

JAMES v. JAMES.

4-8134

201 S. W. 2d 14

Opinion delivered April 14, 1947.

1. DIVORCE—DECREE SUPPORTED BY EVIDENCE.—The decree granting appellee a divorce on the ground of habitual drunkenness and abusive treatment is amply supported by the evidence.
2. DIVORCE.—Appellant's contention that appellee failed to prove the statutory requirement that the cause of divorce occurred or existed within five years next before the commencement of the action (Pope's Dig., § 4386) cannot be sustained.

Appeal from Mississippi Chancery Court, Chickasawba District; *Francis Cherry*, Chancellor; affirmed.

Claude F. Cooper and *Gene E. Bradley*, for appellant.

Frank C. Douglas, for appellee.

McHANEY, Justice. Appellee and appellant were married in 1933. They lived together on appellee's 80-acre farm in Mississippi county since 1934, until a separation in December, 1945. Appellee brought this action for divorce in January, 1946, on the ground of habitual drunkenness and abusive treatment and for the possession of said 80-acre farm. They are each 74 years of age. Trial resulted in a decree for appellee as prayed, and in the dismissal of a cross-complaint of appellant which sought, not a divorce from appellee, but a money judgment against her for sums he claimed to have expended in reducing the mortgage indebtedness against said farm.

For a reversal it is argued that the decree is not supported by a preponderance of the evidence, and that appellee failed to prove the statutory requirement,

§ 4386, sub-division Third, "That the cause of divorce occurred or existed within five years next before the commencement of the suit."

We think appellant must fail on both points. The proof abundantly shows that appellant is addicted habitually to the use of intoxicating liquors to excess, in fact to such extent that he gets drunk regularly and has been doing so for many years and up to and after the separation took place; that particularly when intoxicated he is abusive of appellee, using vile and profane language to her; and that on some occasions he has struck her. It is also true that appellee will, on occasions, take a drink with appellant and that she can swear back at him with some expertness and vehemence, but the evidence is to the effect that he often over-persuaded her to thus yield to temptation.

Both have been previously married and divorced from their respective spouses on several occasions. We think the evidence sufficient to support the decree, and it is accordingly affirmed.
