

suit or other proceeding, to order the writ of assignment of dower to issue to the sheriff of the county in which the land lies, out of which the dower is demanded. So, whenever, a widow's right to dower is established in an action for that purpose, she is entitled to sue out from the court in which the action is brought a writ of assignment of dower, under the provisions of the act. The writ must, of course, in this case be sued out upon the judgment, and in any case be directed to the proper sheriff: (s. 1.)

Form of writ.—The Legislature has not given the form of the writ intended, but, on the contrary, declared that the superior courts of common law shall frame a form of writ of assignment of dower, and *fieri facias* for costs, adapted to the provisions of this act and any other act in force in Upper Canada relating to dower: (s. 15.)

Duty of sheriff upon receipt of the writ.—It is made the duty of the sheriff to whom the writ is directed, to appoint three reputable and disinterested freeholders commissioners, for the purpose of making admeasurement of the dower. The appointment must be by an order which shall specify,
1. The lands of which dower is to be admeasured; and,
2. The time at which the commissioners shall report: (s. 3.)

Oath of Commissioners.—Before entering upon their duties the commissioners must take an oath of office. No form of oath is given, but it must be to the effect that "they will faithfully, honestly and impartially discharge the duty and execute the trust reposed in them by the appointment." The oath may be administered by the sheriff who made the appointment, or before some officer authorized to take affidavits: (s. 4.) There is no obligation on the part of any person to accept of the appointment. It may be refused, and even if accepted it would appear may be neglected without any very serious consequences. It is, however, to be presumed that any person who takes the oath "faithfully, honestly and impartially" to discharge the duty will not be guilty of neglect.

Provision in case of death or resignation of Commissioners.—If the persons appointed commissioners, or any or either of them die, resign, neglect or refuse to serve, others may be appointed in their places by the sheriff. Persons so appointed must take the oath before mentioned.

General duty of Commissioners.—The commissioners are required "as speedily as possible" to lay off the one-third of the lands embraced in the order for that appointment, as the dower of the widow. The part so admeasured and laid off must be by the commissioners designated with posts, stones, or other permanent monuments: (s. 5, sub-s. 1.)

Rule to be observed as to improvements.—In making the admeasurement, the commissioners are required to take

into view any permanent improvement made upon the lands embraced in the order, by any guardian or minor heir, or other owner, since the death of the landlord, or since the time that the lands came to be owned by any person or persons by the alienation of the husband or by title derived through him. If practicable, the commissioners must award the improvement within that part of the dower not allotted to the widow. If not practicable so to award it, they shall make a deduction from the lands allotted to the widow proportionate to the benefit she will derive from such part of the improvements as may be included in the portion assigned to her: (s. 5, sub-s. 2.)

Power to award annuity in lieu of Dower.—It is not under all circumstances imperative upon the commissioners to make an actual assignment of dower. If from the improvements upon the land or other peculiar circumstances, the commissioners find that an assignment of dower cannot be so made as to be fair and just to all parties by metes and bounds, they may assess the amount of a yearly sum of money in lieu thereof. In assessing the annuity they must take evidence of all facts and circumstances relating to the lands, and the improvements thereon, making allowances for the improvements in the same way as would have been done had the assignment been made by metes and bounds. The evidence should be taken in writing on oath and be subscribed by the witnesses. It must be returned to the Sheriff: (s. 5, sub-s. 3.)

Annuity—its effect, and how recoverable.—The annuity will be a lien upon the entire of the lands, unless the commissioners think it just to confine it to a part, and then only to such part. It will be payable as the commissioners may direct, and recoverable by distress in the same manner as rent. The usual personal remedy against the owners of the land may also be preferred and be had: (s. 5, sub-s. 4.)

Employment of a surveyor.—When an admeasurement is necessary, the commissioners may employ a surveyor with necessary assistants to aid them in the admeasurement: (s. 5, sub-s. 6.)

Report of Commissioners.—The report or return must be by the commissioners directed to the sheriff, with a full and ample report of their proceedings, with the quantity, courses, and distances of the land admeasured and allotted to the widow, with a description of the posts, stones, and other permanent monuments thereof: (s. 5, sub-s. 5.)

Controlling power of Sheriff—Confirmation of Report.—The sheriff is empowered upon the application of the commissioners or of either party, to enlarge the time for making the report. He may also by order compel the report or discharge the commissioners neglecting to make the same, and appoint others in their places. (s. 6.) When the report is made, he may at the time for receiving it, or at