

1970

c 135 Dower Act

Ontario

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CHAPTER 135

The Dower Act

1. A widow, on the death of her husband, may tarry in his chief house for forty days after his death, within which time her dower shall be assigned her, if it has not been assigned her before, and in the meantime she shall have her reasonable maintenance, and for her dower shall be assigned to her the third part of all the lands of her husband whereof he was seized at any time during coverture, except such thereof as he was so seized of in trust for another. R.S.O. 1960, c. 113, s. 1.

Dower and
quarantine

2. A widow wrongfully deforced of dower or quarantine may recover damages for such deforcement against the deforcer. R.S.O. 1960, c. 113, s. 2.

Damages for
deforcement

3. Where a husband dies beneficially entitled to any land for an interest that does not entitle his widow to dower at common law, and such interest, whether wholly equitable or partly legal and partly equitable, is or is equal to an estate of inheritance in possession, other than an estate in joint tenancy, his widow is entitled to dower out of such land. R.S.O. 1960, c. 113, s. 3.

Dower out
of equitable
estates

4. Where a husband has been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the land if he had recovered possession of it, she is entitled to dower out of it, although her husband did not recover possession of it, but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. R.S.O. 1960, c. 113, s. 4.

Dower where
husband had
a right
of entry

5. Dower is not recoverable out of any separate and distinct lot, tract or parcel of land that, at the time of the alienation by the husband or at the time of his death, if he died seized thereof, was in a state of nature and unimproved by clearing, fencing or otherwise for the purposes of cultivation or occupation; but this does not restrict or diminish the right to have woodland assigned to the doweress under section 29, from which it is lawful for her to take firewood necessary for her own use, and timber for fencing the other portion of the same lot, tract or parcel assigned to her. R.S.O. 1960, c. 113, s. 5.

Land in
state of
nature

6. No dower is recoverable out of any land that has been heretofore or is hereafter granted by the Crown as mining land in

Mining land

case such land is, on or after the 31st day of December, 1897, granted or conveyed to the husband of the person claiming dower and he does not die entitled thereto. R.S.O. 1960, c. 113, s. 6.

Land dedicated for streets

7. Land dedicated by its owner for a street or public highway is not subject to any claim for dower by the wife of the person by whom it was dedicated. R.S.O. 1960, c. 113, s. 7.

Dower forfeited by elopement with adulterer

8. Where a wife willingly leaves her husband and goes away and continues with her adulterer, she is barred forever of her action to demand her dower that she ought to have of her husband's land, unless her husband willingly and without coercion is reconciled to her and suffers her to dwell with him, in which case she is restored to her action. R.S.O. 1960, c. 113, s. 8.

Effect of bar of dower in mortgages

9.—(1) No bar of dower contained in a mortgage or other instrument intended to have the effect of a mortgage or other security upon land operates to bar such dower to any greater extent than is necessary to give full effect to the rights of the mortgagee or grantee under such instrument.

Wife's right to dower in surplus of purchase money arising from sale under mortgage

(2) Where land comprised in such mortgage or other instrument is sold under a power of sale contained therein or under any legal process, the wife of the mortgagor or grantor who has so barred her dower in such land is entitled to dower in any surplus of the purchase money arising from such sale that remains after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land from which such surplus purchase money was derived had it not been sold and, except where the mortgage or other instrument is for the purchase money of the land, the amount to which she is entitled shall be calculated on the basis of the amount realized from the sale of the land and not upon the amount realized from the sale over and above the amount of the mortgage only. R.S.O. 1960, c. 113, s. 9.

Payment of money into Court

10.—(1) A mortgagee or other person holding any money out of which a married woman is dowable under section 9 may pay it into the Supreme Court to the credit of such married woman and the other persons interested therein.

Order for securing right of dower

(2) The court may, on a summary application, make such order as is considered just for securing the right of dower of a married woman in any money out of which she is dowable. R.S.O. 1960, c. 113, s. 10.

Widow's election

11. A widow is not entitled to take her interest in money under section 9, and, in addition thereto, a share of the money as personal estate. R.S.O. 1960, c. 113, s. 11.

12.—(1) A person whose wife is of unsound mind and is a patient in a psychiatric facility under *The Mental Health Act* at the time he becomes the owner of any land may at any time while his wife is so confined sell and convey or mortgage such land, freed and discharged of any claim of his wife for dower therein.

Sale, etc.,
free from
dower
R.S.O. 1970,
c. 269

(2) A person whose wife has not lived in Ontario since their marriage may sell and convey or mortgage any land freed and discharged of any claim of his wife for dower therein. R.S.O. 1960, c. 113, s. 12, *amended*.

