

NEW JERSEY
Court of Errors and Appeals.

Between

WILLIAM G. FAIRCHILD,
Appellant,
and
NETTIE F. FAIRCHILD,
Respondent.

BRIEF OF COUNSEL FOR RESPONDENT.

STATEMENT OF CASE.

This is an appeal from a decree of the Court of Chancery, in a suit in said court wherein the respondent is complainant and the appellant is defendant.

The parties to said suit were married in New York city, August 10, 1885.

The fact of marriage, duly celebrated, is admitted by the pleadings. See Case, page 18.

The complainant in that suit, and it is claimed, the 10 defendant, were residents of the State of New Jersey at the time of the marriage.

A few days after the marriage the defendant abandoned the complainant and left the State.

In April, 1887, the complainant filed her bill in said suit for maintenance under the statute.

Rev., Divorce, page 318, sec. 20.

See Case, page 1.

The defendant appeared and answered, setting up as a defense, among other things, a divorce obtained by him from the complainant, March 11, 1887, in the District Court of Stafford county, Kansas.

See original answer, page 18.

- 10 Upon objections certain parts of the answer were stricken out, and the defendant ordered to answer further.

The printed case does not contain this order. The exceptions to the answer are found on page 27.

The defendant made no further answer and a decree *pro confesso* was taken against him in February, 1888.

- 20 In November, 1893, the defendant petitioned to be admitted to further answer, and to set up another divorce obtained by him from the complainant, October 24, 1888, in the District Court of Hodgeman county, Kansas.

The petition was granted, and the defendant filed his further answer in April, 1894. He incorporated therein much of the matter ordered stricken out of the original answer in 1888, again neglected to answer certain material allegations of the bill which he had been ordered to answer, and, without the permission of the court, also set up adultery on the part of the complainant, alleged to have been committed *pendente lite*, in August and September, 1888. Page 29.

For decree appealed from, see page 198.

The pleadings and proofs present for consideration and determination the following issues:

1. The charge of abandonment.
2. Defense of divorce first above mentioned.
3. Defense of divorce secondly above mentioned.
4. The charge of adultery.

ABANDONMENT.

It will not be necessary to refer specially to the evidence of the complainant upon this point.

A brief examination of that evidence will show this charge on the part of the complainant to be clearly proven.

See testimony of complainant, page 43, &c., in no wise contradicted.

The defendant's own testimony clearly admits it.

See his answers to cross interrogatories Nos. 8 to 33, 10 page 144-146 of the State of the Case.

The abandonment of the complainant is also clearly admitted by the defendant in his original answer, page 26. He says that in October, 1885, two months after the marriage, "he determined to obtain a divorce from her (his wife) in the easiest way possible." Pages 25, 26.

The defendant claims that, in one instance after marriage, he asked his wife to live with him. (Answers to cross interrogatories Nos. 13 and 19, page 144.)

He refers to letter dated "Col. Feb'y 26, '86." (*Defendant's Exhibit, page 59.*)

An examination of the letter will show that no such request can be inferred from it.

To this letter the complainant replied. (*Complainant's Exhibit A and B. Page 165.*)

The forwarding of this reply, through the channel directed by the defendant, is shown by the testimony of the complainant, page 47, and Samuel E. Maynard, page 62.

The defendant made no reply to the last exhibit. 30 Page 47.

He avers in his further answer, (page 30,) that he did not wish to carry on any correspondence with the complainant.

The defendant, in his original and further answers, justifies his neglect to support his wife upon the ground of an alleged lack of means.

If true, it is no justification.

Gulick v. Gulick, N. J. Eq., V. C. Bird, March, 1885, not reported.

And his allegations in this particular should be taken with great allowance.

In the first divorce case the defendant proved as a necessary part of his case that in August 1885, he was the owner of various kinds of property and amply able to support a family. (See testimony of L. J. Noel, interrogatories Nos. 8 and 9, pages 180, 181, part of record in 10 first divorce case complainant's *Exhibit B5*. Page 171.)

The testimony bearing upon the question of cohabitation after the marriage is not material.

A lawful marriage, duly celebrated, is admitted in the answers.

Only in the absence of a celebration does the question of consummation become material.

Stewart on Mar. and Div., sec. 102.

Consummation after marriage, however, is clearly proven. See evidence of complainant, page 44; Janet 20 Maynard, page 55, and Grace Edmunds, page 57.

DEFENSE OF FIRST DIVORCE.

As a defense to this suit the defendant, in his original and further answers sets up the divorce hereinbefore referred to, obtained by him from the complainant March 11, 1887, in the District Court of Stafford county, Kansas. Page 171.

The complainant claims that this divorce is not entitled to any extra-territorial effect and that it is no 30 bar to this suit.

First. Because the complainant herein, the defendant in that divorce suit, was not domiciled in the State of Kansas at the time of the suit, was not served with process nor with notice of the proceedings and had no knowledge of the same.

That the complainant was domiciled in the State of

New Jersey before, at the time of the institution of these divorce proceedings, and at the time of the decree, is shown by proof not in anywise contradicted. Pages 43, 44. See also admissions in answers, page 18, page 30.

That the complainant was not served with process or notice and had no knowledge of the suit are also shown by proof not in anywise contradicted. Page 46.

It is to be observed, too, that the allegations of the defendant, in his original and further answers, that notice of the institution of this divorce suit was sent to the complainant, is not supported by a single word of proof on the part of the defendant or any of his witnesses.

The record of this divorce suit also shows that no notice was given the defendant in that suit.

Section 4751 of the Kansas General Statutes of 1889 (offered in evidence by the complainant) provides that where the residence of a defendant in a suit for divorce is unknown to the plaintiff, and cannot be ascertained by any means within the plaintiff's control, jurisdiction can be acquired by filing an affidavit to that effect and by the publication of notice of the suit without mailing the notice.

See *Larimer v. Knoyle*, 43 Kansas, 338.

The record in that suit (*Complainant's Exhibit B5*, page 171) shows that jurisdiction in this divorce suit was acquired by means of such an affidavit. Page 173.

Second. Because the decree in that suit was obtained by fraud and perjury.

The affidavit by which jurisdiction was acquired was fraudulent and false (page 173.) The plaintiff in that suit well knew the residence of the defendant therein. The particular allegations of the complainant's bill to that effect are not denied in the answers nor by a single word of proof on the part of the defendant or any of his witnesses.

Although expressly ordered to answer these allegations (see *Fairchild v. Fairchild*, 16 Stewart, at page 476 and order of December 16, 1887, in Chancery suit), the de-

defendant did not do so in his further answer and treated the order of the court with disdain.

The testimony of the complainant shows that the defendant forwarded letters to the complainant at Keyport, N. J., (the complainant's home during that period) the same year that this divorce suit was instituted (page 45.) And that the defendant had for years lived in the same town with the complainant, (page 42), in which town the defendant's parents had also lived for many years, and in which they continued to reside during the time of this divorce suit. Pages 42, 44.

The cause of action in this divorce suit was also fraudulent.

The appellant herein, as plaintiff in that suit, alleged as a cause of action that his said wife had abandoned him. Page 171.

The complainant had not abandoned the defendant.

Upon the contrary, the defendant had abandoned the complainant as hereinbefore shown.

20 A divorce obtained under such circumstances will not be permitted to stand in this State as a bar to this suit.

Doughty v. Doughty, 1 Stew., 581;

Flower v. Flower, 15 Stew., 152.

The invalidity of this divorce in this State is apparently admitted by the defendant. Notwithstanding that he sets it up in his answers as a defense, he has not offered the decree in evidence, nor taken a single word of proof in its support.

But this decree has a local force.

30 *Doughty v. Doughty, 1 Stew., 584;*

Williams v. Williams (N. Y.), 29;

N. East. Rep., p. 99.

The proceedings and decree are regular upon their face.

The fraud and perjury are not manifest by the record. Jurisdiction in divorce suits is wholly statutory.

Kelley v. Kelley (Mass.), 36 N. E. Rep., 839.

The same Kansas statute that confers jurisdiction by service of process confers the same jurisdiction by affidavit

and publication without mailing of notice. (*Kansas Statute, S. 4751.*)

Each State has undoubted right to regulate the dissolution of the marriage contract of its own citizens.

Doughty v. Doughty, 1 Stew., 584.

As to the State of Kansas, this decree, made in this first divorce suit, in which jurisdiction was acquired by publication only, stands the same as a decree made in a suit in which jurisdiction was acquired by service of process and full proof.

10

The decree cannot be changed, except by the court in which it was rendered or by an appellate court.

Larimer v. Knoyle, 43 Kansas, 338;

Ensign v. Ensign, 45 Kansas, 612;

Roe v. Roe, 52 Kansas, 724;

Bishop on M., D. & Sep., 2 Vol., S. 1546.

The effect of this decree in the State of Kansas was to dissolve the marriage relation between these parties in that State, and to leave them in that State as though a marriage contract had never been made between them.

20

Kansas Gen. Statutes, 1889, sec. 4757;

Baughman v. Baughman, 32 Kansas, 544.

Such a decree cannot be attacked collaterally in any court in Kansas.

Larimer v. Knoyle, 43 Kansas, 338.

And having been procured by the fraud of the plaintiff in the suit, cannot be questioned by him in the court in which it was rendered or in other courts of that State or other States.

Dow v. Blake (Illinois), 35 N. E. Rep., 764;

30

Supreme Council v. Carley (N. J. Equity), 29 Atlantic Rev., page 813.

The defendant having procured this divorce by fraud and perjury, is entitled to no consideration because the decree will not avail him as a defense in this suit.

He should be made to bear the burden of his own fraud and folly.

DEFENSE OF SECOND DIVORCE.

As a defense to this suit the defendant also sets up in his further answer another divorce, obtained during the pendency of this suit. Page 33.

This second divorce was obtained in the District Court for Hogeman county, Kansas.

The suit was instituted March 10th, 1888, after decree *pro confesso* in the Chancery suit in this State, and decree was entered October 24, 1888. Page 38.

- 10 The last named District Court is a court of co-ordinate jurisdiction with the District Court in which the first divorce was obtained.

Kansas Gen. Statutes 1889, S. 4749.

The complainant claims that this second divorce is no bar to this suit.

First. Because the decree is invalid under the laws of Kansas and hence has no validity elsewhere.

- The court rendering this decree did not have, under the laws of Kansas, jurisdiction of the subject matter of
20 the suit.

Jurisdiction in cases of divorce is founded upon *status* arising from the marriage relation.

Doughty v. Doughty, 1 Stew., page 586.

The status of the parties is the subject matter of the suit.

A. M. Law Register, Vol. 16., p. 196; Vol. 3, p. 210.

- At the time of the institution of this second case, and at the time of the decree therein, the marriage relation did not exist between the parties in the State of Kansas,
30 It had been wholly dissolved by the former decree and the parties stood in Kansas as if the marriage had never subsisted.

And the defendant in this suit in both of his answers so avers. Pages 20, 21, 33, 34.

The record in the first case (page 184), shows that the first decree had not been reversed or appealed from, and the complainant's testimony that she had not remarried

the defendant, subsequent to the first decree, stands uncontradicted. Page 153.

A marriage existing at the time of the institution of a divorce suit is the foundation of the whole proceeding.

Bishop, Mar. and Div., 6 Ed., S. 263, 2nd Vol.

Where the marriage relation does not exist there can be no decree of divorce.

Bishop, Mar. & Div. and Sep., 2 Vol., S. 433 & 732.

Freeman on Judgments, 4 Ed., S. 313.

Neither party can maintain another suit for divorce 10 after decree.

Stewart, Mar. & Div., 3425.

Nor for alimony, by separate suit, because the marriage relation, which is the foundation of a suit for alimony as well as for divorce, does not exist after decree of dissolution in another suit.

Roe v. Roe, 52 Kansas, 724.

Further than this the Kansas statute, S. 4757, by necessary implication, deprives the other courts of that State, of co-ordinate power, of all jurisdiction in cases 20 between the same parties after a decree has been rendered.

The statute provides that the decree "shall be final and conclusive unless appealed from."

The effect of this is to deprive the other courts of that State of co-ordinate power of all jurisdiction over the same subject matter.

Sampson v. Platt, 1 Iowa, 556.

Am. & Eng. Enc'y of Law, title "Jurisdiction," page 303.

And hence the Kansas courts have held that after 30 decree another court has no power to award alimony because the relation of husband and wife does not exist.

Roe v. Roe, 52 Kansas, 724.

The appearance of the complainant in the second case in Kansas conferred no jurisdiction upon the court as to subject matter.

Am. & Eng. Enc'y Law, title "Jurisdiction," page 301.

Consent nor laches cannot confer jurisdiction of subject matter.

Nor can the right to object to the lack of jurisdiction be lost by acquiescence or neglect.

School Trustees v. Stocker, 13 Vr., 116;

Supreme Council v. Carley (N. J. Eq.), 29 At. Rep., 813.

The Kansas Statute (*Civil Code*, S. 4174, *Gen. Statutes* 1889), provides that appearance by parties does not preclude them from objecting to jurisdiction of the court.

Parties may waive a rule of law where private rights only are involved, but not where questions of public policy are at stake.

In a divorce suit the government or the public is, in effect, a third party.

Winans v. Winans (N. Y.), 26 N. E. Rep., 293.

Public rights and possibly private rights of property had become established by the first decree. The parties could not, by waiver or otherwise, validate a subsequent decree which rendered the first decree of no legal effect.

Lack of jurisdiction of subject matter of any court can be inquired into and the judgment impeached upon that ground.

School Trustees v. Stocker, 13 Vr., 116;

Supreme Council v. Carley (N. J. Eq.), 29 At. Rep., 813;

Hunt v. Hunt, 72 New York, 217.

The Kansas court being therefore without jurisdiction of the subject matter of this second divorce, its decree is of no validity whatever, in that State or elsewhere.

It has no more effect in Kansas or elsewhere than the judgment of a debating society.

Bishop on Mar., Div. & Sep., 2 Vol., S. 1540.

30 *Freeman on Judgments*, 4 Ed., S. 120.

It will be claimed that the Kansas court in the second suit passed upon the question of jurisdiction.

The claim is unfounded; no reference is made to the first decree in the pleadings in the second suit. The findings of fact and law by the referee in the second suit make no allusion to it.

Insignificant findings of fact and law are perpetuated in the record. If this paramount question of jurisdiction had been mooted it would certainly have been decided 40 and the decision perpetuated in the record.

And further, no court can acquire jurisdiction of the subject matter of a suit by the mere assertion of it or by deciding that it has jurisdiction.

*Adams v. Adams (Mass.), 28 N. E. Rep., 263 ;
Kelley v. Kelley (Mass.), 36 N. East. Rep., 837.*

Second. Because the second decree was procured by fraud on the part of the plaintiff in the second suit.

A. *Fraud upon the Kansas court* in concealing the existence of the prior decree.

The plaintiff's petition in the second Kansas suit (page 10 35), avers that at the time of the institution of that suit the marriage relation still existed between the parties in the State of Kansas.

And that the defendant in that suit (the wife) was, at that time, disregarding her marital duties and wilfully absenting herself from the husband when, in fact, the marriage tie had been dissolved in Kansas a year before. Page 35.

And months before in his original answer in the New Jersey suit, the plaintiff, in the second divorce suit in 20 Kansas, had expressly averred that the marriage tie was dissolved. Pages 20, 21.

The defendant in that second Kansas suit could not be expected to plead the former decree of divorce as a bar to the second Kansas suit.

That would have been such a recognition of the decree as to preclude her from afterwards denying its validity.

The plaintiff in that first Kansas suit was bound by the decree therein, which was procured by fraud and perjury on his part. 30

Dow v. Blake, 35 N. E. Rep., 764.

B. *Fraud upon the Kansas court* in setting up a fraudulent cause of action.

The plaintiff in the second Kansas case alleges as a cause of action that his wife had wilfully abandoned him, and that he was in no way in default or neglectful of his duties as a kind husband. Page 35.

As before shown, the plaintiff in that suit, at that time,

had abandoned his wife, and a decree to that effect had been entered against him in the New Jersey case.

And further, the marriage relation between the parties did not then exist, having been dissolved by the former decree.

C. Fraud upon the Court of Chancery of New Jersey in withdrawing from it after appearance, answer and decree *pro confesso*, and fraudulently setting up as a cause of action in the second suit in Kansas abandonment and
10 desertion by the wife, when in the New Jersey case it had already been decreed that the defendant in that case had abandoned and deserted his wife.

The fraud that will vitiate a decree may be upon the party, the court in which the decree is rendered or the court in which the decree is attacked.

Hunt v. Hunt, 72 N. Y., 217;

Doughty v. Doughty, 12 C. E. Gr., 320.

THE CHARGE OF ADULTERY.

As a defense to this suit the defendant also claims,
20 without the permission of the court, however, that the complainant committed adultery with some unknown person during the pendency of this suit, in August and September 1888, at No. 65 E. 12th street, N. Y.

The evidence in support of this charge is briefly this.

That of the witnesses Eaves and Kelly who swear to the bad repute of the place. Pages 69, 79.

And that of the witness Malosse who testifies to the same general effect. Page 63.

The testimony of S. G. Fairchild (page 83), and W. J.
30 Bell (page 93), that they had followed the complainant to this place, has no significance in this connection, since it is admitted that the complainant went to the place every week day from June to September, 1888. Page 155.

If all of this testimony stood without contradiction or explanation, it would not support the charge of adultery.

It is to be noticed that notwithstanding the employ-

ment and use of these spies and private detectives to follow and watch the movements of the complainant, no evidence has been given of any improper act or association on her part.

An in this connection attention should be called to the fact, that not one word of evidence appears in support of the allegations in the answers charging fraud by the complainant, and reflecting upon her character.

The witnesses Eaves, Kelly and Malosse do not mention her name, nor claim even to have ever seen her. 10

The complainant's conduct must have been blameless, for the object in employing these spies was to procure evidence for use in the litigation pending between the parties.

The evidence in disproof of the charge of adultery is overwhelming.

That the complainant was legitimately employed by Austin & Co. in a legitimate business at No. 65 East 12th street, New York, from June to September, 1888, cannot be doubted. 20

That Austin & Co. carried on there during that period the business of compiling a Roster or Directory of the Veterans of the late Civil War, is proven beyond question.

The testimony of Young, Loud and Fairman, all men of standing, engaged in reputable business and not confessed keepers of a brothel, is clear and convincing upon this point. Pages 104, 113 and 130.

Added to that is the documentary proof—the contemporaneous entries in the business books of merchants, and 30 the contemporaneous correspondence and other business memoranda—testimony that could not be manufactured for the occasion, all showing clearly that this business was carried on at the place and time referred to.

(See complainant's *Exhibit I* and *A5* and accompanying papers. Pages 169, 170, 171.)

The complainant's connection with this business of Austin & Co., is shown by her own testimony and that of Mr. Fairman. Pages 153, 114.

Deserted by her husband and obliged to support her-40

self she sought and obtained this employment without suspicion or evidence of questionable surroundings, if any such in fact existed. That she was a faithful employee and circumspect in deportment is vouched for by her employers, as shown in complainant's *Exhibit I*. Page 169.

And what evidence is offered in disproof of all this.

The witnesses Eaves and Kelly cannot and do not say that Austin & Co. did not carry on this business—only
10 that they had no knowledge of it, a fact not very singular considering the quiet character of the business, the short time it was there and that it was carried on in a great city, where the occupants of one building often do not know the occupants of an adjoining one.

Malosse alone denies the existence of this business.

His evidence, however, is evasive upon the point, and given its best construction for the defendant it is the evidence of a confessed keeper of disreputable houses
20 contemporaneous documentary evidence of the most convincing character.

The testimony of Fairman shows that Malosse did not become the landlord of the parlors occupied by Austin & Co., until after the latter had occupied them several months.

The original landlord of this firm was another who assigned his interest to Malosse (page 116). This may explain why Malosse says he never rented to Austin & Co., for he did not originally rent to them.

30 And the testimony of Eaves and Kelly may and apparently does apply to the time when Malosse himself occupied the parlors after Austin & Co., had removed to 52 University Place.

The authorities in this State to the effect that proof of the charge of adultery must be full and clear and such as to lead a reasonable and just man to the conclusion that the offense was committed are so numerous that citations appear to be unnecessary. The case of *Berekmans v. Berekmans*, 1 C. E. Gr., 122, declares the leading principles.

It is respectfully submitted that the decree appealed from should be affirmed.

A. WALLING, JR.,
Counsel for Respondent.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

N.

The
York
the str
the str
compla
the de
residen

The
days a
then to
to Kan
nine y

On t
a decre
of Kan

In
and in
in New
a ne ec
compla

2019

N. J. Court of Errors and Appeals.

WILLIAM G. FAIRCHILD,
Appellant,

AND

NETTIE F. FAIRCHILD,
Respondent.

BRIEF FOR APPELLANT.

Statement of Facts.

The parties to this action were married in New York City on August 10th, 1885, and separated on the streets of said City shortly after the ceremony, complainant going to her home in New Jersey, and the defendant remaining in the City, his then place of residence (page 44).

The defendant, on the 20th day of August, 1885, ten days after the marriage went to Wyoming Territory, then to Colorado, and in December of the same year to Kansas, where he has resided continuously for over nine years, being still a resident of that State.

On the 11th day of March, 1887, defendant obtained a decree of divorce in Stafford County District Court of Kansas.

In April, 1887, complainant commenced this suit, and in July of the same year, while visiting his parents in New Jersey, defendant was served with process and *a ne exeat*. Afterwards complainant filed her amended complaint, praying for a decree, (first) for support and

maintenance ; (second) that the decree of divorce rendered by the District Court of Kansas for Stafford County, in March, 1887, be declared null and void for want of jurisdiction of complainant, and because said decree was procured by fraud and perjury. Defendant appeared and filed his answer to the amended bill, part of which was stricken out by order of Court, and upon hearing of motion for temporary alimony, the decree of divorce obtained by the defendant upon the 11th day of March, 1887, was adjudged void for want of jurisdiction of the person of complainant.

The defendant was compelled to abandon this action, and a decree, *pro confesso*, was entered against him in February, 1888.

In March, 1888, the defendant commenced another action against complainant in the District Court of Hodgeman County, Kansas, asking for a divorce and that the marriage had with complainant be annulled. In that action complainant was served with personal service and she appeared, filed her verified answer (pp. 37 and 38), and contested the suit (pp. 150 and 151), and upon issues joined trial was had, both parties submitting evidence. This complainant offering in evidence as Exhibit "U" of her deposition, her amended bill of complaint herein, attacking the decree of divorce rendered in Stafford County District Court, in March, 1887, against her, for want of jurisdiction of her person and for fraud and perjury, which was there set out in full, together with this defendant's answer and the decree *pro confesso*, which was testified and referred to by both her solicitor, A. Walling, and herself. Complainant also gave her testimony in that case tending to support her allegation of the want of jurisdiction of the Stafford County District Court.

On the 4th day of October, 1888, a decree annulling the said marriage, and of divorce in favor of this defendant, was entered in said action, which was unappealed from, and which now stands unreversed, unvacated and in full force and effect.

Complainant has been for a number of years last

past, a non-resident of the State of New Jersey and a resident of New York State.

In November, 1893, this defendant made application, supported by affidavits to have this case opened, and that he be allowed to file another answer herein. This application was granted upon conditions, which conditions were duly complied with, and in April, 1894, he filed his answer, setting out, among other things, the decree annulling the marriage and of divorce, granted by Hodgeman County District Court of Kansas, on October 4th, 1888, also, charged complainant with adultery committed in August and September, 1888, as a further defense.

To this answer complainant filed a general denial, and upon the issues thus joined, trial was had and evidence submitted before Honorable W. H. Vredenburg, Advisory Master, and upon his report a final decree was entered in the Court of Chancery, bearing date of the 24th day of May, 1895, finding, among other things, that this defendant abandoned complainant in August, 1885, the month of the marriage, without any justifiable cause, and has ever since separated himself from her, and refused and neglected to maintain and provide for her; that the decree mentioned in the further answer of defendant, of the District Court of Hodgeman County, Kansas, entered on the 4th day of October, 1888, was entered in a suit instituted by the said defendant pending this, the complainant's suit, and after the said defendant had appeared and answered in this, the complainant's suit, and after decree *pro confesso* had been entered against said defendant in this, the complainant's suit; and that said named decree of divorce remained unreversed in the said State of Kansas at the time of the entering of said second named decree of divorce; and that he was not a *bona fide* resident of Kansas at the time the decrees in the Stafford County and Hodgeman County District Courts were entered; said last-named decree is no bar to complainant's suit; that the charge of adultery of said complainant on various days in the months of August and

September, 1888, is not supported by the evidence or sustained by the proofs.

And said decree, ordered and adjudged, among other things, that the decree obtained by this defendant, in the District Court of Hodgeman County, Kansas, the 4th day of March, (should be October), 1888, is declared and decreed to be no bar to this suit; and that defendant pay and provide to said complainant within thirty days after the service of a copy of this decree upon the solicitor of said defendant, the sum of \$1,875.00, the aggregate of the weekly allowance heretofore ordered in this cause from the 4th day of March, 1888 (up to which date the defendant has heretofore paid said allowance), up to the 21st day of May, 1895, and also the further sum of \$5.00 per week at the termination of each and every week from last date aforesaid, until the further order of this Court, all now ordered, adjudged and decreed for the support and maintenance of the complainant; and that defendant pay to said complainant, or her solicitor, the costs of this suit to be taxed and her counsel fee of \$150.00.

From all of which findings and judgments the said defendant has appealed and comes now and submits this cause upon appeal to the Court upon the pleadings and the evidence as shown by the record.

FIRST
the fur
of Hoc
1888, w
fendan
the saic
the con
been et
plainan
insuffic
peach o
tion.

SECO
of divo
Kansas
named
ings an
validity

THIR
risdictic
procuri
bona fide
Stafford
were er
contrar
facts in
the dec

FOUR
Hodger
plainan
is contr

Points.

FIRST.—The finding that the decree mentioned in the further answer of defendant of the District Court of Hodgeman County, Kansas, entered October 4th, 1888, was entered in a suit instituted by the said defendant pending this, the complainant's suit, and after the said defendant had appeared and answered in this, the complainant's suit, and after decree *pro confesso* had been entered against said defendant in this, the complainant's suit, is unauthorized by the pleadings and is insufficient in law, under the facts in this case to impeach or effect the validity of said decree in this action.

SECOND.—The finding that said first-named decree of divorce remained unreversed in the said State of Kansas at the time of the entering of said second-named decree of divorce, is unauthorized by the pleadings and insufficient in law to impeach or effect the validity of the second decree in this case.

THIRD.—The finding that defendant sought the jurisdiction of the State of Kansas for the purpose of procuring a divorce from complainant, and was not a *bona fide* resident of Kansas at the time the decree in Stafford County and Hodgeman County District Courts were entered, is not authorized by the pleadings, is contrary to the evidence and is incompetent under the facts in this case to effect or impeach the validity of the decree of the Hodgeman County District Court.

FOURTH.—The finding that the decree entered in the Hodgeman County District Court is no bar to complainant's suit, is not authorized by the pleadings and is contrary to law and the evidence.

FIFTH.—The finding that the charge of adultery is not supported by the evidence or sustained by the proofs, is contrary to and against the evidence and proofs.

SIXTH.—That part of the decree adjudging that the decree obtained by defendant-appellant in the District Court of Hodgeman County, Kansas, on the 4th day of October, 1888, is declared and decreed to be no bar to complainant's suit, is contrary to law and the evidence.

SEVENTH.—That part of the decree ordering defendant to pay within thirty days the sum of \$1,875 to complainant, and the further sum of \$5.00 per week at the termination of each and every week from the 21st day of May, 1895, until the further order of the Court, for her support and maintenance; and that defendant pay said complainant or her solicitor, the costs of this suit to be taxed and a counsel fee of \$150, is contrary to law and is unauthorized by the findings or the evidence in this cause.

EIGHTH.—That the findings and final decree as entered by the Court of Chancery herein, are erroneous, unwarranted by the pleadings, unsupported by the evidence and proofs and contrary to law.

Argument.

The evidence taken before the Master in this case is very conflicting and there have been numerous cries of perjury indulged in by the complainant's attorney and especially has this been noticeable where the evidence at all hurts his client.

It must be that counsel has a personal interest in the result more than the laudable desire to successfully serve his client; in an affidavit to obtain a *ne exeat*, swearing positively that the defendant was a resident of the State of New Jersey in April, 1887, and afterwards in his written brief filed with the Advisory Master, states in his general history of the case, that "A few days after the marriage, the defendant removed to the State of Kansas, where he has since resided and now resides." Perhaps he can reconcile the two, we cannot.

The correct solution of this case can be arrived at by applying the law to the facts, weighing the evidence in the light of reason and our common knowledge of human affairs, considering the motives and interests of the various witnesses. We do not have to stoop to the level of a Billingsgate.

This case upon appeal presents for the Courts solution, among other questions, the interesting one of whether the New Jersey Courts will recognize as valid and binding upon the parties, the decree and judgment pleaded by defendant in his answer as a bar to complainant's action, rendered on the 4th day of October, 1888, by the District Court of Hodgeman County, Kansas, annulling the marriage had between complainant and defendant and granting this defendant a divorce. If that decree is valid and binding between the parties, then it is a complete bar to complainant's action herein.

Most of the errors complained of in the final decree of the Court of Chancery grow out of its declaring that the said decree is not valid and binding between the parties and is no bar to complainant's action.

The District Courts of Kansas are Courts of Record and have general original jurisdiction of all matters, both civil and criminal (not otherwise provided by law) (G. S. of Kan. 1868, Ch. 28, Section I), which Statutes the Supreme Court of Kansas has declared in numerous cases to be broad enough to give the District Courts full Chancery and Common law Jurisdiction. (10 Kan., 390 ; 23 Kan., 703.)

In addition to their general original jurisdiction in all matters, civil and criminal, the constitution of the State vests in the District Courts all power to grant divorce (Const. St. of Kan. Art. 2, Section 18), and in conformity with the Constitution the Legislature has specified, among other causes for which the District Courts may grant divorce, that of abandonment for one year and for fraudulent contract (G. S. of Kan., 1868, Ch. 80, Sec. 639).

Where a Court, having general jurisdiction, acts in a case, its jurisdiction to so act will be presumed. (Lawson on Presumptive Evidence, Rule 8, p. 25, and cases cited), as also will the regularity of its proceedings (*Ibid.*, Rule 10, p. 34, and cases cited), and it is incumbent upon the parties attacking such a decree to establish its invalidity. (116 U. S., 5).

The petition makes a case within the statutes for divorce. (See p. 35 of the Record). And also one in its equity jurisdiction independent of the divorce statutes to set aside and annul the marriage. It alleges the marriage, and that the petitioner is a resident of Hodgeman County, and had been an actual resident in good faith of the State of Kansas for one year next preceding the filing of the petition, and sets forth as causes for setting aside and annulling the marriage and for a divorce, abandonment for one year, fraudulent contract, and fraud duress and misrepresentations by the defendant in the procurement of the marriage.

In Kansas a plaintiff may unite several causes of action in the same petition, whether legal or equitable or both, when they arise out of the same transaction or transactions, connected with the same subject of ac-

tion and
Ch. 80,
joinde

The o
(Sec. 85
petition

FIRST
in whic
parties
"Petiti

SECON
cause of

THIR
suppose
Kan., 1

Con
under o
other a
The cas
mitting

a decre
marriag
defenda
of this
eated,
dence v

The
ant, se
of the l
bar to

No
validity
stands

Mr.
ver v.

tion and affect all the parties to the action. (Sec 83, Ch. 80, G. S. of Kan., 1868), and if there be a misjoinder it is waived unless demurred to.

Section 91, Ch. 80, G. S. of Kan., 1868.

The old forms of pleadings are abolished in Kansas, (Sec. 85, Ch. 80, G. S. of Kan., 1868). All that the petition is required to contain is,

FIRST.—The name of the Court and the County in which the action is brought, the names of the parties plaintiff and defendant, followed by the word "Petition."

SECOND.—A statement of the facts constituting the cause of action in concise language, without repetition.

THIRD.—A demand of the relief to which the party supposes himself entitled (Sec. 85, Ch. 80, G. S. of Kan., 1868).

Complainant appeared in that action and answered under oath, admitting the marriage and denying the other allegations of the petition (See p. 37, Record). The case was contested and tried, both parties submitting evidence, and on the 4th day of October, 1888, a decree was rendered, setting aside and annulling the marriage and granting a divorce to the plaintiff, the defendant in this action. The transcript of the record of this case, together with the decree, duly authenticated, was offered by defendant and admitted in evidence without objection (See p. 38, &c., Record).

The reply of complainant to the answer of defendant, setting up and pleading the decree and judgment of the District Court of Hodgeman County, Kansas, in bar to her action herein is a general denial only.

No ISSUE WAS MADE BY THE PLEADINGS as to the validity of that decree and judgment, and hence it stands unimpeachable.

Mr. Justice Swayne, speaking for the Court, in *Cheever v. Wilson*, 9 Wall. (U. S.) 122, says :

“It would be sufficient answer to the questions raised as to the validity of this decree, that no such issue is made in the pleadings. The answer of Mrs. Worcester is silent upon the subject. Wilson, in his answer, says he ‘does not admit the validity or regularity of said decree,’ or that ‘it is operative to his rights,’ but, on the contrary, * * * ‘reserves to himself the right to impeach it if occasion should so offer and require him to do so.’ This language is too vague and indefinite to have any effect. If he desired to assail the decree he should have stated clearly the grounds of objection upon which he proposed to rely. The averments should have been such that issue could be taken upon them. He and his co-defendant are precluded by the settled rules of equity jurisprudence from entering upon such an inquiry. Their silence is an admission, and they are bound by the implication.”

And to the same effect, see :

25 Ill., 486, *Diblee v. Davidson*.

Freeman on Judg. (3d Ed.), Sec. 461, and cases cited.

24 N. J. L., 242, *Monlin v. Ins. Co.*

34 N. J. L., 289, 290, *Mackey et al. v. Gorden et al.*

The Hodgeman County District Court having jurisdiction of the subject matter of the action; that is, it had jurisdiction to decree divorce according to the Laws of Kansas and had jurisdiction by reason of its equity powers to annul a marriage for fraud; and the Court having also jurisdiction of the parties by appearance of the defendant, this complainant; and under the pleadings, its decree and judgment not being subject to impeachment this Court must give it the full faith and credit accorded it by the Constitution of the United States, and the comity between Courts of different States, and hold that it is a valid defense to complainant's action, and reverse the final decree of the lower Court and dismiss this action. As, however, the other errors complained of in this appeal will compel a reversal of the decree of the Chancery Court and a dismissal of this action we will proceed with them.

The Court of Chancery makes three findings, upon which it bases its decree, declaring the decree and judgment of the District Court of Hodgeman County no bar to complainant's action, all of which, if they had been warranted by the pleadings, are insufficient in law.

The first to receive our attention is the finding that the defendant sought the jurisdiction of the State of Kansas for the purpose of procuring a divorce from the complainant and was not a *bona fide* resident of Kansas at the time the decrees of divorce were entered. This is not only insufficient in law but false in fact and contrary to the evidence.

It was not until we read the decree that we had any knowledge that the residence of the defendant was questioned.

Although with that disadvantage, the evidence in this case discloses the facts that the defendant left New York a few days after the marriage, and went to Cheyenne, Wyoming Territory, where he remained some time, then went to Colorado, where he stayed some six weeks or two months, and finally removed to Kansas in December, 1885, since which time he has been an actual and continual resident and now resides there.

The complainant, in her brief submitted at the trial of this case, admits this fact, and in giving the history of the case says :

"The defendant, a few days after the marriage, removed to the State of Kansas, where he has since resided and now resides."

Why Special Master Vredenburg, in face of these undisputed facts and the admission of complainant in her brief, and without a suggestion of a suspicion that the defendant was not a resident of Kansas being raised, should stultify himself in making such an absurd finding, is hard to explain on any theory. His action in this respect is on a par with his refusal of defendant's request, on complainant's objection, to have his

findings show the undisputed fact of her appearing and answering under oath and contesting the action in the Hodgeman County District Court.

A constant and continuous domicile of ten years in one State, eight years of which is *after* the decree was rendered, ought to be conclusive of the question of the *bona fides* of the residence of the defendant in the State of Kansas. The sole purpose of the defendant in removing to Kansas, could not have been to procure a divorce, as the finding would have you believe, and as must be held if the residence is not *bona fide*; we will cite one fact which is conclusive, and that is, that he left Wyoming Territory and Colorado, where the divorce laws are liberal in the extreme, both as to the time of residence and the cause, and went to Kansas, whose divorce laws are conservative for a Western State. The improbability of such an action on the part of any man of ordinary intelligence, whose only object was a divorce, is so unlikely that no further comment is needed.

In 19 Wendell II, *Frost v. Brisbin*, Nelson, Ch. J., defines residence to be :

“A settled, fixed abode, an intention to remain permanently, at least for a time, for business or other purposes.”

Every requisite to make him a resident of Kansas has been complied with by the defendant. Also see 3 Harr., 138.

If the defendant has not been a resident of the State of Kansas for the past ten years, in what State or country has he been a resident? The decree is conspicuous in its omission to answer this question.

The question as to the residency of this defendant was involved and necessarily passed upon by the District Court of Hodgeman County, Kansas, in rendering its decision; and its finding, that he was a resident of the County and had been an actual resident in good faith of the State for one year next preceding the filing of the petition, was a judicial determination of

that o
parties
termin
attack
The
cussing
“The
can be
cause
bona f
not.
court a
questio
enable
termin
the dec
The st
for tha
ficient
to deci
is not
roneous
residen
sion do
ty of tl

See l

This
this ca
ery of
affirm
Chance

“She
appoint
the sub
subject
tion lai
appears

that question by a Court having jurisdiction of the parties to this action, and jurisdiction to hear and determine that question, and is conclusive, and cannot be attacked in this State collaterally in this action.

The Court in *Kinnier v. Kinnier*, 45 N. Y., 540, discussing the same question, says :

“The question is presented whether the Illinois decree can be attacked in this State in a collateral action because the plaintiff in that action was not actually a *bona fide* resident of that State at the time. I think not. It is conceded he was there, appeared in that court and filed his bill, and took the decree. The question whether he was a resident there, so as to enable him to file his bill, was for that Court to determine, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The status of all persons within a State is exclusively for that State to determine for itself * * * Sufficient facts are alleged to give the Illinois Court power to decide the question of domicile, and the judgment is not void, if we concede that the decision was erroneous, and if it is also conceded that the question of residence is vital to give jurisdiction. A wrong decision does not impair the power to decide or the validity of the decision when questioned collaterally.”

See holding the same doctrine :

10 Barb. (N. Y.) 97.

12 Pick. (Mass.) 582-3.

15 Vt. 46.

Wait's Act. and Def., 181-2 and cases cited.

32 Kan., 691.

7 Law. Rep., 462.

This precise question upon facts similar to those in this case has been determined by the Court of Chancery of this State and the doctrine as above enunciated affirmed. In *Nichols v. Nichols*, 10 C. E. Gr. 63, the Chancellor says :

“She appeared and answered, by attorney duly appointed. The Court had by statute jurisdiction over the subject of divorce. It had jurisdiction over the subject matter of the complainant * * * The petition laid a proper foundation for the decree. It also appears by the record that the question of domicile

was passed upon, and the petitioner was adjudged to have been a *bona fide* resident of Indiana and to have been such for a year previous thereto. The decree is conclusive in Indiana, and it is here also,"

citing *Cheever v. Wilson*, 9 Wall., 108 ;
Kinnier v. Kinnier, 45 N. Y., 535 ;
Kirrigan v. Kirrigan, 2 McCarter, 147 :

This is conclusive as to the errors complained of, not only to this finding, but as to all the others.

The Hodgeman County decree where the Court had jurisdiction of the parties by appearance and defense must not be confounded with judgments in that class of cases where the service is constructive (by publication) and where the judgment was rendered by default, without defense, which are held to be subject to impeachment, collaterally, and a state of facts differing from those stated in the judgment shown. The reason for permitting the impeachment of the record of this last class of cases is the fundamental principle that no person is bound by a judgment till he has his day in Court and given an opportunity to be heard.

In this category stands the *Stafford County decree*, rendered on constructive service, set out in defendant's original answer herein. This complainant never having been a resident of the State of Kansas, and not appearing in that action, the Court had no jurisdiction of her and the Court of Chancery has very properly permitted it to be attacked.

The Court, in *Cross v. Cross*, 108 N. Y., 630, where the recitals in a decree of divorce were attacked, recognized the distinction between these two classes of cases, it says :

"It is also claimed that the Court erred in admitting evidence to show that defendant was not a resident of Illinois when he obtained his decree. The jurisdiction of that Court was open to assault in spite of the recitals in the judgment, and so it was competent to question the truth of the foreign residence (*Kerr v. Kerr*, 41 N. Y., 272). If the

plaintiff had appeared in the Illinois action, or ought to have so appeared, and the question of residence had been litigated, the decision of the Court might have been conclusive, but since no process was served upon her in this State and she had no notice of the action, she had no opportunity to be heard and is not barred by the finding of the decree."

As to complainant, the question of the residence of defendant has been litigated and is *res judicata*.

The next finding:

"That said first named decree of divorce (the Stafford County decree) remained unreversed in said State of Kansas at the time of the entering of said second named decree of divorce (the Hodgman County decree),"

is in the same straits as the finding that defendant was not a *bona fide* resident of Kansas and the same argument is applicable.

Just in what way this finding invalidates the Hodgman County decree in a collateral suit is not stated, and we can draw no inspiration from the pleadings or evidence. It is not stated that it was a valid decree and a bar, but on the contrary it is declared and decreed invalid in this very decree herein by reason of the Court rendering it, not having jurisdiction of the defendant, this complainant. How an invalid decree invalidates another collateral decree is not explained.

It is impossible to imagine what legal effect is going to be claimed for this finding, that is at all consistent with the rest of the decree

The first position of counsel was that the Stafford County decree was invalid, the complainant never being a resident of Kansas and having no notice or knowledge of the pendency of the suit, which was obtained by fraud, etc.

The next position was that the Stafford County decree had a local force until reversed or vacated.

If this is true, that the Stafford County decree is valid in Kansas, this disposes of this case, for by the Constitution of the United States and the law as de-

clared by the Chancellor in *Nichols v. Nichols*, 10 C. E. Gr., 63, quoted above, if valid where rendered it is valid everywhere, and having set up its validity for an advantage, complainant *eo instanti* affirms that judgment and is estopped to impeach it thereafter (see 105 Mass., 507), so that decree is a bar to this action. But counsel did not stop for a little inconsistency like this. That by that decree the marriage status did not exist between the parties in Kansas, and the Hodgeman County District Court had no jurisdiction to render a decree of divorce without the existence of the marriage status, and its decree is invalid in Kansas, and hence invalid everywhere, and is no bar to this action.

The position is so palpably erroneous and such a false application of the word "jurisdiction" that it seems incredible that any attorney should make such a contention.

Jurisdiction is defined by Baldwin, J., in his learned exposition of the subject in *Grigon's Lessee v. Astor*, 2 How. (U. S.), 338, in delivering the opinion of the Court, he says :

"The power to hear and determine a cause is immediately jurisdiction; it is *coram iudice* whenever a case is presented which brings this power into action; if the petitioner presents such a case in his petition, that on a demurrer the Court would render a judgment in his favor, it is an undoubted case of jurisdiction; whether on an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case, is the exercise of jurisdiction, conferred by the filing a petition, containing all the requisites, and in the manner required by law. 6 Pet. 709. 'Any movement by a Court is necessarily the exercise of jurisdiction; so to exercise any judicial power over subject-matter and the parties, the question is whether, on the case before a Court their action is judicial, or extra-judicial, with, or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the Court has jurisdiction, what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action by hearing and determining it.'

12 Pet.
cial cog
Pet., 63

Chief
diction
have ju
laws of
itself th
riage re

To th

All D
divorce;
petition
the cons
trict Co
right to
Court is

That
would o
must be
determin
have ju
is too pl
termine
the right
mination
matter a
valid till
J., says,
familiar
port.

This is
rule stat
Estoppel
"That

12 Pet., 718; S. P. 3 Pet., 205. It is a case of judicial cognizance, and the proceedings are judicial. 12 Pet., 623."

Chief Justice Church says that Courts have jurisdiction of the subject-matter of divorce when they have jurisdiction to decree divorces according to the laws of the State, and each State has to determine for itself the ground upon which it will dissolve the marriage relation of those within its jurisdiction.

Kinnier v. Kinnier, 45 N. Y., 549.

To the same effect see,

Ritter v. Kunkle, 10 Vr., 262.

State v. Sheriff, 3 J. S. Gr., 70.

All District Courts of Kansas have jurisdiction of divorce; that is, to entertain, hear and determine a petition for divorce; this cannot be questioned; both the constitution and the statutes of Kansas give to District Courts that power. Whether a plaintiff has the right to recover depends upon the facts, of which the Court is the sole judge.

That a former decree between the same parties would only, at the most, go to the right to recover must be conceded. Courts having power to hear and determine whether there has been a former recovery, have jurisdiction of the "subject-matter" in dispute, is too plain to contend for. The power to hear and determine is jurisdiction. Whether the Court determines the right of the case or not, is another matter. A determination of a Court, having jurisdiction of the subject-matter and the parties, no matter how erroneous, is valid till set aside in a direct proceedings, is, as Beck, J., says, in *Stevenson v. Bonesteel*, 30 Iowa, 290, too familiar to require citations of authorities in its support.

This is in conformity with the well-known and settled rule stated by Herman, in his celebrated work on *Estoppel and Res Judicata*, Section 366, p. 421:

"That a judgment of a Court having jurisdiction

of both the subject-matter and the parties, however erroneous it may be, is a valid, binding and conclusive judgment as to the matter in controversy upon the parties thereto, and to those claiming under them, and cannot be attached or impeached in a collateral proceeding. This rule, with the exception of a few States as to courts held by justices of the peace, applied to every court and tribunal judicial, and quasi-judicial. It applies to all inferior courts from which an appeal lies; it applies to tribunals whose proceedings can be reviewed only on writ of error or certiorari, and in all cases where the party and cause or subject-matter is within the jurisdiction of the court rendering its judgment thereon; such judgment cannot be assailed in any action, and is conclusive until reversed or set aside by a court or tribunal having authority to reverse such final determination."

Citing a large list of authorities from every State in the Union supporting the text.

Neither is a judgment of another State re-examinable upon its merits, nor impeachable for fraud in obtaining it.

Hanley *v.* Donoghue, 116 U. S., 4.

To receive the benefit of a former adjudication all the authorities agree it must be raised at the first opportunity.

Herman, in his work on Estoppel and *Res Judicata*, p. 1425, says :

"The former adjudication is new matter, which the code practice requires should be pleaded. It is matter *ex post facto*, and should be specially pleaded, so that the Court may, as a matter of law, determine as to its effect. This was the settled rule at common law, whenever there was an opportunity to plead such former adjudication."

