

THE DOWER ACT, 1839
ACT NO. XXIX. OF 1839
(Rep., by Act 48 of 1857)

[16th December, 1839.]

Passed by the Hon'ble the President of the Council of India in Council, on the 16th December, 1839.

AN Act for the Amendment of the Law relating to Dower.

1. Whereas it is expedient to extend the Amendments in the English Law of Dower contained in the Statute 3d and 4th William IV Chapter CV to the Territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English Law of Dower as it existed previously to the passing of the aforesaid Statute:

Meaning of the words in the Act.-It is hereby enacted, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the word "Land" shall extend to Messuages, and all other Hereditaments, whether Corporeal or Incorporeal (except such as are not liable to Dower), and to any share thereof, and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or things.

II. Windows to be entitled to Dower out of equitable Estates.-And it is hereby further enacted, that when a Husband shall die, beneficially entitled to any Land for an interest which shall not entitle his Window to Dower out of the same at Law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an Estate of inheritance in possession, or equal to an Estate of inheritance in possession, (other than an Estate in joint-tenancy,) then his Widow shall be entitled in Equity to Dower out of the same Land.

III. Seisin shall not be necessary to give title to Dower.-And it is hereby further enacted, that when a Husband shall have been entitled to a right of entry or action in any Land and his Window would be entitled to Dower out of the same if he had recovered possession thereof, she shall be entitled to Dower out of the same although her Husband shall not have recovered possession thereof; provided that such Dower be sued for or obtained within the period during which such right of entry or action might be enforced.

IV. No Dower out of Estates disposed of.-And it is hereby further enacted, that no Window shall be entitled to Dower out of any Land which shall have been absolutely disposed of by her Husband in his life time, or by his will.

V. Priority to partial Estates, Charges and Specialty Debts.-And it is hereby further enacted, that all partial Estates and Interests, and all charges created by any disposition or Will of a Husband, and all debts, incumbrancers, contracts, and engagements to which his Land shall be subject or liable, shall be valid and effectual as against the right of his Window to Dower.

VI. Dower may be barred by a Declaration in a Deed.-And it is hereby further enacted, that a Widow shall not be entitled to Dower out of any Land of her Husband, when in the Deed by which such Land was conveyed to him, or by any Deed executed by him, it shall be declared that his Window shall not be entitled to Dower out of such Land.

VII. Or by a declaration in the Husbands's Will.-And it is hereby further enacted, that a Widow shall not be entitled to Dower out of any Land of which her Husband shall die wholly or partially intestate

when by the Will of her husband, duly executed for the devise of Freehold Estates, he shall declare his intention that she shall not be entitled to Dower out of such Land or out of any of his Land.

VIII. Dower shall be subject to restrictions.-And it is hereby further enacted, that the right of a Widow to Dower shall be subject to any conditions, restrictions or directions which shall be declared by the Will of her Husband, duly executed as aforesaid.

IX. Devise of real Estate to the Widow shall bar her Dower.-And it is hereby further enacted, that where a Husband shall devise any Land out of which his Widow would be entitled to Dower if the same were not so devised, or any Estate or Interest therein, to or for the benefit of his Widow, such Widow shall not be entitled to Dower out of or in any Land of her said Husband, unless a contrary intention shall be declared by his Will.

X. Bequest of Personal Estate to the Widow shall not bar her Dower.-And it is hereby further enacted, that no Gift or Bequest made by any Husband to or for the benefit of his Widow of or out of his Personal Estate, or of or out of any of his Land not liable to Dower shall defeat or prejudice her right to Dower unless as contrary intention shall be declared by his Will.

XI. Agreement not to bar Dower may be enforced.-Provided always and it is hereby further enacted, that nothing in this Act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any Husband not to bar the right of his Widow to Dower out of his Lands or any of them.

XII. Legacies in bar of Dower still entitled to preference.-And it is hereby further enacted, that nothing in this Act contained shall interfere with any rule of Equity, or of any Ecclesiastical Court by which Legacies bequeathed to Widows in satisfaction of Dower are entitled to priority over other Legacies.

XIII. Certain Dowers abolished.-And it is hereby further enacted, that no Widow shall hereafter be entitled to Dower ad ostium ecclesiae or Dower ex assensu patris.

XIV. Act not to take effect before the 1st July 1840.-And it is hereby further enacted, that this Act shall not extend to the Dower of any Widow who shall have been or shall be married on or before the First day of July One Thousand Eight Hundred and Forty, and shall not give to any Will, Deed, Contract, Engagement, or Charge executed, entered into, or created before the said First day of July One Thousand Eight Hundred and Forty, the effect of defeating or prejudicing any right to Dower.

XV. And it is hereby provided, that this Act shall not be construed to affect any right of property in Land otherwise than by modifying the Law of Dower in cases governed by the English Law of Dower, or to extent or alter the jurisdiction of any of Her Majesty's Courts of Justice.
