

# Court of Errors and Appeals.

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MERRIT R. LANDRUM, *et als.*,  
*appellants,*

and

BENJAMIN W. KNOWLES, *et als.*,  
*respondents.*

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On appeal.

## POINTS FOR APPELLANTS.

On the 28th of December, 1850, Lucy A. Landrum, then the wife of Samuel Y. Landrum (since deceased,) and mother of the appellants, effected with the Mutual Benefit Life Insurance Company, an insurance on the life of her said husband for the sum of \$2,000 for his life, the policy on its face expressly declaring that it was effected "for the sole use of the children of the said Lucy and Samuel Y. Landrum," and the said Company covenanted to pay the said sum so insured "to the said insured or their assigns" within ninety days after due notice and proof of the death of the said Samuel.

The premiums becoming due upon the said policy down to and including the 28th December, 1859, were regularly paid as the said appellants insist by their said mother on their account. On the 20th February, 1860, the policy being still in force, the said Lucy A. Landrum by instrument under her hand and seal and expressed to be "for value received" assigned the said policy to the appellee Knowles, and delivered the same to him; and by endorsement on the said assignment, the Insurance Company assent thereto "subject to the conditions of the policy."

From and after this assignment, Knowles paid the premiums of insurance thereon down to the time of the death of the said Samuel Y. Landrum, which happened in the month of June 1869.

The appellants who are the children of the said Lucy A. and Samuel Y. Landrum, by their bill filed in the Court of Chancery, insist that the said Insurance was validly effected for their sole use and benefit; they deny the title of the said Knowles as assignee of said policy, and pray that the Company may be decreed to pay over the sum insured on their said father's life, to them or to their use.

Knowles, by his answer, insists on the benefit of said assignment. He says the premiums on the policy, which became payable prior to December, 1859, were paid by the husband and not by the wife: the premium which fell due December, 1859, "was paid by defendant according to the best of his recollection but he is unable to say positively." That at and for some time before the assignment, the said Samuel had become indebted to the defendant in a sum exceeding \$600, the exact amount of which he is unable to state, on account of the destruction of his books, and had then become insolvent and unable to pay the said indebtedness, and neither the said Lucy nor her said husband were in circumstances to enable them to carry the said policy and pay the annual premiums thereon; and in consideration of the said indebtedness and of the payment of the premium of 1859 by defendant "as well as for other considerations," the said Lucy with the assent of her husband, assigned the said policy as aforesaid: and that from the time of assignment, the premiums accruing on said policy have been paid by him.

The Company are neutral and are ready to pay the money insured as the Court may direct.

Knowles was examined as a witness on his own behalf. His testimony is in substance that the policy was effected with him as agent of the Company: that he as agent received the premiums which became due prior to 1859 from Samuel Y. Landrum. He says nothing of the source whence these funds were received by Samuel. He believes he paid the premium which became payable

in December, 1859. He thinks he advanced the money for Samuel; he cannot say positively—If he paid this premium he charged it up in the account against Landrum. At the time of the assignment the latter was in debt to him over \$600, to the best of his recollection. After the assignment he found that Landrum had a share of bank stock worth \$80, and he got him to let him (Knowles) have it. He can not venture to say whether or not Landrum made him any other payments on account of his claim, he may have done so.

It is clear therefore upon his own showing that the only consideration for the assignment was the pre-existing indebtedness of the husband to Knowles, and that it was intended as a security or pledge for the payment of his indebtedness and not as an absolute assignment.

The Chancellor nevertheless by his decree 5th January, 1871, declared that the complainants were entitled to no more than the cash value of the policy at the time it ceased to be kept alive by their mother, that is on the 28th December, 1860, and directed the Company to pay to them the sum of \$246,48, as such cash value and further declared that the said policy at the time of the death of the said Samuel, "was a good and valid policy in the hands of Knowles the assignee for the whole amount thereof exclusive of the said sum adjudged to be due the complainants," and directed the Company to pay the whole amount due on said policy, exclusive of said sum, to the said assignee.