And he cites authorities from every code State in support of the text.

I never heard of the rule of law that a former recovery questioned the "Jurisdiction" of the Court subsequently hearing the same cause, especially when not pleaded, which is the position that must be taken

to hold
without
to pro
a doct

Ther
by cour
sustain
the ma
and "I
the dec
the sui
and, "
annulm
"Its (t
the tim
trial,"
tion."

ceding
proced
when t
isting k
in an a
they to
to be in
tion dic
conten

Ther
counsel
Courts
whethe
pleadin
to pass
it has j
does ne
only be
e. Dan

Ther
Distric
divorce
and ha

to hold that the Hodgeman County District Court was without jurisdiction. And the counsel utterly failed to produce or cite a single authority announcing such a doctrine at the trial below.

There has evidently been a great deal of time wasted by counsel in collecting authorities, which are cited to sustain such abstract propositions of law as, "Where the marriage does not exist there can be no divorce," and "Neither parties can maintain another suit after the decree," and, "Marriage existing at the time of the suit is the foundation of the whole proceedings," and, "After a decree for divorce, even a suit of the annulment of a marriage cannot be maintained," and, "Its (the marriage) continuance and existence up to the time of the suit must be averred and proven at the trial," and, "That appearance does not waive jurisdiction." All of which are abstract propositions, and conceding them to be good law, which should govern the procedure of a Court in the determination of a case when the fact, that there was no marriage relation existing between the parties is shown to exist at a trial in an action for divorce, we ask, what application have they to this case, where the decree which is attempted to be impeached collaterally finds the marriage relation did exist, the truth of which complaint has always contended for.

There was one fatal omission, however, upon which counsel failed to give us any light, and that was, how Courts are to determine, before pleadings and proofs, whether the marriage status existed or not. If the pleadings show a case within the power of the Court to pass upon the truth or falsity of the facts alleged, it has jurisdiction and the fact that it adjudges wrongly does not make it void but only erroneous, which can only be avoided by appeal or writ of error (see *Head v. Daniels*, 38 Kan., 2, 6, 13 and cases cited).

There is no question but that the Hodgeman County District Court had jurisdiction of the subject-matter of divorce according to the laws of the State of Kansas, and had power to hear and determine the truthfulness

or falsity of every allegation of the plaintiff's petition and the marriage status being necessarily passed upon in that action its judgment is conclusive and the argument that a Court has no jurisdiction because of the falsity of the necessary facts to sustain an action is fallacious.

It is like saying that the Court of Chancery has no jurisdiction to entertain a bill for injunction, because of the falsity of the allegations therein. The untenableness of this proposition is too apparent for argument.

The fallacy of the whole argument is illustrated from the procedure of our own Courts of Oyer and Terminer having concurrent jurisdiction of all crimes committed on rivers, etc., dividing their respective counties. No one would contend that by reason of the fact of a trial and conviction by one Court would deprive the other Court of jurisdiction of the "subject-matter" of the same crime, so that if the same person was afterwards arrested and put on trial for the same offense and did not, for some supposed advantage to himself, plead the former conviction of jeopardy that a conviction in the second Court would be void and a nullity, and if acquiesced in it would not be conclusive. Again, if the former conviction should be pleaded it does not *ipso facto* deprive the Court of jurisdiction, as counsel contends, and if the Court should find against the facts and hold there had been no former jeopardy that would not make it void or subject to a collateral attack.

This is a stronger supposed case than the one at bar, where the first decree had already been declared void in an action between the parties and in the second action defendant claimed, and has always claimed, the first degree void.

Yet this is the sole ground upon which complainant bases her claim of the invalidity of the Hodgeman County decree.

If the Stafford County decree was a good defense to

the H
fense s

It is
work o
and 55
judgme
judgme
would
"Cour
case up
DEFENSE
THERE.

"We
"the pa
on new
view th
of law p
site rest
basis.
action d
foreign
ant's pr
defenda
the same
on as lo
country
safe cour
mental r
veritate

A defe
an adver
defense i
else, or,

the Hodgeman action, by her failure to make the defense she will be held to waive it forever.

- 33 Iowa, 242.
- 46 Iowa, 429.
- 51 Ala., 301.
- 70 Ill., 378.
- 27 Ohio St., 233.
- 37 Kan., 636.
- 40 Kan., 636, and cases cited.

It is a well settled rule stated by Herman, in his work on Estoppel and *Res Judicata*, Sec. 495, pp. 591 and 592, that, where there is jurisdiction, a foreign judgment is as conclusive on the merits as a domestic judgment and cannot be assailed by any defense that would be admissible in the original action. He says: "Courts steer clear of inquiry into the merits of the case upon the facts found, FOR WHATEVER CONSTITUTES A DEFENSE IN THAT COURT OUGHT TO HAVE BEEN PLEADED THERE."

"Were it otherwise," Mr. Herman goes on and says, "the parties in such new action could then try the case on new facts and new laws; and even keeping out of view that in independent sovereignties distinct systems of law prevail, it is probable that in many cases opposite results would be reached, even on the same legal basis. A domestic Court, for instance, in a particular action decides an issue for the plaintiff, in face of a foreign judgment to the contrary. Either the defendant's property or person subsequently coming into the defendant's court, the defendant sues the plaintiff on the same cause of action, and there recovers; and so on as long as either party has anything in the other country which could be attached. * * * The only safe course is to fall back on what is one of the fundamental maxims of the Roman Law—'*Res judicata pro veritate accipitur.*'"

A defendant cannot escape from the consequences of an adverse judgment on the ground that he had a good defense in fact, and relied inconsiderately on something else, or, as in this instance, did not dare to plead the

Stafford County decree as a bar, and thereby recognize and affirm it.

She says in her brief, submitted to the lower Court at the trial :

“The defendaut in that suit (speaking of the Hodgeman County suit), could not plead the foreign decree as a bar and thereby recognize and affirm it, for from the moment that she heard of that first divorce to the present time, she has been protesting against its validity, to the truth of which assertion the pleadings and proof in this present case bear full confirmation.”

By which admission we find that the Stafford County decree was not pleaded, to gain an advantage and to benefit herself ; and in truth and fact she has at all times and upon every occasion claimed the marriage relation existed between the parties, and her evidence introduced at the trial of the Hodgeman County case shows she claim it existed then, and this case shows she is claiming the same thing now. This very claim of hers is an estoppel. She can't assert one thing one moment, when it is for her benefit to do so, and then with her next breath, claim to the contrary. Having asserted one thing she is estopped from claiming the contrary. It does not lie in her mouth to complain of the Hodgeman County Court affirming what she has always asserted to be true.

That this finding goes to the merits of whether the Hodgeman County District Court made a decree which was in the right of the case, must be conceded.

A prior judgment to be a bar or defense, the Supreme Court in 47 Kan., 642, has declared must be a valid judgment.

To hold complainant's position good law, would be to hold that the District Courts of Kansas had not power to inquire into the validity or pass upon the existence of a judgment that might be set up in an action as a defense. To hold the contrary would defeat the very object and aim of all courts, as it would permit a defendaut to plead a fictitious judgment as a bar to the plaintiff's claim. And that a court had no

power
plea.
be a
In
can
partie
by ex
Kan.,
In
to the
Distri
certai
Supre
and r
ing th
licatio
the pe
reside
so as
What
reply
peach
wit :
“To
she di
ings w
appea
also t
cover
procu
next
being
been s
The
versed
ings.
All
So u
comm
that th
of this

power to inquire into and determine the effect of the plea, but must of necessity dismiss the action, would be an unheard of proposition.

In Kansas domestic judgments and decrees of courts can be judged void for want of jurisdiction of the parties in a collateral as well as direct proceeding, and by extrinsic as well as by the record itself. (See 19 Kan., 458; 43 Kan., 344; 47 Kan., 603.)

In *Larimer v. Knoyle*, 43 Kan., 338, a case that went to the Kansas Supreme Court on the overruling by the District Court of a demurrer to the reply attacking a certain decree of divorce set out in the answer, the Supreme Court reversed the ruling of the lower Court and remanded the case for further proceedings, holding that the falsity of the affidavits for service by publication and in lieu of sending the defendant copies of the petition and publication notice, both parties being residents of the State, did not render the decree void, so as to be subject to a collateral attack (see p. 350). What additional allegations were necessary to make the reply good, and permit the decree of divorce to be impeached collaterally, are stated to be as follows, to wit :

“To have made it good she should have stated that she did not have knowledge of the divorce proceedings within time, by exercise of reasonable diligence to appear in Court and make her defense; and she ought also to have stated in her reply that she did not discover the fraud perpetrated upon her by her husband’s procuring the divorce until within less than two years next preceding the filing of her reply. The reply being insufficient the demurrer thereto should have been sustained by the District Court.

The judgment of the District Court will be reversed and the cause remanded for further proceedings.

All Justices concurring.”

So upon the merits the Hodgeman County Court committed no error when it held by implication at least that the first decree was void for want of jurisdiction of this complainant, the defendant therein. She was

never a resident of Kansas, so the reason for holding the reply insufficient in the *Larimer v. Knoyle* case is lacking here, and as it is conceded that she never had notice or knowledge of any kind of the pendency of that action till long after the decree was entered, and there being less than two years between the two decrees the facts comply fully with what the Kansas Supreme Court states would be sufficient to make a decree subject to collateral attack.

“ We have argued this question so far as if the Hodgeman County Court had no knowledge of the first decree, and we think it immaterial whether it had or not ; but as a matter of fact, the Stafford County decree and complainant’s claim that it was invalid was fully before the Court, introduced by her to sustain the claim that the marriage relation did exist in Kansas and every where else. And being before the Court it of necessity was passed upon needs no argument or citing of authorities. That the first decree could be so passed upon by the Hodgeman County Court although nothing was mentioned in the pleadings regarding its validity or invalidity. (See *K. P. Rly. Co. v. Taylor*, 17 Kan., 569). And we can look to the whole record to determine what was adjudicated and are not limited to the pleadings (see *Smith v. Auld*, 31 Kan., 266). And as the first decree was before the Court the Hodgeman County Court decree is conclusive.”

It is a fundamental principle stated by Freeman in his work on Judgments (3d Ed.) Sec. 249 :

“ That an adjudication is final and conclusive not only as to the matter actually determined but as to every other matter which the parties might have litigated and have had decided, as incident to or essentially connected with the subject-matter of the litigation, and every matter coming within the legitimate purview of the original action, both in respect to matters of claim and of defense.”

The following cases all hold the same doctrine :

43 Kan, 351.

37 Kan., 636.

61 Cal, 131.

85 N. Y., 427

28 Ohio St., 596, 601.

Her. on Estop., and Res. Jud., Secs. 241, 242,
243 and cases cited.

40 Kan., 770.

So if complainant had a defense to the Hodgeman County suit, such as the Stafford County decree, it is too late now to raise it, and especially in a collateral suit.

Further, a void judgment is no judgment. So for sake of argument let us assume that the Hodgeman County Court had no knowledge of the Stafford County case, (which is not true,) still, complainant's position is untenable for the reason, no Court had rendered a decree to deprive any District Court of Kansas from taking jurisdiction of a petition for a divorce or annulment of the marriage. The complainant not being injured and none of her rights affected by the finding that the marriage existed, there was, upon the merits, no error committed by the Court.

In the Hodgeman County case complainant must take one of two positions, either that the marriage relation existed, or that it did not exist. If she had taken the position that the marriage relation did not exist and asked the Court to dismiss the action upon that ground then, the decree finding that the marriage relation did not exist, and dismissing the action, would have been conclusive and binding upon her.

Her. on Estop. and Res. Jud., Sec. 255, pp.
295, 296 and cases cited.

And would have been an effectual bar to this action, but having made her choice and made her defense therein, accordingly, that the marriage relation did exist, she is bound by the result.

Dewey v. Peek, 33 Iowa, 242.

Complainant cannot allege in her bill herein, the invalidity of the Stafford County decree and make a tem-

porary claim to the contrary for an advantage to herself. She is bound by her own averments. Herman, in his work on Estoppel and *Res Judicata* (Sec. 817, p. 944), states the law to be :

“ All representation, averments and allegations in pleadings made by the parties, are conclusive ; that is, they are estopped to aver to the contrary.”

Where there are two judgments between the same parties for the same cause of action, the latter judgment always controls.

In *Cooley v. Brayton*, 16 Iowa, 10, this question was discussed, and it was held that the last decree rendered by the Court affecting the rights of the same parties and relating to the same subject-matter, governs. A former decree to be made effective as a prior adjudication must be pleaded as such.

This applies as well to a decree determining the marriage status as to any other subject of action. In a case reported in 26 Wis., 152, *Amory v. Amory*, where a woman sued for her share of an estate as the widow of the deceased, it was held that she was bound by a decree dismissing her application for a divorce, from the deceased, which found that the parties had never been married, and that plaintiff had never been the wife of the defendant, although in a prior action, which she failed to plead in her action for divorce, it had been found and adjudged that they had been married and were man and wife.

Also see to the same effect, *Gregory v. Bouvier*, 77 Cal., 121.

This is decisive of this question. That this finding is not sufficient upon which the decree of the Hodgeman County District Court can be impeached in this action must be conceded.

The other finding, that the Hodgeman County District Court decree was entered in a suit instituted by the defendant pending this, the complainant's suit, and after the defendant had appeared and answered in this, the complainant's suit, and after the decree, *pro confesso*, had

been explained
plain
possibilities are
ties are
ferent,
nance,
and an
action o
even if

And,
was wa
Basic
defense
same ca
Herr
120, sa

“ Th
bring
party i
service
the jur
settled
is no d

Citin
the tex
It is
that re
it is i
dered ;
mencer
bar of

been entered against the defendant in this, the complainant's suit, has less merit, if such a thing can be possible, than the other two findings. While the parties are the same the subject matters are entirely different, this action was one for support and maintenance, the Hodgeman County suit was for setting aside and annulling the marriage, and for divorce. This action could under no condition have been a bar to that even if pleaded.

Gardner v. Raisback, 1 Stewart, 71.

And, as we have shown, if it was a good defense it was waived by her failing to plead it.

Besides an action pending in one State is never a defense to an action brought in another State for the same cause.

Herman on his work in *Estp. and Res. Jud.*, Sec. 120, says:

"There can be no question but that a plaintiff may bring an action in every State in the Union against a party if he can obtain either personal or constructive service so as to bring the party or his property within the jurisdiction of each State Court, and it is also well settled that an action pending in a foreign jurisdiction is no defense to an action in another."

Citing a large number of authorities in support of the text.

It is not priority of the commencement of one action that renders the judgment obtained therein a bar, and it is immaterial at what time the judgment is rendered; whether prior or subsequent to the commencement of the action in which it is presented as a bar of such action.

Casebeer v. Mowry, 55 Pa., 419.

Duffy v. Lyttle, 5 Watts, 120.

Savage v. Stevens, 128 Mass., 254.

Child v. Eureka Works, 45 N. H., 547.

Rogers v. Odell, 39 N. H., 452.

Whitehurst v. Rogers, 28 Md., 503.

Stout v. Lye, 103 U. S., 66.

This subject is elaborately discussed by Herman in his work on Estoppel and Res Judicata, Sec. 120, p. 126.

This case can be much easier disposed of by considering it as a whole, as it must be conceded that there is no attack made upon the decree of the Hodgeman County District Court pleaded as a bar by the defendant in his answer herein, to the want of jurisdiction of that Court in the subject-matter, that is, power to hear and determine actions for divorce, according to the laws of the State of Kansas. Nor to the Court having jurisdiction of the parties by reason of the appearance and defense by the defendant, the complainant herein. Jurisdiction having attached, the judgment is conclusive for all purposes and is not open to inquiry upon its merits.

Her. on Estop. and Res Jud., Sec. 505, p. 604, and cases cited.

Only such pleas as would be good in the State of Kansas can be pleaded to the decree of the Hodgeman County District Court, in any other Court in a sister State or the United States.

3 Wheat., 234.

18 Md., 502.

7 Cranch, 483.

15 Ohio, 33.

12 R. I., 440.

28 Conn., 433.

49 Barb., 166.

13 Pet. (U.S.), 312.

10 Kan., 51.

Freeman on Judg. (3d Ed.); sec. 575.

As by the constitution of the United States and the laws of Congress judgments and decrees of various State Courts are vested with the same force and effect in every other State as they have in that in which they are rendered.

D'Arcy v. Ketchum, 11 How. (U. S.), 175.

Young's Adm's. *v.* Rathbone, 1 C. E. Gr., 227,
and cases cited.

A judgment rendered by a Court having power lawfully conferred to deal with the general subject involved in the action and having jurisdiction of the parties, although against the facts or without the facts to sustain it, cannot be questioned collaterally.

Hunt *v.* Hunt, 72 N. Y., 217.

Pringle *v.* Woolworth, 12 N. Y., Weekly
Dig., 554.

Jurisdiction in such cases will be presumed.

Pac. Co. *v.* Whelock, 80 N. Y., 278.

Head *v.* Daniels, 38 Kan., 12, 13.

The facts in the case at bar are much stronger for defendant than the facts in the case of Hunt *v.* Hunt, *supra*. In this action the complainant, after appearing in the Hodgeman County District Court, filing her answer under oath and contesting the case in every possible way, is now attempting in the State of New Jersey to collaterally have that judgment set aside.

The case of Nichols *v.* Nichols, 1 C. E. Green, 60, before cited and quoted from in this brief, with facts right in line with this case, is against her position.

The opinion of the Chancellor in that case is in substance that the judgment of a Court of general jurisdiction in any State in the Union is equally conclusive upon the parties in other States as in the State in which it was rendered.

The Supreme Court of the United States, a controlling authority in all questions of this nature, in its opinion in Cheever *v.* Wilson, 9 Wallace, Mr. Justice Swayne, speaking for the Court (on p. 123), says :

"The petition laid the proper foundation for the subsequent proceedings. It warranted the exercise of the authority which was invoked. It contained all the requisite averments. The Court was the proper one before which to bring the case. It had jurisdiction of the parties and the subject-matter. The decree was

valid and effectual, according to the law and adjudications of Indiana.

“The Constitution and laws of the United States give the decree elsewhere the same effect which it had in Indiana.

“If a judgment is conclusive in a State where it is rendered it is equally conclusive everywhere in the Courts of the United States.”

This case of *Cheever v. Wilson* upon this point is quoted with approval by the Chancellor in *Nicholls v. Nichols*, *supra*.

The Chief Justice, in delivering the opinion in *Doughty v. Doughty*, 1 Stewart, 581, recognizes the conclusive and binding force of judgments of courts having jurisdiction of the subject-matter and of the parties by appearance, he says :

“In my opinion it is only judgments that ensue from jurisdiction, regularly obtained over the parties by service of process upon them, or by voluntary appearance, or when the proceeding is strictly *in rem*, that carry with them these high sanctions, and which, therefore, are everywhere conclusive.”

The only question open to litigation in this action on the decree and judgment of the District Court of Hodgeman County, Kansas, is the jurisdiction of the Court which rendered it over the cause or parties, and when this is once proven or admitted the judgment then becomes absolutely conclusive in regard to all other matters.

Herman on Estoppel, Sec. 526, p. 636 and cases cited.

Jardine v. Reitchert, 10 Vr., 165.

Nichols v. Nichols, 10 C. E. Green, 60.

Bissell v. Briggs, 9 Mass., 462.

The Hodgeman County District Court had jurisdiction of the subject-matter, that is, jurisdiction to decree divorce according to the laws of the State of Kansas, and to set aside and annul marriages by reason of its general chancery powers, and had jurisdic-

tion of
answer
cree of
every w
action,
tween t
the dec
so hold

The
was a r
marriage
of New
make l
tioned.

the hus
riage of
became
that th
she got
home in
legal st
band's.

The C
mony, c
Yule v.
E. Gr.

case wi
The b
an actio
when t
act, it is
it wou
resident

abandon
to main
wife mu
filing of
final jud

tion of the parties by the appearance of defendant, her answering under oath and making defense. The decree of that Court being good in Kansas, it is good everywhere and a complete bar to complainant's action, as the marriage relation no longer exists between the parties, and has not since the rendering of the decree on October 4th, 1888, and this Court must so hold.

Complainant a non-resident.

The evidence in this case shows that the defendant was a resident of New York City at the time of the marriage, August 10, 1885. That he made the City of New York his home. That he had the right to make his domicile where he chose cannot be questioned. It will also be conceded that the domicile of the husband is the domicile of the wife. By the marriage of the complainant to the defendant her domicile became *eo instanti*, that of her husband, and the fact that the parties separated immediately after marriage, she going to New Jersey, and he remaining at his home in the City of New York, did not change the legal status of her residency from that of her husband's.

The Court of Chaucery has no power to decree alimony, except under Sec. 20, p. 318, Rev. Stat. (see *Yule v. Yule*, 2 Stock, 138; *Anshutz v. Anshutz* 1 C. E. Gr. 162), and to recover, complainant must make a case within the statutes.

The kind or length of residence required to maintain an action under the statute is not certain and even when taken in connection with the whole divorce act, it is far from clear. Reading the section alone, it would seem to require that BOTH PARTIES be residents of the State at the time of the alleged abandonment or separation, and the refusal or neglect to maintain and provide for the wife; and that the wife must be a resident of the State at the time of filing of her bill, which must continue at least until final judgment. In this case the defendant was not a

resident of the State at the time of the marriage and never has been since. With these facts existing, the question presents itself, can this complainant acquire a residence in this State to properly maintain this action against the non-resident defendant, although he was duly served with process within the State? We think not.

The spirit and intent of the statute is that the husband who is a resident, must comply with the duty he owes his wife and provides her with support such as his circumstances will warrant, but it does not mean that she can invoke the aid of a foreign jurisdiction to his for this purpose. This is in conformity with the law of every State that permits a suit for maintenance.

If we admit for sake of argument that she can secure a domicile separate from that of her husband in which to maintain this kind of an action, what is the length of residence required before commencing the suit? If it is the three years necessary to maintain an action of divorce, this complainant has not complied with it, as conceding that her residence in New Jersey commenced upon her return after the marriage, there was less than two years from that date to her filing of her bill in this action. And the fact that she had been a resident of New Jersey, prior to the marriage, that residency was lost upon her becoming the wife of defendant, her domicile attaching and becoming the same as his, and if the domicile is lost for however brief a period the new domicile can only be considered as beginning at the time of its new acquirement. The Court of Chancery accepted this to be the law, and in the decree only found that she had been a resident since the marriage.

There is another fact that is sufficient to cause a dismissal of this action, even if there was a proper domicile upon which to bring this action. After bringing this action, and before the final judgment, she abandoned her residence in this State and is now residing

in the S
1888.

The l
and Div

"If, i
suit, the
it to be
jurisdiction
waived
res—the
operate
would se
sonal ac
absolute
interest

This i

While
of adult
Hodgem
answer,
this ques
That
New Yo
conceded
It must a
a brothel
Street, fr
contradic
nesses Ea
when a n
ter it wil
final purp

The ex
to this ho
Company
parlor flo

in the State of New York, and has been since October, 1888.

The learned Mr. Bishop, in his treatise on Marriage and Divorce (6th Ed.), Vol. 2, Sec. 154, says :

“If, after parties properly domiciled commence their suit, they remove before judgment to another State, is it to be dismissed? On principle, the objection to this jurisdiction is not, like some others, of a nature to be waived by a plea, or an omission to plead. When the ~~case~~—the status on which an action for dissolution is to operate—is taken out of the country this, in principle, would seem to be like the death of the parties in a personal action; except that the abandonment would be absolute, there being no legal representatives in whose interest it could be revived.”

This is decisive and to the point.

Charge of Adultery.

While the Court will not likely consider the charge of adultery, as the decree of the District Court of Hodgeman County pleaded in bar by defendant in his answer, will dispose of this case, yet we will review this question briefly.

That complainant visited No. 65 East 12th Street, New York, during August and September, 1888, is conceded. She admits it and the defendant proves it. It must also be conceded that one, Malosse, conducted a brothel or house of assignation at No. 65 East 12th Street, from 1887 to 1890, as it is undisputed and uncontradicted, and is sufficiently proven by the witnesses Eaves, Kelley, Bell and Malosse himself; and when a married woman visits a house of that character it will be presumed that she went there for a criminal purpose unless satisfactorily explained.

Cane v. Cane, 12 Stew., 148.

The explanation given by complainant for her visits to this house is: that she was employed by Austin & Company to do general office work, who occupied the parlor floor at No. 65 East 12th Street, New York,

compiling a directory of the Grand Army of the Republic.

The testimony is conflicting and apparently unreconcilable. That offered by complainant hardly agreeing in a single instance with that offered by defendant.

The burden of proof being upon her to establish the lawfulness of her purpose in visiting this house, the question for this Court to decide is, whether she has sufficiently done this.

The testimony of complainant's witnesses is clear and concise. Malosse, whose testimony perhaps, uncorroborated, would not be entitled to any great weight, yet, as it is corroborated, by witnesses, who are entirely disinterested, and whose integrity is above suspicion, and as all of his testimony in reference to the character of the house was brought out by complainant upon cross-examination, it is entitled to the fullest credit. He states positively that there was never, while he occupied the premises, from 1887 till 1890, any commercial business or compiling a directory carried on at "65 East 12th St.," and that no such firm as Austin & Company ever leased from him the parlor floor of that building or any other part. He states he used the parlor floor for himself, and during the summer and fall of 1888, the time that complainant visited the place, it was occupied by fast women whom he kept there.

Witnesses Eaves and Kelley corroborate this in describing what they saw from the "L" extension of their factory, No. 63 East 12th Street, which covered the rear of No. 65, from the windows of which they could see into the back windows of No 65. And this was facilitated by a glass extension on the parlor floor, with a French window opening in it. The window from the back parlor in the extension extended from the floor to the ceiling, giving them a full view of everything that took place in the back parlor and part of the front parlor, and both testify that they never saw any typewriters or business of any kind done there. On the other hand, they testify to seeing

women in all stages of nudeness, some of them using this glass extension as a bath room, and, while there were shades, seldom using them.

The well-known character of the house in its immediate neighborhood, constant streams of men passing in and out at all hours of the day and night, many of them more or less intoxicated, the constant going of the proprietor for beer, are all totally inconsistent with the idea of a reputable business being carried on at this place.

The general knowledge of this Court would refute the proposition that the proprietor of a house as well known as this evidently was, as evinced by its patronage, would lease for commercial purposes the parlor floor, the most desirable part of the whole premises, for necessarily a much less rent than he would obtain from its illegitimate use by himself such as he put it to. It is preposterous on its face, and the Court must find complainant has failed to clearly establish the legitimate purpose of her visits to this house. It is true that she undertakes to substantiate her story by a number of witnesses, but they contradict her and contradict themselves, and are almost as conflicting with each other as they are with the defendant's witnesses.

The testimony of Kuhl bears the ear marks of a coached witness, and is unworthy of any credit. He knows nothing, and described No. 65 East 12th street as a brown stone front house while the "Private Secretary" says it was a brick house. Kuhl does not recollect anything about the stoops, does not even know whether there was a typewriter there positively, does not know where the house is located, first states it was between Broadway and University Place, and afterwards between Broadway and Fourth avenue. He states he commenced going there May 8th, when Fairman, the so-styled "private secretary," positively states that Austin & Company never went to this place until in June, so that Kuhl and his little book is mistaken if we are to believe Fairman. Kuhl testifies in a general way only, and while, perhaps, he may have

been sincere, yet he was a willing witness, and if he ever did call upon such a firm as Austin & Company during August and September, 1888, he surely has no recollection of their being at No. 65 East 12th street, and that this Austin is in the habit of given wrong addresses. And the testimony of this witness identifying certain printed matter by the type as being printed by the outfit for which he worked, when he admits that it was ordinary type, bought in bulk from the largest type foundry in the world, is bosh.

Complainant in her testimony, faile to agreed as to the number of employees with the other witnesses. She states there were from twenty-five to thirty, and her witness Fairman testifies there was never over eighteen, which number was reached after she had left, and when she first came to work for them there was only three, besides herself. Kuhl says the number remained about the same all the time. Complainant also testifies that her hours of work were from 9 to 5, which is in direct conflict with the "private secretary's" testimony, and even she tells a different story when she is called some weeks after her first examination. Complainant also testifies that she stayed with Austin & Company, in their employ until they disbanded the latter part of August; the other witnesses testify that Austin & Company continued their work at No. 65 East 12th Street, till December, 1888, and then moved to University Place, and operated there for a number of months. No doubt if complainant and witnesses had testified at the same hearing, instead of a number of weeks apart there would not have been the conflict that is now apparent between them. The "private secretary" admits that the parlor floor was in use at night and lighted up, and this Col. Austin used to come there, agreeing with defendant's witnesses in that respect, and also that this extension was used as a wash-room, although, strenuously insists that nothing improper, or any improper actions, were ever committed there.

If complainant's testimony was true in reference to

where she boarded and with whom she boarded, or the party who secured the position for her, why did she not produce the landlady and the other witness in her behalf, surely the question involving as it did her chastity, warranted her making every effort possible to overthrow the strong case made by the defendant against her. The omission of material evidence is often justly construed against the party, and properly so.

"Private secretary" Fairman had learned his "piece" better than the other witnesses, and in truth he may have known complainant at 65 East 12th street, but not as proofreader.

Can the Court, experienced in affairs of life, believe that a firm occupied this building and did such an immense business, employing large numbers of women and men, and spending thousands of dollars without a bank account and without a sign to designate them or their business, except that in keeping with the character of the house of "Furnished Rooms to Rent"? It seems incredible that such a firm existed and their name not in the Directory, and whose members have now so mysteriously disappeared.

Where are the books of this mammoth business; where are the leases by which the parlor floor of this building was rented; who was the party from whom it was rented? The "private secretary" states that during the summer, or when they first went there in June, they rented it from a Frenchman by the name of Martin, he thinks, and that Malosse purchased the lease and furniture from the Frenchman some time afterwards, and they paid the rent to him. The only trouble with this story is, that it is a pure fabrication as all the witnesses, Eaves, Kelley and Malosse himself state positively that Malosse took the place in 1887 and had it for three years. So there could have been no change of landlords after June during the year 1888.

Witness Loud, conceding his sincerity, is not worthy of credit, as he only remembers the number of the

place where he claims he went and saw a Mr. Austin, from seeing papers written by himself from data furnished by this Austin since then. It is his recollection only that it was at No. 65 East 12th street.

It does not seem possible that a business of the magnitude that Austin & Company did could be carried on at 65 East 12th Street and the party occupying the house next door know nothing of it; besides Eaves and Kelley, one a well-known business man and the other his employee, both men of unquestioned veracity, testified that at the time Austin & Company were supposed to be compiling a Grand Army Directory women and men were running around their supposed place of business with scanty clothing on.

Witness Bell, who was in the house on the 15th day of August, 1888, and looked in the parlor, saw no signs of this big commercial business with its large number of employes and typewriters at work; but, on the contrary, he saw simply the ordinary fittings of a "bed house" and brothel.

It is seldom that the writer has met a case where all of the most important witnesses for a party have so mysteriously disappeared. This man Austin and the landlord from whom he rented 65 East 12th Street, and the landlady with whom she boarded at 136 Waverly Place, while claiming to work at 65 East 12th Street, are very important witnesses, if they would testify to corroborate complainant.

It is clearly proven that 65 East 12th Street, New York City, was a house of assignation during the times complainant frequented it, and the Court of Chancery erred in finding that the evidence and proofs were insufficient to sustain the charge of adultery.

The decree ordering defendant to pay \$1,875 in thirty days and \$5 a week from the 21st day of May, 1895, and \$150 counsel fees and costs, is the most outrageous and unconscionable order, in our judgment, ever made by a Court upon like evidence, or rather lack of all evidence. The Special Master's action in

this respect is unexplainable, and he gives no explanation or finding upon which he bases the order.

The Chancellor permitted defendant to purge himself of contempt by paying \$255 and depositing \$265 with the Clerk of the Court as a bond to abide the final termination of the case upon the showing being made of his inability to pay the amount of temporary alimony then due.

No decree can be made in absence of proof of the possession by defendant of property or the ability to acquire property. In this case defendant was not shown to have any property or income, or ability to earn any.

In actions for alimony, the Chancellor, in *Walling v. Walling*, 1 C. E. Gr., 390, says :

“The case must be taken most strongly against the petitioner. The burden of proof is upon her. All the facts upon which the order for alimony is founded must be proven. The order must not rest upon mere presumption or conjecture.”

All the evidence in the case is the testimony of complainant, where she says defendant told her, prior to the marriage, that he was coming into a good deal of property when he was twenty-five, which is denied by defendant. Besides being bad for uncertainty, all this was ten years ago, and if it had been true, which it was not, is incompetent and immaterial in this action, as the question at the hearing was, what was defendant's income or ability to earn money at that time.

The Chancellor in *Richmond v. Richmond*, 1 Gr. Ch., 93, states the rule to be :

“The defendant's property must be estimated at the time of the report of the Master ; for in case of a long-contested suit, to go back to the time of filing the bill, might lead the Court into great error.”

The complainant knew where the defendant resides. His deposition was taken herein, and she had ample opportunity to prove what means, if any he had. His testimony and affidavits showing he had no means, and

for years after the marriage had not supported himself, were easily contradicted if not true, but nothing of this kind is attempted. They rest their case upon mere presumptions and conjectures. There is not a single fact anywhere in the evidence, and none found upon which this order can be maintained.

The Court must concede that it would take a man of means to raise \$1,875.00 cash in thirty days. From what is this defendant going to raise it? He has no property, and his earnings would have to be above the average Kansan's to pay it out of them in that time.

It is safe to venture there is not another case like it in the books, where a Court ordered such a sum to be paid as alimony by a man of no property.

In *Miller v. Miller*, Sax., 392, defendant's estate was worth \$7,000.00, and the wife not able to support herself, yet the Court allowed her only \$100.00 per annum.

In *Cralle v. Cralle*, 6 S. E. R., 12, the defendant had \$3,800.00 and good business habits, and \$150.00 a year was held to be a reasonable allowance.

And in *Williams v. Williams*, 5 N. Y. S., 645, \$500.00 was decreed sufficient allmony, the defendant being a practicing physician with an income of \$3,000 to \$3,500, defendant having a child to support in addition. And in *Hardy v. Hardy*, 6 N. Y. S., 300, the defendant having an income of \$5,000, \$100 a month alimony was allowed.

See to the same effect :

Finn v. Finn, 11 C. E. Gr., 290.

Boyce v. Boyce, 12 C. E. Gr., 433.

Suover v. Suover, 2 Stock., 261.

Unless complainant has ample means to support himself in idleness, complainant cannot expect to be. Her position must not be better than his.

Where the husband has no means but dependent upon his labor, her capacity for work must be taken into account as well as that of the man's.

2 Bish. Mar. and Div. (6th Ed.), Sec. 456.

Complainant, from the testimony, has long supported herself, and done it fully as well as the defendant has supported himself.

She should be in no better position than if she was the widow of the defendant.

There are none of those circumstances in this case by which courts feel authorized in granting large allowances.

The defendant received no estate from her. There was no estate accumulated by their joint exertions or by her economy. There was no surrendering up of the best years of her life, her bloom of youth and virginity to defendant. No gross abuse or cruel treatment. Nothing which would authorize a Court in granting anything but the minimum amount within defendant's ability to pay, which ability must be shown.

The marriage was never consummated, although the contrary is strenuously insisted upon by complainant for some supposed advantage to herself. The circumstances, as detailed by her, of the cohabitation on the Saturday and Sunday following the marriage is inconsistent on any hypothesis of ordinary decency and pure womanhood such as is claimed for her, and whether true or not, the fact of her willingness to have it so, shows the least moral conception and easy virtue of the woman.

While alimony is a matter of discretion it must be a legal discretion and authorized by the facts, for when allowed without facts upon which to found the order, as was done in this case, it becomes an abuse of discretion and this Court must so hold.

Courts will always disregard mercenary scrambles after the husband's property (See Browne on Div., and Ali., p. 172 and cases cited). This case has developed into a scheme to obtain money, pure and simple. The warp of complainant's testimony is the supposed wealth of the defendant. At the time when she claims that she did not know his whereabouts, and had not heard from him for over a year, she files her bill in this action

and causes a *ne exeat* issue to and months afterwards, the moment that he puts his foot within the State, process is served upon him and no time or opportunity given him to settle their differences, even if he had been so inclined. It was the property she was after, and no stronger circumstance is needed to demonstrate that fact.

We cannot reconcile her story of defendant having ample means, and for three years prior to the marriage had been in constant attendance upon her, visiting her from one to three times daily in that period, and that for months he had been urging her to marry him, and had formally asked her hand in marriage in February or March, of that year, if she was the pure, devoted woman claimed; with the fact of their separating immediately after the marriage. It is against nature for a man to wait and work years for a woman, and then just as all of his desires are within his grasp to throw her lightly from him. We have to look further than her story, and that the marriage was unthought of till first proposed by him that day at lunch, to find the true motive for defendant's action. While his version of the affair is not a defense in law, it is a rational explanation of the transaction. And our mind naturally accepts his story as true, and rejects hers as largely a fabrication.

I desire to call the attention of the Court particularly to the following cases and extracts from opinions which, without question, uphold the validity of the Kansas divorce, and hold that it is binding in all the States of the Union.

In case of *Hunt v. Hunt*, 72 New York, 217, Judge Folger rendered the decision of the Court and, from examination of that opinion, it will be found that he decided that a judgment rendered by a Court *having power lawfully conferred to deal with the general subject involved in the action and having jurisdiction of the parties*, although against the facts or without facts to sustain it, is not void as rendered without jurisdiction, and cannot be questioned collaterally; and so

where an action for divorce is brought in a Court *having power to entertain such an action*, and which has *jurisdiction of the parties*, the Court has power to give judgment, although plaintiff fails to make out a case for divorce as prescribed by the laws of the State, and this failure cannot be shown collaterally to avoid the judgment while it stands unreversed, whether the judgment is availed of in the State where granted, or in a sister State.

Of their own jurisdiction so far as it depends upon the municipal laws the Courts of every country are exclusive judges. The decisions also of the tribunals of another State as to the true construction of its laws are binding upon the Courts of this State.

The Court here will notice from testimony in this case of Fairchild against Fairchild that the case at bar is even much stronger than the case of *Hunt v. Hunt*. In case of Fairchild against Fairchild the defendant appeared in the action, filed her answer, contested the case in every possible way, and she now attempts in the State of New Jersey to (collaterally) have the judgment of the Court of the State of Kansas set aside.

I desire to call the Court's attention very particularly to case of *Nichols v. Nichols*, 10 C. E. Green, page 60, I would request that the Court examine the opinion of the Chancellor in that case. He says in substance *that the judgment of the Court of GENERAL JURISDICTION in any State in the Union is equally conclusive upon the parties in all the other States as in the State in which it was rendered*. This, however, is subject to two qualifications :

1. If it appear by the record that the defendant was not served with process, and did not appear in person or by attorney, such judgment is void ; and,
2. If it appear by the record that defendant appeared by attorney, the defendant may disprove the authority of the attorney to appear for him.

Neither of these two qualifications appear in the case

of Fairchild against Fairchild. The defendant was notified of the suit and did appear by attorney and testified and contested the case. She has not attempted to disprove the authority of her attorney to appear in that suit, because he had such authority. Therefore, the decision in the Fairchild case in Kansas, according to the Chancellor in this case of *Nichols v. Nichols*, is equally conclusive upon the parties in this State, as well as in the State of Kansas.

The case of *Kerrigan v. Kerrigan*, 2 McCarter, 146, is a case in many ways similar to the case now before the Court. In that case a decree of divorce was obtained by the husband from his wife in the State of Illinois, and it appeared from the record that the Court had jurisdiction of the parties as well as of the subject-matter. The wife set up in her suit in New Jersey that the decree in Illinois was obtained by fraud. In her suit in New Jersey she also had defendant arrested on a *ne exeat*, her purpose being to obtain money from the defendant in New Jersey suit. In all these particulars it is very similar to this case of Fairchild against Fairchild, but the Chancellor in that matter, which was on a motion for alimony and counsel fee, and a cross motion by defendant to vacate a writ of *ne exeat* and be discharged from arrest, *upheld the judgment in Illinois Court and severely scored the plaintiff for her actions*. It is my opinion that if the Court will look over the opinion in that case that the very same thing will be done in the present suit.

Doughty v. Doughty, 1 Stewart, page 586.

In this case it was claimed that a decree of divorce in the State of Illinois, should have full force and effect in New Jersey. The defendant, however, in Illinois suit was not personally served with process and *did not appear*. The following are extracts from the opinion of the Chief Justice :

“ It is not a judgment such as is entitled to recognition and enforcement in other States by force of the Act of Congress and the Constitution of the United

States.

from ju

service

ance or

carry w

fore are

“ In s

the judg

one resti

ter of u

rests upo

as is rea

with its

peal of t

never pr

has bee

axiom o

before th

tunity of

The d

was hea

ble.

I also

case of C

it was de

the Unit

judicial

To su

the suit

Court in

to the ca

The c

Chicago

that the

rying th

collusion

as thoug

The C

States. In my opinion it is only judgments that ensue from jurisdiction, regularly obtained over parties by service of process upon them *or by voluntary appearance* or when the proceeding is strictly *in rem* that carry with them these high sanctions, *and which therefore are everywhere conclusive.*

“In such instances I regard the question whether the judgment shall be extra territorially enforced to be one resting entirely on the consideration that in a matter of universal interest of this nature, an obligation rests upon every Government to carry into effect as far as is reasonably practicable and as may be consistent with its own policy, all foreign judgments. But an appeal of this kind to interstate comity, should, I think, never prevail when a judgment sought to be accredited has been rendered in violation of that fundamental axiom of justice, before referred to, that the parties before their rights are adjudged, should have an opportunity of being heard.”

The defendant in the Kansas suit (Mrs. Fairchild) was heard—she contested the case in every way possible.

I also desire to call the attention of the Court to the case of *Cheveer v. Wilson*, 76 U. S. 6,04, in which case it was decided, amongst other points, that the Courts of the United States take a judicial notice of the laws and judicial decisions of the several States. (See opinion).

To sustain the proposition that the complainant in the suit at bar, should be bound by the decree of the Court in Kansas, I wish to call the Court's attention to the case of *Garner v. Garner*, 36 Maryland, 127.

Kinnier v. Kinnier, 45 New York, page 539.

The complaint alleges that the husband went to Chicago and filed his bill in a court of equity, and that the defendant appeared and put in an answer denying the equities of the bill, and that afterward, by collusion, a decree of divorce was entered as though no answer had been interposed.

The Court had jurisdiction of the subject-matter of

the action; that is, it had jurisdiction to decree divorces according to the laws of that State; and every State has the right to determine for itself the ground upon which it will dissolve the marriage relation of those within its jurisdiction. The Court also had jurisdiction of the parties by the voluntary appearance of the defendant * * * p. 540. Viewing them in the most favorable light for the plaintiff, the question is presented whether the Illinois decree can be attacked in this State in a collateral action because the plaintiff in that action was not actually a *bona fide* resident of that State at the time. I think not. It is conceded he was there, appeared in that Court and filed his bill, and took the decree. The question whether he was a resident there, so as to enable him to file his bill, *was for* THAT COURT *to determine*, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The status of all persons within a State is exclusively for that State to determine for itself. It is unnecessary to say what the effect might be, if it was alleged that Pomeroy had never been within the State, although he may have authorized the bill to be filed; but it is conceded he was there, and sufficient facts are alleged to give the Illinois Court power to decide the question of domicile, and the judgment is not void, if we concede that the decision was erroneous, and if it is also conceded that the question of residence is vital to give jurisdiction. A wrong decision does not impair the power to decide, or the validity of the decision when questioned *collaterally*. But, aside from this consideration, we have a judgment rendered nearly sixteen years ago, of a Court of one of the States of the Union having jurisdiction of the general subject-matter of the action, which decrees a divorce of the marriage contract between the defendant and her former husband. I think such a judgment is protected by the Constitution of the United States, which declares that "full faith and credit shall be given in each State to the public acts,

records and judicial proceedings of every other State." This means that it must have the same faith and credit as it has in the State where it was rendered. It must, however, be a judgment, and the parties and subject-matter must be within the jurisdiction of the Court.

* * * * *

Until 1813, the Courts of this State held that such judgments stood on the same footing as foreign judgments. (*Shumway v. Stillman*, 1 Wend., 447, and cases there cited.) But in *Miles v. Duryea* (7 Cranch, 481), it was decided by the Supreme Court of the United States, that *nil debet* was not a good plea to such a judgment, and that it had the same conclusiveness in every other State as in the State where it was rendered. Since that time the decisions have been modified so as to conform to that case. In *Shumway v. Stillman*, *supra*, Savage, J., says: "An examination of the cases results in the establishment of the following proposition: *That the judgment of a Court of general jurisdiction, in any State of the Union, is equally conclusive upon THE PARTIES in all the other States, as in the State in which it was rendered.* This, however, is subject to two qualifications. 1st. If it appear, by the record, that the defendant was not served with process, and did not appear in person, or by attorney, such judgment is void; and, 2nd. If it appear by the record that the defendant appeared by attorney, the defendant may disprove the authority of such attorney to appear for him."

If there is no appearance in fact, there is no judgment, it is a nullity.

Since that time the Courts have steadily adhered to this position. In *Bicknell v. Field* (8 Paige, 445), the Chancellor said: "It is at least doubtful whether any Court in this State has any right or power to inquire into the regularity of a judgment recovered in one of the Superior Courts of a sister State, after personal service of the process upon the party against whom such judgment was obtained." In *Dobson v. Pearce* (2 N. Y., 156), it was held that the record of a judg-

ment of a sister State, *when the parties appeared*, is conclusive in this State as to the subject-matter of the action, and as to all questions litigated. A judgment of a sister State cannot be impeached by showing irregularity in the forms of proceeding, or a non-compliance with some law of the State where the judgment was rendered relating thereto, or that the decision was erroneous. Jurisdiction confers power to render the judgment, and it will be regarded as valid and binding *until set aside in the Court in which it was rendered* (12 N. Y., *supra*).

X.

All of which is respectfully submitted, confident that the Court will reverse and set aside the decree and dismiss this action.

LEON ABBETT,
Of Counsel with
Defendant and Appellant.

Bill.
Amen
Answ
Excep
Answ

Comp
S

N

J

C

Defen

F

C

INDEX.

	PAGE.
Bill.....	1
Amended Bill.....	9
Answer (1).....	18
Exceptions to Answers.....	27
Answer (2).....	29

TESTIMONY.

