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VALUATION OF DOWER DURING HUSBAND'S LIFETIME.

Editor, CANADIAN BAR REVIEW.

SIR.—Not all of us are as much shocked as "Amicus Curiae"¹ by the decision in *Re Lesperance*.² It is true that the order in this case goes beyond the one made in *Pratt v. Bunnell*,³ since it undertakes to determine the present worth of the wife's contingent right to dower and directs that such present worth be paid to her out of Court; whereas in *Pratt v. Bunnell (supra)*, Street, J., entered on no speculation as to whether the wife would survive her husband or as to the probable duration of life of either husband or wife. He merely directed that one-third of the surplus after satisfaction of the mortgage be paid into Court, that the interest on it be paid to a trustee for the execution creditors during the husband's lifetime and thereafter to the wife during her lifetime (if she survived), and that, subject to this, the principal be held in trust for the execution creditors. That is precise: and ensures that the parties shall receive exactly what they are entitled to, in accordance with future circumstances as they actually develop. But the valuation of contingencies, probabilities and reasonable expectations is common enough in our law. Juries value such things every day. As I understand it, a valuation of this kind was made in *Re Lesperance (supra)*. The table in Cameron on *Dower*, to which reference was made, purports to give the present worth during the husband's lifetime of the wife's possible right to dower, in the event of her surviving. It is based on the ages of the parties and their expectancy of life. Though the process of calculation is not indicated, it undoubtedly takes into consideration the chance that the wife may not survive her husband and therefore may never be entitled to dower at all. It is, in fact, a valuation of the wife's chance.

Perhaps in special circumstances, such as pronounced ill health of wife or husband, it might be unfair to apply this table, and objection on this account by any party interested should be heeded. But there seems nothing wrong in principle, failing such objection, in trying to determine once and for all, allowing for all contingencies, the present worth of the wife's possible dower and giving it to her immediately. That would be convenient and logical in the case of a separation agreement as between husband and wife; and why not between the wife and his creditors? The risk and the benefit are shared equally by the parties; and if the wife profits by an immediate cash payment in satisfaction of an interest yet shadowy but perhaps in future much more substantial than what she now receives, the creditors also gain by the discounting of her claim and by an immediate cash receipt in commutation of dribblets over a series of years. The amount in Court in *Re Lesperance (supra)* was very small; and the husband had no interest in it.

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AMICUS AMICI.

¹ 5 C.B. Rev. 773.

² [1927] 4 D.L.R. 391; 61 O.L.R. 94.

³ 21 O.R. 1.