

Bill No. 69 of 1948.

A BILL RESPECTING THE INTERESTS OF MARRIED
PERSONS IN EACH OTHER'S HOMESTEAD

NOTE.

This Bill enacts a new Dower Act.

The Land Titles Act was passed to give certainty to title to estates in land and to facilitate the proof thereof. The present *Dower Act* partially defeats the purpose of *The Land Titles Act* by giving rise to uncertainty to title by creating an unregistered interest in land which frequently cannot be discovered and which may over-ride a title obtained on reliance upon the register. The courts have had to deal with numerous cases on *The Dower Act*, many of which arose due to the conflict in principle between it and *The Land Titles Act*.

The reason for the conflict between the two Acts was the provision that a transfer of a homestead made without the wife's consent was null and void for all purposes. The principal change made in the proposed Act is that the section making such a transfer null and void for all purposes is removed, thereby removing the conflict with *The Land Titles Act*.

In lieu of making such a transfer null and void for all purposes, such a transfer is prohibited under penalty.

Under the old Act the wife had a right of action to have the land taken away from the first purchaser under such a transfer and revested in her husband, and the first purchaser had a right of action against the Assurance Fund for damages.

Under this Bill the first purchaser obtains a valid title. Accordingly, the wife has no right of action to have the land revested in her husband, nor has the first purchaser a right to recover his loss from the Assurance Fund. Instead of this the wife is given a right of action against her husband for her loss which is fixed by the Act at one-half the value of the property transferred without her consent. If the judgment against her husband is unsatisfied, she may recover the amount of the judgment from the Assurance Fund.

The other major change effected by this Bill is that the Act is now applied equally to both husbands and wives. That is, a husband has the same rights in his wife's homestead under this Act as a wife is given in her husband's homestead.

Under section 2 (a), which defines "disposition" a lease for three years or less is not a disposition within the meaning of the Act.

Section 2 (b) contains a definition of dower rights as this term is frequently used throughout the Act. Section 2 (d) defines judge as a judge of the Supreme Court or the District Court. Where an application is to be made to a judge this will facilitate matters for country solicitors who may apply to a District Court judge.

Section 3 prohibits a disposition of a homestead without the consent of the spouse unless a judge has dispensed with such consent. A married person who makes a disposition without the consent of his spouse is made guilty of an offence and liable on summary conviction to a fine or imprisonment.

Section 4 provides that a homestead continues to be a homestead under the Act notwithstanding subsequent changes of residence of the owner. Land ceases to be a homestead when a transfer of it is registered in the proper Land Titles Office or a release of dower rights is registered or a judgment for damages against the married person is obtained by the spouse of the married person as provided for in the latter part of the Act.

Sections 5 to 7 inclusive dealing with the consents required to a disposition are similar to those contained in the present Act. Certain changes have been made in the forms for consent and for the acknowledgment required. These sections contain a provision that a consent is not required where a registered and subsisting release of dower rights is on the register.

Sections 8, 9 and 10 deal with releases. These sections are new. They are designed to meet a need which has been felt for a considerable time whereby a spouse could voluntarily release her dower rights.

Section 8 provides that the spouse may execute a release in a form provided in the Schedule which shall be registered in the Land Titles Office. Upon the registration of such a release the land described therein ceases to be a homestead.

By section 9, at any time before a transfer is registered transferring the land of a married person in respect of which a release has been registered, the spouse may execute and register a caveat which will revive the spouse's dower rights in the said homestead subject to rights which have been acquired, or have accrued prior to the filing of the caveat. These provisions comply with the requirements of *The Land Titles Act* as to certainty of title and ease of proof by providing that both the release and the cancellation of the release are instruments requiring registration.

Section 10 provides for a spouse releasing her dower rights by an agreement in writing for valuable consideration. This agreement might be a separation agreement or any other agreement providing for the disposition of the

property belonging to husband or wife, and it may be in general, applying to all homesteads of the married persons, or specific, applying only to a described homestead. Such an agreement would not be registered but before any disposition could be made by a married person of the homestead to which it related, he would have to obtain an order of a judge dispensing with the consent of his spouse to such a disposition. The existence of such an agreement would be a basis for a judge making an order dispensing with the consent if the spouse had in fact received valuable consideration for the agreement to forego dower.

