The foregoing application having been submitted it is thereupon ordered that the same be and is hereby dismissed with costs to be taxed by the Register.

Theodorick Bland Clk.

And afterwards to wit on the 10th day of September 1845 came the complainant aforesaid by his solicitor Collins Lee Esq. and prayed an appeal from the said Decree and of the dismissal of the petition of the said Complainant to the next Court of Appeals to be holden for the Western Shore of Maryland in the words following to wit.

Burgwyn vs. Burgwyn. In Chancery. Mr. Gassaway. Please enter an appeal in this case from the Decree of the Chancellor dismissal of the petition of Complainant and prepare the record as soon as you can. Sept. 9th 1845. Yrs. J. C. Lee Solr. for Complt.

which said Appeal was granted and the proceedings ordered to be transmitted and the same were transmitted accordingly.

And afterwards to wit on the 13th day of February 1846 came the complainant aforesaid by his solicitor Charles F. Mayer Esquire and filed in the said cause his petition in the words following to wit.

Thomas Pollok Burgwyn vs. Anna Matilda W. Burgwyn. In Chancery. To the Honorable The Chancellor. The Court of Appeals having reversed the Decree of this Honorable Court as is shown by the Copy of said Decree herewith exhibited which with the certified opinions of the Court annexed to said copy is prayed to be taken as part of this petition the plaintiff prays your Honours order allowing a Commission to take further testimony to issue directed to Thomas Hanson Bell of the City of Baltimore.

Charles F. Mayer, Solr. of Plff.

To the Honorable Theodorick Bland Chancellor of Maryland.

Burgwyn vs. Burgwyn. Court of Appeals W. S. December Term 1845. This cause coming on to be heard having been fully argued in writing by both parties and considered by the Court and this court being of opinion that the evidence taken under the Commission issued therein should have remained a term in that Court before the cause was ready for a hearing and that therefore it was prematurely decided. It is thereupon this twelfth day of February in the year eighteen hundred and forty six ordered adjudged and decreed that the Decree of the Chancellor passed in this cause be and the same is hereby reversed and remanded to the Court of Chancery for such further proceedings as the rules and principles of equity and the nature of the case shall sanction.

Stevenson Archer.
Thos. B. Dorsey.
E. F. Chambers.
A. C. Magruder.
Robert N. Martin.

Maryland Set. I Richard W. Gill, Clerk of the Court of Appeals for the Western Shore of Maryland do hereby certify that the foregoing is a full and true copy of the original decree now on file in said office.

In Testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals this thirteenth day of February A. D. one thousand eight hundred and forty six.

(Seal)

Richard W. Gill, Clerk.

Burgwyn vs. Burgwyn. Court of Appeals, Western Shore, December Term 1845. Judge Archer's individual opinion until the passage of the act of 1841 ch. 262 the Legislature exercised exclusive jurisdiction over the subject of Divorce, But the exercise of that jurisdiction by the General Assembly being found in practice to be inconvenient by the law adverted to jurisdiction was given to the Courts to decree divorces upon the principles designated by that law and the right is expressly given to divorce whether the cause of divorce originated in or out of the State and by a just construction of these laws and whether the applicant at the time when the cause of divorce originated resided in or out of the State provided such applicant previous to the application should have resided two years within the State. By thus imparting jurisdiction to the Courts the Legislature designed to strip themselves of this branch of their duty in all the cases specified by the act of assembly adverted to and its supplements & under these circumstances I think these acts should be liberally expounded so as to effectuate the intention of the Legislature. I cannot concur with the Chancellor that these laws are to have a prospective operation. The act of 1841 ch. 262 declares that after the passage of the act the Chancellor & County Court shall have jurisdiction of all applications for divorces, now if a prospective operation should be given to this law so as to apply alone to causes of seperation arising after the passage of the law, a class of cases of admitted causes of Divorce may have existed which the Courts could not relieve for want of jurisdiction and the Legislature could not or would not relieve having declared by the act that all future applicants should be made to the Courts. Independent of the above considerations it may be remarked that in assigning abandonment as one of the causes of divorce words having reference to abandonment before the passing of the law are used. The acts says as the fourth cause of divorce where the party complained against has abandoned the party complained against and has remained absent from the State for five years. A construction leaving to such consequences should be avoided and it would only be by giving a retrospective effect to the law that causes of divorce above adverted to could be redressed. The same construction which is proper to be placed on the original law is to be applied to the supplements, I believe the facts proven in the record would entitle the appellant to a divorce a vinculo matrimonii. I have deemed it necessary to present the above views as the cause will have to be remanded to the Court of Chancery. The Decree in the present cause was premature. It has been decided by this Court that according to the practice of the Court of Chancery that Court does not proceed to the passage of a final decree but by the consent of parties until the Commission returned has remained on file one entire term 11 G & J 441. The Decree in this case was made at the same term to which the commission was returned. In the decree of the Chancellor it is stated that the case was submitted but it appears from the record that the defendant filed her answer not by a solicitor but in propria persona and she does not appear to have had a solicitor in Court. The Commission is taken out ex parte by the Complainant and the submission stated by the Chancellor must be considered as made by the complainant. Had the Decree remained in Court other testimony may have been adduced