This appeal is taken by the complainants below from the latter branch of the decree, they insisting that they are entitled to receive from the Company the entire sum due on the said policy.

Knowles in his joinder in error insists that "the said decree is agreeable to Equity and Justice, and therefore humbly hopes that the same may be affirmed."

There is therefore no question as to the propriety of the first clause of the decree, which awards the sum of \$246,48 to the Appellants as the cash value of the policy, on 28th December, 1860.

The affirmance of this part of the decree necessarily concedes the authority of Lucy A. Landrum to effect this insurance for the sole benefit of her children, the appellants, and the right of the said children at the date of the assignment, to the exclusive interest in that policy; and further it concedes that this interest of the children continued to exist down to the 28th December, 1860; so that if Samuel Y. Landrum had died at any time before the said 28th December, 1860, although after the date of the assignment the said children would have been entitled to receive the entire sum secured by the said policy. The children therefore had a subsisting valuable interest in said policy, notwithstanding the said assignment made by Lucy A. Landrum to Knowles, and were entitled in preference to the said assignee to claim the benefit of a renewal on the said 28th December, 1860.

2. *Story's Eq. Pleading Section 1211.*

*Holdridge vs Gillespie 2 Johns, Ch. R. 30.*

I. The appellants will therefore insist that the said renewal was in equity made for their benefit, they being infants, the said Knowles being substituted trustee in the place of the said Lucy A. Landrum, and therefore in construction of equity, making said renewal for the benefit of the appellants.

In this case Chancellor Kent declares that if a guardian takes a renewed lease for lives, the trust follow the actual interest of the infant, and that it is a general principle pervading the cases, that if a Mortgagee, Executor, Trustee, or tenant for life &c., who has a limited interest, gets an advantage by being in possession or behind the back of the party interested in the subject, he shall not retain the same for his own benefit, but hold it in trust. And this principle was enforced by him for the benefit of a mortgagor as against the mortgagee who had got in possession of the mortgaged premises, which were leasehold and obtained a renewal thereof. In 10 *Vesey* 395, Lord Eldon states a case of a church lease: the Trustee applied for a renewal, the lessor declared he would not renew for the benefit of the infant cestui que trust: The Trustee then took it, and rightly in point

of moral honesty, for his own benefit, But the Court said it had so little power of obtaining a complete discovery in all cases, that the property should be thrown back on the lessor, rather than that the Trustee should hold it.

*Keech vs. Sandford*, *Cases in Equity* 151 (175) 74 Law Library, is probably the case to which Lord Eldon refers.

In *Griffin vs. Griffin*, 1 *Sch. and Lef.* 352, this rule was applied under very special circumstances of hardship against the party who had obtained the lease.

It is presumed that the condition of these infants entitled to the right of renewal of a policy which had been outstanding ten years, is analagous in Equity to that of an infant entitled to the renewal of a lease. The danger is equally great in either case that the party having or assuming to have a right to intervene in the interests of the infants, may betray that interest for his individual profit.

II. The case of *Conn. Mutual Life Ins. Co., vs Burroug's*, 34 *Conn.* 305, <sup>SWS</sup> contains our views. In that case the Company had issued a policy of Insurance on the life of one Kendall, in favor of his wife. The policy stated on its face that the sum insured was to be paid to the wife, her executors, administrators or assigns, but "in case of the death of the wife before the decease of her husband, the amount of insurance shall be payable to her children for their use." The wife assigned this policy to Burroughs, by a paper purporting to be an absolute assignment. The assignee paid one premium on the policy which became payable after the assignment. The wife died. The husband died shortly after, leaving, surviving him, one son, the child of the deceased wife. The court held clearly that the assignment was void as against the child surviving, in other words that the child had a beneficial

