DOWER IN AN EQUITY OF REDEMPTION.

The cases of *Standard Realty Co.* v. *Nicholcon* (1911), 24 O.L.R. 46, and *Re Auger* (1912), 26 O.L.R. 4ᵔ2, have re-agitated questions frequently before the courts since 1834, but which, whenever they arise, seem to cause difficulty in spite of repeated earlier judicial consideration. Therefore, some excuse exists for referring to earlier decisions and attempting to trace their effect upon the existing law of dower in a husband's equity of redemption.

Prior to 1834 the question could not arise, because a widow only had dower in the lands of her husband whereof he was *seized* during coverture: 25 Edw. 1, c. 7; see R.S.O. c. 330, s. 6 (1). Seizin implied the possession of a legal estate in lands, and so there was no dower in interests in lands of which courts of equity alone took cognizance. One of the reforms proposed by the Real Property Commissioners in 1829 and 1830 in England was an amendment to the law of dower whereby the widow should under some circumstances have dower out of her husband's equitable estates, and in 1833 an Act was passed, which was adopted in part in Upper Canada as 4 William IV., c. 1, giving a widow dower out of lands of which the "husband *dies* beneficially entitled whether wholly equitable or partly legal and partly equitable," and this enactment is preserved in the present Act respecting Dower, 9 Edw. VII., c. 39, s. 4. This enactment had an important effect upon that species of equitable estate known as the equity of redemption, because it enabled a widow to claim her dower where the equity of redemption subsisted in her husband at his death. He had died beneficially entitled, and so her dower must be assigned to her—subject, of course, to the mortgagee's prior claim. The only question then would be, what proportion of the equity of redemption must be set aside for dower? One-third of the value of the land after deducting the mortgage, or one-third of its value regardless of the incumbrances upon it? Where the husband