

tion of the earlier English cases, and the Supreme Court of Canada decisions,³² rejecting the House of Lords' deviations in the manner they rejected their deviations with respect to the effect of income tax on injury awards,³³ and exemplary damages.³⁴

—J. E. COTE*

³² *Supra*, n. 12, 18.

³³ *British Transport Commission v. Gourley* [1956] A.C. 185, [1955] 3 All E.R. 796 (H.L.), *rejected* in *R. v. Jennings* [1966] S.C.R. 532.

³⁴ *Rookes v. Barnard* [1964] A.C. 1129, [1964] 1 All E.R. 367 (H.L.), *rejected* as to exemplary damages, in *Gouzenko v. Lefolii* [1967] 2 O.R. 262, 268 (C.A.) (modified on other grounds, [1969] S.C.R. 3); *Spence J.* (dissenting on other grounds) in *McElroy v. Cowper-Smith* [1967] S.C.R. 425; *McKinnon v. F. W. Woolworth Co.* (1968) 70 D.L.R. (2d) 280, 289 (Alta. App. Div.).

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THE DOWER ACT—DISPENSING WITH CONSENT— *Truesdale v. Truesdale* (unreported)

This is an application by the husband for an order dispensing with the wife's consent to the sale of the homestead quarter section in Alberta. The application was made before His Honour Chief Judge Feir, in Lethbridge, and was opposed by the wife. The parties had been married about seven years but at the time were living apart under a separation agreement.

After hearing *viva voce* evidence, the learned Judge found that blame for the break-up of the marriage rested "in much greater degree upon the husband," and that the wife "had gone the second mile in most instances to save her marriage." The homestead was worth \$7,690.00. The order was granted and the wife was awarded \$1,000.00 for the withdrawal of her right to withhold consent. The decision was upheld on appeal by Mr. Justice Riley and the Alberta Court of Appeal. One Judge in the appeal court said that the wife was fortunate to get \$1,000.00. So, in effect, a wife who has been a good wife is entitled to about one-seventh of the sale price of the homestead, on these facts.

Suppose things are changed somewhat. The wife has not been a good wife and has caused the separation. The husband sells the homestead, without her consent or a dispensing order, for the said sum. Under Section 12 of the Dower Act the wife is entitled to recover one-half, namely, \$3,845.00. Perhaps this is some indication that the Legislature intended the dower interest to be one-half of the sale price or true value.

The good wife gets one-seventh and the other kind could get one-half.

—T. J. COSTIGAN, Q.C.*

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