

ery, though she offered to return to him and he refuse to receive her. This case is in effect affirmed in *R. v. Flintan*, 1 B. & Ad. 227. However in *Green v. Harvey*, Bac. Abr. Dow. F.; 9 Vin. Abr. 241, pl. 9, it was held, that if the husband's relations keep him from his wife, so that she does not know what has become of him, and give out that he is dead and procure her to release all marriages and interest which she has in him, and also persuade her to marry again, which she does with one who has notice that her first husband is alive, but she has none, though she lives in adultery with this man, and though her husband be not out of the realm, nor beyond seas, so that she ought to have taken notice of his being alive, yet because *non reliquit virum sponte*, but by persuasion of his friends, not knowing herself but that he was dead, this is no such elopement as will bar her of her dower.

It is said in F. N. B. 150 H, that if the wife remain in adultery upon the husband's lands or tenements, she shall have dower, because the same is not an elopement, and Byles J. seems to have thought in *Woodward v. Dowse supra*, that if she committed adultery in her husband's own house she could not be barred; and so *it was held in New Hampshire in **141** the case of *Cogwell v. Tibbetts*, 3 N. H. 41. And it seems to be the law that she must leave her husband. But Lord Coke, as we have seen, expressly says that if the wife leave her husband's house or habitation, it is an elopement within the Statute, and consequently if she commit adultery on any other of his lands or manors she forfeits her dower, see *Park Dow. 224*.

Pleading.—The facts of elopement and adultery may be pleaded, as we have seen, to a writ of dower. The old precedents state that the leaving of the husband by the wife was with the adulterer, Lib. Intrat. fo. 20; Rast. Ent. 230; *Haworth v. Herbert*, 2 Dyer, 106 b. But it is not necessary that all the circumstances mentioned in the Statute should concur in form, provided they do in substance, *Hetherington v. Graham supra*. See this case and *Woodward v. Dowse supra* for the form of pleas without this allegation. The precedents also traverse any subsequent reconciliation by the husband with her in his life-time. However this does not seem to be necessary, 2 Chit. Pl. 1319. If reconciliation be replied, it must be stated to be voluntary and without coercion on the husband, and perhaps that he subsequently permitted her to cohabit with him, for so are the words of the Statute. Lord Coke *supra* says that cohabitation only in the same house is not sufficient to prove a voluntary reconciliation by the husband. Apparently he uses the words simply in the sense of residence, for no doubt every fresh cohabitation (in the sense in which the word is ordinarily used) is a reconciliation, per Willes J. in *Woodward v. Dowse supra*; *Haworth v. Herbert*, 1 Roll. Abr. 680, pl. 10; Vin. Abr. Dower, P. pl. 10. In the case of *Haworth v. Herbert*, upon issue joined on reconciliation after elopement, the evidence to prove the reconciliation was that the husband and wife lay together divers nights and in divers places after the departure and separation, and demeaned themselves as man and wife. It was objected that they never lived together in one house, but were apart, and the wife continued in adultery with one or other during all the life-time of the lord; and *non allocatur* upon this plea and issue, for there may have been divers elopements and divers re-