

whatever proceedings corporations may see fit to take, I cannot say that a city may create a nuisance on the lot of a citizen, without making him any compensation for the damages, and then tax him to abate it.

We were pressed, as courts always are on such occasions, to make a decision that would avoid the inconveniences resulting from holding the tax illegal. These inconveniences may not be as great as was supposed. It would not follow from such a decision that those who had voluntarily paid it could recover it back. But whatever they may be, I am sure they cannot exceed the evils of holding that the citizen has no protection against illegal taxation. Courts have too frequently yielded to such appeals, and to avoid some immediate inconvenience, have decided cases differently from what they otherwise would, overlooking the more remote, but at the same time greater evils of bad precedents in the introduction of a pernicious principle into the administration of justice.

I think the plaintiff was entitled to an injunction restraining the sale of his lands for the general tax, which was increased by the illegal exemption, and for the nuisance tax, but not for the other assessments, and that the judgment should be reversed, with costs.

The judgment is reversed, and cause remanded for further proceedings.

RECENT ENGLISH DECISIONS.

In the Divorce and Matrimonial Causes Court.

WHITE vs. WHITE.

The husband will be entitled to the protection of the court, where the wife's passions, from whatever cause, are so little under control that she is in the habit of using personal violence to the husband, from which habit he may be in danger of bodily injury, though no actual serious injury has been inflicted.

This was a petition for judicial separation, at the suit of the husband, by reason of the wife's cruelty. It appeared that she was easily excited by drink, and in that condition had frequently used

personal violence towards her husband. She had also, at times, been in confinement as insane.

The case was argued, in the sittings after Trinity Term, by

T. Spinks, for the petitioner, and

Mundell, for the respondent.

Cur. adv. vult.

Dec. 7.—CRESSWELL, J. O. gave judgment.—I have had considerable difficulty in satisfying my mind as to the decree which should be pronounced in this case. The principles upon which the court should proceed are plain enough. They were distinctly stated by Lord Stowell in *Evans vs. Evans*, where the wife was petitioner; and again in *Kirkman vs. Kirkman*, 1 Cons. 409, where the husband sought the protection of the court. In that case Lord Stowell observed: “The persons of both parties must be protected from violence; and I cannot accede to what has been said in argument, that the court should not interfere till there has been actual violence of such a nature as to endanger life. It is not to pause till a tragical event has taken place; . . . it is perfectly clear that there have been words of menace with acts of violence accompanying them. It is said that they were caused by jealousy. All the evidence tends to establish that there was no foundation in the conduct of the husband for feelings of that nature. If such feelings were entertained, with or without reason, jealousy is a passion producing effects as violent as any other passion, and there will be the same necessity to provide for the safety and comfort of the individual. If that safety is endangered by violent and disorderly affections of the mind, it is the same in its effects as if it proceeded from malignity alone; it cannot be necessary that, in order to obtain the protection of the court, it should be made to appear to proceed from malignity.” In the case now before the court it appeared that, on many occasions, the husband had been assaulted by his wife, and had resorted with success to a magistrate for protection: the extent of the injury done to him was not fully explained; but on one or two occasions the assaults appeared to be of a somewhat serious character. Her demeanor was shown to have been very violent on many occasions, but that violence sometimes

expended itself in the destruction of her husband's property rather than in injury to his person. The unhappy woman had been several times in confinement as an insane person, and I have found it no easy task to judge how much of her violence towards her husband was to be ascribed to disease of the mind. Her own account of the manner in which the disputes between her and her husband arose was apparently very candid, and perhaps the safest on which the court can act. According to her evidence she was in the habit of going out and drinking spirits, not in large quantities, but sufficient to act upon a very excitable temperament. Then she and her husband began to dispute about trifles, she became gradually more and more excited until she lost her self-control, and then committed the violent acts complained of. These quarrels, which occurred frequently, appear in several instances to have preceded an attack of insanity, under which, as already observed, the unfortunate woman has several times labored. As far as I can judge from the evidence given, I suppose those attacks to have been the consequence, and not the cause of her intemperance and the quarrels with her husband. The assaults committed upon him were not proved to have been productive of any serious bodily injury; but where a woman, either from the effects of drinking, or any other cause, is entirely without the power of controlling her passion, and in such a state of mind is in the habit of assaulting her husband, it is impossible to say that he is not in such danger of bodily injury as entitles him to the protection of the court. I therefore feel bound to pronounce a decree of judicial separation.

Mundell then prayed the court to make some provision for the wife by an order for permanent alimony. There were but two cases reported in which a divorce *à mensa et thoro* had been pronounced at the suit of the husband for cruelty, so that there could not be said to be any precedent against what was now asked. It was clear that the considerations which might have founded the rule of the Ecclesiastical Courts to make no order for alimony when the divorce was granted by reason of the wife's adultery, did not apply to such cases as the present.

But the court, in absence of any precedent in support of the application, refused to make any order.