

CORRESPONDENCE.

come up expressly for adjudication. However, the remarks of Sir Anthony Hart in his judgment, which seem to conflict with the conclusion I have already arrived at, are very general in their terms, and in force of expression are peculiarly gratifying to the Milesian taste. He says p. 83, "on the death of the ancestor, the heir has title to enter and retain possession until the Court interposes. * * But my opinion of the law is this, that the heir has, upon the instant of the death of his ancestor in possession, a right to enter, and to turn out *by the shoulders* any other person *except only the widow*, who has a right to stay *until her dower is assigned to her.*" Without now considering the question whether this familiar usage, this gentle violence, is forbidden as to the widow by the laws of gallantry, which have such a marked effect on the Hibernian character, we come to the remarks made upon this case in *Talbot v. Scott*, 4 K. & J. 117. Sir W. Page Wood in giving judgment says: "It seems to me that the observations of the Lord Chancellor must have been meant to apply to some case of fraudulent or forcible possession which the law will not recognize." And His Honour confesses that he does not understand the Lord Chancellor's words, unless in some such sense as this. But, it will be argued, the widow is excepted from this broad statement; and, before you can make this strong language apply to her, you must show that she is forcibly or fraudulently in possession, and that the law will not recognize that possession. True! but the exception rests upon the assumption that the widow's possession is rightful; and I think that in some cases this ungallant mode of ejection may apply to her, and in others, not. It is plain that she is rightfully in possession at her husband's death. The question then suggests itself, How long does this rightful possession last?

Under the title *Quarantine*, in Tomlin's

Law Dict., we find the following definition: "A benefit allowed by law to the widow of a man dying seised of lands, whereby she may challenge to continue in his capital messuage or chief mansion-house (not being a castle) by the space of forty days after his decease, *in order to the assignment of dower.* And if the heir or any other eject her, she may bring her writ *de quarentinâ habendâ.*" Under the title *Dower III.*, in the same work we find that it was enacted by Magna Charta that "she should remain in her husband's capital mansion house for forty days after his death during which time her dower *should be assigned.*" But in case of a widow out of possession at her husband's death "a woman entitled to dower cannot enter till it be assigned to her and set out either by the heir, terre-tenant or sheriff in certainty." If these authorities be read together with the opinion of Sir Anthony Hart, it will be seen that they are not inconsistent. If the learned Judge's remarks, excepting the widow from the broad proposition which he enunciates, explained by the observations of Sir W. Page Wood in *Talbot v. Scott*, can be referred to the possession of the widow under her right of quarantine, then the whole difficulty disappears. And I think that we may not only, not unfairly presume that they should so be referred, when we find such a weight of authority bearing in that direction, but that we should endeavour to make them consistent with the *dicta* of other learned Judges, if possible, rather than accept them as a conflicting authority. That this is their meaning may further appear from the following. His Lordship says: "She has a right to stay *until her dower is assigned to her.*" In the Law Dictionary, above quoted from, it is said, "she may remain forty days *in order to the assignment of dower.*" What more consistent than this! But, is her right of quarantine an *estate*? Manifestly not. It will certainly not