

Vol 413 - 1907

## New Jersey Court of Errors and Appeals.

MAY J. NEAFIE, <i>Plaintiff,</i> <i>Defendant-in-Error,</i>	}	<b>In Tort.</b>
<i>vs.</i>		
HOBOKEN PRINTING AND PUBLISH- ING COMPANY, <i>Defendant,</i> <i>Plaintiff-in-Error.</i>	}	<b>On Error to Supreme Court.</b>

### **BRIEF FOR DEFENDANT-IN-ERROR.**

This is an action for libel brought by May J. Neafie against the Hoboken Printing and Publishing Company for damages for a libellous publication in *The Observer*, a daily newspaper published by the defendant in Hoboken, N. J., on the 18th day of March, 1903. This is the second trial. The case was first tried at the Morris County Circuit before Mr. Justice Garretson and a jury, and resulted in a verdict of \$5,000 for the plaintiff. That verdict was set aside and a new trial granted on the ground that punitive damages could not be recovered against the defendant corporation (see *Neafie vs. Hoboken P. & P. Co.*, 62 Atl., 1129).

The second trial was had before Hon. Alfred Elmer Mills and a jury in the Court of Common Pleas, Morris County, on the 11th day of June, 1906.

The jury returned a verdict for the plaintiff for \$3,000. From the judgment entered thereon the defendant has brought this writ of error. The assignments of error are seventeen in number and appear at pages 83 to 87 of the printed case.

The libel sued upon is set forth in the declaration, and appears at pages 88 to 90 of the printed case in the display type used in the original publication.

The facts in the case as disclosed by the evidence are without substantial dispute and as follows :

In April, 1891, the plaintiff married one George B. Neafie (Case, p. 27). For many years they resided in Montclair, Bloomfield and Boonton, and the plaintiff also had a large circle of acquaintances in Hoboken (her birthplace), Newark, Jersey City, New York and Brooklyn (Case, 28).

In January, 1903, she lived in Boonton, left her then husband, and early in February, 1903, she was admitted as a probationary pupil nurse to the Christ Hospital Training School for Nurses, Jersey City. She immediately caused to be filed her petition for absolute divorce (Case, pp. 37, 38) previously prepared. No notice or publication of any kind in regard thereto appeared in the defendant's newspaper at that time (Case, pp. 37, 38). The plaintiff's husband, the defendant in the divorce action, filed an answer to plaintiff's petition for divorce, and at the same time filed a cross petition (Case, pp. 61, 100). In his answer the defendant Neafie admitted that on a prior occasion he had been condoned for adultery. The first knowledge that the plaintiff had that either an answer or a cross bill had been filed was by the publication appearing in the defendant's newspaper on March 18th, 1903, under the heading, "Friend Consoled Lonesome Wife" (Case, pp. 30, 38) being the libel sued upon. This article was published as a local

news item and purported to be the allegations in the answer and cross bill of George B. Neafie. As a matter of fact it was a flippant and sensational exaggeration thereof.

Defendant did not pretend to have access to or rely upon the Chancery files, but got the story from a lawyer's office (Case, p. 58), being that of the husband's solicitor; who also represented the defendant newspaper and advertised in its columns (Case, p. 60).

No inquiry was made of the plaintiff before publication (though Christ Hospital is but a short distance from the defendant's office), (Case, p. 40) and no proceedings had been had in open court. The cross bill while voluminous contained but a single charge of adultery, and this was alleged to have been committed more than six years before but only discovered after Neafie was served with papers in his wife's action for divorce.

On June 10th, 1903, on motion of counsel for Mrs. Neafie, before answering the cross-petition of her husband, an order was made that all of the allegations of said cross-petition as to misconduct of the plaintiff except as to the single charge above mentioned, be stricken from the files of the court as scandalous and impertinent. This was after a hearing in open court. No publication concerning this appeared in the defendant's newspaper (Case, p. 39).

Thereafter Mrs. Neafie filed an answer to what remained of the cross petition expressly and specifically denying in detail each of the allegations thereof. No publication concerning this appeared in the defendant's newspaper (Case, p. 40). March 16th, 1904, the hearing on the divorce proceeding took place, and the plaintiff, Mrs. Neafie, was awarded a decree of absolute divorce. This was reported as a telegraphic item in the defendant's newspaper on the first page on that date. On the following day, March 17th, 1904, the defendant

newspaper agreed at plaintiff's demand to publish a statement correcting the report of the hearing, giving it the same prominence and display. In publishing this retraction the defendant inserted it on an inner page instead of on the first page as agreed. April 12th, 1904, the defendant published on the first page of its newspaper a telegraphic account of a proceeding in Newark in which George B. Neafie on affidavits that were shown to be false made application to reopen the divorce proceeding, which application was denied.

On the 23rd of May, 1904, the plaintiff filed the declaration herein.

On July 8th, 1904, the defendant filed its plea herein.

July 30th, 1904, the defendant published what purported to be an interview with George B. Neafie and his counsel which was a virtual reiteration of the previous publications in regard to the plaintiff. At that time George B. Neafie was in custody under a writ of *ne exeat*.

On the trial the learned trial Judge charged the jury that punitive damages could not be awarded against the defendant corporation.

## I.

### **There was no error in rulings on evidence.**

[Assignments 1, 2, 3, 4, 5, 6, 7.]

The plaintiff claimed to be entitled to punitive damages, and to entitle her to such damages upon the trial offered certain evidence which the plaintiff in error now contends was improperly received. *No motion was made by the plaintiff in error to*

*strike out this testimony and no request was made that the jury be instructed to disregard it.*

The evidence was properly received at the time it was offered. It was nullified however by the charge of the Court that

“under the evidence that has been presented in this case, exemplary or punitive damages cannot be awarded against the defendant” (Case, p. 75, line 34).

(1) The purpose of this question (Case, p. 18) was to lay the foundation for exemplary damages, by establishing the identity of the defendant's officers, so as to bind the defendant by their participation in the publication of the libel or the ratification thereof. This was clearly proper, and for such purposes necessary under the decision of the Supreme Court granting a new trial (62 Atl., 1129). In any event it was harmless.

(2) The declaration of the defendant printed on the first page of the newspaper containing the libel:

“The Observer daily enters almost anywhere in Jersey City, Hoboken and North Hudson” (Case, p. 22), was properly received to show circulation.

(3) In cross-examination the plaintiff was asked :

“ Q. Did you see the paper of March 17th, 1904 ?

A. I don't remember.

Q. Mrs. Neafie, did any other paper publish these articles ? A. Yes.

Q. What other paper published it ? A. The Jersey City Journal.

Q. Did you bring a suit against The Jersey City Journal ?

*The Court.*—Objection sustained (Case, p. 35).”

Overruling this question is assigned as error.

The article of March 17th, 1904 (Case, p. 97) was

not the libel sued upon, which was published March 18th, 1903 (Case, p. 88).

Manifestly a suit on an article published a year later had no bearing on the issues herein.

If the question was intended to refer to the item sued upon, it was properly overruled.

In *Butler vs. Hoboken Co.*, 62 Atl., 272, at p. 273, the Court says :

“The trial Justice also properly overruled testimony to show the particulars of actions brought against other newspapers for publishing a similar libel.”

In the *Butler* case the libel was a telegraphic news item sent throughout the country.

In the case at bar the libel was a local news item originating with defendant.

See also 18 Am. & Eng. Enc. of Law  
(2nd ed.) 1103.

In *Pier vs. Speer*, 64 Atl., 161, this Court said :

“The rejection of testimony as to a solitary circumstance which is incompetent unless other testimony be supplied, is not, in the absence of any offer to supply it legal error” (p. 162).

(4) In cross-examination plaintiff was asked many questions as to what she had seen published in the *Observer* (Case, pp. 36-37).

On re-direct she was asked whether she saw any report that she had filed an answer to her husband's cross-bill and answered no (Case, p. 39). There was no error in this. It bore upon defendant's attitude toward plaintiff in the divorce suit, and was proper also as re-direct-examination.

(5) The testimony assigned as error was stricken out on defendant's motion (Case, pp. 43-44).

(6) Exhibit P-2 (Case, pp. 45, 91) was proper in rebuttal of testimony elicited by defendant on cross-examination of plaintiff, and proper to show malice.

It was a virtual reiteration of the original libel. This was clearly admissible under the settled rule in this and other States, as stated in *Evening Journal vs. McDermott*, 44 N. J. L., 430, at page 432:

“The previous or subsequent publications are admitted merely for the purpose of showing the temper of the defendant's mind in the publication complained of, and it, therefore, makes no difference that the previous or subsequent publication is one on which, by reason of the bar of the statute of limitations, no action can be maintained, for no damages are sought or recoverable upon it.”

It makes no difference that the publication was made subsequent to the beginning of the action. In fact, that circumstance only makes it the greater evidence of malice.

(7) There is no force in the seventh assignment of error challenging the refusal to non-suit plaintiff. The publication was clearly libelous.

As was said in *Stuart vs. News Publishing Co.*, 67 N. J. L., 317, 318.

“The publication charged him with a crime. That *per se* even under this statute, entitled him to nominal damages, and such increase beyond nominal as in the judgment of the jury would compensate for the injury.”

## II.

### **There was no error in the Court's charge.**

[Assignments 8, 9, 10].

(8) The 8th assignment challenges the charge that the publication is libelous on its face, and that it charges the plaintiff with the crime of adultery.

This charge was so manifestly right that its propriety requires no discussion.

18 Am. & Eng. Enc. of Law (2d Ed.),  
990 (province of court and jury).

(9) The extract from the charge quoted in the ninth assignment must be read with the context from which it is taken (Case, p. 75, lines 6-18), wherein the Court charged that reports of judicial proceedings must be confined to a fair report and "contain no defamatory observations or comments."

The propriety of this part of the charge is made manifest by the coarse and salacious headings in heavy black type with which the libel is captioned (see Case, p. 88).

Moreover, according to the testimony of defendant's editor, defendant did not pretend to have access to or rely upon the Chancery files, but got the story from a lawyer's office (Case, p. 58), being that of the husband's solicitor, who had also represented the defendant newspaper, and advertised in its columns (Case, p. 60).

On the question of publication of pleadings in divorce actions see also *Stuart vs. Press Pub. Co.*, 93 App. Div. (N. Y.), 467, 478, and *Park vs. Free Press Co.* 72 Mich., 560, 568.

(10) The 10th assignment that the Court erred in leaving to the jury the amount of compensation, if any, plaintiff should receive, and that they could consider the injury to her feelings and her mental anguish, is without force.

The amount of damages was clearly for the jury to determine and the injury to plaintiff's feelings and her mental anguish were matters properly to be considered.

In *Butler vs. Hoboken P. & P. Co.*, 62 Atl. Rep., 272, 274 :

“The right of a libelled person to recover damages as a compensation for her feelings was recognized by our Court of Errors and Appeals in the case of *Knowlden vs. Guardian Printing Co.*, reported in 55 Atl., 287. Indeed, mental anguish, mortification and anger are the necessary results from defamation of character, and so may be said to be legally inferred from the fact of defamation.”

See also 18 Am. & Eng. Enc. of Law (2nd Ed.), 1083.

### III.

#### **There was no error in refusals to charge defendant's requests.**

[Assignments 11, 12, 13, 14, 15, 16, 17.]

(12) This raises the same question as assignment 2 (see p. 5 of this brief).

The 14th, 15th, 16th, and 17th assignments may be considered together. These bear only upon the question of punitive damages, and inasmuch as the Court charged the jury that such damages

could not be awarded (Case, p. 75, line 34), there is no force in these assignments.

The 11th and 13th are covered by the language of this Court in *Stuart vs. News Pub. Co.*, 67 N. J. L., 317, at page 318.

“The only effect of the statute of June 13th, 1898, when the facts proven make a case under its provisions, is to limit the recovery of the plaintiff to his ‘actual damage proven and specially alleged in his declaration.’ The plaintiff did allege specially in his declaration the publication of the article, and that he was injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace with and among all his neighbors and other good and worthy persons to whom he was in anywise known. The publication charged him with a crime. That, *per se*, even under this statute, entitled him to nominal damages, and such increase beyond nominal as in the judgment of the jury would compensate for the injury specially alleged as above quoted from his declaration. What this increase was, if anything, was peculiarly for the jury.”

The declarations in the Stuart case and the case at bar, are practically identical (Case, p. 7).

The defendant's request to charge was merely that the plaintiff could recover only compensatory damages. This was already covered by the Court's charge :

“If you find any damages against the defendant, they must be only compensatory in their nature” (Case, p. 76, line 1).

Moreover, there was evidence introduced by defendant that a retraction had been demanded (Case, p. 47, line 34; p. 48, line 1).

The Court could not therefore properly charge defendant's request.

**The Act of June 12th, 1898, is unconstitutional.**

(a) *It violates Act II, Sec. VII, Subd. 4, of the New Jersey Constitution.*

“4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*”

The title of this act is “An Act Relating to Libels.”

These words do not express the object of this act. The object is not expressed as required by the constitution.

Furthermore, the constitution requires that “every law shall embrace but *one object.*”

It may be said of this statute that it has only one *subject*, namely, libels, but it cannot be contended that it has but a single *object*. In the first section *it is made a misdemeanor* to deliver to any “owner, manager, editor, publisher or reporter of any newspaper,” &c., any libelous statement and thereby secure the publication of the same.

The *object* of this section is to punish those who impose upon a newspaper or procure it to publish libelous matter.

Section two provides a *rule of evidence for a civil action* which purports to give to the newspaper class a protection that no one else has, and to confer upon such class the right to give proof of intention and to limit liability to the plaintiff to the actual damage proved. Obviously *the object of this section is to confer a special benefit* upon a limited class and is quite different from the object of the first section which is criminal in its aspect.

*Rader vs. Township of Union*, 10  
Vr., 509.

*Couteri vs. New Brunswick*, 15 Vr.,  
58.

*Shivers vs. Newton*, 16 Vr., 469.

*Daubman vs. Smith*, 18 Nr., 200.

*Jersey City vs. Elmendorf*, 18 Vr.,  
283.

*Lane vs. State*, 20 Vr., 673.

*Falkner vs. Dorland*, 25 Vr., 409.

(b) *It denies the equal protection of the laws.*

*Park vs. Free Press Co.*, 72 Mich.,  
560, 565.

*Connolly vs. Union Sewer Pipe Co.*,  
184 U. S., 540, 558-560.

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**The judgment should be affirmed, with  
costs.**

Respectfully submitted,

WILLIAM H. SPEER,  
*Attorney for Plaintiff,*  
*Defendant in Error.*

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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MAY J. NEAFIE,	)		
	)		
Plaintiff,	)		10
	)		
Defendant in Error.	)		
	)	In Tort	
vs.	)		
	)	On Error to	
THE HOBOKEN PRINT-	)	Supreme Court	
ING AND PUBLISHING	)		
	)		
COMPANY,	)		
	)		
Defendant,	)		20
	)		
Plaintiff in Error.	)		
_____o	)		

BRIEF FOR PLAINTIFF IN ERROR.

THE CAUSE OF ACTION.

The defendant below was sued for an alleged **30** libel published by it in the newspaper "The Observer" on March 18, 1903. The alleged libel consisted of a publication of extracts from the records of Court of Chancery in a divorce action brought by the plaintiff herein against her husband, in which he filed a cross-petition against her. No part of the publication on which the suit is based asserts directly or indirectly that the plaintiff was guilty of any of the wrongs on which her husband based his cross-petition for divorce. While the publication was not **40**

absolutely privileged, its nature and the circumstances of it, and the fact that the defendant is a corporation sued for punitive damages, solely under the doctrine of respondent superior, caused a reversal of a prior verdict in this action by the Supreme Court at the November Term, 1905, reported in 43 Vroom 340.

At the second trial, after proving the libel alleged  
 10 in the declaration, the plaintiff against the objections and exceptions of the defendant, proved the publication of other articles in the defendant's newspaper, dealing with her divorce suit. The evidence was material to the plaintiff's case, if at all, in only one way; it had a tendency to produce a larger verdict than might otherwise have been given.

While the reversal of the prior verdict was made on a rule to show cause, it was based on an error of  
 20 law committed by the trial judge, in instructing the jury that it might give punitive damages.

The assignments of error, seventeen in number are printed on pages 83 to 87 of the case.

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#### POINT I.

The learned trial judge erred in allowing the question "who were the officers of the Corporation in  
 30 January 1903," (page 16) and the question as to who were directors in March 1906, (page 17).

These two questions do not refer to the time of the alleged libel which is declared upon,, and the latter date was after the commencement of this suit. It is an effort to show MALICE AND THE CONSEQUENT RIGHT TO VINDICTIVE DAMAGES. The reversal of the prior judgment was granted because the trial Court told the jury that  
 40 punitive damages might be given.

Moreover the latter date March 1906, was long after this suit was commenced, and the former date, January 1903, was long before the commencement of this suit. Both inquiries were irrelevant.

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POINT II.

The trial Court also erred in permitting the plaintiff to read to the jury a statement in Exhibit P. 1, which is as follows: "The Observer daily enters almost every home in Jersey City, Hoboken and North Hudson." 10

The only ground for the admissibility of that evidence is its bearing on the quantum of damages, the damages inflicted by a widely circulated libel being greater than that inflicted by a libel less widely spread. 20

That objectionable statement, so far as the evidence discloses, was printed in the Observer only of March 18, 1903, the day when the Editor was absent and when therefore the corporation defendant was not liable beyond mere compensatory damages.

Does not a rule similar to the which excludes punitive damages, exclude the said *statement* from the jury's consideration, with the production of further evidence. For all that appears, that *statement* might have been the unauthorized work of some officious workman, or of a mere correspondent 30

Its admission, as the evidence stands, was clearly an error.

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POINT III.

The admission in evidence of other alleged libels of the plaintiff by the defendant published in the 40

issues of July 30, 1904 and March 6, 1906, was clearly erroneous. The errors thus committed are covered by the Fourth, Fifth and Sixth assignments of error.

First:—Those two alleged libels were published after the commencement of this suit.

10 Second:—Their admission in evidence, even had they not been published before the commencement of this suit, was clearly erroneous.

It seems to be settled law that evidence of a libel published at a different time and FOR WHICH ANOTHER ACTION MAY BE BROUGHT, is “inadmissible to prove malice or for any purpose.” The quoted words in the last sentence are from *Towshend on Slander & Libel*. (Third edition 1877) 663.

20 This text book cites to the same effect:

*Howard vs. Sexton* 4 N. Y. 157.

*Deffries vs. Davies*, 7 C. & P. 112.

30 The reason for excluding other libels is the fact that each libel furnishes a separate cause of action and if in an action on one libel, other libels were laid before the jury, there would be no means of telling that the verdict was not influenced by those libels, which were not pleaded as a cause of action; and the admission of other libels might enable a plaintiff by subsequent suits on them to obtain damages twice for the same cause of action.

In *Howard v. Sexton* a reversal was had because in a suit based on a charge that plaintiff had “sworn falsely before arbitrators” a charge “the way they got the money was no better than highway robbery” 40 was admitted.

In *Cassidy v. Brooklyn Daily Eagle*, 138 N. Y. 242 (1893) a verdict against a defendant for a libel was reversed because the Trial Court admitted evidence of libellous articles in the defendants newspaper, other than that on which the suit was brought. The Court of Appeals, by Peckham J., said: "I think to admit such proof under a pleading which simply sets forth the libellous article complained of would be unjust to the defendant, because it would naturally be a surprise to him. It would be trying a matter of which the plaintiff had not complained, and of which the defendant ought not to be called upon to defend." 10

In *Titus v. Sumner* 44 N. Y. 266 also the question involved in this Point was considered, and the admissibility in evidence of libellous words, other than those declared upon was conceded only when an action on those words was barred by the statute of limitations; there being under those circumstances, no danger that their admission might result in enabling the plaintiff to get double damages for one cause of action. 20

The question was also considered in *Inman v. Foster*, 8 Wendell 609 (1832) *Savage*, Ch. J., after indicating the confused state of the authorities said that in "*Buller's NISI PRIUS*," p. 7 it was stated "that after plaintiff had proved the words as laid, he may give evidence of other expression made use of by the defendants as proof of his ill will." The Chief Justice effectually combats that view, thus: "the cases in England on that point are *Nisi Prius* decisions. Words not laid are given in evidence, not to sustain the action, it is said, BUT TO SHOW MALICE, the quo animo the words laid in the declaration were spoken; and in this point of view it is immaterial whether they are actionable or not provided they show malice. In some of the 30 40

“cases the plaintiff was confined to words not action-  
 “able, spoken after the words laid in the declara-  
 “tion; in others, any words have been received,  
 “spoken at any time; but when subsequent action-  
 “able words are proved, it is said the jury should be  
 “cautioned not to give damages for such words  
 “(Peakes N. P. 22, 75, 125, 166; 1 Camp. 48, Starkie  
 “on Slander 398, 3 Binney, 550” . . . . . “Were  
 this question free from embarrassment on the  
 10 ground of authority “the learned chief justice con-  
 “tinued, I should think with Chief Justice Tilghman  
 “and Chief Justice Spencer (7 Johns. 270) that the  
 “practice is dangerous; for though the jury are  
 “charged not to give damages for such words, they  
 “be imperceptibly influenced by them, and why  
 “should evidence be given to the jury which is not  
 “to inflame their verdict? The actionable words  
 “laid and proven sustain the action; they imply ma-  
 “lice; then why prove more malice? And yet the  
 20 “jury are told not to give damages for such words;  
 “at most then they are given to prove malice, which  
 “was before sufficiently proven.”

INMAN v. FOSTER is direct authority, perhaps  
 for only one rule, viz: “Words spoken more than  
 “two years before suit brought (and therefore out-  
 “lawed as a cause of action) may be given in evi-  
 “dence TO SHOW MALICE” and *e converso* words  
 30 not spoken more than two years before suit brought  
 cannot be received in evidence.

In this case the articles printed were within the  
 two years limitation.

In Root v. Lowndes 6 Hill (N. Y.) 518 (1844) the  
 Supreme Court declared that the following rules  
 might be deducted from the adjudged cases:

“In actions for libel the plaintiff may give in evi-  
 40 dence other publications, which are not libellous;

and in actions for verbal slander, the plaintiff may prove other slanderous words where the statute of limitations has run as to those words.

It is RES ADJUDICATA in this cause that the plaintiff has no right to punitive damages. The prior verdict herein was reversed on rule to show cause, in 43 Vroom 340, for the sole reason that the trial judge had allowed the jury to give punitive damages. **10**

This point is based on the tighth assignment of error, which questions the legality of a portion of the judge's charge to the jury. That portion of the charge is as follows:—

"The article in the paper of March 18, 1903, is "libellous on its face. IT ACCUSES the plaintiff of "unfaithfulness to her husband. IT HOLDS HER "UP to the ridicule and scorn of the community. "Her good name is ATTACKED. Under any fair **20** "interpretation of the language found in the article, "it CHARGES the plaintiff with the crime of adultery. The article is clearly libellous, and if published by the defendant corporation, a verdict can "be found against it."

We respectfully submit that such a charge is erroneous in a trial court, however, admirable it might be in the mouth of a zealous advocate representing a plaintiff.

The article on which this action is based no where **30** "ACCUSES" the plaintiff of any crime or offence whatsoever. It nowhere CHARGES her with the crime of adultery or with any other crime. The learned trial judge might have told the jury that in determining the amount of their verdict, they should consider whether the libel set forth in the declaration would be taken by the public as an accusation or charge of unchastity, or as a mere repetition. Whether evidence that affirmative spoken words are a mere repetition **40**

of what another person had uttered is receivable in evidence, written words which on their face are merely a statement of what another person had said should not by a trial judge be characterized, before a jury, as an "accusation" or a "charge."

An "accusation" certainly does more damage than a mere statement that another person has said something similar. Who can tell that the jury in  
**10** this cause did not assess their extraordinary verdict on the theory that the defendant had actually accused the plaintiff of adultery and CHARGED her with unfaithfulness. The unusual amount of the verdict, in the face of the very slight evidence of damages, must convince any impartial person that the judge's apparent zeal for damages, influenced the action of the jury.

**20** As to the legality of that part of the charge which is questioned in this Point, direct authority is necessarily meagre. It cannot be easily conceived that judges often commit the error of telling a jury that by written words, which on their face are only a statement of what another person had said, a defendant "accuses" a plaintiff of a crime or "charges" her with any offense.

**30** Had the trial judge merely told the jury that the publication in question was actionable whether uttered affirmatively or hypothetically, ironically or interrogatively, he would have kept within legal bounds which he transgressed when he told them what the words meant.

A strong argument by analogy may be drawn from the decisions in libel suits, as to when a variance appears between *allegata* and *probata* in slander suits. Only a few of those decisions seem  
**40** to be necessary for us to set forth.

