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COMMENTS

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INTRODUCTION

In what is a case of first impression,[1] a Florida district court recently held[2] that the Statute of Westminster was not a part of the law of Florida. The statute[3] enacted in 1285 stated that "If a *wife willingly leave* her husband and go away and continue with her advouterer," (emphasis added) she shall be barred of her *dower*[4] unless her husband should afterward forgive her and take her back. In other words, the common law doctrine declared that a wife would forfeit her dower if she voluntarily left her husband and committed adultery.

It is the purpose of this article to discuss this ancient common law statute and its subsequent treatment by the various states of the Union. Because of the recent decision[5] in Florida, particular emphasis will be given to the status of the rule in this state.

The foundation of American jurisprudence is the English common law.[6] It has been adopted generally throughout the United States with the exception of Louisiana, although some states have either modified, amended or repealed it by statute or by constitutional provision.[7] The common law usually prevails as long as it is consistent with the Constitution and laws of the United States and the constitution and laws of the particular state.[8] For example, the common law and certain statutes declared to be in force in Florida are stated as follows:[9]

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1. In Henderson v. Chaires, 25 Fla. 26, 6 So. 164 (1889), since adultery was not proved, the court did not have to consider the applicability of the Statute of Westminster.
2. Wax v. Wilson, 101 So.2d 54 (Fla. App. 1958).
3. 13 Edw. 1, c. 34 (1285).
4. MOYNIHAN, REAL PROPERTY, DOWER 27 (1940). At common law a widow was entitled on the death of her husband, to a life estate in a third of the lands of which her husband was seised in fee simple or in fee tail at any time during the marriage. This life estate is called the widow's estate of dower.
5. See note 2 *supra.*
6. 11 AM. JUR. *Common Law* § 4 (1937).
7. *Ibid.*
8. Burlingame v. Traeger, 101 Cal. App. 365, 281 Pac. 1051 (1929); Matthews v. McCain, 125 Fla. 840, 170 So. 323 (1926); Lutz v. State, 167 Md. 12, 172 Atl. 354 (1934); Nadstanek v. Trask, 130 Ore. 669, 281 Pac. 840 (1929).
9. FLA. STAT. § 2.01 (1957). Comparable statutes to the same effect are: ILL. REV. STAT. ch. 28 § 1 (1957); N. C. GEN. STAT. ch. 4 § 4-1 (1953); PA. STAT. ANN. Tit. 46 § 152 (1952).

> The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state.

From the foregoing it follows that the states have adopted that part of the common law which is not inconsistent with their positive law. It has not been that simple, however. The Statute of Westminster has been one of those "said statutes" which has caused considerable dispute as to whether it is in force in the different states.

THE REASONS FOR THE ENACTMENT OF THE STATUTE OF WESTMINSTER

At common law, prior to the enactment of the statute, the commission of adultery by a wife did not preclude her right of dower.[10] Even if a wife abandoned her husband and committed adultery, such acts would not work a forfeiture.[11] At that time in history, neither adultery nor adultery coupled with the act of abandonment were grounds for divorce.[12] Under these circumstances, the husband did not have a remedy if his mate committed such acts of misconduct. He could not divorce her on the ground that she had engaged in adulterous relations with another man, and he was not able therefore to defeat her right to dower. To correct this situation, the English Parliament enacted the Statute of Westminster[13] in 1285, which barred the wife's right to dower where she voluntarily left her husband to live in adultery with another man.

To exclude the wife from dower under the statute, it must be proved that she, of her own free will, deserted her husband and lived in adultery, and when asked to return to him thereafter, refused to return without a just cause for such refusal.[14] Briefly, there must be a voluntary separation by the wife, as well as adultery, to make the bar complete.[15] Such is clearly the

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10. CO. LITT. 32, a (1953); 2 INST. 435 (1797); Seagrave v. Seagrave, 13 Vesey 443, 33 Eng. Rep. 358 (1884); See also, Bryan v. Batcheller, 61 R. I. 543, 78 Am. Dec. 454 (1860); Lakin v. Lakin, 84 Mass. 45, 2 Allen 45, (1861).

11. AMERICAN LAW OF PROPERTY §§ 5.35, 5.38 (1952).

12. The English Divorce Act of 1857 recognized adultery as a ground for divorce. BISHOP, MARRIAGE AND DIVORCE § 225 (6th ed. 1881); 1 BLACKSTONE, COMMENTARIES 94 (1898).

