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**No. 169.**

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**2nd Session, 6th Parliament, 22 Victoria, 1859.**

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**BILL.**

**An Act to amend the Law of Dower in  
Upper Canada.**

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**Received and read, first time, Thursday, 17th  
March, 1859.**

**Second reading, Monday, 21st March, 1859.**

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**MR. WALLBRIDGE.**

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**TORONTO :**

**PRINTED BY JOHN LOVELL, YONGE STREET.**

## An Act to amend the Law of Dower in Upper Canada.

**W**HEREAS it is expedient to render the acceptance or release of Dower compulsory in certain cases, and to provide for the payment of a compensation in money where improvements have been made upon lands after the husband in whose right Dower is claimed had parted with his estate therein: Therefore Her Majesty, &c., enacts as follows:

- I. Every demandant or person entitled to Dower of and in any hereditaments and real estate, whether at law or in equity, shall be compelled to accept an assignment of the same when tendered.
- II. In case dower is refused when tendered, the tenant of the freehold may file a petition in either of Her Majesty's Superior Courts of Common Law, or in the Court of Chancery in Upper Canada, in the manner prescribed by the Act passed in the twentieth year of the Reign of Her Majesty, chapter sixty-five, for affording relief to parties succeeding to the real estate of persons dying intestate, and may proceed thereupon in manner pointed out by the said Act, for the purpose of setting off the dower, and partitioning the estate accordingly.
- III. No demandant shall recover her Dower in law or equity of any buildings or improvements erected or made upon the lands of which Dower is claimed, after the time her husband (as whose widow she claims Dower) had parted with his estate in such lands.
- IV. In case any suit at law or in equity is brought to recover Dower of any lands of which the husband did not die seized, and on which improvements have been made after the husband so parted with his interest, the tenant of the freehold, or other party defending such action, may give notice to the demandant or her attorney that he will require the Court or Jury before whom the case is pending or is to be tried, in addition to the trial or disposal of the issues joined between the parties, in case the claim to Dower is found or admitted in the demandant, to assess an amount or sum of money as the actual value of the right of Dower of the demandant, (deducting the value of the buildings and other improvements so made since the husband had parted with his interest as aforesaid,) and to give a verdict and judgment, or decree, that the demandant shall recover her Dower or the amount assessed therefor as damages at the election of the tenant, and which election shall be entered by way of a proceeding in the suit or cause before the final judgment is actually signed, or before such other time as the Court shall order.

Person entitled to dower, must accept assignment thereof.

If assignment is refused, tenant in freehold may apply for partition, under 20 V. c. 65.

No dower on improvements after husband parted with the land.

In proceedings for dower, the tenants may require its value in money to be fixed, to be paid, at his election, as damages.

- If tenant accepts such sum. 1. In case the demandant elects to submit to the amount so found by the Court or Jury, the sum shall be a charge upon the land, and shall be recoverable in the usual way, by execution, as costs in Dower are now recoverable.
- And if not. 2. In case no such plea or proceeding is put in declaring such election, the demandant shall recover her Dower as heretofore. 5
- Dower barred by payment. V. On payment of such sum and costs, the right of Dower of the demandant in the land shall be by force of this Act totally and effectually barred and extinguished.
- Tenant, admitting right to dower, may call on demandant to state her age, &c., and value of the dower. VI. In case the claim of the demandant is not denied, the tenant of the freehold may, within days after any suit commenced in Court or any Judge thereof, on cause shewn, shall direct, call on the demandant by rule or summons to state truly her age, the land out of which Dower is claimed, and the amount demanded by her in satisfaction therefor. 10
- Judgment for amount agreed upon, &c. 1. In case the parties, on the return of the rule or summons, agree upon the amount to be given and paid, then the Court or Judge shall order judgment to be entered forthwith for such sum, but no execution shall issue thereupon until twenty days shall have expired after the entry thereof. 20
- If tenant thinks the sum demanded excessive. 2. In case the demandant states a sum which, in the opinion of the Court, or any Judge thereof, may direct an issue to be tried, and the issue shall be framed to try whether the amount claimed by the demandant is excessive or not. 25
- Rules for trial of the issue. 3. The Court in which the action is brought, or any Judge thereof, shall thereupon make a rule or order for the trial of such issue, and the same shall be set down for trial at the following or any other assize; or sitting of any Court at which the same may be directed to be tried, by entering such rule or order in the same manner as *nisi prius* records are entered. 30
- Finding to be endorsed. 4. The finding of the jury shall be endorsed upon such rule or order, and be signed by the presiding Judge.
- Amount found to be a charge. 5. The jury empannelled to try such issue shall assess the value of the Dower of the demandant; and the amount so found shall form a charge upon the land out of which Dower is claimed.
- As to costs. 6. In case the amount claimed by the demandant exceeds the amount found by the jury, the demandant shall pay the costs of the suit to the tenant; if otherwise, then the tenant shall pay the costs of suit to the demandant. 40
- New trial. 7. The Court in which proceedings under this Act are had shall have power in all cases to order new trials, as in ordinary cases.
- When judgment shall be entered. VII. Judgment shall not be entered in any case in which a jury shall be empannelled under this Act, until after the expiration of the first four days of the term next after such verdict rendered. 45

VII. The charge hereby created on lands in favor of the demandant shall not be paramount to the title of the husband in whose right the Dower is claimed. Charge for dower not to be paramount to the title of the husband.