A count alleging that words were spoken *affirmatively* is not supported by evidence that they were spoken *interrogatively*.

Sandford v. Gaddis, 15 Ill. 228.

Walker v. Boyd, 101, Ind. 396.

Where the allegation is that defendant *charged* unchastity, and the proof is that he said that there was a rumor to that effect, the variance is fatal. **10**

Horton v. Reavis, 6 North Car. 380.

So also, an allegation that slanderous words were used ABSOLUTELY will not be supported by evidence that they were used hypothetically. The allegation of the use of words "He swore to a lie" is not established by proof of the utterance of the words "He swore to a lie if he swore as J. said he did." **20**

Evarts v. Smith, 19 Mich. 55.

And a count charging the words "You would steal and you will steal" is not established by evidence of the use of the words "A man that would do that would steal."

Steele v. Kemble, 27 Pa. (3 Casey) 112.

**30**

And if a declaration says that the defendant charged the plaintiff with a crime, and the evidence discloses that the defendant said he supposed the plaintiff to be guilty, there is a fatal variance.

Dickey v. Andross, 32 Vt. 55.

Many other authorities might be cited to a similar effect, but those which we have mentioned will suffice. **40**

That portion of the charge which is criticized in this Point not only violates the cardinal rule that the meaning of doubtful words must be determined by the jury, but it also offends against the elementary rule that the trial judge must not put upon the words a meaning which they do not and cannot bear.

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## POINT IV.

The trial court erred in refusing to charge the request set forth in the fifteenth assignment of error.

That request was couched in the very words used by the Supreme Court, in the opinion delivered in deciding the rule to show cause herein.

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Neafie v. Hoboken Printing & Publishing Co., 43 Vr. 340.

## POINT V.

The learned trial judge erred in his charge in telling the jury that they might consider the "mental anguish and mental suffering" of the plaintiff in making up their verdict.

30 That a jury must not, in a libel suit, consider such elements seems to be well settled, in cases where no actual malice appears, and when punitive damages are not recoverable.

Brooks v. Harrison, 91 N. Y. 82-92.

Warner v. P. P. Co., 132 N. Y. 181.

Vans Ingen v. Star Co., 1 Ap. Div. 429.

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Affirmed 157 N. Y. 695.

Our Supreme Court seems to have adopted the New York rule that damages for mental suffering are in the nature of punitive damages.

Butler v. Hoboken P. & P. Co., 62 Atl p

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POINT VI.

The Court erred in refusing to charge the request **10** set forth in the seventeenth assignment of error.

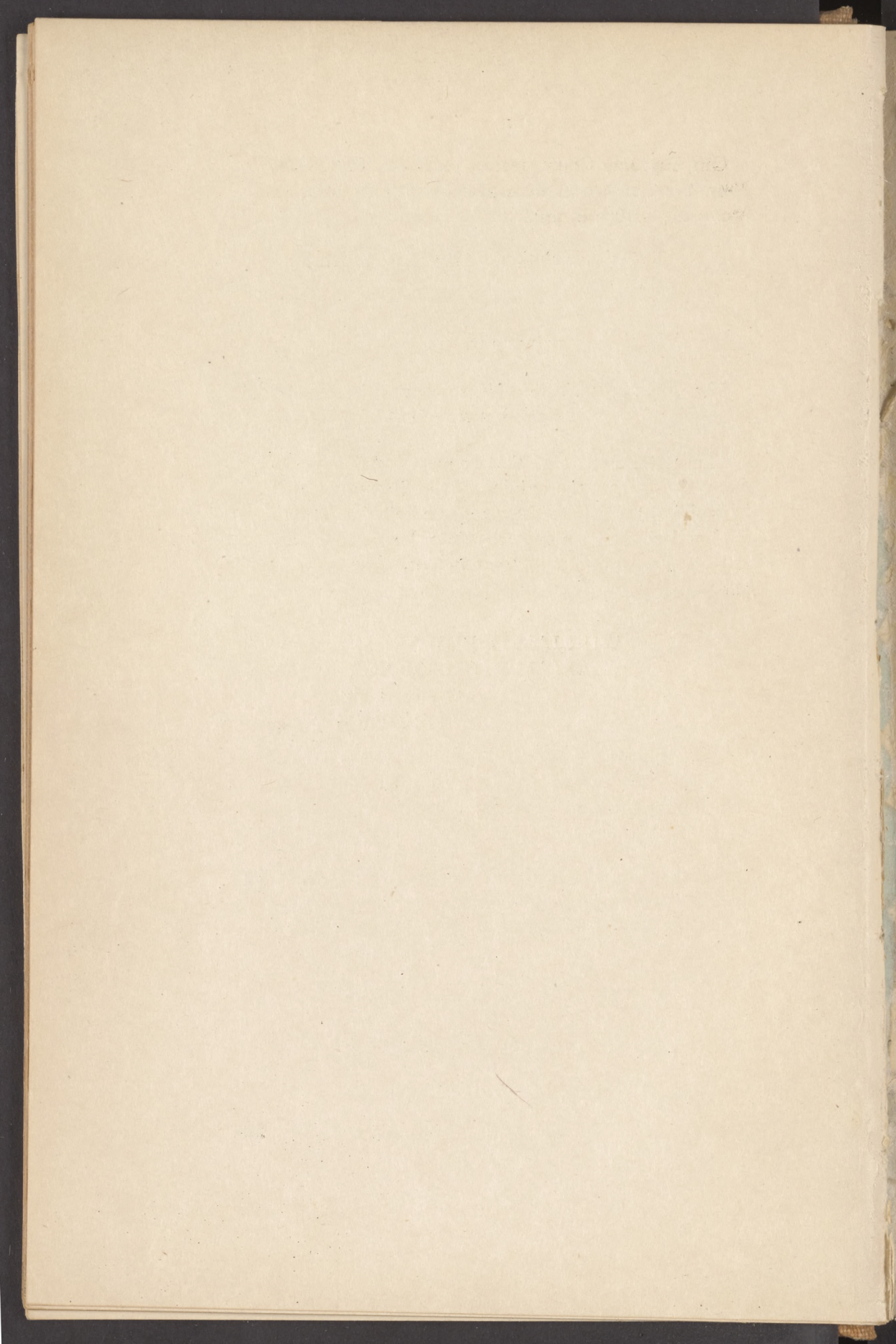
The material part of that request is taken in so many words from the opinion of the Supreme Court in deciding the rule to show cause herein (43 Vroom 340) and expresses a correct rule of law.

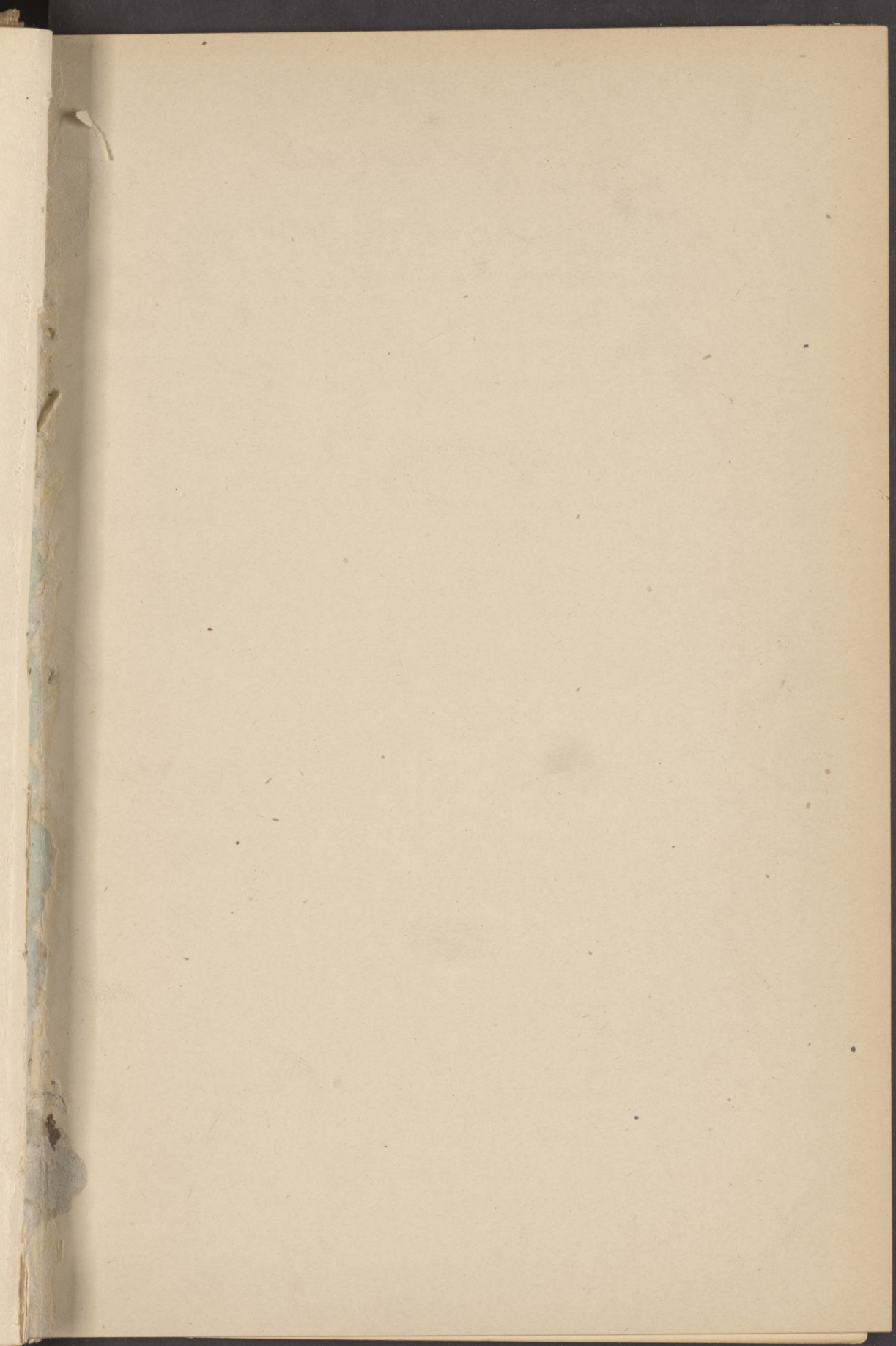
It is respectfully submitted that the judgment of the Supreme Court should be reversed.

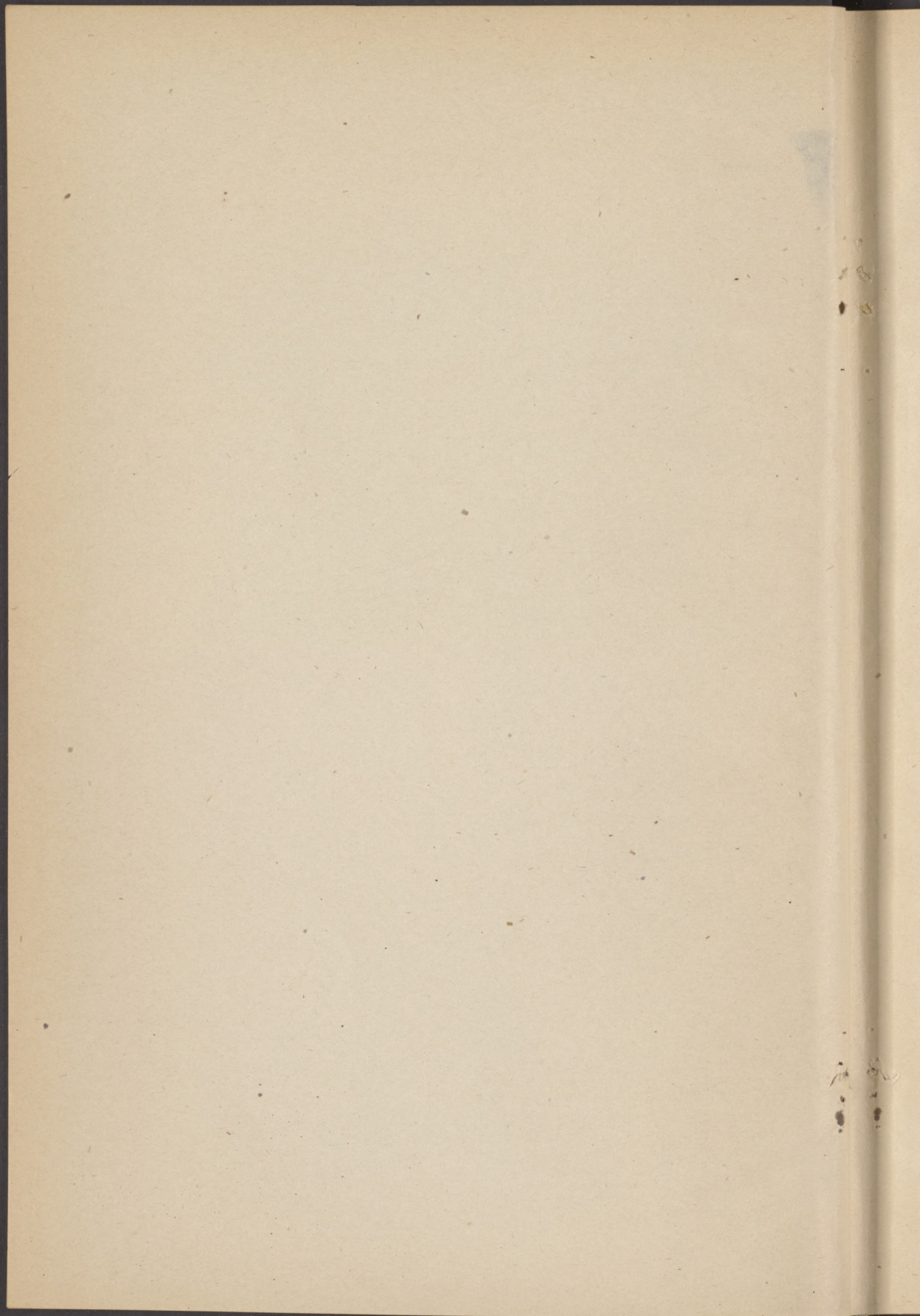
WILLIAM D. EDWARDS, **20**  
 WILLIAM B. GILLMORE,  
 Of Counsel with  
 Plaintiff in Error.

**30**

**40**







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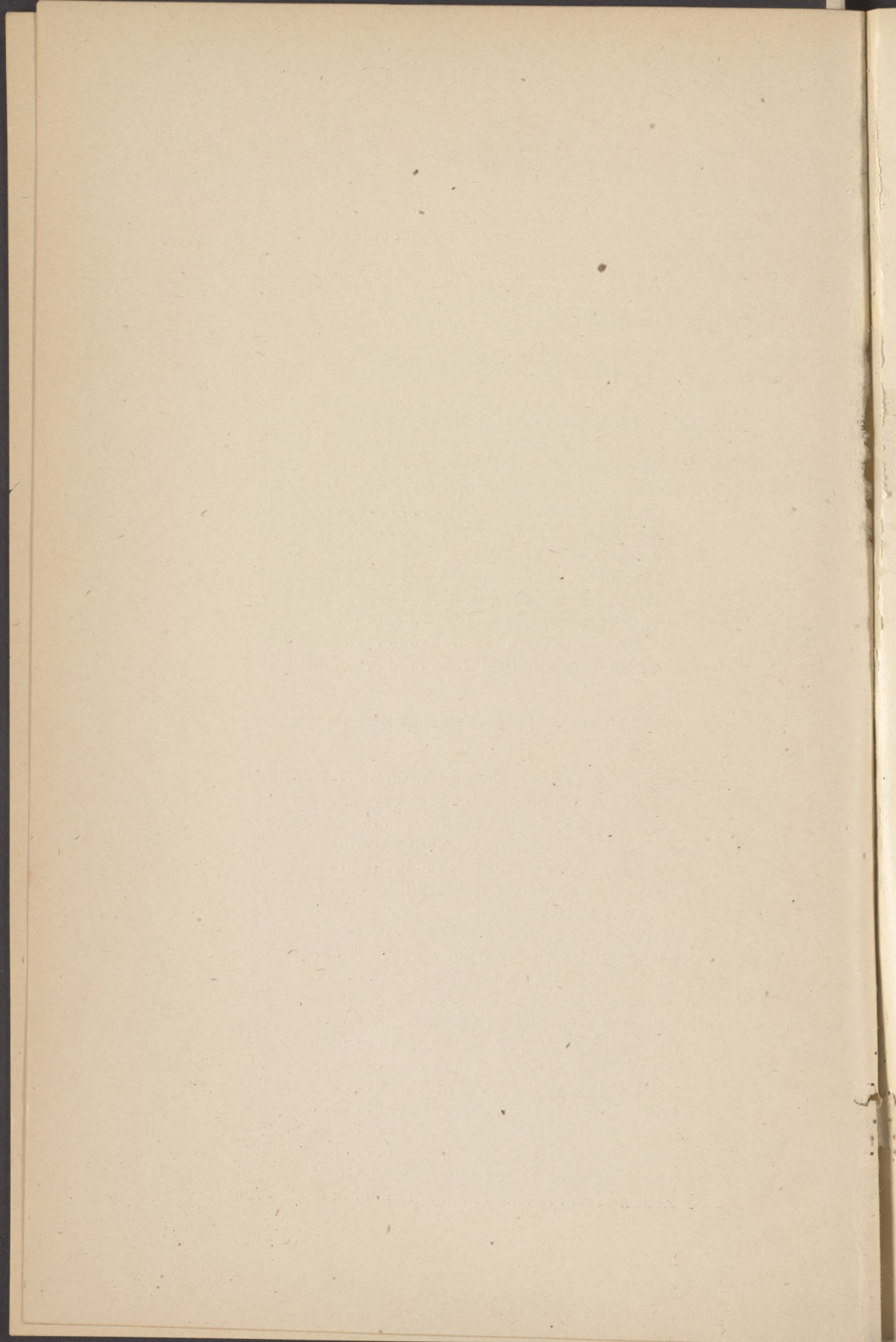
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NEW JERSEY, ss.:

The State of New Jersey to the  
Chief Justice and other Justices of  
our Supreme Court of Judicature,  
Greeting:

For as much as in the record and proceeding, and <sup>10</sup>  
also in the giving of judgment in a certain plaint  
which was in our Supreme Court of Judicature be-  
fore you, between May J. Neafie, plaintiff, and the  
Hoboken Printing and Publishing Company, de-  
fendant, in an action in tort, manifest error hath in-  
tervened, to the great damage of the said defendant,  
as it is said; we being willing that the error, if any  
there be, should in due form be corrected, and full  
and speedy justice done to the parties aforesaid, in  
this behalf, do command you that if judgment be <sup>20</sup>  
thereupon given and affirmed, then you distinctly  
and openly send, under your seal, the record and pro-  
ceedings aforesaid, with all things touching and  
concerning the same, to our Judges of our Court of  
Errors and Appeals, in the last resort in all causes,  
at Trenton, on the twenty-fourth day of November  
next, together with this writ; that the record and  
proceedings aforesaid being inspected, we may  
cause to be further done thereupon for correcting  
that error, what of right and according to the law <sup>30</sup>  
and custom of the State of New Jersey ought to be  
done.

Witness, William J. Magee, our Chancellor and  
President Judge of our said Court of Errors and  
Appeals at Trenton, aforesaid on the seventh day of  
November, 1906.

BEDLE, EDWARDS & HOLMES

Attorneys.

S. D. DICKINSON,  
Clerk.

The answer of Wm. S. Gummere the Chief Justice within named.

The record and proceedings of the plea whereof mention is within made with all things touching and concerning the same to the Court of Errors and Appeals, in the last resort in all cases, within specified at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am  
 10 within commanded.

WILLIAM S. GUMMERE,  
 Chief Justice.

NEW JERSEY SUPREME COURT.

Of the Twenty-Third Day of May, A. D. 1904.

20 MORRIS COUNTY, ss.:

The "Hoboken Printing and Publishing Company," a corporation of New Jersey, the defendant in this action, was summoned to answer May J. Neafie, the plaintiff herein, in an action of tort, and thereupon the said plaintiff, by William H. Speer, her attorney, complains for that the defendant is a corporation duly organized and existing under and by virtue of the State of New Jersey, and for that whereas the said  
 30 plaintiff is a married woman living separate from her husband George B. Neafie, and whereas the said plaintiff now is a good, true, honest, just and faithful citizen and resident of the State of New Jersey, and as such hath always behaved and conducted herself, and until the committing of the several grievances by the said defendant, as hereinafter mentioned, was always reputed, esteemed and accepted by and among all her neighbors, and other good and worthy persons to whom she was in any wise known,  
 40 to be a person of good name, fame and credit, to wit,

at Boonton, in the County of Morris, State of New Jersey. And whereas, also, the said plaintiff was a married woman and hath not ever been guilty, or until the time of the committing of the said several grievances by the said defendant, as hereinafter, mentioned, been suspected to have been guilty of the crime of adultery, or any other such crime, or of the offences and misconduct hereinafter mentioned to have been charged upon and imputed to the said plaintiff, or of any other such offences or misconduct, by means of which said premises the said plaintiff before the committing of the several grievances by the said defendant as hereinafter mentioned, had deservedly obtained the good opinion and credit of all her neighbors, and other good and worthy persons, to whom she was in any wise known, to wit, at the City of Boonton in the County of Morris, State of New Jersey. 10

Yet the defendant, well knowing the premises, but greatly envying the happy state and condition of the said plaintiff, and contriving, and wickedly and maliciously intending to injure said plaintiff in her good name, fame and credit, and to bring her into public scandal, infamy and disgrace, with and amongst all her neighbors and other good and worthy persons to whom she was in any wise known, and to cause it to be suspected and believed by those neighbors and persons that she, the said plaintiff, had been and was guilty of the crime of adultery and of the offenses and misconduct hereinafter mentioned to have been charged upon and imputed to the said plaintiff, and to subject her to the pains and penalties by the laws of this Commonwealth made and provided against and inflicted upon persons guilty thereof, and to vex, harrass, oppress, impoverish and wholly ruin the said plaintiff heretofore, to wit, on the eighteenth day of March, 1903, at Hoboken, in the County of Hudson, State of New Jersey, in a certain daily newspaper called "The Observer," of which the defendant is the 20  
30  
40

publisher and proprietor, and which said paper had and has a wide circulation in the said Counties of Hudson and Morris, and in the States of New Jersey and New York and elsewhere, falsely, wickedly and maliciously wrote and caused to be printed and published of and concerning the said plaintiff in said newspaper a certain false, scandalous, malicious and defamatory libel in the following words, that is to say:

“FRIEND CONSOLED LONESOME WIFE.”

Allegation Made by George  
Neafie in His Suit for Divorce

PROMINENT HOBOKEN OFFICIAL IMPLICATED.

“Hubby Says He <sup>has</sup> ~~Went~~ Home When One of the  
20 Co-respondents Kept an Appointment Late in the Evening—Took the Woman Rowing, it is Said—  
Wife Has Counter Suit.

Testimony of a startling and sensational nature, in which the name of a prominent official in this city will figure, is expected when the hearings in the counter suits for divorce of George B. Neafie and his wife, May J. Neafie, nee Crevier, take place in the Court of Chancery. The Crevier family is one of the oldest  
30 in this city, and the Neafies, who have been connected with the Lackawanna Railroad for nearly twenty-five years, are among the best known people of Boonton, this State.

On February 5, of the present year, Mrs. Neafie filed a petition for divorce from her husband on statutory grounds. A woman named Daisy Addie is named as co-respondent. It is alleged in the bill that Neafie met the Addie woman frequently at Hopatcong, and that the conduct of the pair was of such  
40 a nature that comments were made. The Neafie

couple were married on April 15, 1891. Neafie is engineer of a fast train that runs to Scranton on the Lackawanna road. His brother occupies a lucrative and responsible position with the same road, and his father, Daniel Neafie, was yardmaster for years at the local yards.

The defendant of the petition of February 5 denies that he knows of any such woman as Daisy Addie and makes a general denial of his wife's charges. In her petition, Mrs. Neafie alleges that she is without means of support. The accused husband says he deeded a house and lot over to her at Boonton when they were married, and that she has besides considerable money accumulated by him. 10

#### IN CROSS-PETITION

The cross-petition filed by the accused husband, is highly sensational. Several co-respondents are mentioned, the most prominent of which is Frank Nugent, a well known railroad man. The petitioner in the counter suit alleges that Nugent, under the guise of friendship, used to sit up late at his home in Boonton and entertain his wife. She complained of feeling lonesome because her husband did not reach home until an early hour in the morning. One night, when he returned unexpectedly, Neafie claims he secured evidence of a nature sufficient in seriousness to secure an absolute divorce. That was before Neafie and his wife separated. Since then Neafie claims that his wife had made startling admissions of misconduct to him. The petitioner in the suit against Mrs. Neafie claims that she told him that she came to this city to visit Charles Crevier in the spring of 1897, and that while there met the official referred to. She says the official invited her to go rowing on the Hudson and that she accepted the invitation. The couple rowed a considerable distance and returned to a boathouse, in this city, which was desert- 20  
30  
40

ed. Later, it was arranged, so the petition reads, that the official and Mrs. Neafie were to meet at the latter's home in Boonton. He kept the appointment and rang the door bell at a late hour in the night, not expecting to find "hubby" at home. Neafie alleges that he stuck his head out of the window and demanded what the official wanted. The latter offered a thousand apologies and said he had made a mistake  
 10 in the house.

