

And the Reason why tout temps prift is a good Plea in a Writ of Dower brought against the Heir to bar her of the mean Values and Damages is, because the Heir holdeth by Title, and doth no Wrong till a Demand be made. But in a Writ of Viel, Cofinage, &c. where the Land and Damages are to be recovered, there fuch a Plea is not good; for there the Tenant of the Land hath no Title, but holdeth the Land by Wrong, and the Feoffee of the Heir cannot at the first Day plead tout temps prift, because he had not the Land all the Time, fince the Death of the Anceftor. 5. It is to be obferved that the mean Values and Damages are to be recovered againft the Tenant in a Writ of Dower, as it appeareth in a notable Record [a] between Belfield and Rowle; the Tenant as to Parcel pleaded Non-tenure, and for the Refidue Detainment of Charters, upon which Pleas they were at Iflue, and both Iflues found by the Jury againft the Tenant, and found further that the Husband died feifed fuch a Day and Year, and had Iflue a Son, and that the Demandant and the Son by fix Years together, after the Deceafe of the Husband, took the Profits of the Land, and after the Son fuch a Day and Year died without Iflue, after whole Deceafe the Land defcended to the Tenant as Uncle and Heir to him, by Force whereof he entred and took the Profits until the Purchafing of the original Writ, and found the Value of the Land by the Year, and affeffed Damages for the detaining of the Dower, and Cofts; and upon this Verdict, after often debating, the Demandant had Judgment to recover her Damages for all the Time from the Death of her Husband, without any Defalcation. In which Cafe many Things apparent therein are obfervable. Let the Tenant therefore take heed how he pleads fuch Pleas. 6. That this Statute of Merton doth extend to Copyholds [b] where the Custom is, that Women be dowable. 7. That if the Wife had Dower affigned to her in Chancery, fhe fhall have no Damages, [c] for the Words of the Statute be Et vidua per placitum recuperaverint, &c. So it is if the Heir or his Feoffee affign Dower, and the Wife accepteth it, fhe lofeth her Damages.

A Man feifed of Lands in Fee taketh a Wife and granteth a Rent-charge, and after maketh a Feoffment in Fee, and taketh back an Estate-tail, and dieth, the Wife recovereth Dower againft the Iflue in Tail by Reddition, the Wife maketh a Surmife that her Husband died feifed, and prayeth a Writ to enquire of the Damages, and that is granted to her. In this cafe fhe holds the Land charged with the Rent-charge; for by her Prayer fhe accepteth herfelf dowable of the fecond Estate; for of the firft Estate, whereof fhe was dowable, her Husband died not feifed, and fo fhe hath concluded herfelf; wherefore if the Rent-charge be more to her Detriment than the Damages beneficial to her, it is good for her in that cafe to make no fuch Prayer.

*De quel age que la femme foit, iffint que el paffe lage de neuf ans al temps del mort fon baron.* Feme, Wife; here Littleton fpeaketh of a Wife generally, and generally it is to be underftood as well of a Wife de facto, as de jure. Therefore if the Wife be paff the Age of nine Years, [d] at the Time of the Death of her Husband, fhe fhall be endowed, of what Age foever her Husband be, albeit he were but four Years old. Quia junior non potest dotem promereri neque virum fufcinere; nec obftabit mulieri petenti minor ætas viri. Wherein it is to be obferved, that albeit Consensus non concubitus facit matrimonium, and that a Woman cannot confent before twelve, nor a Man before fourteen; yet this inchoate and imperfect Marriage (from the which either of the Parties, at the Age of Confent, may difagree) after the Death of the Husband, fhall gibe Dower to the Wife; and therefore it is accounted in Law after the Death of the Husband legitimum matrimonium, a lawful Marriage, quoad dotem. If a Man take a Wife of the Age of feven Years, and after alien his Land, and after the Alienation the Wife attaineth to the Age of nine Years, and after the Husband dieth, the Wife fhall be endowed; for albeit fhe was not abfolutely dowable at the Time of her Marriage, fhe was conditionally dowable, viz. if fhe attained to the Age of nine Years before the Death of the Husband; for by his Death the Poffibility of Dower is confummate.

And fo it is, if the Husband alien his Land, and then the Wife is attainted of Felony, now fhe is difabled; but if fhe be pardoned before the Death of the Husband, fhe fhall be endowed. If the Son endow his Wife at the Age of feven Years ex affenfu patris, if fhe before the Death of her Husband attain to the Age of nine Years, the Dower is good. But otherwife it is of an original abfolute Difability; as if a Man take an Alien to Wife, and after the Husband alien the Land, and after fhe is made Denizen, the Husband dieth, fhe fhall not be endowed, because her Capacity and Poffibility to be endowed came by the Denization; otherwife it is if fhe were naturalized by Act of Parliament; whereof fee more in the Chapter of Willenage.

And the Bishop, upon an Iflue joined in a Writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certify that they were coupled in lawful Marriage, albeit the Man were under fourteen, or the Wife about nine, and under twelve. So it is if a Marriage de facto be voidable by Divorce, in refpect of Confanguinity, Affinity, Precontract, or fuch like, whereby the Marriage might have been diffolved, and the Parties freed a vinculo matrimonii; yet if the Husband die before any Divorce, then for that it cannot now be avoided, this Wife de facto fhall be endowed; for this is legitimum matrimonium (as

Doc. Pla. 152.

± Mo. 80. ± S. C.  
Ben. 153. ± S. C. 4 Leon.  
198.  
[a] Mich. 8 & 9 Eliz.  
Rot. 904. in Com. Banc.  
9 Co. Bedingfield's Cafe,  
fo. 16.  
2 Infl. 433.

[b] Tr. 37 Eliz. lib. 4.  
to. 30. b. Shawe's Cafe.  
[c] 43 Aff. Pl. 32.

Doc. Pl. 148.  
[d] 3 E. 1. Dower 172.  
8 E. 1. Dower 122.  
7 E. 2. Dower 147.  
12 E. 2. ib. 159. 21 E. 3. 28.  
15 E. 3. Dower 67.  
1 R. 2. Dower 54.  
12 H. 4. 3. 35 H. 6. 40.  
7 H. 6. 11, 12.  
22 Eliz. Dower 369.  
Bract. fol. 92.  
Lib. intrat. fo. 123.  
Post 37. a.  
Ante 31.

± See Salk. 120.  
± S. C. 3 Lev. 410.  
5 Co. 98. Bourie's Cafe.

ante 32. a.