

138

CAP. XXXIV.

It is Felony to commit Rape. A married Woman elopeth with an Advouterer. The Penalty for carrying a Nun from her House.

(4) And if a Wife willingly leave her Husband, and go away, and continue with her Advouterer, she shall be barred for ever of Action to demand her Dower, that she ought to have of her Husband's Lands, if she be convict thereupon, except that her Husband willingly, and without Coertion of the Church, reconcile her, and suffer her to dwell with him; in which case she shall be restored to her Action.

Et uxor si sponte reliquerit virum suum & abierit & moretur cum adultero suo amittat imperpetuum actionem petendi dotem suam que ei competere posset de tenemento viri si super hoc convincatur nisi vir suus sponte & absque coertione ecclesiastica eam reconciliet & secum cohabitare permittat in quo casu restituatur ei actio.

This Statute, after making a distinction between carrying away women with force and without force, and enacting a punishment for those offences, provides for the case of a woman leaving her husband voluntarily and continuing with her adulterer. Its exposition given by Lord Coke, in 2 Inst. 435, has ever since been adhered to. He says, "albeit the words of this branch be in the conjunctive, yet if the woman be not taken away *sponte* but against her will, and after consent and remain with the adulterer without being reconciled, &c., she shall lose her dower; for the cause of the bar of her dower is not the manner of going away, but the remaining with the adulterer in adultery without reconciliation that is the bar of the dower. If the wife goeth away with her husband's agreement and consent with A. B., if after A. B. commit adultery with her and she remain with him without reconciliation, she shall be barred of her dower." See Paynel's case, *ibid.*, where the husband had granted his wife to the adulterer, and Coot v. Berty, 12 Mod. 232, a similar case, and the grant held void. "Albeit she doth not continually remain in avowtry (or adultery) with the adulterer, yet if she be with him and commit adultery it is a tarrying within the Statute. Also if she once remain with the adulterer in avowtry, and after he keepeth her against her will, or if the adulterer turn her away, yet she shall be said *morari cum adultero* within this Act. And if the wife elope from her husband's house of habitation and commit adultery in any other the lands or manors of her husband, this without the free reconciliation of the husband is within the purview of the Act." He goes on to say, "Note that cohabitation is not sufficient without reconciliation made by the husband *sponte*, so as cohabitation only in the same house with her husband availeth her not; *a fortiori*, though she remain with the adulterer in any of the lands or