Mrs. Neafie, according to her husband, was very suspicious of her husband and offered to co-respondent Nugent all sorts of inducements to reveal to her damaging evidence against Neafie.

There is also a very prominent physician, a Dr. Walton, of the Boonton section, whom, it is alleged, made quite an impression on Mrs. Neafie as a palm-  
 20 ist. The plaintiff alleges that his wife's confessions to him concerning Dr. Walton will be used in the evidence.

Lawyer John J. Fallon, of this city, admitted that he would represent Neafie, but refused to make any statement."

And the said plaintiff says that said words were  
 30 used in a defamatory sense, which defamatory sense is hereby specified as follows:

That the said plaintiff had committed the crime of adultery; that the said plaintiff was guilty of marital misconduct and disloyalty and infidelity; that the said plaintiff was and is a person of an adulterous disposition; that the said plaintiff was and is a dishonest person; that the said plaintiff practiced deception on her husband; and that the plaintiff was and is an indecorous, unchaste and immodest and improper per-  
 40 son.

By means of the committing of which said several grievances by the said defendant as aforesaid, the said plaintiff not only hath been and is greatly injured in her said good name, fame and credit, and brought into public scandal, infamy and disgrace, with and among all her neighbors, and other good and worthy persons to whom she was in any wise known, inso-  
 much that divers of those neighbors and persons to whom the innocence and integrity of the said plain- 10  
 tiff in the premises were unknown, have, on account of the committing of the said grievances by the said defendant, as aforesaid, from thence hitherto sus-  
 pected and believed, and still do suspect and believe the said plaintiff to have been and to be a person  
 guilty of the crime of adultery and of the offenses hereinbefore mentioned to have been charged upon  
 and imputed to said plaintiff by the said defendant, and have, by reason of the committing of the said  
 grievances by the said defendant, as aforesaid, from 20  
 thence hitherto wholly refused, and still do refuse, to have any transaction, acquaintance or discourse  
 with the said plaintiff, as they were before used and accustomed to have, and otherwise would have had.

And also by reason that the plaintiff at the time of the committing of the several grievances by the said defendant, as hereinbefore mentioned, was engaged as a probationary nurse in the Training School for Nurses of Christ Hospital in Jersey City, New Jersey, 30  
 being then and there so engaged by virtue of the authorities of said Hospital, specially granted in behalf of said plaintiff, in exception to the general rules and custom of said Hospital and other hospitals general-  
 ly, which said rules and customs are that no married woman be accepted as a probationer or admitted to training in said School and Hospital.

And by reason of said grievances and publication, as aforesaid, and on no other account whatever, the authorities and superiors over said plaintiff in said 40

Christ Hospital and Training School for Nurses subjected the plaintiff to great humiliation and disgrace, and were about to dismiss said plaintiff from her employment in said hospital and only refrained therefrom on the plaintiff's protestations and assurances that the said charges and imputations, as aforesaid, were utterly false and untrue, and on the condition and with the understanding that thereafter the said plaintiff would never be seen outside of the said hospital in the company of any male person, not even her own brother, Charles E. Crevier, and that she should at all times remain in and about the said hospital and training school except when specially excused. By means of which said premises the plaintiff hath been wholly deprived of all intercourse or society with her said brother, Charles E. Crevier and divers other good and worthy persons, and has not been permitted to be received into their respective houses or company, whereby said plaintiff has been deprived of meat, drink and various other benefits and advantages which, before that time, she had received, and would have continued to have received, whereby the said plaintiff has lost all those valuable benefits and advantages being to her theretofore of great value, and has been and is greatly reduced and prejudiced in her fortunes and pecuniary circumstances, and has been greatly hindered and prevented from forming new acquaintances and extending her circles thereof, in order that she might the more profitably practice her profession as a trained nurse after finishing her course in the said Training School for Nurses at Christ Hospital. And also that by reason of the said grievances and publication as aforesaid the authorities and superiors over said plaintiff in her employment as probationary nurse in the Training School of Christ Hospital notified her that notwithstanding that they would forbear to dismiss the plaintiff from said employment as aforesaid, yet nevertheless should there be any further publications or newspaper notoriety concerning her the said plain-

tiff, they would be compelled, as a matter of duty to the said hospital, its patrons, patients, employes and friends, to forthwith dispense with her services, whatever might be the merit or truth of the situation with respect to her. By means of which premises the said plaintiff was restrained and prevented from applying to the Court of Chancery for an order directing the payment to her, the said plaintiff, of counsel fees and alimony for her support and maintain- 10  
 ence pendente lite in an action for absolute divorce against her said husband for his adultery, then pending in said Court of Chancery, and she was otherwise greatly hindered and delayed and put to additional expense in the prosecution of said action; and the said plaintiff has been and is by reason of the committing of the said several grievances otherwise greatly injured and damaged, to wit, at Boonton and Jersey City, and in Hudson and Morris Counties, New Jersey, as aforesaid. 20

WHEREFORE, the said plaintiff saith that she is injured and hath sustained damage to the amount of Thirty-five thousand dollars (\$35,000), and, therefore, she brings this suit, etc.

WILLIAM H. SPEER,

Attorney for Plaintiff.

Filed May 23, 1904.

30

And the said defendant, by Bedle, Edwards & Thompson, its attorneys, comes and defends the force and injury, when &c., and says that it is not guilty of the torts above laid to its charge or of any or either of them, or of any part thereof, as the said plaintiff hath above thereof complained against it; and of this it puts itself on the country, &c.

And the plaintiff doth the like.

Filed July 8, 1904.

40

And now at this day, to wit, the Seventh day of November, one thousand nine hundred and six, comes the said plaintiff by her attorney aforesaid before the said Justices of the Supreme Court of New Jersey aforesaid, at Trenton aforesaid, and the said Justice before whom the issue was tried, has sent hither his record had before him in these words, to wit:

10 Afterwards, to wit, at the Circuit Court holden at Morristown, in and for the County of Morris, before his Honor Abram Q. Garretson, one of the Justices of the Supreme Court, on the First day of May, one thousand nine hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff, May J. Neafie, and the said defendant, Hoboken Printing and Publishing Company, by their respective attorneys, within  
 20 mentioned, and both parties having then and there consented thereto in open court the within issue, by order of said Justice, was thereupon then and there sent by him to be tried in the Court of Common Pleas in and for the County of Morris wherein the venue in this action is laid, and afterwards, to wit, on the 11th day of June, one thousand nine hundred and six, at a session of the said Court of Common Pleas, in and for the County of Morris, held at Morristown, in and for said County, before his Honor Alfred  
 30 Elmer Mills, Judge of the said Court of Common Pleas in and for the County of Morris, according to the form of the statute in such case made and provided, comes as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned, and the jurors of the jury, whereof mention is within made, being summoned, also come, who to speak the truth of the matters within contained, being chosen, tried and sworn, upon their oath say that the defendant is guilty in manner and form as the plaintiff hath within com-  
 40 plained against it, and they assess the damages of

the said plaintiff, on occasion thereof, over and above her costs and charges by her about her suit in this behalf expended, to the sum of three thousand dollars, and for those costs and charges to the sum of six cents.

And the defendant having consented that judgment be entered forthwith.

THEREFORE, it is considered that the plaintiff <sup>10</sup> do recover against the said defendant her said damages by the jurors aforesaid, in form aforesaid assessed, and also the sum of ~~755~~ and ~~14 cents~~ dollars for her said costs and charges by the said Court before the Justices thereof now here adjudged, to increase to, the said plaintiff, and with his assent, which said damages, costs and charges in the whole amount to 3058.19 dollars.

And the said defendant in mercy, &c.

20

Judgment signed and entered this First day of November, A. D. one thousand nine hundred six.

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30

40

## NEW JERSEY SUPREME COURT.

Morris Circuit—May Term, 1906.

	o	
	)	
10 MAY J. NEAFIE,	)	
	)	
vs.	)	
	)	
THE HOBOKEN PRINT-	)	In Tort.
	)	
ING AND PUBLISHING	)	
	)	
COMPANY.	)	
	)	
	o	

20 Appearances:

William H. Speer, Esq., and Charles C. Craig, Esq., for the plaintiff.

Hon. William D. Edwards (Bedle, Edwards & Holmes) and Hon. George T. Werts, for the defendant.

30 BE IT REMEMBERED that on the Eleventh and Twelfth days of June, one thousand nine hundred and six, at a Court of Common Pleas, holden at Morristown, in and for the County of Morris, before his Honor, Alfred E. Mills, Judge of the Court of Common Pleas, to whom the above entitled case was referred, the issue joined in the above stated cause between the parties (pro ut the pleadings), came on to be tried by a jury for that purpose, duly empanelled and thereupon the plaintiff and defendant offered  
40 evidence (as hereinafter set out) to maintain the issue on their respective parts, as follows:

## PLAINTIFF'S CASE.

THOMAS C. McKEON, sworn as a witness on the part of the plaintiff, testifies as follows:

DIRECT EXAMINATION by Mr. Craig:

Q. Where do you reside? A. Hoboken.

Q. Are you connected with the Hoboken Printing and Publishing Company, the defendant in this case? <sup>10</sup>

A. I am.

Q. Were you connected with it in January, 1903?

A. Yes.

Q. What was your relation to the corporation at that time? A. Director.

Q. What else? A. And editor of the paper.

Q. Who else were directors?

Mr. EDWARDS: I object. What has that to do with this case? <sup>20</sup>

Mr. CRAIG: It may become important.

Mr. EDWARDS: Then I object at this time.

The COURT: The Court will allow it at this time.

A. Mr. G. H. Seide and Frederick Kauffmann. <sup>30</sup>

Q. How long did they continue, including yourself, to be such directors?

Mr. EDWARDS: I object. That is not the proper way to show that. The minutes of this corporation is the proper way to show it.

Mr. SPEER: We have subpoenaed Mr. McKeon to bring the minutes. <sup>40</sup>

By Mr. EDWARDS: .

Q. Are you the custodian of the minutes? A. No; I am not the custodian of the minutes; I asked for them and the secretary refused to give them to me.

By Mr. CRAIG:

Q. Who is the secretary who refused to give them  
10 to you? A. William J. Dynan.

Q. Is he a director of that corporation?

Mr. EDWARDS: I object. It has no bearing at this time.

Mr. CRAIG: I think I have a right to know whether this secretary who took it upon himself to refuse this book is a member of the board of directors, or merely an appointee. I take it this witness could have compelled the  
20 the surrender of this minute book. I withdraw the question if there is a serious objection.

Q. Have you brought with you the subpoena duces tecum that was served upon you to produce the papers of this corporation? A. No, sir.

Q. What did you do with it? A. I think I left it behind me.

Q. You showed it to the secretary?

30 Mr. EDWARDS: I object to that. It is of no importance who he showed it to.

Mr. SPEER: If I may be permitted to suggest something, this appears to be the situation: This subpoena duces tecum which admittedly was served, was served upon Mr. McKeon, the present witness, who was then and now is a director of this company, to produce the minutes of the company. Now, we stand prepared to prove that Mr. McKeon is in  
40 practical charge of the Hoboken Printing and

Publishing Company's plant; and that Mr. Dynan, the gentleman who, it is said, refused to deliver these minutes to him to be brought here, was here at the last session of this court in a friendly attitude with the present witness; and that these minutes, the nonproduction of which it is now sought to use against our proving the directorate of this corporation, will show those officers and others who have <sup>10</sup> a right to supervise the introduction of news-matter into the paper, and to ratify by their subsequent action the action of some one, and as Your Honor will have observed, having read the printed case, to supervise the introduction of news matter of a libelous character. We have a right to show that the effort to prevent proof of the corporate directorship is an obstinate effort, so that the jury may have a right to draw such inferences from that ob- <sup>20</sup> stinancy as they see fit, inimical to the defendant and favorable to the plaintiff.

Mr. EDWARDS: These papers could have been demanded on a notice to produce. They have seen fit to summon Mr. McKeon to bring them here. Mr. McKeon says: "I am a director. I am not the secretary. I am not in charge of the books." I don't understand that that subpoena was for this morning. <sup>30</sup>

Mr. SPEER: The understanding was that the subpoena, in consideration of our agreeing to let the case go over, would have its vigor continued to bring the books here when the trial should go on, as a favor to you.

Mr. EDWARDS: I didn't so understand it, but if that is so, I don't make any point of that.

Q. I ask you whether Mr. Dynan, the secretary of the corporation, to whom you showed this subpoena duces tecum to produce the books and papers of this corporation, is a director of the defendant company, the Hoboken Printing and Publishing Company?

A. No, sir.

Q. Or a member at the time you showed it to him?

10 Mr. EDWARDS: I object. The minutes are the best evidence of that fact.

A. No, sir.

Mr. SPEER: We are prepared to show that Mr. Dynan is the secretary, and that so far as the directorship is concerned there is a contest now on, which is of record in the office of the Secretary of State; and there is every reason—

20 Mr. EDWARDS: Your Honor will now see the futility of the question. It appears that there is this controversy. I say it is wrong to ask this gentleman to take sides in that controversy. The question here is: Did this paper publish this libel? Have they got the right defendant? I don't think there is going to be any trouble on that score in this case.

30 The COURT: The Court will allow the question to be asked.

Q. (Question repeated by stenographer.) I ask you whether Mr. Dynan, the secretary of the corporation, to whom you showed this subpoena duces tecum to produce the books and papers of this corporation, is a director of the defendant corporation, the Hoboken Printing and Publishing Company, or was a member at the time you showed it to him? A. No, sir; decidedly no.

40 Q. Then he is a mere employee?

Mr. EDWARDS: I object to that as a conclusion.

The COURT: Yes; that is a conclusion.

Q. How long did those men whom you have named as being in office in January, 1903, continue to be officers of that corporation?

Mr. EDWARDS: I object. 10

Q. I will modify it to avoid any distinction that may be in the mind of counsel. Did the board of directors that you have named as being in office, January, 1903, continue to be such directors until the First of August, 1904? A. Yes.

Q. Were they such directors on the First day of March, 1906?

Mr. EDWARDS: I object to that. What has that to do with the question in issue? 20  
That was after the beginning of this suit. I ask an exception on the ground that it is immaterial and irrelevant.

Q. Who were the directors on the <sup>Suit</sup>~~Sixth~~ day of March, 1906?

Mr. EDWARDS: I object on the ground that the minutes are the best evidence of these facts. What is the object of this? 30

Mr. SPEER: We have an article appearing in the paper in March, 1906, which tends to show an obstinate intent on the part of this defendant to malign this woman, even after suit brought, and even after one trial was had. Malice is proved by acts prior and subsequent.

The COURT: I don't think you can show anything after suit was brought. 40

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

Q. Who were the officers of the corporation in January, 1903?

Mr. EDWARDS: I don't think that can have any bearing on this question.

10

Mr. CRAIG: I will say this to Your Honor: Here was a suit brought in the Court of Chancery in January, 1903, and continued in that Court in 1904 and 1905. The plaintiff in this case was the complainant in that action in chancery; that this defendant with its newspaper circulating all through that part of New Jersey, where the friends of the plaintiff in this action resided, from time to time, not once but several times, published what they alleged to be reports of proceedings in that action in chancery, which were grossly unfair to this plaintiff, and which we say were malicious. We will show that every transaction which transpired in the Court of Chancery, which was favorable to this plaintiff, they suppressed reporting in their paper, or at least they made no mention of it. We are entitled to show who the officers of that corporation were and who the directors were who are responsible for the policy of the paper.

20

30

Mr. EDWARDS: There is only one article claimed as libelous. It seems to me the trial of this case must be confined to that article and to its motive.

The COURT: It is permissible if there were others after the first but before the suit was brought.

40

Counsel for the defendant pray an exception to the ruling of the Court, which is allowed and the same is sealed accordingly.

ALFRED ELMER MILLS, (Seal.)  
Judge, &c.

A. G. A. Seide, President; William J. Dynan, Secretary and Treasurer.

Q. Did the defendant corporation at that time publish the "Observer?" A. It did. 10

Q. And has since continued to publish it? A. Yes.

Q. How many editors did the corporation have in January, 1903, and in March, 1903? A. Practically one.

Q. And that was who? A. Myself.

Q. Was there any such functionary as the news editor? A. I had several assistants.

Q. They were all— 20

Mr. EDWARDS: I object to leading the witness or characterizing the question.

Q. The other men employed in the editorial work were assistants to you? A. I said "yes."

Q. Who was the City Editor in March, 1903?

Mr. EDWARDS: I object on the ground that it is incompetent and improper, and there may not have been any such person. 30

Q. Was there a City Editor in March, 1903? A. I think I said there was not.

Q. I ask you a fact; I don't care for what you think: Was there a City Editor in 1903? A. No.

By the COURT:

Q. You say you were the editor; were you the only editor? A. I will have to explain, judge. 40

By Mr. CRAIG:

Q. When you were present, you were the editor in charge of all the work that went into the newspaper? A. Yes.

Q. In your absence, your assistants did that in your office? A. Yes.

Q. And of course it is the function of the editor to supply the head lines of the matter that goes into the paper?

Mr. EDWARDS: I object.

Q. Is it? Who supplies the head lines? A Well, four or five people in an office that—

Q. An editor? A. He is not called an editor; they are called copy-readers; they do nothing else but write head lines.

Q. What was the circulation of the "Observer" in March, 1903? A. I have practically forgotten; you will have to refresh my memory.

Q. (Showing witness.) I show you this item here and ask you whether that refreshes your memory as to the circulation?

Mr. EDWARDS: I object. The newspaper is not evidence of that. I object to the paper being used for that purpose or anything of the kind. I object to its being used to refresh his memory in any way.

Mr. CRAIG: A witness may refresh his memory by anything.

Q. (Showing witness.) Can you identify this thing that I now hand you, and tell me what it is? A. A newspaper.

Q. What newspaper? A. The "Observer."

Q. Published by whom? A. The Hoboken Printing and Publishing Company.

Q. The defendant in this case? A. Yes; I presume.

Q. Of what date? A. March 18, 1903.

Q. Can you tell me the circulation of that newspaper, or the number published on that date? A. No.

Q. Or about that time—its general circulation at that time? A. I cannot; I have forgotten it.

Q. Can you refresh your recollection by anything that you see on the first page of this paper, in the upper right hand corner? A. That means nothing.

Q. I am asking whether that refreshes your memory? A. No.

Mr. CRAIG: I offer this newspaper.

Mr. EDWARDS: I object to this; so far as it refers to this case, this paper is wholly irrelevant.

20

The COURT: Is that the paper that contains the libel alleged in the case?

Mr. CRAIG: Yes, sir.

The COURT: If that is undisputed, the paper will go in evidence.

(Paper is marked P-1.)

Mr. CRAIG: I will read to the jury this matter which you will see printed here (indicating.)

Mr. EDWARDS: I object to the reading of any part of this exhibit except so much as refers to the libel in question.

Mr. CRAIG: And the circulation.

Mr. EDWARDS: I object.

The COURT: The Court allows it.

40

Mr. EDWARDS: I ask an exception to the reading of that part.

The COURT: You may have an exception. I think it is proper.

ALFRED ELMER MILLS, (Seal.)  
Judge, &c.

10 Mr. CRAIG: I read the matter enclosed in heavy black lines in the upper right hand corner of the "Observer" of March 18, 1903:

"The 'Observer' daily enters almost every home in Jersey City, Hoboken and North Hudson."

Mr. WERTS: Do I understand the Court to have admitted that as evidence?

20 The COURT: Yes.

CROSS-EXAMINATION by Mr. Edwards:

Q. Has the "Observer" any circulation in Morris County?

Mr. CRAIG: That is objected to as incompetent.

The COURT: Objection overruled.

30 A. Not that I know of; I think not.

Q. It circulates mainly in Hudson County? A. In Hudson altogether.

Q. This article of March 18, 1903; when did you first see that?

40 Mr. CRAIG: We object to that, if your Honor please, as not proper cross-examination. We have not examined on that. We have offered the paper as being the paper

published by the defendant company. That does not open cross-examination as to anything in the paper.

The COURT: Objection overruled.

Counsel for the plaintiff pray an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly. 10

A. The day following.

Q. Were you on duty on March 18, 1903? A. I was not.

Q. Where were you? A. I think I was home sick.

Q. You were away sick? A. Yes.

Q. What hour of the day is the paper published?

A. About half-past two or three o'clock.

Q. It is made up in the morning and during the day? A. Yes. 20

Q. Do you have the appointment of your assistant editors? A. Yes.

Q. Yourself? A. Yes.

Q. As editor? A. Yes.

Q. Did you ever approve of this head line? A. No.

RE-DIRECT EXAMINATION by Mr. Craig:

Q. Who was your physician on the Eighteenth of March, 1903? A. Who was what? 30

Q. Your physician? A. The same physician I have always had,—Dr. Foley.

Q. Did he attend you on that day? A. No; I don't know whether he did or not.

Q. How sick were you? A. I cannot remember how serious the illness was; I think it was an attack of stomach trouble, to which I am subject.

Q. What time of day did this attack strike you? A. I cannot remember; I think it was about noon; I remember that I was not there; I just remember that I was sick at the time. 40

Q. You had this attack of stomach trouble after you had your noon-day luncheon? A. I don't think I had my noon-day luncheon.

Q. And after you had your noon-day— A. I say I don't remember that.

Q. You remember it was stomach trouble? A. Because I am subject to it; that is all.

Q. You have no recollection of any particular trouble on that day? A. I don't know except that I was ill, and that was usually the nature of my ailment.

Q. You are usually ill on the day that you publish libels?

Mr. EDWARDS: I object.

The COURT: Objection sustained.

Q. I want you to tell us whether you were ill as a matter of fact, on the eighteenth day of March, 1903?

A. I have said I was.

Q. I know you have said you were, but I want to know if you were ill?

Mr. EDWARDS: I object to the style of the question.

A. Yes.

Q. Were you in bed? A. I cannot say. The chances are that I was.

Mr. CRAIG: May I strike out the latter part?

The COURT: No.

Q. There were some chances you were not in bed?

A. As near as I can remember the date and the nature of my illness—

Q. (Interrupting.) You cannot remember that you were ill on the 18th? A. Because I seldom stay

away from the paper unless because of illness, and I was away that day—what part of the day, I don't remember—

Q. What time do you usually go home? A. When? In the afternoon.

Q. In the afternoon. What time do you usually leave the office? A. About three o'clock.

Q. What time did you go home that day?

10

Mr. EDWARDS: He does not say that he was there that day.

A. I was not there—

Mr. CRAIG: I think it is important to know what time he left there that day. Maybe I can refresh his recollection by his testimony on the former trial.

20

Q. Can you testify that you were at home that afternoon? A. Yes; I can testify positively that I was not there.

Q. That you were not at home? A. What?

Q. I asked you whether you were at home that afternoon? A. No; I cannot testify positively as to that.

Q. Can you name any other day in the month of March that you were not there? A. No.

30

Q. You were away from there that afternoon; you are sure of that? A. I am sure of that, because I objected to that article the next day.

Q. Are you a shareholder of the defendant corporation? A. Yes.

Q. (Showing witness.) Is that the "Observer" published by the defendant on the day that it bears date? A. Yes.

Mr. CRAIG: I ask that this paper of July 30, 1904, be marked for identification.

40

Mr. EDWARDS: I object, because that is after the commencement of this suit.

The COURT: It may be marked for identification.

Q. (Showing witness.) I show you another paper and ask you whether that is a copy of the "Observer" of the date that it bears date? A. It looks like it.

10 Q. Is it? A. I don't know; it is possible to print a paper exactly like that.

Q. You want to tell the jury that you don't know whether this paper which I show you is the Observer of that date? A. I cannot tell you positively. It looks like it.

Mr. EDWARDS: What is the date?

Mr. CRAIG: March 6, 1906.

20 The COURT: It may be marked for identification.

(Paper of July 30, 1904, is marked P-2 for identification. Paper of March 6, 1906, is marked P-3 for identification.)

Q. You were the editor of the paper on March 6, 1906?

Mr. EDWARDS: Objected to as immaterial.

30 The COURT: Objection sustained.

Mr. CRAIG: I am going to show later on that this paper which he cannot recognize here as being a copy of the "Observer," contains an editorial written by him on that date against this plaintiff.

The COURT: The objection is sustained.