13. See note 3 *supra*.

14. Shaffer v. Richardson's Adm'r 27 Ind. 122 (1866); Cogswell v. Tibbetts, 3 N.H. 41 (1824); Reel v. Elder, 62 Pa. 308, (1869); Bell v. Nealy, 1 Bailey 312, (S.C. 1829); Harman v. Harman, 139 Va. 508, 124 S.E. 273 (1924) (The statute, while somewhat different in phraseology than the Statute of Westminster, had the same meaning as the English statute. The Virginia statute stated, "If a wife of her own free will, leave her husband and live in adultery, she shall be barred of her dower, unless her husband afterwards reconciled to her, and suffer her to live with him").

15. CO. LITT. 32, b (1853); 2 INST. 435-36 (1797).

interpretation given to it by the majority of American courts,[16] and the leading English cases are to the same effect.[17] The elopement need not be with the adulterer, for even where there has been a voluntary separation by mutual agreement the statute applies.[18] It is still necessary, however, that *she* should have separated herself from her spouse willingly. For example, in one case decided under a statute having the same meaning as the Statute of Westminster, a wife was not held to be barred where she had lived in adultery subsequent to her mate's desertion.[19] In another case, in which the English statute was held to be in force, the question was whether a woman living in adultery at the time of her husband's death, without having left or eloped with her adulterer, had forfeited her dower. It was held that she had not.[20]

It is important to note that the Statute of Westminster only refers to dower and not to the interests of intestacy or homestead. However, there are decisions which have expanded its scope to include these other rights.[21]

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16. Wiseman v. Wiseman, 73 Ind. 112 (1880); Owen v. Owen, 57 Ind. 291 (1877); Goss v. Froman, 89 Ky. 318, 125 S.W. 387 (1910); Cogswell v. Tibbetts, 3 N.H. 41 (1824); Morello v. Cantalupo, 91 N.J.Eq. 415, 111 Atl. 255 (1920); Adose v. Fossit, 1 Pearson 304 (Pa. 1867) (desertion and adultery on the part of the wife barred her from any right under the statute, since she was not a "member of the family" at the time of the husband's death.); Harman v. Harman, 139 Va. 508, 124 S.E. 273 (1924).

17. Bostock v. Smith, 34 Beav. 57, 55 Eng. Rep. 553 (1864) (The court stated there would be no forfeiture under the statute, if the wife had not left her husband's house "sponte sua", but had been compelled to take that step by the cruelty and misconduct of her husband); Hethrington v. Graham, 6 Bing. 135, 130 Eng. Rep. 1231 (1829) (dictum).

18. In *Hethrington v. Graham, supra* note 17, the wife had left her husband with his consent, and was living apart from him, with such consent, at the time she committed adultery. *Held*, that if the wife leaves her husband voluntarily, and afterwards lives in adultery, her dower is barred, though she does not elope with the adulterer. The court said, "We hold the proper construction of the statute to be what the words still will warrant, that if a wife leaves her husband with her own free will, and afterwards lives in adultery, the dower is forfeited."

19. Gordon v. Dickinson, 131 Ill. 141, 23 N.E. 439 (1890). See also Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73 (1899).

20. In Cogswell v. Tibbetts, 3 N.H. 41 (1824), there was no allegation that the wife left her husband, and the court said, "however gross her conduct there may have been, during the absence of her husband, it is very clear, it does not amount to an elopement." By way of dicta, the court added the following remarks, "To work the forfeiture, it is not necessary, that the wife should voluntarily leave the husband, for if, after she has been taken away against her will, she consents to abide with the adulterer, it will be deemed an elopement."

21. Cameto's Estate, Myrick Prob. Ct. Rep. 42 (Cal. 1873) (a wife who had been unfaithful to her husband and at the time of his death was separated from him and living in adultery was not entitled to have a homestead set apart for her); Coe v. Nelson, 59 S.W. 170 (Tenn. 1900) (by adultery the wife has forfeited *all* right to any benefits in her husband's property); Prater v. Prater, 87 Tenn. 78, 9 S.W. 361 (1888). *Contra*, Duffy v. Harris, 45 S.W. 545 (Ark. 1898) (abandonment and adultery would not bar the widows' right to the homestead). See also Turner v. Cole, 24 Ala. 364 (1854) (adultery would bar the right to dower, but the right to a distributive share was not an enlargement of the dower right and thus was not subject to the same exceptions); Mack v. Pairo, 136 Md. 179, 110 Atl. 198 (1920) (adultery has no effect on the right of the erring husband to his distributive share in the estate of his deceased wife); Lyons v. Lyons, 101 Mo. App. 494, 74 S.W. 467 (1903).