Idem

13.—(1) An owner of land, who is married and wishes to sell or mortgage the land free from dower, may in any case where,

Application
to dispense
with consent

- (a) he and his wife are living apart; or
- (b) the whereabouts of his wife is unknown; or
- (c) his wife is of unsound mind and is confined as such in a hospital for mentally ill, mentally defective or epileptic persons,

apply to a judge of the Supreme Court or to a judge of the county or district court of the county or district in which the owner resides or the land is situate for an order dispensing with the concurrence of his wife for the purpose of barring her dower.

(2) The judge may, by order made in a summary way, upon such evidence as to him seems proper and upon notice to be served personally, dispense with the concurrence of the wife for the purpose of barring her dower.

Order

(3) Where the judge is satisfied that for any reason notice cannot be served personally, the order may be made after notice has been served upon the Public Trustee and in such other manner as the judge may direct.

Idem

(4) The judge may make the order without imposing any conditions or he may, unless the wife has been living apart from the husband under such circumstances as disentitle her to dower, ascertain and state in the order the value of the dower and by the order direct that the amount thereof shall be paid into court or shall remain a charge upon the land or be secured otherwise for the benefit of the wife or be paid or applied for her benefit as he considers best.

Idem

(5) After the making of the order, a conveyance or mortgage by the owner, expressed to be free from his wife's dower, is, subject to the terms and conditions mentioned in the order, sufficient to bar her right thereto.

Conveyance
or mortgage
after order

(6) This section extends to a case in which an agreement for sale has been made, or a conveyance executed by the husband, and part of the purchase money retained by the purchaser on account of dower or an indemnity given against such dower, and in any such case the application may be made by any person

When agree-
ment for sale
executed by
husband or
part of pur-
chase money
retained

interested in the land, the purchase money retained or the indemnity. R.S.O. 1960, c. 113, s. 13 (1-6).

Where wife
is an infant
or of un-
sound mind
R.S.O. 1970,
c. 269

(7) Where the wife is an infant or a person of unsound mind, notice of the application shall be served on the Official Guardian, except where such person is a patient in a psychiatric facility under *The Mental Health Act*, in which case the notice shall be served only on the Public Trustee. R.S.O. 1960, c. 113, s. 13 (7), *amended*.

Fee

(8) On every such application, a fee of \$5 is payable and no other fee or charge of any kind is payable in respect thereof, except that for filing the affidavits and papers the proper officer shall charge the same fees as for filing papers in other cases. R.S.O. 1960, c. 113, s. 13 (8).

Application
where wife is
mentally ill
but not
confined in
a hospital

14.—(1) Where the doctor of a correctional institution in a county or district in which a married woman who is not confined in a hospital for the mentally ill resides and another medical practitioner to be named by the judge each certifies in Form 1 that he has personally examined such married woman and that he is of opinion that she is mentally ill and a judge of the county or district court of the county or district in which such married woman resides or a judge of the Supreme Court also certifies in Form 2 that he has personally examined such married woman and that from such examination and from the evidence adduced before him, if he thinks it expedient to hear evidence, he is of opinion that such married woman is mentally ill, the judge may make the like order as is authorized by section 13.

Interval
between
examination
and appli-
cation

(2) The examination and certificates required by this section shall not be acted upon by the judge unless all are made within a period of one month, and the application shall not be entertained unless it is made within one month after the day upon which the last of such examinations took place. R.S.O. 1960, c. 113, s. 14.

Subsequent
orders

15. Where a judge makes an order under section 13 or 14 with reference to a parcel of land, he may afterwards make orders in respect of other sales or mortgages by the husband on the evidence adduced on the first application and on such further evidence as satisfies him that the circumstances under which he made the original order still exist. R.S.O. 1960, c. 113, s. 15.

Bar of dower
on sale in
bankruptcy

16. Where the owner of land has become bankrupt and it is sought to sell such land in order to wind up his estate and the wife of such owner will not release her dower, the trustee or assignee in bankruptcy may apply to a judge of the Supreme Court or to a judge of the county or district court of the county or district in which the land is situate for an order enabling him to convey the land free from the dower of the wife, and the order may be made

subject to the like conditions and upon the like proceedings as are provided for in section 13. R.S.O. 1960, c. 113, s. 16.