40 Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

MAY J. NEAFIE, the plaintiff, sworn as a witness  
in her own behalf, testifies as follows:

DIRECT EXAMINATION by Mr. Craig:

Q. Where did you reside in January, 1903? A.  
Boonton, N. J.

Q. You brought this suit against your husband for  
divorce?

Mr. WERTS: Why don't you prove the <sup>10</sup>  
marriage and all that sort of thing first?

Mr. CRAIG: Is that an objection?

A. Some time in February.

By Mr. EDWARDS:

Q. What is that? A. In the early part of Febru-  
ary.

Q. 1903? A. 1903. 20

By Mr. CRAIG:

Q. Where were you on the 18th day of March,  
1903? A. In the hospital.

Q. What hospital? A. Christ Hospital, Jersey  
City.

Q. In the training school for nurses? A. In the  
training school for nurses.

Q. And how long had you been there? A. About  
six months. 30

By The COURT:

Q. Who was your husband at that time? A.  
George B. Neafie.

Q. How long had he been your husband? Twelve  
years; since 1891.

By Mr. CRAIG:

Q. And before you had lived at Boonton, where  
else had you lived? A. In Hoboken. 40

Q. Where else? A. Before I was married I lived in Hoboken.

Q. And where else? A. I resided in Boonton all the while I was married, except the last two or three years.

Q. You lived in Morristown? A. Morristown, Boonton, N. J., Bloomfield, N. J., and Montclair.

Q. Prior to your marriage, you lived in Morris-  
10 town? A. Yes, in Morristown.

Q. And while you were married, you also lived at Montclair and Bloomfield? A. Yes, sir.

Q. And you have acquaintances or friends, or did you have at that time, in all of those places? A. In all of those places.

Q. And also in Brooklyn and New York? A. Yes, in Brooklyn and New York.

Mr. EDWARDS: Objected to as leading.

20 Q. You obtained a divorce from your husband? A. Yes, sir.

Q. I show you a paper and ask you when you saw a copy of the "Observer" of that day for the first time? A. March 18, 1903, the night that it was printed.

Q. It was shown to you that night? A. My friend brought it to me at the home in the hospital.

Q. State to the jury what your feelings were when  
30 you saw it published? A. I was very much worried as to whether the hospital authorities would see it.

Mr. EDWARDS: I object to it; there is no special damages claimed on account of the hospital authorities.

Q. Just state what your feelings were, in meeting your friends and acquaintances after that time, as the result of this publication? A. I was humiliated. A  
40 great many of my friends and acquaintances shunned me.

Mr. EDWARDS: I think that is a conclusion on her part.

The COURT: In view of the nature of this action, the Court will allow the answer to stand.

Mr. EDWARDS: I ask that it be stricken out on the ground that it is incompetent and irrelevant, and also that it is not the best evidence of that fact. She can state the circumstances but not the conclusion. <sup>10</sup>

The COURT: The answer may stand, and the defendant may have an exception.

Q. How did you feel, Mrs. Neafie, after what you heard on this occasion? A. I was humiliated and worried and felt that I had been unjustly treated.

Q. How long did your feelings of humiliation and mortification continue? <sup>20</sup>

Mr. EDWARDS: I object. She has not said that she had any feelings of mortification.

Q. Leaving out the mortification? A. Well, I have never got over it until this day.

CROSS-EXAMINATION by Mr. Edwards:

Q. You were angry at your husband for making such charges? <sup>30</sup>

Mr. CRAIG: I object. The charge she was angry at was made by the paper.

Mr. EDWARDS: We have a right to inquire whether she was not angry at her husband for making such charges.

The COURT: Objection overruled. <sup>40</sup>

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

A. Well, I naturally would not feel friendly toward a man who charged me with things that were not true.

Q. Was that the first you had heard of his cross-petition? A. That was the first, when my friend  
10 brought me the paper.

Q. You afterwards sent for the petition filed by your husband? A. Yes.

Q. You saw it? A. Yes.

Q. And read it? A. Yes.

Q. It was the same as was in the paper? A. Not exactly. No.

Q. In what respect was it different? In a good many respects.

20 Q. Will you please tell us how it is different?

Mr. CRAIG: I object. I submit they cannot ask this witness whether or not they made a good guess when they published all of this stuff.

A. I cannot remember everything that was in the paper and everything that was in the cross-bill, but at the time it was brought to me I remember there  
30 was a great many ~~mistakes~~ *misstatements*.

Mr. CRAIG: I ask an exception.

Q. "Several co-respondents are mentioned"? A. Yes.

Q. "The most prominent of whom is Frank Nugent, a well known railroad man"? A. Yes.

Q. "The petitioner in the counter-suit alleges that Nugent, under the guise of friendship, used to sit up late at his home in Boonton and entertain his wife"?

40 A. That is false.

Q. That is what was said by your husband? A. I cannot remember what was said in the cross-petition.

Q. Was there anything in this newspaper article that did not appear in the petition, which you can tell us of? A. Yes.

Q. Tell us where?

Mr. CRAIG: Objected to.

10

The COURT: Objection overruled.

Counsel for the plaintiff prays an exception to the ruling of the Court, and the same is sealed accordingly.

A. I remember at the time of the last trial that there were lots of things when you read the paper. I have not read the paper since. There were things in the paper that were not in the cross-petition.

20

Q. Did you think there was? A. Yes, I know there was.

Q. You cannot tell us a single one of them? A. I cannot remember them.

The COURT: You are going to offer the petition?

Mr. EDWARDS: Yes.

Q. Where did you say you were born? A. In Hoboken. 30

Q. How long did you live there? A. Well, I lived there about ten years, when we moved to New York, and from there to Morristown, and from Morristown—

Q. (Interrupting.) What year were you living in Morristown? A. I cannot remember the year.

Q. You were married in 1891? A. Yes.

Q. How long before you were married did you live in Morristown? A. It must have been four or five years before that. 40

Q. How long did you live in Morristown? A. A year.

Q. And whereabouts in Morristown? A. On South street, and on Pearl avenue.

Q. How old were you at that time? A. About sixteen.

Q. Where did you go then to live? A. To Montclair.

10 Q. How long did you live at Montclair? A. About a year and a half at Montclair.

Q. Where did you meet Mr. Neafie? A. In Boonton.

Q. Where did you go from Montclair? A. To Boonton.

Q. What year did you move to Boonton? A. In 1890.

Q. With your folks? A. Yes.

Q. With your father and mother? A. Father was  
20 dead.

Q. With your mother? A. Yes.

Q. What was your maiden name? A. Crevier.

Q. You were married in Boonton? A. Married in Boonton.

Q. How long did you live in Boonton? A. About twelve years.

Q. Until you started proceedings for divorce? A. No; I had lived in Bloomfield and Montclair; I was away from Boonton two years.

30 Q. Where were you living when you started your divorce proceedings? A. I was living in Boonton then.

Q. How long did you continue in Boonton? A. After starting the divorce proceedings I went to Christ Hospital in Jersey City.

Q. How long did you remain in Christ Hospital? A. Twenty months.

Q. Twenty months? A. Yes, I think it was twenty months.

Q. When did you leave Christ Hospital? A. I  
40 think it was the latter part of July.

Q. July, 1904, was it not? A. I think it was.

Q. Where have you lived since? A. In Jersey City and Boonton.

Q. How long have you lived in Boonton? A. That is where my home is. I am in Jersey City but my home is in Boonton.

Q. You live— A. (Interrupting.) I reside in Boonton and stop in Jersey City. My home is in Boonton. 10

Q. How much of the time are you in Boonton? A. A great part of the time.

Q. With whom do you live in Boonton? A. My sister.

Q. When did you obtain your divorce? A. I don't remember the date exactly.

Q. You cannot tell us the date? A. I don't remember the date.

Q. Was it not about May, 1904? A. Yes; about 20 that time.

Q. You knew some time before you obtained the divorce that you were going to get it—before you got the decree? A. Before the final decree was given to me, do you mean?

Q. Yes. A. Certainly.

Q. Did your husband defend that proceeding? A. He filed a cross-petition.

Q. Did he appear at the trial before the Vice Chancellor? A. No; he did not.

Q. He ran away, didn't he? A. I don't know 30 what he did, but he was not there.

Q. He did not appear to fight it? A. No.

Q. Where were you married? A. Boonton, N. J.

Q. What date? A. April 15th, 1891.

Q. I see in the record it is 1895; it is 1891, is it? A. Yes.

Q. Did you own your own house in Boonton? A. Yes.

Q. That was the house you and your husband bought together? A. No. It was the house he went 40

in the Building and Loan for; he never bought it; he never owned it.

Q. Didn't he pay some of the money into the Building and Loan? A. Very little.

Q. Didn't he pay half? A. Not half.

Q. Didn't you say on the last trial that he did? A. No.

Q. On the last trial you were asked this question:  
 10 "What proportion did you pay and what proportion did he pay?" And you answered, "Well, I paid, I should judge, more than half." A. I bought the lots and put up the foundation.

Q. You saw the paper of March 17th, 1904, did you not?

Mr. CRAIG: Objected to as not being cross examination.

20 The COURT: That paper is not in evidence.

Q. Did you send Mr. Craig down to the "Observer" office?

Mr. CRAIG: How is that cross examination?

Mr. EDWARDS: I am allowed a wide latitude with the plaintiff on cross-examination.

30 The COURT: The Court will allow the question.

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

Q. Did you send Mr. Craig down to the "Observer" office? A. Yes.

Q. And asked him to get a vindication of you  
 40 printed? A. Yes.

Mr. CRAIG: If the Court please, if we are going to get into the relations between attorney and client, I would like to suggest that there is a privilege in such matters.

Mr. EDWARDS: You did not act as an attorney.

Mr. CRAIG: I will withdraw the objection.

Q. Did you see the paper of March 17th, 1904? 10

A. I don't remember.

Q. Mrs. Neafie, did any other paper publish these articles?

Mr. CRAIG: Objected to.

Mr. EDWARDS: I refer your Honor to the Butler case where there were a number of papers published the article.

A. Yes 20

Q. What other paper published it? A. The Jersey City Journal.

Q. Did you bring a suit against the Jersey City Journal?

The COURT: Objection sustained.

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

ALFRED ELMER MILLS, (Seal.) 30

Judge, &c.

Q. Was it published also in the Boonton paper?

A. Yes, in the Boonton paper.

Q. Did you bring suit against the Boonton paper?

A. No.

Q. (Showing witness.) Is that the article that was published after Mr. Craig went to the "Observer?"

Mr. CRAIG: I object to this line of cross examination. 40

Mr. EDWARDS: They went there and asked that that article be published. She said that she sent Mr. Craig.

Q. Mr. Craig reported to you that he had been there? A. I don't remember now.

Mr. SPEER: The objection is that there is no proof that this is the paper or that that is the article.

Q. You heard of the article that Mr. Craig had put in. I will refresh your recollection by reading it.

Mr. CRAIG: The witness' memory can be refreshed by showing the witness a document.

Mr. EDWARDS: I can read it.

The COURT: It is not in evidence.

Q. Didn't you see the paper with the following in it: "In the report of the proceedings in the Neafie divorce action before Vice Chancellor Emery at Newark, published yesterday, some expressions were inadvertently used that seemed to reflect upon the petitioner, Mrs. May Neafie. There was no intention on the part of the 'Observer' to publish anything in any way derogatory to Mrs. Neafie's character, and there was nothing in the Court proceedings to warrant the use of language of such a nature or having that effect." A. I don't remember any article now, it is so long ago.

Q. "Mrs. Neafie petitioned for an absolute divorce on statutory grounds. The defendant, George B. Neafie, made a general denial of her allegations, and at the same time served a cross-petition very voluminous in character." A. Yes, I remember that you said that.

Q. It was this cross-bill that contained serious allegations against the plaintiff; but the matter was

of such a vindictive and defamatory character that the entire cross-bill, with the exception of a single allegation, was ordered by the Vice Chancellor to be stricken from the files of the Court as being scandalous, and Mrs. Neafie was not required to answer such part." A. Yes.

Q. 'At the hearing Wednesday, the only witnesses examined were those testifying to the truth of Mrs. Neafie's charges, and of these only one was so much as cross examined by the defendant's counsel.'" A. I cannot say positively. 10

Q. It is about what you remember? A. No; I don't remember the whole article. I have not read it in all this while.

Q. "Mr. Neafie failed to appear personally and produced no witnesses, either to contradict those of the plaintiff or to sustain in the slightest degree the allegations of misconduct so recklessly made by him in his cross-petition." Do you remember that? ~~A~~No, 20 I cannot remember that.

Q. "Vice Chancellor Emery granted the plaintiff's petition for an absolute divorce, with costs against the defendant, and an allowance of alimony and counsel fees for the plaintiff, the amount of which was to be determined later." Do you remember that? A. I remember that the article came out that I was granted a divorce.

Mr. EDWARDS: I ask that the paper be 30 marked for identification.

(Paper is marked D-1 for identification.)

By Mr. CRAIG:

Q. Did you see, or did any one bring to your attention, any publication in the defendant's newspaper, the "Observer," about your having filed a petition for divorce before they published this alleged cross-bill? A. No. 40

Mr. EDWARDS: I object. It does not appear that she looked to see if it was there.

The COURT: The answer may stand.

Mr. EDWARDS: I ask that it be stricken out. It does not appear that she looked to see.

10 Q. Are you, or were you at that time, a reader of the "Observer" from day to day? A. Yes.

Q. Was it taken every day at the Hospital? A. They took it every day at the Hospital.

Q. It circulated among the nurses and physicians and visitors and everybody who came there? A. Yes.

Q. You were asked some questions with respect to whether or not this article that suit is brought upon here contained matters that were not alleged in the  
20 cross-petition; and I want to ask whether it was or was not true that in the cross-petition Mr. Neafie admitted that he had been guilty of certain offenses that you charged him with? A. Yes.

Mr. EDWARDS: I object. The cross-petition shows for itself.

Mr. CRAIG: This is re-direct examination. If the Senator called out half the truth, I  
30 think I have a right to bring out the whole truth.

Q. (Repeated by stenographer.) You were asked some questions to whether or not this article that suit is brought upon here contained matters that were not alleged in the cross-petition; and I want to ask whether it was or was not true that in the cross-petition Mr. Neafie admitted that he had been guilty of certain offenses that you charged him with.

The COURT: That is too leading; I will  
40 over-rule the question.

Q. This article says: "The defendant of the petition of February 5 denies that he knows of any such woman as Daisy Addie." Is that true? Did he make any such denial in his cross-bill? A. I don't remember.

Q. What is your best recollection?

Mr. EDWARDS: I object.

The COURT: She says she does not re-<sup>10</sup>member.

Q. He did admit in his cross-bill that he had committed offenses two years before that, did he not? A. Yes.

Q. There is no publication of that in this item sued upon? A. No.

Q. Nothing at all about that? A. No.

Q. All this scandalous matter that the Senator has referred to was stricken out by an order of the Court<sup>20</sup> of Chancery? A. Yes.

Mr. EDWARDS: I object. Show it by the order of the Court of Chancery.

Q. Did you see any report in the "Observer" that this matter had been stricken out? A. No.

Q. You filed an answer, did you not, denying whatever was left of the cross-bill? A. Yes.

30

Mr. EDWARDS: I object; the answer shows for itself.

Q. Did you see any report in the paper publishing the fact that you had filed an answer? A. No.

Mr. EDWARDS: I object to this as wholly immaterial whether it was there or not.

The COURT: The question may be answered.

40

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

ALFRED ELMER MILLS,  
Judge, &c.

Q. Subsequent to the time of the trial in the Court of Chancery, when you were awarded a decree for an  
10 absolute divorce, an application was made by Neafie to have it re-opened, was there not? A. On the alimony question, do you mean?

Q. The application to have it re-opened when he alleged that he was out of the State? A. Yes.

Q. That motion was denied? A. Denied.

Q. This article that was published in the Boonton newspaper was published after the item was published in the "Observer" of March 18, 1903?

20 Mr. EDWARDS: Objected to as leading.

Q. When was the item published by the Boonton paper about your having brought suit for divorce? A. After the publication in the "Observer."

Q. How far is Christ Hospital from the office of the "Observer," in Hoboken; how long does it take you to go there? A. About fifteen minutes.

Q. Was there any inquiry made of you at any time by the "Observer," or any representative of the  
30 paper, in any way, as to the truth of these matters before publication? A. No; none.

Q. Did you see at any time between the eighteenth day of March, 1903, and the sixteenth day of March, 1904, any article in the "Observer" in any way contradicting, retracting or—(interrupted).

Mr. EDWARDS: I object upon the ground that the production of the newspaper file is the best of evidence.

40 Mr. SPEER: She says she took the paper every day.

A. I read the paper.

Q. Did you, between the eighteenth of March, 1903, and the sixteenth of March, 1904, see any article in the "Observer" that in any way softened, mitigated or retracted this publication made on the eighteenth of March, 1903?

Mr. EDWARDS: I object because that calls for a conclusion. 10

Q. Did you see any article at all? A. No.

Q. What were your feelings at the time that you requested me to go down to the "Observer" office, on or about the seventeenth of March, 1904? A. I was very indignant at the "Observer".

Q. Were you also distressed? A. I was worried and distressed.

By Mr. EDWARDS: 20

Q. What were you indignant about in March, 1904? A. I was indignant because you had published that in your paper in the first place, and my friends read it. I was indignant during all that year. I was indignant all the time.

Q. Why didn't you send Mr. Craig down there then and ask an apology? A. I asked my lawyer if he would not see and have them correct it, but he didn't do it.

Q. You never went to the "Observer" for a whole year? A. I asked my lawyer to do it. 30

Q. Did you make any complaint? A. I made a complaint to him.

Q. Did you make any complaint to the "Observer"? A. I asked my lawyer to do it, and I asked my brother to go.

Q. Did you ever make any complaint to the "Observer?" A. No.

Q. Did you say that your brother went? A. I asked him to go. 40

Q. Did he go? You knew he didn't go? A. I asked him if he would go, to tell me whether he would go—

Q. (Interrupting.) You know he didn't go? A. Yes.

Q. Did you also ask your lawyer to go? A. Yes, sir; I did.

Q. Did you ask him whether he went? A. Yes.

10 Q. What did he say? A. He said he was going.

Q. Did he go? A. Not to my knowledge.

Q. Who was that lawyer? A. Bradner.

Q. You held your indignation for a year, and yet, although you were only fifteen minutes' walk from the "Observer" office, you did not go and ask for an apology yourself? A. I had other business at the hospital.

Q. You say that you read the "Observer" every day that year? A. Yes.

20 Q. You looked for everything concerning this case? A. Yes.

Q. I show you this paper of Tuesday evening, April 12, 1904.

Mr. CRAIG: Objected to as not cross examination. It is not contradictory of anything she has said.

30 The COURT: I think it is competent; although I think the witness was misled. I thought you meant between the article in March, 1903, and this alleged libel in 1904.

Q. Did you see this article of April 12, 1904? A. Yes.

Q. "Court Decided the Divorce Must Stand"—you read that, didn't you? A. Yes.

40 (Paper marked D-2 for identification is offered in evidence, and is marked Exhibit D-2.)

Q. Now, Mrs. Neafie, did you also see this article of March 16, 1904, stating that you had received a divorce? You read the paper every day? A. Yes; I saw that; but do you think that is fair? I call it a libel just as much as the other.

Q. You saw this article of March 16th? A. I did.

Q. And then you sent Mr. Craig down? A. Yes.

Mr. EDWARDS: I ask to have that marked for identification. 10

Mr. SPEER: We are willing to have it put in evidence.

(Paper is marked D-3 for identification.)

By Mr. CRAIG:

Q. It was that item of March 16, 1904, that caused your distress and worry at that time, was it not? You 20 remember that was just the day before.

Mr. Edwards: Objected to.

A. It was.

The COURT: The answer may stand, but the question was too leading.

Q. (Showing witness.) I show you this and ask you whether this refreshes your recollection as to 30 the cause of your indignation at that very time—March 16, 1904? A. Yes.

Q. Does that refresh your memory? A. Yes.

Q. Having had your memory refreshed, state what it was that caused your indignation at that time?

Mr. EDWARDS: I object. That is not the libel sued upon.

The COURT: The question may be answered. 40

Counsel for the defendant prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

A. I considered that just as libelous as the first article you published, where you say—

10

Mr. EDWARDS: I object, and ask that the answer be stricken out as a conclusion.

The COURT: Strike that out.

Q. Did you read in the "Observer" of the sixteenth of March, 1904, that "the answer of the husband contained counter charges in the form of a cross-bill which made serious allegations against the wife?" A. Yes.

20

Q. And that was many months after the cross-bill had been stricken from the record, was it not? A. Yes.

By Mr. EDWARDS:

Q. And the Vice Chancellor decided that you were entitled to a divorce? A. Yes.

Q. And the paper said you got it? A. Yes; but then you said—

30

Q. (Interrupting.) The paper said you got it?

Mr. CRAIG: She has a right to answer that question in her own way.

The COURT: She may answer.

A. You say that I secured a divorce, and then you go on to state that the cross-bill contained serious allegations and so forth. I don't consider that that was showing me any favor. First you say something  
40 favorable, and then you turn right around and say

that the cross-bill contained serious allegations. My friends read that just the same.

Q. Does the paper say that the serious allegations were in there —A. (Interrupting.) Yes; you brought that up that there were serious allegations. You could not leave that out.

Mr. CRAIG: We offer in evidence the paper, which has been marked P-2 for identification, being the "Observer" of July 30,<sup>10</sup> 1904.

Mr. EDWARDS: I object on the ground that that is after the suit was brought; that it has no connection with the libel sued upon; that it is an article upon an entirely different matter that reflects in no way upon Mrs. Nea-  
fie; it is after the suit was brought and has no  
connection with any of the previous publica-<sup>20</sup>  
tions.

The COURT: In view of the testimony, I think it is admissable.

(Paper is marked Exhibit P-2.)

Counsel for the defendant prays an excep-  
tion to the ruling of the Court, which is allow-  
ed, and the same is sealed accordingly.

ALFRED ELMER MILLS. (Seal.)<sup>30</sup>  
Judge, &c.

(Article is read to jury.)

Mr. CRAIG: I offer the "Observer" of  
March 6, 1906, the item offered being on the  
editorial page, and I offer this, among other  
grounds, as an admission against the defend-  
ant. The proof is that this is the defendant's  
newspaper, and I offer it as an admission that  
the libel published was false, and that they<sup>40</sup>

knew it virtually at the time that it was published. It is competent as an admission just as much as if they had admitted it in their pleadings.

Mr. EDWARDS: That is nonsense, but I will withdraw my objection.

10 The COURT: If there is no objection, the paper will be admitted.

(Paper is marked Exhibit P-3.)

Mr. CRAIG: I will not read the entire article.

Mr. EDWARDS: I insist that he read the whole of it.

20 The COURT: If you are going to read any of it, you must read it all.

Mr. CRAIG: I offer the paper and ask that it be marked.

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PLAINTIFF RESTS.

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30 Mr. EDWARDS: I move for a non-suit on the ground that no actionable libel has been proved whatever, and also upon the ground that no damage has been shown.

The COURT: The motion is denied.

Counsel for the defendants pray an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

40 ALFRED ELMER MILLS. (Seal.)  
Judge &c.

## DEFENDANT'S CASE.

MATTHIAS C. ELY, a witness sworn on the part of the defendant, testifies as follows:

DIRECT EXAMINATION by Mr. Edwards:

Q. Where do you reside? A. In Jersey City. 10

Q. What is your occupation? A. Newspaperman.

Q. How long have you been a newspaperman? A. Twenty years.

Q. Where has your newspaper life mainly been spent? A. In New York and in New Jersey.

Q. Are you connected with the Observer? A. Yes sir.

Q. And were you connected with the Observer in the month of March, 1905? A. Yes sir.

Q. And in what capacity? A. As news editor. 20

Q. And whom did you succeed as news editor? A. No one. That was a new position created for me.

Q. Are you in any way connected with the printing and publishing company itself? A. No, sir.

Q. How long have you been connected with the Observer—since when? A. Since October, 1903.

Q. Do you know Mr. Craig? A. I know him by sight; yes, sir.

Q. Did Mr. Craig ever call upon you in the Observer office? A. He did. 30

Q. Can you fix the date of his calling? A. My impression was that it was March 17, 1904.

Q. And where were you on that day? A. In the editorial room.

Q. What did Mr. Craig have to say to you when he came there? A. He complained in a general way about the—he said he came representing Mrs. Neafie, and complained in a general way about the publications regarding Mrs. Neafie's case in the Observer.

Q. Any particular publication? A. The publication of the day before and some prior publications. 40

Q. All of the publications? A. In a general way; yes sir.

Mr. CRAIG: Let us have the witness state what was said.

