

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1850. Toronto: Stewart Derbyshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 58

**An Act to alter the Practice of the Law in actions of Dower, in Upper Canada. 10th August, 1850.**

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 by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That from and after the passing of this Act, the action of Dower at Law shall be commenced by filing a declaration or plaint (in the form heretofore used) in the Office of the Clerics 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: Provided always, that any action of Dower shall be brought in the County or United Counties wherein the lands or tenements of which Dower is sought to be recovered in such action are situate, and that the declaration may be served on the tenant of the freehold in any part of Upper Canada, either within or without the limits of the County or United Counties in which the action is brought.

II. And be it enacted, That a copy of such declaration and of the notice to this Act annexed (marked Schedule A) may be served by any literate person personally, within one year from the filing thereof, 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 plead agreeably to the notice, the demandant therein, upon affidavit of the due service of such declaration, and notice being made and filed, shall be entitled to proceed thereon as in personal actions.

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 declaration 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 declaration and affidavit of service, and the order or rule of allowance thereof, the demandant may after the time for pleading has expired proceed thereon, as if personal service had been effected.

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

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.

VI. And be it enacted, That every tenant to whom any declaration or plaint in Dower shall be delivered, shall forthwith give notice thereof to his Landlord, or to the Servant, Attorney, Agent, Bailiff or Receiver of his Landlord, under the penalty of forfeiting three years improved or rack rent of the premises so demised, holden, or in the possession of such tenant to the person of whom he holds, to be recovered by action of debt to be brought in any of Her Majesty's Courts of Record in this Province: Provided always, that a recovery had against a mere occupier of the land, and without notice to the *Terre Tenant* shall have no greater effect than a recovery in ejectment would have had for the quantity of land assigned as Dower in such recovery.

Schedule A.  
In the Queen's Bench, Common Pleas, &c.,

A. B. who was (or is, as the case may be) the widow of C. D. deceased, demandant, and E. F. tenant.

Take notice, that a declaration of which the annexed is a true copy, was this day filed in the Office of the Clerk (or Deputy, as the case may be) at \_\_\_\_\_ in the County of \_\_\_\_\_ (or United Counties of \_\_\_\_\_ as the case may be) and unless you plead thereto within twenty days from the service hereof, judgment will be signed against you by default, and subsequent proceedings and execution thereof follow thereon, according to law.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

J. K. Attorney, &c., residing at \_\_\_\_\_  
in the County of \_\_\_\_\_ (or United Counties of \_\_\_\_\_  
\_\_\_\_\_ as the case may be)

To E. F. of the Town of \_\_\_\_\_ (as the case may be) the above tenant.