Section 11 sets out the circumstances under which a judge may dispense with the consent of a spouse to a disposition by a married person of the homestead of the parties. The conditions are similar to those contained in the present Act.

Sections 12 to 18 deal with the remedy of the spouse who is deprived of dower by a disposition by the married person without the consent of his spouse. The old Act enabled a spouse to have the land revested in her husband if it remained in the hands of a first purchaser and the first purchaser was then entitled to claim damages from the Assurance Fund. In lieu of interfering with the title of a purchaser who acted in good faith in reliance upon the register and paid valuable consideration, the spouse is now given a right of action against the married person for damages for making such a disposition. Damages are fixed by the Act at one-half of the value of the property disposed of without consent.

By section 13, if a spouse recovers a judgment against the married person, the married person upon producing proof to the Registrar that the judgment has been paid, may register the judgment in the Land Titles Office. Upon the registration of the judgment, the spouse ceases to have any further dower rights in any lands of the married person.

By section 14 if the judgment recovered by the spouse against a married person is unsatisfied, the spouse may apply for payment of the judgment out of the Assurance Fund.

By sections 15 and 16 the spouse is required to show to the satisfaction of the judge that reasonable efforts have been made to obtain satisfaction of the judgment against the married person. If the judge is satisfied he may under section 17 order the unsatisfied judgment paid out of the Assurance Fund. Upon such order being made the spouse is required to register the judgment in the Land Titles Office and thereupon the spouse has no further dower rights in any property of the married person.

Sections 19 to 24 inclusive deal with the life estate of the surviving spouse. These provisions are similar to those in the present Act.

By section 20 the life estate is confined to one homestead. The spouse is required to elect in writing in a form provided in the Schedule what homestead the spouse claims for the life estate. If the spouse neglects or refuses to make an election the executor or administrator may at the expiration of three months after the decease of the married person apply to a judge for an order designating the homestead to which the dower rights attach. The election or the order, as the case may be, must be registered in the Land Titles Office. Upon the registration of the election or order all other lands belonging to the deceased married person cease to be homesteads.

Section 22 provides that if the executor is disposing of a homestead of a deceased married person during the lifetime of the married person's spouse, the spouse shall execute a consent in a form provided in the Schedule. In every other case, the Registrar is required to obtain from the executor or administrator an affidavit in a form provided in the Schedule. This is a new provision which remedies a situation which was not provided for in the old Act.

Section 23 provides that an executor or administrator may apply to a judge for an order dispensing with the consent of the spouse to any disposition in the same circumstances that the deceased married person could have done if still alive.

Section 24 gives a life estate in certain personal property to a spouse who has acquired a life estate in a deceased married person's homestead.

Section 25 provides that dower rights shall apply to mines and minerals contained in any homestead and no married person shall make any disposition of such mines and minerals without the consent in writing of the spouse.

Section 26 provides that where a married person is a joint tenant, tenant in common or owner of any other partial interest in land together with any person or persons other than the spouse of the married person, this Act does not apply to such land and it is not a homestead. Where a married person and his spouse are joint tenants or tenants in common, the execution of a disposition constitutes a consent by each of them to the release of their dower rights and no acknowledgment is required from either of them.

Section 29 provides that this Act shall come into force on the first day of September, 1948, to give time to enable necessary administrative arrangements to be made in the Land Titles Offices and to enable solicitors to obtain the necessary new forms which will be required.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 69 of 1948.

An Act respecting the Interests of Married Persons in
Each Other's Homesteads.

(Assented to _____, 1948.)

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Dower Act, 1948.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—
 - (a) "Disposition" means any disposition by act *inter vivos* which is required to be executed by the owner of the land disposed of, and includes every transfer, agreement for sale, lease for more than three years or other instrument intended to convey or transfer any interest in land and every mortgage or incumbrance intended to charge land with the payment of a sum of money (and requiring to be so executed) and every devise or other disposition made by will; and includes every mortgage by deposit of certificate of title or other mortgage not requiring the execution of any document;
 - (b) "Dower rights" means all rights given by this Act to the spouse of a married person in respect of the homestead and property of such married person, and without restricting the generality of the foregoing includes,—
 - (i) the right to prevent disposition of the homestead by withdrawing consent;
 - (ii) the right of action for damages against the married person if any disposition of the homestead which results in the registration of the title in the name of any other person is made without consent;
 - (iii) the right to obtain payment from the Assurance Fund of an unsatisfied judgment against the married person in respect of any such disposition of the homestead made without consent;