Q. What was said by Mr. Craig as near as you can remember the whole thing? A. In reference to the publication. He said that the publication, as near  
10 as I can recollect the conversation of the prior day—

Q. (Interrupting) March 16th. A. I think March 16th—was not complete enough; that it did not, because of its incompleteness, do Mrs. Neafie justice.

Q. I show you now what has been marked as an exhibit; is that the article which you refer to. In the issue of March 16th, 1904. A. Yes sir.

Mr. CRAIG: I object to this upon the ground that there is no proof that this paper  
20 is the Observer of that date.

Q. Is that the Observer of that day? A. Yes, sir; March 16th, 1904.

Mr. EDWARDS: I offer in evidence this paper.

Mr. CRAIG.: I object on the ground that it is irrelevant to any issue in this case. It purports to be a retraction of an article not in  
30 this case. I ask that the witness state the conversation that occurred between myself and him on this occasion, and that he be allowed to testify and not the counsel for the defendant.

Q. What did you do when Mr. Craig spoke to you about it? A. I do not understand that question.

Q. When he made the complaint, what did you  
40 suggest, or what did you say to him?

Mr. CRAIG: I object to that as being too vague.

A. Did you give any invitation to him at all.

Mr. CRAIG: I object to that as calling for a conclusion. He can testify as to what occurred between me and him on that occasion.

Q. Tell us what you invited him to do? 10

Mr. CRAIG: What he said I have no objection to.

Q. (Repeated by stenographer.) Tell us what you invited him to do? A. I asked him to write whatever he wanted printed.

Q. And what did he say to that? A. He agreed to that.

Q. And when did he want to get it in the paper? 20

A. That day.

Q. Did he sit down and write then and there? A. No, sir.

Q. What did he say about writing then and there?

A. He said he would go to New York and write it and send it over.

Q. What time of the day was he there? A. I think about eleven o'clock.

Q. Was anything said by you about fixing the time by which you must receive it if it was to get in the paper of that day? A. My impression is that I told him what hour he would have to get it over in order to have it printed. 30

Q. What hour was that? A. Half-past one.

Q. Then did he leave your office? A. He did.

Q. Did he give you any information as to how he could be reached when he left the office? A. He gave me his address.

Q. Anything else besides his address? A. I think his telephone number; I am not sure. 40

Q. Did you hear from him again over the telephone that day? A. Yes, sir.

Q. What did he do? A. He called up and said that he could not send the matter over in time.

Q. What did you say? A. I suggested that he telephone it.

Q. Dictate it over the 'phone? A. Dictate it over the 'phone.

10 Q. And did he dictate it over the 'phone? A. He did.

Q. To whom did he dictate it? A. To one of my men.

Q. After he dictated it, what did you do? A. I read it back.

Q. Were there any corrections made by him? A. I think some minor corrections.

Q. Were they made as he desired? A. They were.

Q. Where does this article appear that he read:  
20 March 17th? A. That appears March 17th; yes, sir.

Q. How is it headed? A. "Complete Vindication."

Mr. CRAIG: I object as the article will speak for itself if it is competent evidence. The article speaks for itself. The jury can tell how it is headed. If he is entitled to have it in the record, he is entitled to have the whole thing go to the jury.

30 Mr. EDWARDS.: I am only asking to have the article identified.

Q. (Showing witness.) Is this the article on the fourth page of the issue of March 17th, 1904, on the third column beginning about the eighteenth line from the top?

Mr. CRAIG.: Objected to as incompetent.

40 The COURT.: Objection over-ruled.

Counsel for the plaintiff pray an exception to the ruling of the Court which is allowed, and the same is sealed accordingly.

A. Yes, sir; that is the article.

Q. Is that the Observer of that day? A. Yes.

Mr. EDWARDS.: I offer that in evidence.

Mr. CRAIG.: I object. 10

The COURT.: It is received in evidence.

Counsel for the plaintiff pray an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

(Paper is marked Exhibit D-1, and the article headed "Complete Vindication" is read to the jury.

Q. In the course of your employment there, was there ever any application made before that time for an explanation or retraction? 20

Mr. CRAIG.: That is objected to. There is no evidence that there was not some other person in authority. He has already said that he has no connection with the defendant corporation, and naturally no application would be made to him. He testified that he was in there for some seven or eight months after the libel was published. 30

The COURT: Objection over-ruled.

Counsel for plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

A. Not to me.

Q. By Mrs. Neafie or any one for her? A. Not to me. 40

Q. Was there any made for her? A. Not while I was there; no, sir.

Q. Do you know Mrs. Neafie?

Mr. CRAIG: That is objected to. It does not make any difference whether this man knew Mrs. Neafie or not.

10 The COURT: The Court will allow the question.

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

A. No, sir.

Q. Did you know Mr. Neafie? A. No, sir.

Q. All entire strangers to you? A. Never heard of them before.

20 Q. Now, how long before going to press did you get this over the 'phone? A. I think it was about one o'clock.

Q. Was it among the earlier or later articles received for the paper? A. There were some later.

Q. How many articles do you suppose would be later from what you know of the paper? A. I should think 90 per cent. of the matter—

Q. (Interrupting.) Was up? A. Was up.

30 Q. I see that it is put upon the fourth page of the paper; can you tell us why it is put there? A. That is the section of the paper devoted to Jersey City Heights.

Q. Was any request made to you by Mr. Craig or any one else for its location in any particular part of the paper? A. None, whatever.

Q. Who wrote the head note for that? A. I did.

CROSS-EXAMINATION by Mr. Craig:

40 Q. You say you did not write this item? A. No, sir.

Q. Have you ever written any retractions of libels since you have been in the newspaper business? A. For some one else, do you mean?

Q. I ask if you have ever written any retractions? A. Oh, yes.

Q. When? A. Often.

Q. Have you ever written a retraction for anybody since you have been employed by the "Observer?"

Mr. EDWARDS: I object to that. 10

The COURT: Objection sustained.

Q. Do you know Mr. Leonard E. Travis, of Newark? A. I do.

Q. He is the Newark correspondent of the "Observer?" A. He was.

Q. He was in 1903 and 1904? A. I don't know about 1903.

Q. When was he? A. He was there when I came there. 20

Q. That was in 1903? A. That was in the Fall.

Q. He was there in 1903? A. In the Fall.

Q. And in 1904? A. Yes.

Q. He was there in March, 1904? A. He was.

Q. Did you ever talk to him over the telephone about these divorce proceedings? A. I did.

Q. He told you that he had the material for a hot story? A. No, sir.

Q. You swear that he did not? A. I swear that he did not. I never talked to him until after the suit was begun. 30

Q. That is, after this suit for libel that you are now testifying in? A. Yes, sir.

Q. Why didn't you write this retraction? A. Because you wanted to write it. You were particular about the wording.

Q. You want to be straight before the jury and have it perfectly clear upon their record that the only item talked about that day was the item appearing 40

in the "Observer" of March 16th, 1904; is that correct? A. No, sir.

Q. What other articles were discussed between you and me? A. You also complained of the first publication which I at that time had never seen.

Q. Will you swear to that? A. Yes.

Q. What did I say? A. You thought it was unfair. You said it was unfair. I told you at that time  
10 I had never seen the article at all.

Q. You swear to that? A. Yes, sir; it was published before I was employed there.

Q. Are you now employed by the defendant? A. I am.

Q. Do you receive a salary? A. I do.

Q. And that is paid you by the Hoboken Printing and Publishing Co.? A. Yes, sir.

Q. Have you any stock in that corporation? A. None whatever.

20 Q. Now, why didn't you tell the Court on the last trial that some other item was talked about than this item of March 16th? A. I was not asked.

Q. And you did not want to volunteer it? A. My impression was that at that time you raised a good many objections. I could not get an answer in edge-ways.

Q. Now, I want you to point out the objections in the testimony on the last trial that kept you from testifying?

30 Mr. EDWARDS.: I object.

Q. I want you to show me the objections in that record that I made to your testifying that prevented you from telling us about any other article than the item of March 17th? A. I didn't say that. I said the question was not asked me. I said you were continually objecting to all my testimony.

Q. (Showing witness printed case.) Put your finger on the objection that kept you from telling the whole truth and nothing but the truth on the last  
40 trial.

Mr. EDWARDS.: I object to that and I ask that the Court admonish Mr. Craig for framing his question in such a way.

The COURT.: Strike it out.

Q. I ask you to point out the objections that kept you from giving testimony on the former trial? A. I have answered the question. 10

Q. Now, when you said that I should write the paragraph inserted was there any conversation between us? A. Yes.

Q. For five or ten minutes? A. Yes.

Q. I want to get perfectly clear there with reference to location of this paragraph. You say there was no conversation with reference to where that paragraph should be located? A. None whatever.

Q. Will you swear that I did not state to you in substance that the matter was given to you only 20 upon the condition that it was to be given the same prominence and publicity that the item of March 16th, 1904, had, of which this was a correction? A. You made no such condition.

Q. Nothing of that kind? A. Nothing of that kind.

Q. Will you swear to that? A. I swear to it.

Q. The article of March 16th, 1904, is on the first page, is it not? A. It is.

Q. The article that you published on the 17th you 30 put on the inside on the fourth page? A. On the Jersey City Heights page.

Mr. CRAIG: I ask that that answer be stricken out as not responsive.

The COURT: Strike it out.

Q. (Repeated by stenographer.) The article that you published on the 17th you put on the inside on the fourth page? A. Yes. 40

RE-DIRECT EXAMINATION by Mr. Edwards:

Q. What do you print on the first page?

Mr. CRAIG: Objected to.

The COURT: Objection over-ruled.

Q. What do you print on the first page—what  
 10 character of news generally? A. A good deal of late  
 news.

Q. Telegraph news? A. Late telegraph news.

Mr. EDWARDS: I offer in evidence the  
 Observer of Tuesday evening, April 12th,  
 1904, which has been marked D-2 for identi-  
 fication.

Q. Is that the Observer for that date? A. I don't  
 remember that article.

20 Q. I only want you to recognize the paper? A.  
 Yes.

Mr. EDWARDS: I offer the paper in evi-  
 dence.

Mr. CRAIG: I object.

Mr. EDWARDS: I offer it to off-set the  
 various offerings that you have made.

30 The COURT: The Court will allow it.

Counsel for the plaintiff prays an exception  
 to the ruling of the Court, which is allowed  
 and the same is sealed accordingly.

(Paper is marked Exhibit D-2.)

By Mr. CRAIG.

Q. It was after you published that item that you  
 published this item about the arrest of Neafie in  
 40 which it was stated that the decree contained no pro-

vision for alimony? A. The question is very indefinite. I don't know what you mean "that" and "this."

Q. I simply mean to say that you published the item setting forth Neafie's arrest on the 30th of July subsequent to the time that you published this item here, and had that before your eyes at the time you wrote that the decree contained no provision for alimony? A. I don't remember the item at all.

Q. I want to hand you this, Exhibit D-2, and ask you to point out the telegraph dispatches on that first page.

Mr. EDWARDS: That is April 12th.

A. Boston, Barcelona, Rome, Newark.

By Mr. SPEER:

Q. How are you able to pick these out as telegraph dispatches? A. By the telegraph lines on them.

Q. What are the telegraph lines; what do you mean by telegraph lines? A. The dispatch lines.

Q. What is the dispatch line? A. It is the date at some town.

Q. The date and some other town—that is what makes it a dispatch line? A. That is what makes it a dispatch line.

Q. It is by that means that you tell the telegraph dispatches from other news on that page? A. It depends on what you mean by telegraph dispatches.

Q. What is a telegraph dispatch? A. A telegraph dispatch in a newspaper is a dispatch which is dated from some other town, and which has been transmitted from that town by telegraph.

Q. And you identify that in the paper by the name of the town and date of the transmission by telegraph; isn't that it? A. Yes.

By Mr. EDWARDS:

Q. Where is Christ Hospital; in what part of Jersey City? A. It is on Jersey City Heights.

THOMAS C. McKEON, a witness already sworn, called on the part of the defendant, testifies as follows:

DIRECT EXAMINATION by Mr. Edwards:

10 Q. This article of March, 1903,—did you make an investigation as to where the news came from for that article?

Mr. CRAIG: I object to that. Any investigation this gentleman made is not competent evidence in respect to this publication.

The COURT: Objection overruled.

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

20

A. Yes, I did.

Q. Will you tell us why? A. Because I did not like the article. The rule of the office is to give very little space to divorce cases until they are heard in Court. I was displeased with the whole thing.

Q. What did you find out about the source of the article?

Mr. CRAIG: I object to this testimony as being incompetent.

30

The COURT: Question allowed.

Counsel for the plaintiff prays an exception to the ruling of the Court, and the same is sealed accordingly.

A. I found it came from a lawyer's office, brought in by a reporter.

Q. And who was that reporter? A. I think it was Rathchin.

40 Q. Henry Ratchin? A. Henry Ratchin.

Q. Was any retraction ever asked for by the plaintiff? A. No.

Q. In your paper for this publication, before suit was brought, except the visit of Mr. Craig, that has been testified to? A. No.

Q. Was any retraction ever asked of you as editor? A. No.

Q. Do applications for retractions come to you?  
A. As a rule. 10

Q. Did you know Mrs. Neafie? A. No.

Q. Did you ever hear of her before the institution of this suit? A. No.

Mr. CRAIG: We make the same objection to this testimony as we made before.

The COURT: Objection overruled.

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, 20  
and the same is sealed accordingly.

Q. Did you know George Neafie? A. No.

Q. Did you ever hear of him? A. No.

Q. Did you know any of his or her connections, that you know of? A. I do not know. I cannot say that I did, that I know of.

Q. You knew Mr. Steil? A. I knew Mr. Steil.

Q. Did you know of his connection with the suit—that his name had been mentioned in connection with the suit before this action was brought? A. I don't know; I have forgotten. 30

Q. He is one of the gentlemen named? A. Yes, but I have forgotten.

Q. Mr. Steil is a very reputable man? A. Yes; a very good friend of mine.

Q. At present Mayor of Hoboken? A. Yes.

CROSS EXAMINATION by Mr. Craig:

Q. Do you have the function of writing retractions for the Observer? A. No. 40

Q. Who has that function? A. Nobody in particular.

Q. Then you don't publish retractions? A. Well, if we find that we have made a mistake or made an error, we are only too glad to correct it.

Q. When you get in a hole you try to get out of it.

Mr. EDWARDS: I object.

10 Q. Mr. Steil was the public official whose name was not mentioned in this libel? A. I suppose so.

Q. What official position did he then hold in the City of Hoboken? A. I think he was a Councilman.

Q. He is the present Mayor? A. Yes, he is the present Mayor.

Q. You mention this matter as having come from a lawyer's office; that was John J. Fallon's office, was it not? A. That is what I heard.

Q. He is the lawyer you refer to? A. Yes.

20 Q. He had been the lawyer for the Hoboken Printing and Publishing Company? A. In one case.

Q. One at least? A. One at least.

Q. He advertises in the Observer? A. Along with about a hundred others.

Mr. EDWARDS: I object to this testimony.

30 Mr. CRAIG: For all we know he may be one of those numerous aides to a newspaper, who takes his pay in advertising.

The COURT: I will allow that question.

Q. Is Mr. Fallon a newspaper man? A. I cannot say. I know little or nothing about him.

Q. Mr. John J. Fallon, the lawyer that you just spoke of, was also the solicitor for George B. Neafie, the defendant in this divorce proceeding; was he not? A. I don't know.

40 Q. What is your best information? A. Well, he was.

Mr. EDWARDS: I now offer in evidence the answer and cross petition in the divorce case of Mary J. Neafie vs. George B. Neafie, which is found on page 103 of the printed record here, it having been agreed between counsel that the copy as it appears in the printed case may be used in evidence.

Mr. CRAIG: We object to the admission of these papers in evidence. 10

The COURT: They will be admitted.

Counsel for the plaintiff prays an exception to the ruling of the Court, which is allowed, and the same is sealed accordingly.

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JOHN J. FALLON, sworn as a witness on the part of the defendant, testifies as follows: 20

DIRECT EXAMINATION by Mr. Edwards:

Q. Where do you reside? A. Hoboken, N. J.

Q. What is your occupation? A. Lawyer.

Q. How long have you followed that profession?

A. A little over eleven years.

Q. Were you the solicitor in Chancery of George B. Neafie, in the suit that has been brought in question in this case? A. I was. 30

Q. Did you file his answer? A. I did.

Q. Did you ever communicate from your office to the Observer the contents of that answer or cross-bill? A. I did not.

Q. What is your recollection on that subject? A. I am certain that I did not.

Q. Did any one from the Observer come to see you about it? A. I am positive no one saw me about it.

Q. Have you a number of clerks in your office? 40

A. I have. When I say I am positive, I mean prior to this publication.

CROSS EXAMINATION by Mr. Craig:

Q. Didn't you testify on the last trial as follows: "Q. Did you ever communicate from your office to the Observer the contents of that answer or cross-bill? A. Not directly. My recollection of that matter is that some one—a reporter from the Observer—called at my office and stated that they had received from Trenton some information." Give us your recollection on that? Did a reporter call to see you? A. I will give my recollection of the circumstances of the call of the reporter at my office.

Mr. EDWARDS: I object to anything that took place in the way of a conversation between Mr. Fallon and that reporter.

20 Q. A reporter from the Observer came to see you? A. There was a reporter called at the office.

Q. Did you give him any information as to the filing of this cross-bill? A. He informed me that he learned—I didn't give him any information as to what the contents of that paper were.

By Mr. EDWARDS:

Q. You told him that you had filed the paper- A. 30 I admitted that I had filed the answer and cross-bill but did not divulge its contents.

Q. You are here under subpoena? A. Yes; I was on the original day.

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DEFENDANT RESTS.

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## REBUTTAL.

CHARLES L. CRAIG, sworn as a witness on the part of the plaintiff in rebuttal, testifies as follows:

DIRECT EXAMINATION by Mr. Speer:

Q. You are a counsellor-at-law of the State of New York? A. I am.

Q. And you were such in the year 1904? A. I was.

Q. Did you make a visit to the office of the Hoboken Observer? A. I did, on the 17th of March, 1904.

Q. You went there as the representative of Mrs. Neafie? A. Yes.

Q. Whom did you see when you got there? A. I saw first several persons and asked for the managing editor, and was shown to Mr. Ely.

Mr. EDWARDS: I object to what he asked for.

The COURT: The answer may stand.

Q. You were shown to Mr. Ely? A. I was shown to Mr. Ely.

Q. What conversation did you have with him, as near as you can recollect in substance, from the first word that was spoken until its conclusion? A. I told Mr. Ely that I had called to see the managing editor; that there was an item that appeared in the Observer of the day before, which was the 16th of March, 1904, that my client, Mrs. Neafie, considered grossly unfair; that she was very much distressed about it; that she felt that some modification or correction should be made; that she was then a probationary nurse at Christ Hospital, and had been granted leave of absence for two or three days to attend the trial of the divorce proceedings in Newark, and that she was afraid to return to the Hospital in the face of the publication as it then stood, because of the action

that she feared might be taken on the part of the hospital authorities.

Q. Did you at that time or any other time refer to any other articles than the article that had been published in the issue of March 16, 1904? No; the article of March 16, 1904, was the only article referred to between us. Mr. Ely maintained—

10 Q. (Interrupting.) Tell us what he said? A. He said that that article was not intentionally unfair, but he said he would take my story, and he then turned to some other persons in the room, whom I took to be reporters, and said: "Take this man's story," and I told Mr. Ely that I didn't come there to give any story to any one to be published in such a way. I told him that I came to see some one in authority or some one that had authority to correct such an unfair article. He said: "You can tell it to these men." I said, "We will see whether or not this is the only way," and then I started to leave and he said, "Stop." 20 Then after a while we had a talk and I told him that I objected to this serious allegation made in this article of March 16th, 1904, which had been, by order of the Court of Chancery, stricken from the record many months before the action came on for trial, and that they were not part of the record when the trial came on, and I complained that the article in that respect was unfair to Mrs. Neafie, and unnecessarily prejudicial. He said he didn't think that amounted 30 to anything, and he said, "We will write something and touch it up the other way." I said to him, "I don't want you to injure anyone, or to injure Neafie." He said, "Oh, well, we don't care anything about that." Then for two or three minutes there was some conversation between us about the style of the item, and finally he said, "Well, if you will write the item, we will put it in that way." I said to Mr. Ely that any correction or alteration that was made 40 must be given the same degree of publicity and prominence and have the same place in the newspapers as

the article of March 16th, 1904, of which this was a correction; that is, the article must be on the first page above the middle of the page; and that I would not consent to give him any matter or have any matter inserted with which I had any connection unless it was given the same location and publicity. He said that was all right, and that that would be done. Thereupon I left and went to New York, where my office is, wrote this item, and called the office on the telephone. It was then too late to get a messenger over before the paper went to press; and I read this item to them over the telephone.

Q. This item of March 17th, prepared by you, was an article of retraction solely referable to, and solely intended by you to refer to the article in the Observer of March 16, 1904?

Mr. EDWARDS: I object.

20

Q. That is what you stated to Mr. Ely, is it not?

Mr. EDWARDS: I object.

A. That is correct.

The COURT: Objection sustained.

Q. What did you state to Mr. Ely on that subject? 30

A. The only item discussed between us was the item—

Mr. EDWARDS: I object to that as not responsive.

(continuing.) I said to Mr. Ely that I desired a correction to be made of the article of March 16, 1904, and my language referred to no other article whatever. In fact, I had no authority from Mrs. Neafie to discuss any other article.

40

## CROSS EXAMINATION by Mr. Edwards:

Q. When did you become the representative of Mrs. Neafie in these matters—about what date? A. I think the day before; that is, March 16, 1904.

Q. You knew all about the various articles that had been published? A. Why, some of my own knowledge and others by investigation.

10 Q. You knew of the article of March 18, 1903?  
A. Yes.

Q. You knew of that before you went to the office? A. Yes.

Q. That was the worry and indignity she complained of? A. That is the one she is suing upon here in this case.

Q. That article of March 16, 1904, was comparatively harmless, I mean compared with the one previous?

20 Mr. SPEER: I object upon the ground that that is calling for a conclusion.

The COURT: The question is objectionable. Objection sustained.

Q. You only went to see about this little article of March 16th? A. That was the only article of which any retraction or correction whatever was asked.

30 Q. You never asked for any retraction of any other articles? A. Never.

Q. When you knew at the time that the other article had been published? A. I did.

Q. You knew that Mr. Ely was in a mood to publish anything you wanted him to? A. On the contrary, he was not.

Q. Didn't you find him agreeable to publish anything that you wanted? A. Not at all. He only agreed to publish any retraction of any kind under extreme pressure.

40 Q. Are you the man who was going to apply the extreme pressure? A. That is what pressure—

Q. (Interrupting.) You put the screws on Ely?  
A. Not at all.

Q. After you put the screws on Ely— A. (Interrupting.) I didn't put the screws on Mr. Ely.

Q. Why didn't you ask Mr. Ely to retract the article of March, 1903, after you applied the pressure? A. I will tell you why. I had noticed what had happened to people who asked for retractions, and I found that in the retraction they only repeated the offensive publication, and touched it up with true journalistic style, and I had consulted with Mrs. Neafie, and I was advised by her that if any further publication was made, she would be compelled to leave the training school, and I told her that when she got through her work in the training school—

Q. (Interrupting.) Then you had a libelsuit up your sleeve? A. Not in the least.

Q. Where did you have it hid; you must have had it somewhere? A. You are quite mistaken. 20

Q. Didn't you have any idea of a libel suit? A. No; I didn't have any.

Q. Think again? A. I will think again and give you the same answer.

Q. I don't suppose, no matter how much you think, you would change your answer? A. I always considered this article libelous, if that is what you mean, but whether or not—

Q. (Interrupting.) By the way, you didn't begin this libel suit? A. I am not a member of the New Jersey bar. 30

Q. You are not a member of the New Jersey bar?  
A. I am not a member of the New Jersey bar.

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It is understood that all of the Chancery record is in evidence.

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CASE CLOSED. 40

Adjourned to June 12, 1906, at 10 a. m.

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### PLAINTIFF'S REQUESTS TO CHARGE.

Counsel for the plaintiff request the Court to charge as follows:

<sup>10</sup> I. It is not necessary that the plaintiff should have suffered any pecuniary loss, or that the injury suffered by her, should be susceptible of a definite money valuation in order to entitle her to recover damages in this action.

II. The plaintiff is entitled to recover general damages for the injury to her feelings which the libel of the defendant has caused and the mental suffering and anguish which she has endured as a consequence thereof.  
<sup>20</sup>

III. The plaintiff is also entitled to recover full compensation for any injury to her character, or more properly her reputation, which has been caused by the defamation of the defendant.