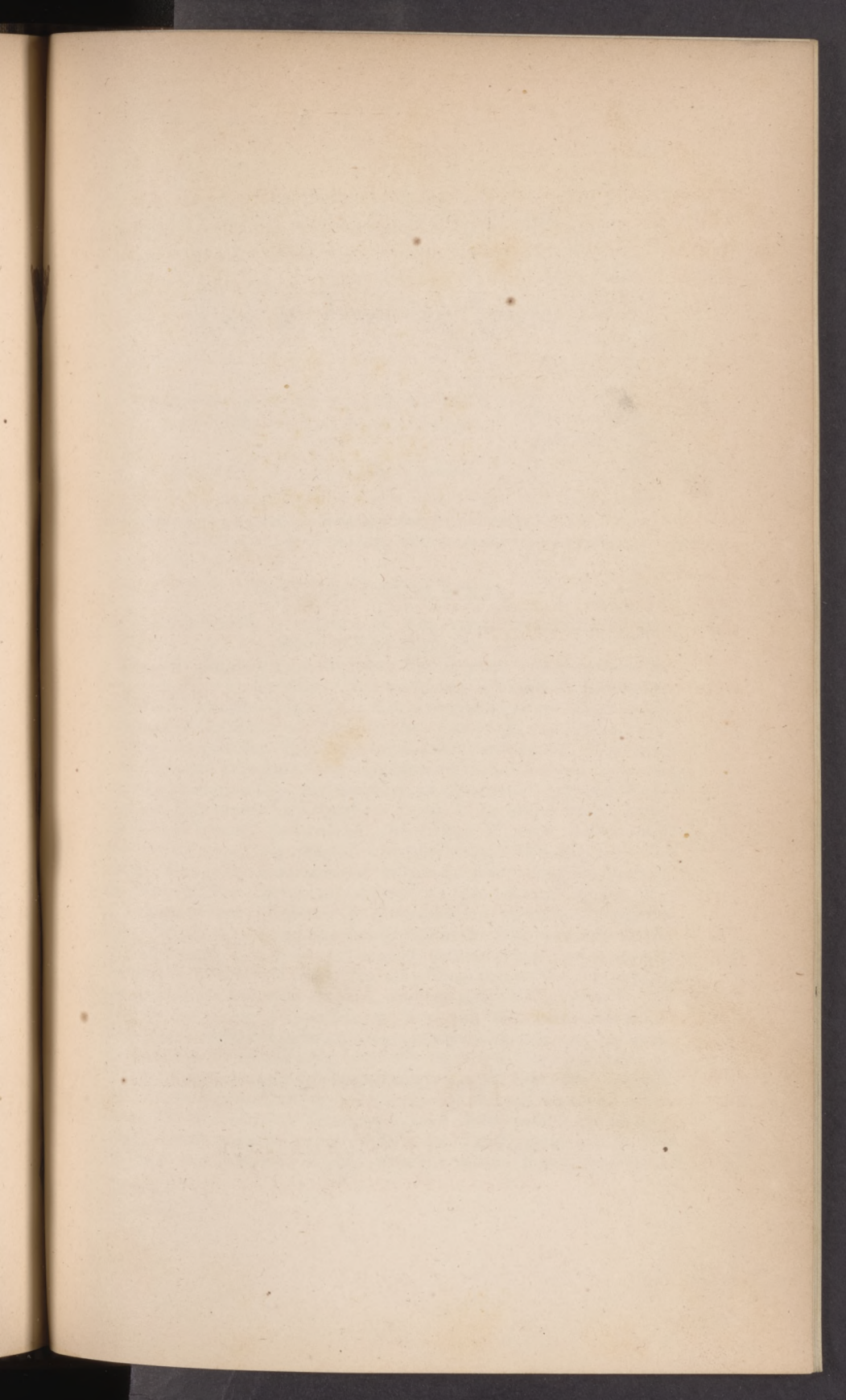
interest in the policy, which could not be diverted by the act of the wife. The consideration for the assignment is not stated in the report. It may have been money or other value passing immediately to the wife. In our case the policy is assigned in consideration of a pre-existing debt of the husband.