Complainant's :

Samuel E. Maynard,

Direct.....	41
Cross.....	42
Re-Direct.....	61
Re-Cross.....	62

Nettie F. Fairchild,

Direct.....	43
Cross.....	48
Re-Direct.....	58
Re-Cross.....	58

Janette Maynard,

Direct.....	54
Cross.....	55

Grace Edmunds,

Direct.....	55
Cross.....	56

Defendant's :

Frank Malosse,

Direct.....	63
Cross.....	64

Colin S. Eaves,

Direct.....	67
Cross.....	69
Re-Direct.....	71
Re-Cross.....	74

Thomas J. Kelly,	
Direct.....	77
Cross.....	79
John P. Duffy,	
Direct.....	80
Cross.....	81
Re-Direct.....	81
Samuel G. Fairchild,	
Direct.....	82
Cross.....	82
Re-called.....	86
Edward Sprague,	
Direct..	88
Cross.....	89
Samuel G. Fairchild,	
Re-called.....	92
William J. Bell,	
Direct.....	93
Cross.....	95
William G. Fairchild,	
Deposition.....	138
Nettie F. Fairchild, recalled,	
Direct.....	150
Cross.....	151

REBUTTAL.

Leonard Kuhl Young,	
Direct.....	104
Cross.....	107
Gibson Willard Fairman, Jr.,	
Direct.....	113
Cross.....	119
George B. Loud,	
Direct.....	130
Cross.....	132
Louisa Kellie Jackson,	
Direct.....	135
Cross.....	135

Net

 Exhibits
 Decree.
 Notice
 Petition
 Answer

INDEX.

Nettie F. Fairchild, recalled,

Direct.....	153
Cross.....	159
Re-Direct.....	161
Re-Cross.....	162

Exhibits.....	165-198
Decree.....	198
Notice of Appeal.....	202
Petition of Appeal.....	203
Answer to Petition of Appeal.....	207

To his
Jer

Comp
Nettie
County
on the
and eig
present
New Y

That
and the
the Sta

That
tinued
That a
oratrix
aforesa
tinued

That
your o
her at
husban
taind
oratrix
priety
any ca
hereina

That
1885 th
ention
row, a
doned
self fro
Tha
husban

IN CHANCERY OF NEW JERSEY.

To his Honor, the Chancellor of the State of New Jersey :

Complaining, shows unto your Honor your oratrix, Nettie F. Fairchild, of the Town of Keyport, in the County of Monmouth, and State of New Jersey, that on the tenth day of August A. D. eighteen hundred and eighty-five your oratrix was duly married to her present husband, William G. Fairchild, at the City of New York, in the State of New York. 10

That at the time of the said marriage, your oratrix and the said William G. Fairchild were inhabitants of the State of New Jersey.

That since her said marriage your oratrix has continued to be an inhabitant of the State of New Jersey. That at and before the date of her said marriage your oratrix resided with her father at the town of Keyport aforesaid, and that after her said marriage she continued to reside with her father at the same place. 20

That after her said marriage the said husband of your oratrix frequently called upon and remained with her at her father's house, and until abandoned by her husband as hereinafter mentioned, your oratrix maintained with him all the relations of a wife. That your oratrix has at all times conducted herself with propriety and has not at any time or in any manner given any cause to her husband for the injury and neglect hereinafter complained of. 30

That on or about the nineteenth day of August A. D. 1885 the said husband of your oratrix, wickedly and intentionally disregarding the obligation of his marriage now, and without any justifiable cause therefor, abandoned your oratrix and has since then separated himself from her.

That on or about the day last aforesaid the said husband of your oratrix departed from the State of 40

New Jersey, and from that time, as your oratrix has been informed and believes, he has remained out of said State.

That after the marriage of your oratrix her said husband informed her that his parents were very much displeased with his marriage to your oratrix, and he also informed her that he proposed to go away for a short time, and that by so doing things would be made smoother for him.

- 10 That shortly after, and on or about the nineteenth day of August A. D. 1885, as hereinbefore stated, the said husband of your oratrix departed from this State, but without informing your oratrix where he was going.

- 20 That on or about the twenty-second day of August A. D. 1885, your oratrix received a letter from her said husband purporting to have been written at Suspension Bridge in the Dominion of Canada, in which letter he informed your oratrix that he had gone away but did not know to what place he was going, and directing your oratrix to see one L. J. Noel, in the City of New York, who would make arrangements for the future of your oratrix.

- 30 That on or about the first day of September A. D. 1885, your oratrix received another letter from her said husband purporting to have been written at Cheyenne in the Territory of Wyoming, in which, among other things, he stated that your oratrix should not write to him, and that on the following day he would leave for the Rattlesnake Mountains.

That as directed by her said husband your oratrix afterwards saw the said L. J. Noel, who informed your oratrix that he was authorized to make arrangements for her support, and intimating that he had been provided with funds for that purpose.

- 40 That said Noel did not then give to your oratrix any money for her support, and shortly after, in the month of November, 1885, your oratrix wrote to said Noel requesting him to send to her some money for her support.

That on or about the twentieth day of December, A. D. 1885, your oratrix received another letter from her said husband, by the hands of said Noel, in which letter he stated that he had been informed of the request made by your oratrix of said Noel for support as hereinbefore stated, and which last-named letter he upbraided your oratrix for making such request and refused to contribute to the support of your oratrix.

That in said last-named letter her said husband did not inform your oratrix where he was nor did the letter contain the name of the place from which it was written other than that of the State, viz. "Col.," and your oratrix was therein directed to communicate with her said husband through said Noel. 10

That on or about the fifth day of March, A. D. 1886, your oratrix received another letter from her said husband by the hands of said Noel in which letter her said husband made no mention of providing for the support of your oratrix.

That in said last-named letter her said husband did not inform your oratrix where he was, nor did the letter contain the place from which it was written, except that of the State, viz., "Col.," and your oratrix was therein directed to communicate with her said husband through said Noel. 20

That your oratrix did communicate with her said husband through said Noel, in response to said last-named letter, and requested her said husband to inform her where he was and what was his post office address, but she has received no reply to her said request. 30

That except as above stated your oratrix has received no word from her said husband since his departure from this State, nor, except as above stated, has he communicated with her by letter or otherwise since that time.

That your oratrix has not known where her said husband was since his departure from this State, but she has heard that he was travelling from place to place in the West and Southwest parts of the United States, and your oratrix has also lately heard that her said 40

husband has within a short time past come into the State of New York.

That since the marriage of your oratrix as aforesaid, her said husband has not in anywise or to any extent contributed toward her maintenance and support, and that he has refused and wholly neglected to maintain and provide for her, and that he still does neglect to maintain and provide for her.

10 That your oratrix has applied to her said husband for support at the time and in the manner hereinbefore stated, and has been refused such support by him as hereinbefore mentioned, but that she has not otherwise or at any other time applied to him for support, for the reason that she has not been informed as to the place where he was or where to address him, as hereinbefore stated.

That the said husband of your oratrix knew at the time he departed from this State that your oratrix resided at Keyport aforesaid.

20 That the parents of her said husband reside at Keyport aforesaid, and your oratrix believes that they have been in constant communication with him by letter or otherwise, so that the husband of your oratrix could easily have ascertained as to the whereabouts of your oratrix if he had desired so to do.

That your oratrix has no separate estate of her own and no means of support except by her own exertions, and that she is not in very good health.

30 That prior to the marriage of your oratrix she earned some money by her own exertions in teaching school, and in other ways, but she was then in a great measure supported by her father.

That since the marriage of your oratrix she has earned a little money by her own exertions, but not sufficient for her own support, nor is she able by her own exertions to support herself.

That your oratrix now resides with her father, and now relies, and must continue to rely, upon him for support, in whole or in part.

40 That your oratrix was informed by her said hus

band, before the marriage of your oratrix, that he had an interest and ownership in a restaurant business in the City of New York, which restaurant business your oratrix believes is still owned by her said husband.

That your oratrix was also informed by her said husband, to some extent, of the profits accruing to him from said restaurant business; but your oratrix cannot now remember the figures he stated.

That your oratrix has been informed and believes it to be true that her said husband has and is the owner 10
of certain sums of money and other property.

That no part of the estate, business, money or other property of the husband of your oratrix is in the State of New Jersey, so far as your oratrix knows or believes.

That the said husband of your oratrix, as your oratrix believes, is supported and maintained by the income which accrues to him from the profits of his aforesaid restaurant business and from the interest and profits of his money and other property. 20

That your oratrix has no certain information as to the amount and value of the estate of her husband nor as to the amount of the yearly income which accrues to him from the sources aforesaid, but from the recollection of your oratrix as to what her husband told her concerning his business, from the manner in which he lived before he departed from this State, and from the fact that he has since then been traveling from place to place, as your oratrix believes, under great expense, your oratrix estimates and believes the amount of the 30
yearly income of her said husband from the sources aforesaid to be at least the sum of twelve hundred dollars.

That your oratrix believes that her said husband has not departed this State with the intention of permanently residing elsewhere, but only for the purpose of absents and separating himself from his wife, your oratrix, and to keep himself beyond the reach of process in this State.

That your orator has been informed and believes it 40

to be true that her said husband is now in the City of New York ; that he intends soon to come into the State of New Jersey to visit his parents, who reside at Keyport, in said State, and that he intends to depart from the State again without making any provision for the support of his wife, your oratrix.

10 That your oratrix believes that her said husband intends to come quickly in the State for the purpose aforesaid and intends quickly to depart therefrom so as to avoid the usual process from the Courts of this State in any proceedings which your oratrix may institute against him.

20 And your oratrix further shows and by reason of the facts hereinbefore stated hereby expressly charges that her said husband has, without any justifiable cause therefor, abandoned and separated himself from your oratrix, his wife, and has refused and neglected to maintain and provide for her ; and that to afford your oratrix a complete and sufficient remedy in the premises recourse must be had to this Honorable Court and a writ of *ne exeat republica* awarded against her said husband.

30 In consideration whereof and forasmuch as your oratrix can only be relieved in this Court : To the end, therefore, that the said William G. Fairchild may answer the premises, but without oath, and that he may be ordered and decreed to provide such suitable support and maintenance to be paid by him for your oratrix out of his property, for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the Court ; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court as provided by the statute ; and that he may be required to pay to her a reasonable weekly allowance and a proper amount for counsel fees during this suit ; and that she may have such other or further relief in 40 the premises as to your Honor shall seem meet.

May
to gran
republic
orable
trix, W
jurisdic
subpoen
child, t
day an
to be a
Court,
stand t
therein

STATE
Court

NETT
being c
that sh
knows
of her
are the
and as

And
that he
her an
justifia
neglect
does ne
duly st
plaint
self by
estate
est in
as he
depone

May it please your Honor, the premises considered, to grant unto your oratrix not only a writ of *ne exeat republica* issuing out of and under the seal of this Honorable Court to restrain the said husband of your oratrix, William G. Fairchild, from departing out of the jurisdiction of this Court, but also the State's writ of subpoena, to be directed to the said William G. Fairchild, therein and thereby requiring him, on a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to and abide and perform such order and decree therein as to your Honor may seem meet. 10

A. WALLING, JR.,
Solicitor for and of Counsel
with Complainant.

STATE OF NEW JERSEY, }
County of Monmouth, } ss. :

20

NETTIE F. FAIRCHILD, the above-named complainant, being duly sworn according to law, on her oath saith that she has read the above bill of complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters that are therein stated to be on her information and belief, and as to those matters she believes it to be true.

And further the above-named complainant says, that her husband, William G. Fairchild, has abandoned her and separated himself from her, without any justifiable cause therefor, and that he has refused and neglected to maintain and provide for her, and still does neglect to maintain and provide for her, as more fully stated and shown in the foregoing bill of complaint; that this deponent is unable to support herself by her own exertions and that she has no separate estate of her own; that her said husband has an interest in a restaurant business in the City of New York, as he himself informed deponent, and also has, as deponent has been informed and believes, other prop- 40

- erty and money, from all of which, as this deponent believes, he derives an annual income of twelve hundred dollars; that no part of the business or other property and money of her said husband is in this State and that her said husband has not, as this deponent believes, any property in this State; that the said husband of deponent is now in the City of New York, as deponent has been informed and believes, and as is now more fully stated in the foregoing bill of complaint;
- 10 that deponent has been informed that it is the desire of her said husband soon to come quickly into this State, on a visit to his parents, and to depart quickly from the State again; and deponent further says that any decree which she might obtain in this cause against her said husband would not be of any value to her if her husband is not required to furnish security to abide and perform such decree; that if he is suffered to depart this State after subpoena is served upon him any decree obtained by this deponent would be valueless because
- 20 her said husband has no property in this State, and because he is absenting himself from this State, as this deponent believes, for the purpose of avoiding the process, decrees and judgments of the Courts of this State in any proceedings which deponent might institute against him.

NETTIE F. FAIRCHILD.

Sworn and subscribed to }
before me this 19th day }
of April, A.D. 1887. }

30 BENJAMIN B. OGDEN,
Master in Chancery of
New Jersey.

IN CHANCERY OF NEW JERSEY.

To his Honor, ALEXANDER T. MCGILL, Chancellor of
the State of New Jersey :

Complaining shows unto your Honor your oratrix
Nettie F. Fairchild, of the town of Keyport, in the
County of Monmouth, and State of New Jersey, that
on the tenth day of August, A. D. eighteen hundred
and eighty-five, your oratrix was duly married to her 10
present husband, William G. Fairchild, at the City of
New York, in the State of New York.

That at the time of the said marriage your oratrix
and the said William G. Fairchild were inhabitants of
the State of New Jersey.

That since her said marriage your oratrix has con-
tinued to be an inhabitant of the State of New Jer-
sey. That at and before the date of her said marriage
your oratrix resided with her father at the town of
Keyport aforesaid, and that after her said marriage 20
she continued to reside with her father at the same
place.

That after her said marriage the said husband of
your oratrix frequently called upon and remained with
her at her father's house, and until abandoned by her
husband as hereinafter mentioned, your oratrix main-
tained with him all the relations of a wife.

That your oratrix has at all times conducted herself
with propriety and has not at any time, or in any
manner, given any cause to her husband for the injury 30
and neglect hereinafter complained of.

That on or about the nineteenth day of August,
A. D. 1885 the said husband of your oratrix, wickedly
and intentionally disregarding the obligations of his
marriage vow, and without any justifiable cause there-
for, abandoned your oratrix and has since then
separated himself from her.

That on or about the day last aforesaid the said hus-
band of your oratrix departed from the State of New
Jersey, and from that time, as your oratrix has been 40

informed and believes, he has remained out of said state.

That after the marriage of your oratrix her said husband informed her that his parents were very much displeased with his marriage to your oratrix and he also informed her that he proposed to go away for a short time and that by so doing things would be made smoother for him.

- 10 That shortly after and on or about the nineteenth day of August A. D. 1885 as hereinbefore stated, the said husband of your oratrix departed from this State but without informing your oratrix where he was going.

- 20 That on or about the twenty second day of August A. D. 1885 your oratrix received a letter from her said husband purporting to have been written at Suspension Bridge in the Dominion of Canada, in which letter he informed your oratrix that he had gone away but did not know to what place he was going and directing your oratrix to see one L. J. Noel in the City of New York who would make arrangements for the future of your oratrix.

That on or about the first day of September, A. D. 1885, your oratrix received another letter from her said husband purporting to have been written at Cheyenne in the Territory of Wyoming, in which among other things he stated that your oratrix should not write to him and that on the following day he would leave for the Rattlesnake Mountains.

- 30 That, as directed by her said husband, your oratrix afterward saw the said L. J. Noel, who informed your oratrix that he was authorized to make arrangements for her support and intimating that he had been provided with funds for that purpose.

That said Noel did not then give to your oratrix any money for her support, and shortly after, in the month of November, 1885, your oratrix wrote to said Noel requesting him to send to her some money for her support.

- 40 That on or about the twentieth day of December,

A. D.
her s
letter
quest
herein
upbrai
refused

That
not inf
ter con
written
and yo
with h

That
your or
band b
said hu
support

That
not inf
contain
that of
therein
throug

That
husban
named
form h
address

quest
That
no wor
from th
commu
that tir

That
husban
she has
place i
States,

A. D. 1885, your oratrix received another letter from her said husband by the hands of said Noel, in which letter he stated that he had been informed of the request made by your oratrix of said Noel for support as hereinbefore stated, and in which last-named letter he upbraided your oratrix for making such request and refused to contribute to the support of your oratrix.

That in said last-named letter her said husband did not inform your oratrix where he was nor did the letter contain the name of the place from which it was written, other than that of the State, viz., "Col.," and your oratrix was therein directed to communicate with her said husband through said Noel. 10

That on or about the 5th day of March, A. D. 1886, your oratrix received another letter from her said husband by the hands of said Noel, in which letter her said husband made no mention of providing for the support of your oratrix.

That in said last named letter her said husband did not inform your oratrix where he was, nor did the letter contain the place from which it was written, except that of the State, viz. : "Col" and your oratrix was therein directed to communicate with her said husband through said Noel. 20

That your oratrix did communicate with her said husband through said Noel, in response to said last named letter, and requested her said husband to inform her where he was and what was his post office address, but she has received no reply to her said request. 30

That except as above stated your oratrix has received no word from her said husband since his departure from this State, nor, except as above stated, has he communicated with her by letter or otherwise since that time.

That your oratrix has not known where her said husband was since his departure from this State, but she has heard that he was travelling from place to place in the West and Southwest parts of the United States, and your oratrix has also lately heard that her 40

said husband has within a short time past come into the State of New York.

That since the marriage of your oratrix as aforesaid her said husband has not in anywise or to any extent contributed toward her maintenance and support and that he has refused and wholly neglected to maintain and provide for her and that he still does neglect to maintain and provide for her.

- 10 That your oratrix applied to her said husband for support at the time and in the manner hereinbefore stated, and has been refused such support by him, as hereinbefore mentioned, but that she has not otherwise or at any other time applied to him for support for the reason that she has not been informed as to the place where he was or where to address him, as hereinbefore stated.

That the said husband of your oratrix knew at the time he departed from this State that your oratrix resided at Keyport aforesaid.

- 20 That the parents of her said husband reside at Keyport aforesaid, and your oratrix believes that they have been in constant communication with him by letter and otherwise, so that the husband of your oratrix could easily have ascertained as to the whereabouts of your oratrix if he had desired so to do.

That your oratrix has no separate estate of her own and no means of support except by her own exertions, and that she is not in very good health.

- 30 That prior to the marriage of your oratrix she earned some money by her own exertions in teaching school and in other ways, but she was then in a great measure supported by her father.

That since the marriage of your oratrix she has earned a little money by her own exertions, but not sufficient for her own support, nor is she able by her own exertions to support herself.

That your oratrix now resides with her father, and now relies and must continue to rely upon him for support in whole or in part.

- 40 That your oratrix was informed by her said husband,

before th
interest.
City of
oratrix b
That
band, to
from sai
now ren
That
to be tr
of certa
That
propert
State of
believes
That
oratrix
come v
aforesa
profits
That
the an
nor as
crues t
recolle
told h
which
from
from
great
amour
from
twelve
Tha
has ne
mane
of abs
oratri
cess i
Th

before the marriage of your oratrix, that he had an interest and ownership in a restaurant business in the City of New York, which restaurant business your oratrix believes is still owned by her said husband.

That your oratrix was also informed by her said husband, to some extent of the profits accruing to him from said restaurant business, but your oratrix cannot now remember the figures he stated.

That your oratrix has been informed and believes it to be true that her said husband has, and is the owner 10 of certain sums of money and other property.

That no part of the estate, business, money or other property of the husband of your oratrix is in the State of New Jersey, so far as your oratrix knows or believes.

That the said husband of your oratrix, as your oratrix believes, is supported and maintained by the income which accrues to him from the profits of his aforesaid restaurant business and from the interest and profits of his money and other property. 20

That your oratrix has no certain information as to the amount and value of the estate of her husband, nor as to the amount of the yearly income which accrues to him from the sources aforesaid, but from the recollection of your oratrix as to what her husband told her concerning his business, from the manner in which he lived before he departed from this State, and from the fact that he has since then been travelling from place to place, as your oratrix believes under great expense, your oratrix estimates and believes the 30 amount of the yearly income of her said husband from the sources aforesaid to be at least the sum of twelve hundred dollars.

That your oratrix believes that her said husband has not departed this State with the intention of permanently residing elsewhere, but only for the purpose of absentsing and separating himself from his wife, your oratrix, and to keep himself beyond the reach of process in this State.

That your oratrix has been informed and believes it 40

to be true that her said husband is now in the City of New York; that he intends soon to come into the State of New Jersey to visit his parents, who reside at Keyport, in said State, and that he intends to depart from the State again without making any provisions for the support of his wife, your oratrix.

10 That your oratrix believes that her said husband intends to come quickly in the State, for the purpose aforesaid, and intends quickly to depart therefrom so as to avoid the usual process from the courts of this State in any proceedings which your oratrix may institute against him.

20 And your oratrix further shows, and by reason of the facts hereinbefore stated, hereby expressly charges that her said husband has, without any justifiable cause therefor, abandoned and separated himself from your oratrix, his wife, and has refused and neglected to maintain and provide for her; and that to afford your oratrix a complete and sufficient remedy in the premises, recourse must be had to this Honorable Court and a writ of *ne exeat republica* awarded against her said husband.

30 And your oratrix further shows that she has recently been informed, and believes it to be true, that on or about the eleventh day of March, A. D. 1887, the said defendant, in certain proceedings for divorce by him instituted in the District Court in and for the County of Stafford and State of Kansas, procured to be rendered by said Court, a judgment or decree that the said defendant be divorced from your oratrix and that the bonds of matrimony theretofore existing betwee them should be dissolved and held for naught; but your oratrix further shows and hereby expressly charges that said judgment or decree was procured by fraud and perjury; that your oratrix was never domiciled, nor has she ever been in the State of Kansas; that at the time of the commencement of said proceedings for divorce in said Court, and at the time of the rendering of said judgment and 40 decree of divorce, your oratrix was an actual resident

of the State of New Jersey and domiciled therein ;
that your oratrix was not served with process in said
divorce proceedings, nor was any notice of any kind
whatsoever of the pendency of said proceedings ever
given to her prior to the rendering of said judgment or
decree of divorce ; that your oratrix for at least fifteen
years last past has continued to reside at Keyport, in
the State of New Jersey ; that her residence at the
time of her said marriage and at the time of the com-
mencement of said proceedings for divorce by the de- 10
fendant as above mentioned was well known to said
defendant ; that the defendant, at the time he aban-
doned your oratrix as hereinbefore mentioned, and for
several years prior thereto, also resided at Keyport
aforesaid ; that the parents and other relatives
of the defendant also reside at Keyport afore-
said and have resided there for at least ten
years last past ; that the defendant, since he
abandoned your oratrix as hereinbefore stated, as
your oratrix believes, has been in constant communi- 20
cation by mail and otherwise with his said parents and
relatives ; that during the pendency of said divorce
proceedings the said parents and relatives of the de-
fendant well knew that your oratrix resided in Key-
port aforesaid, and frequently saw her in the public
streets of that place ; that the defendant after aban-
doning your oratrix as hereinbefore stated, addressed
letters to your oratrix at Keyport aforesaid ; that after
the rendering of said judgment or decree of divorce,
and before he had returned to the State of New Jer- 30
sey, the defendant also addressed a letter to your ora-
trix at Keyport aforesaid ; that prior to the receipt of
said last-named letter, your oratrix had no knowledge
whatever of the pendency of said divorce proceedings,
or that such judgment or decree of divorce had been
rendered therein ; that in said divorce proceedings to
induce the said District Court in and for the County of
Stafford and State of Kansas to take jurisdiction thereof,
and to avoid giving your oratrix any notice of said 40
divorce proceedings, the defendant herein falsely and
wickedly swore that the residence of your oratrix was

unknown to him and could not be ascertained by any means within his control; that in said divorce proceedings the defendant also falsely swore, and as a cause of action for divorce also claimed, that your oratrix had abandoned him the defendant herein, whereas in truth and in fact the said defendant had abandoned your oratrix as hereinbefore stated.

In consideration whereof, and forasmuch as your oratrix can only be relieved in this Court; to the end,
 10 therefore, that the said William G. Fairchild may answer the premises, but without oath, and that he may be ordered and decreed to provide such suitable support and maintenance to be paid by him for your oratrix out of his property, for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the Court; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court, as provided by
 20 the statute; and that he may be requested to pay to her a reasonable weekly allowance and a proper amount for counsel fees during this suit; and that the judgment or decree that the defendant herein be divorced from your oratrix and that the bonds of matrimony existing between them be dissolved and held for naught, rendered by the District Court in and for the County of Stafford and State of Kansas as hereinbefore mentioned, may be by this Honorable Court decreed, to be
 30 null and void, for want of jurisdiction on the part of said District Court in and for the County of Stafford, and State of Kansas, over the person of your oratrix, and over the aforesaid proceedings for divorce in said District Court, and because said judgment or decree of divorce in said District Court was procured by fraud and perjury on the part of the defendant herein; and that she may have such other or further relief in the premises as to your Honor shall seem meet.

40 May it please your Honor, the premises considered, to grant unto your oratrix not only a writ of *ne exeat republica* issuing out of and under the seal of this

Hono
 ora
 the j
 of su
 Fairc
 certai
 expre
 this I
 premi
 order
 meet.

Sol.

STATE
 Court

NET
 being
 the al
 conten
 own
 therai
 as to

Sworn
 5th da

Honorable Court, to restrain the said husband of your oratrix, William G. Fairchild, from departing out of the jurisdiction of this Court, but also the states writ of suphcena, to be directed to the said William G. Fairchild, therein, and thereby requiring him, on a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to and abide and perform such order and decree therein as to your Honor may seem meet. 10

A. WALLING, JR.,
Sol. for and of Counsel, with Complainant.

STATE OF NEW JERSEY, }
County of Monmouth, } ss.

NETTIE F. FAIRCHILD, the above named complainant, being duly sworn deposes and says, that she has read the above amended bill of complaint, and knows the contents thereof, and that the said bill is true of her own knowledge, except as to the matters that are therein stated to be on her information or belief, and as to those matters she believes it to be true. 20

NETTIE F. FAIRCHILD.

Sworn and subscribed to before me this }
5th day of September, A. D. 1887. }

B. B. OGDEN,

Master in Chancery of New Jersey.

The answer of WILLIAM G. FAIRCHILD, defendant, to the bill of complaint and amended bill of complaint of Nettie F. Fairchild, the complainant :

This defendant, now, and at all times hereafter, saving and reserving to himself all and all manner of benefits and advantages of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto, or unto so
 10 much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says :

This defendant admits that he was married to the said Nettie F. Fairchild, the said complainant, on the tenth day of August, A. D. 1885, at the City of New York in the State of New York. But this defendant does not admit that at the time of the said marriage this defendant was an inhabitant of the State of New
 20 Jersey. On the contrary, this defendant says, that at the time of said marriage and for a very considerable time before that time, he was, and had been, a resident of the State of New York aforesaid.

This defendant further admits that said complainant, at and before the date of her said marriage, resided with her father, at the town of Keyport, in the State of New Jersey, but whether or not said complainant, since the date of her said marriage, has continued to be an inhabitant of the State of New Jersey, or whether she has continued to reside with her father,
 30 this defendant does not know.

This defendant expressly denies, however, that he, defendant, frequently called upon and remained with said complainant at her father's house, or that after his said marriage with said complainant, she ever maintained with him the relations of a wife ; on the contrary, this defendant, after the date of his said marriage with the complainant, did not at any time call upon her at her father's house nor at any other
 40 place, and from the time of his said marriage, thenceforth, this defendant, with the consent and concur-

rence of said complainant, held none of the relations of married life.

This defendant further denies that he directed said complainant to call upon one L. J. Noel, or any other person, for the purpose of receiving any money from this defendant, and says that he, defendant, did not at any time make any arrangement with any person or persons whatever for her support.

This defendant admits that some time in the month of December, A. D. 1885, this defendant wrote to said complainant the letter by her mentioned, in which he upbraided said complainant for requesting said Noel to contribute money for her support. And this defendant did, in fact, refuse to contribute to her support, for reasons hereinafter stated. 10

The defendant further admits sending the letter which the complainant claims to have received on or about the fifth day of March, A. D. 1886, through said Noel. And that he did not inform said complainant of his then place of residence, for the reason that he had no desire to hold any further direct communication with said complainant, believing, as he did, that he had been fraudulently entrapped into his said marriage with the complainant, as will be more fully shown hereinafter. 20

This defendant, however, has never at any time received the letter mentioned by said complainant, requesting him to inform her where he was and what was his postoffice address.

That this defendant admits having informed said complainant before their said marriage, that he had an interest in a restaurant business in the City of New York, but he does not admit having stated to said complainant that he was then or at any other time receiving any income from said business. On the contrary, this defendant says that although this defendant's father sold him a small interest in said business, this defendant was never able to pay for the same, and never did pay for the same, and the said interest was, before the commencement of this suit, re-transferred 30 40

by this defendant to his said father by reason of his inability to pay for the same.

This defendant denies that he is the owner of certain sums of money and other property as alleged by the said complainant, but, on the contrary, does not own any real or personal property whatever, in this State or elsewhere.

10 That this defendant denies that he is supported and maintained by the income which accrues to him from the profits of the aforesaid restaurant business and from the interest and profits from his moneys and other property, but on the contrary declares that he has no income and has had none since his said marriage from any source whatever of his own.

20 That the money with which he was enabled to go West he borrowed from his father, and that during all the time of his absence West his sole support has been derived from the moneys advanced to him at various times by his parents, and such precarious livelihood as he was able to pick up from time to time.

30 That so far from living at great expense, this defendant has always been compelled to live, through his want of means of support, and owing to his continued ill health, in the most economical manner. And that owing to his ill health, which has continued ever since the time of his said marriage and before, this defendant has been unable even to support himself, and is and always has been since his said marriage entirely unable to support or even contribute to the support of said complainant. And that he is even at this time dependent upon his said parents for his support and maintenance.

40 That this defendant, in answer to the complainant's amended bill of complaint, further answering, says that he admits that on or about the 11th day of March, A. D. 1887, he, said defendant, in certain proceedings for divorce by him instituted in the District Court in and for the County of Stafford and State of Kansas, did obtain from said Court a judgment or decree that this defendant be divorced from the com-

plainant
theretof
complain
naught ;
judgmen
on the p
for divo
defendant
declares th
proceedi
thereto,
resident
lawful re
That t
pendency
given to
said jud
defendant
plainant
12th day
days th
complain
dress to
to her in
" I am
York to
you had
meaning
his letter
street, N
That a
Kansas w
counsel w
to send, a
at No. 33
lice of w
STATE OF
Stafford

complainant in this suit, and that the bond of matrimony theretofore existing between this defendant and said complainant was by said Court dissolved and held for naught; but this defendant expressly denies that said judgment or decree was procured by fraud and perjury on the part of this defendant, but that said proceedings for divorce were instituted and conducted by this defendant in entire good faith, and this defendant declares that at the time of the commencement of said proceedings for divorce, and for a year or more prior 10 thereto, this defendant was and had been a lawful resident of the State of Kansas, and is at this time a lawful resident of said State of Kansas.

That this defendant denies that no notice of the pendency of said proceedings for divorce was ever given to said complainant prior to the rendering of said judgment or decree of divorce, but this defendant says that in a letter written by the complainant to this defendant, bearing date the 12th day of September, A. D. 1885, and a few 20 days thereafter received by this defendant, the complainant gave this defendant her post office address to which this defendant should direct his letters to her in the following language, to wit:

"I am going to have this letter mailed from New York to avoid suspicion, and when you write to me, you had better direct to "331 Washington street," meaning thereby, that this defendant should address his letters to the complainant, No. 331 Washington street, New York City. 30

That about the time said divorce proceedings in Kansas were commenced, this defendant directed his counsel who had charge of said proceedings for divorce, to send, and his counsel did send, to said complainant at No. 331 Washington street, New York City, a notice of which the following is a true copy:

STATE OF KANSAS, }
Stafford County, } ss. :

IN THE DISTRICT COURT,

TWENTIETH JUDICIAL DISTRICT.

10	WILLIAM G. FAIRCHILD, vs. NETTIE F. FAIRCHILD,	Plff., Def.	} Notice.
----	--	----------------------------	-----------

The above-named Nettie F. Fairchild, defendant, you are hereby notified that on the 28th day of December, A.D. 1886, the above-named plaintiff, William G. Fairchild filed, his petition in the office of the District Clerk of Stafford County, Kansas, praying for a divorce from you. You are hereby notified that you are required to answer said petition on or before the 19th day of February, A.D. 1887, or said petition will be taken as true, and judgment rendered as therein prayed for.

WAMPLER & WEEKS,
Plff. Atty's.

[Attest] . WILLIAM DIXON,
Clerk District Court.

30 That after giving this defendant her said address, the said complainant never informed this defendant in any way that she had changed her address or wished him to address her at any other place.

And this defendant denies, that after receiving from said complainant said address, he had information or knowledge of any other address or residence of hers.

This defendant denies, that at the time of his leaving the complainant as aforesaid, he was a resident of Keyport aforesaid, but that, on the contrary, declares that
40 from about the middle of the month of May, A. D.

1885, this defendant became a resident of the City of New York aforesaid, and so continued until his removal to the West as aforesaid.

This defendant, however, admits that his parents and other relatives reside at Keyport aforesaid, as in said bill stated, and that he has been in frequent communication with his said parents, but not with other relatives. But that this defendant's said parents from some time in the month of November, A. D. 1886, to the early part of the month of April, A. D. 1887, were absent from the said State of New Jersey, and that they had no knowledge whatever of the address or whereabouts of the complainant. 10

And this defendant, further answering, says, that on the 10th day of August, A. D. 1885, the said complainant came to this defendant on board the steamer *Minnie Cornell*, on her passage from Keyport aforesaid to the City of New York, and informed this defendant that she, complainant, was "in trouble," (meaning thereby that she was with child by this defendant) and that this defendant must marry her. 20

And this defendant admits, that on the 16th day of July, of the year last aforesaid, and also about one week after that date, this defendant held carnal intercourse with the said complainant, at the house of the father of said complainant, in Keyport aforesaid, but this defendant expressly avers that such intercourse was not held under any promise of marriage, but, on the contrary, that no engagement of marriage existed between them at the time of such intercourse, or at any other time, that the subject of marriage had not been mentioned between them prior to said conversation on the boat, that this defendant had never, at any time, expressed, or in any wise manifested any affection or love for said complainant, or in any way given her to understand that he, defendant, felt any degree of affection whatever for the complainant; neither did the complainant, at the time of such intercourse, or, at any time prior thereto, nor at any time since, has she manifested any affection for this defendant, and this 30 40

defendant further avers that said intercourse was brought about wholly through the wiles and machinations of said complainant.

And this defendant further says, that, believing the assertion of said complainant above-mentioned, and that she was really with child by this defendant, this defendant, in order to shield said complainant from disgrace, and to legitimate her offspring, married the said complainant on the said 10th day of August, A. D. 1885, and a few minutes after said marriage said complainant and this defendant separated on the street by mutual consent, and this defendant did not see the complainant again until the following Saturday, when, while on a visit to his parents in Keyport aforesaid, he accidentally encountered her upon the street. He entered into conversation with her, and accompanied her as far as her father's gate. During this conversation, the plaintiff admitted to this defendant, that she thought there was nothing the matter with her, and remarked "that it was a good way to get a fellow." This defendant thereupon became suspicious that said complainant, knowing that the parents of this defendant were in good financial circumstances, had deliberately formed a plot to deceive this defendant, and with a mercenary object in view had induced him to marry her as aforesaid.

He therefore had no further personal communication with the complainant, and, on the 20th day of August, A. D. 1885, five days after the conversation last above mentioned, this defendant started for the western States, where he has constantly remained until since the commencement of this suit.

And defendant further says, that after his said conversation with said complainant, last above narrated, he, defendant, made arrangements with one L. J. Noel, already mentioned herein, to see said complainant, and ascertain if possible, if the complainant had not been deceiving this defendant in procuring his marriage with her as aforesaid, and also to make known to her the desire of this

defend
her a
compla
said N
meanin
defend
that, if
she wo
defend
defend
compla
letter
A. D.
and an
and of

"I v
though
at the
you, ha
were w
me to
that all
this, sa
certain

After
fendan
notwith
she wa
ant, in
was get
Octobe
defenda
Arrows
to proc
do it, b
tress; t
his, def
ascertai
formed
had nev

defendant to have the marriage annulled, and secure her acquiescence therein; that said Noel did see the complainant, and in the course of a conversation with said Noel, she confessed that she was in no trouble, meaning thereby that she was not with child by this defendant; and she also gave said Noel to understand that, if this defendant wished said marriage annulled, she would make no opposition thereto, of which this defendant was soon after notified by said Noel, and defendant says that soon after said interview between complainant and said Noel, this defendant received a letter from the complainant, dated September 12th, A. D. 1885 (being the same letter already mentioned, and an extract from which has been already given), and of a part of which letter the following is a copy :

“I went to see Mr. Noel as you wished me to; I thought I liked him, and although greatly astonished at the ‘business’ he had with me, was conscious that you, having destroyed my certificate, and saying you were willing the marriage should be annulled, wanted me to understand it the same as if you had written that all he (Noel) said was your wish; I, thinking all this, said, as you were willing and wished, I would certainly not hinder the proceedings.”

After that, she never made any request upon this defendant for support. And defendant further says, that notwithstanding her said admission to said Noel, that she was not “in trouble”, as aforesaid, said complainant, in her letters to this defendant, asserted that she was getting very sick and not able to go out, and in October, A. D. 1885, said complainant wrote to this defendant that she had made a confidant of one Dr. Arrowsmith, of Keyport, aforesaid, and had asked him to procure a miscarriage for her, but that he would not do it, but gave her some medicine to relieve her distress; that this defendant shortly thereafter wrote to his, defendant’s father to see said Arrowsmith, and ascertain if this was true; that said Arrowsmith informed this defendant’s father that the complainant had never made a confidant of him, said Arrowsmith,

and that to his knowledge, she had never been with child; that thereupon this defendant became fully satisfied that said complainant had deceived this defendant, in inducing him to marry her, as aforesaid, and he determined to obtain a divorce from her in the easiest way possible.

10 He accordingly, in the month of December, A. D. 1888, instituted proceedings in the District Court of the County of Stafford, in the State of Kansas (of which County and State this defendant was then, and is now, a resident), for the purpose of annulling the marriage between this defendant and the complainant, and in the month of March following, as already stated, this defendant obtained from said court a decree divorcing him from the complainant in this suit.

20 And this defendant, further answering, says, that, under the laws of the State of Kansas the complainant in the suit was entitled to have said proceedings for divorce reopened, for the purpose of being heard therein, and putting in her defense at any time within six months after the entering of said decree; that the said decree of divorce, having been entered on the 11th day of March A. D. 1887, in the six months allowed by the Kansas statute, expired on the 11th day of September A. D. 1887, that even if the complainant in this suit had not received the notice of said divorce proceedings sent to her by this defendant's counsel, as aforesaid, she nevertheless, had, from other sources, 30 full knowledge of said divorce proceedings, long prior to the expiration of said six months; yet, as this defendant is informed and believes, the complainant in this cause has made no effort whatever to open said proceedings for divorce

40 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without that, that any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and

hereby
avoided
or believ
things
maintain
direct,
his rea
wrongf

The
original
Decem
appears
ber, 18

1st.
ing exc
binatio
Court.

2nd.
answer
the bill
or abou
the def
compla

3rd.
answer
further
ant clai
of Mar
"For t
ther dir
lieving,
trapped
scandal

hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

RENS. W. DAYTON,

Sol. for

10

MARCUS B. TAYLOR,

Of Counsel with Complainant.

The following exceptions, which were filed to the original answer of the defendant on the 15th day of December, 1887, were held by the Court to be good, as appears by order entered on the 16th day of December, 1887.

1st. Because said answer contains the clause reserving exceptions and the general clause denying combination contrary to the rules and practice of this Court. 20

2nd. Because the said defendant, in and by said answer, has not answered the allegations and charge in the bill of complaint in this cause contained; that on or about the nineteenth day of August, A. D. 1885, the defendant, without justifiable cause, abandoned the complainant. 30

3rd. Because that part of the paragraph of said answer beginning with the words, "This defendant further admits sending the letter which the complainant claims to have received on or about the fifth day of March, A. D. 1886, &c," which reads as follows: "For the reason that he had no desire to hold any further direct communication with said complainant, believing, as he did, that he had been fraudulently entrapped into his marriage with the complainant," is scandalous and impertinent. 40

4th. Because the said defendant in and by his said answer has not answered the allegation and charge in said bill contained that since the marriage of the complainant to the defendant the defendant has not in any wise or to any extent contributed toward the support and maintenance of the complainant, and that he still neglects to maintain and provide for her.

10 5th. Because the said defendant in and by his said answer has not answered the allegations and charges in said bill contained ; that the residence of the complainant at the time of the commencement of the proceedings for divorce mentioned in said bill and answers was well known to the defendant ; that in said divorce proceedings, to induce the District Court in and for the County of Stafford, State of Kansas, to take jurisdiction thereof; and to avoid giving the complainant notice of said divorce proceedings, the defendant falsely and wickedly swore that the residence
20 of the complainant was unknown to him and could not be ascertained by any means within his control; that in said divorce proceedings the defendant falsely swore, and as a cause of action for divorce claimed that the complainant had abandoned the defendant.

30 6th. Because the said defendant in and by his said answer has not well and sufficiently answered the allegations and charge in said bill contained; that the complainant was not served with process in said divorce proceedings, and that no notice of any kind whatsoever of the pendency of said proceeding was ever given to the complainant prior to the rendering of said judgment or decree of divorce.

40 7th. Because the whole of the paragraph of said answer beginning with the words "And this defendant further answering says, that on the 10th day of August, A. D. 1885, the said complainant came to this defendant on board the steamer *Minnie Cornell* on her passage, &c.," is scandalous and impertinent.

8th. . .
of said
paragra
nation,

9th.
fense to
complai
any ma
not ent
complai

Between

The a
the ame
complai
The c
times h
all man
many e
said an
there u
is advis
unto, a
This
of Aug

8th. Because all of the several paragraphs and parts of said answer immediately following the last-named paragraph, down to the general clause denying combination, are scandalous and impertinent.

9th. Because the said answer does not set up any defense to or disclose any equity in answer to said bill of complaint, and because the said answer does not state any matter or thing to show that the complainant is not entitled to the relief prayed for by said bill of complaint. 10

By permission of the Court the following answer was filed :

IN CHANCERY OF NEW JERSEY.

Between—

NETTIE F. FAIRCHILD,
Complainant,

AND

WILLIAM G. FAIRCHILD,
Defendant.

20

On Bill, &c.

The answer of William G. Fairchild, defendant, to the amended bill of complaint of Nettie F. Fairchild, complainant. 30

The defendant, William G. Fairchild, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer there unto, or unto so much thereof as this defendant is advised it is material or necessary to make answer unto, answering says :

This defendant admits that on or about the tenth day of August 1885, he was married to Nettie F. Fair- 40

child, the complainant herein, in the City of New York.

This defendant denies that at the time of said marriage he was an inhabitant of the State of New Jersey and avers that at that time and prior thereto he resided in the State of New York.

This defendant admits that the said complainant did, at the time of said marriage reside in the State of New Jersey, but does not know whether the complainant
 10 continued to be an inhabitant of the State of New Jersey or not, or whether complainant continued to reside with her father at Keyport, Monmouth County, New Jersey.

This defendant expressly denies that he frequently called upon and remained with said complainant at her father's house, and that after his said marriage with said complainant she ever maintained with him the relations of a wife ; on the contrary this defendant after
 20 the date of his said marriage with complainant, did not at any time call upon her at her father's house nor at any other place ; and from the time of his said marriage thenceforth, this defendant, with the consent and concurrence of said complainant, held none of the relations of married life.

This defendant denies directing the complainant herein, to call on L. J. Noel in New York City, or an any other person, to receive money from this defendant, and he also denies making any arrangement for her support.

This defendant admits that in the month of December, 1885, he wrote to the complainant herein, and admits that in said letter he upbraided said complainant for requesting said Noel to contribute money for her support ; and this defendant also admits refusing to contribute to the support of complainant herein.

This defendant admits sending a letter on or about March 5, 1886, through said L. J. Noel, to the complainant herein, and admits that he did not inform her
 40 of his address for the reason that he did not wish to carry on any correspondence with complainant.

This defendant denies ever having received from complainant a letter requesting his post office address.

This defendant admits having told complainant before their said marriage that he had an interest in a restaurant in New York City: but denies stating that he received any income for the same. Defendant avers that his father sold him a small interest in a restaurant business, but defendant could never pay for the same, and the said interest was re-transferred to his father.

10

This defendant denies that he is or ever was supported or maintained by the income which accrued to him from said restaurant business, and from the interest and profits of his money and other property; and that the money which it was necessary for him to use to go West by defendant was borrowed from his father; that he has lived prior to his said marriage on borrowed money and what he could earn. And this defendant further alleges that he has been compelled to live very economically, and that he could not support this complainant prior to the commencement of this action.

20

This defendant admits that on the eleventh day of March, 1887, in a suit for divorce instituted by him and against the complainant herein, a judgment or decree was entered, decreeing that the bonds of matrimony theretofore existing between this defendant and the complainant herein should be dissolved and held for naught; but denies that said judgment or decree was procured by fraud or perjury, and alleges that said suit was instituted and carried on in good faith by this defendant.

30

This defendant denies that no notice of said suit was given to the complainant herein. And this defendant further alleges that notice of said divorce proceedings were sent to said complainant at No. 331 Washington street, New York City.

This defendant denies that at the time he left for the West, he was a resident of the State of New Jersey, and alleges that from about the middle of May, 1885,

40

up to the time he left for the West, he was a resident of the State of New York.

This defendant admits that his parents reside at Keyport, Monmouth County, New Jersey, and have resided there for a number of years ; but defendant alleges that his said parents were absent from the State of New Jersey from November 1886 until April 1887, and that they had no knowledge of complainant's whereabouts.

10 And this defendant further answering sayeth that on the tenth day of August, 1885, while complainant was on the steamboat "*Minnie Cornell*" on his way from Keyport aforesaid to New York City, complainant herein came to this defendant and told him that she was "in trouble" (meaning with child by defendant), and that he must marry her. Defendant admits that on the 16th day of July, 1885, and one week after said date, he had had carnal intercourse with complainant herein at the house of complainant's father in Keyport aforesaid, but alleges that he did not at either of said

20 times, or ever make any promise to marry complainant herein ; that there never was any engagement between this defendant and complainant herein ; that defendant never had any conversation with complainant about marriage until on the said tenth day of August, 1885, as above stated ; that defendant never gave complainant any reason to think he loved her ; and that complainant never manifested any love for defendant. That defendant, believing complainant's said statement about being "in trouble" and to shield

30 her from disgrace, married her that day in New York City ; that within a few minutes after said marriage defendant and complainant separated on the street, and did not meet until the following Saturday, on which day the defendant met complainant accidentally at Keyport while defendant was on a visit to his parents ; complainant then said to defendant that nothing was the matter with her and said it was "a good way to get a fellow." Defendant then

40 became suspicious that he had been the victim of a

scheme to compel him to marry complainant herein. Defendant had no further communication with complainant, and on or about the twentieth day of August, 1885, started West. That defendant arranged with said L. J. Noel to ascertain if he had not been deceived by complainant as to her condition; that said Noel saw complainant and she admitted having deceived defendant; that never since her said interview with said Noel has complainant demanded support from this defendant. That complainant wrote this defendant that she had confided in Dr. Ainsworth, of Keyport, Monmouth, County, New Jersey, and had told him of her trouble; that defendant ascertained from the said Dr. Ainsworth that there was no truth in the statements of complainant, and that he did not believe complainant was with child at or about that time.

And this defendant further answering says that on the tenth day of March, 1888, he filed his verified petition in the District Court of the Sixteenth Judicial District of Kansas, sitting in and for Hodgeman County, a Court of competent jurisdiction, praying that he might be divorced from the complainant herein, and that the bonds of matrimony between them might be decreed and adjudged dissolved, annulled and at an end (copy of which said petition is hereto annexed marked Exhibit A, and made a part of this answer). That the complainant herein was duly summoned to answer said petition, and on the twenty-third day of April, 1888, filed her verified answer to said petition in the said District Court of Kansas and a copy of said answer is hereto annexed, marked Exhibit B, and made a part of this answer). That the said cause was duly tried, and on the 24th day of October, 1888, the Journal entry of said cause was filed wherein it appears that the complainant herein was within the jurisdiction of the said Court of Kansas, and contested the said suit, and that on the fourth day of October, 1888, a decree was entered therein, in which it was ordered and adjudged that this defendant,

William G. Fairchild, "be and he is hereby divorced from the said defendant (Nettie F. Fairchild), and that the bonds of matrimony heretofore existing between said plaintiff and defendant be and the same are hereby annulled, dissolved and held for naught" (copy of said Journal entry is hereto annexed, marked Exhibit C, and made a part of this answer). That no appeal was taken by said defendant, Nettie F. Fairchild, the complainant herein, from said decree.

- 10 And this defendant, further answering, avers that the cause of action of the complainant herein, if any there might have been, is now barred by the decree of the said District Court of Kansas hereinbefore referred to, and defendant prays that this honorable Court will consider the said decree as fully and completely pleaded herein.

- And this defendant, further answering says: That the said complainant, Nettie F. Fairchild, since her said marriage with defendant, and on various days in
 20 the months of August and September, 1888, to wit: August 13th, August 20th, and September 3d, wickedly disregarding the solemnity of her vows and the sanctity of the marriage state, committed adultery with a person or persons unknown to defendant, at No. 65 East 12th street, New York City, in the State of New York; that house, No. 65 East 12th street, New York City, was, at said dates last hereinbefore mentioned, a house of bad repute, and was well known to be so.

- And this defendant, further answering, avers that
 30 the cause of action of the complainant herein, if any there might have been, is barred by the adultery of the complainant.

All which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

LEON ABBETT, Jr.,
 Sol'r of Defendant and of Counsel.

Exhibit A.

IN THE DISTRICT COURT

OF THE 16TH JUDICIAL DISTRICT OF KANSAS, SITTING IN
AND FOR HODGEMAN COUNTY.

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

Petition.

10

Comes now William G. Fairchild, the above named plaintiff, and complaining of Nettie F. Fairchild, the above named defendant, for cause of action against her, says :

1. FIRST CAUSE OF ACTION. 20

That he, said plaintiff, is now and has been, for more than one year last past an actual and bona fide resident of the State of Kansas and a resident of said Hodgeman County at the present and prior to the filing of this petition.

That on the tenth day of August, 1885, this plaintiff and said defendant were married in the City of New York and State of New York.

That on or about said 10th day of August, 1885, the said defendant, without any cause or provocation known to this plaintiff, wholly disregarding her marital relations and duties, wilfully absented herself and abandoned this plaintiff, since which time this plaintiff has not seen said defendant. Plaintiff alleges that he was in no way in default or neglectful of his duties of a kind husband. 30

This plaintiff further alleges that said defendant told certain parties she never intended to live with this plaintiff. That she only married him to get the best of the plaintiff's mother's pride. 40

2. SECOND CAUSE OF ACTION.

And for a second cause of action this plaintiff further alleges that said defendant induced this plaintiff to marry her through false and fraudulent representations, in this; that she told plaintiff she was in the family way by plaintiff, and that plaintiff was the father of her unborn child. That plaintiff, reposing confidence in said defendant's said statements as being true and desiring to shield her as well as her offspring from the disgrace of illegitimacy, was induced to marry said defendant.

That after the said marriage was consummated said defendant admitted to plaintiff that she was not pregnant by him, and that she knew her said representations and statements to plaintiff were false, and were made to entrap him into marrying her, through fear of exposure and disgrace of himself and family.

And plaintiff further alleges the only object said defendant had in so fraudulently inducing him to marry her, was that she might be in a position to demand and extort from plaintiff through others large sums of money under pretence that they were necessary for her support, which she, said defendant, has attempted to do in several instances.

Plaintiff further says the defendant is a non-resident of the State of Kansas and the service of summons cannot be made upon her in said State of Kansas, but that she resides and has her domicile in Keyport, in Monmouth County and State of New Jersey.

Wherefore said plaintiff prays the judgment of this Court that he, said plaintiff, may be divorced from the said Nettie F. Fairchild, the said defendant, and that the bonds of matrimony between them be decreed and adjudged dissolved, annulled and at an end, and that he also have judgment for costs and such other and further relief as in law and equity he may be entitled to and to the Court may seem just and proper.

WILLIAM G. FAIRCHILD.

Plaintiff.

HUGHES & JOHNS,
Plaintiff's Attorneys.

STATE OF KANSAS, }
 Hodgeman County, } ss. :

WILLIAM G. FAIRCHILD, plaintiff in the foregoing action, being first duly sworn upon his oath says, he has read and heard read the foregoing petition and knows the contents thereof, and that the facts therein set forth are true.

WILLIAM G. FAIRCHILD.

Sworn to and subscribed before me }
 this 10th day of March, 1888, } 10

[SEAL.] D. G. CURTIS.

Clerk of District Court of Hodgeman Co.,
 Kas. By D. H. BRADLEY, Deputy.

Exhibit B.

IN THE DISTRICT COURT

IN AND FOR HODGEMEN COUNTY, KANSAS, 16TH JUDICIAL DISTRICT. 20

WILLIAM G. FAIRCHILD,
 Plaintiff,

vs.

NETTIE F. FAIRCHILD,
 Defendant.

} Answer.

30

Comes now the defendant by her attorney S. A. Sheldon, and for her answer to plaintiff's petition denies each and every material allegation set up in said petition except what is hereinafter especially admitted.

1st. Defendant admits that she was married to the said plaintiff William G. Fairchild on the 10th day of August, 1885, in the City of New York and State of New York.

S. A. SHELDON,
 Defts. Atty. 40

STATE OF NEW JERSEY }
 County } ss.:

NETTIE F. FAIRCHILD, of lawful age, being first duly sworn according to law on oath says, that she is the defendant in the above-entitled cause, that she has read the foregoing answer and that the facts therein alleged are true.

NETTIE F. FAIRCHILD.

10 Subscribed and sworn to before me
 this 17th day of April, 1888, {

[SEAL.] BENJAMIN B. OGDEN,
 Notary Public for New Jersey,
 Keyport, Mon. Co. N. J.

Exhibit C.

IN THE DISTRICT COURT

20 OF THE 16TH JUDICIAL DISTRICT OF KANSAS, SITTING IN
 AND FOR HODGEMEN COUNTY.

WILLIAM G. FAIRCHILD,
 Plaintiff,

vs.

NETTIE F. FAIRCHILD,
 Defendant.

} Journal Entry.

30

On the 22nd day of May, A. D. 1888, it being the first day of the regular May Term of the District Court holden in and for Hodgemen County in the State of Kansas for the year 1888, the above-entitled action coming regularly on for trial in said Court, the plaintiff appears by H. C. Johns, his attorney, and the defendant appears by S. A. Sheldon, Esq., her attorney, and a jury being waived and trial had by the Court, the Court refers this cause to L. K. Soper, Esq., a practicing attorney in said Court, as Referee to try said

40

action and report to this Court his findings of fact and conclusions of law herein.

That afterwards said Soper duly qualified as said referee according to law and proceeded with the trial of this action, the respective parties submitting evidence and argument by their respective counsel, and upon the conclusion thereof reported to this Court his findings of fact and conclusions of law in substance as follows :

1.—That the plaintiff in this action, the said William G. Fairchild, has been and was, an actual resident, in 10
good faith, of the State of Kansas for one year and more next preceding the filing of his petition in this action, to wit ; prior to the tenth (10th) day of March 1888.

2.—That said plaintiff was a resident of Hodgeman County, Kansas, at the time his petition in this action was filed in the District Court of said County, to wit : March 10th, 1888.

3.—That said plaintiff and defendant were married in the City of New York and State of New York on 20
the 10th day of August, 1885.

4.—That after the marriage ceremony on the 10th day of August, 1885, the plaintiff and defendant were together on the streets of New York City about one hour when the defendant without any cause or provocation left the plaintiff, saying she had but the one errand in New York that day, which was accomplished, and that she was going to her home in Keyport, in New Jersey.

5.—That the plaintiff never met the defendant but once after the 10th day of August, 1885, and that 30
meeting was on the streets of Keyport, New Jersey, when he walked with her as far as her father's gate.

6.—That said marriage was never consummated by copulation or sexual intercourse between the parties.

7.—That said plaintiff (William G. Fairchild) was induced to marry said defendant (Nettie F. Fairchild) by and through false and fraudulent representations made to the plaintiff by the defendant (which said defendant knew to be false), and fraud and threats amounting to duress.

8.—That said defendant (Nellie F. Fairchild) was personally and lawfully served with summons and appeared and answered in this action by S. A. Sheldon, Esq., her attorney, and took depositions and submitted evidence and argument in opposition to granting to the plaintiff a divorce in this action.

And, as Conclusions of Law, the said Referee has found and reported to this Court in substance as follows, to-wit :

10 1. That the said marriage contract between the plaintiff (William G. Fairchild) and defendant (Nettie F. Fairchild) was procured through fraud and unwarranted threats of said defendant.

2.—That the said marriage is void by reason of the fraud on the part of the defendant in procuring it.

3.—That the plaintiff should be divorced absolutely from the defendant and from the bonds of matrimony with her.

4.—That the defendant should pay the costs of this action.

20 Now on this 4th day of October, 1888, the said action coming on for further hearing on the findings of fact and conclusions of law, and exceptions thereto filed by said defendant and reported to this Court by the said Referee, said L. K. Soper, Esq., the plaintiff appearing by H. C. Johns, his attorney, and the defendant appearing by S. A. Sheldon, Esq., her attorney, and after argument by counsel and due consideration by the Court, the said exceptions of said defendant are overruled and disallowed and said findings of fact and conclusions of law of said Referee herein are affirmed. Wherefore it is considered, ordered and adjudged by the Court that the said plaintiff, the said William G. Fairchild, be and he is hereby divorced from the said defendant, the said Nettie F. Fairchild, and that the bonds of matrimony heretofore existing between said plaintiff and said defendant be and the same are hereby annulled, dissolved and held for naught, and that the costs of this action, taxed at \$132.-

30 29, be paid by the defendant, to all of which defendant

40

objects
for the

J

I

Between

Exam
by an
Master
ferred
the cor
the de
A. D.

SAM
of the
follow

By A.
I liv
I an
My
with h
her pa
She
parent
Abc
the da
York

X
a

objects and excepts and is allowed 60 to make a case for the Supreme Court.

J. C. STRANG,
Judge of the 16th Judicial District of Kansas.



IN CHANCERY OF NEW JERSEY.

Between— NETTIE F. FAIRCHILD, AND WILLIAM G. FAIRCHILD, Compl't, Def't.	} On Bill, &c,	10
--	----------------	----

Examination of witnesses in the above-entitled cause by and before William H. Vredenburg, Advisory Master of said Court, to whom the cause has been referred in the presence of A. Walling, Jr., solicitor of the complainant, and Leon Abbett, Jr., of counsel with the defendant, taken at Freehold, N. J., July 5th, A. D. 1894. 20

SAMUEL E. MAYNARD, a witness produced on the part of the complainant, being duly sworn, testifies as follows:

By A. WALLING, JR. : 30

I live at 460 Lafayette avenue, Brooklyn.

I am a brother of the complainant.

My sister lived in 1885 at Keyport, New Jersey, with her parents. She had lived there all her life with her parents, at least twenty years.

She lived there until 1888 I am sure, with her parents.

About that time, as near as I can now remember, the date she moved away with her parents to New York and since to Brooklyn where she now resides. 40

** Replication filed May 17, 1894,
as follows:*

I knew the defendant William G. Fairchild. I have known him 20 or 25 years. He lived in 1885 and prior thereto during my acquaintance with him, he lived at Keyport.

He lived there with his parents. I left Keyport in 1880.

I was in business in New York in 1885, 1886 and 1887.

In the produce commission business for the firm of
10 Lutz & Oetjen, 331 Washington street, New York City.

I stopped business with that firm in 1886, about the first of August, 1886.

331 Washington street, New York, is a place of business, and was all the time I was there and had been for twenty years before.

Q. Did you ever receive at or from No. 331 Wash-
ington street, New York City, a letter directed to
20 Nettie F. Fairchild or Nettie F. Maynard, from the State of Kansas?

Objected to as being irrelevant and immaterial.

A. No, sir; I never did.

CROSS-EXAMINATION BY MR. ABBETT:

I was book-keeper and cashier for the firm I was with. I attended to other work in the store besides that. Since I left that firm in 1886, my business has been a book-keeper somewheres else.

30 I reside with my parents at 460 Lafayette avenue, Brooklyn. I resided at Robinson's Hotel, in Greenwich street, in 1880. No, sir, I didn't reside there up to the time I resided with my parents.

I resided at Fourteenth street, for one place, since I left that hotel. I am a married man.

Q. What year was you married?

A. In 1884.

Q. Are you and your wife now living together?

A. No, sir.

40 Q. Did your wife obtain a divorce from you in the State of New York, on statutory grounds?

A. N
Q. H
apart
A. A
I vis
frequen
child at
There
the tim
I don
1885.
I kne
I didn'
him thr
Br MR
Durin
there b
tence n
I was
I wor
had bee
mail; I
RE-Ex
Q. V
plainan
New Y
No,
NETT
sworn i
By MR
I am
460 Laf
Keypor
I reside

A. No, sir, my wife is not divorced from me.

Q. How long have you and your wife been living apart?

A. About five years.

I visited Keyport between 1880 and 1885, very frequently. There was no one by the name of Fairchild at 331 Washington street.

There was never any one by that name there during the time I was employed there.

I don't know L. J. Noel now; I did know him about 1885. 10

I knew him for a short time after that, that is to say I didn't know him, I was brought in contact with him through the Fairchilds, the defendant.

By MR. VREDENBURGH:

During the firm's existence there was never any one there by the name of Fairchild; they are out of existence now, I think, I left about August, 1886.

I was with another concern after that.

I would have seen while I was there a letter if there had been one directed to Fairchild. I opened all the mail; had charge of that. 20

RE-EXAMINED BY MR. WALLING:

Q. Was any mail ever sent to your sister, the complainant in this case, to No. 331 Washington street, New York City.

Objected to by Mr. Abbett on the ground as not being re-direct.

No, sir.

30

NETTIE F. FAIRCHILD, the complainant, being duly sworn in her own behalf, testifies as follows:

By MR. WALLING:

I am the complainant in this case. I now reside at 460 Lafayette avenue, Brooklyn. I resided in 1885 at Keyport, New Jersey, with my parents. Before 1885 I resided in Keyport all my life, I might say. 40

I was born in 1861.

I was born in New York City. I was eight or nine years old perhaps when I came to Keyport and resided there continuously from that time to 1885 in Keyport and from 1885 to on to 1888, I think, all the time with my parents.

I became acquainted with the defendant, William G. Fairchild, when I was about fourteen or fifteen years of age ; he lived in Keyport, New Jersey, at that time
10 with his parents.

I lived on First street. He lived on First street.

I was married to the defendant August 10th, 1885, at Dr. Brouner's, in West 11th street, New York City, by Dr. Brouner. He was the Minister of the Baptist Church in 11th street. Prior to our marriage my husband visited me at my father's house in Keyport, from the time I first knew him until after we were married.

Prior to our marriage, about three years, he visited me whenever it was convenient, sometimes once, and
20 sometimes twice, and sometimes three times a day.

After my marriage in the city I came back to Keyport, to my father's home ; my husband did not return with me.

I next saw him the following Saturday evening following the marriage. The marriage was on the preceding Monday.

I saw him that Saturday evening at my father's house.

He came there that Saturday evening. I am not
30 positive how long he remained ; about one hour, probably.

After we were married we took a Sixth avenue car and came down to Vesey street, and he walked with me to the boat.

Our marriage was consummated by cohabitation that Saturday evening at my father's house.

I saw him the following Sunday afternoon.

I saw him at my father's house ; he came to my father's house at that time. I think I next saw him

some time
about it
On one
he would
for me in
never see
My hu
riage.
He co
I recei
sion Bri
All th
after ou
think I
Decemb
spoke.
My hu
my supp
I neve
from hi
He ha
sel. I
Imme
my par
I the
office p
my par
time.
I firs
New Y
June (t
August
part of
His
Army
about f
there v
during
at 21 U
Union

some time that following week ; I am not positive about it ; it seems so to me now ; I mean as to the time.

On one of the occasions after our marriage, he said he would have to go away, and would make a home for me in the West, and I could come to him. I have never seen him since that last occasion I have spoken of.

My husband corresponded with me before our marriage.

He corresponded with me after the marriage.

I received a letter after my marriage from Suspension Bridge, dated Suspension Bridge. 10

All the correspondence my husband had with me after our marriage was within a month. After that I think I received one letter. I received a letter in December in that year. I had forgotten that when I spoke.

My husband has never contributed anything towards my support.

I never have directly or indirectly received anything from him for my maintenance since our marriage. 20

He has paid something into Court and to my counsel. I don't mean that.

Immediately after my marriage I was supported by my parents, and for nearly three years.

I then maintained myself in part. I accepted an office position in New York City ; that was before my parents moved away from Keyport just a short time.

I first accepted employment at 65 East 12th street, New York City, with Austin & Co. I went there in 30 June (the latter part) of 1888, and worked there until August, the latter part, or it might have been the first part of September.

His business was compiling a directory for the Grand Army Republic. When I first went there there was about four or five ; when I left, or when they disbanded, there was anywhere from twenty-five to thirty. I think during September and a short time in October I worked at 21 University Place, called the Writers' Publishing Union or Company ; I am not certain which. I remained 40

there until our family moved up sometime in October. I didn't accept a position from that time until—I think it was some time in March, 1889, with Longmans, Green & Co., it is in East 16th St. I have forgotten the number.

I think it was a year and a half, it was over a year. Then I went from there to David Williams, publisher, 56 Duane St., and then they moved to 96 Reade St. I remained with that firm until last May. Since then
 10 only occasionally I have had employment, no steady employment.

At the time I instituted this suit against my husband I did not know that any divorce suit had been begun against me in the West. After this suit was begun I first heard that my husband had obtained a decree against me for divorce. I was living at Keyport at that time, I was keeping the Walling House there; my home was with my parents just the same. I had not then received nor have I at any time received any notice of those divorce proceedings.
 20

Counsel for complainant here offers in evidence certified copy of the proceedings and decree in the case of William G. Fairchild against Nettie F. Fairchild in the District Court of the Twentieth Judicial District of the State of Kansas, duly certified. Counsel for defendant waives the certificate of exemplification and subject to inspection and examination admits these proceedings and decree in evidence as if they were exemplified.
 30

After my marriage and until March, 1887, I continued to reside in Keyport as I had resided there before all my life nearly. I last saw my husband in Keyport after our marriage. I believe his parents continued to reside in Keyport after the marriage, they have never moved away from Keyport.

Q. Did you in any way, directly or indirectly, before you commenced this suit, have any notice or
 40 knowledge that proceedings had been brought by your

husband against you for divorce in the State of Kansas
or elsewhere?

A. No, sir.

My husband requested me to keep our marriage a se-
cret at the time we were married.

He directed a letter to me after our marriage from
New York City before he went away to the West.

I gave my husband no reason to leave me the way
he did after our marriage.

Q. So far as you know, where has your husband re- 10
sided since you last saw him after the marriage on the
occasion you spoke of?

A. In the West.

Q. Has he ever sent for you to come to live with
him in the West?

A. Only by letter.

Q. What did he request by letter?

A. Would I come to live with him knowing all this.
I replied to that letter.

Counsel for complainant notifies counsel for 20
the defendant to produce a letter from the com-
plainant to the defendant dated Keyport, March
15th, 1886.

I have a copy of the reply I made to the letter sent
to me by my husband. I think it was sent to my hus-
band through Mr. Noel by my brother.

Witness is shown what purports to be a copy
of the letter last referred to her reply. 30

Q. Is that a copy of the letter which you sent to
your husband in response to his letter to which you
have referred to?

Counsel for defendant objects to the copy on
the ground that it is a copy and not the original.

The copy referred to is marked Exhibit A for
identification, and the ruling upon the objection
is withheld by the Master for the present.

I received no reply to the letter I sent my husband, 40
as I have just stated.

I have never heard from him since, directly.

He has never made any request since then for me to live with him. He has not since then informed me of his whereabouts.

I received two letters at Keyport. I also received them through my brother at 331 Washington street, New York City.

I had a conversation with my husband at different times with respect to the property owned by him.

- 10 In one instance he referred to having an interest in a café, and often spoke of when he was twenty-five of coming into a good deal of property.

CROSS-EXAMINATION BY MR. ABBETT :

These conversations in regard to an interest in a café took place both before and after our marriage.

I was mostly at home when these conversations took place.

- 20 I can't tell the number of conversations in regard to that matter we had.

I think this matter was referred to once after our marriage; the day we were married.

He never spoke of it again after that.

I don't remember the conversation that day about the interest in the café, except that it was referred to.

I don't remember what he stated about it.

The conversation which took place before our marriage was to the effect that he had received enough from it to support a wife.

- 30 I recollect that there was some definite amount but I can't remember what amount it was.

He did not state to me before our marriage what property he was coming into when he was twenty-five years old.

He simply stated that it was a good deal of property.

He mentioned them to me when he was urging me to marry him.

- 40 During that year he commenced urging me to marry him, I think it was February or March of that year he

formally asked me to marry him, and after that he repeated them.

I don't remember how many letters I received from the defendant through my brother.

I received two direct at Keyport, not through my brother.

I don't remember how many I received through my brother, I think they are all in evidence, I mean in the previous suits.

I think there were more than two I got through my brother from Mr. Fairchild. 10

I don't remember how those letters were addressed that came through my brother.

They came to him in New York.

It was after my marriage in the year 1885.

I never received any through my brother after 1885.

I don't remember whether I ever received any letters any other way than at Keyport and through my brother.

I do not know where the defendant resides at the present time. 20

I have not heard where he resides.

I did not offer to live with my husband at the time he was in Keyport.

I did not see him at the time referred to in my main examination, when I spoke of not having heard of the divorce in Kansas until the occasion of his coming to Keyport.

I did not see him on that occasion.

The last time I ever saw William G. Fairchild was the week following our marriage at Keyport; he sent a letter through by his cousin Eddie Sprague for me to come and meet him as he didn't care to come to the house again, it was in pursuance of that letter that I saw him. 30

That part in relation to the letter is stricken out by order of the Master.

I don't know whether that was the first or latter part of the week following the marriage that I met him. 40

I don't remember whether it was Monday or not.

I am not positive about the day but I think it must have been some day previous to the latter part as I think he left the city during that week.

Those letters that I referred to as being brought to my brother were carried to him as I understand it by Mr. Noel, Mr. L. J. Noel.

I know of Mr. Noel through a letter of introduction by my husband.

10 I think I did at that time know Mr. Noel's address; I don't remember it now.

I saw Mr. Noel in pursuance of that letter of introduction.

Not at his place of business.

I saw him at the Astor House, an engagement made for me and Mr. Noel by William Fairchild.

The meeting was in the ladies' parlor at the Astor House.

20 I received word that my husband lived in the West from some lawyers that came here to try and settle the claim as they spoke of it.

I knew at that time only through them that he was residing in the West, if I knew what part of the West it was when these lawyers spoke to me I have forgotten it now.

I think the last letter I received through my brother was in December, 1885.

30 I don't remember the date or dates that my husband spoke to me about keeping our marriage a secret, but at each time it was spoken of he said that it would be a quiet wedding. I didn't think of any distinction at that time of a secret marriage and a quiet one.

Just how soon after Mr. Fairchild proposed to me I do not remember when it was he spoke about a secret or quiet marriage. Between the time he proposed to me and the time of the secret marriage I never told any one of my engagement.

40 During the time I was in New York I lived there from Monday until Saturday, and I came to my home on Saturdays.

Durin
port ver
until Mo
The d
port for
I don
I kept
tember.
I first
June, 1
I got
cashier
I left
practica
I an
Writers
Miss
Publish
Green
My s
Co. ho
mans,
I le
this ot
home.
I dic
employ
Wh
Co. I
I bo
Waver
at 101
New
Wh
them
any ti
I vi
I ca
age b

During the time I was in New York, I was in Keyport very little—only Saturday and Sunday—stayed until Monday morning.

The defendant's parents were often away from Keyport for some time.

I don't remember whether it was 1886 or 1887 that I kept the Walling house, it was from May until September.

I first seeked employment to help support myself in June, 1888, I think. 10

I got employment with Austin & Co., through the cashier of the St. Denis Hotel.

I left the employ of Austin & Co., because the firm practically suspended their business for a short time.

I answered an advertisement for the position in Writers' Publishing Co., which procured it for me.

Miss Jackson, who was the manager of the Writers' Publishing Co., procured me the position in Longmans, Green & Co.

My sister was employed in the David Williams & 20 Co. house and she knew of a vacancy and I left Longmans, Green & Co.

I left Longmans, Green & Co. because I thought this other position was a better one; it was nearer my home.

I did not board in New York during all this time of employment during the week.

When I first procured employment with Austin & Co. I boarded in New York during the week.

I boarded with a lady by the name of Ingoldsby, 136 30 Waverly Place, New York City. I boarded one week at 101 Waverly Place previous to my family coming to New York.

When my family came to New York I lived with them of course. I was not in business in New York any time before I went to Austin & Co.

I visited New York at various times before that.

I can't say how often I visited New York on an average before that.

I did earn enough from these employments to support myself.

Our residence from the residence of the defendant at the time we lived at Keyport was about two New York blocks.

I was married on Monday. We decided to get married on that day when we got in the city I believe. We went up on the same boat together. We met on the boat.

- 10 I saw him the Sunday before. I remarked that I was going to the city on Monday. We did not make any arrangements to meet on the day before.

The matter of marriage was first spoken of that day on the boat.

I don't remember how the matter was broached, but at any rate he said we would be married that day, and I said I guess it was too sudden and I objected to it.

I withdrew my objection when we were at lunch.

- 20 I think the boat reaches there at New York about quarter of nine during the summer time.

From nine until about twelve or one I did some shopping.

We married after one o'clock ; I don't just remember the time.

I didn't see my husband from that time we parted at the boat until the Saturday of that week.

He called on me that Saturday at my father's house in the evening. I received him in the parlor.

I remained in the parlor the whole time of his call.

- 30 The rest of the family were home when he came; I don't remember the time he came.

I can't tell how long it was after he called the rest of the family went, but he remained about an hour.

He called on me on Sunday afternoon.

I cohabited with him on Sunday also, after the Saturday night he was there. I received him Sunday in the parlor also.

There were other members of the family home on Sunday during the whole time of this visit.

I rem
his visit

I new
that.

He sp
go away

Re-Exa

Q. M
you rec
marriage

A. T
and we
sion.

Q. Y
ceived
someth
all this

The

I kep
last ref

Q. I
mark I
is a cop
in repl

The

suspen
I ser
Noel.
My

I remained in the parlor during the whole time of his visit.

I never cohabited with him any time again after that.

He spoke to me of his reasons for being obliged to go away.

RECESS UNTIL 2.15 P. M.

RE-EXAMINATION BY MR. WALLING :

Q. Mrs. Fairchild, you have spoken of letters that you received from your husband before and after your marriage; where are the originals? 10

A. They were used as evidence in the second case and were sent out there; they are not in my possession. I retained copies of them.

Q. You have spoken of your reply to a letter received from your husband in which occurred a phrase something like this: "Will you live with me knowing all this?" in your reply did you offer to live with him? 20

Objected to on the ground of stating a conclusion which has not yet been reached, and also object to any answer that may state the contents of another letter unless original letters are produced.

The last question is withdrawn for the present.

I kept a copy of the reply to my husband's letter last referred to.

Q. I show you this paper which I ask the Master to mark Exhibit B for identification, and ask you if that is a copy of the letter that you sent to your husband in reply to the letter of his last referred to? 30

Objected to on the ground that the original should be produced.

The further evidence with reference to this copy suspended at present.

I sent the reply through my brother to give to Mr. Noel.

My husband's letter came through Mr. Noel and 40

from him to my brother and my reply was returned through the same channel.

Q. You have spoken of receiving letters from your husband after you were married through your brother. Were the envelopes enclosing these letters post-marked?

A. No, sir.

I supposed my brother received them from Mr. Noels. After I started this suit my husband came to Key-

10 port but did not come to see me.

RE-CROSS BY MR. ABBETT :

I do not know that my husband was detained anywhere which prevented him from seeing me.

I know that my husband was arrested in this suit at my instance.

I did general office work at Austin & Co.'s; my hours from nine A. M. until 5 or half-past 5 in the afternoons.

20 The establishment did not occupy the whole building. They occupied the parlor floor.

Mrs. JANETTE MAYNARD, a witness produced on the part of the complainant, being duly sworn, testified as follows :

BY MR. WALLING :

30 I live at 460 Lafayette avenue, Brooklyn, and am the mother of the complainant in this case. I lived in 1885 at Keyport, N. J., and had lived there previous to that for about eighteen or twenty years; we moved from Keyport in 1888 or 1889. My daughter lived with me while we were in Keyport all the time up to a few months before we moved; she had gone to New York then.

I know the defendant, William G. Fairchild, and have known him fifteen years.

40 I did not know of my daughter's marriage at the time it occurred. I think I learned of it two days after, my daughter told me.

The defendant was in the habit of visiting our house prior to the marriage; he was there very frequently, once a day if he was in the place or oftener.

I saw the defendant at my house after the date when I learned the marriage took place, I seen him there twice. He was in the parlor with the complainant, my daughter.

I have never seen the defendant since he was at my house at that time.

Before my daughter went to New York after her marriage she was supported by her parents. 10

CROSS-EXAMINATION BY MR. ABBETT :

I did not have any conversation with the defendant at the time he was at my house after my daughter's marriage.

The first time I saw him at my house after the marriage I think it was on a Saturday.

I had nothing to say to him at that time.

I knew at that time that he was the husband of my daughter. I had nothing to say to him about coming to my house the first time he called after the marriage for reasons. 20

The next time I saw him at my house I think was Sunday afternoon, the next day.

I had no conversation with him at that time for the same reasons. I did not state to my daughter that I did not want him to call at the house.

I did not see him after he was at my house that Sunday afternoon. 30

Mrs. GRACE EDMUNDS, a witness produced on the part of the complainant, being duly sworn, testifies as follows :

I live at 145 Lexington avenue, Brooklyn, and am a sister of the complainant in this case.

I lived for more than ten years prior to 1887 at Key- 40

port with my parents. My parents moved to New York in October and I went in November, 1888.

I had employment in Keyport prior to my moving away from there.

I was employed by B. B. Ogden and A. Walling, Jr.

I must have been with them nearly six years.

I know the defendant, William G. Fairchild.

I am acquainted with his handwriting.

I was called upon to make copies of letters that my
10 sister had received from him.

Witness is shown papers purporting to be copies of letters of the defendant in this case— one dated August 11th, 1885, marked Exhibit C for identification ; one without date marked Exhibit D for identification ; one dated August 18th, 1885, marked Exhibit E for identification ; one headed Suspension Bridge, Canada, without date, marked Exhibit F for identification and
20 one dated Cheyenne, August 29, 1885, marked Exhibit G for identification.

Q. I ask you now to look those all over and see if they are in your handwriting ?

A. Exhibits C and D are in my handwriting ; the others are not.

Q. From what did you make those copies Exhibits C & D ?

A. From the original letters in the handwriting of Mr. Fairchild.

30 The defendant was in the habit of calling at my mother's house prior to the marriage with my sister.

All the time he was always there.

CROSS-EXAMINATION BY MR. ABBETT :

I mean by all the time that any time you went to go in the parlor Mr. Fairchild was always there.

Those frequent visits from him commenced as far back as I could remember ; say since 1880 or 1881.

I noticed his frequent visits for at least ten years
40 before my sister's marriage.

During that time he used to call once a day.

When he was in the town he was most always in the house. He was away from the town on trips away during those ten years, but when at home he was most always at our house.

I don't think he was away from Keyport during those ten years more than half the time.

I think just before my sister's marriage he was at Keyport frequently. I don't think he was away for any length of time. I believe I saw Mr. Fairchild at our house after my sister's marriage; it was the Saturday and Sunday after the marriage. I believe he was there in the evening on Saturday. I couldn't tell you the time it was he called. I don't know what time he left, probably about nine o'clock. I didn't see him when he left that evening. I may not have been in the house when he left. We had a hammock in the yard. I may have been in that. 10

The hammock was out by two willow trees. I think I let him in was the reason I noticed he was there, I might have had a conversation with him when I let him in, I don't remember. 20

I don't know of any conversation that I can recall that I had with him. I can't tell where my mother was that evening.

My sister was home, I am sure about it.

I don't remember whether other members of the family was home that evening or not.

I saw him the next day. I can't tell what time he called that day. I did not let him in that time that I now recall; may have done so. He didn't stay to tea that day. 30

I can't recall any conversation I had with him that day.

I think I saw him come off the boat the night he was arrested.

I had no conversation with him at that time.

I don't remember when I knew of my sister's marriage to Mr. Fairchild, it was some time after the marriage. 40

I did not know of my sister's marriage with Mr. Fairchild at the times he called that I have mentioned above.

I have been married four years this fall.

The complainant, being recalled in her own behalf:

BY MR. WALLING .

I was familiar with my husband's handwriting.

10 Q. I show you papers purporting to be copies of letters of your husband which have been marked for identification Exhibits E, F and G, and ask you in whose handwriting those papers are?

A. They are my handwriting.

Q. From what did you make those copies?

A. From the original letters from my husband that I had received.

Q. And those originals are some of the originals you say you sent West in the suit?

A. Yes, sir.

20 Those are exact copies I made of the originals.

CROSS-EXAMINATION BY MR. ABBOTT:

The suit I mention is the second divorce suit in the West. They were sent West in connection with my testimony. My testimony was to contest that suit. I had attorneys there that represented me in that suit.

BY MR. WALLING:

30 Q. In the second suit that your husband brought against you for divorce the existence of the prior decree was brought to the attention of the Court by your evidence, was it not?

Objected to on the ground that the record in that suit will show what evidence is before the Court and that that record is the best evidence to show what was before the Court.

40 Counsel for complainant offers in evidence the record of the decree for divorce obtained by the defendant in this suit from the complainant in the Twentieth Judicial District of the State of Kansas referred to in the foregoing testi-

NETTIE

I ha

and I

would

of the

"H

never l

The

raggs,

having

she onl

pelled

The

ceived,

you ha

that yo

he wou

which

him I

of July

16th),

That

I had

mony and being the decree of divorce referred to by the complainant in this cause.

Also offers in evidence the copy of the letter referred to in the foregoing testimony sent by the complainant to the defendant and marked Exhibit B for identification. Also offers the paper referred to as Exhibit A for identification, also offers in evidence the copies of the defendant's letters referred to in the foregoing testimony and marked Exhibits C, D, E, F & G for 10 identification. Counsel for defendant objects to the admission of copies of letters in evidence on the ground that they are not the best evidence.

COL. Feb. 26th, '86.

NETTIE :

I have received a valentine which is a personal insult and I know of no one except *you* or your family who would stoop to so mean an act. I will quote two lines 20 of the thing.

"He should be fed on sugar teat all his life, and never know the pleasure of having a wife."

The sugar *you* gave me is gone and left only the raggs, but no one wants to know the pleasure of having a wife when he has "known" her before and she only became his wife when he thought he was compelled to accept her.

The last letter of yours sent to Cheyenne that I received, you stated that you had become so *sick* that 30 you had taken Dr. Arrowsmith in your confidence, that you had asked him to cause a miscarriage. That he would not do it, but had given you some *medicine* which had relieved your distress. That you also told him I had been with you only twice, once on the 15th of July (if I remember—and I think I do—it was the 16th), and once after marriage.

That you wrote me so I could tell the same story. I had father call on Dr. and ask him if you had ever

taken him in your confidence. If you had ever been in the family way, etc.

He said "No." You had never said a word to him and you had not been in the family way.

Why did you write me any such stuff? Did you think I would never find out any of your lies or had you been feeding me on "sugar" so long you thought you could continue the dose?

Now, in yours of September 12th, you write:
 10 "When you write to me in plain words that you married me because you were forced to—felt duty bound to do so—that you do not care for me at all for a wife; that you would rather be quietly settled in New York as you were six weeks ago; that you earnestly desire the marriage entered into August 10, 1885, annulled. When you write these words to me there will be but one person's wish in the matter, and that will be yours."

I now write them and *mean* every word. I could
 20 not express my feelings and wishes any better than by copying your own words.

My only greater wish is that I had not been such a fool as to get in a trap designedly set for me.

Will you live with me knowing all this?

W. G. FAIRCHILD.

Address :

Care of LEN. J. NOEL,
 231 Broadway,
 New York City.

30

40

IN CHANCERY OF NEW JERSEY.

Between NETTIE F. FAIRCHILD,
Complt.

AND

WILLIAM G. FAIRCHILD,
Deft.

10

Transcript of evidence taken in the above-stated cause, before Hon. W. H. VREDENBURGH, Advisory Master, at the Chancery Chambers in Jersey City, July 13th, 1894, at 11 A. M.

APPEARANCES :

A. WALLING, JR., Esq., for Complainant.

LEON ABBETT, JR., Esq., for Defendant.

20

MR. WALLING : I wish to further offer in evidence the General Statutes of Kansas, relating to divorce. I supposed I could get a copy in the library, but I have not been able to do so. I offer all the laws of Kansas bearing on the subject of divorce.

SAMUEL E. MAYNARD, being recalled in behalf of complainant, saith :

EXAMINED BY MR. WALLING :

30

Q. How did you first become acquainted with L. J. Noel referred to in the testimony ?

A. He introduced himself to me.

Q. Had you met him before that ?

A. No, sir ; not to know him.

Q. Where was that ?

A. At my place of business, 331 Washington street.

Q. Did he afterwards hand you a letter to be given to your sister, the complainant in this case ?

A. He did at the time he introduced himself.

40

Q. And the letters which you carried to your sister you received from him ?

A. Well, some of them from him personally, some of them from a messenger.

Q. Did you receive none through the mail ?

A. No, sir.

Q. Do you remember how the letters you received from him for your sister were addressed.

A. I think they were addressed to Nettie F. Maynard.

Q. At what place ?

A. Keyport, New Jersey.

Q. Did they come through the mail at all ?

A. No, sir.

Q. I show you a paper marked in this case Exhibit B, for identification, and ask you to read it. Witness having done so says :

A. Yes.

Q. Were you requested to take any letter to Mr. Noel from her after you received letters for your sister from Mr. Noel, were you requested to take any letters to her ?

A. Yes, sir.

Q. Did you see the letter that was inclosed that you took to him ?

A. Most always ; it was generally sent to me unsealed and then I read it and sealed it.

Q. Were you requested to read one in particular ?

A. Yes, sir.

Q. I ask you if the paper already shown you, Exhibit B, is a copy of that one ?

A. I delivered the original of that personally to Mr. Noel.

CROSS-EXAMINATION BY MR. ABBETT :

Q. At the time you received these letters from Mr. Noel did you know your sister had been married ?

A. Yes, sir.

Q. Did you make any comment as to their being directed to Nettie F. Maynard ?

A. I don't remember whether I did or not, I think I did, but I think we talked of it casually.

Q. Tell me what was said about it, why they were directed in that way?

A. I don't remember.

Q. Your sister's name at that time was not Nettie F. Maynard?

A. It was not, no, sir.

Q. Did you deliver these letters directly to your sister?

10

A. Yes, sir.

COMPLAINANT RESTS.

FRANK MALOSSE, a witness produced in behalf of defendant, being duly sworn according to law on his oath, says:

EXAMINED BY MR. ABBETT :

20

Q. Did you ever occupy the building No. 65 East 12th Street, New York City?

A. Yes, sir; three years.

Q. Did you occupy it in 1888?

A. Yes, sir.

Q. During the summer of 1888?

A. Yes, sir; I occupied that house, me and my wife.

Q. You had a lease of that place?

A. Yes, sir; a three years' lease.

30

Q. And you were there during the months of June, July, August and September, 1888?

A. Yes, sir.

Q. Did you ever lease any part of that building to a firm by the name of Austin & Co.?

A. No, sir.

Q. Was there ever any firm there who were compiling a directory of the Grand Army of the Republic?

A. No, sir; only for gentlemen and ladies. I never heard it was rented for any business purposes, only for 40

ladies and gentlemen, and they occupied only furnished rooms.

Q. You kept only furnished rooms ?

A. That is all.

Q. Was there ever any commercial business or compiling of directories carried on on the parlor floor of that building ?

A. No, sir.

10 Q. Do you know whether there was a factory on this side of your building at No. 63 East 12th Street ?

A. Yes, sir ; there was one, costumers for the theatre.

Q. Do you remember the name of the men who carried that business on ?

A. No, sir ; I never asked the name.

CROSS-EXAMINATION BY MR. WALLING :

Q. From whom did you lease this property ?

20 A. From Mr.—I forget the name, I only leased it from the agent.

Q. From the agent ?

A. Yes, sir.

Q. Where was the place of business ?

A. 33 Howard street.

Q. When did your lease begin ?

A. In 1887.

Q. And you had a three years' lease ?

A. Yes, sir.

30 Q. Did you occupy the property during the entire three years ?

A. Yes, sir ; right along.

Q. You were there during the entire year of 1888 ?

A. Yes, sir.

Q. Did you occupy the entire house ?

A. Yes, sir.

Q. You occupied every part of it ?

A. The whole house, fourteen rooms.

Q. Did you have any tenant of the parlor floor in June, 1888 ?

A. Well, I suppose so ; my parlors was occupied all the time.

Q. They were rented all during 1888, your parlors ?

A. Yes, sir.

Q. To whom did you rent them in 1888 ?

A. Well, about that time I kept the parlor for myself.

Q. You say you rented them ; who did you rent them to ?

A. I kept them myself, and that time I kept two or 10 three girls there ; I had some fast women there.

Q. You had some fast women living there in June, 1888 ?

A. Yes ; about that time.

Q. You kept some fast women there in June, 1888 ?

A. Yes ; about that time.

Q. Did you ever have a tenant by the name of Austin ?

A. I cannot remember that name, I have so many people passing through. 20

Q. Did you ever rent part of your premises to a man of the name of Austin ?

A. I cannot remember, because it is six years ago.

Q. You can't remember ?

A. No, sir ; I have thousands of people passing to and fro.

Q. Do you remember a firm of the name of Austin & Co. who advertised their place of business as 65 East 12th street and occupied that parlor floor in June and for several months after in 1888 ? 30

A. No, sir.

THE COURT :

Q. Did you have any written lease with the parties who occupied your apartments there ?

A. No, sir.

MR. WALLING :

Q. Do you read English ?

A. No, sir ; only a few.

Q. Can you read that paper (handing witness Exhibit I for identification) ? 40

A. No, sir ; I cannot read it.

Q. Where do you live now ?

A. 39 and 308 East 12th street.

Q. What is your business ?

A. I let furnished rooms. I keep a furnished room house.

Q. That is, you occupy rooms where people go to have improper intercourse ?

A. Not now. I used to do that before ; six years ago.

Q. You now say you keep a respectable house ?

A. Yes, sir.

Q. And six years ago you kept a bad house ?

A. No, sir ; not a bad house. I kept two or three women there on the parlor floor.

Q. At any time during your occupation of that property, did you rent the parlors to a man of the name of Austin, or any other man that carried on a business there ?

A. I cannot remember names.

Q. You did rent it to some one ?

A. I did rent it to some one, but I kept the parlor for myself. I had my own business there.

Q. You did, at some time, rent the parlor floor to a person who carried on a business there ?

A. I don't understand what you mean.

Q. You rented it to some one, didn't you, that had as many as twenty-five employees writing there, and typewriters in the parlor ?

A. No, sir ; nothing of the kind.

Q. Nothing of that kind ?

A. No, sir.

Q. At no time had you no person there who had typewriters and carried on a business there ?

A. No, sir ; not at all.

COLIN
fendant,
oath said

EXAMINE

Q. W

A. TH

Q. W

A. A

Q. W

1888 and

A. W

been a c

was ther

Q. Y

A. I I

Q. Fr

there ?

A. Y

Q. W

A. 63

Q. Di

here test

A. OI

Q. W

A. He

next doc

Q. W

you coul

Twelfth

A. Ye

nected w

it extend

could lo

rear of I

Q. Y

A. Y

Q. Ar

A. 65

COLIN S. EAVES, a witness produced in behalf of defendant, being duly sworn, according to law, on his oath saith :

EXAMINED BY MR. ABBETT :

Q. What is your present business ?

A. Theatrical manager at present.

Q. What was your business in the summer of 1888 ?

A. A manufacturer of theatrical costumes. 10

Q. Were you in that business some little time before 1888 and afterwards ?

A. Well, I was in that business ever since I have been a child, ever since I was sixteen years old, and I was there until 1891 at 63 East Twelfth street.

Q. You were there, how do you mean ?

A. I lived there for ten years.

Q. From 1881 to 1891, you are sure you were there ?

A. Yes, sir. 20

Q. What was the number of your place of business ?

A. 63 East Twelfth street.

Q. Did you ever see this gentleman that was just here testifying ?

A. Oh, yes ; every day.

Q. Who was he—was he in that neighborhood ?

A. He lived next door to me, he occupied this house next door, No. 65 East Twelfth street.

Q. Was there any part of your factory from which you could see the rear of the building, No. 65 East Twelfth street ? 30

A. Yes, sir ; our factory had a rear building connected with the front building by an extension, that is it extended beyond the line of that building so that you could look right into the rear of No. 65, the entire rear of No. 65 was right in full view.

Q. Your factory was in the shape of an "L" ?

A. Yes, sir.

Q. And you could see into the rear of No. 65 ?

A. 65, 63 and 67 was right open to us in the rear, 40

especially No. 65, because we were right in a line with the building there.

Q. Did you ever see any business signs on the front of No. 65 East Twelfth street ?

A. There never was any signs there except "Furnished rooms to let," simply a notice pasted up in paper in writing.

Q. Did you ever see a sign there of a firm of the name of Austin & Co. ?

10 A. I never did.

Q. Did you ever know of a firm of Austin & Co., compilers of a directory of the Grand Army of the Republic, occupying that building ?

A. I never did ; I never knew of any business being carried on there.

Q. Do you think if there had been a firm there employing ten, twenty or thirty hands, you would have been liable to notice it ?

20 A. I think I would have seen them going in and out ; I know I would have seen them from the rear windows also.

Q. Did you ever see anything going on in No. 65 East 12th street from your rear rooms ?

A. Yes, sir ; I saw a great many things.

Q. What is on the rear of the parlor floor of 65 East 12th street ; how is it built ?

A. Well, there was an extension with a French window in it opening from top to bottom, it was a glass extension.

30 Q. All glass ?

A. The windows were very wide and two of them took up from the ground up to the ceiling, and there was—from there you could see the entire floor, you could see right down to the floor, there were no sills, and the windows were right open all the way up to the ceiling.

Q. So that you could see better in there than in an ordinary window ?

40 A. Yes, sir ; the view was not cut off any by the sill, the sill was only six or seven inches high.

Q. D
A.
house, y
Q. D
there ?
A. Y
right b
bathed
Q. W
tension
A. W
Q. W
A. W
tle, but
tension
—the e
Q. D
parlor f
tory of
A. I
Q. A
A. N
ness at
Q. D
during
A. V
the hou
Q. W
A. Y
because
time it
Q. V
the nei
A. I
assigna
Cross-1
Q. V
A. N
Q. Y

Q. Did you ever see any women in that extension ?

A. Yes, sir ; in fact ever since Malosse had the house, yes, sir.

Q. Did you ever see them in scanty clothing around there ?

A. Yes, in all shapes ; they used to bathe and wash right back in there, that is where they washed and bathed themselves there.

Q. Was there anyway of shutting up that back extension when they occupied it ? 10

A. Well, yes, there were the shades there.

Q. Were they ever used ?

A. Well, once in a while they would be down a little, but very seldom, they were usually open to the extension ; it was cut off by a back door to the entrance—the entrance was on the west end of the building.

Q. Did you ever see any business carried on on the parlor floor that looked like the compiling of a directory of the Grand Army of the Republic ?

A. I never saw any business carried on there. 20

Q. Any legitimate business you mean ?

A. No legitimate business that I thought was business at all.

Q. Did you notice all that you have told us about during the summer of 1888 ?

A. Well, it began from the time Mr. Malosse took the house and continued until he left, or I left in 1891.

Q. Was that going on in the summer of 1888 ?

A. Yes, sir, it was, especially in the summer months, because the windows were all open, but in the winter 30 time it was closed and they were all closed.

Q. What was the general reputation of that house in the neighborhood ?

A. It was considered by everybody as a house of assignation.

CROSS-EXAMINATION BY MR. WALLING :

Q. Were you ever in the house ?

A. No, sir.

Q. You were never in the house ? 40

A. I was never in the house while Mallosse occupied it.

Q. You were never in the house from 1887 to 1890 we will say?

A. I was never in the house.

Q. Do you know the arrangement of the rooms in the house?

A. Just as I saw them from the back.

Q. How many rooms are there on the parlor floor there?

A. Well, as they appeared to me (interrupted)

Q. Do you know?

A. I don't know positively, but as it appeared to me there was an extension, the back parlor, with folding doors, and a front parlor.

Q. Was this extension connected with the back parlor?

A. Yes, sir, by a door on the west end.

Q. Do you know whether or not portions of that house was rented by Mr. Malosse during these years—1887 to 1890?

A. No, sir, I do not know positively.

Q. Do you know Col. John Austin?

A. I do not know him.

Q. Do you know that he did not occupy that parlor floor a few months in 1888?

A. Well, he did not occupy it to my knowledge.

Q. I say, do you know that he did not?

A. No, sir, I do not know it.

Q. Can you say there were not typewriters employed in that back parlor in the months of June, July and August, 1888?

A. They were not kept in the back parlor.

Q. You are speaking of this extension, are you not?

A. You can see a portion of the back parlor through the folding doors.

Q. You say there were no typewriters in 1888 in either the back or the front parlors?

A. I cannot say as to the front parlor; I could not see the front parlor.

Q. Do
rooms dur

A. I di

Q. Wh

on?

A. The

Q. You

A. Yes

Q. An

this disre

A. Yes

Q. Vic

New Yor

A. Ye

Q. An

business

and the c

in anothe

A. Ye

Q. I s

you, did

A. No

Q. Ca

on there

A. I c

Q. Di

these wi

A. No

dows, an

Q. Di

Malosse

A. N

Q. Y

A. N

didn't b

Re-DIR

Q. In

of your

A. Y

Q. Do you pretend to know who occupied these rooms during the years I have named ?

A. I did not know any of them.

Q. What kind of business did you say you carried on ?

A. The manufacture of theatrical costumes.

Q. Yours is a reputable business ?

A. Yes, sir.

Q. And you were separated by a brick wall from this disreputable business ? 10

A. Yes.

Q. Vice and morality go pretty close together in New York City ?

A. Yes, sir ; I suppose they do.

Q. And it might be that portions of a reputable business might be carried on in portions of that house, and the disreputable portion of the business carried on in another portion of the house ?

A. Yes ; well, I can only say what I have seen.

Q. I show you Exhibit I for identification and ask 20 you, did you ever see that business advertised ?

A. No, sir.

Q. Can you say that that business was not carried on there in the months I have named in 1888 ?

A. I cannot positively say.

Q. Did you occupy your whole time looking in at these windows ?

A. No, sir ; our workshop faced right on these windows, and we couldn't help but look into them.

Q. Did you ever make any complaint to Mr. 30 Malosse about it ?

A. No, sir.

Q. You rather liked the sights you saw ?

A. No, sir ; we didn't pay any attention to it ; it didn't bother us any at all.

RE-DIRECT EXAMINATION BY MR. ABBETT :

Q. In the summer time did you have the windows of your factory, as a rule, open ?

A. Yes, sir ; the windows were open, of course, in 40

the summer time—they usually opened down from the top, because of the benches coming along by the windows, the windows were open from the top, so that things would not fall out, and they were open from the top about half way.

Q. Was the character and the use of this house spoken of in your factory once in a while, comments made of it?

A. A great many comments made about it.

10 Q. If there had been a number of typewriters in that back room, do you think you could have seen them?

A. Well, I don't know—if they was thirty or so—interrupted.

MR. WALLING :

Q. Say twenty for a start, to begin with.

A. If there were twenty in the back parlor, then we should have undoubtedly have seen them.

MR. ABBETT :

20 Q. Don't you think that if there was that number working there, don't you think you could have heard the type machines :

A. Well, I don't know as to that, whether I could or not; you see we had our own sewing machines going all the time, quite a number of them, and I do not know whether we should have been able to hear the type machines.

Q. Did you ever see a typewriter machine or a typewriter at work in that place?

30 A. I did not.

Q. Did you ever see a typewriter machine go in and out of that house?

A. I never did.

Q. And all during that time you were at work next door?

A. My office was at the front, and my workshop in the back, but I was back and forth all day.

Q. Did you ever pass that house at nights or in the evening?

40

A. Y
63.

Q. Y
place?

A. Y
No. 63,

Q. W
the busi

A. W
and I ha
and trea

Q. Di
was lit u

A. In

Q. Ev

A. I s

Q. W

A. Ye

light on

evenings

see the l

tell whet

Q. Di

take for

A. Ye

the night

Q. Di

the num

A. W

they wan

ious nam

was next

and the

whether

rang the

went in.

The Cou

Q. Di

your offic

building

A. Yes, I lived next door to it, I lived right in No. 63.

Q. You had a room where you slept in your business place ?

A. Yes, sir ; I had a room in my business place at No. 63, and I used to sleep there at nights.

Q. Were you an officer of the company carrying on the business there ?

A. Well, it was sort of a family affair, my father and I had it all between us, and I acted as secretary and treasurer of the company. 10

Q. Did you ever notice whether that parlor floor was lit up or not, late in the evening ?

A. Invariably.

Q. Every evening ?

A. I saw it lit up every night that I came home.

Q. Whenever you noticed it you saw it lit up ?

A. Yes, sir ; you could see the reflection of the light on the back fence, and when I came in in the evenings and went into my room, I would look out and see the light reflected on the back fence, and I could tell whether any of the building was lit up or not. 20

Q. Did anybody ever get into your building by mistake for this one ?

A. Yes, sir ; they have rung our bell at all hours of the night.

Q. Did they say anything about being mistaken in the number when you asked them what they wanted ?

A. Well, they seemed to be intoxicated mostly, and they wanted to get into there to see the ladies of various names they would give, and I told them that it was next door, No. 65, and they would look around and then they would go in. Well, I don't know whether they went in or not always, but they went and rang the bell ; I did not wait to see whether they went in. 30

THE COURT :

Q. Did you see the persons who went in the front of your office—you say your office was in the front of the building ?

A. Yes, sir; at that time my office was on the first floor; it is now a store, and at that time it was a private residence, and I was on the front floor, and I would not notice except casually people coming in and out of there; of course I paid no attention to it.

Q. You saw nothing by which you could tell whether people were going there for typewriting or anything of that kind?

A. No, sir; mostly during the day time it was men
10 going in there, and the only person that I saw there to notice particularly was Mr. Malosse, and he was going in and out all the time for beer; I knew him by sight, although I never spoke to him.

FURTHER CROSS-EXAMINATION BY MR. WALLING:

Q. When was your memory first refreshed about this matter, when you were first spoken to about this testimony?

A. Well, the first time Capt. Fairchild stopped in
20 my office one day and asked me what my opinion was of the house next door.

Q. When was that?

A. This was in the fall of 1888, or spring of 1890; I don't remember exactly, but it was during those months.

Q. The father of the defendant?

A. Yes, sir.

Q. He stopped at your house and asked you your
opinion of this house next door to you?

A. Yes, sir, the house next door.

Q. Did he come to you after that?

A. Well, I met the Captain several times since.

Q. Where?

A. I met him casually, and I have had business done
in his office; I stopped in there once—(interrupted)

Q. What business?

A. I went down there to see about the inspection of
a boat.

Q. Were you interested in the boat?

A. It was not my boat; it was a boat of Commo-
40

dore Harris of the New York Yacht Club, and I went in there with him to see the inspection papers ?

Q. With whom did you go ?

A. Mr. Harris.

Q. You did not go on your own business ?

A. No, sir, I went with Mr. Harris.

Q. Did you have anything to say about 65 East 12th street then ?

Q. No, sir, there was no reference made to it then.

Q. When did you next speak to him about that place ?

A. The next time was the other day—interrupted—

Q. How long ago about ?

A. About a week ago.

Q. From 1888 until about a week ago you have not had any conversation about this place ?

A. No, sir, no conversation about the place at all.

Q. And you say you are able to say now that in June, July and August, 1888, these rooms were lit up at night ?

20

Q. They were lit up at night, the entire house was lit up.

Q. I am speaking of these two parlor rooms, they were lit up at night ?

A. I cannot say every night, but I saw them lit up night after night.

Q. Have you any special recollection as to their being lit up at nights during the months I speak of ?

A. The only way I can base my memory on that is that I manufactured campaign goods in connection with my theatrical business and that is the way I remember the year 1888.

30

Q. What relation has that to the light in the parlor ?

A. And it has always been lit up more or less.

Q. Have you any special recollection as to the light in the parlor during these months that I speak of ?

A. I remember that ever since Malosse has had the house it has been lit up at night.

Q. Do you occupy all of No. 63 ?

A. I did at that time, I don't now—my father and

40

myself occupied it then, and we had leased the building and the floor above were supplied to a dress-maker.

Q. You lived there with your family?

A. I lived there by myself.

Q. Your father lived there, too?

A. No, sir, he slept down town usually.

Q. Did you ever complain about Malosse's place?

A. No, sir.

10

RE-DIRECT BY MR. ABBETT:

Q. When Mr. Fairchild first spoke to you about this matter had you that floor in the fall of 1888—do you think it was in the fall of 1888?

A. I think in the fall of 1888 or the winter of 1888.

Q. At that time, you remember about this house more distinctly than you do now?

A. Of course, it was the common talk of the neighborhood at that time, everybody knew about the house.

20

Q. That is the reason you remember it now, because Capt. Fairchild called your attention to it about that time?

A. He just asked me about it at that time, and I told him, I gave him my opinion then whatever it was, I cannot say now what it was, but I gave him my opinion as to what it had been for about two years.

Q. And you remember that you told him that for a few months before that time, that house had been of that character?

30

A. Yes, sir, of course I would not have referred to it if I had not been positive about it, I wanted to be careful.

THOMAS
defendant
oath said

EXAMINE

Q. W

A. TH

Q. W

A. TH

Q. W

A. AT

Q. BY

A. EA

Q. DO

street?

A. I c

Q. W

employed?

A. No

Q. Fr

could yo

A. I c

Q. PL

A. PL

Q. W

12th stre

A. An

Q. W

A. W

Q. Co

A. Ye

Q. Di

extension

A. W

scanty c

Q. W

A. Ye

Q. Di

A. I c

THOMAS J. KELLY, a witness produced in behalf of defendant, being duly sworn according to law, on his oath saith:

EXAMINED BY MR. ABBETT.

Q. What is your present business?

A. Theatrical costumes.

Q. What was your business in the summer of 1888?

A. The same.

Q. Where were you employed in September, 1888? 10

A. At No. 63 East 12th street.

Q. By whom?

A. Eaves' Costume Company.

Q. Do you remember the building No. 65 East 12th street?

A. I do.

Q. Was that next door to where you were employed?

A. Next door.

Q. From the factory of your place of employment, could you see the rear of 65 East 12th street? 20

A. I could.

Q. Plainly?

A. Plainly.

Q. What was the construction of the rear of 65 East 12th street on the parlor floor?

A. An extension.

Q. Wooden or mostly glass?

A. Wood and glass both—a large glass window.

Q. Could you see in there plainly? 30

A. Yes, sir.

Q. Did you ever notice anything going on in that extension?

A. Well, I have seen people going around with scanty clothing.

Q. Women?

A. Yes, and men too.

Q. Did you ever see any typewriters on that floor?

A. I did not.

Q. From the windows of your factory, could you see into that parlor floor?

A. I could see into the rear parlor and part of the front.

Q. Did you ever see any typewriters in any part of that parlor floor that you could see?

A. Never.

Q. Do you think if there had been twenty typewriters at work there you could have seen some of them?

A. Yes, I think I could, yes sir.

Q. That building is only of the ordinary width, is it not?

A. Yes, sir; that is all.

Q. About how wide?

A. Twenty-five feet front about.

Q. Did you ever see a business sign on the front of that building under the name of Austin & Co.?

A. I did not.

20 Q. Did you ever see any sign on the front of that building?

A. The sign "rooms to let."

Q. Did you ever hear of a firm occupying any portion of that building engaged in compiling a directory of the Grand Army of the Republic?

A. I did not.

Q. Did you ever see any type-writing machines going in or out of that building?

A. No, sir.

30 THE COURT :

Q. Have you any special recollection of the months of August and September, 1888?

A. No special recollection, but I know that during that year it was always the same.

Q. Did you ever see this gentleman first on the stand to-day, Mr. Malosse?

A. Yes, sir.

Q. Where did you see him before?

A. At 65 East 12th street.

40 Q. Was he in there?

A. Yes, sir.

Q. These occurrences in No. 65 that you have mentioned, were they during the time he was there?

A. They were.

Q. Were you ever in No. 63 East 12th street, in your factory at night or in the evening?

A. Yes, sir; I have slept there.

Q. Did men ever come to your building during the night by mistake?

A. Yes, sir.

10

Q. Tell us what occurred there?

A. They came there and rang the bell and wanted to get in, and when I found out what they wanted, they wanted to go up and see the girls.

Q. And they were told to get out, I suppose?

A. Yes, sir.

Q. Did you notice where they went?

A. Sometimes they went next door, and sometimes they went away altogether, they were generally intoxicated.

20

Q. What was the general reputation of that house in the neighborhood, No. 65 East 12th?

A. Bad.

Cross-EXAMINATION BY MR. WALLING :

Q. Can you say that no part of No. 65 East 12th Street was rented during the years 1887, 1888, 1889, or 1890?

A. How do you mean rented?

Q. Well, sub-let or sub-rented—perhaps that will convey it better to your mind?

A. Not to my knowledge.

Q. Can you say it was not done?

A. No, sir; I cannot.

Q. Can you say that Col. John Austin did not occupy the front and back parlor of 65 East 12th Street, during the months of June, July and August, 1888?

A. That I cannot say.

Q. Have you ever seen that business advertisement (standing witness Exhibit I. for identification)?

40

A. I never have.

Q. What part of the building No. 63 East 12th Street did you work in, the front or back?

A. Both front and back.

Q. Could you see who went in and out No. 65 at all hours of the day?

A. Not from the front, no, sir.

Q. Type machines may have gone in and out without your knowledge?

10 A. They might.

Q. What communication was there between this extension you speak of and the back parlor?

A. A door way.

Q. Just an ordinary door?

A. Yes, sir.

Q. A door of ordinary width?

A. Yes, sir.

Q. What communication was there between the back and front parlors of this house?

20 A. Folding doors.

Q. And from your building, you could see into the front and back parlor through this ordinary door?

A. All the back and part of the front parlors.

Q. Were you ever in No. 65?

A. No, sir.

Q. You did not go in there?

A. No, sir.

30 JOHN P. DUFFY, a witness produced on behalf of defendant, being duly sworn according to law on his oath, saith :

EXAMINED BY MR. ABBETT :

Q. Are you a clerk in my office?

A. I am.

Q. Did you examine the New York City directories of 1887, 1888 and 1889 for a firm of the name of Austin & Co.?

40 A. I did.

Q. Did you find any such firm in the directories ?

A. I found a firm of Austin & Co., but not Austin & Co., publishers or anything of that kind. I found Austin & Co., poultry, and another I think were plumbers, it was not a firm of publishers.

Q. Was there any Austin & Co. on 12th street ?

A. None at all during those three years.

Q. During those three years, did you see the Riders Publishing Company ?

A. Riders Publishing Company and Ryders Publishing Union, I was given those two names, and I could not find any such names in the directory for those three years.

CROSS-EXAMINED BY MR. WALLING :

Q. Do you remember when the directories were published ?

A. I do not remember, but I know the New York directory for 1894 has just come out now.

Q. They are made so as to show the spring changes, are they not ?

A. Right after May I think they are published.

Q. They give the occupation of houses in the month of May of each year ?

A. I believe so.

Q. Then a person who occupied in June and gave it up in the latter part of the fall would not have his name in the directory.

A. I do not think so.

Q. Would he have it in at all if he occupied it only for these months ?

A. He might for the previous years.

Q. No, if he occupied it from June to September or October, would he have his name in the directory ?

A. He would not, probably.

RE-DIRECT BY MR. ABBETT :

Q. Do you know anything about the system of compiling directories ?

A. No, sir, I do not think I do.

MR. WALLING :

Q. What is your age ?

A. Twenty-two.

Q. You are a clerk for Mr. Abbett ?

A. I am.

Q. Counsel in this case ?

A. Yes, sir.

10

SAMUEL G. FAIRCHILD, a witness produced in behalf of defendant, being duly sworn according to law, on his oath saith :

EXAMINED BY MR. ABBETT :

Q. Are you the father of the defendant in this suit ?

A. Yes, sir, I am.

Q. Do you know the complainant ?

A. I do.

20 Q. Did you ever see the complainant in this suit enter the house known as No. 65 East 12th street, New York City ?

A. Yes, sir.

Q. On what date ?

A. The 3rd of September, 1888.

Q. What day was that ?

A. Labor Day, a holiday.

Q. You saw her enter into that building ?

A. I did.

30 Q. What time of the day ?

Q. Not far from ten o'clock in the forenoon.

CROSS-EXAMINATION BY MR. WALLING :

Q. That was September 30th, 1888 ?

A. September 3rd, 1888, Labor Day.

Q. Where did you first see her ?

A. I saw her at Keyport.

Q. That day ?

A. That day.

40 Q. How did she come to the city ?

A. She went on the boat running from Keyport to New York.

Q. How did you go?

A. I went on the same boat.

Q. And where did she go after she got off the boat at New York City?

A. I do not know until I saw her going into that house.

Q. You met her accidentally?

A. No, sir, I went there purposely to see her go in there. 10

Q. You went there on purpose to see her go in there?

A. Yes, sir, I did.

Q. Did you follow her from the boat to that place?

A. I did not.

Q. You went from the boat to that place and remained there waiting?

A. I did.

Q. What prompted you to go to that place? 20

A. I had been told that she was an inmate of this house, and that the house was a disreputable one.

Q. Who told you?

A. Parties that I sent to the house to inquire into it.

Q. Who was it you sent?

A. One was Captain Petrie, a ship master.

Q. You sent him to this house to inquire for her?

A. No, sir, I did not, I sent him to inquire about that house; he had told me that she was an inmate of that house. 30

Q. This Captain Petrie had told you that?

A. Yes, sir.

Q. Did you employ him to watch Mrs. Fairchild?

A. I did not employ him for anything, he told me voluntarily, I never employed anyone to watch her.

Q. He told you without you suggesting the matter in any way to him, that Mrs. Fairchild was an inmate of the house, No. 65 East Twelfth street?

A. He told me she was an inmate of 65 East Twelfth street. 40

Q. Without your suggesting anything to him?

A. I suggested, I presume, but I had been told before that, that she was an inmate of this house.

Q. Who told you?

A. William J. Bell, and he would have been here this morning if he was not sick abed.

Q. Who is he?

A. A lawyer in New York.

Q. He has been your attorney in several matters,
10 has he not?

A. He was.

Q. Is he not employed under you?

A. He is not.

Q. He was at that time?

Q. Yes, he was.

Q. Didn't you suggest that he should look after Mrs. Fairchild?

A. I did suggest that he should look after Mrs. Fairchild and then he came and reported to me.

20 Q. How long prior to this time was it you asked Mr. Bell to look after her?

A. The first of August or about the time that you got the people in Keyport to testify as to her good character at Keyport.

Q. Why did you suggest to Mr. Bell that he should follow Mrs. Fairchild?

A. Because I did not believe she was a good woman.

Q. Long before that time, your son had secured what he claimed to be a divorce from Mrs. Fairchild?

30 A. You can ask my son about that.

MR. ABBETT:—I do not think this is cross examination as to whether his son had a divorce or not.

THE COURT:—I suppose it was for the purpose of locating the time; for that reason I will overrule the objection.

Q. Didn't you know that he had secured what he claimed to be a divorce from Mrs. Fairchild?

40 A. Only from hearsay.

Q. And you wanted to prove for your own satisfaction that Mrs. Fairchild was a bad woman?

A. I was satisfied of it, and I asked him to follow her.

Q. You employed this man to follow her?

A. Yes, sir.

Q. And this day in question, you went from the boat to this place and remained there to see her go into that house?

A. On Labor Day? 10

Q. Yes.

A. I did.

Q. Did you go in?

A. I did not.

Q. You didn't go in and look why she went into the house?

A. I saw her go in, that was enough.

Q. Was she alone?

A. She was alone.

Q. Where were you standing with reference to her when she went into that house? 20

A. I was standing nearly opposite the house, I stood behind a covered wagon on the opposite side of the street.

Q. You were hiding?

A. I was standing out of sight, nearly opposite the house and behind a covered wagon on the opposite side of the street.

Q. Did you ever employ anybody else to watch Mrs. Fairchild about that time? 30

A. I had not.

Adjourned to August 3rd, 1894, at 10 A. M. at Jersey City.

Transcript of evidence taken in the above stated cause before Hon. W. H. Vredenburgh, Advisory Master, at the Chancery Chambers, Jersey City, August 3, 1894, at 10 A. M., in the presence of counsel for the respective parties.

SAMUEL G. FAIRCHILD, recalled :

EXAMINED BY MR. WALLING :

Q. Do you know William W. Winterton, a constable, of Matteawan ?

A. I do not.

Q. You do not know him ?

A. No, sir.

10 Q. Did he never, at your request, watch Mrs. Fairchild ?

A. He has not. I don't know the man. I never heard his name before.

Q. John R. Winterton's son.

A. I never heard his name before.

Q. Didn't he make any reports to you ?

A. He has not.

Q. Do you remember when your son came home from the West, in 1887, when process in this suit was
20 served upon him ?

A. I remember when he came home.

Q. Did he not then exhibit to you the decree of divorce which he claimed to have obtained in the West ?

MR. ABBETT : I object. This is surely not a cross-examination on what I asked. There is not the least question about this matter in Captain Fairchild's direct examination.

30 Counsel states that he is asking the question for the purpose of testing the credibility of the witness.

Objection overruled.

A. I do not remember that he did.

Q. Did you not go as security upon the bond which your son gave in this suit at that time ?

A. I did.

Q. And did he not, in your presence, speak of that decree of divorce, and exhibit the decree to the Sheriff ?

40 A. I do not know that he did. He had a short

piece of paper in his hand, and he showed the Sheriff something, but what it was I do not know.

Q. Did he not say to you, "This is a decree of divorce?"

A. I do not remember.

Q. You were afterwards sued upon this bond, were you not?

A. I was.

Q. And judgment was obtained against you?

MR. ABBETT: If the Court please, that is all 10
a matter of record. Judgment was obtained
and not collected.

MR. WALLING: I propose to take the testimony. I don't accept the admission.

MR. ABBETT: Then I object that it is not cross-examination.

MR. WALLING: I will show that the witness has a pecuniary interest in the result of this suit.

THE MASTER: I won't exclude the question. 20
Exception.

A. I never paid anything. I don't know anything about your judgment. I never paid anything.

Q. And you know nothing about the judgment—were you not examined on supplemental proceedings?

A. Yes, sir; I was.

Q. In aid of the execution that was issued on that judgment?

A. I can't tell you about that. 30

Q. You say you don't know that a judgment was rendered against you?

A. I say I don't remember about that; I know I was examined on supplemental proceedings. I don't know what you are driving at.

Q. You say you don't know that judgment was entered against you, as an incident of this suit?

A. I know there is a place like China, but I have never been there. 40

Q. Upon that examination it turned out by your testimony that you had no property?

Q. I can give you the testimony, if you wish.

Q. I ask you if that is not so, by your own testimony?

A. No, sir, it is not. I told you what I had.

Q. Did you disclose any property upon that examination?

A. I did.

10 Q. Were you ordered to turn it over to the Receiver?

A. I have not seen any Receiver yet.

Q. Were you not served with a copy of the order to turn over certain mining stocks to the Receiver?

MR. ABBETT: I object to this testimony. The records will show what was done in that proceeding.

20 THE MASTER: The interest, so far as it is shown now, is a pecuniary interest; but, as to the details of it, that has nothing whatever to do with the issues in this case.

Q. Was your object in watching Mrs. Fairchild to get testimony to be used in the second divorce suit?

A. It was not.

Q. Were you sworn in that second divorce suit?

A. I think I was, in Keyport. That was some time prior to the time I followed her and saw her go into that house. That testimony wasn't sent West, not a
30 word about the house, in no way or manner.

EDWARD SPRAGUE, a witness produced on the part of the defendant, being duly sworn on his oath, according to law deposeth and saith:

EXAMINED BY MR. ABBETT:

Q. What is your full name?

40 A. Loring Sprague.

Q. Where do you live ?

A. Fall River, Massachusetts, now.

Q. And what is your employment—what do you work at now ?

A. I am a clerk.

Q. Where ?

A. On the Fall River Line of steamers.

Q. Do you know the complainant in this suit, Nettie F. Fairchild ?

A. I do.

10

Q. Do you know the defendant in this suit, William G. Fairchild ?

A. I do.

Q. Have you known them a long time ?

A. Yes, sir.

Q. Are you any relation to either of them ?

A. I am a cousin to William G. Fairchild.

Q. Did you know both of these parties in 1885 ?

A. Yes, sir.

Q. Did you ever, in the month of August, 1885, take a letter from William G. Fairchild, the defendant, to Nettie F. Fairchild, the complainant in this suit ?

A. No, sir.

Q. Did you ever take any note, which might not be considered a letter—did you take any writing from the defendant to the complainant, which could be called a letter or a note ?

A. No, sir.

Q. In August, 1885 ?

A. Not in August ; no, sir.

30

Cross-EXAMINATION BY MR. WALLING :

Q. When did you take any ?

A. I don't remember, sir, ever taking any.

Q. You don't remember ever taking any ?

A. No.

Q. Do you remember hearing the time that they were married ?

A. Yes, sir.

Q. How soon after the marriage did you hear of it ?

40

A. I don't know, sir.

Q. Did you correspond with Mrs. Fairchild at that time ?

A. No, sir.

Q. You wrote her no letters ?

A. No, sir.

Q. You wrote no letters to the complainant, Mrs. Fairchild, about that time ?

A. No, sir.

10 Q. Did you see the complainant in this case at the Astor House a few days after the marriage ?

A. I don't remember, sir.

Q. You don't remember ?

A. No, sir.

Q. Didn't you, at the request of Mr. Noel, go over to the Astor House to see if Mrs. Fairchild was there ?

A. I don't remember, sir.

Q. Did you see Mrs. Fairchild in Keyport the Saturday following the marriage ?

20 A. I don't remember that.

Q. You don't remember it ?

A. No, sir.

Q. Where did you see Mrs. Fairchild—you say you didn't see her the Saturday following the marriage ?

A. I don't remember.

Q. Don't you remember walking through the street with your cousin, the defendant in this case, and his leaving you and talking to Mrs. Fairchild ?

A. I don't remember it.

30 Q. Well, what do you say—that it didn't occur ?

A. I don't remember it.

BY THE MASTER :

Q. Can you answer it more definitely than that ?

A. No, sir ; it is so long ago I have no recollection of anything about meeting her.

BY MR. WALLING :

Q. Won't you read this (handing paper to witness, who reads same). Did you send Mrs. Fairchild a letter, of which that is a copy ?

40 A. No, sir.

The paper referred to is marked "For identification Complainant's Exhibit 1, August 3, 1894."

Q. I was mistaken as to the day. Did you not on the Sunday evening following the marriage take from William Fairchild to Mrs. Fairchild a note and receive from her one in return to him ?

A. No, sir.

Q. You deny that, positively ?

10

A. I do, sir.

Q. You were frequently at Mrs. Fairchild's house about those times ?

A. Yes, sir.

Q. And you were there frequently after the marriage, for a short time ?

A. I can't say positively as to that.

Q. Well, can you say that you were not ?

A. I don't remember.

Q. You don't remember that ?

20

A. No.

Q. Did you know that Alfred J. Noel ?

A. Yes, sir.

Q. Did you see him a short time after the marriage in New York City.

A. I don't remember.

Q. You don't remember ?

A. I don't remember seeing him a short time after, no; I might have. I saw him frequently.

Q. You say you were not sent over to the Astor House by Alfred J. Noel, to see if Mrs. Fairchild was there, and that you did not go back and report to him ?

30

A. I don't remember it.

Q. You don't remember it ?

A. No, sir.

Q. Well, do you say that it didn't occur ?

A. I can't say ; I don't think it did.

MR. ABBETT: I offer in evidence the record of the proceeding in the District Court of the 16th Judicial District of Kansas, in and for 40

Hodgman County; the suit being William G. Fairchild *v.* Nettie F. Fairchild. The Journal entry is marked "Filed October 24, 1888;" it is the one referred to in the answer to the amended complaint. The exemplification includes the petition, the answer, the Journal entry including the testimony.

Marked "Defendant's Exhibit No. 1, August 3, 1894.

- 10 MR. ABBETT: I offer in evidence the general statutes of Kansas, on the subject of Divorce, which were in force at the time of the entry of the second decree of divorce.

Further hearing is adjourned until Monday, August 20, 1894, at Chambers, Jersey City, at 10:15 o'clock, A. M.

- 20 Transcript of evidence taken in the above-stated cause, before Honorable W. H. VREDENBURGH, Advisory Master, at the Chancery Chambers in Jersey City, August 27, 1894, at 10:15 A. M., in presence of counsel for the respective parties.

SAMUEL G. FAIRCHILD, recalled by Mr. Abbett:

Q. Captain, in your testimony given August 3 of this year, you stated that you did not know William W. Winterton; is that correct?

- 30 A. I do know him.

Q. Will you state just how you happened to make that error?

A. My ear must have been stopped up, and I was quite deaf, and I understood the counsel to say Winston.

Q. You do know William W. Winterton?

A. I do.

Q. Did you know he was a constable?

A. I did not.

- 40 Q. Do you know that now?

A. I inc
called to

Q. And
rou?

A. I ha

Q. Is he

A. Yes

Q. Did

child?

A. I ne

of. I don

he was a c

Q. Did

A. He

WILLIA

the defenc

oath says

EXAMINED

Q. Mr.

child?

A. Yes

Q. Did

A. I di

Q. Did

Mrs. Nett

A. On

Q. Wa

A. She

Q. Wh

A. Aug

Q. And

A. At

street.

Q. Jus

A. Cap

Fairchild

iff the do

A. I inquired after that day, after my attention was called to this, and I found he was.

Q. And you have known him for some time, haven't you?

A. I have known him from a child.

Q. Is he a son of John R. Winterton?

A. Yes; his father's name was John or John R.

Q. Did you ever employ him to watch Mrs. Fairchild?

A. I never spoke to him on the case that I know 10

Q. I don't know anything about him. I didn't know he was a constable.

Q. Did he ever make a report to you regarding it?

A. He never did, never.

WILLIAM J. BELL, a witness produced on behalf of the defendant, being duly sworn, according to law, on oath says :

20

EXAMINED BY MR. ABBETT :

Q. Mr. Bell, do you know Captain Samuel G. Fairchild?

A. Yes.

Q. Did you know him in August, 1888?

A. I did.

Q. Did you ever see the complainant in this suit, Mrs. Nettie F. Fairchild?

A. On one occasion only, to my recollection.

Q. Was she pointed out to you by Captain Fairchild? 30

A. She was.

Q. When was that?

A. August 13, 1888.

Q. And where was she pointed out to you?

A. At the boat landing of the Keyport boat, in West street.

Q. Just tell me what happened subsequent to that?

A. Captain Fairchild requested me to follow Mrs. Fairchild and see where she went to. After she came off the dock I followed her; I walked up Dey street 40

or one of those streets to Broadway, and I saw her get on a Broadway car, she went inside and I stopped on the back of the car; she got off at 12th street, and I got off at 12th street and saw her go into the house 63 or 65 East 12th street.

Q. Was it on 12th street near 4th avenue?

A. Between Broadway and 4th avenue, on the north side of the street.

Q. And what was the date of that?

10 A. August 13, 1888, Monday morning.

Q. Did you go to that house subsequently?

A. I did.

Q. When?

A. Well, on Tuesday, the day following, I went up in the afternoon with Captain Fairchild; we passed the house.

Q. You didn't go in that day?

A. I didn't go in that day; I pointed it out to him; but on the Wednesday I went in the house, the 15th.

20 Q. Just tell what occurred.

A. The only person I saw in the house was a stout, middle-aged German woman, and I asked her if she had any furnished rooms to let, and she said she did; she took me up-stairs one flight, up in the back room and pointed out all the advantages of it, and I asked what the cost would be, and she said \$5 a week; I said that would be satisfactory. I said, "Is it noisy or quiet?" She said, "It is rather noisy, particularly at nights, so I will tell you that beforehand, so if you are troubled with sleeplessness you needn't take it." I said, "That doesn't bother me." I said then, "How will it be if I want to double up?" She says, "That is all right; that is thrown into the game." I said, "I will call this afternoon," and left there.

30 Q. Did you see any signs on the front of the house?

A. Nothing but "Furnished Rooms To Let" on a piece of paper at the side of the door.

Q. Did you notice the rooms on the parlor floor of that house?

40 A. Yes, for this reason, the door was open, the

parlor door
glanced
body in
ing.

Q. Did
this one

A. No

Q. Did
there was

A. No

Q. Did

A. I d

Q. If

would kn

would yo

A. I w

Q. Did

that hous

A. Th

Q. Ex

A. Th

Q. Did

facts to y

A. No

that that

Cross-Ex

Q. Wh

A. I a

Q. Wh

A. For

that is w

Q. Ho

profession

A. 188

Q. Yo

A. Yes

mean.

Q. Wh

parlor door ; it was open as I went up-stairs, and I glanced in there and there didn't appear to be anybody in there ; there was no noise, confusion or talking.

Q. Did you see anybody else in this house except this one woman ?

A. No, sir ; I did not.

Q. Did you hear any noise on the parlor floor, as if there was business going on in any way ?

A. No, sir.

10

Q. Did you hear any typewriter machines going ?

A. I did not.

Q. If there had been any typewriters going you would know the sound, you would have recognized it, would you ?

A. I would, at once.

Q. Did there appear to be any business going on in that house ?

A. There did not appear to be any ; no, sir.

Q. Except, of course, the business of renting rooms ? 20

A. That is all.

Q. Did this woman in charge state any further facts to you about the rooms, that you remember ?

A. No ; I can't recall any further conversation than that that I have testified to.

Cross-Examined by Mr. Walling :

Q. What is your business or profession ?

A. I am a lawyer by profession.

Q. Why do you emphasize the profession ? 30

A. For the reason that I am not practising at present, that is why.

Q. How long is it since you have practiced your profession ?

A. 1885 ; that is 9 years.

Q. You quit practising in 1895 ?

A. Yes, sir ; that is general practice, you know, I mean.

Q. What is your business ?

40

A. I am employed by the City of New York and County of New York.

Q. Do you have an office in the City of New York?

A. The department I am employed by has an office; yes, sir, the Stewart Building.

Q. Did you have an office in 1888, your own private office?

A. No, sir.

Q. You had no office in 1888?

10 A. Simply the house office, the office that I had at home.

Q. Didn't you have an office in any government office?

A. I was employed by the United States Government.

Q. What Department?

A. The Steamboat Inspection Service.

Q. That is the Department in which Samuel G. Fairchild is?

20 A. He was the Local Inspector.

Q. And you were employed in that department?

A. I was employed in that department.

Q. How did you come to go to the boat that morning for Captain Fairchild?

A. At his request.

Q. Did he tell you what he wanted you to go for?

A. Yes, sir.

Q. Had he spoken to you about it before?

A. He had.

30 Q. How long before?

A. The Saturday previous to that.

Q. What did he say to you?

A. He asked me if I would meet him at the boat Monday morning; that is as far as I can recall. My recollection is not very distinct on that point. He asked me to meet him at the boat on the Monday morning and he would point out Mrs. Fairchild to me, and asked if I would follow her and see where she went.

40 Q. Were you a detective at that time?

A. No, sir.

Q. Were you engaged in the divorce detective business at that time ?

A. No, sir.

Q. Well, how is it you came to engage in this detective business at that time ?

Q. Well, at his request I went up there.

Q. You were employed to do it by him ?

A. I was not employed to do it by him ; I was requested. 10

Q. Weren't you paid at the time ?

A. Not a dollar, not a penny, not even my car fare.

Q. You hadn't seen Mrs. Fairchild before ?

A. No.

Q. She came up from Keyport on that boat, that morning ?

A. Presumably ; I didn't see her leave the boat ; she was coming up the dock.

Q. Was she alone ?

Q. She was at that time I saw her. 20

Q. Have you ever seen her at any other time ?

A. No, sir.

Q. Then, why do you qualify it ?

A. She was alone at the time she was pointed out to me.

Q. And you followed behind her from the boat to this place ?

A. I followed behind her from the boat to this place up to the Broadway cars and got on the same car she did. 30

Q. And when she got off the car you got off ?

A. Yes, sir.

Q. And you followed her to this place ?

A. Yes, sir.

Q. And then you reported what you had seen to Captain Fairchild ?

A. That is the fact ; yes, sir.

Q. Did you know at the time that there was any trouble between Mrs. Fairchild and her husband ? 40

A. I didn't know ; I understoꝑd that there was ; yes, sir.

Q. How did you understand it ?

A. From the conversation that I had had with Captain Fairchild from time to time.

Q. You had understood from the conversation that you have had with Captain Fairchild that there was trouble between his son and his wife ?

A. Yes.

10 Q. And you understood it in no other way ?

A. I don't quite catch the purport of the question.

Q. You didn't have any information from any other source than from Captain Fairchild ?

A. No, sir ; I did not.

Q. You interested yourself in this matter at the Captain's request ?

A. Yes, sir.

Q. Did he tell you why he wanted you to watch her ?

20 A. No, he did not.

Q. Do you know why he wanted you to watch her ?

A. No, I do not. No, but I presume.

Q. What is your presumption ?

MR. ABBETT: What the witness presumes it seems to me is not testimony.

A. (Unanswered).

Objection sustained.

30 Q. You are a Notary Public, aren't you ?

A. Yes.

Q. Didn't you in 1885 take testimony to be used in a divorce suit brought by William G. Fairchild, the defendant in this case, against his wife ?

A. I took testimony ; I can't recall the year I took the testimony, whether before 1885 or 1888, but I know I took testimony in the case.

Q. Then you knew of this trouble from another source than from what Captain Fairchild had told you ?

40 A. No, not originally.

Q. Did you not in the very summer that you watched Mrs. Fairchild take testimony in another divorce case brought by William G. Fairchild against Mrs. Fairchild in the West?

A. That is the only time I recall; I may have taken others, but I have not any recollection of it.

Q. Well, didn't you at the very time or very near the time you were watching Mrs. Fairchild, take the testimony of Leonard J. Noel, up on the fourth floor of a private house in Avenue B?

10

A. I recall I took the testimony of Mr. Noel about that time.

Q. And didn't you then certify that you were not connected with the parties to that suit, as an attorney or otherwise, and that you were entirely disinterested?

A. Unquestionably, and I was.

Q. And yet you were acting as a private detective, watching this woman?

A. You can put it that way, if you like. I was not a detective.

20

Q. What was the nature of the service—had you any interest in this lady?

A. None whatever.

Q. And you did this at the request of the father of the defendant in this case, watching this lady, didn't you?

A. Unquestionably I did.

Q. And you are a lawyer?

A. Yes.

Q. What department of the city are you in now?

30

A. I am employed in the Commissioners' of Accounts Office.

Q. In the office of the Commissioners of Accounts?

A. Yes, sir.

Q. What position do you hold?

A. That of Examiner.

Q. Examiner in the Department of Commissioners of Accounts?

A. Yes.

Q. Where is the office?

40

A. I told you in the Stewart Building.

Q. You went to this lady, you say, two days following—the lady in charge of this house?

A. Yes.

Q. Did you tell her that you came there for any unlawful purpose?

A. No.

Q. Did you go there for any unlawful purpose?

A. I did not.

10 Q. You went there as any reputable man would, for the hiring of this room?

A. Yes.

Q. You claim to be a reputable man?

A. Yes, unquestionably I do.

Q. Did you acquaint that lady that you saw there that you were anything different than that of a reputable man?

A. No.

Q. You went there and tried to hire a room?

20 A. No; I didn't try to hire it.

Q. What did you do?

A. I went to make inquiries as to whether a room could be hired.

Q. And you found out by her that for a certain price you could?

A. Yes.

Q. And did you learn anything else but that?

A. Only what I have testified to here.

30 Q. Did you learn anything else than that for a certain price per week you could hire a room?

A. I heard this after I made the suggestion to her, as I have already testified, that if I wanted to double up at any time—I used that term and she could draw any inference she liked; and she said, "Certainly; that is all in the game."

Q. What does that mean, "double up"—has it a meaning?

A. Certainly, it has a meaning.

Q. And you understood the meaning?

40 A. Certainly, I did.

Q. How did you learn the meaning of it—do you double up any?

A. Oh, yes, I have.

Q. You have?

A. Yes.

Q. Then you admit that you know what term it was necessary to employ in going there to give the language of bad meaning?

Q. Oh, no; I didn't give any construction to it at all.

10

Q. Is it a bad term?

A. It is the way you use it.

Q. Well, how did you use it?

A. I used it in a bad sense.

Q. And you knew that it had a bad sense, peculiar to that kind of business?

A. Yes, and I wanted to see if she understood it so.

Q. Had you been in this kind of houses?

A. Years ago, when I was a young man; I have not been in recent years.

20

Q. Did you see anything improper done while you were there?

A. No, sir.

Q. Did you go in the parlor?

A. No, sir.

Q. How did you see into it?

A. The door was open, and as I went up stairs and down-stairs I could look in.

Q. Did you ask this lady if the parlor was occupied?

30

A. No, sir.

Q. You didn't say anything to her?

A. Not a word, except as I have testified to.

Q. Did you make any inquiries about Mrs. Fairchild?

A. I did not.

Q. You knew that you were engaged in a business or an object that was to defame her character, and you made no inquiries about her?

A. None whatever.

40

Q. You didn't go in that parlor to see whether she was employed legitimately or not?

A. I didn't.

Q. You were hunting for a certain kind of testimony that you hoped to get there, were you not?

A. No; I didn't know that this was going to be brought out or not.

Q. You went there to have it appear that that was a bad place, did you not?

10 A. I wanted to see whether it was a bad place.

Q. You went there for that purpose and you made use of certain language to have it appear that, didn't you?

A. Yes, I will say that, if it pleases you to do it.

Q. Did you inquire if anybody else carried on any other business there?

A. I didn't have any other conversation except that I have testified to.

Q. When did you say this was?

20 A. I say this was on the 15th of August, 1888.

Q. Now, I ask you again, if you were not at that time, very close to that time, taking testimony on commission or on notice for this defendant in this action, in his suit in the West, in which you were certifying under your official seal that you were not interested in the case and had no connection with the parties to it?

A. Yes, and if I did so I truthfully stated.

30 Q. And yet you were acting as a private detective in this case?

A. I was not acting as a private detective, and you can put it in that way if you like; I did it out of personal consideration for Captain Fairchild.

Q. Does that change the nature of the case?

A. Yes. A private detective is paid; I was not paid, even my car-fare for it. I don't propose to be classed with a private detective.

Q. Were you not then a mere dependent upon Captain Fairchild in his Department?

40 A. No, sir; I was not employed by him; I was not

dependent upon him ; he could not have me removed if he desired to.

By THE MASTER :

Q. Did you take the testimony before that time ?

A. I can't say whether I did. I took testimony once, but the probabilities are it was after that time.

MR. ABBETT : With the exception of the testimony of the defendant, which I will have to make an application for to take by deposition or commission, and the introduction of parts of the record in these suits out West which we have not agreed on yet, we will close our case. 10

MR. WALLING : Then you close ?

MR. ABBETT : With the privilege of putting in.

MR. WALLING, interposing : There was no closing by the complainant with any testimony left out, and I shall not go on with my case until all your testimony is in.

THE COURT : Then you don't yet announce your evidence closed ? 20

MR. ABBETT : I can't. I ask for an adjournment, so that I can make an application for a commission on the 10th of September, before the Chancellor.

Further hearing is adjourned until Wednesday, September 19, 1894, at 10:30 o'clock A. M. at Chambers in Jersey City.

30

40

IN CHANCERY OF NEW JERSEY.

Between

NETTIE F. FAIRCHILD,
Complainant,

AND

WILLIAM G. FAIRCHILD,
Defendant.

10

Transcript of stenographer's notes of evidence taken in the above-stated cause, before Hon. WILLIAM H. VREDENBURGH, Advisory Master, at the Chancery Chambers, in Jersey City, October 31st, 1894, at 10.30 A. M.

APPEARANCES :

ALFRED WALLING, JR., Solicitor, &c., of the Complainant.

20

LEON ABBETT, JR., Solicitor, &c., with the Defendant.

By consent of counsel for both sides the further examination of witnesses on the part of the defendant is suspended for the purpose of allowing witnesses to be examined on the part of the complainant in rebuttal, out of order.

LEONARD KUHLE YOUNG, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith :

30

EXAMINED BY MR. WALLING :

Q. Please state to the Court where you live and do business.

A. I am in business at the corner of Broadway and 12th Street. Is my house address necessary ?

Q. No. What is your business at that place ?

A. Printing.

40

Q. On your own account ?

A. No, sir; I am employed by a cousin of mine.

Q. Who is that?

A. Leon P. Kuhl.

Q. How long has he been carrying on business at that place?

A. Well, about fifteen years or somewhere in that neighborhood. I don't know exactly; twelve or fifteen years.

Q. That is what we call East 12th Street, is it?

A. Yes, sir.

10

Q. At the corner of Broadway and East 12th Street?

A. The southwest corner of Broadway and East 12th Street.

Q. In 1888 did you have occasion at any time to go to Number 65 East 12th Street?

A. Yes, sir; frequently.

Q. For what purpose?

A. For the purpose of taking proofs there, printing proofs and the material after printing and collecting 20 bills, &c,

Q. For what concern?

A. For the concern of Austin & Co.

Q. Have you any reference in your book to any business of that concern?

A. Yes, sir; I have a number during that period.

Q. Will you please let the Advisory Master look at the book?

A. That is a memorandum of the dates and pages (handing the Court a paper). Now, on page 97 you 30 will see an entry there under the date of May 8th, and then as you go on from there, these dates run from May 14th to the last of September in the year 1888.

Q. I show the witness a letter with a letter-head printed, and which I ask to be marked A. 5 for identification on the part of the complainant—will you please look at that and say is there any way by which you recognize whether you printed that letter-head or not?

A. Yes, sir, every line of type is ours. I have had 40

eleven years' experience with our type, and I know every line of type in our place, and there is a peculiarity about our typesetting that there is not in others—of course, there are others, I suppose, use the same type, but I have little things in it which indicate to me that it is our own type.

Q. Of course, you don't know anything about the employees of that place, you didn't know any of them except the principal at Austin & Company's?

10 A. No, sir, I didn't personally know them; there is one gentleman that I recognize as being there.

Q. Were you inside of the place?

A. Yes, sir.

Q. State in a general way what the appearance of the place was there.

A. It had the appearance of a business place, and business was being carried on there—they were addressing envelopes, folding circulars and sending them out, and if you notice, you will find there are quite
20 quantities of materials ordered, and it will be necessary to have quite a number of employees there.

COURT:

Q. Were you in the parlors of this place?

A. On the first floor.

Q. What did you understand to be the parlors of the house?

A. The front and back parlor.

Q. Was there a front and back parlor?

A. I think there was. I don't know whether there
30 was or whether they were parted by folding doors.

Q. Did you see what was in there?

A. Yes, sir, that this business was being carried on there.

Q. What kind of business?

A. This Grand Army Roster.

Q. Were there any typewriting machines in there?

A. I am under the impression there was, I cannot say positively; but there was a number of employees there addressing envelopes and sending out circulars.

40 Q. Male and female employees?

A. Both.

CROSS-EXAMINATION BY MR. ABBETT :

Q. How often did you visit that place during the month of August, 1888?

A. I see there are three entries, and it is probable and very possible that during that time I was there eight or ten times.

Q. Do you know what dates that would be?

A. The entries are the 11th, 28th and 29th—those 10 are the entries—it is necessary to first take proof down, and then there is the revision probably two or three times, and then I collect the bills.

Q. Is that a book of original entries?

A. Yes, sir.

Q. Who keeps that book?

A. I did; it is my handwriting, all of it.

Q. Where do you live?

A. Now?

Q. Yes.

20

A. 386 Sixth street, Brooklyn; at that time do you mean?

Q. Where did you live at that time?

A. I don't know whether I lived at 221 or 224 East 12th street; I don't know whether I lived in one or the other—one is across the street from the other, but it was the same family.

Q. That is near what streets?

A. Between 2nd and 3rd avenues.

Q. What kind of a looking building is this No. 65 30 East 12th street?

A. It is an ordinary brown stone front and had been a private residence.

Q. A brown stone front?

A. I am under that impression.

A. Do you know how many stories?

A. No, sir, I don't; I think it is four stories; high stoop I think; I don't remember the number of stories exactly.

40

Q. Is it a building by itself or are there other buildings right along close to it?

A. It is in a block.

Q. Is the stoop a stoop by itself, or is there another stoop adjoining to it so as to make this stoop and the stoop next door come quite close together?

A. I don't recollect as to that.

Q. You don't remember how it was in 1888?

A. No, sir; it is far beyond my recollection.

10 Q. You were there frequently?

A. Very frequently.

Q. Do you think if there had been twenty or thirty typewriters at work in that room you would have noticed them?

A. Yes, sir; I think so.

Q. Do you think if there had been five typewriters at work in that room you would have noticed them?

A. I think so.

Q. Did you notice them there?

20 A. I am not positive, I say; but I am under the impression there were typewriters there.

Q. How many?

A. It is mere guess work with me; I don't remember exactly.

Q. When did you first commence going to No. 65 East 12th street?

A. Somewhere, I think—the first entry is here in May, I cannot be positive about it.

30 Q. You kept going there continuously until the end of September?

A. Yes, and on still later; they moved, but I don't exactly remember what date they went round to University Place, and we did work for them there.

Q. Do you remember what date it was they moved?

A. No, sir; I don't.

Q. You were doing work for whom at that place?

A. No. 65?

Q. Yes.

A. Austin & Co.

40 Q. When you first commenced to do work for Aus-

tin & Co., w
what part

Q. Do yo

A. Yes, e
the second

A. It is o
right thro

through, I
the office t

Q. When
you went i

A. I bel

Q. Do y
after you g

A. No,

Q. It m

A. Yes,

Q. Was

some sort

A. The

recollect a

Q. Did

A. My

through,

close, but

through.

Q. Do

there wh

business?

A. No

Q. We

A, Th

dozen; n

Place is

fifteen o

Q. I a

A. Th

12th str

Q. I

I confin

tin & Co., where was their office or place of business, what part of the house?

Q. Do you mean what floor?

A. Yes, either the front or the back, or the first or the second floor, which?

A. It is on the parlor floor; I believe it was open all right through and employees were distributed all through, I believe; I don't remember the locality of the office there so distinctly as I do at the other place.

Q. When you went there to see about this business you went into the parlor floor? 10

A. I believe so, that is my impression.

Q. Do you remember going up any flights of stairs after you got into the house?

A. No, sir.

Q. It must have been on the parlor floor then?

A. Yes, sir.

Q. Was that parlor one whole room or did it have some sort of division making a front and back parlor?

A. There may have been folding doors; I don't 20
recollect about that, but there may have been.

Q. Did you ever go into the back parlor?

A. My impression is that it was all open right through, the doors might have been there to shut and close, but my impression is that it was all open right through.

Q. Do you know how many hands were employed there when first you commenced to go there to do business?

A. No, sir; I don't. 30

Q. Well, about?

A. There may have been then eight or ten or a dozen; my recollection of the other place in University Place is that there was quite a good many, probably fifteen or twenty.

Q. I am talking now about 12th street?

A. There were more at University Place than at 12th street.

Q. I don't want to refer to University Place at all, I confine my question to 65 East 12th street? 40

A. All right.

Q. During the time you did business for them all that summer, did there appear to be any increase or decrease as to the help during that time?

A. No, sir; my recollection is that there was about the same, there might have been a slight increase.

Q. One or two more or one or two less?

A. Yes, sir, about that.

Q. You don't think there were twice as many?

10 A. No, sir, I don't.

Q. You suppose there might have been a couple of typewriters; now, do you think there was more than three or four there at any one time?

A. I am not positive.

Q. Do you think if there was ten typewriters there you would have noticed them?

A. There may have been that many.

Q. But you cannot say yes or no to my question?

A. No, sir, I am not positive; there were some
20 there.

Q. This letter A. 5 for identification you are sure was printed by you and not by anyone else; now, what is there peculiar about that letter-head?

A. I cannot explain; the type is all our own, we have every line of it now, and then those jim-cracks between the words we used those, and I recognize this type as being ours.

Q. Don't any other printers use the same type?

A. There may be others; there is always something
30 by which a person familiar with type can judge.

Q. Do you mean to say that it would be impossible for another printer to reproduce that so that you could not tell it?

A. It is possible even if we did it, and anyone can reproduce it; if it was reproduced exactly I would say it looked like ours, but I don't think it is hardly possible anyone would attempt to reproduce it, and there is no one office in New York City that has the same type that another one uses; there is always some little

difference,
that would

Q. Do
factory?

A. No,

Q. The
business,

A. Yes

Q. Did

tin & Co.

them?

A. I at

boy might

it was my

side busin

Q. Is t

yet?

A. Yes

Q. You

some kind

A. No,

Q. Wh

A. All

roster rol

rolls, not

little thin

ter.

Q. Wl

Austin &

A. Mr

Q. Wl

A. I d

Q. Wl

A. I b

Q. Dic

you were

A. I d

Q. Do

that hou

A. I d

difference, some little thing that would be noticeable, that would indicate the office from which it came.

Q. Do you have a special make of type for your factory?

A. No, sir; our type is Boston and St. Louis type.

Q. These firms in Boston and St. Louis do a large business, don't they?

A. Yes, sir; they do the largest in the country.

Q. Did anyone else attend to this business with Austin & Co. for your firm, or did you have all to do with them? 10

A. I attended to all the outside business entirely; a boy might have taken round proofs sometimes, but it was my business to look after that business, the outside business, entirely.

Q. Is that business at Broadway and 12th street yet?

A. Yes, sir.

Q. You spoke of Austin & Co. getting up a roster of some kind, did you print that for them? 20

A. No, sir, not the book.

Q. What did you print for them?

A. All the stationery appertaining to it, that is the roster rolls particularly. Here is an entry: "Roster rolls, note heads and circulars," and we did all of those little things appertaining to the publication of this roster.

Q. Who did you have your business with there at Austin & Co.?

A. Mr. Austin. 30

Q. Who composed that firm, do you know?

A. I don't know, W. R. Austin, so far as I know.

Q. W. R. Austin?

A. I believe that was his initial.

Q. Did you ever see any sign on that house when you were there or any time you went there?

A. I don't recollect of any signs.

Q. Do you remember seeing a sign out in front of that house "Austin & Co.?"

A. I don't recollect about that at all. 40

Q. Do you think if there had been one there you would have remembered about it ?

A. Well, I don't know about that.

Q. How did you come to get that printing business ?

A. Well, I don't know, I suppose being right there --we have signs out on our building, and it may have been in that way.

Q. But you don't know about that ?

A. No, sir ; that is impossible to tell.

10 Q. On which side of the street is No. 65 East 12th street, north or south ?

A. No. 65 is on the north.

Q. Near 4th avenue ?

A. No ; No. 65 is between—let me see, 65—it is between University Place and Broadway, I think.

Q. What book is that you have there ?

A. The Day Book and Journal, it is the only book I have, I use it as a Journal as well as Day Book.

20

MR. WALLING : I make the formal offer of this book and ask for it to be marked.

Marked A 6 for identification.

COURT :

Q. Do you know the whereabouts of Mr. Austin with whom you did business, now ?

A. He called some few months ago at our place and had some little slips printed on another transaction, and he left an address of 11th street or 10th street, near Broadway, and shortly after that I went down to see
30 him, to see if I could not straighten up the matter, and he was not there.

Q. How old a man is he, about ?

A. I should take him to be about fifty.

Q. You don't know but that he is still living in the city, do you ?

A. No, sir ; I don't know.

RE-DIRECT BY MR. WALLING :

Q. This matter has not been brought to your mind
40 since 1888, until recently ?

A. No, sir.

Q. Won't you think again if you got the location of No. 65 East 12th Street right?

A. I was just thinking of that same thing; my impression is that No. 65 is in that short block between Broadway and Fourth Avenue; it is a short block running nearly to a point on 14th Street.

10

GIBSON WILLARD FAIRMAN, JR., a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith :

EXAMINED BY MR. WALLING :

Q. Where do you reside?

A. 211 East 11th Street.

Q. Are you in business anywhere?

A. Yes, sir, at 53 East 10th Street.

Q. With what company or firm are you in business?

A. The Home and Country Magazine.

20

Q. How long have you been with that concern?

A. About five years.

Q. Did you ever know the business carried on by a firm of individuals under the name of Austin & Co?

A. Yes, sir.

Q. Whereabouts did you know them?

A. No. 65 East 12th Street and 52 University Place.

Q. Did you have any relations to that firm?

A. Yes, sir.

30

Q. What was it?

A. I was Assistant Private Secretary.

Q. At this place No. 65 East 12th Street?

A. Yes, sir.

Q. Will you please tell me, as near as you can, now remember, about the time you went there and about the time you left that place?

A. I believe I went there with Mr. Austin the first part of June, 1888, and I believe we left that place to

40

go to University Place the latter part of December 1888.

Q. Now, be kind enough to tell the Court the nature of Mr. Austin's business, what plan or scheme you had?

A. We were compiling a directory of the Grand Army of the Republic. We sent out blank forms to the different posts throughout the country to have their commanders or adjutants to fill in the names of each individual with his arm of service.

Q. The idea was to compile a complete list of all the veterans of the war?

A. Yes, sir.

Q. And they style that a roster in literary terms?

A. Yes, sir.

Q. Do you know the complainant sitting here? (indicating.)

A. Yes, sir.

Q. Mrs. Fairchild?

A. Yes, sir.

Q. Where did you see her in 1888?

A. At 65 East 12th street.

Q. What doing there?

A. She was our proof reader.

Q. Can you recollect about the time she came there?

A. Not exactly.

Q. Was it before or after you went there?

A. It was after I went there.

Q. After you went there she came?

A. Yes, sir.

Q. And can you give us any idea—give us your memory about the time she left?

A. Not exactly; no, sir.

Q. Will you tell me about the number of employees, from time to time that Austin & Co, had at this place?

A. Well, we averaged from half a dozen to a dozen; the highest number we ever had was eighteen I believe.

Q. Now, will you state what these several employees did, in a general way?

A. They took those original rosters received from

the diff

of pape

Q. Y

A. Y

Q. A

A. F

Q. I

shall as

please

and wh

A. T

cating

Court:

Q. D

A. Y

correcti

the orig

tion).

Mr. W

Q. W

A. F

zine.

Q. D

the pos

there?

A. Y

Q. D

A. Y

East 12

Q. N

ber?

A. Y

with a

Q. A

stamp

from?

A. Y

Q. T

East 12

A. N

the different Posts and recopied them on manilla sheets of paper on the typewriting machines.

Q. You did have typewriters there?

A. Yes, sir.

Q. About how many?

A. From six to twelve.

Q. I show the witness now various papers which I shall ask to be marked later for identification—will you please state in a general way what these papers are and where they came from?

10

A. This is a letter, I believe, that we sent out (indicating A. 5, for identification).

COURT:

Q. Do you identify the papers?

A. Yes, sir, I do—this is a form we sent out for the correction of the names that we could not decipher on the original sent us (referring to A 5, for identification).

MR. WALLING:

Q. Where did you get these papers?

20

A. From the office of the Home and County Magazine.

Q. Do you recognize them as papers that were in the possession of Austin & Co. during your service there?

A. Yes, sir.

Q. Do you recognize them all as such?

A. Yes, sir; but not as in his possession at No. 65 East 12th street, all of them.

Q. No; but those marked with that street and number?

30

A. Yes, sir; with the exception of those corrected with a rubber stamp.

Q. And where the two names appear the rubber stamp name or address is the place where they are from?

A. Yes, sir.

Q. To where did Austin & Co. go after they left East 12th street?

A. No. 52 University place.

40

- Q. How long did they continue in business there?
 A. I can't say. I don't remember exactly the date the business was suspended.
- Q. Will you please state what were the hours of Mrs. Fairchild there?
 A. I believe it was from eight to six o'clock.
- Q. Do you know that she ever remained beyond business hours, except, perhaps, for a few minutes under some circumstances?
 10 A. No, sir; not to my knowledge.
- Q. Did you at any time pay the rent for those rooms?
 A. Yes, sir.
- Q. At 65 East 12th street?
 A. Yes, sir.
- Q. To whom did you pay it at first and afterwards?
 A. I forget the name of the parties that we paid the rent to at first, but I think it was Martin, but I am not sure.
- Q. You are not sure about the name?
 20 A. No, sir.
- Q. Are you sure of any relation that he held to the building?
 A. Yes, sir; I believe he was the lessee.
- Q. How long did you pay the rent to Mr. Martin, if that be his name?
 A. I can not say exactly; several months.
- Q. To whom did you afterwards pay, if to any one?
 A. To a Mr. Mallosse.
- Q. When your company first went there Mr. Mal-
 30 losse was not your landlord?
 A. No, sir.
- Q. He afterwards became your landlord in some way?
 A. Yes, sir.
- Q. Do you know how that occurred?
 A. I believe I have heard that he bought the lease and the furniture.
- Q. From your former landlord?
 A. Yes, sir; from our former landlord.
- 40 Q. What floor was it that Austin & Co. occupied?

A. Th
 Q. Wa
 A. It
 Q. WI
 A. A
 steps.
 Q. WI
 business
 there?
 A. Th
 Q. Th
 ness purp
 A. Ye
 Q. No
 A. Ye
 Q. Di
 A. Ye
 Q. Yo
 parlor?
 A. Ye
 Q. Th
 parlor an
 A. Ye
 Q. Wa
 period yo
 A. Ye
 Q. I sh
 file of th
 question,
 A. Th
 of the w
 Q. WI
 A. I b
 Q. An
 A. I b
 try Mag
 Q. Th
 Home an
 A. Ye
 Q. Un

A. The parlor floor.

Q. Was that even with the street or above it some ?

A. It was up the stoop.

Q. What you might call a moderately high stoop ?

A. A moderately high stoop, probably ten or a dozen steps.

Q. What portion of the parlor was occupied for the business purposes during the time the employees were there ?

A. The entire floor through. 10

Q. The entire floor through was occupied for business purposes ?

A. Yes, sir.

Q. Now, was there a room back of the back parlor ?

A. Yes, sir ; there was an extension ?

Q. Did you occupy that ?

A. Yes, sir.

Q. You occupied the extension back of the back parlor ?

A. Yes, sir. 20

Q. That made the three rooms, the front and back parlor and extension ?

A. Yes, sir.

Q. Were you continuously employed during the period you have named ?

A. Yes, sir.

Q. I show the witness now what purports to be a file of the Grand Army Review, and I ask him the question, what is that ?

A. That is a monthly paper devoted to the veterans 30
of the war.

Q. When was that published ?

A. I believe the first publication was in 1885 ?

Q. And when did it cease its publication ?

A. I believe it was changed to the Home and Country Magazine in 1890 ?

Q. Then this is the periodical that preceded the Home and Country Magazine ?

A. Yes, sir.

Q. Under the same general management ? 40

A. Yes, sir ; and the same proprietorship.

Q. Under the same proprietorship and management ?

A. Yes, sir.

Q. Now, be kind enough to turn to the issue of December, 1888, and will you please exhibit to the Court the article that I wish the Court to see ?

A. Yes, sir. (Exhibits to Court.)

10 MR. WALLING : I now offer in evidence for the purpose of establishing the nature of the business carried on at 65 East 12th Street, this issue which the witness has referred to of the "Grand Army Review," being an editorial article under the title of "Why and Wherefore," which includes a column long and ends with these words: "What is desired is the name, number and location of Post, the name and organization in which service in the war was rendered and present post-office address of every comrade. These rosters should be sent at once to Austin & Co., at No. 65 East 12th Street, New York. Hurry them along ; let us not falter in such good work."

20

MR. ABBETT : I will consent to that going in if you will allow me to introduce certain articles and advertisements printed in the New York City newspapers in the year 1888, otherwise I will object.

MR. WALLING : I will consent to nothing at all.

30

MR. ABBETT : I object, then, to this offer as having no bearing on the case, and being utterly incompetent and irrelevant. A publication of that kind is not evidence, and cannot be introduced as evidence in this way, and further, that what took place in December, 1888, has nothing to do with our defense in this case, which is laid in August and September, 1888.

COURT : I do not see how that is competent and I will therefore sustain the objection.

40

Mr. WALLING :
Q. Did
not Austin
work on
A. No,
Q. Do
legal holi
A. I do
Q. Wh
respect to
like Labor
on on Sun
A. No
Q. We
ness stop
A. No
Q. Eve
A. Yes
Q. I un
Day of
lection w
ishment
attending
A. No,
Q. Hav
were ther
A. I w
Q. Do
there on
A. I do
Cross-Ex
Q. Did
A. Yes
Q. Wa
A. Yes
Q. Wh
full—wh
A. I do
Q. Wh

MR. WALLING :

Q. Do you remember, can you recollect, whether or not Austin & Company's employees were there at work on Labor Day of 1888 ?

A. No, sir, I cannot remember that.

Q. Do you know that in 1888 Labor Day was not a legal holiday ?

A. I don't remember that.

Q. What was your methods of business there with respect to days ; would the typewriting go on on days like Labor Day ; do you know about that ; did it go on on Sunday ?

A. No, sir.

Q. Were there any other days in which your business stopped that you recollect distinctly ?

A. No, sir.

Q. Every day except Sunday ?

A. Yes, sir.

Q. I understand you have no recollection of Labor Day of 1888—September 3, 1888—you have no recollection whether the persons employed at that establishment of Austin & Co. were busy that day there attending to business or not ?

A. No, sir.

Q. Have you your own diary to see whether you were there or not ?

A. I was there.

Q. Do you recollect whether Mrs. Fairchild was there on that day or not ?

A. I don't remember.

30

CROSS-EXAMINATION BY MR. ABBETT :

Q. Did you keep the pay rolls for Austin & Co. ?

A. Yes, sir.

Q. Was Mrs. Fairchild's name on the pay roll ?

A. Yes, sir.

Q. What name was on that pay roll—her name in full—what was it ?

A. I don't know the first name.

Q. Who composed the firm of Austin & Co. ?

40

- A. W. R. Austin and a Mr. Stetson—
- Q. Do you know his first name ?
- A. I think it is George.
- Q. Any one else ?
- A. In December, 1888, I believe a Mr. Joseph W. Kay became interested.
- Q. When did Austin & Co. suspend business ?
- A. I don't remember exactly ; I think it was in 1890.
- 10 Q. Do you know about what month ?
- A. The latter part of 1890 ; I don't remember the month.
- Q. The latter part of 1890 ?
- A. Yes, sir, I think so.
- Q. At that time they were in University place, were they not ?
- A. Yes, sir.
- Q. Did you stay with them until they suspended business ?
- 20 A. Within a week or two.
- Q. Cannot you fix the date ?
- A. There were no employes there when I left the business.
- Q. Was it October, November or December, do you remember which ?
- A. No, sir, not exactly.
- Q. Was it one of these three months ?
- A. I don't remember exactly.
- Q. It was the latter part of 1890.
- 30 A. Yes, sir.
- Q. After the summer.
- A. Yes, sir ; after the summer.
- Q. After you left them did you obtain other employment immediately ?
- A. Yes, sir.
- Q. With whom ?
- A. With the Home and Country Magazine, which was then the Grand Army Review or Home and Country Magazine.
- 40 Q. Who was at the head of that ?

A. Joseph Kay was the publisher.

Q. The same gentlemen who became interested with Austin & Co.

A. Yes, sir.

Q. Any other members of Austin & Co. firm interested in this Grand Army Review ?

A. No, sir.

Q. Did that publication which Austin & Co. were compiling ever become public and published ?

A. No, sir.

10

Q. What were your duties as Assistant Private Secretary when you first went there in June, 1888 ?

A. I opened all the mail, and I kept the records, the books, the pay-roll, &c., and I had full charge of the employees

Q. You did all that a confidential clerk would do ?

A. Yes, sir.

Q. About how many people were employed there when you first went there ?

A. When I first went there there was one.

20

Q. About how many were there employed there about the first of July, 1888 ?

A. I should think between six and a dozen.

Q. About the 1st of August how many ?

A. I think about the same.

Q. And about the 1st of September, how many ?

A. I don't know exactly.

Q. Just about the same, was it ?

A. About the same.

Q. And did you keep on employed about the same number of people all the time until you left Twelfth street ?

A. No, sir.

Q. When did there commence to be a falling off or an increase in the employees ?

A. In November and December I believe.

Q. Not until then ?

A. No, sir.

Q. About how many did you have left in your employ in November and December ?

40

A. About three I believe.

Q. Did I understand you to say you don't remember when Mrs. Fairchild left Austin & Company's employ ?

A. No, sir.

Q. Can you give any idea of the time ?

A. No, sir.

Q. Was it before or after you moved to University Place ?

10 A. Before I believe.

Q. Was it very long before or don't you remember that ?

A. I think it was about the time that we discharged the most of the employees.

Q. About November ?

A. Yes, sir.

Q. How many stories is this building at 65 East 12th street.

A. I believe it is four.

20 Q. And a basement.

A. Yes, sir.

Q. Is it a frame building, brown stone or a brick building ?

A. A brick building.

MR. WALLING :

Q. Is there not a new building there now ?

A. No, sir.

Q. Is it the same building now ?

A. Yes, sir.

30 MR. ABBETT :

Q. Is that building right up against another building or is there a little space on each side ?

A. Right against another building.

Q. Is there a space on one side or is it close up on both sides ?

A. I think there is a slight space nearest Broadway.

Q. Is the stoop of No. 65 East 12th street and the stoop of the next door right against each other, making a double stoop ?

40 A. Yes, sir.

Q. Were all your employes to report for duty at eight o'clock in the morning ?

A. Yes, sir ; I don't believe we had any exceptions.

Q. Did they all report at that time ?

A. Yes, sir.

Q. Were there ever any exceptions made on certain days and for certain people ?

A. There might have been, but not as rule.

Q. Do you ever remember Mrs. Fairchild leaving or getting there late on certain days ?

10

A. Not that I can remember.

Q. If that had been a regular practice with her you would have remembered, don't you think so ?

A. I don't know ; it is a long time since I had that business under my supervision.

Q. If employes were absent or did not attend to their duties properly would the amount be deducted from their pay ?

A. As a rule ; yes, sir.

Q. You had charge of that part of the business, 20 hadn't you ?

A. Yes, sir.

Q. Did you always close up the place of business at night after every one had gone away ?

A. Yes, sir.

Q. You never left when anyone was there ?

A. No, sir ; I lived there after business hours.

Q. What part of the floor did you live on ?

A. I lived in the parlor floor.

Q. What part ?

30

A. I slept in the front parlor.

Q. Did anybody occupy the rear parlor ?

A. Mr. Austin.

Q. He slept there also ?

A. Yes, sir.

Q. Did anybody occupy this extension they speak of ?

A. No, sir.

Q. What was that used for ?

A. There was a wash basin there ; it was a wash

40

room, and in business hours we used it for proof readers or for proof reading.

Q. Who were your proof readers who occupied that rear extension ?

A. Well, we had more than two.

Q. How many were there, and who were they, if you remember ?

A. We had four, I believe ; Mrs. Fairchild was one. Part of my time I used as proof reader, and we had a
10 couple of other young ladies.

Q. And they used to occupy this rear extension you speak of ?

A. Yes, sir.

Q. What was the name of the Mr. Martin to whom you paid rent, the full name ?

A. I don't remember it was really Martin or not ; I am not sure about that.

Q. You don't really know who it was, then, do you ?

A. No, sir, not exactly.

20 Mr. WALLING :

Q. You don't know the name ?

A. No, sir, I don't know the name.

Q. But you know the man ?

A. I know the man.

Mr. ABBETT :

Q. Who was the man ?

A. He was a Frenchman ; I cannot recall the name.

Q. Did he have a full beard or a mustache ; do you remember that ?

30 A. No, sir, I do not.

Q. Did he have a peculiar accent ?

A. A French accent, yes, sir.

Q. Did you ever see a lease of that place ?

A. No, sir.

Q. And as to what you testified about the lease, &c., was only what you were told, was it not ?

A. What I was told, yes, sir.

Q. Was Mr. Stetson at your place in 12th street actually at work ?

40 A. Yes, sir.

Q. What was he—a silent partner ?

A. Yes, sir.

Q. And Mr. Austin was the only active partner ?

A. Yes, sir.

Q. Did Mr. Kay ever take any active part in the business ?

A. No, sir.

Q. Do you know where Mr. Austin lives at the present time ?

A. No, sir. 10

Q. Do you know where Mr. Stetson lives at the present time ?

A. No, sir; not where he lives.

Q. Do you know where Mr. Kay lives at the present time ?

A. Yes, sir.

Q. Where ?

A. 107 Prince street, Brooklyn.

Q. How many typewriters and machines did you have at your place in August and September 1888 ? 20

A. It was either six or a dozen, I don't remember exactly the number.

Q. They were all in use at that time, I suppose ?

A. Yes, sir.

Q. And were they used nearly continuously all the time ?

A. During business hours, yes, sir.

Q. What make of machine did you use ?

A. Mostly the Remington—we had a Hammond and also a Caligraph. 30

Q. Did you buy them directly from the agents ?

A. We didn't own the machines.

Q. Did you rent them ?

A. No, sir; in most cases the employees owned their own machines.

Q. Did you own any, your firm ?

A. We rented one.

Q. From whom ?

A. The Remington Company.

Q. On Broadway, their offices ? 40

A. Yes, sir.

Q. Have you any of those books of wages, accounts, etc., with you that you had at that time?

A. None in my possession; no, sir.

Q. Did your firm of Austin & Co. have a bank account?

A. Yes, sir.

Q. What bank?

A. I think it was the Bank of the Metropolis on
10 Union Square. That was after, though.

Q. When was that?

A. That was after December.

Q. I mean during the time you were at 65 East 12th street, did you have a bank account anywhere?

A. No, sir; we got our funds from Ballou & Company, Wall street.

Q. While you were at 12th street?

A. Yes, sir.

Q. During the summer of 1888?

20 A. Yes, sir.

Q. You didn't have any bank account at all?

A. No, sir.

Q. You paid your employees all in cash?

A. Yes, sir.

RE-DIRECT BY MR. WALLING:

Q. Can you recollect whether or not Mrs. Fairchild was in the habit of coming a little late on Monday morning, coming from her home from Keyport, do you
30 remember anything about that?

A. No, sir, I cannot remember that; I cannot recall that.

Q. Now, did you observe anything wrong about that place while you were there, anything of an immoral character?

A. No, sir.

Q. Was there anything immoral done in the part of the building occupied by you or by this company?

A. Not to my knowledge; no, sir.

Q. It was a legitimate business, carried on with propriety?

A. Yes, sir.

Q. Now from this extension, or could a person from the adjoining building see into this extension, do you remember that?

A. I do not believe in the building directly next to 65 East 12th street.

Q. Do you know the costumer's business place—do you remember a costumer's business there; was there one alongside 65 East 12th street? 10

A. Yes, sir.

Q. From his building could he see into this extension (Eames was the name I believe)?

A. Well, there has been a change made there I think, and I do not remember whether they had any extension or not then.

Q. Well, during the time that you occupied 65 East 12th street, and during the time Mrs. Fairchild was employed there, did any of the employees, male or female, go in that extension and around it in an indecent condition of dress? 20

MR. ABBETT: I object to that question—this is not re-direct examination.

MR. WALLING: It is a little out of order, but I forgot to ask the question at the proper time. Question allowed.

Q. Did any of the employees, while Mrs. Fairchild or you worked there, go around not sufficiently clothed, with their person exposed or anything of that kind; was there any indecent conduct ever permitted? 30

A. No, sir, there was no indecent conduct ever permitted.

Q. Have you tried to find the first landlord you referred to?

A. Yes, sir.

Q. Have you succeeded in finding him?

A. No, sir, I have not.

FURTHER CROSS-EXAMINATION BY MR. ABBETT:

Q. What did you and Mr. Austin use as beds there; did you have regular beds to sleep on?

A. Mr. Austin had a folding bed in the back parlor and I used to sleep on a cot.

Q. In the front parlor?

A. Yes, sir.

Q. Do you remember that there was a sort of "L" or extension or building coming out back of that extension which you speak of?

A. I do not remember, no, sir.

Q. It might have been there and you not remember it?

A. Yes, sir.

Q. Were there any buildings or warehouse back of that extension, or windows from where people could look into that back extension of yours?

A. Not to my knowledge.

Q. Did you ever notice whether there was or not?

A. I never saw any to my knowledge.

Q. You do not think there was any building on that whole square where they could look into your back windows, do you think so?

A. Yes, sir; I think there was on that whole square.

Q. What buildings on that whole square was there from which you could look into your back windows?

A. There were buildings on 13th street.

Q. Any others?

A. There might be some on Broadway, some of the rear windows of the Broadway buildings.

Q. What buildings are there on 13th street between Broadway and 4th avenue?

A. Well, the one directly opposite I believe is some kind of manufacturing business or building, quite a high building.

Q. Is there a coal yard there?

A. There is a vacant corner, I do not know what they keep there.

Q. Quite a large space there vacant, is there not?

A. Yes, sir.

Q. If that building occupied by Eames & Co. had an extension, extending beyond your extension at the back, they could look into your building, could they not?

A. If there was windows there, very likely.

THE COURT :

Q. This next building, No. 63, was used as a factory for the manufacture of theatrical costumes, was it not?

A. I believe so ; yes, sir.

Q. Did this Mr. Mallosse come in there often with beer, that is, in your part of No. 65 East 12th street?

A. He may have, through the basement.

Q. Who did he take beer to, glasses of beer ; who did he take them to ?

A. I never saw him with any glass of beer.

Q. You never saw him take any beer, in any form, into that building, did you ?

A. No, sir.

Q. You say he might have done it in through the basement ?

20

A. Yes, sir.

Q. What sort of people was there in the basement ?

A. I believe Mr. Mallosse occupied the basement himself.

Q. You stayed there over night ?

A. Yes sir.

Q. Was the parlor lighted up at night, late at night, bright lights ?

A. Yes, sir, sometimes quite late.

Q. Did any drunken people come there ?

30

A. No, sir, not to my knowledge, Mr. Austin may have had a little too much sometimes.

Q. Was there any noise there, made by Mr. Austin and those with him at night ?

A. No, sir.

Q. These proof-readers slept there, I understand you, occupied the rear building, the extension at night ?

A. Oh no, sir, only during the time they worked there.

40

Q. You did not mean to say in your testimony that anybody but Mr. Austin and yourself slept there?

A. No, sir.

MR. WALLING :

Q. All the other employes left at the usual business hours?

A. Yes, sir..

Q. And you and Mr. Austin made that your lodging place?

10 A. Yes, sir.

Q. Now, in the night time, after business was over, was there any immorality of any kind there, so far as your apartments were concerned?

A. None that I know of ; no, sir.

20 GEORGE B. LOUD, a witness produced in behalf of complainant, being duly sworn according to law, on his oath, saith :

EXAMINED BY MR. WALLING :

Q. Where do you reside ?

A. At 313 Alexander Avenue, New York City.

Q. And where do you carry on business ?

A. At 53 East 10th Street.

Q. What business do you have ?

A. I am connected with the Home and Country Magazine, the business manager.

30 Q. And is Mr. Fairman, the witness who has just been sworn, in the employ of the same concern ?

A. Yes, sir, as bookkeeper.

Q. How long have you been with that present concern or any predecessor of it ?

A. Since September, 1887.

Q. Do you know the firm of Austin & Company ?

A. Yes.

Q. Where did they carry on business when you knew them ?

40 A. At 65 East 12th Street.

Q. Did you have any business relations with that firm?

A. Yes, sir.

Q. What was your relation with them?

A. That is the Home & Country Magazine, the Grand Army Publication Company, subsequently the Grand Army Review—I had business with them.

Q. Did your connection with the present concern lead you to have business relations with Austin & Company?

A. Yes, sir. 10

Q. Did you ever call at Austin & Company's place of business, 65 East 12th street?

A. Yes, sir.

Q. Can you recall from memory about what time?

A. The first time I called there was in the month of July or August, 1888.

Q. After that did you call?

A. Once or twice.

Q. Did you know Mr. Austin?

A. Yes, sir. 20

Q. Do you know where he is now?

A. I do not.

Q. Do you remember their moving from 65 East 12th street?

A. Yes, sir.

Q. To what place?

A. 52 University Place.

Q. I call your attention now to the magazine called the Grand Army Review, referred to in the testimony of Mr. Fairman, and ask you to look at the article to which reference has been made in your hearing. 30

A. The article in the December number of the Grand Army Review, I wrote this myself.

Q. You wrote that article?

A. Yes, sir; I wrote that article upon data furnished to me by Mr. Austin.

Q. Can you tell the Court about the general nature of the business that was carried on by Austin & Company?

A. Yes, sir, it was the compiling of a roster of all 40

the veterans of the war for the Union, to be in book form, for the use of the public, the Government Department, and for the tracing of any claims business, and for the pension business, and as a matter of record.

Q. Was the scheme ever completed?

A. It was not.

Q. It was not a financial success?

A. Well, we were dependent largely upon aid from Congress, and after the Grand Army Publication Company had invested about \$25,000 cash in it, disbursed entirely by Austin & Company, we found that to complete it would take \$25,000 more, and without any aid from the government we could not do it and we abandoned it, but we have the rosters on hand at the present time as they were made by Austin & Company or their employees.

Q. Do you know any of Austin & Co.'s employees?

A. Only Mr. Fairman.

20 Q. That is the only one?

A. That is the only one.

Q. You were not acquainted with the other employees?

A. No, sir; I had no occasion to be.

Q. Did you see other people working there besides Mr. Fairman?

A. Yes, sir.

Q. Can you give us some idea of the number?

A. I cannot—anywhere from five to fifteen. The 30 number was not of sufficient importance to me to brand it indelibly on my mind, certainly not to retain it any way.

Q. Do you know where they moved to from 65 East 12th street?

A. To 52 University Place.

CROSS-EXAMINATION BY MR. ABBETT:

Q. How do you remember that particular number?

A. 65 East 12th street?

40 Q. Yes.

A. Be
Mr. Kaw
Co., for
made ba
the appe
12th stre
was and
they had
if he tho
the mag
Q. W
you wen
A. Th
papers si
No. 65 E
Q. Th
by Mr. A
A. Ye
Q. W
Austin &
Kay?
A. No
tion of h
Q. Of
A. Of
directory
counting
ranced.
Q. Di
A. No
Q. W
Kay, dic
him?
A. No
understo
Q. AB
to 65 Ea
A. No
Q. W
partly in

A. Because Mr. Austin of Austin & Co. applied to Mr. Kay, the President of the Grand Army Publishing Co., for help to carry on that work, that they had made barely a start in the business when they made the appeal for help to carry it on. I went to 65 East 12th street to see what the character of the business was and what shape they had it in, and what progress they had made and get Mr. Austin's ideas, and see if he thoroughly understood what he was doing, and the magnitude of it and where he was. 10

Q. What I mean is, are you sure that the building you went to was No. 65 East 12th street?

A. That is my recollection, No. 65, and seeing the papers since then I am satisfied that is the number, No. 65 East 12th street.

Q. That article you wrote was from data given you by Mr. Austin I understand?

A. Yes, sir; that was written in November.

Q. What other business, if any, did you have with Austin & Co. besides looking into the matter for Mr. Kay? 20

A. Not any—not any, he had exclusive administration of his department.

Q. Of Mr. Kay's?

A. Of this Grand Army Review business; he ran the directory business on his own lines entirely, simply accounting to Mr. Kay for any money that was advanced.

Q. Did you ever see or meet a Mr. George Stetson?

A. No, sir. 30

Q. When you went to look into this matter for Mr. Kay, did you see Mr. Stetson or have any talk with him?

A. No, sir, never; I knew him in the business, I understood—interrupted.

Q. About how many visits altogether did you make to 65 East 12th street?

A. Not more than two or three.

Q. Were they all in July or partly in July and partly in August? 40

A. I don't know—the first visit was made in July or August, I cannot say which month. That is as near as I can fix it, one of these months.

Q. Was the second visit close after the first?

A. I don't think the second visit was very long after.

Q. How long did you stay?

A. Possibly an hour or so first, to get an idea of the business myself, it was such a voluminous affair that
10 I wanted to grasp as many of the details of it as I could.

THE COURT:

Q. When you went there to this place, what part of the building did you go in at 65 East 12th street?

A. The front parlor.

Q. Who did you meet there?

A. Mr. Austin; I recollect his secretary and book-keeper was there at that time.

Q. Did you see any proof readers?

20 A. Not distinctly proof readers, but I saw them all at work there, fully occupied; if there had been anything indicating that they were skylarking or anything of that kind and not attending to business, I should have discovered the matter.

Q. That is the impression it gave you?

A. Yes, sir, that is the impression it gave me—as the representative of Mr. Kay, I do not think he would have wanted to put in \$6,000, the first install-
30 anything going on there but was strictly business.

Q. Did you see any typewriting machines there?

A. Yes, sir; quite a number.

Q. On that floor?

A. Yes, sir.

Q. Did you go into any other room?

A. No, sir; my recollection is that I saw them there—they had two large rooms occupied in that
business.

Q. Were there any lady employees?

40 A. A number; yes, sir.

Louis
half of
scientio
affirmed

EXAMIN

Q. W

A. 4

Mrs. F

Q. D

in this

A. Y

Q. W

her acq

A. I

and ha

place.

Q. V

A. V

penmen

it was

and I

Q. A

A. Y

Cross-I

Q. V

A. I

Septem

time.

Q. I

A. Y

Q. I

A. I

Q. I

20th o

A. I

LOUISA KELLIE JACKSON, a witness produced in behalf of the complainant, who, declaring herself conscientiously scrupulous of taking an oath, being duly affirmed, saith :

EXAMINED BY MR. WALLING :

Q. Where do you reside ?

A. 409 St. Nicholas avenue now, but not when Mrs. Fairchild knew me.

Q. Do you know Mrs. Fairchild, the complainant in this case ?

10

A. Yes, sir.

Q. Will you please state when you first formed her acquaintance ?

A. I was at the Readers' Publication Company, and had charge of the work there, at 21 University place.

Q. Was Mrs. Fairchild employed there ?

A. We advertised, I believe, for a great many good penmen, and her letter came among a number, and it was left to my selection who should be employed, and I liked her writing and sent for her.

20

Q. And she was thereafter employed by you ?

A. Yes, sir.

CROSS-EXAMINATION BY MR. ABBETT :

Q. When was this that you advertised ?

A. I cannot say exactly. I think it was between September 20th and 26th, 1888, or it was about that time.

30

Q. Do you now live at 409 St. Nicholas avenue ?

A. Yes, sir.

Q. Is that Brooklyn or New York ?

A. New York.

Q. Did you know Mrs. Fairchild before September 20th or 26th, 1888 ?

A. No sir.

MR. WALLING: I think it better that we should have a decision now with regard to

40

10 certain letters, that is as to the competency of the copies of the letters which we have offered in evidence. If it is necessary I can be sworn to testify to these facts that I wrote to the Clerk of the Court in which the second divorce case was tried, as to whether he had in his possession certain letters which have been offered as exhibits in that case, and he replied that he had. And as I interpreted the letter it is to the effect that it is a rule of law there that they must remain the property of or in the custody of the Court. I shall claim that as we, having offered in evidence sworn copies of the originals, that we are entitled to have these copies received by the Court as in evidence here.

THE COURT: You wrote to the Clerk, you say, to ask him to send the originals?

20 MR. WALLING: No, I wrote to ask him if they had them as exhibits in that case, and he said he had.

THE COURT: Now, what efforts did you make to get those originals here?

MR. WALLING: I wrote to the Clerk for them and he wrote a letter to me in reply, which letter I do not have with me to-day, but it was to the effect that it was a rule of law there that the papers offered as exhibits in causes must remain the property of, or in the custody of the Court.

30 THE COURT: Do you object, Mr. Abbett, to the introduction of the copies instead of the originals?

MR. ABBETT: I suppose we ought to have the originals, and if we cannot get the originals, I think we ought to have certified copies.

40 There are some letters which I do not want to have go in, unless other letters go in with them; that is, the originals to which they are answers, or the answers to these letters, and I think we ought to have them all, that we may have the

complete evidence. I understand that such letters as Judge Walling speaks of were produced, and I also understand as to his efforts to get them. I do not dispute that at all.

THE COURT: I think that Mr. Abbett's request is reasonable, that the letter in reply as well as the one you offer should be put in evidence. Of course, I cannot tell myself the force of the letter without I see the answer to it. I will admit the copies of letters and over- 10
rule the objection.

MR. WALLING: I will now read the evidence which has been taken in this cause on commission.

20

30

40

Depositions of witness produced sworn and examined the 2d day of October, 1894, at my office, in the City of Hutchinson, Reno County, Kansas, under and by virtue of a commission issued out of the Court of Chancery, of New Jersey, in a certain cause therein pending, wherein Nettie Fairchild is complainant and William G. Fairchild is defendant.

- 10 WILLIAM G. FAIRCHILD, of the City of Hutchinson, in the State of Kansas, a witness produced on the part of the defendant being duly sworn, deposes and says:

Interrogatories.

First.—Are you the defendant in this suit?

FIRST.—To the first interrogatory he says, I am.

Second.—What is your present residence and what has been your residence since 1885?

- 20 SECOND.—To the second interrogatory he says: My present residence is Hutchinson, Kansas, and have resided in Kansas, since the fall of 1885.

Third.—When did you first meet the complainant?

THIRD.—To the third interrogatory he says: That he first met the complainant about twenty years ago.

Fourth.—Did you frequently visit the complainant at her father's house before your marriage, and if so how often on an average?

- 30 FOURTH.—To the fourth interrogatory he says: I made frequent visits on the complainant at her father's house prior to the marriage in 1885. During the two or three years immediately prior to the marriage on the few occasions when I chanced to be in Keyport, New Jersey, but no oftener than I visited other young ladies of that town, and not as often as some others.

Fifth.—When did you next see the complainant after your marriage, and where?

- 40 FIFTH.—To the fifth interrogatory he says: I first saw the complainant on the following Saturday evening after the marriage, at the post office in

Keyport,
as her fa
Sixth.
er's house
ing your
SIXTH.
met the c
tory fifth
Sevent
your ma
on the S
SEVENT
No, I di
Eighth
father's
following
EIGHT
did not.
Ninth
marriage
Sunday
NINTH
not. I
except t
I never
place af
Tenth
would n
could co
TENT
I never
Eleve
owned
York C
ELEV
No, not
York C
had no
make t
thing i

Keyport, New Jersey, and walked with her as far as her father's gate.

SIXTH.—Did you call on the complainant at her father's house at Keyport, on the Saturday evening following your marriage?

SIXTH.—To the sixth interrogatory he says: No I met the complainant as stated in answer to interrogatory fifth, but did not go inside the yard.

SEVENTH.—Did you and complainant consummate your marriage by cohabitation at her father's house on the Saturday evening following your marriage? 10

SEVENTH.—To the seventh interrogatory he says: No, I did not.

EIGHTH.—Did you call on the complainant at her father's house at Keyport, on the Sunday afternoon following your marriage?

EIGHTH.—To the eighth interrogatory he says: No, I did not.

NINTH.—Did you and complainant consummate your marriage by cohabitation at her father's house on the Sunday afternoon following your marriage? 20

NINTH.—To the ninth interrogatory he says: No, I did not. I never saw the complainant after the marriage except the one time on the street as testified to above. I never cohabited with the complainant at any time or place after the marriage.

TENTH.—Did you ever tell complainant that you would make a home for her in the West and that she could come to you?

TENTH.—To the tenth interrogatory he says: No, as I never saw her after I made up my mind to go West. 30

ELEVENTH.—Did you ever tell complainant that you owned in your own right an interest in a cafe in New York City?

ELEVENTH.—To the eleventh interrogatory he says: No, not in my own right; there was some of the New York Cafe stock in my name, so I was informed, but I had no interest in the concern, my name being used to make the requisite number of stockholders to get the thing incorporated; but I never had a dollar in it nor 40

never received a dollar from it directly nor indirectly. I may have mentioned the above fact, but never that I owned any of the stock in my own right.

Twelfth.—Did you ever tell complainant that you would come into a good deal of property when you were twenty-five years old?

TWELFTH.—To the twelfth interrogatory he says: No, I never did.

Thirteenth.—Did you during the week following
10 your marriage send a letter to her by your Cousin Eddie Sprague requesting complainant to meet you?

THIRTEENTH.—To the thirteenth interrogatory he says: No.

Fourteenth.—When was the last time you saw complainant in Keyport and where?

FOURTEENTH.—To the fourteenth interrogatory he says: On Saturday following the marriage, standing at the gate at her father's yard at Keyport, New Jersey.

Fifteenth.—Did you ever cohabit with complainant
20 after your marriage?

FIFTEENTH.—To the fifteenth interrogatory he says: No, I never did.

Sixteenth.—What money or other property did you have at or about the time of your marriage?

SIXTEENTH.—To the sixteenth interrogatory he says: He had no money or property of any kind or description and was not making enough to pay his expenses at that time.

Seventeenth.—Was the decree of divorce obtained
30 in your suit against complainant, which was entered March 11, 1887, obtained by fraud or perjury? Has any such claim ever been made except by complainant's bill herein?

SEVENTEENTH.—To the seventeenth interrogatory he says: The decree of divorce entered March 11th, 1887, was not obtained by me by fraud or perjury. I had never been inside of a court room up to the time of the hearing of that case, and every step in that case was taken at my attorney's request and instructions. I re-
40 lied upon and obeyed him in all things, and done

nothing only as he told me it was proper for me to do. The complainant, by her attorney, made the claim that the decree entered March 11th, 1887, was obtained by fraud and perjury in the second action had in the District Court of Hodgeman County, Kansas, and submitted testimony to that effect, and also cross-examined me when on the witness stand in reference thereto.

Eighteenth.—What was your residence at the time of your marriage to complainant? 10

EIGHTEENTH.—To the eighteenth interrogatory he says: My residence was at New York City at the time of marriage. I had been residing in Orange, New Jersey, some months prior to moving to New York with my parents.

Nineteenth.—When did you next see complainant after your marriage, and where?

NINETEENTH.—To the nineteenth interrogatory he says: Saturday following the marriage at the Post Office, at Keyport, New Jersey. 20

Twentieth.—State what further you know relative to the issues in this cause.

TWENTIETH.—To the twentieth interrogatory he says: I was married to the complainant the 10th of August, 1885, and left her on the street a few minutes thereafter, and have never seen her but once since, and then only for a short time upon the street in Keyport, New Jersey. I had no means of my own or property, and was dependent upon my parents for support, as my health was very poor, so that I was unable to do 30 any work of any kind, and did not do anything for several years afterward. I had spent the year of 1884 in Wyoming Territory, sent there by my physician on account of my health, my parents paying all of my expenses. We were never engaged and I never asked her to be my wife.

IN CHANCERY OF NEW JERSEY.

Between

NETTIE F. FAIRCHILD,

Complainant,

AND

WILLIAM G. FAIRCHILD,

Defendant.

} On Bill, &c.

10

Interrogatories to be administered to William G. Fairchild, the defendant in the above-entitled cause, by way of cross-interrogatories to be administered to him upon the part of and in behalf of the complainant in the said cause, under and by virtue of the commission to which these cross-interrogatories are annexed, sued out upon motion of the said defendant :

20

1.—In what year and in what place were you born ?

To the first cross-interrogatory he says: I believe in 1860, and in Keyport, N. J.

2.—With whom and at what place did you reside for the fifteen years next before your marriage with the complainant ?

2nd Interrogatory.—The year 1885 up to the time of our marriage I resided at Orange, N. J., and in New York City with my parents. The year 1884, the months of March and April, was spent in Keyport, N. J. The balance of the year was spent in Wyoming Territory, and from April, 1883, to March, 1884, I lived in New York City, my parents being with me the most of the time. From the fall of 1879 to April, 1883, I was at sea or living in Coatzacoalcos, Old Mexico, not being in Keyport 30 days during the entire time; from 1875 to 1878 I was at school in Connecticut and spent my vacations in Greenville, New York State. From the time of leaving school up to my going to sea in 1879 I

40

was in a bank in New York, where my health broke down and lived in the city. Two years prior to going to school, I resided in Keyport, N. J., and prior to that in New Orleans, Louisiana.

3.—In what place have your parents resided for twenty-five years last past, and where do they now reside?

3rd Interrogatory.—Some of the time in Keyport, New York City and New Orleans, Louisiana; they have always had a home in Keyport, but have occupied 10
it only a part of the time up to my leaving the East in 1885; just now I understand they are in Keyport, N. J.

4.—Had you voted at any other State or municipal election prior to your said marriage, and, if so, at what place did you so vote, and in what years?

4th Interrogatory.—No, never voted but once anywhere, and that was in Keyport, N. J., to the best of my recollection.

5.—Had you paid any municipal or poll taxes prior 20
to your said marriage, and, if so, at what place and in what year?

5th Interrogatory.—Never paid any municipal or poll taxes anywhere prior to marriage.

6.—How long had you known the complainant before your said marriage to her, and where did she reside during that time and at the time of your said marriage?

6th Interrogatory.—First met complainant about 1873 or 1874, perhaps later; she then resided with her 30
father in Keyport, also resided there at time of marriage.

7.—How long had you known the parents of the complainant before your said marriage, and where did they reside during that time and at the time of your said marriage?

7th Interrogatory.—About the same length of time I have; the complainant; they resided in Keyport at the time of marriage.

8.—How long after your said marriage was it that you went to the West ?

8th Interrogatory.—10 days.

9.—Did you inform your wife, the complainant, that you were going to the West ?

9th interrogatory.—No.

10.—Did you ask your said wife to go with you to the West ?

10th Interrogatory.—No.

10 11.—In what State did you locate after you went to the West first after your said marriage ?

11th Interrogatory.—My first permanent location was in the State of Kansas.

12.—Have you resided in that State ever since that time ?

12th Interrogatory.—Yes.

13.—Did you ask your said wife to come to live with you where you were in the West ?

13th Interrogatory.—Yes, once by letter.

20 14.—Did you inform your said wife of the place where you were living after you went to the West as aforesaid ?

14th Interrogatory.—Not since I have been in Kansas ; she knew of my being in Cheyenne, Denver and Pueblo, where I remained a few weeks each.

15.—Did you send your said wife any money to go to you in the West ?

15th Interrogatory.—No ; had none of my own to send her or do anything else with.

30 16.—Did you go to the West as aforesaid intending to make that your home ?

16th Interrogatory.—I did.

17.—Did you ever send your said wife your post office address after you went to the West as aforesaid ?

17th Interrogatory.—Yes ; from Cheyenne.

18.—Have you ever contributed anything to the support of your said wife ?

18th Interrogatory.—No.

40 you ?
19.—Have you ever asked your said wife to live with

19th never

20.—marria

20th office a

gate.

21.—marria

21st

22.—

22d

23.—

quire v

and of

23d

24.—

at any

at wha

24th

25.—

said m

send a

26th

27.—

since

from v

27th

date ;

Denve

28.—

wife si

28th

29.—

29th

writte

19th Interrogatory.—Yes, in one instance, but never received reply.

20.—Have you ever seen your said wife since your marriage to her and if so when and where?

20th Interrogatory.—Only once; met her at the post office at Keyport, and walked with her to her father's gate.

21.—When after you first went West after your said marriage did you first return to Keyport?

21st Interrogatory.—In 1887. 10

22.—Did you at that time call upon your said wife?

22d Interrogatory.—No.

23.—Did you then make any effort to see her or inquire where she was? If yes what effort did you make and of whom did you inquire?

23d Interrogatory.—No.

24.—Have you ever since your said marriage called at any place to meet and see your said wife? If yes at what place did you call?

24th Interrogatory.—No. 20

25.—Did you request your said wife to keep your said marriage secret for a time?

25th Interrogatory.—Yes, at the time I left her in New York on the streets.

26.—Have you written to your said wife since your said marriage and if so did you inform her where to send a reply?

26th Interrogatory.—Yes.

27.—How often have you written to your said wife since your said marriage and upon what dates and from what places? 30

27th Interrogatory.—Two or three times; cannot give date; think I wrote her from Cheyenne, also from Denver.

28.—Have you received any letters from your said wife since your said marriage?

28th Interrogatory.—Yes.

29.—If yes, how many?

29th Interrogatory.—Three or four; they were written the latter part of August and the forepart of 40

September; her last letter was from New Haven, Connecticut, which was the last place I know of her being, except from hearsay.

30.—At what date did you first make up your mind to try and procure a divorce from your said wife?

30th Interrogatory.—Along in the fall of 1886.

31.—Did you arrange in any way for the support of your said wife after your said marriage? If yes, in what way did you so arrange?

10 31st Interrogatory.—No.

32.—What duty or obligation as a husband to your said wife have you discharged since your said marriage?

32d Interrogatory.—

33.—When you separated from your said wife in New York on the day of your marriage did you intend to call upon her again and to live with her?

33d Interrogatory.—No, and I so told her at the time of leaving her.

20* 34.—What is your business or profession?

34th Interrogatory.—The practice of law, having commenced the study of law in 1888, and have since been admitted to the bar.

35.—Where do you now live and carry on business?

35th Interrogatory.—Hutchinson, Reno County, Kansas.

WILLIAM G. FAIRCHILD.

Examination taken, reduced to writing, and sworn to this 2d day of October, 1894, before me.

30

[L. s.]

Z. W. WHINERY,

Clerk District Court,
Reno County, Kansas.

MR. WALLING : There is quite some of this commission that I must object to. First, I object to the 32d Interrogatory, and I ask to have the answer to that interrogatory taken out as not responsive.

MR. ABBETT : I object to its being stricken out—it is an answer to his own cross-examination—if it was an answer to one of my direct questions I might not object ; but as it is, I do object.

10

THE COURT : I shall grant the motion. I do not think it is responsive.

MR. WALLING : I also move to strike out a portion of the answer to the 23rd cross interrogatory. After he returned from the West, in 1887, I asked him this question : “Did you then make any efforts to see her or inquire where she was ?” to which he answered : “Yes.” Then I asked : “What effort did you make, and of whom did you inquire ?” and he answered : “No, she had already commenced suit to get what money she could,” and I ask now to have stricken out all that follows the word “No,” as not being responsive, and as irrelevant.

20

THE COURT : I think it ought to go out as irrelevant.

MR. WALLING : Now I object to the 17th cross interrogatory, “Did you ever send your said wife your post office address after you went to the West as aforesaid,” his answer was “Yes, from Cheyenne ;” now that is a complete answer to the question, but he still goes on and says, “As I wished to learn how big a deception she had practiced upon me, and see how long she would carry it out ;” now I move to strike out the latter part of that answer as irresponsible and irrelevant.

30

THE COURT : I think that ought to be stricken out.

40

MR. ABBETT : Of course your Honor will understand that I object to all this striking out?

THE COURT : Of course this is all done subject to your objection.

MR. WALLING : I object also to the answer given to interrogatory No. 17 on the direct examination, and I ask to have that stricken out.

10 "Was the decree of divorce obtained in your suit against complainant which was entered March 11th, 1887, obtained by fraud or perjury," and he says "No."

20 Then the question, "Has any such claim ever been made except by the complainant's bill herein," and I ask that the answer to that second part be stricken out—all of the response to the 17th direct interrogatory—"the complainant by her attorney made the claim that the decree entered March 11th, 1887, was obtained by fraud and perjury in the second action, &c. down to the words "On the witness stand in reference thereto." I want to have this stricken out because the answer is a surprise to me, and there is no opportunity for me to contradict her—there is nothing in the question that suggests that there should be a reply setting forth the testimony of this character, or anything except a categorial reply of yes or no.

30 THE COURT : I do not see anything wrong in that and I decline to strike it out.

40 MR. ABBETT : I offer in evidence two portions of testimony in the suit which we have always spoken of as the second divorce suit in Kansas. That is the testimony of the complainant here where she speaks on the first suit for divorce. There is about 70 pages of testimony altogether, and I would like to go through it and have one or two facts introduced in evidence here, show ing that the first decree in Kansas was before

the Court when they considered the second case and ruled on the second suit.

MR. WALLING: If he puts any of this evidence in, I want the whole of it to go in. I am willing that the entire testimony of either Mrs. Fairchild or himself or both, should go in.

MR. ABBETT: We might reserve the right for either party to read any portion of that testimony, but I do not want to consider the whole of this evidence as put in evidence by me. I 10 offer a certain portion of it.

MR. WALLING: I object to offer unless it shall include the entire testimony of each witness, which he desires to introduce.

THE COURT: I think the proper practice is to offer the whole of the evidence and you can then call attention to any specific fact.

MR. ABBETT: Yes, but I do not want to offer that whole testimony, because there were some facts testified to which I do not consider bene- 20 ficial to my case.

THE COURT: You do not offer the whole of it except so far as necessarily show the particular facts you desire to prove?

MR. ABBETT: That is all.

THE COURT: I do not see how you can separate one part from the other. You have to offer the whole testimony in this case, but you do it for the purpose of proving that specific thing, or only so far as it is testimony relating to the fact 30 that the first decree was before the court when they considered the second decree?

MR. ABBETT: Yes, that is all I want to get before the Court here.

THE COURT: Will Judge Walling waive the point that this is only a partial reproduction of all the evidence in that case?

MR. WALLING: I am perfectly willing that all Mrs. Fairchild's testimony should go in on their offer, and that, despite the fact that there 40

were other witnesses who were sworn, simply her own evidence, I am willing for that.

THE COURT: I will allow that to go in, and I give Judge Walling the benefit of using any portion of that testimony which may be in rebuttal of the fact which you allege it shows—in rebuttal or in explanation.

10. NETTIE F. FAIRCHILD, being recalled in behalf of the defendant :

EXAMINED BY MR. ABBETT :

Q. Were you the defendant in a certain suit started in the State of Kansas against you for divorce by William G. Fairchild, in which case—that is in the second case—your testimony was taken before Mr. Ogden in Keyport ?

A. Yes, sir.

20 Q. You were the defendant in that suit ?

A. Yes, sir.

Q. And gave certain testimony in that suit, did you not ?

A. Yes, sir.

Q. Did you testify as follows—you spoke of a letter and then you say—"Shortly after that I learned that he had obtained a divorce against me in Stafford County, Kansas"; do you remember so testifying ?

A. I testified to it, yes, sir.

30 Q. I want to know if you did so testify ?

A. I presume so, if it is there.

Q. Just look at that testimony found on page 29 which I now hand you, and refresh your memory, and answer that question, and also answer from your recollection (hands the witness a package of testimony); did you so testify ?

A. So far as my recollection goes, it is here, I cannot say any more than that.

40 MR. ABBETT: I offer that portion of her testimony in evidence.

MR. WALLING : I move to strike that evidence out on the ground that there is evidence before the Court, that there is higher and better evidence now than her testimony ; that there is now before the Court the depositions of the witnesses which was taken in the divorce case in question, and all of her testimony appears in that deposition and is the best evidence on the point in question that can be obtained.

MR. ABBETT : I offer that portion of this witness, the certified record in evidence. 10

THE COURT : I decline to strike out. It is simply asking her whether she testified to certain facts, whether she did or not, at a certain place and time, testify to certain facts. This testimony has not come before the Court yet, and Mr. Abbett wants to know what she testifies to at this trial, and I think he has a right to ask her what she testified to.

WITNESS : Well, suppose I have forgotten? 20

THE COURT : Then you must do the best you can.

MR. ABBETT :

Q. The testimony which you gave in a suit against you for divorce in Kansas, which you defended, did you testify that there was a first divorce suit against you in the State of Kansas?

A. I knew of it and presume I did.

30

CROSS-EXAMINATION BY MR. WALLING :

Q. Your testimony in the second divorce case was taken by means of a written deposition?

A. Yes, sir.

Q. And taken down in writing?

A. Yes, sir.

Q. And forwarded to the West?

A. Yes, sir.

Q. You did not appear in the West, did you?

A. No, sir.

40

Q. The Court refused to allow you the means to make your personal appearance to defend yourself in that case?

MR. ABBETT: I object to that as not being cross-examination.

Question withdrawn.

Q. Your deposition, or what purports to be a copy of your deposition in the West, has been shown by
10 counsel to the complainant here this morning?

A. Yes, sir.

Q. And he has that in his possession?

A. Yes, sir.

Q. And what you testified to in that case will appear in that paper?

A. Yes, sir.

Q. If that is a copy?

A. Yes, sir.

20

MR. ABBETT: I offer in evidence that portion of the testimony given by Nettie F. Fairchild in the suit in the State of Kansas which we have spoken of as the second divorce case, and found on page 29 of the exemplified copy of her testimony, which reads as follows: "Shortly after that I learned that he had obtained a divorce against me in Stafford County, Kansas."

MR. WALLING: I object to it on the ground that it does not include the entire testimony of the witness or entire deposition.

30

THE COURT: Has the witness in any way contradicted that testimony?

MR. ABBETT: No, sir, I do not think she denies that. I want that before this Court, because the question of jurisdiction will most likely come up, and I want the Court to know that the Court there knew of the first case when the second case was being tried.

THE COURT: The witness has been here and she testifies that she testified by deposition and

40

NETT
half:

EXAMIN

Q. E
Jersey
tell?

A. T

Q. I

A. Y

Q. D

A. I

Q. B

A. Y

Q. W

your fir

A. N

Q. N

you can

A. I ha

for me

St. Den

that she was not personally present in Court, and the evidence she has given does not contradict the evidence you show.

MR. WALLING : I am willing that the whole of that testimony shall go in.

THE COURT : I think it is proper that counsel offer the deposition, but he is not bound by anything else except the specific purpose that he offers it for—but the whole deposition goes in, and that is my ruling. 10

MR. WALLING : I am willing that the whole record shall go in, that is the whole deposition.

MR. ABBETT : With the exception of any evidence that may be found necessary as to the copies letters which have been mentioned, the defendant rests.

NETTIE F. FAIRCHILD, being recalled in her own behalf : 20

EXAMINED BY MR. WALLING :

Q. How long did your residence continue in New Jersey before your your family left, as near as you can tell ?

A. To the latter part of October, 1888.

Q. In New Jersey ?

A. Yes, sir.

Q. Do you think it was after the 24th or before ?

A. I cannot say, really. 30

Q. But it was late in the month ?

A. Yes, sir.

Q. Were you ever remarried to your husband after your first marriage ?

A. No, sir.

Q. Now, Mrs. Fairchild, will you please state how you came to find employment at 65 East 12th street ?

A. I had a friend who was looking for employment for me here in the city, and she spoke to the cashier of 40 St. Denis Hotel, knowing that she had a great many op-

portunities. This Mr. Austin, talking to her one day, said he would like to have a lady that he could depend upon to help him start this work, and this lady thought of me ; she sent me a postal card that day, and I went to the city and the interview was satisfactory, and I went to work, I think, the following Monday for Austin & Co.

Q. About what time did you begin work there ?

A. It was in June.

10 Q. And you continued there how long ?

A. Until I think the latter part of August or the first week in September.

A. Of the same year ?

A. Yes, sir.

Q. Please describe to the Court the nature of your duties ?

A. I was proof reader (interrupted)—

MR. ABBETT : I object to it as not being in rebuttal. Objection overruled.

20

A. I was proof reader ; I addressed envelopes and interviewed some of the people who came to see about the business.

Q. On what floor of the building was it carried on ?

A. On the parlor floor.

Q. What hours would you generally go to work ?

30 A. Well, during the week I got to work between eight and half past, and left by six or before six o'clock. Those were the hours usually ; but on Mondays I arrived there after the boat arrived, as I came from the boat, as it arrived in the city about nine or about that hour.

Q. Did you ever remain in that building after business hours ?

A. No, sir.

Q. Were you ever there in the night time at all ?

A. No, sir.

Q. Where did you spend your nights ?

A. At 136 Waverly place.

40

Q. What place was that ?

A.
Q.
there
A.
I did
then.
Q.
A.
Q.
A.
Q.
A.
Q.
Capt.
A.
Q.
A.
Q.
A.
Q.
place
A.
work
Q.
perio
A.
Q.
was n
A.
until
Q.
ploys
A.
Q.
A.
Q.
as ne
A.
fiftee

A. My boarding house.

Q. Did you spend the nights of the entire week there?

A. No, only from Monday to Friday—a few times I did not go home and I stayed there just the same then.

Q. But your custom was to go home?

A. Yes, sir.

Q. And by home, you mean what?

A. Keyport, New Jersey. 10

Q. Coming up again on Monday morning?

A. Yes, sir.

Q. Did you ever know that defendant's father, Capt. Fairchild, had emissaries watching you?

A. No, sir.

Q. That he was following you?

A. No, sir.

Q. That William J. Bell was following you?

A. No, sir.

Q. Do you remember whether you worked in this 20 place on Labor Day in 1888 or not?

A. I did not have any holidays any of the time I worked there.

Q. You worked there every week day during the period of your employment?

A. Yes, sir.

Q. And do you remember that as a fact Labor Day was not much celebrated?

A. Yes, sir; Labor Day was not a legal holiday until 1890. 30

Q. Now about how many employees were there employed there when you first went there?

A. Mr. Fairman, a typewriter and myself.

Q. Besides Mr. Austin?

A. Yes, sir, besides Mr. Austin.

Q. Now to what number did they finally increase, as near as you can recollect?

A. Well, I know at one time there were twelve or fifteen at one time, but they discharged and hired, so 40

that they employed I suppose of strangers, about thirty, the whole time that I was there.

Q. Did you have any special acquaintance with any of them, any special acquaintance?

A. No, sir.

Q. You knew them simply as fellow employees?

A. Yes, sir.

Q. Did you ever see anything improper around that building while there?

10 A. No, sir.

Q. Did you suspect that the building, if it was in fact used for any improper purpose, other parts of the building?

A. No, sir.

Q. Did you ever see anything to suggest any such thing to you?

A. No, sir.

Q. Do you know where Col. Austin lives?

A. I do not.

20 Q. Have you tried to find him?

A. Yes, sir.

Q. Did you ever commit adultery at 65 East 12th street or elsewhere?

A. No, sir.

Q. Did you on the 10th of August or at any other time on the steamboat *Minnie Cornell* say to defendant that you were in trouble?

A. No, sir.

Q. And that defendant must marry you?

30 A. No, sir.

Q. After your marriage to the defendant, where did defendant go?

A. We were married by Dr. Bouna of the 11th Street Baptist Church at his home. From there we walked toward 6th avenue and took the car for the boat. While in the car he took this ring (indicating one on her right hand), and measured with his finger for the size of the wedding ring, and spoke of keeping the ceremony quiet. We then got out of the car

and he walked with me down Vesey street to the boat.

Q. I want to know where you separated ?

A. At the boat.

Q. Now, why did your husband remain in the city ?

A. At my request.

Q. Was he not likewise employed in the city ?

A. Yes, sir ; he was.

Q. Did he come home any other nights than Saturdays.

10

A. No, sir.

Q. When he speaks of separating from you on the street, it was a separation under those circumstances that you should go home and he remain in the city to attend to his business ?

A. He said to me " Good-bye, Mrs. Fairchild ; take good care of yourself."

Q. Did you practice any deception on your husband ?

A. No, sir, none whatever.

Q. Do you remember where you saw your husband on the Saturday evening following your marriage first ?

20

A. At my home.

Q. He came there ?

A. He came and called on me.

Q. Did you meet him at the Post Office ?

A. No, sir.

Q. Did he go inside of the yard at your home that Saturday night ?

A. He was inside of the house when I saw him first.

Q. He called at your house and came in ?

30

A. Yes, sir.

Q. Will you state a little more in detail the circumstances of the day of the marriage, beginning with the coming up on the boat ; I do not mean the conversation, but how you employed the time up to the hour of the marriage ?

MR. ABBETT: I object to that question as irrelevant and immaterial.

Question allowed.

40

A. We were on the boat, and I did some shopping in the city, and we met at lunch. He went to his business and we had lunch together (interrupted).

Q. You separated and he went to his business, after arriving in the City ?

A. Yes, sir.

Q. And you met again in the day time ?

A. Yes, sir, at lunch.

Q. How many hours elapsed between the time you
10 separated and met again ?

A. Well, the boat got in by a quarter past nine, or about that, and we met again at twelve o'clock at lunch. We had lunch together and we were married between one and two, and then the boat left at three o'clock again in the afternoon ; I think it was at that time, and we took the cars directly to the boat. I remember that I was a little bit early in the boat and the boat did not start just as I arrived there.

Q. Did your husband leave you under peculiar cir-
20 cumstances on the streets, of any kind ?

A. No, sir.

Q. Did he leave you in a pleasant frame of mind ?

A. Very.

Q. Did he say anything to this effect "that he did not intend to call upon you again nor to live with you" ?

A. No, sir ; he did not.

Q. Was there intimation then on his part of any kind that he intended to separate from you or to treat you otherwise than as his lawful wife ?

30 A. Not any.

Q. Do you know, Mrs. Fairchild, why your husband's manner changed towards you after the marriage ?

Objection by Mr. Abbett as irrelevant and immaterial.

THE COURT : You may state any facts.

MR. WALLING : We cannot state any facts, and as the question is objected to, I will withdraw it.

Q. Why did you go to the city to work, were you compelled to go?

A. Yes, sir.

Q. Your husband had at that time left you without supporting you, how long?

A. Three years.

Q. Your father is a man not in very good circumstances?

A. No, sir.

Q. And you were compelled to seek employment for 10 your own support?

A. Yes, sir.

Q. And have you, so far as your abilities permitted, supported yourself ever since?

A. Yes, sir; I have.

Q. Can you now remember clearly what you testified to in the so-called second divorce except as your memory is refreshed by reference to the deposition you then took?

A. No, sir; I cannot.

20

CROSS-EXAMINATION BY MR. ABBETT:

Q. Who was this friend here looking for employment for you?

A. Her name was Miss Lizzie Cartlisch, cashier for Huyler's store.

Q. Cashier there at present?

A. Yes, sir.

Q. Do you know her address and residence?

A. I know her, but I do not know her city address 30 or home, but I see her quite often. But the young lady who obtained the situation for me was the cashier of the St. Denis Hotel. She is now married and living in the west.

Q. Do you know where?

A. No, sir.

Q. Would you be able to obtain her address?

A. Yes, sir; I think so.

Q. When was that you were speaking of being em-

40

ployed in Austin & Company and the postal card sent you, do you know when it was?

A. It was in June, 1888.

Q. What part of June?

A. I do not remember.

Q. Do you know whether it was shortly before the 4th of July, do you remember it in connection with the 4th of July?

A. No, sir; I cannot remember it.

10 Q. And I understand you left there the latter part of August or first part of September, 1888?

A. Yes, sir.

Q. Then if any one says you were there until October or November, 1888, they are wrong about that, are they?

A. They are mistaken.

Q. That is not so?

A. No, sir; it is not so.

20 Q. Is there any part of the time you were employed at Austin & Company's you were busier than at other times, or was the work slack, or were you rushed all the time, which?

A. It began very moderately, and then we were rushed up to the time the company disbanded.

Q. Did you ever have to get there before eight o'clock?

A. No, sir.

Q. Did you ever have to stay there after hours?

A. No, sir.

30 Q. You were never so rushed that you had to work overtime?

A. No, sir.

Q. Who did you board with at 126 Waverly place?

A. I boarded with a Mrs. Inglesby.

Q. Does she still live there now?

A. No, sir.

Q. Do you know where she lives?

A. Yes, sir.

Q. Do you know her at the present time?

40 A. Yes, sir; I do.

Q. W
around t
to the P
A. I v
Q. W
the mail
A. M
for the n
Q. Yo
A. No
Q. In
were you
A. No
Q. Yo
A. Ye
Q. Th
to the P
A. No
Q. Di
stayed in
A. I s
Q. Yo
returned
A. O
Q. W
stay in N
A. Th
agreed to
after his
Q. W
A. Th
RE-DIRE
Q. Yo
A. Ye
Q. An
five year
A. He

th

Q. When you were at Keyport in and about or around the time of your marriage, did you usually go to the Post Office to get your mail?

A. I very seldom went to the Post Office.

Q. Who in your family went to the Post Office for the mail?

A. My sisters were working in town, and they went for the mail.

Q. You never went for the mail?

A. Not purposely.

10

Q. In 1885, you were not employed in New York, were you?

A. No, sir.

Q. You were at home at that time all the time?

A. Yes, sir.

Q. That is the time I mean—did you ever then go to the Post Office for the mail?

A. No, sir; I never had any occasion to.

Q. Did I understand you to say that your husband stayed in New York at your request?

20

A. I suppose so, I asked him to.

Q. You asked him to stay in New York while you returned to Keyport?

A. Oh, no.

Q. What do you mean by saying you asked him to stay in New York?

A. That our marriage should be a secret one, and I agreed to it, that he should remain in New York until after his birthday.

Q. When was his birthday?

30

A. The 25th of September.

RE-DIRECT BY MR. WALLING:

Q. Your husband is older than you?

A. Yes, sir.

Q. And at the time of his marriage he was twenty-five years old?

A. He would be on the 25th of September.

MR. WALLING: I now offer in evidence all the various papers, books and letters which

40

were during the progress of the case marked for identification.

I also ask the further privilege, if it becomes necessary, to offer in evidence certain copies of letters, if it turns out that I have lost my originals. I thought I had them here to-day with me, but they are not in my satchel and they may be mislaid.

10 I also wish to have substituted as an exhibit, instead of the paper referred to in the evidence, certain copies of all papers in the case of William G. Fairchild *v.* Nettie F. Fairchild, in the District Court of Stafford County, Kansas.

Marked D. 5 October 31st, 1894.

MR. WALLING :

Q. (Witness being shown letter I. for identification and dated October 25th, 1888, is asked, Do you know the signature to that letter ?

A. Yes, sir.

20 Q. Whose is it ?

A. Mr. Austin's.

Q. From whom did you receive it ?

A. From Mr. Austin ?

Q. While you were employed at that place ?

A. After my employment had ceased.

THE COURT :

Q. Is this a letter written to you ?

A. Yes, sir.

30 CROSS-EXAMINATION BY MR. ABBETT :

Q. Where were you when you received that letter, Mrs. Fairchild ?

A. I was in New York, in the city.

Q. Where were you employed at that time ?

A. I was not employed anywheres, I was looking for a position.

Q. How soon after the date of that letter did you get employment ?

40 A. In March, 1889.

Q. WI
A. M
Q. Di
A. No
Q. WI
the type
A. Ye
Q. WI
A. A
Q. Do
A. I o
lost track
Q. Ha
A. No
Q. Di
Co., at th
A. I d
Q. WI
A. Ye
Q. WI
A. In
moved t
New Yo
Q. Ho
A. Be
along, an
Q. Di
Austin &
A. No
Q. Di
A. Ye

fa
an
ri

To be

Q. Who signed that letter ?

A. Mr. Austin.

Q. Did you see him sign it ?

A. No, sir.

Q. Who wrote the letter—do you know who wrote the typewritten part of it ?

A. Yes, sir.

Q. Who ?

A. A lady by the name of Miss Pullis.

Q. Do you know where she is at the present time ? 10

A. I only know she lives in Jersey City, but I have lost track of her.

Q. Have you tried to find her ?

A. No, sir.

Q. Did you get that letter at the place of Austin & Co., at their establishment ?

A. I do not think I did, I think it was sent to me.

Q. Where you were residing ?

A. Yes, sir.

Q. Where was that at that time ? 20

A. In 11th street—it was sent to me just as we moved to the city, our family moved that month to New York City, the latter part of it.

Q. How did Austin & Co. know your address ?

A. Because I had been in the city right straight along, and they knew of our intention to move up.

Q. Did you live on 11th street while employed in Austin & Co.'s place ?

A. No, sir.

Q. Did they know of your change of address ? 30

A. Yes, sir.

COMPLAINANT RESTS.

THE COURT : Mr. Abbett, if there are any new facts which have been put in by Judge Walling and you think they are not correct, you had a right to answer those.

MR. ABBETT : I do not know that there is.

DEFENDANT RESTS.

CASE CLOSED.

40

To be submitted on briefs.

Mr. Walling makes an application for an allowance in this cause, which is objected to by Mr. Abbett.

10 THE COURT : The Chancellor made the former order with respect to this matter, and I hesitate about taking any action therein, but if, on application being made to the Chancellor, and he says that he considers that as being within the scope of the reference to me, then I will take the matter into consideration. Judge Walling had better make the application to the Chancellor direct.

20

30

40

C
Mr Hus
Yours
hands.
the concl
me know
If you
inform m
Your l
to your v

Destroy
Sure.

DEAR N
I am c
pictions
hurt me
I have
his i
He

Destroy

Complainant's Exhibit A and B.

KEYPORT, March 15th, 1886.

MY HUSBAND :—

Yours of Feb. 26th, 1886, has been placed in my hands. The only portion of it which deserves notice is the concluding sentence as follows, " Will you live with me knowing all this ? "

If you intend by this to ask me to join you please 10 inform me when and where you expect me to come.

Your letter has no address and I am not informed as to your whereabouts.

NETTIE FAIRCHILD.

Complainant's Exhibit C.

20

Destroy
Sure.

NEW YORK, Aug. 11th, 1885.

DEAR NETTIE :—

I am quite worried last for fear you would rise *sus-
pitions* of how we stood. Please be careful as it would hurt me more than you *imagine*.

I have just received a letter from Ed. he is no out of his it,

He

30

I am

Yours

W.

Destroy this sure.

40

Complainant's Exhibit D.

DEAR NETTIE

I have told Mother we are married. I could not stand it she has took it so hard no one when we were married no

On _____ why did I not use
common *sence*.

Yours Will.

10

Complainant's Exhibit E.

NEW YORK Aug 18th 1885

DEAR NETTIE

Yours of yesterday at hand it is more fully than we had a chance to talk last night.

20 I do not know what I am going to do as yet; that is where I am going; dont worry about me. I feel much better today over it than I have yet. You know I come out of things easy. They are hard while it lasts but once over all is over.

I am coming down to Keyport Wednesday night. Tell your Mother if you think best.

30 You need never fear of my people saying one word Not even Grandmother or any one will ever find it out through them I have made them promise that. You if you tell them you had better see that they do the same. I think it may quiet down.

It is all on me nothing s/ and my doing all without saying one word. By my going away and getting out of sight I am in hopes of having things Smoother-

Yours

WILL

40

DEAR NE
I am in
what do
o'clock I
wait ther
will intro
He wil
must be s
Any an
with my
me if you
As the
I do.
Now I
hand.
Remen
lor of the
You v
Frank o
rather a
If you
office an
I neve
home an
it came
Eddie
night
I am
I exp
they can
serned
I do n
view

Reme

Complainant's Exhibit F.

SUSPENSION BRIDGE Canada

DEAR NETTIE

I am in Canada where all the d——n rascals go ;
 what do you think. Now on Tuesday next at 2
 o'clock I want you to go the Astor House Parlor and
 wait there. When Mr Len J. Noel a friend of mine
 will introduce himself to you in my behalf.

He will make arrangements for the future so *you* 10
must be sure to meet him there without fail.

Any arrangements he makes with you will meet
 with my hearty approval. And you will greatly please
 me if you say nothing of this *meeting to any one.*

As there is no use in any one knowing what you and
 I do.

Now I trust you will comply with my wish & be on
 hand.

Remember Tuesday afternoon at 2 o'clock in the Par- 20
 lor of the Astor House August 25th.

You will find Len a Gentleman about as tall as
 Frank only slender Black eyes and mustache also
 rather a dandie as his dimond stud and ring will show.

If you cannot meet him write to New York Post
 office and make another appointment

I never thought it would be so hard to give up
 home and all my *foakes* but when I was compeled to
 it came hard.

Eddie is in N. Y. city, he will see you Saturday 30
 night

I am well and feeling as good as could be expected.

I expect you have told your *foaks* by this time see if
 they cant keep it quiet as it is no *cretit* to any one con-
 cerned

I do not know where I am going have no place in
 view

Yours

WILL

Remember Mr Len J Noel is his name.

40

Complainant's Exhibit G.

CHEYENNE, WY.,

8 /29 /85.

DEAR NETTIE :

Yours of the 20th just received. I hardly know what to write or where to begin. I have just arrived in town came last from Denver think I shall pull out
 10 tomorrow. I have no plans. I am adrift.

I am sorry that I have acted so. I know how your father felt. I know something of how hard it was for you I have been through it. I do not know what to write and I see I have acted dishonorable but I could not face any more it seemed as if my cup was full. I had to leave I could not stay East. You have no idea of what I went through.

God knows what will become of me.

It was this feeling as I knew I had no one to depend
 20 upon that I wrote to Noel to meet you and give you a chance to free yourself of such a worthless fellow. I have not heard a word from any one your letter is the first line from the States that I have received. They do not know where I am and you must not breath a word (except to Mr. and Mrs. Maynard) that you have heard from me. I will trust to there good judgment to keep my where-a-bouts to themselves.

You can trust "Noels" as he has always proven true to me so far and I have known him for years but
 30 it is not think it necessary for him to know where I am in fact he must not.

I do not intend any one shall unless I get settled I have got to start anew I have no one to back me now.

I do not know what you and Noel have done but you shall hear from me as long as you keep it to yourself whether you have decided to drop me or not. I must have some one to write too. It is lonely enough. I have never been quite so broken up.

You must not try to write to me. I expected there
 40 would be some letters come to Talbot's so I had the

bookkeep
 it, he bel
 ever Exp
 read my
 them.

God b
 Mountai

AUSTIN
 Pu

To who
 Mrs.
 service
 her pr
 worthy
 work i

consis
 ture o

De
 G. M

He
 of ou

bookkeeper send them here. That is how I received it, he being the only one that I gave an ide to that I ever Expected to reach this place if you do not wish to read my letters you can burn them without opening them.

God bless you Net. I leave for the Rattle Snake Mountains tomorrow. W.

Complainant's Exhibit I.

The Historical 10

"GRAND ROSTER" Roll of Honor
Of our Country's Defenders.

THE GRAND ARMY OF THE REPUBLIC
Is now being compiled.

HEADQUARTERS, 65 East 12th street.

AUSTIN & COMPANY,
Publishers.

NEW YORK, October 26, 1888.

To whom it may concern :

Mrs. N. F. Fairchild. Was with us so long, and her services so acceptable, that we cannot say too much in her praise. She is thoroughly lady-like and trustworthy, in any position she desires. A change in our work is the only reason we cannot retain her longer. 20

Truly Yours,

AUSTIN & COMPANY.

Complainant's Exhibit A.

consists of sundry letters, rosters, &c., the general nature of which corresponds with the following: 30

Headquarters
of

C. COLESGROVE POST No. 166

G. A. R.

MARSHALL, Mich., Nov. 3d, 1888.

Department of Mich.

G. M. DEVLIN, A. A. G.

Comrade :

Herewith we comply with your request for Roster of our Post. 40

When we rec'd your request we had no printed roster, having procured them since that time.

Yours in F. C. & L.

W. B. MEAD,
Adjt.

The Historical
"GRAND ROSTER" ROLL OF HONOR.
of our Country's Defenders.

10

THE GRAND ARMY OF THE REPUBLIC,
is now being compiled.

Headquarters, 65 East 12th street,

AUSTIN & COMPANY,
Publishers.

NEW YORK, Dec. 3d, 1888.

W. B. MEAD, Adj't., Post 166, Marshall, Mich.,
Dept. of Michigan, G. A. R.

DEAR SIR & COMRADE :

20 We have received from your post a printed,
and also a written "Roster," in which the Arm
of Service of the following Comrades differ, viz. :

	Printed.	Written.
N. J. Frink,	Mich. 28th Inf.	Mich. 25th Inf
C. Robinson,	Mich. 4th Inf.	
R. Rohr,	N. Y. 1st M'td Inf. Mt'd.	
N. Freenburg,	N. Y. 8th. H. Art.	
J. W. Lester,	Minn. 5th. Inf.	
A. H. Van Vliet,	Mich. 11th. Inf.	Mich. 2d Inf.
D. A. Morrison,	N. Y. 10th. H. Art.	
30 W. Upham,	Mich. 6th. H. Art.	
C. J. Pryer,	Mich. 6th H. Art.	

If either Comrade served in both organi-
zation so state in your reply.

Please let us know which is correct, and fraternally
oblige, Yours in F. C. & L.

AUSTIN & COMPANY.

P. S. Please scratch out those that are incorrect,
and return this sheet. A. & Co.

72732 87822 4444

Complainant's Exhibit A6.

Is the Day Book and Journal of Leon P. Kuhl referred to in testimony of Leonard Kuhl Young :

STATE OF KANSAS, {
Stafford County. }

IN THE DISTRICT COURT,

20TH JUDICIAL DISTRICT.

10

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

Petition for
Divorce.

20

The above-named plaintiff, William G. Fairchild, complaining of the above-named defendant, alleges :

That he has been an actual resident of the State of Kansas for more than one year last past. That he is an actual resident of Stafford County, Kansas.

That on the 10th day of August, A. D. 1885, he was married to the defendant in the City of New York, and State of New York.

30

That on said 10th day of August, A. D. 1885, the defendant, without any cause or provocation known to this plaintiff, wholly disregarding her marital relations, abandoned plaintiff, and since which time plaintiff has not seen the defendant.

The defendant told parties that she never intended to live with plaintiff, that she only married plaintiff to get the best of plaintiff's mother's pride.

That plaintiff does not know where defendant is.

40

Wherefore, plaintiff prays that he have judgment,

that the bonds of matrimony be annulled and that he be divorced from the defendant, and for such other and further relief as to the Court shall seem meet, and for costs.

WAMPLER & WEEKS,
Plff's Attys.

10 WILLIAM G. FAIRCHILD, being duly sworn, on oath deposes and says that he is plaintiff in the foregoing action; that he has heard the same read and knows the contents thereof, and that the same is true of his own knowledge.

WM. G. FAIRCHILD.

Subscribed and sworn to before me }
this 28th day of December, 1886. }

[SEAL.] WILLIAM DIXON,
Clerk District Court.

20

IN THE DISTRICT COURT,

TWENTIETH JUDICIAL DISTRICT.

STATE OF KANSAS, }
Stafford County. } SS.

30

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

} Affidavit for
Publication.

40

WILLIAM G. FAIRCHILD, being duly sworn, on oath deposes and says that service of summons cannot be had on the above-named defendant, Nettie F. Fairchild, within this state, and that the above-entitled

action is brought for the purpose of obtaining a divorce from the defendant.

W.M. G. FAIRCHILD.

Subscribed and sworn to before me }
this 28th day of December, 1886. }

WILLIAM DIXON,
Clerk District Court.

[SEAL]

IN THE DISTRICT COURT, 10
TWENTIETH JUDICIAL DISTRICT.

STATE OF KANSAS, }
Stafford County. } ss.:

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

Affidavit for
Publication. 20

WILLIAM G. FAIRCHILD, of lawful age, being duly sworn, on oath deposes and says that the residence of the defendant, Nettie F. Fairchild, is unknown to this affiant, and cannot be ascertained by any means within the control of the plaintiff.

W.M. G. FAIRCHILD.

30

Subscribed and sworn to before me }
this 28th day of December, 1886. }

WILLIAM DIXON,
Clerk District Court.

[SEAL]

STATE OF KANSAS, }
 Stafford County, } ss. :

IN THE DISTRICT COURT IN AND FOR SAID COUNTY AND
 STATE.

10	Wm. G. FAIRCHILD, Plaintiff,	}	Journal Entry.
	vs.		
	NETTIE F. FAIRCHILD, Defendant.		

Now on this 11th day of March, 1887, being the 9th day of the March term of said Court, the above cause coming on regularly to be tried by the Court, the plaintiff present in Court and by his attys. Wampler & Weeks, and the defendant not having pleaded in said cause and being in default, and the Court being satisfied that due and legal service of summons by publication has been had upon the defendant, and after hearing all the evidence adduced by the plaintiff and the argument of counsel, the Court finds that due and legal service of summons has been had by publication upon the defendant and that the allegations in the petition are true.

Wherefore, it is considered, ordered and adjudged by the Court that the plaintiff be divorced from the defendant, and that the bonds of matrimony heretofore existing be and the same are hereby dissolved and held for naught, and that the costs herein, taxed at \$24.85, be paid by the plaintiff.

ANSEL R. CLARK,
 Judge.

STATE OF KANSAS, }
 Stafford County. }

IN THE DISTRICT COURT, 20TH JUDICIAL DISTRICT.