- (iv) the right of the surviving spouse to a life estate in the homestead of the deceased married person;
- (v) the right of the surviving spouse to a life estate in the personal property of the deceased married person, exempt from seizure under execution;
- (c) "Homestead" means a parcel of land on which the dwelling house occupied by the owner thereof as his residence is situated, consisting of,—
 - (i) not more than four adjoining lots in one block in a city, town or village, as shown on a plan duly registered in the proper Land Titles Office; or
 - (ii) not more than one quarter section of land other than in a city, town or village;
- (d) "Judge" means a judge of the Supreme Court of Alberta or a District Court judge having jurisdiction in the judicial district in which the homestead is situated, in respect of which any application is made.

DISPOSITION PROHIBITED WITHOUT CONSENT.

3.—(1) No married person shall make any disposition by act *inter vivos* of the homestead of the married person whereby any interest of the married person shall or may vest in any other person at any time during the life of the married person or during the life of the spouse of such married person living at the date of the disposition, unless the spouse consents thereto in writing or unless a judge has made an order dispensing with the consent of the spouse as hereinafter provided for.

(2) Every married person who makes any such disposition of a homestead without the consent in writing of the spouse of such married person or without an order dispensing with the consent of the spouse shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding two years.

DURATION OF HOMESTEAD.

4.—(1) When land becomes the homestead of a married person it shall continue to be his homestead within the meaning of this Act notwithstanding the acquisition of another homestead or any change of residence of the married person until the land ceases to be a homestead pursuant to the provisions hereinafter set out.

(2) Land ceases to be the homestead of a married person when,—

- (a) a transfer of the land by that married person is registered in the proper Land Titles Office; or

- (b) a release of dower rights by the spouse of that married person is registered in the proper Land Titles Office as hereinafter provided for; or
- (c) a judgment for damages against that married person is obtained by the spouse of the said married person pursuant to sections 12 to 18 inclusive of this Act in respect of any land disposed of by the married person and the judgment is registered in the proper Land Titles Office.

(3) When a disposition of a homestead is made by an agreement for sale, lease, mortgage, incumbrance or other instrument which does not finally dispose of the interest of the married person in the homestead, an order of a judge dispensing with the consent of the married person's spouse to such disposition only extinguishes the dower right of the spouse in the homestead to the same extent as the voluntary consent of the spouse to the disposition would have done.

CONSENTS.

5.—(1) Any consent required for the disposition *inter vivos* of the homestead shall be contained in or annexed to the instrument by which the disposition is effected and shall, whenever that instrument is produced for registration under the provisions of *The Land Titles Act*, be produced and registered therewith.

(2) The consent in writing of the married person's spouse to any disposition shall state in Form A in the Schedule or to the like effect, that the spouse consents to the disposition of the homestead and has executed the same for the purpose of giving up the spouse's life estate and other dower rights in the homestead to the extent necessary to give effect to the disposition.

(3) If the consent is contained in the instrument, the spouse's signature to the instrument shall be a sufficient signature to the consent as well as to the instrument.

(4) The consent may be contained in or written or indorsed at the end of or at any place on the instrument and the spouse's signature to the consent shall be a sufficient signature to the instrument as well as to the consent.

(5) If the consent is annexed to the instrument, the spouse shall sign both the consent and the instrument.

(6) The Registrar of Land Titles, before registering any disposition of land,—

- (a) not purporting to be consented to under this Act; or
- (b) not accompanied by an order of a judge dispensing with the consent; or
- (c) not covered by a registered and subsisting release of dower rights;

shall require an affidavit of the owner in Form B in the Schedule or to the like effect, supported by such other evidence by affidavit or otherwise as the Registrar may prescribe:

Provided that if the disposition is executed under a power of attorney the party executing it may, if he is acquainted with the facts, make the affidavit.

