

The answer of T. Wallace Jamison to the 12th interrogatory, together with complainant's receipts, none of which appear to be dated since 1840, appear to establish this fact.

The question then arises upon these pleadings and facts, whether there exists in the Court of Chancery of Maryland, authority, during the separation, to make a suitable allowance out of the property of the husband for the maintenance of the wife, or in other words to decree her alimony?

It is a question of great importance and delicacy, and has commanded, as it deserved, a very full and deliberate consideration of the cases upon the subject which have fallen under my observation, or been brought to my attention in the arguments of the counsel by whom the cause has been tried.

The counsel for the defendant has insisted that in England, the Court of Chancery grants alimony, or a separate maintenance for the wife, only, as a consequence of, or as an incident to, a sentence of divorce, *a mensa et thoro*, and that therefore no such allowance can be made there by the Chancery Court until the proper tribunal shall have paved the way by decreeing a separation between the parties, and this is a proposition which seems to be settled by the cases.

In this state, no judicial tribunal was ever clothed with authority to grant divorces until the legislature, by the act of 1841, ch. 262, conferred jurisdiction in such cases upon the courts of equity, defining the ground upon which they should proceed in the exercise of this new jurisdiction. Up to that period the legislature itself had exercised this power.

But although the Court of Chancery, until the passage of this act, had no authority to decree a divorce, it had from a period prior to the revolution full and complete jurisdiction in cases of alimony, and could decree to the wife a separate maintenance out of the estate of the husband, founded upon a proper case, 2 *Bland*, 565, 566; and the cases cited in the notes. *Galwith vs. Galwith*, 4 *H. & McH.*, 477; *Crane vs. Meginnis*, 1 *G. & J.*, 475.

This jurisdiction has also been expressly given to the Court of Chancery by the act passed at the February session, 1777.