

CORRESPONDENCE—LAW OF DOWER.

made requisite. Though, when her husband *was* a party, she need not have been examined. When we consider that the object of the examination was to ascertain whether the husband had coerced his wife to join in the deed, which would be more likely to happen where he was also a party to the instrument than where he was not, it is difficult to see why it was so enacted. Thus, in one of two instances, imposing a precautionary measure, where there seems to be no reason for it; and in the other, omitting it, where the very state of facts exists, which furnished the reason for the law in the first place. See remarks of Robinson, C. J. in *Howard v. Wilson*, 9 U.C. Q.B. 450.

Other anomalies, not depending on the wording of the statutes, have existed; such as, that the wife of an idiot might be endowed; though the husband of one should not be tenant by the courtesy: Co. Litt. 31. See also Archbold's Blackstone, p. 129, n. 33, where it is laid down, that Courts of Equity, although not allowing the wife of a *cestui que trust* to be endowed of the trust, yet allowed courtesy of the trust; a seeming partial diversity, for which Lord Chancellor Talbot said he could see no reason; but which, as he found it settled, he did not feel himself at liberty to correct: 3 P. Wms. 234.

Whether an Act is expedient in its terms, or tends to create confusion or anomalies, is not, it will be admitted, our object in examining the state of the law; but rather the ascertainment of the law, as enacted. It is submitted that we are not called upon to say, whether the act in making the inchoate right an apparently higher interest in law, than the consummate right, produces an anomaly, nor, by showing that such an intention is apparently an absurd one, to say that *therefore* the Act is not to be so construed; nor, whether it was actually the intention

of the Legislature, or unwittingly done, to include this contingent right in, and exclude the vested right from its provisions. If it be so enacted, I apprehend that to be sufficient.

That a possibility of succeeding for life to the third part of an estate, depending on the chance of the wife's surviving her husband, is a higher interest in law than the right of the widow immediately to have that estate set out, does at first seem too monstrous a proposition to be entertained. But, after all, this is not the exact deduction from the foregoing remarks. It is rather this, that, as already shown, the interest is not changed by the act, nor in any way exalted above the consummate right, except in so far as the statute has attached to it the incident of a capability of being dealt with in a way which it was apparently not thought fit to extend to the consummate right. But, even supposing the first enunciation to be correct, we must bear in mind that it does not depend for its proof upon the close and logical reasoning of learned judges and commentators; but is the offspring of a statute. Because the plain and manifest reading of a statute will produce an apparent anomaly in the law, we can hardly *solely thence* infer that such a meaning was not the intention of the Legislature; and that we must cast about for some other meaning, which will save the anomaly. There is little reason to doubt that the inchoate right is described by some one of the very broad expressions used in the 5th section of C. S. U. C. cap. 90. And if so, it is difficult to see why we should not, to use the words of Mr. Justice Gwynne, "give effect to the clause *as it is expressed*."

If a reason for the provisions of the Act, founded on principles of moral philosophy or ethics, be sought for, we may find it in this, that, while the husband is alive, the wife is provided for. Supposing her right to dower, to be