

Grafton, }
 June, 1895. }

HARRINGTON v. HARRINGTON.

This court can decree a divorce for conviction of crime and imprisonment therefor in the state prison when the offence was committed by the libelee while domiciled here, and when both parties were domiciled here at the time the libel was filed.

LIBEL FOR DIVORCE, filed February 5, 1894. The cause alleged was the defendant's conviction of the larceny of a horse and his actual imprisonment therefor in the state prison, commencing November 20, 1892, under a sentence for more than a year. The plaintiff has had her domicile in the state since December 28, 1893, and the defendant since April, 1892.

Smith & Sloane, for the plaintiff.

WALLACE, J. The parties having their domicile in this state at the time the proceeding was commenced, the court has jurisdiction of them and can decree a divorce for a cause which is within its jurisdiction. The alleged cause of divorce occurred in this state while the libelee was domiciled here, but at a time when the libelant was not a resident of the state.

The doctrine that conviction of crime and imprisonment in one jurisdiction is only a cause of divorce in that jurisdiction and not in any other (*Martin v. Martin*, 47 N. H. 52; 1 Bish. Mar. & Div., s. 823) is evidence that the legislature must have intended that an offence like the present, which occurred within the state when the libelee was actually domiciled here, should be within the jurisdiction of the court. It must have been intended that the injured party should have a right to apply for a divorce somewhere. It must be here where the offence occurred, if anywhere. Although our cases hold that the court has no jurisdiction of a cause of divorce which arose when the libelant was not domiciled here, yet they have not gone to the extent of refusing jurisdiction when the offence was committed in this state by the libelee when domiciled here and was of such a nature it could be taken cognizance of nowhere else, and when both parties were domiciled here at the time of the filing of the libel. The court has jurisdiction.

Divorce decreed.

CARPENTER, J., did not sit: the others concurred.