

ably, receive and protect her, and, of course, maintain an action for her necessary support. A well grounded apprehension of such injury, whether actually inflicted, or not, is sufficient. Nor need it be an apprehension of being murdered, or maimed. The fear of any thing which comes within the meaning of the term "*bodily injury*," is a lawful cause for her quitting his house, and resorting to the protection of some other person. If, for instance, she has suffered, or has good reason to fear, a *horsewhipping* from her husband, it brings her case within this rule of law; for that is a "*bodily injury*," as well as an indignity. The old barbarous doctrine, that a husband may beat his wife, by way of correction, is exploded in modern times. Such violence is illegal, and may be the subject of an indictment, or of sureties for the peace; and, therefore, according to the authority last cited, a father, a brother, or any other friend may, in a case of such corporal injury, *safely* and *honorably* interfere, and afford her protection and support.

To show that Lord Kenyon was not singular in his view of the law on this point, I will produce another high authority. In *Ewers vs. Hutton*, 3 Esp. 235, Lord Eldon, then Chief Justice of the Common Pleas, now Lord Chancellor, declared "there was no doubt of the law, that where a husband, either by ill treatment compelled his wife to leave his house from motives of personal safety, or turned her out of doors, any person who afforded her protection, and furnished her with necessities correspondent to his rank and situation in life, could compel the husband to pay for them."

Even should we fail to prove that the Defendant's wife had such a lawful cause for leaving his house, in the first instance; if he afterwards refused to receive her, that was a turning of her out of doors. In *Rawlins vs. VanDyke*, 3 Esp. 231, Lord Eldon said, "My conception of the law is this, that if a man will not receive his wife into his house, he turns her out of doors; and if he does so, he sends with her credit for her reasonable expenses." Should you, then, Gentlemen of the Jury, be convinced, from the declarations of the Defendant, or other evidence which may be adduced, that the Defendant would not receive his wife into his house, you have the opinion of Lord Chancellor Eldon, the highest law authority in England, that

it was tantamount to turning her out of doors, and that he thereby sent with her credit for her reasonable expenses.

His Lordship also stated, in the Report of *Ewers vs. Hutton*, already referred to, "That it was settled in a case in Lord Raymond's Reports, to which he subscribed, that if the wife had eloped, and afterwards solicited to be received into the husband's house, and the husband refused to receive her, from that time he was bound for necessities furnished to her." You will please, Gentlemen, to bear this rule of law in your minds, in order to compare it with the evidence in the case. If Mrs. Ham had eloped from her husband, or whatever was the original cause of her separation from him, yet if she afterwards solicited to be received into his house, and was not so received, from that time, at least, says the law, you must hold him responsible for the necessities furnished to her by the Plaintiff.

To these concurring authorities permit me to add one decision of the late Lord Chief Justice Ellenborough. In *Lidlow vs. Wilmot*, 2d Stark. 78, an action similar to the present, he told the Jury, "The first question for consideration is whether the Defendant turned his wife out of doors, or by the indecency of his conduct precluded her from living with him; for then he was bound by law to find her means of support adequate to her situation." And again, "When the wife lives separately from her husband without any fault of her own, the law provides that her husband shall be liable for her adequate maintenance."

If, then, Mrs. Ham left her husband's house, and lived separately from him, "without any fault of her own," the law, as stated by Lord Ellenborough, provides that her husband shall be liable for her adequate maintenance, in such an action as you are now trying. If he "precluded her from living with him," not merely by flogging her, but even "by the indecency of his conduct," he is bound by law to pay for her support adequate to her situation.

These principles of law, my Lord, are sanctioned by such a weight of venerable authorities, and are so rational and just in themselves, that it would be superfluous in me to offer arguments in support of them. I have read them to the Court, in your hearing. Gentlemen of the Jury, that you may have them distinctly in view,