CASES IN

THE HIGH COURT OF CHANCERY,

OF MARYLAND.

HON. JOHN JOHNSON, CHANCELLOR.

BRADFORD AND WILLIAMS vs GEORGE H. WILLIAMS AND OTHERS. — MARCH TERM, 1849.

[EVIDENCE—ELECTION.]

THE rule of evidence, that husband and wife cannot be witnesses for or against each other, is firmly established, and is founded partly on identity of interest, and partly on that principle of public policy which seeks to prevent discord in families,—a policy of which no invasion will be permitted, even after divorce.

No case has been found in which a husband has been so far regarded as agent for his wife, as that his declarations as agent can be received in evidence against her.

The rule which admits as evidence the admissions and declarations of an agent, like other rules, is subject to limitations. Such declarations must be made in the course of, and accompanying the transaction which is the subject of inquiry,—but when so made, they constitute a part of the *res gestæ*, and are binding on the principal.

Declarations of an agent, made *after* the transaction, though in relation to it, are no part of the *res gestæ*, and are not binding on the principal, but come within the rule that excludes hearsay evidence.

The entries in the books of an agent, running over a long lapse of time, cannot be used against a principal, without showing that they were made under circumstances which constitute them a part of the *res gestæ*.

A plaintiff suing at law and in equity at the same time and for the same matter, will be compelled to elect in which court he will proceed. The reason and object of this rule is to relieve a defendant from the "double vexation" of defending himself in two courts against the same de-