Another limitation on the application of the statute at common law was that it only barred the wife from dower and its operation did not extend to the husband's right to curtesy. This interpretation has been generally followed, but in some instances the scope of the statute has been expanded to include the husband.[22] The court in *Mack v. Pairo*[23] indicated that the statute is applicable to the husband, but held that it pertains only to real estate.

In summation, the reason for the enactment of the Statute of Westminster is apparent — it gave the husband a *remedy* if his wife committed adultery after deserting him. The remedy, though, was not relief in the true sense of the word, since it came into being at the husband's death. Undoubtedly, he could not enjoy the real effects of the statute at this time. A more appropriate cure could have been the enactment of a divorce statute.[24] Historically speaking, England did not recognize divorce on the grounds of adultery until a period subsequent to the enactment of the Statute of Westminster.[25] The results of this rule were negligible. For example, where a wife committed adultery but did not abandon her husband, she would not be barred from dower. The only function of the doctrine was to penalize the erring wife at her spouse's death.

DEVELOPMENT OF THE STATUTE IN THE UNITED STATES

The Majority Rule.

The general pattern developed has been to accept the Statute of Westminster either by adoption as part of the common law or by express legislative enactment.[26] In those states which have accepted the doctrine, there has been a complete disparity as to its application; eg., some states construe the statute literally, thus confining it only to the wife and her right of dower.[27] However, there have been acts which have explicitly provided that if *either* the husband or wife voluntarily leaves the other and commits adultery, he or

22. Stock v. Mitchell, 252 Ill. 530, 96 N.E. 1076 (1911) (The dower act provides that if a husband or wife voluntarily leaves the other and commits adultery, he or she shall be forever barred of dower, unless there is a subsequent reconciliation). *Contra*, Wells v. Thompson, 13 Ala. 793 (1848) (misconduct by the husband does not work a forfeiture of his curtesy).

23. 136 Md. 179, 110 Atl. 198 (1920).

24. There can be situations where a husband has grounds for divorce because of his wife's reprehensible conduct, but he may not want to procure a divorce for various reasons. His motives could be of a religious nature or they may be unknown. For example, in one case where the husband had knowledge of his wife's misconduct, but did not take advantage of the divorce statute, the court held that the wife would not be barred of her dower. Schmeizl v. Schmeizl, 186 Md. 371, 46 A. 2d 619 (1946).

25. See note 12 *supra*.

26. See Annots., 71 A.L.R. 278 (1931), 139 A.L.R. 481 (1942).

27. Stegall v. Stegall, Fed. Cas. No. 13351 (C.C. Vt. 1825); Schmeizl v. Schmeizl, 186 Md. 371, 46 A. 2d 619 (1946) (The statute only applies to dower); Mack v. Pairo, 136 Md. 179, 110 Atl. 198 (1920) (dictum); Lyons v. Lyons, 101 Mo. App. 494, 745 S.W. 467 (1903) (adultery barred the wife from dower, but not from the homestead).

she shall be barred of dower.[28] Then, there are those jurisdictions which utilize the principle depending upon equitable principles to guide their decisions.[29] *Gaylor v. McHenry*[30] represents this approach. The rationale of the court's decision was that the statute was passed to protect public morals, and a "secret and single act" would not be likely to affect such morals.

The courts have applied the statute only when all its requirements have been satisfied.[31] There appear to be no reported cases involving the application of the statute when one of its elements was lacking. The common trend has been to employ the enactment in a reasonable fashion, and this spirit has influenced many of the decisions. For example, in *Beaty v. Richardson*[32] the husband deserted his wife and resisted all her attempts to win him back. After unsuccessful efforts to that end, she engaged in adultery. The statute specified in plain, unmistakable language the acts which would operate as a bar to the wife's claim of dower; viz. if she "willingly" left her husband "and" continued with her adulterer. Since one of the essential elements was lacking, the wife not having left her husband "willingly," her dower remained intact. This view is fully supported by other decisions.[33]

From a reading of the cases it is clear, that where the husband has been the cause of his wife's adultery, she will not be barred from dower. An exception occurs when the fugitive wife refuses an invitation to return and continues her misconduct.[34] Under the circumstances, the mere fact that

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28. SMITH-HURD REV. STAT. ch. 41 § 15 (Ill. 1929) provided that "if the husband or wife voluntarily leave the other and commit adultery; he or she shall be forever barred of dower, unless they are afterwards reconciled and dwell together." See also, VA. CODE §§ 5123, 5140, 5277, 5786-5788 (1942) that provided "if either husband or wife leaves the other and lives in adultery, he or she shall have no part of the personal estate as to which the other consort dies intestate."

