

No. 78.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act to amend the Law, and facilitate proceedings in Actions of Dower, in Upper Canada.

Received and Read a first time, Monday, 12th
February, 1849.

Second Reading, Monday, 19th February, 1849.

Mr. LYON.

BILL.

An Act to amend the Law, and facilitate proceedings in actions of Dower, in Upper Canada.

WHEREAS it is expedient and necessary Preamble.
to alter the Law of Dower, and to give a more easy and less expensive remedy for the recovery thereof than now exists by law, in that part of this Province formerly the Province of Upper Canada:—Be it therefore enacted, &c.

And it is hereby enacted by the authority of the same, That no Widow shall be entitled to Of what lands the Widow shall not have dower.
10 Dower out of any land which shall have been absolutely disposed of by her husband in his life time for a valuable consideration.

II. And be it enacted, That this Act shall To what cases this Act shall extend.
15 extend to the Dower of any Widow whose husband shall die after the passing of this Act, and shall make any deed, contract or engagement, executed, made or entered into before the passing of this Act, by any husband who shall die after the passing of this Act, as valid
20 and effectual to bar or affect the right of his Widow to Dower, as if such deed, contract or engagement had been executed, made or entered into after this Act was passed.

III. And be it enacted, That the first or What shall be the first process in actions of Dower.
25 original process in actions of Dower at law, shall be in the form given in the Schedules to this Act, and shall and may be issued in the Court of Queen's Bench, out of the office of the Clerk of the Crown or of any Deputy
30 Clerk of the Crown in any District, either as an original or *testatum* writ, as the case may be, in the same manner as any writ of mesne process in any personal action may now be issued by law.

How service of process may be made on the tenant, &c.

IV. And be it enacted, That a copy of such process shall be served by the Sheriff to whom the said process is directed, or by his deputy or bailiff, or a literate person, personally upon the tenant of the land of which Dower is demanded, on or before the return day of the writ, and if such tenant do not appear within eight days after such return day, of which notice shall be given in the same form as in cases of non-bailable process, the demandant therein, upon affidavit of the due service of such process being made and filed, shall be entitled to enter an appearance for him, and proceed thereon as in ordinary cases of non-bailable process.

If the lands are vacant, &c.

Proviso: where the service is not personal, it must be allowed by a Judge, &c.

V. And be it enacted, That if the land of which Dower is demanded is vacant and the tenant thereof cannot be personally served with process as hereinbefore provided, then and in such case service may be made as in actions of ejectment: Provided always, that such service, when not personal upon the tenant, shall be allowed by the Court or a Judge thereof; and after filing such process and affidavit of service, and the order or rule of allowance thereof, the demandant may after eight days, if no appearance has been entered, enter an appearance for the tenant, and proceed thereon as if personal service had been effected.

What the Demandant must prove, &c.

VI. And be it enacted, That whenever the tenant of the land shall not be personally served with process, or enter appearance if not personally served, and the demandant shall proceed to the trial of the right of Dower in the land, the said demandant before the entry of any verdict in favour of such right, shall prove the marriage, seisin and death of the husband, in the same manner as if the tenant had pleaded traversing such marriage, seisin and death of the husband.

How costs shall be allowed, &c.

VII. And be it enacted, That costs shall be allowed to the demandant or tenant in all

cases, whether damages be recoverable or not, in the same manner as costs are now allowed to a plaintiff or defendant in personal actions.

- 5 VIII. And be it enacted, That the words ^{Interpretation} and expressions hereinafter mentioned, _{clause.} which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provisions or the context of the Act shall
- 10 exclude such construction, be interpreted as follows, that is to say: The word "lands" shall extend to messuages, and all other here-
- 15 ditaments whether corporeal or incorporeal (except such as are not liable to Dower) and to any share thereof; And any word importing the singular number only shall be extended and applied to several persons or things, as well as one person or thing.

SCHEDULE.

Form of Writ.

Victoria &c., (*as in ordinary Writs.*) To the Sheriff of (*the District where the lands in Dower lie.*) Greeting:—

We command you that you take A. B. (*the tenant*) if he be found in your District, and him safely keep, so that you may have his body before our Justices of our Bench at Toronto, on the _____ day of _____ Term, to answer to C. D. (*the Demandant*) why he does not render to the said C. D. who was the wife of E. F., her reasonable Dower which falleth to her of the freehold which was of E. F. her late husband, in _____ whereof she has nothing, as she says, and whereof the said A. B. depriveth her; and have then and there this writ.

Witness, &c., (*as in ordinary cases of mesne process.*)