

[Upon the final hearing of the cause which took place on the 29th of April, 1851, without any further testimony or proceedings, by either party, the following opinion was delivered :]

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THE CHANCELLOR:

This case standing ready for hearing, and being submitted on the part of the defendant's, and the complainant's counsel having presented an argument, in writing, in support of the prayer of the bill, the proceedings have been read and considered by the court.

There appears to me no ground, whatever, for a divorce *a vinculo matrimonii*, the charge of adultery made in the bill being wholly unsupported by the proof, and the only question is, whether the complainant is entitled to a divorce *a mensa et thoro*, for "cruelty of treatment," under the 3d section of the Act of 1841, ch. 262. The observations of Mr. Chancellor Kent upon this subject, in the case of *Barrere vs. Barrere*, 4 *Johns. Ch. Rep.*, 189, are pregnant with instruction, and show, I think, most satisfactorily, that the acts relied on in this case, in support of the charge of "cruelty of treatment," are wholly insufficient for the purpose. "Mere petulance and rudeness, and sallies of passion, may not be sufficient." There must, says the Chancellor, "be a series of acts of personal violence, or danger of life, limb or health," to justify the court in separating the parties. These remarks were made with reference to the New York statute, which uses language substantially the same as ours. They show that the rule prescribed by the canon law, and the law of England, was deemed applicable to the New York statute, and that the term "cruelty," used in the statute was to have the same interpretation as was given it in the ecclesiastical courts.

Now, tested by this standard, and there is in the evidence in this case nothing to justify the court in decreeing the separation of these parties. There may have been some acts which seemed harsh in the eyes of a fond mother and sister, but surely nothing which amounts to "cruelty," as that word is understood in the law. The marriage relation is not to be dissolved upon slight grounds, nor will parties be relieved from the du-