29. Zeigler v. Mize, 132 Ind. 403, 31 N.E. 945 (1892) (The wife was not barred of dower, since at the time of her husband's death she was not living in adultery. Several years before the husband's death the wife had committed adultery and since the statute stated "shall be living at the time of his death in adultery", the wife's dower remained intact); Landreth v. Casey, 340 Ill. 519, 173 N.E. 84 (1930) (The husband had been living apart from his wife, but had his wife's consent to be away. During his absence the husband had committed adultery, but since he had been maintaining a fond relation with his wife, he was not barred from his curtesy); Sergent v. North Cumberland Mfg. Co., 112 Ky. 888, 66 S.W. 1036 (1902) (Where a wife continues to live with her husband even though she commits adultery, she will not be barred of her dower).

30. 15 Ind. 383 (1860) (The holding of this case resulted primarily through the argument of the wife's counsel).

31. Sergent v. North Cumberland Mfg. Co. 112 Ky. 888, 66 S.W. 1036 (1902) (adultery, but no elopement). See also Cogswell v. Tibbetts, 3 N.H. 41 (1824); Gordon v. Dickinson, 131 Ill. 141, 23 N.E. 439 (1890) (The wife had engaged in adultery subsequent to her mate's desertion and thus the element of elopement was lacking).

32. 56 S.C. 173, 34 S.E. 73 (1899).

33. Gordon v. Dickinson, 131 Ill. 141, 23 N.E. 439 (1890); Zeigler v. Mize, 132 Ind. 403, 31 N.E. 945 (1892); Hoyt v. Davis, 21 Mo. App. 235 (1886); Bell v. Nealy, 1 Bailey 312 (S.C. 1829) (dictum). *Contra*, Phillips v. Wiseman, 131 N.C. 402, 42 S.E. 861 (1902) (Even though the husband had committed misconduct, this was no excuse for the wife to do the same. It was felt that the statute creating dower rights "is framed for the benefit of the guiltless, not those in pari delicto."); Bostock v. Smith, 34 Beav. 57, 55 Eng. Rep. 553 (1864).

34. Bell v. Nealy, *supra* note 33.

the wife leaves home does not make the statute applicable. If the departure is caused by the husband's behavior, he is guilty of constructive desertion. Therefore, even though the wife may engage in adultery, there has not been a leaving "of her own free will" within the meaning of the statute. The court in *Estate of Mehaffey*[35] stated, "But the 'fault', in order to furnish justification for the separation — must be a serious one — deserting, maltreating, or abusing her, driving her away, or inducing her to leave the home, and the like," thus, limiting the wife's excuse for leaving her husband.

Another line of cases is that involving *consensual separation* and subsequent adultery.[36] In this situation, the Statute of Westminster has not been found applicable. Some states have statutes which declare that a wilful and malicious desertion of the husband shall bar the wife of any interest in the husband's estate.[37] In order to satisfy the requirement of a willful and malicious desertion, the courts have held that the adultery gives rise to a presumption of desertion, and such misbehavior is indicative of an intent to desert. As already stated, the separation is consensual in its inception. Later it becomes a desertion by the wife who engages in adultery.

A somewhat different type of situation arises when a husband condones the immoral conduct of his truant spouse.[38] The question raised is whether such condonation precludes the operation of the English statute. The last clause of the statute states, "she shall be barred of her dower unless her husband should afterward forgive her and take her back." The few reported cases have involved intestate property rather than dower, and have interpreted this section to the effect that condonation "must be completed and accompanied by cohabitation."[39] Thus, the wife must return and resume marital relations in order to participate in the distribution of her husband's estate. The rule seems quite harsh in that there are instances where a husband would want to retain the marital ties but not want to resume cohabitation with his runaway wife; e.g., because of family ties or religious reasons. Under these circumstances, forgiveness in and of itself should be sufficient, so as not to bar the wife of dower.

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35. 102 Pa. 232, 156 Atl. 746 (1931).

36. *In re* Bowman's Estate, 301 Pa. 337, 152 Atl. 38 (1930); *In re* Lodge's Estate, 287 Pa. 184, 134 Atl. 472 (1926); Clark v. Clement, 71 N.H. 5, 51 Atl. 256 (1901) (dictum). *Contra*, Jardine v. O'Hare, 66 Misc. 33, 122 N.Y. Supp. 463 (Sup. Ct. 1910) (The New York courts held that a conviction for adultery is necessary to preclude the wife from any interest).