6.—(1) When the spouse of a married person executes a consent to a disposition as required pursuant to this Act or a disposition containing such a consent, the spouse shall acknowledge apart from the married person,—

- (a) that the spouse is aware of the nature of the disposition;
- (b) that the spouse is aware that *The Dower Act, 1948*, gives the spouse a life estate and other dower rights in the homestead;
- (c) that the spouse consents to the disposition for the purpose of giving up the life estate and other dower rights in the homestead given by *The Dower Act, 1948*, to the extent necessary to give effect to the said disposition;
- (d) that the spouse is executing the document freely and voluntarily without any compulsion on the part of the married person.

(2) The acknowledgment may be made before any person authorized to take proof of the execution of instruments under *The Land Titles Act*, and a certificate thereof in Form C in the Schedule or to the like effect shall be indorsed on or attached to the disposition executed by the spouse.

(3) A judge may, upon being satisfied of the due execution of any consent and the making of any acknowledgment whether the consent was executed and the acknowledgment made within or without the limits of the Province, authorize the registration of the disposition notwithstanding that the proof of the execution of the consent or the making of the acknowledgment may be defective under the provisions of this section.

7.—(1) Where a homestead has been sold under an agreement of sale and,—

- (a) the spouse entitled to dower rights has consented thereto and given the acknowledgment required by this Act; or
- (b) a judge has dispensed with the consent of the spouse to the sale; or
- (c) a registered and subsisting release of dower rights was on the register at the time of the execution of the agreement of sale;

no further signature of the spouse or acknowledgment shall be required upon a transfer of the homestead in fulfilment of the terms of the agreement of sale.

(2) Upon the transferee filing,—

- (a) the agreement of sale accompanied by the consent in Form A in the Schedule and the acknowledgment in Form C in the Schedule or accompanied by the order dispensing with the consent of the spouse or accompanied by the consent and acknowledgment required by chapter 206 of the Revised Statutes of Alberta, 1942, if executed prior to the repeal of that Act; and
- (b) a transfer of the land; and
- (c) an affidavit identifying the transferee as the purchaser under the agreement of sale;

and otherwise complying with the provisions of this Act, and paying the prescribed fees, the Registrar shall issue a certificate of title in favour of the transferee.

RELEASES.

8.—(1) The spouse of a married person who owns a homestead may execute a release of dower rights in Form D in the Schedule or to the like effect.

(2) Any such release shall be supported by the spouse's affidavit in Form E in the Schedule or to the like effect.

(3) Every such release and supporting affidavit shall be executed and sworn to apart from the married person in whose favour the release is made, and before any solicitor, barrister, lawyer, or attorney-at-law residing in the Province of Alberta, or in any other province, dominion, state or country, other than the solicitor or the partner or employee of the solicitor acting for the said married person.

(4) Upon the registration of any such release in the proper Lands Titles Office, the land described therein shall cease to be a homestead, and the spouse of the married person shall cease to have any dower rights in the said land, and the Registrar shall indorse a memorandum of the same upon the certificate of title.

9.—(1) At any time before a transfer is registered in the proper Land Titles Office transferring the land of a married person in respect of which a release of dower rights has been registered pursuant to section 8, the spouse of such married person may execute and register a caveat against the said land and thereupon the Registrar shall cancel the said release, and the spouse shall be entitled to dower rights in the said land except as otherwise provided in this Act, to the same extent as if the said release had never been registered.

(2) The dower rights to which the spouse becomes entitled pursuant to subsection (1) shall be subject to any rights which have accrued to or been acquired by any person in the said land in good faith and for valuable consideration prior to the filing of the caveat.

10.—(1) The spouse of a married person who owns a homestead may execute an agreement releasing to the married person the dower rights in the homestead given to the said spouse by this Act.

(2) Any such agreement,—

- (a) shall be in writing;
- (b) shall be for valuable consideration and the consideration shall be expressed in the agreement;
- (c) shall be acknowledged by the spouse releasing the dower rights, apart from the married person with whom the agreement is being made, and before any solicitor, barrister, lawyer, or attorney-at-law residing in the Province of Alberta or in any other province, dominion, state or country, other than the solicitor or the partner or employee of the solicitor acting for the said married person, and a certificate thereof in Form C in the Schedule shall be signed by the said person and indorsed on or attached to the agreement;
- (d) shall be signed by the spouse releasing the dower rights in the presence of the person before whom the acknowledgment was made;
- (e) may be contained in or form part of a separation or other agreement;
- (f) may be general in character applying to all homesteads of the married person, or may be specific applying only to a described homestead.

DISPENSING WITH CONSENT.

11.—(1) A married person who is desirous of making a disposition of his homestead and who cannot obtain the consent of his spouse may in any case where,—

- (a) the married person and his spouse are living apart; or
- (b) the said spouse has not since the marriage lived in the Province; or
- (c) the whereabouts of the said spouse is unknown; or
- (d) the married person has two or more homesteads; or
- (e) the said spouse has executed an agreement in writing and for valuable consideration to release the spouse's claim to dower pursuant to section 10; or
- (f) the spouse is a mentally incompetent person or a person of unsound mind;

apply by notice of motion to a judge for an order dispensing with the consent of the spouse to the proposed disposition.

(2) Where a judge is satisfied that the spouse has not since the marriage lived within the Province, or that the whereabouts of the spouse is unknown, he may dispense

with the giving of notice of the application for the order or give such other direction as to the service of notice as may to him appear proper.

(3) Where the spouse is a mentally incompetent person or a person of unsound mind, notice of any application to dispense with the consent of the spouse shall be served in the manner provided by the Rules of the Supreme Court for the service of statements of claim on such persons.

(4) On any such application a judge may hear such evidence and consider such matters as in his opinion relate to the application, and without restricting the generality of the foregoing, he may consider,—

- (a) in the case of a husband and wife who are living apart, the circumstances of the separation and the financial resources of the parties and their mode of life;
- (b) in the case of a married person with two or more homesteads, which homestead the spouse of the married person would prefer the married person to retain;
- (c) in the case of a spouse who has executed an agreement in writing and for valuable consideration to release the spouse's claim to dower, whether the other provisions of the agreement have been performed and whether the consideration has been paid.

(5) A judge may, by order, dispense with the consent of the spouse if, in the opinion of the judge, it seems fair and reasonable under the circumstances so to do.

(6) A judge may make the order without imposing any conditions, or upon such terms and conditions as to notice, payment into court, or otherwise as the judge in the circumstances thinks proper.

(7) Upon the order being made and filed with the Registrar of Land Titles, together with the disposition, and upon payment of the proper fees, the Registrar shall register the disposition in the same manner as if the spouse of the married person had consented thereto.

REMEDY OF SPOUSE.

12.—(1) Every married person who makes any disposition to which a consent is required by this Act, without the consent in writing of the spouse of such married person or without an order dispensing with the consent of the spouse which disposition results in the registration of the title in the name of any other person shall be liable to the spouse in an action for damages for a sum equivalent to one-half the consideration for the disposition made by the married person, if such consideration is of a value substantially equivalent to that of the property transferred, or one-half the value of the property at the date of the disposition, whichever is the larger.

(2) In the event of the death of the married person, any such action may be commenced or continued against the executors or administrators of the estate of the deceased married person, but the liability of the executors or administrators in the said action shall be limited to the assets of the estate which are undistributed at the time of the service of the statement of claim upon the executors or administrators or any of them.

(3) Every such action shall be commenced within six years from the discovery by the spouse of such married person of the disposition:

Provided, however, that the action shall be commenced in any case not later than two years after the death of the married person.

13.—(1) Where a spouse recovers a judgment against the married person pursuant to section 12, the married person upon producing proof satisfactory to the Registrar that the judgment has been paid in full may register a certified copy of the judgment in the proper Land Titles Office.

(2) Upon such registration the spouse shall cease to have any dower rights in any lands registered or to be registered in the name of the married person and all such lands shall cease to be homesteads for the purposes of this Act.

14.—(1) Where a spouse recovers a judgment against the married person pursuant to section 12, which is not paid and the judgment debtor has insufficient assets liable to be sold or applied in satisfaction of the judgment or of the balance owing thereon, the spouse may apply by way of originating notice to a judge of the Supreme Court for an order directing payment of the unsatisfied judgment out of the Assurance Fund created pursuant to *The Land Titles Act*.

(2) The originating notice shall be served upon the Registrar of the Land Registration District in which the homestead disposed of is situated and upon the Attorney General of the Province thirty days before the date on which the originating notice is returnable.