17.—(1) Where an owner of land, being at the time married, sells and conveys or has sold and conveyed, or mortgages or has mortgaged, the land, his wife not having joined in the conveyance or mortgage and the purchaser or mortgagee not having had notice that the grantor or mortgagor had a wife living at the time, the purchaser or mortgagee may, if any of the circumstances set out in clauses *a* to *c* of subsection 1 of section 13 existed at the time of the conveyance or mortgage, apply during the lifetime of the grantor or mortgagor to a judge of the Supreme Court or to a judge of the county or district court of the county or district in which he resides or the land is situate, for an order enabling him to convey or mortgage the land free from the dower of the wife, and the order may be obtained subject to the like conditions and by the like proceedings as are provided by section 13.

Application
by purchaser
or mortgagee

(2) A person claiming under the grantee or mortgagee is entitled to apply in like manner and obtain like relief founded on the right that such grantee or mortgagee had, or, on the applicant's own interest having been acquired by purchase for value in good faith without notice, that such owner had a wife at the time of the conveyance or mortgage. R.S.O. 1960, c. 113, s. 17.

Relief of persons
claiming
under
grantee or
mortgagee

18.—(1) An order under any of the preceding sections may be made in duplicate or in as many parts as are necessary, and shall be signed by the judge, and may be registered in the registry office of the registry division wherein the land to which the order relates is situate, upon its production and deposit, and such registration may take place either before or after the execution of the conveyance or mortgage made in pursuance of the order. R.S.O. 1960, c. 113, s. 18 (1); 1964, c. 26, s. 1 (1).

Registration
of order

(2) The order may be endorsed or written upon the conveyance or mortgage, in which case it shall be registered as part thereof. R.S.O. 1960, c. 113, s. 18 (2).

Order may
be endorsed
on deed

(3) If the order is endorsed or written upon the conveyance or mortgage, the land may be described in the order by reference to the description contained in the conveyance or mortgage. R.S.O. 1960, c. 113, s. 18 (4).

Description
of land in
order

19. Where a wife has joined or hereafter joins in a conveyance or mortgage purporting to convey or mortgage land, or has signed or signs, otherwise than as a witness, a conveyance or mortgage by which her husband conveys or mortgages or purports to convey or mortgage land, but the conveyance or mortgage contains no words purporting to release her dower or other estate or interest in the land, the conveyance or mortgage has the same effect as if it contained a bar of dower by the wife and she thereby barred her dower in the land. R.S.O. 1960, c. 113, s. 19.

Wife joining
in deed with-
out releasing
dower

Married
women
under 21
barring
dower

R.S.O. 1970,
c. 234

20. A married woman under twenty-one years of age and of sound mind may bar her dower in any land by joining with her husband in a deed or conveyance thereof to a purchaser for value or to a mortgagee, or in a transfer or charge under *The Land Titles Act*, in which deed, conveyance, transfer or charge a release or bar of her dower is contained, and she may in like manner release her dower to any person to whom such land has been previously conveyed. R.S.O. 1960, c. 113, s. 20.

Assignment
of dower
by deed

21. The doweress and the tenant of the freehold may by an instrument under their hands and seals and executed in the presence of two witnesses agree upon the assignment of dower, or upon a yearly or gross sum of money to be paid in lieu of satisfaction of dower, and the instrument may be registered in the proper registry office by filing it or a duplicate thereof, verified by the affidavit of one of the subscribing witnesses, and entitles the doweress to hold the land so assigned to her against the assignor and all parties claiming through or under him, as tenant for her life, or to distrain for, or to sue for, and recover in a court of competent jurisdiction the yearly or gross sum agreed to be paid to her by the tenant of the freehold, and the instrument so registered is a lien upon the land for such yearly or gross sum, and is a bar to any action or proceeding by the doweress for dower in the lands mentioned therein. R.S.O. 1960, c. 113, s. 21.

Duty to
notify
landlord

22. Every tenant in possession who is not also tenant of the freehold and who is served with a writ of summons in an action for the recovery of dower shall forthwith give notice thereof to his landlord or other person under whom he entered into possession, under the penalty of forfeiting the value of three years improved rent of the premises in the possession of the tenant, to the person under whom he entered into possession, to be recovered by action in the Supreme Court. R.S.O. 1960, c. 113, s. 22.

Mode of
estimating
damages for
detention of
dower, etc.

23. In estimating damages for the detention of dower or the yearly value of the land for the purpose of fixing a yearly sum of money in lieu of an assignment of dower by metes and bounds, the value of permanent improvements made after the alienation of the land by the husband or after the death of the husband shall not be taken into account, but the damages or yearly value shall be estimated upon the state of the property at the time of such alienation or death, allowing for the general rise, if any, in the price and value of land in the particular locality. R.S.O. 1960, c. 113, s. 23.