37. For example, PA. STAT., 20 P. S. 1.2 (3), 1.6 (b) (1947) provides, "no wife who shall have, for one year or upwards previous to the death of her husband, wilfully and maliciously deserted her husband, shall have the right to claim any title or interest in his real or personal estate after his decease, under the provisions of this act."

38. Schmeizl v. Schmeizl, 186 Md. 371, 46 A. 2d 619 (1946); *In re* Fenyo's Estate, 105 Pa. Super. 560, 161 Atl. 606 (1932); *In re* Drinkhouse's Estate (Orph. Ct.) 11 Pa. Co. Ct. R. 96, 29 Wkly. Notes Cas. 35 (1890).

39. See *in re* Fenyo's Estate, *supra* note 38; *accord*, *In re* Drinkhouse's Estate *supra* note 38. *But cf.* Schmeizl v. Schmeizl *supra* note 38 (The husband had knowledge of his wife's misconduct, but he did not procure a divorce. The wife was not barred from dower).

The Minority View — The Florida Position

There have been many inroads made on the majority view,[40] the most current one being the Florida decision.[41] The court declared that the Statute of Westminster has been "impliedly repealed" by section 65.04 of the Florida Statutes which makes adultery grounds for divorce. That same type of reasoning has been applied by other state courts in several cases.[42] The rationale of these decisions is that the law gives the husband a remedy and it is optional with him to use it or not. Even though a husband for religious or other reasons may not desire to avail himself of the relief given to him by the divorce laws, such motives do not justify the abrogation of the wife's right of dower by the use of the ancient rule. Thus, where the states have given adequate and broader remedies than that afforded by the English statute, such remedies are exclusive.[43] *Lakin v. Lakin*[44] upheld this view. The court, in refusing to apply the English statute, reasoned that the divorce statute is "preferable to the provisions of the English law."

Still another factor to be clarified is the current status of section 2.01 of the Florida Statutes. That section adopted the common law of England which was in force as of July 4, 1776, and which was not "inconsistent" with the laws of Florida. The court held in *Wax v. Wilson* [45] that the Statute of Westminster was "inconsistent" with the laws of Florida. What formula was employed to achieve this holding? The reasoning behind the decision seems to parallel that of another Florida opinion.[46] The court there used expressions as "the common law yields to the implied meaning of a statute, as well as its expressed provisions, general and comprehensive statutes that are designed to regulate an entire subject supersede all common law rules in the premises, and the valid provisions of the statute are the controlling

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40. Nolan v. Doss, 133 Ala. 259, 31 So. 969 (1902) (no statutory provision referring to wife's misconduct); Littlefield v. Paul, 69 Me. 527 (1879) (Statute of Westminster was not a part of the common law and there was no statutory provision declaring adultery as a bar to dower); Lakin v. Lakin, 84 Mass. Rep. 45 (1861) (The divorce laws have replaced the need for the Statute of Westminster); Lecompte v. Washington, 9 Mo. 551 (1846) (The divorce and dower laws are adequate); Application of Schinzing's Estate, 2 Misc. 2d 661, 150 N.Y.S. 2d 305 (Sup. Ct. 1956); Bryan v. Batcheller, 6 R.I. 543 (1860); Davis v. Davis' Ex'r, 167 Wisc. 328, 167 N.W. 819 (1918).

41. Wax v. Wilson, 101 So.2d 54 (Fla. App. 1958).

42. Lakin v. Lakin, Lecompte v. Washington, Davis v. Davis' Ex'r, *supra* note 40.

43. Such reasoning was used in the recent Florida holding when the court said, "It is apparent that the legislation of this state has covered all the respective rights involved in the Statute of Westminster II. The Statute is inconsistent with the present laws of marriage and divorce as our legislature has recognized it. It is therefore not in force in this state."

44. 84 Mass. 45 (1861).

