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No. 18.

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3d Session, 3d Parliament, 13 Victoria, 1850.

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## **BILL.**

**An Act to alter the practice of the Law  
in actions of Dower, in Upper Canada.**

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Received and Read a first time, Wednesday, 29th  
May, 1850.

Second Reading, Wednesday, 5th June, 1850.

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**Mr. BURRITT.**

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**TORONTO: PRINTED BY LOVELL AND GIBSON.**

**BILL.**

**An Act to alter the Practice of the Law in actions of Dower in Upper Canada.**

**WHEREAS** it is expedient and necessary to alter the practice of the Law for the recovery of Dower, and to give a more easy and less expensive remedy for the recovery thereof than now exists in Upper Canada:—Be it therefore enacted, &c.

*Preamble.*

And it is hereby enacted by the authority of the same, That from and after the passing of this Act, the first or original process in actions of Dower at Law, shall be in the form given in the Schedule to this Act, and shall and may be issued in the Court of Queen's Bench or Common Pleas, out of the offices of the Clerks of the Crown or Common Pleas, or of any Deputy Clerk of the Crown or Common Pleas, in any County where the action is brought, in the same manner as any summons in any personal action may now be issued by law.

*What shall be the first process in actions of Dower.*

II. And be it enacted, That a copy of such summons may be served by any literate person personally on the tenant of the freehold, if within the jurisdiction of the Court, and if not, then upon the tenant of the land of which Dower is demanded, and if such tenant do not appear, the demandant therein, upon affidavit of the due service of such summons being made and fyled, shall be entitled to enter an appearance for him, and proceed thereon as in personal actions.

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

III. And be it enacted, That if the land of which Dower is demanded is vacant, and the tenant of the freehold cannot be personally served with summons, 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 fyling such summons and affidavit of service, and the Order or Rule of allowance thereof, the demandant may, after the time for appearing has expired, and no appearance has been entered, enter an appearance for the tenant and proceed thereon as if personal service had been effected.

*If the lands are vacant, &c.*

*Proviso; Where the service is not personal, it must be allowed by a Judge, &c.*

IV. And be it enacted, That whenever the tenant of the land shall not be personally served with summons or

*What the Demandant must prove.*

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. 5

How costs shall be allowed, &c.

V. And be it enacted, That costs shall be allowed to the demandant, 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; provided it shall be made appear on the trial that a demand in writing had been made of the Dower claimed from the tenant, one month before action brought, the action to be brought within a year from demand as aforesaid; provided also, that the tenant shall not make it appear on the trial that he or she, offered to assign the Dower demanded, before action brought. 15

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## SCHEDULE.

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*Victoria, by the Grace of God, &c.*

To C. D., of  
County of

in the

We command you, that within eight days from the servire of this writ upon you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Queen's Bench, (*or* Common Pleas) at Toronto, by fying your appearance in the office of the Clerk of the Crown (*or* Clerk of the Common Pleas, *or* Deputy, *as the case may be*) in the County of in an action of Dower, at the suit of A. B. And take notice, that in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed thereon to judgment and execution.

Witness

at

the

day of

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N.B. This writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards.