THE LAW OF DOWER.

While the action, or plaint, for dower is almost unknown in England, this claim of the widow is a subject of frequent and difficult litigation in this Province. The judges and the legislators of Ontario have carefully preserved the ancient immunities of the widow, though the rights of married women have been for the last few years in a constant state of flux and change. The words of Lord Bacon, though no longer applicable in their entirety to England, are of full significance in Ontario. The tenant in dower, he says, is so much favoured, as that it is the common by-word in the law, that the law favoureth three things: (1) life; (2) liberty; (3) dower. It is somewhat singular that none of our law-writers have taken up this subject, which affords ample materials in the many modern decisions for a very useful and valuable treatise. Mr. Draper's book is now out of date, and at best was rather sketchy in character. In England, Mr. Park's book relates chiefly to ancient law and black letter cases; though very excellent and thorough, so far as it goes, it is half a century behind our requirements in Canada. The American work of Mr. Scribner is unnecessarily voluminous, and besides being badly arranged is filled with the manifold enactments and conflicting decisions of the various States of the Union. There is certainly a fine field for Canadian legal authorship in this region, and we hope that some competent student of our laws may regard it as a debt he owes his profession to embody his industry and research in a volume devoted to the law of dower.

There are in truth many anomalies, and many difficulties yet unsolved, and many decisions that cannot be reconciled to be met with in the investigation of this subject. It is held to be no objection to an action for dower, that the demandant has been in possession of the land since her husband's death, inasmuch as she has the right to have her dower specifically assigned: *Gilkison* v. *Elliott*, 27 U.C. Q.B. 95. The assignment of dower by the sheriff should be by metes and bounds; the heir may assign one-third in general of the estate, but in neither case is livery of seisin or any writing required, because, as it is said, dower is due of common right: *Fisher* v. *Grace*, 28 U.C. Q.B. 312. Therefore it has been held that as between the devisees and the widow a parol assignment of part of the land for the life of the widow in respect of her dower is good, and that such an agreement is not within the Statute of Frauds: *Leach* v. *Leach*, 8 Gr. 499.

A widow's claim to dower does not, in the absence of an assignment of dower out of the lands, give her an immediate estate in the lands, though she is in occupation of them, and ejectment is maintainable against her by the tenant of the freehold without demand of possession: *McEnally* v. *Wetherell*, 15 Irish C. L. R. 502. Against this is Sir Anthony Hart's opinion in *Lloyd* v. *Trimleston*, 2 Molloy, 81; see also *Talbot* v. *Scott*, 4 K. & J. 117. In this Province it has been held that the widow before assignment has not such an estate as a mere release can operate upon, and that a "quit-claim" deed to her so circumstanced was of no validity: *Acre* v. *Livingstone*, 26 U.C. Q.B. 282. From this judgment, Mr. Justice Hagarty dissented, and it cannot be said that the law on this point is settled. In *Collyer* v. *Shaw*, 19 Gr. 599, Strong, V.C., is reported as having disavowed his concurrence with the majority of the Court in *Acre* v. *Livingstone*, but the case is so baldly reported as not to carry much weight.

The right to dower, whether inchoate or consummate, is one of the few valuable interests which cannot be reached at law by execution to satisfy creditors: *Allen*