

CATHARINE JAMISON
BY HER NEXT FRIEND
vs.
JOSEPH JAMISON.

MARCH TERM, 1847.

[ALIMONY.]

WHERE a separation was commenced and is continued by the act of the husband against the will of the wife, and he refuses or neglects to make provision for her support, the Court of Chancery in this state, has the power, and will decree her alimony, though there has been no divorce decreed and though the case made by the bill and proof would not, according to the ecclesiastical courts in England, entitle her to a divorce *a mensa et thoro*.

In England, alimony is granted only as a consequence or an incident, to a sentence of divorce, *a mensa et thoro*, and no such allowance will be made by the Chancery Court there until such decree of divorce has been passed.

Though in this state the Court of Chancery had no power to decree a divorce prior to the act of 1841, ch. 262, yet it had from a period prior to the revolution, full and complete jurisdiction in cases of alimony, and could, upon a proper case, decree the wife a separate maintenance out of the estate of the husband.

In England on an application for a divorce on account of cruelty, it is necessary to show that actual violence has been committed, attended with danger, or a reasonable apprehension of such violence.

The act of 1777, ch. 12, sec. 14, conferring jurisdiction upon the Chancellor in cases for alimony, gives full and complete jurisdiction over the subject, and does not restrict the court in making such allowance to the circumstances and causes which would entitle the party to a divorce according to the ecclesiastical laws of England.

There is no tribunal in this state competent to entertain a suit for the restoration of conjugal rights.

Prior to the act of 1841, ch. 262, the legislature had the exclusive power of granting divorces, and they exercised it as a regular exertion of legislative power.

There must be some method by which the husband may be compelled to maintain his wife, and when restitution of conjugal rights cannot be decreed, alimony must.

The amount of the allowance is to be determined by the value of the estate of the husband, and if the proof is not sufficiently clear to enable the Chancellor to determine such value satisfactorily, the question will be referred to the Auditor.

[The facts of this case are stated in the opinion of the Chancellor.]