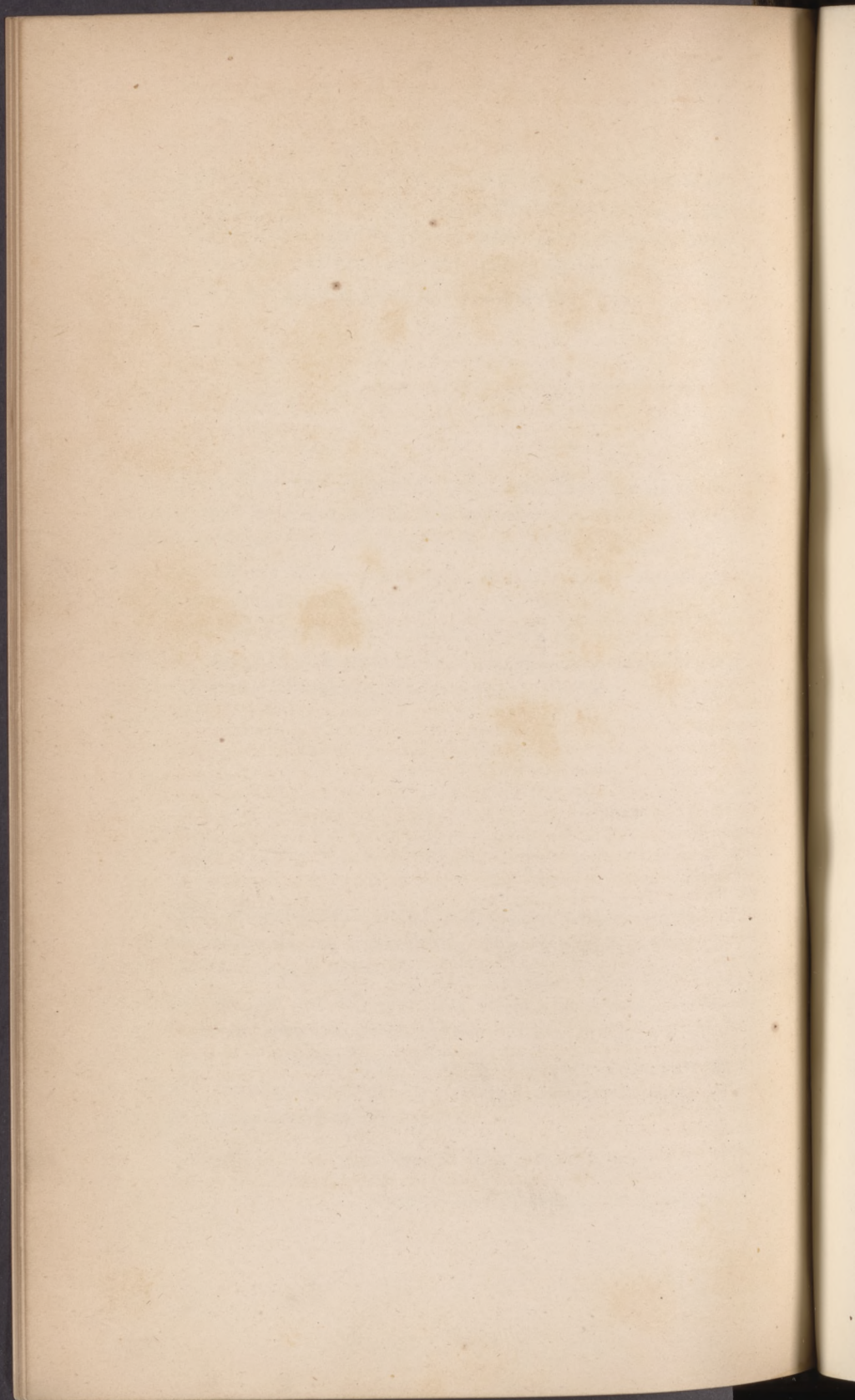
III. The policy was assignable only with the consent of the Company, and the Company in this instance consented to the assignment in terms "to be subject to the conditions of the policy." Knowles accepting of the assignment on those terms stands precisely in the condition of his assignor. As that assignor held for the sole use and benefit of the infants, he did so likewise; and it is simply a fraud that he should claim for his own personal benefit an interest which he has consented to take and hold for the benefit of infants.

