sheriff and shall contain a full statement of their proceedings, and, where the dower is assigned by metes and bounds, shall distinctly point out and describe the same and the posts, stones or other monuments designating the boundaries, and, for the purpose of planting and marking such posts, stones or monuments, they may, if necessary, employ chain-bearers and labourers.

32. The Sheriff may in his discretion upon the request of the Commissioners, enlarge the time for making their report, for not more than ten days, and he shall, within twenty-four hours after the receipt thereof, endorse thereon the day and hour of such receipt, and he shall then forthwith return the writ of admeasurement of dower, together with the report and all papers annexed thereto, to the