

It has been thought that, without putting at hazard any regulation necessary to insure conjugal felicity, a woman might, very beneficially for herself as well as her husband, be indulged with some more latitude of free will as to contracts, and a large extent of individuality of character in relation to the right of property. By the common law, her will and her rights, in those respects, are so absolutely submerged and covered over by those of her husband, that she is not only made dependent on him for domestic happiness, but is tied to his fortunes, and deprived of all means of saving herself from the most abject penury in cases where, by means of a larger share of independent right, she might rescue herself and children from the wayward or the luckless course of her husband, and thus promote, instead of disturb, conjugal harmony. But those stern and ungallant general rules of the common law, by which marriage so sinks the wife under the absolute sway of the husband have been made, in many respects, to yield to a better feeling, and have undergone many wholesome modifications chiefly by the direct, or indirect application of the principles of equity.

\* The father is the rightful and legal guardian of all his infant children; and in general, no Court can take from him **563** the custody and control of them, thrown upon him by the law, not for his gratification, but on account of his duties, and place them against his will in the hands even of his wife. *St. John v. St. John*, 11 Ves. 531. But although the Courts of common law can enforce the rights of the father, they are not equal to the office of enforcing the duties of the father; and therefore, where the children have any property, which can give this Court the means of acting in their behalf, it will protect them as well against the

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the wife, upon a supposition that they are to live together. *Head v. Head*, 3 Atk. 550; *Clavering's Case*, 2 P. Will. 202; *King v. King*, 2 Ves. 578; *Heyn's Case*, 2 Ves. & Bea. 182.

BREAD'S CASE.—Charles, &c.—To the Sheriff of Charles County, greeting, Whereas Jane, the wife of John Bread, of your county, hath made supplication unto us, that she hath been grievously and manifestly threatened by her said husband of her life and of mutilation of her members, we being willing, in this behalf, to provide for the security of the said Jane, do command you, firmly enjoining, that you cause the said John Bread personally to come before you, and him compel to find sufficient security, under a certain penalty by you, for our use, reasonably to be imposed, for which to us you will answer; that he, the said John Bread, the said Jane well and truly will treat and govern: and that the said John do not, by any means, do, nor procure to be done, any damage or evil to the said Jane of her body, otherwise than what to a husband, by cause of government and chastisement of his own wife, lawfully and reasonably belongeth. And if this before you to do he refuseth, then, that you take him, and him safe keep until he find security in form aforesaid. Dated 9th September, 1681.—*Chancery Proceedings, lib. C. D. fol. 319.*