Appointment
of commis-
sioners to
admeasure
the dower,
etc.

24. The sheriff, on receipt of a writ of assignment of dower, shall, by writing under his seal of office, appoint two resident freeholders of his county who are rated upon the assessment roll for real estate of a value not less than \$2,000 each, and each of

whom would in other respects be eligible to serve as a juror between the parties named in the writ, and an Ontario land surveyor, to be commissioners to admeasure the dower, and the sheriff shall, in such writing, set out a copy of the writ, and shall name therein a day on or before which the commissioners shall make and return to him a report of their proceedings and determination in the execution of the duty assigned to them. R.S.O. 1960, c. 113, s. 24.

25. In the case of the death or refusal to act of any or all of the commissioners so appointed, the sheriff shall, from time to time, in like manner, appoint another or others to perform the duty of any who die or refuse to act. R.S.O. 1960, c. 113, s. 25. Death, etc., of commissioners

26.—(1) Every commissioner so appointed shall, before entering upon the execution of his duty, take and subscribe an oath in the following form: Oath of commissioners

I,....., do swear that I am not of kin to the plaintiff (*naming her*) or to the defendant (*naming him*), or in any way interested in the land out of which the assignment of dower is to be made by me, and that I will honestly, impartially, and to the best of my skill and ability, execute and perform the duties imposed upon me by the appointment of....., Sheriff of the County of....., as a Commissioner for the admeasurement of dower between the plaintiff and the defendant according to law. So help me God.

(2) The commissioners shall annex to their report the oaths sworn by them, and return them to the sheriff. R.S.O. 1960, c. 113, s. 26. Return to sheriff

27. After taking and subscribing such affidavit, the commissioners shall, for all purposes in the fulfilment of the duties by law required of them, be considered officers of the court, and are entitled to the same immunities and protection and are subject to the same liabilities and proceedings as a sheriff in the discharge of his duty. R.S.O. 1960, c. 113, s. 27. Powers and liabilities of commissioners

28.—(1) If either party desires to produce a witness before the commissioners, such party may sue out a subpoena *ad testificandum* or *duces tecum* from the office in which the action was commenced, commanding the attendance of such witness at the time and place appointed by the commissioners. Attendance of witnesses

(2) The person so required to attend is entitled to be paid the same fees, allowances and conduct money as if he had been subpoenaed as a witness in an ordinary action. R.S.O. 1960, c. 113, s. 28. Payment of witness

29.—(1) It is the duty of the commissioners, Duties of commissioners
 (a) to admeasure, designate and lay off without delay, by sufficient marks, descriptions, boundaries or monu-

ments, one-third of the land mentioned in the writ, according to the nature of the land, whether meadow, arable, pasture or woodland, being a part of the land mentioned in the writ, and having always due regard to the nature and character of the buildings and erections on the land;

- (b) to ascertain and determine what permanent improvements have been made upon the land since the death of the plaintiff's husband, or since he alienated it to a purchaser for value, and, if it can be done, they shall award the dower out of such part of the land as does not embrace or contain such permanent improvements, but, if that cannot be done, they shall deduct either in quantity or value from the portion to be by them allotted or assigned to the plaintiff in proportion to the benefit she may or will derive from the assignment to her as part of her dower of any part of such permanent improvements.

Assessment
of yearly
sum in lieu
of dower

(2) If from peculiar circumstances, such as there being a mill or manufactory upon the land, the commissioners cannot make a fair and just assignment of dower by metes and bounds, they shall assess a yearly sum of money, being as near as may be one-third of the clear yearly rents of the premises, after deducting any rates or assessments payable thereon, and in assessing such yearly sum they shall make allowances and deductions for permanent improvements, as above provided for, and in their report to the sheriff they shall state the amount of such yearly sum and set forth all the evidence taken by them in relation to the same.

Evidence
on oath

(3) The evidence shall be taken upon oath, which oath any one of the commissioners is hereby authorized to administer, and shall be reduced to writing and signed by the witness.

Recovery
of sum
assessed

(4) Such yearly sum is a lien upon the land mentioned in the writ or upon such specific portion thereof as the commissioners may direct, and it is recoverable by distress as for rent or by action against the tenant of the freehold for the time being.

Report of
commis-
sioners

(5) The report of the commissioners shall be in writing, signed by them and directed to the sheriff, and shall contain a full statement of their proceedings, and, where the dower is assigned by metes and bounds, shall distinctly point out and describe the metes and bounds and the posts, stones or other monuments designating the boundaries, and, for the purpose of planting and marking the posts, stones or monuments, the commissioners may, if necessary, employ chainbearers and labourers. R.S.O. 1960, c. 113, s. 29.