IV. Upon Knowles own showing the assignment was made to him as a security for an outstanding debt due to him from the father. If therefore, it is considered that the assignment to him is available to him for any purpose, (which is denied) he can claim out of the proceeds of the policy only so much as will reimburse him that outstanding debt, and the premiums paid by him for the renewal of the policy, reduced by the dividends he may have received from the Company.

ANDREW KIRKPATRICK,

*Counsel and Solicitor for Appellant.*





## Court of Errors and Appeals.

MERRIT R. LANDRUM ET ALS. BY LUCY A.

LANDRUM, their next Friend, *Appellants*,

AND

BENJAMIN W. KNOWLES, *Respondent*.

} *On Appeal.*

ANREW KIRKPATRICK, Solicitor for Appellants.

DIXON & COLLINS, Solicitors for Respondent.

### BILL OF COMPLAINT.

To the Honorable ABRAHAM O. ZABRISKIE, Chancellor of the State of New Jersey :

Humbly complaining unto your Honor, your orators Merrit R. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum, and Mattie Landrum, infants under twenty-one years of age, and residents of the State of Virginia by Lucy A. Landrum, their mother and guardian duly appointed and qualified, and also their next friend to prosecute their suit on their behalf, show that on the twenty-eighth day of December, in the year eighteen hundred and fifty-three, said mother, Lucy A. Landrum, then being the wife of Samuel Y. Landrum, the father of your orators, and who is since deceased, effected with the Mutual Benefit Life Insurance Company, a corporation duly organized under the laws of the State of New Jersey, and carrying on its business in the city of Newark, county of Essex, in the said state, an insurance on the life of her then husband Samuel Y. Landrum, who was the father of your orators, and is since deceased, for the sum of two thousand dollars for the term of life of the said Samuel, for the sole use of the children of the said Lucy A. and Samuel Y. Landrum ; and that the said Lucy A. Landrum paid to the said Insurance Company the premiums becoming due on the aforesaid policy from the date thereof continually until the twentieth day of February, in the year eighteen hundred and sixty ; and that on the said last named day and during the life time of the said Samuel Y. Landrum, the said Lucy A. Landrum signed and sealed a certain paper, which purports to be made "for value received," and to assign to one Benjamin W. Knowles the above named policy of

insurance and all sum or sums of money, interest, benefit and advantage whatsoever then due or thereafter to arise or to be had or made by virtue thereof and delivered the said paper together with the said policy of insurance unto the said Benjamin W. Knowles, who has ever since held and yet has possession of the same; and your orators have been informed and believe the said Benjamin W. Knowles thereafter kept the said policy of insurance alive by payment of the annual premiums becoming due and payable thereon until the death of the said Samuel Y. Landrum, which event has recently occurred.

And your orators further show that the said Benjamin W. Knowles has recently exhibited to the said Insurance Company the aforesaid policy of insurance and the said paper purporting to be an assignment thereof together with the proofs of the death of the said Samuel Y. Landrum within the risks insured against and demanded payment of the sum of money insured on said life; but the said Insurance Company having received notice of the claim and right of your orators, as children of the said Lucy A. Landrum and Samuel Y. Landrum have hitherto declined to pay the said sum of money to the said Knowles; at the same time the said Insurance Company declines to make payment of the said sum of money unto your orators, alleging that the same is payable on the surrender of the said policy of insurance and to the person having the rightful custody thereof, and that it cannot assume the responsibility of determining between the respective claims and pretensions of the said Benjamin W. Knowles and of your orators.

Your orators deny the validity of the said papers as an assignment of the said policy of insurance and insist that inasmuch as it purports on its face to have been effected for the use of your orators, who are the children and only children of the said Lucy A. Landrum and Samuel Y. Landrum the said Knowles had notice of their rights, and even if said paper operated at law as an assignment of the legal right of the said Lucy A. Landrum, therein he is to be deemed and taken to have acquired the same as trustee for your orators, and they have therefore required him to surrender said policy of insurance to your orators or to deposit the same with the said Insurance Company with authority to the said company to pay the said sum of money so become payable thereon your unto orators.

But these their reasonable requests have been denied by the said Knowles, and your orators verily apprehend that the said Knowles, unless prevented by this court, will institute proceedings at law against the said insurance company for recovery of said sum of money, and thus your orators will be deprived of the opportunity for litigating their rights fairly against him.

To the end therefore that the said Benjamin W. Knowles and the said Mutual Benefit Life Insurance Company may answer the premises and that the said Knowles may produce unto this court the aforesaid original policy of insurance, and the said Mu-

tual Benefit Life Insurance Company may be decreed to pay unto your orators the said sum of money so insured on the life of the said Samuel Y. Landrum, and that your orators may have such other and further relief in the premises as their case may require, and in the meantime that a writ of injunction may be issued to restrain the said Mutual Benefit Life Insurance Company from paying the said sum of money to the said Knowles and to restrain the said Knowles from proceeding at law to enforce payment thereof by the said company to him.

May it please your Honor to grant unto your orators the 10 State's writ of subpoena to be directed to the said Mutual Benefit Life Insurance Company and Benjamin W. Knowles, requiring them to be and appear in this court to answer the premises and abide by such decree as may be passed therein and also the writ of injunction to restrain the said Mutual Benefit Life Insurance Company from paying the said sum of money to the said Benjamin W. Knowles, and to restrain the said Knowles from proceeding at law to enforce payment thereof by the said Company to him until further order of this court, etc.

*Adm. Kirkpatrick*<sup>20</sup>  
*Sol. of Complainant*

ANSWER OF DEFENDANT KNOWLES.

(Filed March, 1870.)

The separate answer of the defendant Benjamin W. Knowles to the bill of complaint of Merrit R. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum by Lucy 30 A. Landrum their next friend.

This defendant reserving to himself all benefit of exception to any errors or insufficiencies that may be in the said complaint, answering says:

1. That he admits that Lucy A. Landrum, the then wife of Samuel Y. Landrum at the time mentioned in the complaint effected with the defendant, The Mutual Benefit Life Insurance Company, a body corporate under the laws of the State of New Jersey, then and still doing business at Newark, in said State, an insurance on the life of her husband for two thousand dollars for 40 the term of life whereby she would have been entitled if she fulfilled the conditions of the policy to receive from the said Company on the death of her said husband two thousand dollars for the sole use of the children, of herself and her said husband, who are the plaintiffs in this action as by the policy of Insurance issued the said company, to the said Lucy A. Landrum, now in the possession of this defendant will more fully appear and to which he refers.

2. That he admits that all the premiums that fell due upon the said policy from its date to the 20th day of February, 1860, were 50

paid to the said company, but this defendant denies that the said premiums or any of them were paid by the said Lucy A. Landrum, and he avers that they were all paid by the said Samuel Y. Landrum, except the premium that fell due in December, 1859, which was paid by this defendant according to his best recollection and belief, but he is unable to say positively because of the destruction of his books by fire at the close of the war.

3. That the said Lucy A. Landrum had a valuable interest in the life of the said Samuel Y. Landrum at the time of effecting  
10 the said insurance.

4. That the said Lucy A. Landrum being a married woman on the 20th day of February, 1860, by an instrument in writing under her hand and seal, and with the assent of her said husband, for value received did assign, transfer and set over unto this defendant the said policy of insurance and all sums and sums of money, interest, benefit and advantage to arise, or to be had or made by virtue thereof, as by the said deed of assignment now in the possession of this defendant will more fully appear, and to which he refers.

20 5. That at or about the time of the said assignment the defendant, The Mutual Benefit Life Insurance Company by its Secretary, gave its consent thereto in the following words written or printed on the said deed of assignment, viz: "The Mutual Benefit Life Insurance Company hereby consent to the above assignment, subject to the conditions of the policy. B. C. Miller, Secretary."

6. That at the time of the said assignment and at the time of the consent given thereto by the said company, this defendant had a valuable interest in the life of the said Samuel Y. Landrum  
30 as his creditor.

7. That at the time the said policy was issued and ever afterwards, until the year 1865, the said Samuel Y. Landrum and Lucy A. Landrum and their children and this defendant were all residents and inhabitants of the state of Virginia, during all which time the said Lucy A. Landrum owned no separate property; that at and some time before the assignment of the said policy, the said Samuel Y. Landrum had become indebted to this defendant in a considerable sum of money, exceeding six hundred dollars, the exact amount of which he is unable to state on  
40 account of the destruction of his books as aforesaid, and had then become insolvent and unable to pay the said indebtedness, and neither the said Lucy A. Landrum nor her husband were in circumstances to enable her to carry the said policy and pay the annual premiums thereon; that in consideration of the said indebtedness and of the payment of the premium in 1859 by this defendant, as well as for other considerations the said Lucy A. Landrum with the assent of her husband assigned the said policy as aforesaid.

8. That ever after the said assignment and the said consent  
50 thereto, until the death of the said Samuel Y. Landrum, the de-

defendant, The Benefit Life Insurance Company, treated this defendant as the owner of the said policy, and received from him the annual premiums from year to year, to keep the same in force, and this defendant is advised and believes that the said policy became and was and still is a good and valid policy of insurance in favor of this defendant against the said company upon the life of the said Samuel Y. Landrum, and that this defendant is not accountable to the plaintiffs as a trustee or otherwise for the said policy or the moneys due thereon.

9. That the plaintiffs in this action did not nor did either of them ever pay any or either of the premiums that have been paid upon the said policy or any part thereof, nor did they ever give or pay any consideration whatever for any interest therein, and this defendant is advised and believes that they never had or owned any vested interest in the said policy, and never had any just claim, legal or equitable against their said parents or either of them to have the said policy kept in force by payment of the premiums thereon or to have their mother continue to hold the same.

10. That the said Samuel Y. Landrum died in or about the month of June, 1869, and in or about the month of July, 1869, this defendant furnished the defendant, the Mutual Benefit Life Insurance Company, with proof of such death, and otherwise duly performed all the conditions of the said policy on his part, and after a lapse of more than ninety days demanded of the said company payment of the moneys due upon the said policy, to which demand the said company answered that it was ready and willing to pay such amount to the parties entitled to the same, but declined to pay to this defendant by reason of the claim which it supposed the plaintiffs might make upon it for the same money.

This defendant therefore asks the adjudication and decree of this court that the amount due upon the said policy, viz: nineteen hundred and fifteen dollars and eighty-nine cents with interest from the first day of November, 1869, be paid to him and that the plaintiffs' complaint be dismissed, or that he may have such other or further relief in the premises as shall be just and equitable.

OSCAR KEEN,

Sol. of Defendant, B. W. Knowles.

ANSWER OF DEFENDANT, THE MUTUAL BENEFIT  
LIFE INSURANCE COMPANY.

(Filed March, 1870.)