IV. The defendant is responsible for all damages resulting from such a circulation of the defamation as is the natural consequence of the publication by it.  
<sup>30</sup>

V. Proprietors of newspapers are liable in law for whatever appears in their columns. Libelous publication is a wrongful act, and when to a wrongful act there is testimony from which a wrongful motive can be inferred, the jury, in addition to the general damages to which they find the plaintiff entitled, to compensate her for the injury the defendant has caused, may rebuke and punish the defendant by awarding punitive or exemplary damages in such sum as marks  
<sup>40</sup> their sense of the maliciousness or recklessness of the

defendant in offering the insult and injury, their belief in the groundlessness of the charge, and their desire to vindicate the plaintiff.

VI. You may take into consideration the character of the charges made against the plaintiff, the fact that she is charged with a crime, and with conduct, which, if the accusations were true, would disentitle her to the respect and esteem of all right-minded people; that no inquiry was made of her as to the truth of the matter; that it appears that the charges published against her are absolutely false; and that after this present action was brought by the plaintiff against the defendant, the defendant published the article of July 30th, 1904, which has been offered in evidence as plaintiff's exhibit. 10

VII. In determining whether you should give the plaintiff punitive or exemplary damages you are to consider whether the defendant was actuated by malice or personal ill will toward the plaintiff. But if you find from the evidence that the defendant published the article sued upon, with a reckless and wanton disregard of the plaintiff's right to an unchallenged reputation, that, in the law, constitutes express malice. In the same connection, you may consider the subsequent conduct of the defendant toward the plaintiff as throwing light upon his motive. 20 30

VIII. Punitive or exemplary damages are assessed, if at all, on the ground of public policy, and not on the ground that the plaintiff has any right to the money. In order to prevent a repetition of the wrong, the jury in a proper case may assess punitive or exemplary damages, in the way of punishment, which will go to the plaintiff because assessed in her suit, but not on the theory of compensating her, so much, as of punishing the wrongdoer and making an example of him. 40

IX. In fixing the amount of damages to which the plaintiff is entitled, the jury should take into consideration all matters which tend to throw light upon the injury which has been sustained by the plaintiff, or may be useful in determining the degree of culpability of the defendant. Regard should be had for the nature of the charge which the defendant has made against the plaintiff, the manner in which the publication was made and the attending circumstances;  
10 the conduct of the defendant from the time of the publication of the libel down to the time you give your verdict. You may also consider the circulation of the defendant's paper, and the situation of the plaintiff at the time of the publication.

X. There has been something said in this case about the allegations of the libel sued upon being taken from the papers filed in the Court of Chan-  
20 cery in a divorce action. In regard to such papers I charge you that the pleadings, that is, the petition and answer and cross-petition and answer, filed by the parties in such an action, do not by the filing become public records in the sense that every one has a right to inspect them and disclose their contents. Such pleadings, before a hearing in open Court, are open to the inspection of the parties having a legal interest therein, and to persons having a legal control thereover, and no other person has a right of ac-  
30 cess thereto, and this is not permitted for the purpose of publication, or to gratify private spite or promote public scandal.

XI. There is no rule of law which authorizes any but the parties interested to handle the files or publish the contents of their matters in such litigation until there is a judicial hearing or trial thereof. The public has no right to information on private divorce suits till they come up for public hearing or action in open court. It is only when there has been a hear-  
40 ing in open court that the situation is changed.

Where there is a hearing or trial in open court a newspaper has a right to publish a fair report of the proceedings.

XII. You may take into consideration the fact of the filing of the cross-petition and other papers in determining the amount of damages to which the plaintiff is entitled; but that is the only bearing it has in this case.

10

XIII. If the jury believes that any witness had wilfully testified falsely in regard to a material fact, or has attempted to deceive the jury, the testimony of such witness may be entirely disregarded.

XIV. At common law the pleadings or paper filed in an action or proceeding were not open to public inspection but only to those having an interest therein or right of access thereto, and this was not permitted for the purpose of publication or to gratify private spite or promote public scandal. This rule has not been changed by statute in New Jersey, but exists there in full force and virtue.

20

XV. The plaintiff is entitled to recover punitive damages in this case, despite the statute of 1898.

XVI. The plaintiff is entitled to recover punitive damages in this case, despite the statute of 1898, which said statute is unconstitutional.

30

XVII. The jury may infer from the evidence that the Managing Editor of the newspaper, who was also a director of the defendant corporation, after reading the article sued upon in the "Observer," was satisfied to let it stand without any alteration or qualification in the following issues of the defendant's newspaper. If the jury do so find they may infer from that and the other testimony in this case that the publication sued upon was authorized or ratified by the defendant corporation.

40

XVIII. Whether the item of March 17th, 1904, was a retraction of the article of March 18th, 1903, either in whole or in part, and if so, to what extent, is a question for the jury. If the jury should conclude that it was not, then the jury would be justified in giving punitive damages if they believe the publication of the article in suit was subsequently to its publication by the defendant ratified by the defendant's managing editor.

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#### DEFENDANT'S REQUESTS TO CHARGE.

Counsel for the defendant requests the Court to charge the jury as follows:

- I. The plaintiff in this case cannot recover punitive damages against the defendant corporation.
- 20 II. There is no evidence of malice in fact proven in this case against the defendant and no damages should be given therefor.
- III. The plaintiff is entitled only to nominal damages, if any.
- IV. In examining the newspapers offered in evidence, the jury must confine their attention to the articles referring directly to the Neafie case; they must 30 not consider other articles or statements.
- V. The plaintiff having failed to request the "Observer" to retract the alleged libel, she can, in this suit, without proving malice in fact, recover only her actual damage, proved and specially alleged in the declaration.
- VI. No proof has been adduced on the part of the plaintiff showing wrongful motive on the part of the 40 defendant in publishing the alleged libel.

VII. The plaintiff has failed to sustain the burden of proof to show wrongful motive on the part of the defendant in publishing the libel.

VIII. If a principal must, on the one hand, answer for its agents' wrong doing, on the other hand, its liability is circumscribed by the scope of its agent's employment, unless there be proof of ratification of its agent's misconduct. 10

IX. There is no proof in this case wherefrom any ratification of the editor's assistants by the defendant company can be inferred.

X. The liability to respond in punitive damages is ordinarily limited to the actual wrong-doer (the editor's assistant). The publishing company is only consequentially responsible for the wrong-doer's act, on account of its relation to him, and is excluded from such liability, unless it participates in the act expressly or implied, by conduct authorizing or approving it, either before or after it was committed. 20

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#### CHARGE OF THE COURT.

Gentlemen of the Jury: This is an action in tort wherein May J. Neafie is plaintiff and the Hoboken Printing and Publishing Company is defendant. The Justice of the Supreme Court holding this circuit has handed the case down to the Court of Common Pleas for trial. 30

The plaintiff asks for damages against the defendant for printing and publishing an article alleged to be libelous in the "Observer," a newspaper, which, it is claimed, belongs to the defendant. The article in question appeared in the "Observer" on March 18, 1903. Before the plaintiff can recover it is incumbent upon her to prove her action by a fair prepond- 40

erance of evidence. You are the judges of the evidence. First, she must prove to your satisfaction that the Hoboken Printing and Publishing Company was the proprietor of the newspaper in which the alleged libelous article appeared. Evidence has been produced before you to show that such was the fact. If such evidence is satisfactory, then, secondly, determine whether the plaintiff is referred to in this article. Her name appears in the article, and she claims to have been the person referred to. If you are satisfied that she is therein referred to—and I do not understand that there is any question on this point—you must then determine, thirdly, whether the article is libelous.

A libel has been correctly defined to be "Any publication, expressed either by printing or writing, or by signs, pictures or effigies or the like, which tends to injure one's reputation in the common estimation of mankind, to throw contumely, shame or disgrace upon him, or which tends to hold him up to scorn, ridicule or contempt, or which is calculated to render him infamous, odious or ridiculous, is prima facie a libel."

A copy of the "Observer" of March 18, 1903, containing the article alleged to be libelous has been offered in evidence. You may take it with you when you retire to the jury room. Other newspapers also have been offered, which you may also take with you, but only such portions of the newspaper as have been offered in evidence can be examined and considered by you in your deliberations upon this case.

The article in the paper of March 18, 1903, is libelous on its face. It accuses the plaintiff of unfaithfulness to her husband. It holds her up to the ridicule and scorn of the community. Her good name is attacked. Under any fair interpretation of the language found in the article, it charges the plaintiff with the crime of adultery. The article is clearly libelous, and, if published by the defendant corpora-

tion a verdict can be found against it.

It is no justification for a libelous article that the charges contained therein were taken from the records of the Court of Chancery. That the article contains a fair presentation of the charges contained in the papers filed, is no justification. It is well settled law that the publication of the contents of pleadings before they come up for hearing or action in open court is not privileged. "It is an established principle, upon which the privilege of publishing a report of any judicial proceeding is admitted to rest, that such report must be strictly confined to the actual proceedings in court and must contain no defamatory observations or comments from any quarter whatever, in addition to what shall form strictly and properly the legal proceedings."

If you are satisfied that under the evidence, damages should be awarded, it remains for you to determine next in what amount you should assess such damages. Damages may be of two kinds—compensatory and punitive. In this case compensatory damages only can be awarded. Under certain circumstances, punitive or exemplary or vindictive damages, as they are called, may be awarded in libel cases. Such damages are in excess of the actual loss suffered by the person libeled and are awarded for the purpose of punishing the defendant and of holding him up as an example and warning to others. In view of the recent decision of the Supreme Court of this State, explaining the kind of proof necessary to hold a corporation responsible for exemplary damages in a suit for libel, I charge you that under the evidence that has been presented in this case, exemplary or punitive damages cannot be awarded against the defendant. The malicious conduct on the part of the defendant, necessary to charge it with such damage, has not, under the ruling of that decision, been shown. I do not find that the plaintiff has shown that malice in fact on the part of the defendant, which

would justify exemplary damages in this case. If you find any damages against the defendant, they must be only compensatory in their nature. They must be such damages as will compensate the plaintiff for injury to her reputation and to her feelings.

To what extent has she been damaged? You must determine. How far has her reputation been injured? The article in question was naturally injurious.  
 10 In determining what amount, if any, to award for injury to her reputation, you may consider who she was, her standing in the community, her unquestioned virtue. Consider also what damages, if any, you will award the plaintiff for injury to her feelings, for the mental anguish and the mental suffering which she claims to have passed through, and which she claims lasted for a long period of time. What compensation, if any, should she receive for the shame and mortification which she claims to have  
 20 suffered.

It is contended on behalf of the defendant, that if the plaintiff is entitled to any damages, they should be nominal. Will nominal damages—say for six cents—be sufficient to compensate this woman, who was of unblemished reputation so far as appears in this case, for the attack made on her reputation and for her injured feelings? If that is your opinion, you should so find. If you think her compensation should be of a more substantial character, your verdict  
 30 should indicate in what amount.

Take the case, gentlemen. Consider all the evidence soberly and quietly, both that offered on behalf of the plaintiff and that on behalf of the defendant, and find such verdict as you may think is justified under the evidence and under the law as laid down by the Court.

If you find in favor of the plaintiff, your verdict will be one of guilty and you will assess damages in such amount as you may think proper. If you find in favor of the defendant, your verdict will be one of not  
 40 guilty.

On behalf of the plaintiff I have received several requests to charge.

"First. It is not necessary that the plaintiff should have suffered any pecuniary loss or that the injury suffered by her should be susceptible of a definite money valuation in order to entitle her to recover damages in this action."

The Court will charge that it is not necessary that the plaintiff should have suffered any pecuniary loss, <sup>10</sup> or that the injury suffered by her should have been proved to be of a definite money value; but, of course, if you find in her favor, it will be necessary for you to put in a definite amount the damages you find.

"Second. The plaintiff is entitled to recover general damages for the injury to her feelings which the libel of the defendant has caused and the mental suffering and anguish which she has suffered as a consequence thereof." <sup>20</sup>

The Court so charges, leaving out the word "general."

"Third. The plaintiff is also entitled to recover full compensation for any injury to her character, or more properly her reputation, which has been caused by the defamation of the defendant."

The plaintiff is entitled to recover full compensation for any injury to her reputation which may have been caused by the defamation of the defendant. <sup>30</sup>

The fourth I decline to charge except as already charged.

The fifth I refuse to charge.

The sixth I decline to charge except as I have charged.

The seventh I decline to charge.

The eighth I decline to charge.

The ninth I decline to charge, except as already charged.

The tenth and eleventh I decline to charge, except as already charged. <sup>40</sup>

The twelfth and thirteenth I decline to charge.

The fourteenth I decline to charge, except as already charged.

The fifteenth and sixteenth I decline to charge.

The seventeenth and eighteenth I decline to charge.

On behalf of the defendant I have received ten requests to charge.

10 "First. The defendant in this case cannot recover punitive damages against the defendant corporation."

I so charge.

The second request I decline to charge, except as already charged.

"Third. The plaintiff is entitled only to nominal damages, if any."

The Court refuses so to charge.

20 "Fourth. In examining the newspapers offered in evidence the jury must confine their attention to the articles referring directly to the Neafie case; they must not consider other articles or statements."

The Court so charges, excepting that it charges that you are entitled to consider the statement contained in one of the papers with regard to the circulation of the paper. That has been marked, as I understand it.

The fifth I decline to charge.

The sixth I decline to charge, except as already  
30 charged.

The seventh I decline to charge, except as already charged.

The eighth I decline to charge.

The ninth I decline to charge.

The tenth I decline to charge, except as already charged.

## PLAINTIFF'S EXCEPTION.

Mr. SPEER: The plaintiff desires to take an exception to that part of the charge of the Court where it was said that only compensatory damages could be recovered by the plaintiff in this case, and that punitive damages or exemplary damages could not be recovered.

The COURT: Exception allowed.

10

Mr. SPEER: The plaintiff desires to take a separate exception to the refusal of the Court to charge each of the requests made by the plaintiff and also a separate exception to each modification of each request as charged by the Court, and also an exception to the charge made by the Court in response to the requests of the defendant.

The COURT: Exception allowed.

20

## DEFENDANT'S EXCEPTIONS.

Mr. WERTS: I desire to take the following exception to that part of the Court's charge wherein the Court said:

"The article in the paper of March 18, 1903, is libelous on its face. It accuses the plaintiff of unfaithfulness to her husband; it holds her up to the ridicule and scorn of the community. Her good name is attacked. Under any fair interpretation of the language found in the article, it charges the plaintiff with the crime of adultery. The article is clearly libelous, and if published by the defendant corporation, a verdict can be found against it."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)

Judge, &c. 40

Mr. WERTS: I desire also to except to that part of the charge, wherein the Court said:

"It is no justification for a libelous article, that the charges contained therein were taken from the records of the Court of Chancery. That the article contains a fair presentation of the charges contained in the papers filed, is no justification."

<sup>10</sup> Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Mr. WERTS: I desire also to except to that part of the charge, wherein the Court said:

"To what extent has she been damaged, you must determine. How far has her reputation been injured? The article in question was naturally injuri-  
<sup>20</sup>ous. In determining what amount, if any, to award for injury to her reputation, you must consider who she was; her standing in the community; her unquestioned virtue. Consider also what damages, if any, you will award the plaintiff for injury to her feelings, for the mental anguish and the mental suffering which she claims to have passed through, and which she claims lasted for a long period of time. What compensation, if any, should she receive for the shame and mortification which she claims to have  
<sup>30</sup>suffered."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Mr. WERTS: I also desire to except to the refusal of the Court to charge as follows:

"The plaintiff is entitled only to nominal dam-  
<sup>40</sup>ages, if any."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Mr. WERTS: I also desire to except to the refusal of the Court to charge the request of the defendant as follows:

"The plaintiff having failed to request the "Ob-<sup>10</sup>server" to retract the alleged libel, she can in this suit, without proving malice in fact, recover only her actual damages proved and specially alleged in the declaration."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

20

Mr. WERTS: I also desire to except to the refusal of the Court to charge the request of the defendant as follows:

"No proof has been adduced on the part of the plaintiff showing wrongful motive on the part of the defendant in publishing the alleged libel."

Which exception is allowed, and signed and sealed accordingly.

30

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Also to the refusal of the Court to charge the request of the defendant as follows:

"If a principal must, on the one hand, answer for its agent's wrong-doing, on the other hand, its liability is circumscribed by the scope of its agent's employment, unless there be proof of ratification of its agent's misconduct."

40

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Also to the refusal of the Court to charge the request of the defendant as follows:

<sup>10</sup> "There is no proof in this case wherefrom any ratification of the editor's assistants, by the defendant Company, can be inferred."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Also to the refusal of the Court to charge the request of the defendant as follows:

<sup>20</sup> "The liability to respond in punitive damages, is ordinarily limited to the actual wrong-doer (the editor's assistant); the publishing Company is only consequentially responsible for the wrong-doer's act, on account of its relation to him, and is excluded from such liability, unless it participates in the act expressly or impliedly by conduct, authorizing or approving it, either before or after it was committed."

<sup>30</sup> Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c.

Also to the refusal of the Court to charge the request of the defendant as follows:

<sup>40</sup> "In examining the newspapers, offered in evidence, the jury must confine their attention to the articles referring directly to the Neafie case. They must not consider other articles or mis-statements." The Court charging in the following modified manner:

"The Court so charges excepting that it charges that you are entitled to consider the statement contained in one of the papers with regard to the circulation of the paper."

Which exception is allowed, and signed and sealed accordingly.

ALFRED ELMER MILLS. (Seal.)  
Judge, &c. 10

NEW JERSEY COURT OF ERRORS AND APPEALS.

_____o	
MAY J. NEAFIE,	)
	)
Plaintiff,	)
	)
Defendant in Error,	)
	)
vs.	)
	)
HOBOKEN PRINTING &	)
PUBLISHING COMPANY,	)
	)
Defendant,	)
	)
Plaintiff in Error.	)
_____o	

In Tort. 20  
On Error to  
Supreme Court.  
Assignments of  
Error.  
30

And now at this day, the said defendant, plaintiff in error, assigns the following causes of error:

1. Because the Court permitted the question, "Who were the officers of the corporation in January, 1903?" to be answered by the witness, Thomas C. McKeon, sworn on the part of the plaintiff, against objection by the defendant. 40

2. Because the Court permitted the reading by the plaintiff to the jury of a portion of the paper marked Exhibit P. 1, as follows: "The Observer daily enters almost every home in Jersey City, Hoboken and North Hudson," against objection by the defendant.

3. Because the Court over-ruled the question, "Did you bring a suit against the Jersey City Journal?" asked by the defendant of the plaintiff.  
10

4. Because the Court permitted the question, "Did you see any report in the paper publishing the fact that you had filed an answer," to be answered by the plaintiff, against objection by the defendant.

5. Because the Court permitted the question, "Having had your memory refreshed, state what it was that caused your indignation at that time?" to be answered by plaintiff against objection by the defendant.  
20 ant.

6. Because the Court permitted in evidence the paper marked Exhibit P. 2, being the Observer of July 30, 1904, against objection by the defendant.

7. Because after the plaintiff rested her case, the Court refused to non-suit the plaintiff, upon the grounds (1) that no action of libel had been proved, and (2), upon the ground that no damages had been shown, although a non-suit should have been  
30 granted.

8. Because the Court erred in charging the jury as follows:

"The article in the paper of March 18, 1903, is libelous on its face. It accuses the plaintiff of un-faithfulness to her husband. It holds her up to the ridicule and scorn of the community. Her good name is attacked. Under any fair interpretation of the language found in the article, it charges the plain-  
40 tiff with the crime of adultery. The article is clearly

libellous, and if published by the defendant corporation, a verdict can be found against it."

9. That the Court erred in charging the jury as follows:

"It is no justification for a libellous article that the charges contained therein were taken from the records of the Court of Chancery. That the article contains a fair presentation of the charges contained in the papers filed, is no justification." 10

10. That the Court erred in charging the jury as follows:

"To what extent has she been damaged, you must determine. How far has her reputation been injured? The article in question was naturally injurious. In determining what amount, if any, to award for injury to her reputation, you must consider who she was; her standing in the community; her unquestioned virtue. Consider also what damages, if any, you will award the plaintiff for injury to her feelings, for the mental anguish and the mental suffering which she claims to have passed through, and which she claims lasted for a long period of time. What compensation, if any, should she receive for the shame and mortification which she claims to have suffered." 20 30

11. Because the Court erred in refusing to charge the request of the defendant as follows:

"The plaintiff is entitled only to nominal damages, if any."

12. That the Court erred in modifying the fourth request of the defendant to charge, as follows:

"In examining the newspapers offered in evidence, the jury must confine their attention to the articles referring directly to the Neafie case. They must not 40

consider other articles or statements," (the modifications being that the Court added the following words) "that you are entitled to consider the statement contained in one of the papers with regard to the circulation of the paper."

13. That the Court erred in refusing to charge the fifth request of the defendant, as follows:

10 "The plaintiff, having failed to request the Observer to retract the alleged libel, she can in this suit, without proving malice in fact, recover only her actual damage proved and specially alleged in the declaration."

14. That the Court erred in refusing to charge the six request of the defendant, as follows:

20 "No proof has been adduced on the part of the plaintiff showing wrongful motive on the part of the defendant in publishing the alleged libel."

15. That the Court erred in refusing to charge the eighth request to charge of the defendant as follows:

"If a principal, must on the one hand, answer for its agent's wrong-doing, on the other hand its liability is circumscribed by the scope of its agent's employment, unless there be proof of ratification of its agent's misconduct."

30 16. That the Court erred in refusing to charge the ninth request to charge of the defendants as follows:

"There is no proof in this case where from any ratification of the editor's assistants by the defendant company can be inferred."

17. That the Court erred in refusing to charge the tenth request of the defendant as follows:

40 "The liability to respond in punitive damages is ordinarily limited to the actual wrong-doer. (the editor's assistant) The Publishing Company is only consequentially responsible for the wrong-doers act

on account of its relation to him, and is excluded from such liability, unless it participates in the act of expressly or impliedly by conduct authorizing or approving it, either before or after it was committed.

Yours respectfully,

BEDLE, EDWARDS & HOLMES,  
Attorneys of and of  
Counsel with the Defendant 10  
Plaintiff in Error.

Dated November 15th, 1906.

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Plaintiff's Exhibit "P-1," from The Observer of  
March 18, 1903.

## FRIEND CONSOLED LONESOME WIFE

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Allegation Made By George  
Neafie in His Suit For  
Divorce.

## PROMINENT HOBOKEN OFFICIAL IMPLICATED

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"Hubby" Says He Was Home When  
One of the Co-respondents Kept an  
Appointment Late in the Even-  
ing—Took the Woman Rowing, it  
is Said—Wife Has Counter Suit.

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Testimony of a startling and sensa-  
tional nature, in which the name of a  
prominent official in this city will  
figure, is expected when the hearings  
in the counter suits for divorce of  
George B. Neafie and his wife, May J.  
Neafie, nee Crevier, take place in the  
court of chancery. The Crevier family  
is one of the oldest in this city and  
the Neafies, who have been connected  
with the Lackawanna Railroad for  
nearly twenty-five years, are among  
the best known people of Boonton, this  
state.

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On February 5, of the present year,  
Mrs. Neafie filed a petition for divorce  
from her husband on statutory grounds.  
A woman named Daisy Addie is named  
as corespondent. It is alleged in the  
bill that Neafie met the Addie woman

frequently at Hoptacong, and that the conduct of the pair was of such nature that comments were made. The Neafie couple were married on April 15, 1891. Neafie is engineer of a fast train that runs to Scranton on the Lackawanna road. His brother occupies a lucrative and responsible position with the same road, and his father, Daniel Neafie, was yardmaster for years at the local yards.

The defendant of the petition of February 5 denies that he knows of any such woman as Daisy Addie and makes a general denial of his wife's charges. In her petition, Mrs. Neafie alleges that she is without means of support. The accused husband says he deeded a house and lot over to her at Boonton when they were married, and that she has besides considerable money accumulated by him.

#### IN CROSS-PETITION.

The cross-petition, filed by the accused husband, is highly sensational. Several correspondents are mentioned, the most prominent is Frank Nugent, a well known railroad man. The petitioner in the counter suit alleges that Nugent, under the guise of friendship, used to sit up late at his home in Boonton and entertain his wife. She complained of feeling lonesome because her husband did not reach home until an early hour in the morning. One night, when he returned unexpectedly, Neafie claims he secured evidence of a nature sufficient in seriousness to secure an absolute divorce. That was before Neafie and his wife separated. Since then Neafie claims that his wife has made startling admissions of misconduct to him. The petitioner in the suit against Mrs. Neafie claims that she told him that she came to this city to visit Charles Crevier in the spring of 1897 and that while there met the official referred to. She says the official invited her to go rowing on the Hudson and that she accepted the invitation. The couple rowed a considerable distance and returned to a boat house, in this city, which was deserted. Later it was arranged, so the petition reads, that the official and Mrs. Neafie were

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to meet at the latter's home in Boonton. He kept the appointment and rang the bell at a late hour in the night, not expecting to find "hubby" at home. Neafie alleges that he stuck his head out of the window and demanded to know what the official wanted. The latter offered a thousand apologies and said he made a mistake in the house.