15. Upon the hearing of the application, the applicant shall show, unless the judge in his discretion otherwise orders,—

- (a) that he has obtained a judgment as set out in section 12 stating the amount thereof and the amount owing thereon at the date of the application;
- (b) that he has caused to be issued a writ of execution, and that,—
 - (i) the sheriff or bailiff has made a return showing that no goods of the judgment debtor liable to be seized in satisfaction of the judgment debt could be found; or

- (ii) the amount realized on the sale of goods seized or otherwise realized, under the writ was insufficient to satisfy the judgment (stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized) ;
- (c) that he has caused the judgment debtor to be examined, pursuant to the law for that purpose provided, touching his estate and effects and his property and means, or that he is unable to examine the judgment debtor, giving the reasons therefor ;
- (d) that he has made searches and inquiries to ascertain whether the judgment debtor is possessed of assets, real or personal, liable to be sold or applied in satisfaction of the judgment ;
- (e) that by such searches, inquiries and examination,—
 - (i) he has learned of no assets, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt ; or
 - (ii) he has learned of certain assets (describing them) owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment and has taken all necessary actions and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment (stating the amount so realized and the balance remaining due on the judgment after application of the amount realized).

16.—If the judge is satisfied,—

- (a) of the truth of the matters shown by the applicant as required by section 15 ; and
- (b) that the applicant has taken all reasonable steps to learn what means of satisfying the judgment are possessed by the judgment debtor ; and
- (c) that there is good reason for believing that the judgment debtor has insufficient assets liable to be sold or applied in satisfaction of the judgment or of the balance owing thereon ;

the judge may make an order directing payment of the unsatisfied judgment out of the Assurance Fund.

17.—(1) The spouse shall forthwith register certified copies of the judgment and of the order directing payment of the same out of the Assurance Fund, in the proper Land Titles Office.

(2) Upon such registration, the spouse shall cease to have any dower rights in any land registered or to be

registered in the name of the married person, and all such lands shall cease to be homesteads for the purposes of this Act.

(3) Upon proof of the registration of the certified copies of the judgment and the order in the proper Land Titles Office, and upon receipt of a certified copy of the order, the Provincial Treasurer shall pay the amount so ordered to be paid out of the Assurance Fund and thereupon shall be entitled to an assignment of the judgment and shall be subrogated to all the rights of the spouse who recovered the judgment.

18. The provisions of *The Land Titles Act* relating to the Assurance Fund and recovery therefrom shall apply to applications for payment out of the Fund pursuant to this Act in so far as they are not varied by the provisions of this Act.

LIFE ESTATE TO SURVIVOR.

19. Every disposition by will of a married person and every devolution upon the death of such married person intestate shall, as regards the homestead of the married person, be subject and postponed to an estate for the life of the spouse of the married person hereby declared to be vested in the spouse so surviving.

20.—(1) The rights of a surviving spouse under this section shall in no case apply to more than one homestead, and if a married person dies owning two or more homesteads, the surviving spouse shall elect in writing, signed by such spouse, the homestead in which the life estate is claimed.

(2) The election shall be addressed to the Registrar and shall be in Form F in the Schedule or to the like effect.

(3) If a married person dies owning two or more homesteads, no homestead belonging to the deceased married person shall be transferred or otherwise disposed of by the executor or administrator of the estate of the deceased married person until the executor or administrator has registered in the proper Land Titles Office the election of the surviving spouse.

(4) If the surviving spouse neglects or refuses to make an election, the executor or administrator may, at the expiration of three months after the date of the married person's decease, apply by notice of motion to a judge for an order designating the homestead to which the dower rights of the surviving spouse attach.

(5) The executor or administrator shall register any such order with the Registrar of the proper Land Titles Office.

21. Upon the registration of any election, or upon the registration of any order designating the homestead of a deceased married person, all other lands belonging to the

deceased married person shall cease to be homesteads within the meaning of this Act, and the executor or administrator may transfer or dispose of the same without any further consent from the surviving spouse of the married person.

22.—(1) In the case of any disposition of the homestead of a deceased married person during the lifetime of the spouse, the spouse of the deceased married person shall execute the consent in Form A in the Schedule or to the like effect.

(2) The Registrar of Land Titles, before registering any disposition of land made by the executor or administrator of the estate of a deceased person,—

- (a) not purporting to be consented to under this Act by the spouse of the deceased married person; or
- (b) not accompanied by an order of a judge dispensing with the consent of the surviving spouse of the deceased married person; or
- (c) not covered by a registered and subsisting release of dower rights;

shall require an affidavit of the executor or administrator in Form G in the Schedule or to the like effect.

23.—(1) Where at the time of the death of a married person the spouse is living apart from such married person under circumstances which would disentitle a wife to alimony, no life estate shall vest in the spouse, nor shall the spouse take any benefit under this Act.

(2) The executor or administrator of the estate of a deceased married person may in any such case or in any case where the married person could have made such an application, apply to a judge by notice of motion for an order dispensing with the consent of the surviving spouse to any disposition.

24.—(1) When a life estate in the homestead vests in the surviving spouse upon the death of a married person, the surviving spouse shall also have a life estate in the personal property of the deceased declared in *The Exemptions Act* to be free from seizure under a writ of execution in his lifetime, and shall be entitled to the use and enjoyment of the said personal property.

(2) In the event of any dispute arising as to what articles are included in the personal property referred to in subsection (1), the question shall be submitted by way of notice of motion to a judge having jurisdiction in the judicial district in which the homestead lies, who shall summarily decide it.

GENERAL.

25.—(1) The dower rights given to the spouse of a married person pursuant to this Act shall apply to mines and minerals contained in any homestead, and no married person shall make any disposition of mines and minerals contained

in or forming part of any homestead without the consent in writing of the spouse of such married person in accordance with the provisions of this Act.

(2) Nothing contained in this section shall give the spouse of a married person any dower interest in mines or minerals contained in any certificate of title registered in the name of the married person other than the certificate of title to the homestead, and no consent or acknowledgment under this Act shall be required to the disposition of any such mines and minerals or any interest therein.

26.—(1) In any case where a married person is a joint tenant, tenant in common, or owner of any other partial interest in land together with any person or persons other than the spouse of the married person, this Act shall not apply to such land and it shall not be a homestead within the meaning of this Act nor shall the spouse have any dower rights in it.

(2) In any case where a married person and his spouse are joint tenants or tenants in common in land, the execution of a disposition by them shall constitute a consent by each of them to the release of their dower rights and no acknowledgment under this Act shall be required from either of them.

27. This Act shall apply to all married persons whether or not they have attained the age of twenty-one years, and for the purposes of this Act, and every matter or thing done under or by virtue of its provisions, a married person of whatever age shall be deemed to be *sui juris*.

28. *The Dower Act*, being chapter 206 of the Revised Statutes of Alberta, 1942, is hereby repealed.

29. This Act shall come into force on the first day of September, 1948.

SCHEDULE.

FORM A.

(Section 5.)

CONSENT OF SPOUSE.

I, being married to the above named do hereby give my consent to the disposition of our homestead, made in this (or the annexed) instrument, and I have executed this document for the purpose of giving up my life estate and other dower rights in the said property given to me by *The Dower Act, 1948*, to the extent necessary to give effect to the said disposition.

.....
(Signature of Spouse.)

FORM B.
(Section 5.)

AFFIDAVIT.

I, of
in the Province of,
(occupation)

make oath and say:

1. That I am the transferor (or mortgagor, lessor or incumbrancer, as the case may be) (or the duly appointed agent acting under power of attorney in my favour dated the day of A.D. 19..... granted by the transferor, mortgagor, or incumbrancer) named in the within (or annexed) instrument.

2. That the land described in the said instrument is not and does not include any part of my homestead (or the homestead of my principal) within the meaning of *The Dower Act, 1948*.

3. That I am (or my principal is) not married.

or

That neither myself nor my spouse (or my principal or his spouse) have resided on the within mentioned land at any time since our (or their) marriage.

or

That a judgment for damages was obtained against me by my spouse (or my principal by his spouse) and registered in the Land Titles Office as No. dated the day of 19.....

Sworn before me at
in the Province of }
this day of }
A.D. 19..... }

.....
A Commissioner, etc. (or as the case may be)

FORM C.
(Section 6.)

CERTIFICATE OF ACKNOWLEDGMENT BY SPOUSE.