Return of
writ and
report

30. The sheriff may, in his discretion, upon the request of the commissioners, enlarge the time for making their report for not

more than ten days, and he shall, within twenty-four hours after the receipt thereof, endorse thereon the day and hour of the receipt, and he shall then forthwith return the writ, together with the report and all papers annexed thereto, to the office wherein the action was commenced. R.S.O. 1960, c. 113, s. 30.

31.—(1) Either party, within a month from the filing of the sheriff's return to the writ or within such further time as a judge of the Supreme Court allows, may appeal from the report of the commissioners to a judge in court, upon grounds apparent on the report and papers filed therewith, or may apply to set aside the same, upon other grounds verified by affidavit and set forth in the notice served. Appeal

(2) The court may vary or amend the report, or refer it back to the commissioners for amendment in whole or in part, with such directions as to law or fact as are considered proper, or the court may confirm or set aside the report and may appoint three new commissioners or direct that the sheriff shall do so, and the new commissioners have the same powers and shall perform the same duties as hereinbefore set out, and the report of the new commissioners shall be treated as if no other report had been made, and shall be dealt with and proceeded upon accordingly. Order thereon

(3) If the report is moved against upon the ground of misconduct or fraud on the part of the commissioners, the court may direct that they be added as parties to the proceeding, and, if wilful misconduct or fraud is established, the report may be set aside and the commissioners may be adjudged to pay to the parties injured all the costs that have been incurred in respect of proceedings rendered useless by such misconduct or fraud and all the costs of the proceeding to set aside the report. Effect of report being appealed from for misconduct, etc.

(4) The appeal or application may be dismissed with or without costs, and the court may order the party at whose instance or on whose complaint the commissioners have been made parties to pay the commissioners their costs. Costs of appeal

(5) If the appeal or application is dismissed or if the report is not appealed from or moved against within the proper time, the report is thenceforth final and conclusive on all parties to the action of dower, and a copy of the report, certified by the registrar under the seal of the court, may be registered in the proper registry office. R.S.O. 1960, c. 113, s. 31. Registration of copy of report

32. After such registration, the plaintiff is entitled to sue out a writ directed to the proper sheriff, commanding him to put her into possession of the land assigned to her for her dower and to levy all such costs as have been awarded to her against the defendant. R.S.O. 1960, c. 113, s. 32. When writ of possession may issue

Commissioners' fees

33. The commissioners are each entitled to receive from the plaintiff the sum of \$5 for each day's attendance, not exceeding two, and the sum of 20 cents for every 100 words for drawing up their report, and may also charge 10 cents for every 100 words of each copy furnished by them to either party. R.S.O. 1960, c. 113, s. 33.

By whom costs to be paid

34. The plaintiff shall pay the costs of suing out and the costs of the commissioners in executing the writ of assignment of dower and making their report, but each party shall pay his own costs of witnesses and of his counsel or solicitor attending before the commissioners. R.S.O. 1960, c. 113, s. 34.

FORM 1

The Dower Act

(Section 14 (1))

CERTIFICATE OF MEDICAL PRACTITIONER

I, the undersigned . . . , a legally qualified medical practitioner, doctor of the correctional institution in the County (*or* District) of
 (*or as the case may be*) residing and practising at
 in the County (*or* District) of, do
 hereby certify that on the day of, 19,
 at in the County (*or* District) of I,
 separately from any other medical practitioner, personally examined
 of the Township of in the County of
 (*or* District) of, wife of, of the Township of
 in the County (*or* District) of and I further
 certify that the said is mentally ill and that I have formed this opinion upon
 the following grounds, namely: (*here state the facts upon which the certificate is
 based*).

Signed this day of,
 19, at in the County of

Witness

R.S.O. 1960, c. 113, Form 1.

FORM 2

*The Dower Act**(Section 14 (1))*

CERTIFICATE OF JUDGE

Province of Ontario.

County (or District) of

I, the undersigned.....
Judge of the County (or District) Court of the County (or District)
of....., do hereby certify that on the.....
day of, 19....., I personally examined....., of the
..... of..... in the County (or District)
of....., wife of..... of the..... of..... in the County
(or District) of....., and that from such personal examination
(and from the evidence of..... and..... adduced before me (*if evidence has been
taken*)) I am of opinion that the said..... is mentally ill.

Signed this..... day of....., 19....., at.....
..... in the County (or District) of.....

.....
R.S.O. 1960, c. 113, Form 2.