Mrs. Neafie, according to her husband, was very suspicious of her husband and offered correspondent Nugent all sorts of inducements to reveal to her damaging evidence against Neafie.

There is also a very prominent physician, a Dr. Walton, of the Boonton section, whom, it is alleged, made quite an impression on Mrs. Neafie as a palmist. The plaintiff alleges that his wife's confessions to him concerning Dr. Walton will be used in the evidence.

Lawyer John J. Fallon, of this city, admitted that he would represent Neafie, but refused to make any statement.

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Plaintiff's Exhibit "P-2," from The Observer, July  
30, 1904.

## DIVORCED MAN UNDER ARREST

**Taken Into Custody Under Writ of  
Ne Exeat Obtained on Petition of  
Former Wife to Vice Chancellor.**

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### WANTS TO COMPEL HIM TO PAY HER ALIMONY

George B. Neafie, a Lackawanna engineer, was arrested on a writ of ne exeat when he stepped from his engine at the Lackawanna depot after having made a trip from Scranton. The arrest was made at the instance of Mrs. May J. Neafie, who on March 16 obtained a decree of divorce from her husband.

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The marital troubles of Mr. and Mrs. Neafie have at different times figured in the newspapers, although efforts were made by each of them to avoid publicity. Neafie comes from a family favorably known in this county and Boonton, and his wife is a sister of Charles Crevier and a sister of the wife of George H. Steil, chairman of the common council. Before her marriage Mrs. Neafie was a nurse in Christ Hospital.

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#### DID NOT APPEAR.

When it became apparent that she and her husband could not live happily together Mrs. Neafie began a suit for divorce and Neafie commenced a counter suit. On the day of the hearing before Vice Chancellor Emery, at Newark, Mr. Neafie did not appear and

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his wife was granted a decree. Neafie explained afterward that his failure to defend the suit brought by his wife and to prosecute the one brought by himself was because of his desire to avoid publicity and notoriety on account of his family, and because his wife had stated that she would not ask for alimony.

10 He said he would have defended her suit and pushed his own if he had thought alimony would be demanded. At the hearing Mrs. Neafie was represented by Frank E. Bradner, a Newark lawyer, and when the decree was granted it contained no provision for alimony. Since then Mrs. Neafie retained Counselor Charles L. Craig, of New York and Counselor Frederick B. Scott, of Jersey City, to proceed against her divorced husband for alimony.

20 In this proceeding the lawyers filed a petition in the court of chancery asking for alimony and annexed to the petition was an affidavit to the effect that Neafie was about to depart from the state. These papers were filed with Vice Chancellor Pitney, who granted a writ of ne exeat and fixed the bail of Neafie at \$3,000 when he should be taken into custody.

#### UNDER \$3,000 BAIL

30 As soon as he was arrested Neafie, accompanied by the deputy sheriff, visited the office of his lawyer, John J. Fallon and consulted him. He then sent to New York for \$3,000 to give cash bail to the sheriff. Neafie laughed at the idea of his attempting to leave the state, any more than he does several times each week, his duties as a locomotive engineer requiring him to go to Scranton, Pa.

Mr. Fallon was indignant over the arrest and said that on Monday he will apply to the vice chancellor to quash the writ of ne exeat on the ground that it was "illegally and improvidently" granted. He said that he was of the opinion that when the vice chancellor was in possession of all the facts that the writ would be thrown out of court and Neafie released from it. Neafie will contest the attempt of Mrs. Neafie to obtain alimony from him.

The couple have no children, but Mrs. Neafie believes that her former husband should be compelled to contribute toward her support.

40 Late in the afternoon Counselor Fallon and Neafie deposited \$3,000 cash bail with the sheriff and the latter was released.

Plaintiff's Exhibit "P-3," from The Observer of March 6, 1906, on sixth page.

### TWO IMPORTANT LIBEL CASES

Two decisions, each setting aside the verdict of a jury in the Circuit Court granting heavy damages for libel, have been handed down by the New Jersey Supreme Court. Both are important because they put the law respecting this tort on a foundation more satisfactory to both newspaper men and the public, guarding on the one hand the liberty of the press and on the other the rights of individuals.

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No new principles are established, but in one case particular old and sound decisions are collected and affirmed in a manner calculated to discourage some of the unjust findings of minor tribunals.

Mrs. Mary J. Neafie sued the Observer of Hudson County for libel about a year and a half ago. She had begun divorce proceedings against her husband and her husband had replied in a cross bill which was filed in the office of the Clerk of Chancery.

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At the time it was assumed by an agent of the newspaper that a cross-bill was a privileged communication which any newspaper had the right to print, but this was an error.

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When the divorce case came to trial the cross-bill was stricken out by the court as untrue and scandalous and Mrs. Neafie procured her divorce. Subsequently her counsel asked for and obtained the publication of an article fully setting forth her vindication in the chancery tribunal, but some weeks after an action for libel was begun.

Mrs. Neafie had lived in Jersey City, but she moved to Boonton and the trial of the libel suit took place before Justice Garretson in the Morris County court in March, 1905.

Some of the jurors were Boonton neighbors of the complainant and one of them, a clergyman, in the jury room offered a prayer in behalf of the lady.

Several ballots were taken and the jury returned a verdict of \$5,000 damages. Application was made for a rule to show cause why the verdict should not be set aside and the case was heard by Chief Justice Gummere and Justices Pitney, Fort and Reed. The decision making the rule absolute is by the Chief Justice.

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Error is found in the charge of the trial judge. After reciting facts which are peculiar to this case the court lays down this broad principle:

"There was nothing to justify a finding by the jury that the publication was malicious on the part of the defendant. And this was the situation which the case would have presented, even without the evidence submitted by the defendant for the purpose of rebutting any inference of prior authorization or subsequent ratification.

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The right to recover punitive damages rests primarily upon the single ground of wrongful motive; and when such motive is not inherent in the offense which fixes the defendant's legal liability, the burden rests upon the plaintiff of presenting some proof from which such wrongful motive may be inferred."

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This follows the well-established rule that actual malice must be shown in order to entitle the plaintiff to recover punitive damages and the malice must be that of the proprietor of the publication, or malice which he has ratified.

The decision leaves to an injured party the right to recover actual damages without proving malice on the part

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of the proprietor, but not exemplary damages. The burden rests upon the plaintiff of presenting proof of conduct on the part of the proprietor from which a wrongful motive may be inferred. Even the malice of an agent is not the malice of the principal unless the principal ratifies it.

No malice was shown in the Neafie case and no actual damages for that matter. Full reparation was made at once when it was asked for; in fact nobody connected with the publication had ever heard of the plaintiff prior to the publication of the article.

Counsel for Mrs. Neafie was William H. Speer and a Mr. Craig; for the Observer, William D. Edwards.

Second of the cases was that of "Annie Oakley," the well known rifle shot. She had been impersonated in a police court in Chicago by a woman who claimed to be "Annie Oakley," but was not, and an untrue story concerning the markswoman was sent out by a press agency and printed in scores of newspapers throughout the country.

She brought suit against these publications for damages aggregating \$2,000,000 and obtained a number of judgments. Her counsel in New Jersey was Attorney-General Robert H. McCarter.

An Essex County jury gave her \$3,000 against the Observer. This verdict has been set aside on an application of William D. Edwards for a rule to show cause, the Supreme Court deciding that, "In an action for libel or slander damages cannot be assessed for physical sickness alleged to have been caused by the libel or slander."

These decisions, particularly the first, are calculated to discourage actions by persons who have no real grievances; who have been unintentionally injured

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by an honest newspaper which is willing to correct its error at once.

Where printed statements are as a matter of fact malicious the juries may punish to any extent they think proper, as they ought to. But malice to entitle one to punitive damages may not be inferred. It must be intrinsic or it must be proved by the plaintiff.

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In the Neafie case nothing was printed but the bill sworn to by the husband and filed in the office of public record. Though its statements were untrue, that was not and could not have been known at the time. Any other decision than that which the Supreme Court has given would have been so obviously unjust that the fact need scarcely be commented on.

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Defendant's Exhibit "D-1," from The Observer of March 17, 1904, middle of fourth page.

## COMPLETE VINDICATION FOR MRS. NEAFIE

In the report of the proceedings in the Neafie divorce action before Vice Chancery Emory, at Newark, published yesterday, some expressions were inadvertently used that seem to reflect upon the petitioner, Mrs. May Neafie.

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There was no intention on the part of the Observer to publish anything in any way derogatory to Mrs. Neafie's character and there was nothing in the court proceedings to warrant the use of language of such a nature or having that effect.

Mrs. Neafie petitioned for an absolute divorce on statutory grounds. The defendant, George B. Neafie, made a general denial of her allegations and at the same time served a cross petition very voluminous in character.

It was this cross bill that contained serious allegations against the plaintiff, but the matter was of such a vindictive and defamatory character that the entire cross bill, with the exception of a single allegation, was ordered by the vice chancellor to be stricken from the files of the court as being scandalous, and Mrs. Neafie was not required to answer such part.

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At the hearing Wednesday the only witnesses examined were those testifying to the truth of Mrs. Neafie's charges, and of those only one was so much as cross examined by the defendant's counsel.

Mr. Neafie failed to appear personally and produced no witnesses either to contradict those of the plaintiff or to sustain in the slightest degree the allegations of misconduct so recklessly made by him in his cross petition.

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Vice Chancellor Emory granted the plaintiff's petition for an absolute divorce with costs against the defendant and an allowance of alimony and counsel fees for the plaintiff, the amount of which has to be determined later.

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Defendant's Exhibit "D-2," from The Observer of April 12, 1904, top of first page.

## COURT DECIDED THE DIVORCE MUST STAND

**Declined to Re-Open Case in  
Which Neafy, a Lackawanna En-  
gineer, Was Concerned.**

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[Special to The Observer.]

Newark, April 12.—Vice Chancellor Emery to-day denied the application of Michael J. Connor, counsel, representing George B. Neafy, engineer of the Chicago express on the Lackawanna Railroad, for leave to open the proofs in the divorce suit brought by Mrs. Mary J. Neafy.

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In making his application Mr. Connor read the affidavit of Mr. Neafy, which declared that when testimony in the suit was taken he was unable to be present, being detained in Scranton by trouble on the railroad. Frank E. Brannar, who appeared for the wife, in reply to the affidavit read the deposition of the train dispatches of the Lackawanna Railroad, which cited the record of Mr. Neafy's run and showed that he returned to Hoboken and was at liberty, so far as his work was concerned, and could have attended court.

After denying the husband's leave to open the decree granted to Mrs. Neafy, the court granted the application of Mr. Brannar for \$10 a week alimony with the direction that the husband shall pay all costs. As to his income testimony will be taken in two weeks.

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Defendant's Exhibit "D-3," from The Observer,  
March 16, 1904, first page, middle column.

**MRS. GEORGE B. NEAFIE  
TO SECURE A DIVORCE**

[Special to The Observer.]

Newark, March 16.—After hearing several witnesses in the matter of the divorce suit brought by May J. Neafie, of Hoboken, against George B. Neafie, one of the engineers of the Lackawanna Railroad, Vice Chancellor Emory to-day decided that the petitioner was entitled to a decree.

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There was no defence other than a formal appearance of the husband's counsel who explained to the court that his client had been properly notified to appear. The statutory offense was charged in the wife's petition, and the answer of the husband contained counter charges in the form of a cross bill which made serious allegations against the wife.

The couple were married April 15, 1891, at Boonton, where they resided until 1900, when they moved to Montclair and later to Bloomfield. The petitioner left her husband's home January 17, 1903, for the reasons set forth in the bill. Mrs. Neafie's mother, Mrs. Charles Crevier, is a resident of Hoboken.

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To his Honor, William J. Magie, Chancellor of the  
State of New Jersey—

The petition of May J. Neafie, of Boonton, in the State of New Jersey, respectfully shows that on the fifteenth day of April, in the year eighteen hundred and ninety-one, your petitioner was married to her present husband, George B. Neafie, at Boonton aforesaid in the State of New Jersey, and that she continued to live with him as her husband until the seventeenth day of January, nineteen hundred and three, and that from the time of said marriage they have been and are now inhabitants of this State.

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That in the month of September, nineteen hundred and two, the said George B. Neafie, at or near Hopatcong, in the State of New Jersey, wickedly disregarding the solemnity of his vows and the sanctity of

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the marriage state, committed adultery with one Daisy Addy, and your petitioner is unable to state the exact date in said month, but is informed that the act was committed in the early part of September aforesaid.

And your petitioner further shows that she has only recently discovered that her husband had committed said act of adultery, and she has not co-habited with her said husband since the discovery by  
 10 her of said act of adultery.

And your petitioner further shows that said defendant had committed adultery on a former occasion and had confessed the same to your petitioner, and your petitioner then condoned the offense on the promise of said defendant to be faithful thereafter.

And your petitioner further shows that she has no means of support and that her said husband is regularly employed as an engineer by the Delaware,  
 20 Lackawanna and Western Railroad Company and receives a salary of one hundred and fifty dollars per month.

Your petitioner prays that she may be divorced from her said husband, George B. Neafie, for the cause aforesaid according to the statute in such case made and provided; and that she may have a suitable allowance for her maintenance and support, and may have such further or other relief as may be  
 30 equitable and just.

And she will ever pray, &c.

FRANK E. BRADNER,  
 Solicitor for and of Counsel with Petitioner.

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State of New Jersey, County of Essex, ss—

May J. Neafie, being duly sworn according to law on her oath says: That she is the petitioner named in the foregoing petition; that her complaint in said petition is not made by any collusion between her and the said defendant in said petition for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the said petition.

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Sworn and subscribed to before me this thirtieth day of January, A. D. 1903, at Newark New Jersey.

FREDERICK R. PECK,

Master in Chancery of New Jersey.

A true copy.

E. C. STOKES,

Clerk.

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Defendant's Exhibit "D-A."

## IN CHANCERY OF NEW JERSEY.

_____o		)	
	Between	)	
	MAY J. NEAFIE,	)	On Petition for
10	Petitioner,	)	Divorce, etc.
	and	)	Answer
	GEORGE B. NEAFIE,	)	and
	Defendant.	)	Cross-Petition.
_____o		)	

20 The answer of George B. Neafie, defendant, to the petition of May J. Neafie, the petitioner in the above entitled cause:

The defendant for the answer to the said petition or unto such parts and so much thereof as he is advised is material and necessary for him to make answer unto, answering says:

30 That he admits that on the fifteenth day of April, in the year eighteen hundred and ninety-one, he was married to May J. Neafie, the petitioner, at Boonton, County of Morris, New Jersey; that he and his said wife continued to live together until January seventeenth, nineteen hundred and three, and that from the time of said marriage they have been and now are inhabitants of this State.

40 This defendant denies that in the month of September, nineteen hundred and two, at or near Hopatcong, in the State of New Jersey, or at any other time or at any other place, he committed adultery with one Daisy Addy, and denies that his said wife

did not cohabit with him since September, nineteen hundred and two; but avers, on the contrary, that his said wife cohabited with him up to the very time of their separation, January seventeenth, nineteen hundred and three.

This defendant admits that he committed adultery about two years ago, and that at said time he confessed the same to his said wife and that she then <sup>10</sup> condoned the offense.

This defendant denies that his said wife has no means of support, and avers, on the contrary, that his said wife is possessed of considerable means; that she is the owner, subject to mortgage, of a house and lot at Boonton, New Jersey, of considerable value (the gift of this defendant), and receives the rents, issues and profits of said house and applies same to her own use; and further avers, that his said wife is not <sup>20</sup> obliged to pay taxes, water rents, interest on mortgage, insurance and such other charges upon said property, but that all such charges, taxes, water rents, etc., have been paid by this defendant; and the defendant further avers that his said wife is possessed of considerable moneys, the amount whereof he cannot state with certainty, but he believes same to be several thousand dollars; and this defendant further avers that all of the said moneys of which his wife is <sup>30</sup> possessed, is and has been the accumulation of savings from this defendant's salary or wages which his said wife had been accustomed to receive direct from his employer up to the time of the aforesaid separation.

And this defendant further avers that his said wife informed him that she had loaned to her brother the sum of fourteen hundred dollars upon his promissory note, and the interest thereon is paid to her by her said brother regularly. <sup>40</sup>

This defendant admits that he is employed as an engineer by the Delaware, Lackawanna and Western Railroad Company, and receives a salary of one hundred and fifty dollars per month; and that defendant charges that he received for a number of years, prior to the aforesaid separation, between him and his said wife, the average salary of about one hundred and twenty-five dollars per month, and that he authorized  
 10 his said wife to receive his said salary direct from his employer when the same became due, and she did so for a number of years, to wit, three years; and this defendant charges that his said wife has either squandered or disposed of the entirety thereof in some manner unknown to him, or has same hidden away or secreted so as to be used by her for her personal advantage.

GEORGE B. NEAFIE.

20 And this defendant by way of cross-petition exhibited against the said petitioner, May J. Neafie, says:

That he now resides in Montclair, Essex County, New Jersey, and has resided there since January seventeenth, nineteen hundred and three, when he and his wife become separated; that he was married to his present wife, May J. Neafie, on April fifteenth, eighteen hundred and ninety-one, at Boonton, New Jersey, and continued to live with his said wife until  
 30 January seventeenth, nineteen hundred and three, and that from the time of his said marriage this defendant and his said wife have been continuously residents of this State.

And this defendant and cross-petitioner further says, that there are no children as the fruit of said marriage.

This defendant and cross-petitioner further says, that his said wife throughout the past six years at  
 40 least has been guilty of improper, indiscreet, scanda-

lous and dishonorable conduct, that her said conduct throughout said period was unbecoming to a wife who would be faithful to her marriage vows.

This defendant and cross-petitioner further says that at divers times in the months of January and February, eighteen hundred and ninety-seven, his said wife wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with one Frank Nugent; that this defendant and cross-petitioner, by reason of his employment, was under emergencies, obliged to be at work until very late at night; that the said Frank J. Nugent had been accustomed to remain in the house with his said wife and to sit up with her and to keep her company until this defendant and cross-petitioner returned from work; that this defendant and cross-petitioner, on the particular occasion now complained of, on his return from his work, observed that his apartments, which had usually been lighted until his return from work, was in darkness; that upon entering his said apartments he went to the bed room occupied by himself and his said wife, and there, to his amazement, he discovered his said wife and the said Frank J. Nugent occupying the same bed together, both of them undressed and under the bed clothing; that he then and there demanded an explanation of his said wife and she declared to this defendant and cross-petitioner that there had been no serious consequences and no sexual intercourse between her and the said Frank J. Nugent, and explained that she had become sleepy while awaiting this defendant and cross-petitioner's return, and undressed herself and retired to bed, and feeling sorry to have left the said Frank J. Nugent in the lower part of the house alone, she invited him upstairs to stop with her; and this defendant and cross-petitioner then having the utmost confidence in his said wife believed the story which she then and there told him.

And this defendant and cross-petitioner further says, that since his recent separation from his said wife and because of many ugly and scandalous rumors which came to his hearing, he has inquired into the actions and conduct of his said wife; that he has learned and has abundant evidence to prove that his said wife, on the occasion hereinabove referred to, notwithstanding her explanation to this defendant and cross-petitioner, on the occasion hereinabove referred to, committed adultery with the said Frank J. Nugent, and that the said Frank J. Nugent had full sexual intercourse with her, and this without any remonstrance upon the part of his said wife, but, on the contrary, his said wife was a willing party thereto.

This defendant and cross-petitioner further says, that he has learned since his recent separation from his said wife, that the said Frank J. Nugent had been unduly intimate with his said wife, that he had been accustomed to put his hands under his said wife's clothing and feel of her limbs and body, and that his said wife permitted said Frank J. Nugent to do so without reproof.

And this defendant and cross-petitioner further says, that in the month of February, eighteen hundred and ninety-seven, his said wife laid on a lounge in the house and apartments then occupied by her and this defendant and cross-petitioner, and there had full sexual intercourse with said Frank J. Nugent, who was then and there also lying on said lounge.

And this defendant and cross-petitioner further says, that he has learned that his said wife on more than one occasion, expressed her desire to be left alone with the said Frank J. Nugent in her said apartments, and that she and the said Frank J. Nugent were alone in the said apartments on divers

occasions, unknown to this defendant and cross-petitioner; and this defendant and cross-petitioner, by reason of what he has learned since his aforesaid separation from his said wife, fully believes that his said wife has been untrue to him, has violated her marriage vows and has had sexual intercourse with the said Frank J. Nugent on more than the occasion hereinabove expressly referred to; that she received the attention of the said Frank J. Nugent for a considerable time unknown to this defendant and cross-petitioner, and only discontinued receiving the said Frank J. Nugent into her apartments in the absence of this defendant and cross-petitioner because of the rumors then in circulation among the neighbors as to her conduct with the said Frank J. Nugent, and the attention she bestowed upon him and frequency of his visits to her while in her said apartments; and his said wife admitted to him that she had misbehaved herself with said Frank J. Nugent, and admitted to this defendant and cross-petitioner that she and the said Frank J. Nugent had went so far as to feel of each others' private parts, but she strenuously denied ever having had committed adultery with him.

And this defendant and cross-petitioner further says, that his said wife informed him that on one occasion in the spring of the year eighteen hundred and ninety-seven, she had visited the house of her brother, Charles Crevier, in the City of Hoboken, County of Hudson and State of New Jersey, and there met one George Steil, who asked her to go rowing with him in a boat on the Hudson River, that she accepted his invitation and went with the said Steil to a point a considerable distance up the Hudson River, and when she and the said Steil returned from said voyage to the boat house there was no person in said boat house other than she and the said George Steil; that he, the said George Steil, then and there hugged, kissed and embraced her, and then and there made improper proposals to her; that she

thereafter made known to this defendant and cross-petitioner her entire conduct with the said George Steil on this occasion, which said conduct this defendant and cross-petitioner considers too scandalous to set out in this petition; that a few days after the said boat house incident, the said George Steil called at the residence of this defendant and cross-petitioner, at Boonton, New Jersey, very early in the morning, ostensibly to meet the wife of this defendant and cross-petitioner, but finding that this defendant and cross-petitioner was unexpectedly at home on this occasion, he, the said George Steil, made an excuse for his call and went away.

And this defendant and cross-petitioner further says, that very frequently his said wife, when they would quarrel, would say to him that she could go to the said George Steil, who would take her to dinner and to the theatre and give her a good time, and she, on many occasions, threatened this defendant and cross-petitioner that she would go to said George Steil, who, she declared, would treat her with more consideration than did this defendant and cross-petitioner, and he would love and respect her; that she further stated to this defendant and cross-petitioner that said George Steil had very often said to her that she should have been his, Steil's, wife instead of being the wife of this defendant and cross-petitioner.

And this defendant and cross-petitioner further says, that his said wife's mother, Mrs. Charles E. Crevier, informed him as well as having informed another, that his said wife had been unduly intimate with one John Sanderson and with whom she had illicit intercourse; this defendant and cross-petitioner spoke to his said wife of this alleged intimacy, and of her mother's accusation, but that his said wife made complete denial thereof.

This defendant and cross-petitioner further says, that in the fall of the year nineteen hundred, his said wife went with a party on a ride to Denville, New Jersey, returning therefrom in an intoxicated condition; that he has recently learned that his said wife on the occasion in question had been drinking intoxicating beverages with divers young men and was seated with said young men, and particularly one young man whose name this defendant and cross-<sup>10</sup> petitioner is not now aware of, and permitted them, and particularly this one young man in question, to place their hands under her clothing and feel of her legs, and that his said wife permitted same without reproval.

And this defendant and cross-petitioner further says, that in the month of August, nineteen hundred and two, his said wife was accustomed to go to the office of one Dr. Walton, at Hopatcong, New Jersey, and that said Dr. Walton, this defendant and cross-petitioner has been informed since his separation from his said wife, would undertake by the lines of the palms of her hands, to tell her of her intense passion for sexual intercourse, and that on several of her said visits he informed the wife of this defendant and cross-petitioner that she was very passionate, and should have had him, the said Dr. Walton, for her husband; and this defendant and cross-petitioner has been informed since the aforesaid separation between he and said wife that on one of the said visits to said Dr. Walton, and after having sent his adopted daughter from the room, insulted the wife of this defendant and cross-petitioner; the nature of such insult, however, this defendant and cross-petitioner has been unable to learn, but he has learned that in consequence of said insult, whatever it may have been, the said Dr. Walton was ordered by the proprietor of the West Moreland Hotel at Hopatcong, New Jersey, from the said hotel.<sup>20</sup>  
<sup>30</sup>  
<sup>40</sup>

And this defendant and cross-petitioner further says, that he has recently learned that his said wife, in his absence from home, was accustomed to go out with men and meet with men other than this defendant and cross-petitioner, and drink intoxicating beverages with them so much so, that she had, on several occasions, to be carried to her apartments in the hotel where she was stopping.