1. This document was acknowledged before me by
..... apart from her husband (or his wife).

2. acknowledged to me
that she (or he),—

- (a) is aware of the nature of the disposition (or agreement);
- (b) is aware that *The Dower Act, 1948*, gives her (or him) a life estate and other dower rights in the homestead;
- (c) consents to the disposition (or agreement) for the purpose of giving up the life estate and other dower rights in the homestead given to her (or him) by *The Dower Act, 1948*, to the extent necessary to give effect to the said disposition (or agreement);
- (d) is executing the document freely and voluntarily without any compulsion on the part of her husband (or his wife).

Dated at....., in the Province of
 this..... day of..... A.D.
 19.....

.....
 (Title of Officiating Officer.)

FORM D.

(Section 8.)

RELEASE OF DOWER RIGHTS.

To the Registrar of the..... Alberta Land Registra-
 tion District.

Take notice that I.....
 (name of spouse)
 being the wife (or husband) of.....
 (name of married person)
 of....., in the Province of.....,
 (address)
, who is the registered owner of the
 (occupation)
 following lands, namely:

hereby release to my husband (or wife) all my life estate
 and other dower rights in the above described lands and I
 hereby discharge my said husband (or wife)
his heirs, executors, and administrators
 from any claim for dower under *The Dower Act, 1948*, in
 respect of the said lands.

In witness whereof I have hereunto set my hand and seal
 this..... day of..... A.D. 19.....

Signed, sealed and delivered }
 in the presence of }

FORM E.
(Section 8.)

AFFIDAVIT IN SUPPORT OF DOWER RELEASE.

I, of, in the
Province of, make
(occupation)
oath and say:

1. That I am the wife (or husband) of
of in the Province of
(occupation)

2. That my said husband (or wife) is the registered
owner of the following lands, namely:

3. That I am aware that *The Dower Act, 1948*, gives me a
life estate and other dower rights in the said lands.

4. That I am executing this release for the purpose of
giving up my life estate and other dower rights in the said
lands.

5. That I am executing this release freely and voluntarily
without any compulsion on the part of my husband (or
wife).

Sworn before me at }
in the Province of }
this day of }
A.D. 19 }

.....
A Commissioner, etc. (or as the case may be)

FORM F.
(Section 20)

ELECTION.

To the Registrar of the Alberta Land Registra-
tion District.

Take notice that I
(name of spouse)
being the widow (or widower) of
(name of deceased married person)
formerly of in the Province of
(address)
....., do hereby elect and claim my life estate
(occupation)
under *The Dower Act, 1948*, in the lands registered in the
name of my said deceased husband (or wife) (or in the
name of the executor or administrator of his (or her) estate)
and described as follows:

In witness whereof I have hereunto set my hand and seal this.....day of.....A.D. 19.....

Signed, sealed and delivered }
in the presence of }
.....

FORM G.

(Section 22.)

AFFIDAVIT OF EXECUTOR OR ADMINISTRATOR.

I.....of.....in the Province
of.....,.....make oath and say:
(occupation)

1. That I am the executor (or administrator) of the estate
of.....

2. That the land described herein is not and does not include any part of the homestead of the deceased.

3. That to the best of my knowledge, information and belief, the deceased was not married.

or

That to the best of my knowledge, information and belief, the spouse of the deceased married person is dead.

or

That to the best of my knowledge, information and belief, neither the deceased nor the spouse of the deceased have resided in the within mentioned land at any time since their marriage.

or

That a judgment for damages was obtained against the deceased by his spouse and registered in the Land Titles Office as No.....dated the.....day of.....
.....A.D. 19.....

or

That the homestead of the deceased consists of land other than the within mentioned land as determined by the election of the spouse (or the order of the judge) dated the.....day of.....and registered in the Land Titles Office as No.....dated the.....day of.....
.....A.D. 19.....

Sworn before me at..... }
in the Province of..... }
this.....day of..... }
A.D. 19..... }

.....
A Commissioner, etc. (or as the case may be)

No. 69

FIFTH SESSION
TENTH LEGISLATURE
12 GEORGE VI
1948

BILL

An Act Respecting the Interests of
Married Persons in Each
Other's Homestead.

Received and read the

First time

Second time

Third time.....

HON. MR. MAYNARD.

EDMONTON:
A. Shnitka, King's Printer