WILLIAM G. FAIRCHILD,
 Plaintiff,

vs.

NETTIE F. FAIRCHILD,
 Defendant.

} Notice. 10

To the above-named Nettie F. Fairchild, defendant :
 You are hereby notified that on the 28th day of December, A.D. 1886, the above-named plaintiff, William G. Fairchild, filed his petition in the office of the District Clerk of Stafford County, Kansas, praying for a divorce from you. You are hereby notified that you are required to answer said petition on or before the 19th day of February, A. D. 1887, or the said petition will be taken as true and judgment rendered as therein prayed for. 20

WAMPLER & WEEKS,
 Plff's. Attys.

Attest :

[SEAL.] WILLIAM DIXON,
 Clerk District Court.

30

Proof of Publication.

STATE OF KANSAS, }
Stafford County. } ss.

10 J. F. SPICKARD, of lawful age, being first duly sworn, says he is the publisher of The St. John Sun, a weekly newspaper, published in the town of St. John, county and state aforesaid, and of general circulation therein, and that the attached notice was published in said newspaper for four consecutive weeks, the first publication being on the 6 day of January, A. D. 1887, and the last publication on the 27 day of January, A. D. 1887.

J. F. SPICKARD.

Sworn to before me and sub- }
scribed in my presence this }
1st day of March, A.D. 1887. }

WILLIAM DIXON,

[SEAL.]

Clerk District Court.

20 O. K. CLARK, Judge.

STATE OF KANSAS, }
Stafford County. }

IN THE DISTRICT COURT,

20TH JUDICIAL DISTRICT.

30 WILLIAM G. FAIRCHILD,
Plaintiff,
vs.
NETTIE F. FAIRCHILD,
Defendant.

Notice to take
Depositions.

40 To the above named Nettie F. Fairchild or her attorney of record: Take notice that on the 18th day of February, A. D. 1887, plaintiff will proceed to take the deposition of Len J. Noel, to be read in evidence

in the above-entitled action on the part of the plaintiff, said depositions to be taken before William J. Bell, a notary public, at his office, room 156, Post Office Building, New York City, in the State of New York. At said time you can appear and cross-examine said witness if you so desire. Which said deposition will be taken from interrogations.

WEMPLER & WEEKS,
Plaintiff's Attorneys.

Attest : 10
WILLIAM DIXON,
[SEAL.] Clerk District Court.

Proof of Publication.

STATE OF KANSAS, }
Stafford County. } ss.:

J. F. SPICKARD, of lawful age, being first duly sworn, 20
says he is the publisher of the St. John Sun, a weekly
newspaper, published in the Town of St. John, County
and State aforesaid, and of general circulation therein,
and that the attached notice was published in said
newspaper for four consecutive weeks, the first publi-
cation being of the 6 day of January, A. D. 1887, and
the last publication on the 27 day of January, A. D.
1887.

J. F. SPICKARD. 30

Sworn to before me and sub-)
scribed in my presence, this)
1st day of March, A.D. 1887.)

WILLIAM DIXON,
Clerk District Court.

[SEAL.]
O. K. CLARK,
Judge.

Certificate of Attendance.—(Witness.)

State of Kansas, Stafford County, Twentieth Judicial District, ss.:

MARCH TERM, 1887,

William G. Fairchild, Plaintiff, v. Nettie F. Fairchild, Defendant.

This is to Certify, That in the District Court, within
10 and for said county, at the March term, A. D. 1887, thereof, the following named person attended said Court as witness on behalf of plaintiff the number of days herein stated, and is entitled to the mileage and amount specified, to-wit:

Name of witness, J. C. Miller.

Number of miles traveled, ———. Number of days 1.

Amount, \$1.50.

Witness my hand and the seal of said Court at my
20 office in said county this day March 11, A. D. 1887.

WILLIAM DIXON,
Clerk.

[SEAL.]

Paid March 21, 1887.

STATE OF KANSAS, }
Stafford County. }

IN THE DISTRICT COURT,

TWENTIETH JUDICIAL DISTRICT.

30

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD.

} Notice to take
Deposition.

To the above-named NETTIE F. FAIRCHILD or her at-
40 torney of record. Take notice that on the 18th day

of February, A. D. 1887, plaintiff will proceed to take the deposition of Len J. Noel, to be read in evidence in the above-entitled action on the part of the plaintiff, said deposition to be taken before William J. Bell, a notary public, at his office, Room 156, Post Office Building, New York City. In the State of New York ; at said time you can appear and cross-examine said witness, if you so desire. Which said deposition will be taken from interrogations.

WAMPLER & WEEKS, 10
Plaintiff's Attorneys.

Attest :

WILLIAM DIXON,
[SEAL.] Clerk District Court.

Deposition of Leonard J. Noel, taken before me, William J. Bell, a notary public within and for the 20
County of New York, in the State of New York, on the 18th day of February, in the year 1887, between the hours of 9 o'clock A. M. and 12 o'clock M., in said county, pursuant to the annexed notice, to be read in evidence on behalf of the plaintiff in said action.

LEONARD J. NOEL, of lawful age, being by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposed and said that : 30

Interrogatory 1st. What is your name, age, and where do you reside ?

A. Leonard J. Noel, 35 years, 137 Seventh avenue, Brooklyn, New York.

Int. 2d. Are you acquainted with Wm. G. Fairchild and Nettie F. Fairchild, the parties to this action ?

A. Yes.

Int. 3d. How long have you known them ?

A. I have known Wm. G. Fairchild about 6 years ; have known Nettie F. Fairchild about 18 months. 40

Int. 4th. When did you last see Nettie Fairchild, and under what circumstances?

A. I met her in the Astor House, New York City, about a year or so since—the precise date I cannot recall. I met her by appointment.

Int. 5th. If in a conversation with Nettie F. Fairchild on or about September 15th, 1885, or August 15th, 1885, she told you she never intended to live with Wm. G. Fairchild, please give the conversation in full; state fully all you remember having been said at that time or times.

A. Mrs. Nettie F. Fairchild met me in the Astor House, as I have stated, at about the time referred to in this interrogatory, and at that time told me that she had left Wm. G. Fairchild and went home, and now that she had found him out said Wm. G. Fairchild was not the man she took him for, and she would not live with him under any circumstances. She also stated at such interview: “What I did was to get the best of his mother’s pride, and I will do anything in the world to gain my point, in outdoing his mother”. She also said, “I am in no trouble through my connection with Wm. G. Fairchild—how could I be? I left Will one hour after we were married, and went home, and during the hour we were together we were on the street.”

Int. 6th. Please give the full particulars under which you had the conversation?

A. I have stated the particulars under which the conversation occurred, in my answer to the last interrogatory.

Int. 7th. State, if you know, why she would not live with plaintiff, Wm. G. Fairchild?

A. I have answered this question in answer to interrogatory 5th, in which I stated she said, “He was not the man I took him to be.”

Int. 8th. You may say if you were acquainted with the financial condition of Wm. G. Fairchild at the time of the marriage in August, 1885?

A. Yes; he owned stock in N. Y. Cafe Company

and own
on con

Int. 9
interrog
ple for t

A. In

Int. 1
this cas
particul

A. N
a fit per

I, W
city, co
that L
testify
truth,
above s
the pre
witness
in plac
sel, att
interes

[s

and owned other stock of various kinds, also sold coal on commission.

Int. 9th. If you answer yea to the next preceeding interrogatory, you may say if such condition was ample for taking care of a family?

A. In my judgment, it was ample.

Int. 10th. If there is any other matter in regard to this case you have not stated, you can now give full particulars.

A. Nothing further than that I do not consider her 10
a fit person for a wife to Wm. G. Fairchild.

LEONARD J. NOEL.

I, WILLIAM J. BELL, Notary Public in and for the city, county and State of New York, do hereby certify that Leonard J. Noel was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed as above set forth was reduced to writing by myself, in the presence of the witness, and was subscribed by said witness in my presence, and was taken at the time and in place annexed notice specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit. 20

WM. J. BELL,

Notary Public,

City, County and State of New York.

[SEAL.]

30

40

Post mark, New York, Feb. 18, 3 P. M., '87.
Three 2 cent postage stamps.
WILLIAM DIXON, Esq.,
Clerk District Court,
St. John,
Kansas.

DISTRICT COURT,
20TH JUDICIAL DISTRICT.

10

COUNTY OF STAFFORD, }
State of Kansas. }

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

20

Deposition on behalf of plaintiff taken before Wm. J. Bell, Notary Public, Room 156 P. O. Building, N. Y. City.

These depositions sealed by me this 18th day of February, 1887.

WM. J. BELL,
Notary Public.

30

Feb. 26th, 1887.

Opened at request of plff's attorneys.

WM. DIXON, Clerk.

Recei

COUNTERSIGNED :

H. M. WOOLLEY,
Co. Clerk.

ST
Office o

I, R.

Kansas

duly el

Court o

of Kan

and Sta

to such

the fir

[s

Received through the mail Feby. 22d, '87.
 W.M. DIXON,
 Clerk Dist. Court,
 Stafford County, Ks.

No. 119.

TREASURER'S OFFICE,
 STAFFORD COUNTY, KANSAS.

Original.

ST. JOHN, KAS., June 16th, 1887. 10

Case No. 527

William G. Fairchild, Plaintiff, *vs.* Nettie F.
 Fairchild, Defendant.

Received of Wm. Dixon, Clerk District
 Court, Two Dollars Stenographer's fee in
 above-entitled cause.

T. J. MAXWELL.
 County Treasurer.

By..... 20
 Deputy.

COUNTERSIGNED :
 H. M. WOOLLEY,
 Co. Clerk.

STATE OF KANSAS. }
 Office of Secretary of State. }

I, R. S. OSBORN, Secretary of State, of the State of
 Kansas, do hereby certify that Ansel R. Clark is the
 duly elected, qualified and acting Judge of the District
 Court of the Twentieth Judicial District of the State
 of Kansas, consisting of the counties of Rice, Barton
 and Stafford, and that said Ansel R. Clark was elected 30
 to such office for the term of four years beginning on
 the first Monday of January, 1894.

In witness whereof, I have hereunto sub-
 scribed my name and affixed my of-
 ficial seal. Done at Topeka, Kansas,
 this 29th day of August, A. D.
 1894.

[SEAL.]

R. S. OSBORN,
 Secretary of State.

40

STATE OF KANSAS, }
 Stafford County, } ss.:

This is to certify that E. J. Westgate is the duly elected Clerk of the District Court of Stafford County, in the Twentieth Judicial District of the State of Kansas, of which Stafford county forms a part. That he has been duly commissioned and qualified as such officer, and that his official acts are entitled to due credit.

In testimony whereof, I have hereunto set
 10 [SEAL.] my hand, this 31st day of August,
 A.D. 1894.

ANSEL R. CLARK,

Judge of the 20th Judicial
 District of the State of
 Kansas.

THE STATE OF KANSAS, }
 20th Judicial District, } ss.:
 Stafford County, }

20 I, E. J. WESTGATE, Clerk of the District Court of the Twentieth Judicial District of the State of Kansas, sitting within and for the county aforesaid, do hereby certify that the above and foregoing to be a true, full and complete copy of all the papers in Case No. 527, William G. Fairchild *v.* Nettie F. Fairchild in the therein entitled cause as the same remains of record and on file in my office.

Witness my hand, and the seal of said
 30 [SEAL.] Court, affixed at my office in St.
 John, this the 6th day of September,
 A. D. 1894.

E. J. WESTGATE,

Clerk of the District Court.

By F. E. MILLER,
 Deputy.

LAWS OF THE STATE OF KANSAS, IN RELATION TO DIVORCE.

Courts, Jurisdiction of, Procedure.

All power to grant divorces is vested in the District Court, subject to regulation by law.

Article 2, Sec. 18, Constitution of the State of Kansas.

There shall be in each county organized for judicial purposes, a district Court, which shall be a Court of record, and shall have general jurisdiction of all matters, both civil and criminal (not otherwise provided by law), and jurisdiction in cases of appeal and error from all inferior Courts and tribunals, and shall have a general supervision and control of all such inferior Courts and tribunals, to prevent and correct errors and abuses. 10

G. S. 1868, ch. 28, Art. I., Sec. I., Oct. 31.

20

CHAPTER 80.—CODE OF CIVIL PROCEDURE.

Article 28.

The District Court may grant a divorce for any of the following causes :

First, When either of the parties had a former husband or wife living at the time of the subsequent marriage. Second, Abandonment for one year. Third, Adultery. Fourth, Impotency. Fifth, When the wife, at the time of the marriage, was pregnant by another than her husband. Sixth, Extreme cruelty. Seventh, Fraudulent contract. Eighth, Habitual drunkenness. Ninth, Gross neglect of duty. Tenth, The conviction of a felony, and imprisonment in the penitentiary therefor, subsequent to the marriage. 30

G. S. 1868, ch. 80, Art. 28, Sec. 639, Oct. 31.

The plaintiff in an action for divorce must have been an actual resident, in good faith, of the state, for one year next preceding the filing of the petition, and a 40

resident of the county in which the action is brought at the time the petition is filed.

G. S. 1868, ch. 80, Art. 28, Sec. 640, Oct. 31.

The petition must be verified as true, by the affidavit of the plaintiff. A summons may issue thereon, and shall be served, or publication made, as in other cases. When service by publication is proper, a copy of the petition, with a copy of the publication notice attached
 10 thereto, shall, within three days after first publication is made, be enclosed in an envelope addressed to the defendant, at his or her place of residence, postage paid and deposited in the nearest postoffice, unless the plaintiff shall make and file an affidavit that such residence is unknown to the plaintiff, and cannot be ascertained by any means within the control of the plaintiff.

G. S. 1868, ch. 80, Art. 28, Sec. 641, Oct. 31.

20 The defendant, in his or her answer, may allege a cause for a divorce against the plaintiff, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were plaintiff. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the defendant.

G. S. 1868, ch. 80, Art. 28, Sec. 642, Oct. 31.

When the parties appear to be in equal wrong, the
 30 Court may, in its discretion, refuse to grant a divorce; but in any such case, or in any other case where divorce is refused, the Court may, for good cause shown, make such order as may be proper for the custody, maintenance and education of the children, or the control and disposition of the property of the parties as may be proper.

G. S. 1868, ch. 80, Art. 28, Sec. 643, Oct. 31.

After a petition has been filed in an action for a di-
 40 vorce, or for alimony alone, the Court, or a judge

thereof in vacation, may make and enforce, by attachment, such order to restrain the disposition of the property of either party, or for the control of the children and support of the wife, during the pendency of the action, as may be right and proper; and also, may make such order, relative to the expenses of the suit, as will insure to the wife an efficient preparation of her case; and on granting a divorce in favor of the wife, or refusing one on the application of the husband, the Court may require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the action. 10

G. S. 1868, ch. 80, Art. 28, Sec. 644, Oct. 31.

When a divorce is granted, the Court shall make provision for guardianship, custody, support and education of the minor children of the marriage, and may modify or change any order in this respect whenever circumstances render such change proper.

G. S. 1868, ch. 80, Art. 28, Sec. 645, Oct. 31. 20

When a divorce shall be granted by reason of the faults or aggression of the husband, the wife shall be restored to all her lands, tenements and hereditaments not previously disposed of, and restored to her maiden name, if she so desires, and shall be allowed such alimony out of her husband's real and personal property as the Court shall think reasonable, having due regard to the property which came to him by marriage, and the value of his real and personal estate at the time of said divorce, which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross or installments, as the Court may deem just and equitable; and if the wife survive her husband she shall also be entitled to her right of dower in the real estate of her husband, not allowed her as alimony, of which he was seized at the time during the coverture, to which she had not relinquished her right of dower; but if the divorce shall arise by reason of the 30 40

fault or aggression of the wife, she shall be barred of all right of dower in the lands of which her husband shall be seized at the time of the filing of the petition for divorce, or which he may thereafter acquire, whether there be issue or not; and the Court shall order restoration to her of the whole of her lands, tenements or hereditaments not previously disposed of, and also such share of her husband's real or personal property, or both, as to such Court may appear just and reasonable.

10

Sec. 646, Art. 28, as amended, L. 1870, ch. 87,
Sec. 27; took effect May 12, 1870.

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of the party, for whose fault it was granted, in or to the property of the other; and no proceeding for reversing or vacating the judgment or decree divorcing said parties shall be commenced unless within six months after the rendition of said judgment or decree, and during said six months and the pendency of said proceeding for reversing or vacating said judgment or the decree it shall be unlawful for either of said parties to marry, and any person so marrying shall be deemed guilty of bigamy; provided, such decree shall be final; and no proceedings in error to the Supreme Court shall be allowed or taken, unless a notice of an intention to prosecute such proceedings in error be given in open Court and noted on the journal of the Court, within three days after the entry of the decree or judgment, and the petition in error and transcript be filed in the Supreme Court within three months after the rendition of such judgment or decree.

20

30

Sec. 647, Art. 28, as amended, L. 1881, Ch. 126, Sec. I.; took effect May 10, 1881.

When either of the parties to a marriage shall be incapable from want of age or understanding of contracting such marriage the same may be declared void

40

by the
capabl
gotten
Cohab
sufficie

The
withou
in the
a divo
same
for d
divorc

Up
mony
the pa
ing su
nivan
Proof
of the
riage.

A v
plying
State

In
there
in lik
prop
are a

Th

by the District Court in an action brought by the incapable party ; but the children of such marriage, begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases shall be a sufficient defense to any such action.

G. S. 1868, Ch. 80, Art. 28, Sec. 648, Oct. 31.

The wife may obtain alimony from the husband without divorce, in an action brought for that purpose in the District Court, for any of the causes for which a divorce may be granted. The husband may make the same defense to such action as he might to an action for divorce, and may for sufficient cause obtain a divorce from the wife in such action. 10

G. S. 1868, Ch. 80, Art. 28, Sec. 649, Oct. 31.

Upon the trial of an action for a divorce, or for alimony, the Court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation and reputation of the marriage of the parties may be received as evidence of the marriage. But no divorce shall be granted without proof. 20

G. S. 1868, Ch. 80, Art. 28, Sec. 650, Oct. 31.

A wife who resides in this State at the time of applying for divorce shall be deemed a resident of this State though her husband resides elsewhere.

G. S. 1868, Ch. 80, Art. 28, Sec. 651, Oct. 31. 30

In any action for a divorce hereafter tried the parties thereto, or either of them, shall be competent to testify in like manner, and respecting any fact necessary or proper to be proven as parties to other civil actions are allowed to testify.

L. 1871, Ch. 116, Sec. 6 ; took effect March 16, 1871.

This is all the law in this State on the subject of 40

divorce and will be found in Dasler's Compiled Laws of Kansas, 1885.

In the District Court of the 16th Judicial District of Kansas sitting in and for Hodgeman County.

10	WILLIAM G. FAIRCHILD, Plaintiff,	}	Petition.
	vs.		
	NETTIE F. FAIRCHILD, Defendant.	}	

Comes now William G. Fairchild, the above-named plaintiff, and complaining of Nettie F. Fairchild, the above-named defendant, for cause of action against her, says :

FIRST CAUSE OF ACTION.

1. That he, said plaintiff, is now and has been, for more than one year last past an actual and bona fide resident of the State of Kansas and a resident of said Hodgeman County at the present time and prior to the filing of this petition.

That on the 10th day of August, 1885, this plaintiff and said defendant were married in the City of New York and State of New York.

That on or about said 10th day of August, 1885, the said defendant, without any cause or provocation known to this plaintiff, wholly disregarding her marital relations and duties, wilfully absented herself and abandoned this plaintiff, since which time this plaintiff has not seen said defendant. Plaintiff alleges he was in no way in default or neglectful of his duties of a kind husband.

This plaintiff further alleges that said defendant told certain parties she never intended to live with this

plaintiff
of the

2. A
ther al
to mar
tions,
the fa
father
confid
true an
from
marry
Tha
defend
nant b
tions a
made
expos
And
fendan
her, w
and ex
money
her su
to do
Pla
of th
canno
that s
mout
Wh
Court
said N
the be
adjud
he als

plaintiff. That she only married him to get the best of the plaintiff's mother's pride.

SECOND CAUSE OF ACTION.

2. And for a second cause of action this plaintiff further alleges that said defendant induced this plaintiff to marry her through false and fraudulent representations, in this: that she told plaintiff that she was in the family way by plaintiff and that plaintiff was the father of her unborn child. That plaintiff reposing confidence in said defendant's said statements as being true and desiring to shield her as well as her off-spring from the disgrace of illegitimacy was induced to marry said defendant. 10

That after the said marriage was consummated said defendant admitted to plaintiff that she was not pregnant by him and that she knew her said representations and statements to plaintiff were false, and were made to entrap him into marrying her through fear of exposure and disgrace of himself and family. 20

And plaintiff further alleges the only object said defendant had in so fraudulently inducing him to marry her, was that she might be in a position to demand and extort from plaintiff through others large sums of money under pretence that they were necessary for her support, which she, said defendant, has attempted to do in several instances.

Plaintiff further says the defendant is a non-resident of the State of Kansas, and the service of summons cannot be made upon her in said State of Kansas, but that she resides and has her domicile at Keyport, Monmouth County and State of New Jersey. 30

Wherefore said plaintiff prays the judgment of this Court that he, said plaintiff, may be divorced from the said Nettie F. Fairchild, the said defendant, and that the bonds of matrimony between them be decreed and adjudged dissolved, annulled and at an end, and that he also have judgment for costs and such other and

further relief as in law and equity he may be entitled to and to the Court may seem just and proper.

WILLIAM G. FAIRCHILD, Plff.
 HUGHES & JOHNS,
 Plaintiff's Attorneys.

STATE OF KANSAS, }
 Hodgeman County. } ss.:

10 WILLIAM G. FAIRCHILD, plaintiff in the foregoing ac-
 tion, being first duly sworn upon his oath, says: he
 has read and heard read the foregoing petition and
 knows the contents thereof and that the facts therein
 set forth are true.

[L.S.] WM. G. FAIRCHILD.

Sworn to and subscribed before }
 me this 10th day of March, }
 1888.

[SEAL.] D. G. CURTIS,
 Clerk of District Court of Hodgeman Co., Kas.
 20 By D. H. BRADLEY,
 Deputy.

In the District Court in and for Hodgeman County
 Kansas, 16th Judicial District.

	WILLIAM G. FAIRCHILD, Plaintiff,
30 vs.	NETTIE F. FAIRCHILD, Defendant.

Answer.

40 Comes now the defendant by her Attorney S. A.
 Sheldon, and for her answer to plaintiff's petition de-
 nies each and every material allegation set up in said
 petition except what is hereinafter especially admitted.

1st.—Defendants admits that she was married to the said plaintiff William G. Fairchild, on the 10th day of August, 1885, in the City of New York, and State of New York.

S. A. SHELDON,
Defts. Atty.

STATE OF NEW JERSEY, }
County, } ss.:

NETTIE F. FAIRCHILD, of lawful age, being first duly 10
sworn according to law on oath says, that she is the
defendant in the above entitled cause, that she has
read the foregoing answer, and that the facts therein
alleged are true.

NETTIE F. FAIRCHILD.

Subscribed and sworn to before me }
this 17th day of April, 1888. }

BENJAMIN B. OGDEN,

[SEAL.] Notary Public for New Jersey,
Keyport, Mon. Co. N. J.

20

In the District Court of the 16th Judicial District of
Kansas, sitting in and for Hodgeman County.

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

} Journal Entry.

30

On the 22d of May, A. D. 1888, it being the first
day of the regular May Term of the District Court
holden in and for Hodgeman County in the State of
Kansas, for the year 1888, the above-entitled action
coming regularly on for trial in said Court, the plain-
tiff appears by H. C. Johns, his attorney, and the de-
fendant appears by S. A. Sheldon, Esq., her attorney, 40

and a jury being waived and trial had by the Court, the Court refers this cause to L. K. Soper, Esq., a practicing attorney in said Court, as Referee to try said action and report to this Court his findings of fact and conclusions of law herein.

That afterwards said Sopher duly qualified as said Referee according to law, and proceeded with the trial of this action, the respective parties submitting evidence and argument by their respective counsel, and upon the conclusion thereof reported to this Court his findings of fact and conclusions of law in substance as follows :

1. That the plaintiff in this action, the said William G. Fairchild, has been and was, an actual resident, in good faith of the State of Kansas for one year and more next preceding the filing of his petition in this action, to wit : prior to the tenth (10th) day of March, 1888.
- 20 2. That said plaintiff was a resident of Hodgeman County, Kansas, at the time his petition in this action was filed in the District Court of said County, to wit : March 10th, 1888.
3. That the said plaintiff and defendant were married in the City of New York and State of New York on the 10th day of August, 1885.
- 30 4. That after the marriage ceremony on the 10th day of August, 1885, the plaintiff and defendant were together on the streets of New York City about an hour when the defendant, without any apparent cause or provocation, left the plaintiff saying she had but the one errand in New York that day which was accomplished, and that she was going to her home in Keyport in New Jersey.
- 40 5. That the plaintiff never met the defendant but once after the 10th day of August, 1885, and that meeting was on the streets of Keyport, New Jersey when he walked with her as far as her father's gate.

6. Th
copulati

7. Th
induced
by and
made to
fendant
amounti

8. Th
persona
peared a
Esq., he
ted evi
to the p

And
found a
lows, to

1. Th
plaintiff
F. Fair
warrant

2. Th
fraud or

3. Th
from th
with he

That
tion.

Now
tion cor
fact an
filed by
the said
appeari
fendant
ney, an

6. That said marriage was never consummated by copulation or sexual intercourse between the parties.

7. That said plaintiff (William G. Fairchild), was induced to marry said defendant (Nettie F. Fairchild) by and through false and fraudulent representations made to the plaintiff by the defendant (which said defendant knew to be false), and fraud and threats amounting to duress.

8. That said defendant (Nettie F. Fairchild) was personally and lawfully served with summons, and appeared and answered in this action by S. A. Sheldon, Esq., her attorney, and took depositions and submitted evidence and argument in opposition to granting to the plaintiff a divorce in this action. 10

And as conclusions of law, the said Referee has found and reported to this Court in substance as follows, to wit :

1. That the said marriage contract between the plaintiff (William G. Fairchild) and defendant (Nettie F. Fairchild) was procured through the fraud and unwarranted threats of said defendant. 20

2. That said marriage is void by reason of the fraud on the part of the defendant in procuring it.

3. That the plaintiff should be divorced absolutely from the defendant and from the bonds of matrimony with her. 30

That the defendant should pay the costs of this action.

Now on this 4th day of October, 1888, the said action coming on for further hearing on the findings of fact and conclusions of law, and exceptions thereto filed by said defendant and reported to this Court by the said Referee, said L. K. Soper, Esq., the plaintiff appearing by H. C. Johns, his attorney, and the defendant appearing by S. A. Sheldon, Esq., her attorney, and after argument by counsel and due consider- 40

ation by the Court, the said exceptions of said defendant are overruled and disallowed, and said findings of fact and conclusions of law of said Referee herein are affirmed. Wherefore it is considered, ordered and adjudged by the Court that the said plaintiff, the said William G. Fairchild, be, and he is hereby divorced from the said defendant, the said Nettie F. Fairchild, and that the bonds of matrimony heretofore existing between said plaintiff and said defendant, 10 be and the same are hereby annulled, dissolved and held for naught, and that the costs of this action, taxed at \$132.29, be paid by the defendant, to all of which defendant objects and excepts and is allowed 60 to make a case for the Supreme Court.

J. C. STRANG,
Judge of the 16th Judicial District of Kansas.

20 STATE OF KANSAS, }
County of Hodgeman. } ss.:

I, ALEXANDER FORBES, Clerk of the District Court, in and for said County, do hereby certify that the foregoing is a full and correct copy of the complete record of the petition, answer and journal entry of judgment of the case herein entitled, as the same appears in my office.

In testimony whereof, I have hereunto set my hand, and affixed the Seal of said Court, at the City of Jetmore, this 30 the 25th day of June, A. D. 1892.

ALEXANDER FORBES,
Clerk.

STATE OF KANSAS, }
County of Hodgeman. } ss.:

40 I, S. W. VANDIVERT, Judge of the 16th Judicial District of said State, and Presiding Judge of the District Court of said County, do hereby certify that Alexander Forbes, by whom the above attestation was made,

was, at the date thereof, Clerk of said Court, duly qualified, and that the same is in due form of law and made by the proper officer.

Dated June 27th, A. D. 1892.

S. W. VANDIVERT,

STATE OF KANSAS, }
County of Hodgeman. } ss.:

I, ALEXANDER FORBES, Clerk of the District Court, in and for said County, do hereby certify that Hon. S. 10
W. Vandivert, whose genuine signature is subscribed to the foregoing certificate, was, at the date thereof, Presiding Judge of said Court, duly commissioned. sworn and acting.

In witness whereof, I have hereunto set my hand, and affixed the Seal of said Court, at the City of Jetmore, this [L.S.] the 28th day of June, A. D. 1892.

ALEXANDER FORBES,
Clerk.

20

IN THE DISTRICT COURT,

SITTING IN AND FOR HODGEMAN COUNTY, KANSAS.—16TH
JUDICIAL DISTRICT.

WILLIAM G. FAIRCHILD,
Plaintiff,

vs.

NETTIE F. FAIRCHILD,
Defendant.

Bill of
Exceptions.

30

Comes now the defendant above by her attorney, S. A. Sheldon, and files her bill of exception to the report of the Referee in the above case, both as to the Findings of Facts and Conclusions of Law, for the following reasons, to wit:

40.

1st.—That the Findings of Facts are contrary to and not sustained by the evidence introduced and now on file in the above case.

2nd.—That the Conclusions of Law are erroneous, and not in conformity with, nor based upon, a proper construction of the law governing such cases, and not sustained by the evidence produced in the case and now on file.

3rd.—That the said Referee improperly excluded 10 evidence that was offered by the said defendant.

4th.—That the defendant was deprived of the right of a fair and impartial hearing by reason of the exclusion of testimony offered by the said defendant, and the closing of said hearing before the Referee before the said defendant had rested her defence.

S. A. SHELDON,
Atty. for Defendant.

IN CHANCERY OF NEW JERSEY.

20

Between

NETTIE F. FAIRCHILD,
Complainant,

AND

WILLIAM G. FAIRCHILD,
Defendant.

On Bill, &c.
Decree.

30

This cause having been heretofore regularly brought on to be heard in the presence of A. Walling, Jr., of counsel with the complainant, and Leon Abbett, Jr., of counsel with the defendant, upon the pleadings filed and the proofs taken therein; and the said pleadings having been read, and the said proofs and the argument of counsel heard and all duly considered.

40 And it appearing to the Court by said pleadings and proofs that the said complainant, Nettie F. Fairchild, and the said defendant, William G. Fairchild, were

lawfully married on the tenth day of August, A. D. eighteen hundred and eighty-five, and that afterwards in the same month of August, A. D. eighteen hundred and eighty-five, the said defendant, without any justifiable cause, abandoned the said complainant, and has ever since separated himself from her and refused and neglected to maintain and provide for her.

And it further appearing to the Court by said pleadings and proofs that the decree of divorce mentioned in the complainant's bill of complaint and in the original answer of the defendant, obtained by the said defendant from the said complainant in the District Court of the County of Stafford, in the State of Kansas, on the eleventh day of March, A. D. eighteen hundred and eighty-seven, was procured by fraud by said defendant; that the said complainant did not appear personally or by attorney in the suit in which said decree was made; that process in said suit was not served upon her, nor was any notice of said suit given her; that she had no notice or knowledge of the institution or pendency or such suit or of said decree, when rendered; and that said decree of divorce is no bar to the complainant's suit. 10 20

And it further appearing to the Court by said pleadings and proofs that the decree of divorce mentioned in the further answer of the defendant, obtained by the said defendant from the said complainant in the District Court of the County of Hodgeman, in the aforesaid State of Kansas, on the fourth day of October, A. D. eighteen hundred and eighty-eight, was entered in a suit instituted by the said defendant pending this, the complainant's suit, and after the said defendant had appeared and answered in this, the complainant's suit, and after decree *pro confesso* had been entered against said defendant in this, the complainant's suit; and that said first named decree of divorce remained unreversed in the said State of Kansas at the time of the entering of said second named decree of divorce; and that said defendant sought the jurisdiction of the said State of Kansas for the purpose of procuring a 30 40

divorce from the complainant, and was not a bona fide resident of said last-named State at the time said first and second-named decrees of divorce were entered; and that said last-named decree of divorce is also no bar to the complainant's suit.

And it further appearing to the Court by the said pleadings and proofs that at the time of her aforesaid marriage the complainant was and from thenceforward until after the rendering of the aforesaid second
 10 named decree of divorce the complainant continued to be an inhabitant and resident of and domiciled in the State of New Jersey.

And it further appearing to the Court by the said pleadings and proofs that the charge in the said defendant's further answer contained that the said complainant on various days in the months of August and September, A. D. eighteen hundred and eighty-eight, committed adultery, is not supported by the evidence nor sustained by the proofs.

20 And it further appearing to the Court that the complainant is entitled to relief, pursuant to the statute in such case made and provided.

It is, on this twenty-fourth day of May, A. D. eighteen hundred and ninety-five, by his Honor, Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree, that in the month of August, A. D. eighteen hundred and eighty five, the said defendant, William
 30 G. Fairchild, without any justifiable cause, abandoned the said complainant, Nettie F. Fairchild, and has ever since separated himself from her and refused and neglected to maintain and provide for her.

And it is further adjudged and decreed, that the aforesaid decree of divorce obtained by the said defendant, William G. Fairchild, from the said complainant, Nettie F. Fairchild, in the District Court of the County of Stafford, in the State of Kansas, on the
 40 eleventh day of March, A. D. eighteen hundred and

eighty-se
 tained
 from the
 District
 State of
 eighteen
 them her
 this suit.

And it
 defendan
 the said
 vice of a
 defendan
 five doll
 heretofor
 of March
 (up to wh
 said allo
 A. D. eig
 two hund
 the defen
 said Cler
 count of
 five dolla
 per week
 from the
 this Cour
 the suppo
 that the
 the sum o
 form and
 one of th
 ment ther
 And it
 fendan p
 the costs

eighty-seven, and the aforesaid decree of divorce obtained by the said defendant, William G. Fairchild, from the said complainant, Nettie F. Fairchild, in the District Court of the County of Hodgeman, in the said State of Kansas, on the fourth day of March, A. D. eighteen hundred and eighty-eight, are, and each of them hereby is declared and decreed to be no bar to this suit.

And it is further ordered and decreed, that the said defendant, William G. Fairchild, pay and provide to 10
the said complainant within thirty days after the service of a copy of this decree upon the solicitor of said defendant, the sum of eighteen hundred and seventy-five dollars, the aggregate of the weekly allowance heretofore ordered in this cause, from the fourth day of March, A. D. eighteen hundred and eighty-eight (up to which date the defendant has heretofore paid said allowance), up to the twenty-first day of May, A. D. eighteen hundred and ninety-five (the sum of 20
two hundred and sixty five dollars heretofore paid by the defendant to the Clerk of this Court to be paid by said Clerk to the complainant and credited as on account of said sum of eighteen hundred and seventy-five dollars); and also the further sum of five dollars per week at the termination of each and every week, from the last date aforesaid until the further order of this Court, all now ordered, adjudged and decreed for the support and maintenance of the complainant; and that the defendant give bond to the complainant in 30
the sum of eight hundred dollars, to be approved as to form and the security therein by Frank P. McDermott, one of the special masters of this Court, for the payment thereof.

And it is further ordered and decreed, that the defendant pay to the said complainant, or her solicitor, the costs of this suit, to be taxed, and a counsel fee of

one hundred and fifty dollars; and that execution issue therefor, according to the practice of this Court.

ALEX. T. MCGILL,
C.

Respectfully advised,
W. H. VREDENBURGH,
Adv. Master.

A true Copy,
ALLAN McDERMOTT,
Clerk.

10

IN CHANCERY OF NEW JERSEY.

Between—

NETTIE F. FAIRCHILD,
Complainant,

20

AND

WILLIAM G. FAIRCHILD,
Defendant.

On Bill, &c,
Notice of
Appeal.

30

The defendant, William G. Fairchild, hereby appeals from the final decree made in this cause, bearing date on the twenty-fourth day of May, eighteen hundred and ninety-five, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated June 4th, 1895.

LEON ABBETT, JR.,
Solicitor of Defendant.

I conceive there is good cause for appeal in the above stated cause.

LEON ABBETT, JR.,
Of Counsel with Defendant.

40

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between—

WILLIAM G. FAIRCHILD,
Appellant,

AND

NETTIE F. FAIRCHILD,
Respondent.

Petition of
Appeal.

10

To the Honorable the Court of Errors and Appeals
in the last resort in all causes :

The petition of William G. Fairchild, the appellant
in the above stated cause, respectfully shows: That
your petitioner finds himself aggrieved by the final de-
cree made in the Court of Chancery, by his Honor Al- 20
exander T. McGill, Chancellor of the State of New
Jersey, bearing date the twenty-fourth day of May, eigh-
teen hundred and ninety-five, wherein Nettie F. Fair-
child was complainant, and the said William G. Fair-
child was defendant, in this respect, to wit, in that the
said decree adjudged and decreed that the said William
G. Fairchild, without any justifiable cause, abandoned
the said Nettie F. Fairchild, and has ever since separ-
ated himself from her, and refused and neglected to
maintain and provide for her ; and in that said decree 30
adjudged and decreed that the decree of divorce ob-
tained by the said William G. Fairchild from the said
Nettie F. Fairchild, in the District Court of the County
of Stafford, in the State of Kansas, on the eleventh day
of March, A. D. eighteen hundred and eighty-seven, and
that the decree of divorce obtained by the said William
G. Fairchild from the said Nettie F. Fairchild, in the
District Court of the County of Hodgman, in the State
of Kansas, on the fourth day of March, A. D. eighteen
hundred and eighty-eight, were each of them declared 40

and decreed to be no bar to this suit ; and in that the said decree adjudged and decreed that the said William G. Fairchild pay and provide to the said Nettie F. Fairchild, within thirty days after service of a copy of said decree upon the solicitor of said William G. Fairchild, the sum of one thousand eight hundred and seventy-five dollars (\$1,875), the aggregate of the weekly allowance heretofore ordered in said cause, from the fourth day of March, A. D. eighteen hundred and eighty-eight, up to the twenty-first day of May, 10 eighteen hundred and ninety-five, and that the sum of two hundred and sixty-five dollars (\$265) heretofore paid by the defendant to the Clerk of the Court of Chancery, be paid by the said clerk to the said Nettie F. Fairchild, and credited on account of said sum of one thousand eight hundred and seventy-five dollars, and that the further sum of five dollars a week be paid, at the termination of each and every week, from the last date aforesaid until the further order of this Court,

20 for the support and maintenance of said Nettie F. Fairchild, and that said William G. Fairchild give a bond to the said Nettie F. Fairchild in the sum of eight hundred dollars (\$800), to be approved as to form and security by Frank P. McDermott, one of the special masters of this Court, for the payment of said weekly allowance ; and in that said decree adjudged and decreed that the said William G. Fairchild pay to the said Nettie F. Fairchild, or to her solicitor, the costs of said suit and a counsel fee of one hundred and

30 fifty dollars (\$150), and that execution should issue therefor, according to the practice of said Court of Chancery ; and in that the said decree contained the following recital, to wit : " And it further appearing to the Court by said pleadings and proofs that the charge in said defendant's further answer contained that said complainant on various days in the month of August and September, A. D. eighteen hundred and eighty-eight, committed adultery, is not supported by the evidence nor sustained by the proofs." And in

40 that said decree contained a recital that the said

Willia
of the
Kans
the s
obtain
suit in
the S
eight
fraud
An
of sai
afore
becau
did n
justifi
decre
in,
sponc
Court
Kans
and e
groun
requi
said J
hund
in sai
week
the sa
sum o
that
the s
herei
and f
said
adult
and u
in ev
Yo
of sai
rever

William G. Fairchild was not at the time of the entry of the decree in said two divorce suits in the State of Kansas a *bona fide* resident of said State; and in that the said decree contained a recital that the decree obtained by said William G. Fairchild in his divorce suit in the District Court of the County of Stafford, in the State of Kansas, on the eleventh day of March, eighteen hundred and eighty-seven, was procured by fraud by the said William G. Fairchild.

And your petitioner humbly appeals from that part 10
of said decree of the Chancellor, which decrees, as aforesaid, upon the ground that the same is erroneous, because the appellant herein, William G. Fairchild, did not abandon the respondent herein without any justifiable cause; and upon the ground that the decree of divorce obtained by the appellant herein, William G. Fairchild, from the said respondent, Nettie F. Fairchild, in the District Court of the County of Hodgman, in the State of Kansas, on the fourth day of March, eighteen hundred 20
and eighty-eight is a bar to this suit; and upon the ground that it is inequitable, unjust and oppressive to require the said William G. Fairchild to pay to the said Nettie F. Fairchild the sum of One thousand eight hundred and seventy-five dollars (\$1,875) as provided in said decree, and the further sum of Five dollars a week to be paid in each and every week, and to require the said William G. Fairchild to give a bond in the sum of Eight hundred dollars; and upon the ground 30
that it is inequitable, unjust and oppressive to require the said William G. Fairchild to pay to the respondent herein, or her solicitor, a counsel fee of One hundred and fifty dollars (\$150); and upon the ground that the said decree does not adjudge and decree that the adultery of the respondent herein is a bar to this suit; and upon the ground that the said decree is erroneous in every particular.

Your petitioner therefore prays that the said decree of said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden. And that 40

your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

LEON ABBETT, JR.,

Solicitor and of counsel with appellant.

Filed June 17, 1895.

HENRY C. KELSEY,

Clerk.

10

STATE OF NEW JERSEY,

DEPARTMENT OF STATE.

I, HENRY C. KELSEY, Secretary of State of the State of New Jersey, and *ex officio* Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of Petition of Appeal in the above-stated cause, as the same is taken from and compared with the original ("Filed June 17, 1895") and now remaining on file in my office.

20

In testimony whereof, I have hereunto set my hand and affixed the Official Seal of said Court, this Twentieth day of June, A. D. 1895.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

30

40

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between—

WILLIAM G. FAIRCHILD,
Appellant,

AND

NETTIE F. FAIRCHILD,
Respondent.

Answer.

10

The answer of the above-named respondent to the
Petition of Appeal of the above-named appellant :

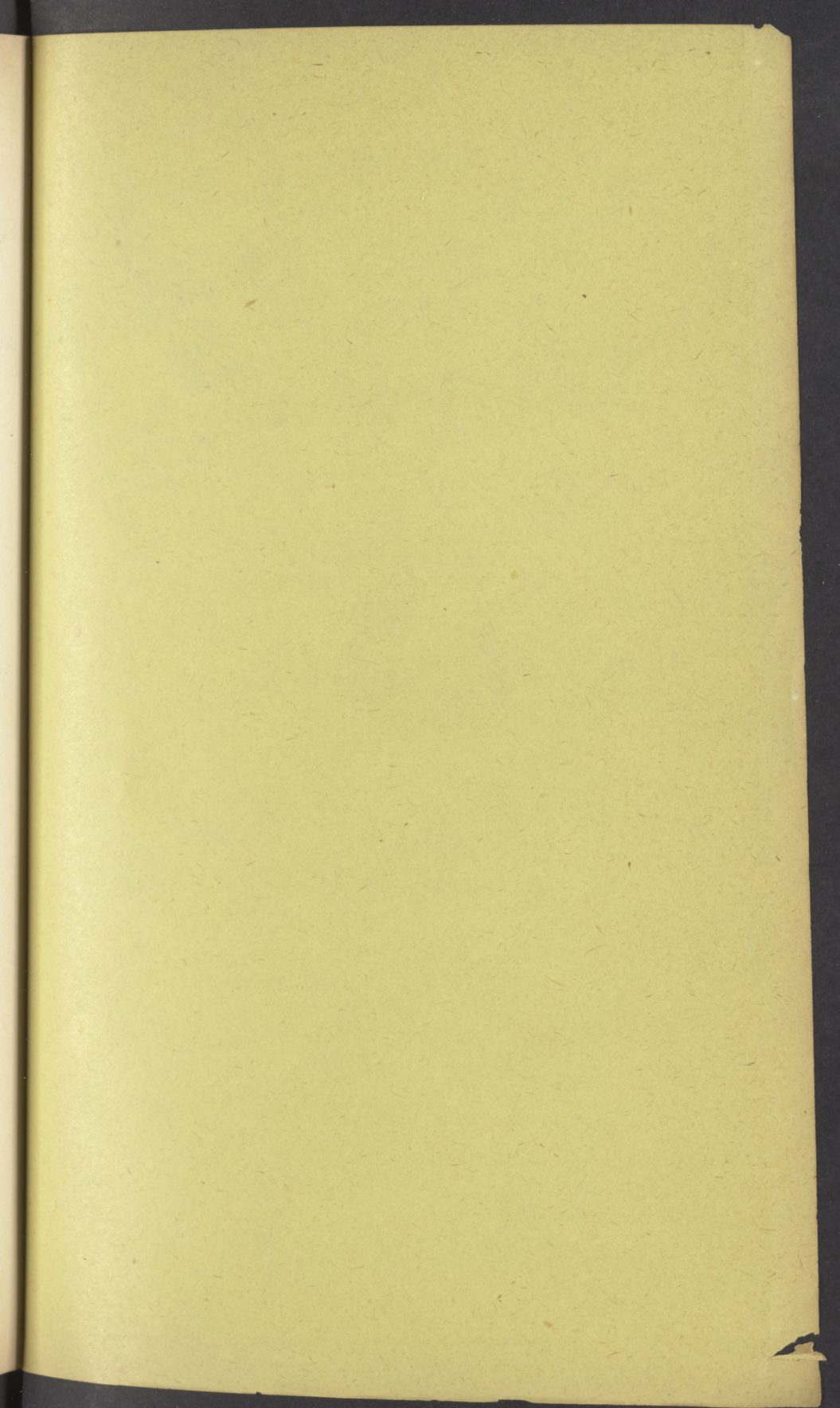
The respondent, not acknowledging all or any of
the matters which in the said Petition of Appeal are
contained to be true, for answer thereto, nevertheless,
says and admits that a decree was, on the twenty- 20
fourth day of May last past made and entered in the
Court of Chancery, in the cause for that purpose men-
tioned in the said petition, as is therein stated ; but
as to the substance and form thereof, this respondent
prays to refer thereto when the same shall be pro-
duced.

And this respondent is advised and believes that the
said decree is agreeable to equity, and she prays that
the same may be affirmed, with costs to be adjudged
to this respondent. 30

A. WALLING, JR.,
Solr. for and of counsel
with Respondent.

40





To h

your
in the
of the
and h
the e
town
this
the y
intes
and p
the t
and s
appo
Hanc
and y
are n
Hanc

A
the s
at the
cattle