Taylor that his wife's affections were alienated, and that no *bonâ fide* reconciliation could be expected; and he went to reside in France. Afterwards, in July 1838, Mrs. Taylor instituted a suit in the Consistory Court of London for restitution of conjugal rights. To this suit Mr. Taylor put in an allegation in bar, stating the circumstances under which his wife had left his house, and the charge she had made against him; and adding, that although she well knew the charge to be entirely devoid of foundation, she persisted in refusing to retract it. On the 5th February, 1839, the allegation was rejected by the court. Mr. Taylor appealed to the Arches Court, where the judgment of the Consistory Court was affirmed on the 20th June, 1839. He then appealed to the Judicial Committee of the Privy Council, pending which appeal the petition came on to be heard. At the time of the presentation of the petition, there were living five children of the marriage, two of whom were more than seven years old, but the other three were under that age, the youngest having been born on the 23rd May, 1837. The prayer of the petition appears to have been, that Mrs. Taylor might have access to her children.

For the petitioner, Mrs. Taylor, it was contended that the intention of the Act was to create a right in the mother to which the court should give effect in all cases of separation between husband and wife where the wife had not been guilty of criminal conduct: that the clause in the Act pointing out the criminality of the mother as the only cause which should exclude her from the benefit of the Act, distinctly recognised her general right in cases where no criminality could be imputed: that the Act created a positive right of access in the mother, which the court could not deprive her of: that the court was merely the instrument appointed by the legislature to put her in possession of her right: that it was the right of every innocent mother living in a state of separation from her husband; and that the discretion of the court was to determine the *manner* only in which the right was to be enjoyed, not to take it away: that the interest of the children was the only consideration which could be allowed to interfere with the mother's right.

The Vice-Chancellor of England, however, was in that case of opinion that the jurisdiction given by the Act was to be exercised solely in the discretion of the court; and that, pending the question in the Ecclesiastical Court, it would not be right for the court to say that Mrs. Taylor was entitled to have access to her children. Moreover, he was of opinion that the fact of her having, without cause, removed herself from her husband, was a sufficient reason why the court should not exercise the jurisdiction of ordering any access. Accordingly, no order was made on the petition.

In re Bartlett, 2 Col. 661, was an application under the Act, praying the delivery to the mother of two of her children, a boy and a girl under seven years of age, the girl being only two years of age; and that she might have access to her other children, four in number. It appeared that the wife's family had brought about an unhappy state of existence between the husband and wife; that on one occasion he had separated himself from her, and on returning to his house struck her; that he had been bound over to keep the peace towards her; and that he had, both in words and in writing, expressed himself towards her in a very violent and offensive manner. In giving judgment, the Vice-Chancellor held that the statute did not, as a condition of the interference of the court, require that the wife should have obtained or should be entitled to obtain a divorce *a mensâ et thoro*. "This," he said, "is a case in which the husband and wife are living apart from each other" (her brothers having removed her from his house), "her husband appearing to wish, and the wife objecting to, a reunion." He says also, "That she is clearly legally justified in living apart from him, it would be imprudent for me, upon the evidence before me at present, to say; but if she is not so, that she is not without excuse, not without apology, may, I think, be safely stated." He accordingly made an order for the delivery to the mother of her youngest child (two years of age), Mrs. Bartlett's two brothers undertaking for the proper care, maintenance and education of the child while in her custody. The order also made provision for her having access to the other children, and for access for the father to the youngest child so removed into the custody of the mother; and it was ordered that this child should not be removed from the house of Mrs. Bartlett's brothers without the leave of the court.

In re Fynn, 2 DeG. & Sm. 457 (A. D. 1848), was not a petition under the Act, and no order was made upon the petition for the want of a sufficient provision being made for the care, maintenance and education of the child, if the father should be deprived of his common-law right of possession and control of his children. In that case, however, the facts were such as seemed to justify the wife in living apart from her husband, for Knight Bruce, V. C., says, "I am not persuaded, however, that she has not a good defence to the pending suit, if there is one pending, or to any suit against her for restitution of conjugal rights."

In *Re Tomlinson*, 3 DeG. & Sm. 371, no order was made, for a reconciliation took place while the petition stood over to enable the wife (the petitioner) to answer the affidavit filed by the husband. Knight Bruce, V. C., in this case also seemed to regard the mother's right as dependent upon her being justified in living apart from her husband; for he says there, "I should have thought it right now to make an order relating to the custody of the infant, without directing the petition again to stand over, had there appeared to me to be a probability of the mother's success in the ecclesiastical suit, that is to say, in establishing that she is justified in living apart from her husband" The husband had instituted a suit for the restitution of conjugal rights, and the case had stood over for the purpose of enabling counsel from the Ecclesiastical Court to argue the case upon the validity of the mother's defence to that suit; at the close of which argument the learned Vice-Chancellor made the observations above quoted.

In *Warde* v *Warde*, 2 Phill. 786 (A.D. 1849), the wife obtained a decree *a mensâ et thoro*, and the order was made on her petition. Lord