45. Wax v. Wilson, 101 So.2d 54 (Fla. App. 1958).

46. Broward v. Broward, 96 Fla. 131, 117 So. 691 (1928). See also, Randolph v. Randolph, 146 Fla. 491, 1 So.2d 480 (1941) ("Where the reason for any rule of law ceases, the rule should be discarded").

law . . . ." Similar expressions have been found in other cases.[47] Another source[48] has indicated that common law rules should be recognized only when they meet conditions existing in the state. Hence, such rules will control, if the conditions they are to apply to are ones which had been contemplated by the common law. As stated previously, the motives behind the enactment of the English statute were clear. The principal object of the statute was to give the husband some "comfort" when his runaway wife committed adultery. The majority opinion in the Florida case[49] recognized that such motives did not coincide with the conditions presently existing in the state. Since adultery is a ground for divorce,[50] the court felt itself bound by the divorce statute.

The view taken by the unsuccessful litigants has much support.[51] It was urged that this common law principle became a part of the law of Florida by virtue of section 2.01 Florida Statutes. Because the statutory law was silent on this question it was argued that the common law governs.[52]

CONCLUSION

In making any decision as to the applicability of a common law statute, the Florida courts must look to the provisions of section 2.01 of the Florida Statutes. The purpose of this section is to assimilate the English common law which is not *inconsistent* with the statutory laws of Florida. When the court takes up the question of determining whether a common law statute is in force, one difficulty — the primary difficulty, is the lack of a realistic, common sense meaning of the word "inconsistent." It can be logically argued that the legislature intended to reject that part of the common law which *conflicted* with the statutory law of Florida, and it is certainly not unreasonable to presume that the intent was to accept the common law which was merely supplementary to its positive law. The holding in *Wax v. Wilson*,[53] that the divorce act "impliedly repealed" the Statute of Westminster seems unrealistic in view of the fact that the acts were enacted for different purposes. The English act was a sanctionary measure, *penalizing* the wife at her husband's death. On the other hand, the divorce statute is remedial, in that it is designed to give *relief* to a wronged spouse. Another distinction

47. Ripley v. Ewell, 61 So.2d 420 (Fla. 1952); Gilchrist v. Filyau, 2 Fla. 94, 97 (1848). *Contra*, Sullivan v. Leatherman, 48 So.2d 836 (Fla. 1950) ("An act which is supplementary to the common law does not displace it any further than is clearly necessary"); Banfield v. Addington, 104 Fla. 661, 140 So. 893 (1932) (dictum). See also, Strauss v. Strauss, 148 Fla. 23, 3 So.2d 727 (1941) (Mentioning the influence of Christian ethics).

48. 11 AM. JUR. *Common Law* § 6 (1937).

49. Wax v. Wilson, 101 So.2d 54 (Fla. App. 1958).

50. FLA. STAT. § 65.04 (1957).

51. See cases cited note 27 *supra*.

52. See for example, Re Chesser, 93 Fla. 590, 112 So. 87 (1927); Peters v. Peters, 156 Cal. 32, 103 Pac. 219; Sesler v. Montgomery, 78 Cal. 486, 21 Pac. 185 (1889).

53. See note 49 *supra*.

is that under the common law "act," the wife at the death of her husband was deprived of dower by reason of her own action, whereas the divorce statute requires affirmative action during the lifetime of *either* spouse to preclude the other from dower.

It appears from an examination of the cases that there is nothing in the divorce statute inconsistent with the Statute of Westminster, or which evinces a purpose to cover the entire subject of what will bar the right to a spouse's estate. It is difficult to see how the giving of an additional remedy, such as the divorce statute, would abrogate the common law statute, and for this reason the writer believes that the Florida court could have found better justification for its decision.

In addition, it is not entirely clear whether the acceptance of the Statute of Westminster would clear up every problem that might arise. For example, if the Florida court would have held that the Statute of Westminister *was in force*, the wife would have been barred from *dower*. But what effect would this have had on her intestate rights? Assuming that the husband's estate was secure from creditors, the wife by being barred from dower still could have elected to take her intestate share, which in a given situation may be more than dower. Neither the common law nor the statutory law of Florida makes any provision concerning forfeiture of a widow's intestate interest on the grounds of adultery.[54] The injustice of allowing an adulterous wife *or* husband to share in his spouse's estate is apparent. The situation calls for a legislative enactment which would bar an erring husband or wife from *all* interest in his mate's estate. This suggestion may seem severe, but such statutes do exist in other jurisdictions.[55]

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54. FLA. STAT. chs. 731-737 (1957).
55. N. C. GEN. STAT. §§ 28-11 to-12, 30-4 (1950); N. J. STAT. ANN. 3A: 37-2 (1953); S. C. CODE §§ 19-57, 19-121 (1952); VA. CODE §§ 64-19, 64-35 (1950); W. VA. CODE §§ 4114, 4093 (1955).