

wife, even pending the suit; and this is not considered as making a decree before the hearing, but only doing what the husband himself is obliged to do: maintain his wife until the case can be heard upon the merits. Thus guarding the wife against the possibility of future danger, and applying a remedy for her present wants. *Oxenden v. Oxenden*, 2 Vern. 493; *Sleech v. Thorington*, 2 Ves. 560; *Watkins v. Watkins*, 2 Atk. 96; *Bond v. Simmons*, 3 Atk. 20; *Head v. Head*, 3 Atk. 295; *Ball v. Montgomery*, 2 Ves. Jun. 192; *Legard v. Johnson*, 3 Ves. 352; *Wright v. Morley*, 11 Ves. 12; *Duncan v. Duncan*, 19 Ves. 395; S. C. Coop. Rep. 254; *Cooke v. Cooke*, 1 Eccles. Rep. 178; *Otcay v. Otcay*, 1 Eccles. Rep. 203; *Smith v. Smith*, 1 Eccles. Rep. 220; *Rees v. Rees*, 1 Eccles. Rep. 418; *Street v. Street*, 2 Eccles. Rep. 195; *Smyth v. Smyth*, 2 Eccles. Rep. 293; *Cox v. Cox*, 2 Eccles. Rep. 531; *Hamerton v. Hamerton*, 3 Eccles. Rep. 17; *Harris v. Harris*, 3 Eccles. Rep. 153; *Hawkes v. Hawkes*, 3 Eccles. Rep. 231; *Kempe v. Kempe*, 3 Eccles. Rep. 233; *Purcell v. Purcell*, 4 Hen. & Mun. 507; *Hewitt v. Hewitt*, 1 Bland, 101.

There is yet another occasion afforded by the nature of the wife's title to property, of which the Court avails itself to interpose its authority, against the legal claim of the husband; that is, when the husband requires the assistance of this Court, to procure the possession of any part of his wife's fortune, it will be refused to him, unless he makes a provision for her out of it, or shews that he has purchased it by having already adequately provided for her; or that it is of too small an amount to have any provision made out of it. *Jernegan v. Baxter*, 6 Mad. 32; *Foden v. Finney*, 3 Cond. Cha. Rep. 739. This peculiar claim is emphatically called "the wife's equity." *The State v. Krebs*, 6 H. & J. 36. It extends to all her equitable *choses in action*, and generally, to all equitable estates or interests falling within the jurisdiction of a Court of Chancery; but not to mere legal *choses in action*, to terms for years, or any chattel of which the husband may legally take possession. The habit of the Court has always been, of itself, and without any application previously made by the married woman, to direct an inquiry, when money has been carried over to her account, whether any settlement has been made; and, if none has

**576** \* been made, to direct a settlement not upon the wife only, but upon the children also. *Murray v. Elibank*, 13 Ves. 1.

To obtain the benefit of this equity the wife may come in and make her claim in any suit instituted by her husband; or she may by her next friend file a bill against him or his legal assignees in bankruptcy or insolvency; for neither the husband, nor any person standing in his place can have her fortune, without making a provision for her. The wife's equity is a mere creature of this Court; and is therefore never allowed, as between citizens of other States, according to the laws of which the wife is allowed no such equity. *Dues v. Smith*, 4 Cond. Cha. Rep. 257. It is a claim founded upon