

22 Vict. ch. 85, assented to on the 28th August, 1857, all jurisdiction then exercisable by an Ecclesiastical Court in England in respect of divorce *a mensa et thoro*, suits of nullity of marriage, suits of jactitation of marriage, suits for restitution of conjugal rights, and all causes, suits, or matters matrimonial, is taken away from the Ecclesiastical Courts and vested in the new "Court for Divorce and Matrimonial Causes" thereby constituted; and it is provided that no other Court shall thereafter exercise any jurisdiction with respect to these matters.

Where a marriage was alleged on the one side and denied on the other, as already pointed out, a suit for declaration of nullity would be inappropriate, as that assumed a valid marriage ceremony at least. The suit for a jactitation of marriage was brought for the purpose of obtaining a judicial declaration that a lawful marriage did not subsist between the parties. This action could, prior to the Act of 1857, be brought only in the Ecclesiastical Courts. What is sought here is really to permit such an action to be brought in our High Court. It is sought to have it established that this portion of the jurisdiction of the Ecclesiastical Courts can now be exercised by this Court. As the Acts of 1857 had deprived the Common Law Courts of all possible claim to such jurisdiction before the 5th December, 1859, the jurisdiction, if it exists in a Court, must be derived through the sections conferring equity jurisdiction. In *Lawless v. Chamberlain*, the Chancellor adopted the view, expressed in certain judgments of the early Chancellors in the State of New York, that the Court of Equity had an inherent jurisdiction over the matters generally entertained by the Ecclesiastical Courts, this jurisdiction remaining latent, the Court of Equity permitting it to be exercised exclusively by the special tribunals which entertained matrimonial causes. Consistently with this, when the "Courts Christian" were abolished during the Protectorate, the ancient jurisdiction of Chancery was revived and exercised: *Tot-hill*, 61; *Anon.*, 2 Show. R. 283.

This is a fair statement of the views entertained by the New York Chancellors; but it appears to me that it is not conclusive when it is sought to apply it to the state of affairs existing here, as this latent residual jurisdiction of the Court of Chancery has never been vested in our Courts. Our Courts were given all the jurisdiction of the English Common Law Courts, but only part of the jurisdiction of the Court of Chancery, and I think it must be taken that no portion of the latent Ecclesiastical jurisdiction, if in truth it existed, ever became vested in our Courts. The