10 And this defendant and cross-petitioner further says, that in the month of October, nineteen hundred and two at the house of one Benjamin Owens, at Boonton, New Jersey, his said wife, with a party, remained away from her home until one-thirty (1:30) o'clock in the morning; that she had been in company on this occasion with one Dr. Raynor, who escorted her to her home at the aforesaid hour; that she, at that time, returned to her home in a beastly state of intoxication, so much so, that she, on this  
20 occasion, vomited upon the floor of her apartments, and thereafter in a pail brought to her for such purpose.

And this defendant and cross-petitioner further says, that in the summer of nineteen hundred and two, at Montclair, New Jersey, his said wife, while he would be away to work, was accustomed to go out with male boarders who were stopping at the same house with her; and did so, notwithstanding his re-  
30 monstance with her therefor.

This defendant and cross-petitioner further says, that while he and his said wife were boarding at Bloomfield, New Jersey, in September, nineteen hundred, his said wife transmitted to him an affection or disease known as "crabs" and when asked by him for an explanation regarding same, his said wife informed him that she received same from her sister, who had received same from her husband, and that the latter had received same from his "gentle-  
40 man friend."

And this defendant and cross-petitioner further says, that his said wife was not possessed of any love or affection for him during all of the years last past, and for this reason unhesitatingly went out in the company of other men and misbehaved herself; that she stated to divers persons at divers times that she would get a divorce from this defendant, but for the fact that this defendant was "so easy" and gave her everything she wanted, and was so good hearted. 10

And this defendant and cross-petitioner further says, that in the month of November, nineteen hundred and two, his said wife went to New York, when they had quarreled, and there remained for a period of four days, informing him, upon her return, that she had been with "a friend," and this defendant and cross-petitioner does not know and was never informed by his said wife where she had been on this occasion, that while she was away in New York City on this occasion, she pawned her diamonds and other articles of jewelry, and that when she returned to her home she was dressed very fastidiously. 20

This defendant and cross-petitioner further says, that among other men with whom his said wife was accustomed to go out was one Mr. Morrell, with whom she went out quite frequently, and that he very frequently remonstrated with his said wife for her conduct in this respect and received no satisfaction from her; that his said wife on such occasions informed him that he was "dead slow," that Mr. Morrell was accustomed to meet with "people of society;" that she had been also accustomed to meet with "people of society," and this defendant and cross-petitioner was a "country man" and that the company of the said Mr. Morrell was very agreeable to her. 30

This defendant and cross-petitioner further says, that prior to his said marriage to his said wife, she 40

was pregnant with child and she then informed him that he was the father thereof, that he always repudiated the paternity of said child and has ever believed that said child to have been the offspring of another.

This defendant and cross-petitioner further says, that he and his said wife had been living in boarding houses for the past three years at her request and  
 10 entirely to please her, that he informed his said wife in the early part of January, nineteen hundred and three, that he had become tired of so living and insisted that they take up apartments together, that his said wife expressed her dissatisfaction thereat; that at this time he stopped the payment to his said wife of his pay warrant which she had been accustomed to receive direct from his employer for a period of three years prior thereto, and because thereof, and for no other reason that he is aware of, his  
 20 said wife then deserted him.

This defendant and cross-petitioner further says, that his said wife, just preceding the aforesaid separation, requested that he pay her the sum of fifty dollars per month so that she and her mother might go boarding together in the City of Hoboken, and that he, this defendant and cross-petitioner, might then go his way, which request he refused to accede  
 30 to.

This defendant and cross-petitioner further says, that he had learned since his separation from his said wife, in addition to the matters hereinabove-mentioned, that his said wife had behaved herself indecreeetly, shamefully and disgracefully on very many occasions throughout the past three years, that she submitted herself to the embraces of divers men whose names are at this time unknown to him, that she was accustomed to give exhibitions of high-kick-  
 40 ing in the presence of men, and that she was accus-

tomed to go to various places of amusement and to New York City with divers men unknown to this defendant and cross-petitioner.

And this defendant and cross-petitioner further says, that his wife had been dominated and influenced and now is influenced by her mother, Mrs. Charles E. Crevier, who is herself an immoral woman, and who has herself confessed to him that she, the said Mrs. Charles E. Crevier, has been guilty of illicit intercourse with men, and this defendant and cross-petitioner's wife persisted in continuing to be in the company of her said mother, notwithstanding that she well knows of her mother's immorality. 10

And this defendant and cross-petitioner further says, that upon learning such of his said wife's escapades that had come to his knowledge, he reproached his said wife, therefor, and she then made a complete denial thereof, that he confided and believed in her and then made no further investigation in the matter until he became separated from her on January seventeenth, nineteen hundred and three aforesaid, when he learned the same to be true in all particulars hereinabove-mentioned. 20

And this defendant and cross-petitioner further says, that he was informed by the said Frank J. Nugent, since January seventeen, nineteen hundred and three, aforesaid, the date of the aforesaid separation, that he, the said Frank J. Nugent, and this defendant and cross-petitioner's said wife had been in adulterous intercourse on more than one occasion and was further informed that his said wife was accustomed to undress herself before him, the said Frank J. Nugent, upon retiring to bed, and that she had exposed her person to the said Frank J. Nugent and submitted herself to his affection and embrace, and that she expressed to the said Frank J. Nugent a desire to be in his company in preference to the company of 40

this defendant and cross-petitioner, her husband; and this defendant and cross-petitioner, since the aforesaid separation between he and his said wife, questioned the said Frank J. Nugent, as to his conduct with the wife of this defendant and cross-petitioner, and that, he, the said Frank J. Nugent, then admitted that he had taken undue liberties with the wife of this defendant and cross-petitioner, that he had committed adultery with the wife of this defendant and cross-petitioner, and this without any remonstrance upon her part, but that she was a willing party thereto.

And this defendant and cross-petitioner further says, that he has learned since his separation from his said wife she had been charged by a friend of hers, whom this defendant and cross-petitioner intends to subpoena to testify in his behalf, that she having been in adulterous intercourse with the said Frank J. Nugent and that his wife then explained to the said person that she and the said Frank J. Nugent had been lying on a lounge together in her apartments and that he had felt her legs; that she believed that the said Frank J. Nugent could give her information regarding her said husband whom she considered to have been unfaithful to her, and that the said Frank J. Nugent proposed to her that he would tell her all he knew concerning said matter if she would go to bed with him, the said Frank J. Nugent; and this defendant and cross-petitioner's said wife further explained that she and the said Frank J. Nugent retired to her bed-room where they would each undress, she putting on her night-dress, and he, the said Frank J. Nugent, robing himself in the night-dress of this defendant and cross-petitioner, and that they then went to bed together and she felt of his private person against her leg and then became conscience-stricken and jumped from the bed and refused to have anything more to do with him; and this defendant and cross-petitioner has learned with-

in the past week that this explanation or confession of his said wife was made to her friend the day following the above-mentioned occurrence.

And this defendant and cross-petitioner further says, that while his said wife was stopping at Hopatcong, New Jersey, in the summer of nineteen hundred and two, she submitted herself to the embrace of a certain man, whose name this defendant and cross-petitioner does not here care to mention, but who petitioner will subpoena upon the trial of this cause, and permitted him to feel of her bust, and permitted him to kiss and embrace her and the like; that on this occasion, when all of the persons there present retired to bed, and after this defendant and cross-petitioner had retired to bed, his wife went out on a porch of a certain hotel at which she was then stopping and there remained in the company of the said man above-mentioned.

And this defendant and cross-petitioner further says, that he has not co-habitated with his said wife since his recent separation from her, and since the discovery by him of her said acts of adultery, and he therefore prays that he may be divorced from his said wife for the causes aforesaid and according to the statute in such case made and provided, and that he may have such further and other relief as may be equitable and just.

And this defendant and cross-petitioner will ever pray, etc.

GEORGE B. NEAFIE,  
Defendant and Petitioner.

JOHN J. FALLON,  
Solicitor & Counsel of Defendant.

Filed March 13, 1903.



## IN CHANCERY OF NEW JERSEY:

_____o		)	
Between		)	
	MAY J. NEAFIE,	)	
	Petitioner,	)	On Petition &c.
	and	)	ORDER. 10
	GEORGE B. NEAFIE,	)	
	Defendant.	)	
_____o		)	

This matter coming on to be heard upon the motion of the petitioner to strike out each and every part of the cross petition in the above stated cause, except the allegations of the residence and marriage and the allegation that the petitioner had committed adultery with one Frank Nugent and the prayer for divorce; in the presence of Frank E. Bradner, of counsel with the petitioner, and John J. Fallon of counsel with the defendant, and the arguments of counsel having been heard and considered and the court being of the opinion that the allegations in the cross petition which relate to petitioner's conduct with other persons than the said Frank J. Nugent are irrelevant to the issue and are scandalous; it is, therefore, on this ninth day of June, 1903, on motion of Frank E. Bradner of counsel with the petitioner, ordered that each and every part of the cross petition filed by the said defendant, except the allegation of his marriage and residence and the allegations relating to the charge of adultery with one Frank J. Nugent and the facts and circumstances relevant to that charge and the prayer for divorce, that is to say, all the allegations in the said cross petition relating



This petitioner further admits that there are no children by said marriage.

This petitioner expressly denies that she at any time or place committed adultery with Frank J. Nugent.

This petitioner expressly denies that the said defendant at any time or at any place saw her and the said Frank J. Nugent occupying the same bed together; and she expressly denies that the said defendant ever at any time demanded or requested any explanation from her as alleged in the said cross-petition, and she expressly denies that she made any such explanation or any explanation as alleged in the said cross-petition, and she expressly denies that she was ever in the same bed with the said Frank J. Nugent.

This petitioner expressly denies that the said Frank J. Nugent at any time or place was unduly intimate with her or took any liberties with her whatsoever.

This petitioner expressly denies that she ever at any time admitted to the said defendant that she had misbehaved herself with the said Frank J. Nugent, or had permitted him to be familiar with her in the manner alleged in said cross-petition or in any other manner; and she expressly denies that the said defendant ever accused her of permitting any familiarities on the part of said Frank J. Nugent or of committing adultery with him.

This petitioner expressly denies that she ever at any time admitted to any person that she had committed adultery with the said Frank J. Nugent, or that she had allowed the said Frank J. Nugent to be familiar with her in any manner; and she expressly denies that she had requested the said Frank J. Nugent to give her information regarding the said defendant and that the said Frank J. Nugent proposed to her that he would tell her all he knew if she would submit to him as alleged in said cross-

petition; and she expressly denies that any such conversation took place between her and the said Frank J. Nugent, and she expressly denies that she admitted to any person or explained to any person that she and the said Frank J. Nugent retired to her bed-room together or that the events took place as alleged in said cross-petition or that she ever told any person that such events took place; and she expressly denies that any such occurrence ever took place.

This petitioner expressly denies that she has at any time or at any place committed adultery with any person; and she prays that the cross-petition of said defendant may be dismissed with costs.

FRANK E. BRADNER,  
Solicitor of Petitioner.

20

IN CHANCERY OF NEW JERSEY.

_____		0	
Between		)	
		)	
MAY J. NEAFIE,		)	
	Petitioner,	)	On Petition &c.
		)	
30	and	)	Final Decree.
		)	
	GEORGE B. NEAFIE,	)	
		)	
	Defendant.	)	
		)	
_____		0	

This cause coming on to be heard before the court upon the petition and answer thereto, and cross-petition and answer thereto, in the presence of Frank E. Bradner of counsel with the petitioner, and John  
40 J. Fallon of counsel with the defendant, and the

proofs having been duly taken in behalf of the petitioner and no proofs having been offered in behalf of the said defendant or in support of his cross-petition, and the court being of opinion that the defendant is guilty of the crime of adultery charged against him in the said petition and that the petitioner is entitled to a decree of divorce against the said defendant:

It is thereupon on this eleventh day of May, nineteen hundred and four, by his Honor William J. Magie, Chancellor of the State of New Jersey, by virtue of the power and authority of this court ordered, adjudged and decreed that the petitioner, May J. Neafie, and the said defendant, George B. Neafie, be divorced from the bond of matrimony for the cause aforesaid, and the marriage between them is hereby dissolved accordingly and the said parties and each of them are and is hereby freed and discharged from the obligations thereof.

And it is further ordered, adjudged and decreed that the cross-petition filed in this cause by said defendant be and the same is hereby dismissed with costs to be taxed

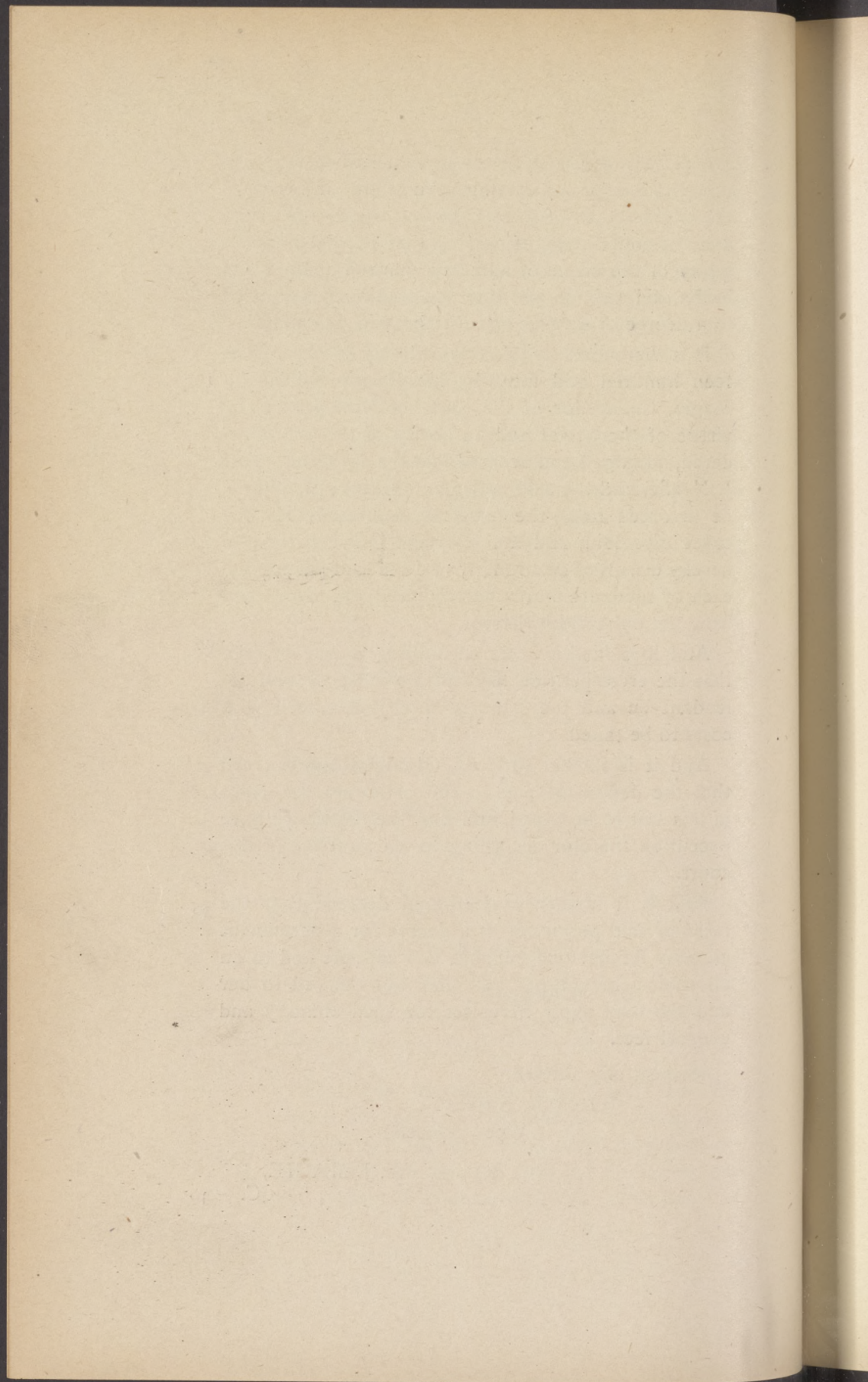
And it is further ordered, adjudged and decreed that the defendant pay to the petitioner her costs of this suit to be taxed, and that the petitioner have execution therefor according to the practice of this court.

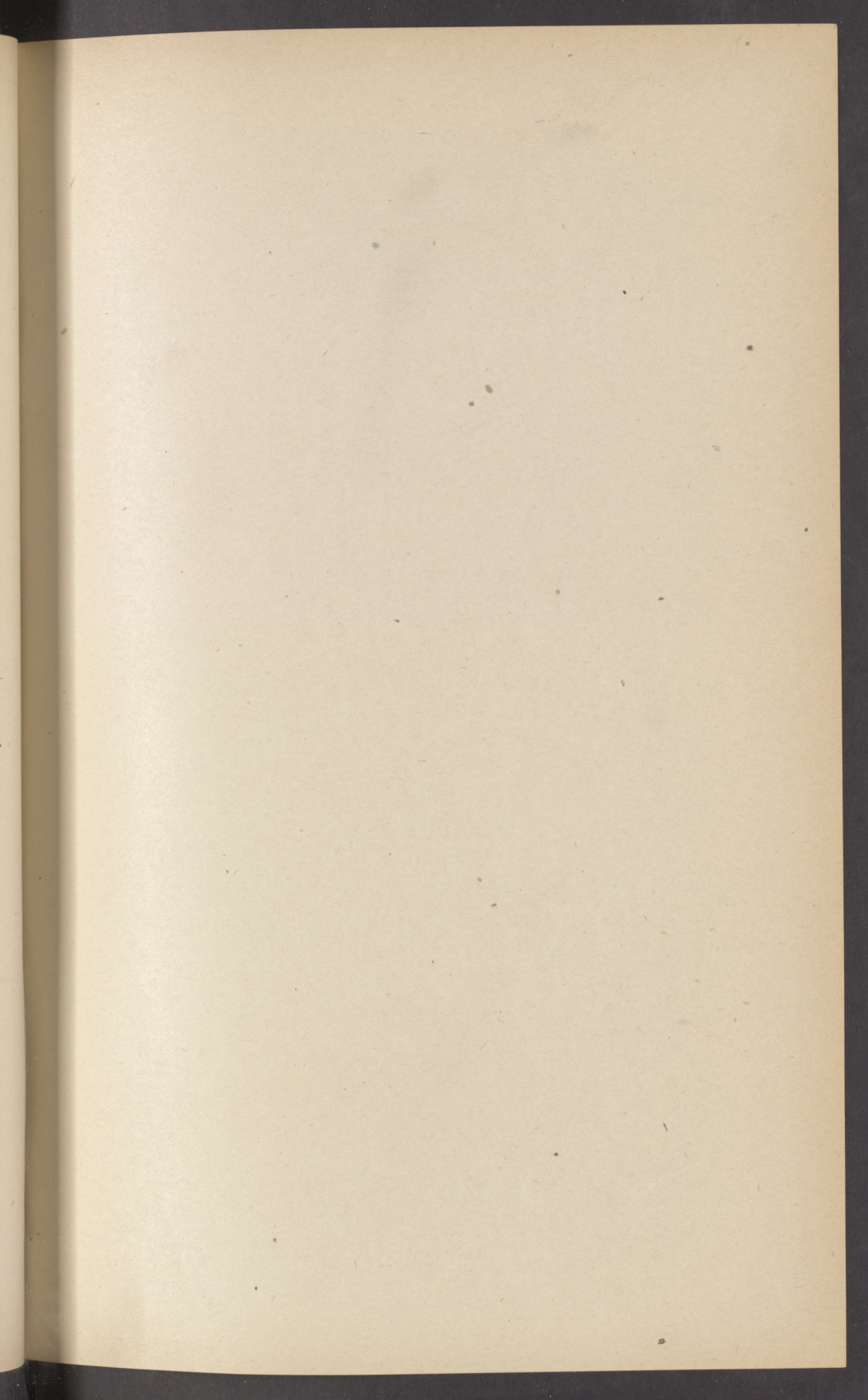
And it is further ordered and decreed that the right of said petitioner to a decree for a permanent alimony for her maintenance and support and to an allowance for counsel fees shall be reserved to her and she may apply hereafter for such alimony and counsel fees.

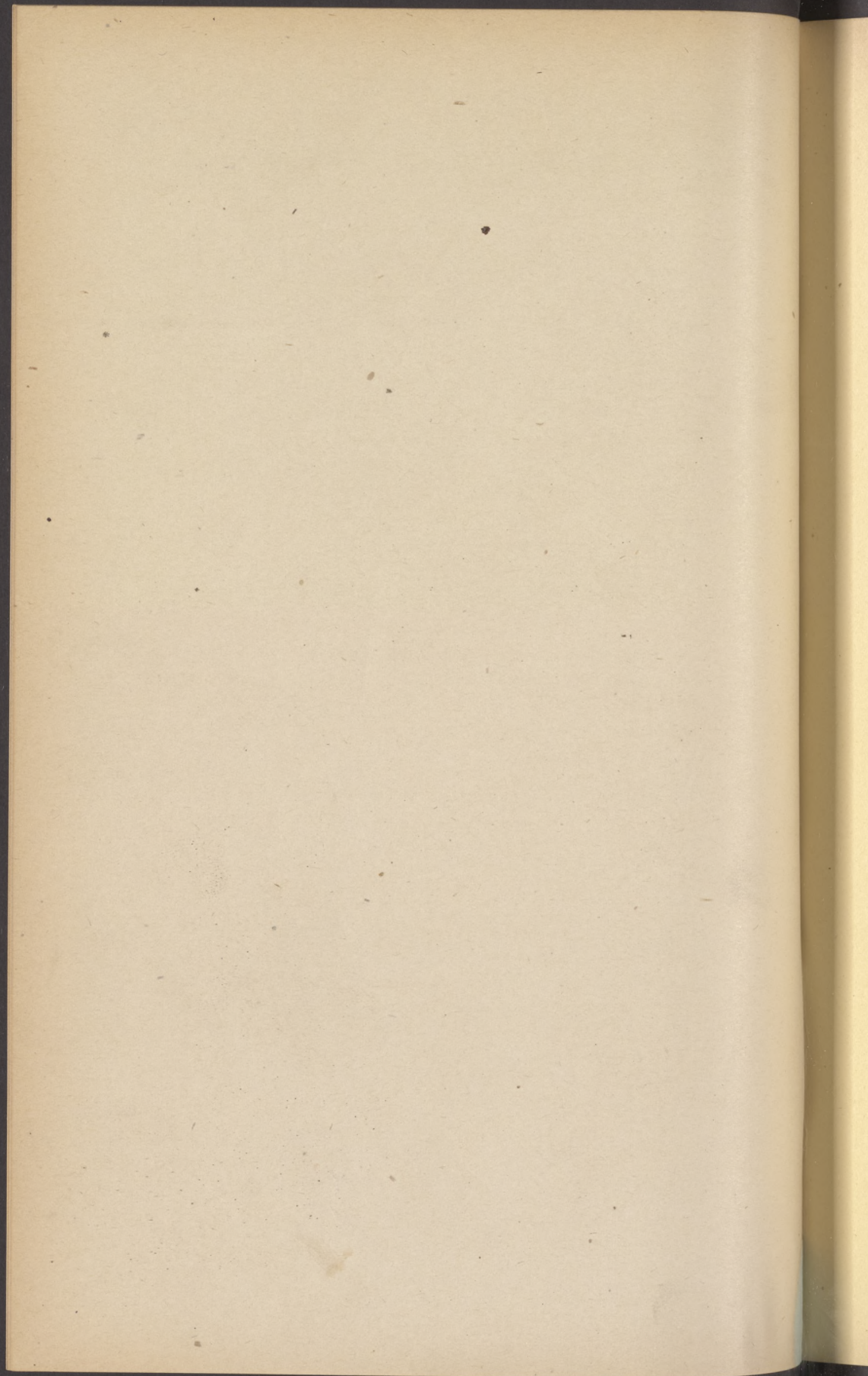
Respectfully advised,

JOHN R. EMERY,  
Vice Chancellor.

W. J. MAGIE,  
C. 40







THE HISTORY OF THE UNITED STATES

CHAPTER I  
THE DISCOVERY OF AMERICA  
The first voyage of Christopher Columbus to the West Indies in 1492, the discovery of the continent of America by Columbus in 1492, the first voyage of Christopher Columbus to the West Indies in 1492, the discovery of the continent of America by Columbus in 1492.

THE HISTORY OF THE UNITED STATES

CHAPTER II  
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