

ness for the Plaintiff, but did not appear. Mr. Hagerman stated that she was a material witness, had been subpoenaed, and was in attendance; and he wished it to be noted that she was publicly called, with a view to some proceeding against her for disappearing, and refusing to testify.

*Collin McKenzie, Esquire*, sworn, is a Magistrate, residing near the parties, is well acquainted with them; knows that Plaintiff has maintained his daughter, the Defendant's wife, decently and respectfully, since the Defendant and his wife parted. When they were married, the Defendant was a young man, doing well, had a farm of his own, and improvements on it.

The evidence on the part of the Plaintiff being closed, the *Solicitor General* rose, and, observed that he did not, at the commencement of the trial, anticipate the conclusion which he now thought he had reason to expect. He supposed the Plaintiff would prove some of the facts necessary to support the action; but he had totally failed. He, therefore, moved for a nonsuit, to which, he said, he was entitled, on two grounds; 1st, that there was no evidence proper to support the action, the Plaintiff being himself the wrong doer in the first instance; 2d, that no justifiable cause of separation had been proved.

On the first point, he thought it was evident that the Defendant did not turn his wife away, but the Plaintiff wrongfully took her home to his own house; and no man should be permitted to take advantage of his own wrong.

On the second point, he contended that there was no proof of violence on the part of the Defendant towards his wife; at least, of such violence as would authorize Mrs. Ham to leave her husband, and bind him to pay for her support at another person's house. He admitted that one witness had sworn that the Defendant acknowledged to him that he had chastised her with a riding whip; but he insisted that such a chastisement was lawful, or certainly not sufficient to entitle her to leave him. Nothing short of danger or fear of the loss of life would be a justifiable cause of separation. He read several authorities in support of this position, and appealed to the Judge for the correctness of it.

*Mr. Hagerman* opposed the motion for a nonsuit, and contended that there was evidence to support the action on both of

the grounds of action relied on. The Defendant's repeated declarations that he would not live with his wife amounted to evidence of his implied consent that she should reside where she was, at her father's house; and his letter contained his express consent to her residing there at least one month. There was also legal evidence, from his own confession, that he had used personal violence, and that that was the cause of her leaving him and going home to her father's. On both of those grounds the action was supported. He had a right to have the case go to the Jury, and he could not submit to be nonsuited.

*The Solicitor General* replied, and defended the position he had before taken, that to justify a wife in departing from her husband's house, it must appear not only that there was violence on his part, but that it was violence endangering her life; otherwise her departure was not necessary. If there was occasion for it, she might apply to a magistrate to protect her by requiring the husband to find sureties for his good behaviour, which was a common occurrence, and the course pointed out by the law.

*The Chief Justice* said that to maintain an action of this kind, it was requisite to prove that the Defendant's conduct to his wife had been such as to render her departure necessary; which in this case did not appear. It was true it had appeared in evidence that a chastisement had taken place; but, however ungallant such conduct might be thought, a man had a right to chastise his wife moderately. To warrant her leaving her husband, the chastisement must be such as to put her life in jeopardy. Such violence or danger was not proved in this case. Were it not for the Defendant's letter, he should not hesitate to direct a nonsuit. In that letter the Defendant informed the Plaintiff that he let his wife return until the next month; which might imply his consent, that she should be boarded and supplied in the mean time by the Plaintiff at his house. It must therefore be submitted to the Jury to decide upon that question of evidence.

His Lordship wished the public to understand what the law was in such cases; that it was opposed to the practice of wives in running away from their husbands, and to the interference of parents in behalf of their married daughters, who