manors of her husband, yet she shall be barred of her dower by this branch without the husband's *free reconciliation, albeit it hath been other- **139**
wise holden; and the reason that they yielded is because it is no elopement, whereas it appeareth before that the words *reliquierit et abierit* (leave and go away) are not of the substance of the bar of dower but the adultery and the remaining with the adulterer, and albeit she and the adulterer remain within any of the lands or manors of the husband, yet (the words being *si uxor sponte reliquierit, &c.*) she hath left and gone from her husband in that case which is a personal offence." And Britton, 258 b, writing shortly after the Statute, and speaking of a writ of dower against the heir and his guardian, observes, "he may say she hath forfeited dower of her husband by adultery, for she went from her husband to another bed after she had married him and so forfeited her dower." It appears too from Paynell's case, that after elopement the law will not permit an averment that there was no adultery, though after the death of the husband the wife and the adulterer intermarry, Co. Litt. 32 a, n. 10.

Forfeiture based on adultery rather than elopement.—The modern as well as the ancient authorities accordingly place the forfeiture on the fact of the wife's living apart from her husband in adultery, and not on the circumstances attending the elopement. Thus in Hetherington v. Graham, 6 Bing. 135, where the tenant pleaded that the wife during coverture had voluntarily left her husband and lived in adultery, the demandant replied that she left with her husband's consent, and that the separation so continued till the husband's death, and if any adultery took place it was after such separation by mutual consent. The Court stated the question to be, whether committing an act of adultery and continuing with the adulterer is a bar where the wife has previously left the husband with his consent and is living apart with his consent at the time of adultery, or whether it is necessary to satisfy the words of the Statute, that the original leaving of her husband should be with the adulterer by his means or persuasion, and it was determined that it was not necessary that the wife had left her husband willingly with the adulterer, had gone away with, and had also continued with him, but that it was sufficient to bring the case within the Statute, if the wife has of her own consent left the society of her husband, and after she has so left him commit the act of adultery. All the circumstances mentioned in the Act need not concur in form if they do in substance.

In the later case of Woodward v. Dowse, 10 C. B., 722, to a similar plea the demandant replied that she was forced to and necessarily did leave her husband by reason of his cruelty, which was sufficient to make cohabitation with him unsafe and to entitle her to a divorce *a mensa et toro*, and that she was ready to return to him but for his cruelty and his cohabitation with another woman. And the Court held that she had forfeited her dower though she had originally left her husband in consequence of his cruelty. Willes J. observed that on looking at the Statute of Rape, 6 R. 2, c. 6, and this against carrying away a religious, it would appear that the word *sponte* is used in contradistinction to a forced elopement. The best construction is that leaving *sponte* is not of the essence of the offence that leads to forfeiture. It is enough if having left her husband's house she commit adultery. Nay, the words *sponte reliquierit*, &c., are satisfied by the mere