

MAY IT PLEASE YOUR LORDSHIP,

*And Gentlemen of the Jury,*

The learned Counsel, who addressed you in behalf of the Defendant with his usual ability, and more than his usual zeal and confidence, introduced the defence by a fine eulogium upon his client, as a man of affluence, of an unspotted and excellent character in his own neighbourhood and township. I have no disposition to disturb him in the enjoyment of whatever wealth or fame he has honestly acquired; but you should hear the language of truth. If you do not yourselves know the Defendant, there are many in whose hearing I am now speaking to you, who do know that his reputation among his neighbours and acquaintance is very different from the flattering picture drawn of it by his Counsel. I fear no contradiction in declaring, before the Court and the country, that it is notoriously bad, particularly in respect to the subject of this action. And what stronger proof could there be of baseness and total want of principle and honor, than the last and most scandalous defence, to which he has had recourse, to invalidate his own marriage, and thus prove his wife a prostitute and his child a bastard; the son whom he has brought into court here by his side, to witness this shameful defence! What, then, must he be himself, in his own view! His Counsel has accused us of wishing to make him a brute. He makes himself worse than a brute, by this desperate attempt to defood his cause by setting aside his marriage.

*The Solicitor General.* I took the exception to the validity of the marriage from my own opinion of the law, and not from the instructions of my client.

*Mr. Hagerman.* Whether it originated with him, or not, is immaterial. It is urged in his behalf, and with his assent: and it has fixed upon him a mark of infamy, which he can never survive. It is a foul stain, which no time will wear away. I tell him, in the face of the public, that he will rue it to the day of his death. The attempt is as futile as it is base and flagitious. It is founded upon a distinction without a difference; that the certificate of licence granted by the Magistrates to the Clergyman describes him as a Presbyterian, and does not specify that he is a Calvinist. Why, Gentlemen, a Presbyterian is of course a Calvinist. Calvinism is an essential part of Presbyterianism. The objection is a mere quibble. This Clergyman's authority to marry a person of his congregation, whether a church member or not, is unquestionable; and the Defendant's marriage is legal and valid; but his infamy is not the less for attempting, although unsuccessfully, to set it aside, for the sordid purpose of avoiding the payment of an honest debt.

The nature of the Plaintiff's claim was satisfactorily explained in the opening of the case; and the evidence produced in support of it, under all the disadvantages of obtaining evidence in such a case, and in spite of the phalanx of family witnesses on the Defendant's part, has, I think, established our right of action, on both of the grounds, upon which it is claimed; the Defendant's ill treatment of his wife, and his consent to her separate residence.

We have proved, beyond contradiction, that the Defendant chastised his wife with a horse whip, which was an act of violence sufficient, according to my understanding of the law, to justify her separation from him.

It is with regret that I ever differ from the bench. In the present instance, however, notwithstanding what fell from his Lordship to the contrary, I contend, and think I can shew, that by the present law of England, which is our law, a man is not at liberty to chastise his wife. That was once the law, in days of less refinement and liberality; but I am happy to say it is not so at present. The good sense and humanity of modern times have introduced a more liberal rule for the treatment of wives. In this opinion, I am born out, not only by the authorities read by my learned associate, in his clear and correct statement of the law, but more pointedly by one, which I will now read, from the first volume of Blackstone's commentaries, page 444. After mentioning that by the old law a husband might give his wife moderate correction, this standard commentator on the laws of England says, "But, with us, in the polite reign of Charles the second, this power of correction began to be doubted; and a wife may now have security of the peace against her husband, or, in return, a husband against his wife. Yet the lower rank of people, who are always fond of the old common law, still claim and exert their ancient privilege; and the Courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehaviour." He is merely permitted to restrain her of her liberty, and that only in a case of gross misbehaviour.

This is the modern law of England. Against a husband's moderate correction of his wife, such as in early times was allowed, the wife may now have security of the peace. It is, then, a breach of the peace, an unlawful act, an indictable offence, in the same sense, and in the same manner, as an assault and battery of a wife against her husband: Such a beating of a wife by her husband is an act of violence, and comes within the letter and spirit of the decisions of Lord Kenyon, Lord Ellenborough, and Lord Chancellor Eldon, that it is equivalent to turning her out of doors, in consequence of which the husband becomes chargeable with her necessary support.