## IN CHANCERY OF NEW JERSEY.

The answer of the Mutual Benefit Life Insurance Company, a corporation organized under the laws of the State of New Jersey, and doing business in the city of Newark, county of Essex and State aforesaid, one of the parties defendants to the bill of complaint of Merrit P. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum by Lucy A. Landrum their next friend, complainants. These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say: That they admit that on or about the twenty-eighth day of December, eighteen hundred and fifty-three, Lucy A. Landrum, the wife of Samuel Y. Landrum, of Richmond, in the State of Virginia, effected with these defendants an insurance of two thousand dollars upon the life of her said husband, Samuel Y. Landrum, the said sum of two thousand dollars to be paid upon the death of the said Samuel Y. Landrum to the said Lucy A. Landrum, for the sole use and benefit of the children of the said Samuel Y. Landrum and Lucy A. Landrum, and pray that for greater certainty the said policy may be produced to this court as by reference thereto had will more fully appear. And these defendants further answering admit, that the said Samuel Y. Landrum is dead, and that the said sum of money insured by said policy is payable upon a surrender of said policy of insurance and a compliance with the rules and regulations of these defendants. And these defendants further answering say that they have been informed that Benjamin W. Knowles one of the defendants hereto, claims and pretends to have some interest in said policy, by reason of a certain paper purporting to be an assignment of said policy, and to be entitled to receive from these defendants the money due thereon. And these defendants further answering say that they are ready to pay the sum of money due upon said policy whereon this honorable court shall determine to whom the said money shall be paid, and further that they are willing upon an order from this court to pay the said sum of money into court to abide such further order in this suit as to your Honor shall seem meet and agreeable to equity.

LEWIS C. GROVER,

Sol. of Defendants, The Mutual Benefit Life Insurance Company.

STATE OF NEW YORK.

City and County of New York. } ss. On this 24th day of June, A. D. 1870, before me, a notary public, in and for City and County of New York, appeared the above named plaintiffs by their Solicitor and the defendant, Benjamin W. Knowles, by his Solicitor, and the said Knowles being duly affirmed as a witness to testify in his own behalf in this case and examined as such by his said Solicitor deposes as follows :

First. I reside at Westfield, Mass. 10

Second. The premiums on the policies of insurance mentioned in the proceedings, which became payable before the time of the assignment of said policies to me, were paid by Samuel Y. Landrum who is mentioned in the proceedings. Being asked, Do you include in your preceding answer the premium which became payable the 12th of December, 1859.

Third. I believe that I paid it, but I cannot be definite about it. I advanced the money for Landrum, I think.

Fourth. Why are you unable to say positively?

A. Because my papers were destroyed by fire at the burning of 20 Richmond at the close of the war.

Fifth. Q. At the time the policy was issued and ever afterwards up to the close of the war where did Samuel Y. Landrum and his wife and children and yourself reside.

A. At Richmond, Virginia, or in its vicinity.

Q. At the time of the assignment of the policy was Mr. Landrum indebted to you in any and what amount?

A. He was indebted to me to the best of my recollection over \$600. I cannot tell the exact amount on account of the loss of my books by fire as before mentioned. 30

Q. Had Mr. Landrum become insolvent and unable to pay his debts before assignment of the policy?

A. Yes. I say insolvent; I do not believe he could pay his debts. I do not mean to say he had taken the benefit of any insolvent act.

Q. Did he ever pay you anything on account of that indebtedness except by the assignment of that policy?

A. After the assignment of the policy I found that he had a share of bank stock and I got him to let me have it. I think it was the Traders' Bank of Richmond, and the share was worth 40 about \$80.

Q. Did Mrs. Landrum have any separate property of her own to your knowledge?

A. No, sir.

Q. Was your negotiation for the assignment of the policy with Mr. Landrum or his wife?

A. It was with him.

Q. Had Mrs. Landrum anything to do with effecting the policy or with the payment of the premiums before the assignment?

A. Only in signing the application for the policy. I was at 50

that time the agent of the company at Richmond. The application was handed to me as agent with her signature attached.

Q. At the time the assignment was made what was the ability of Mr. Landrum to pay the premiums on the policy?

A. I do not think he was able to pay them.

Q. What did Mr. Landrum say to you on the subject, if anything? [Objected to and waived.]

Q. What was the value of the policy at the time of the assignment?

10 A. I could not answer that question.

Q. Did you see Mrs. Landrum at any time in relation to the assignment of the policy?

A. No.

Being cross-examined:

Q. Why do say that all the premiums on the policy were paid by Mr. Landrum?

A. Because he made the payment to me as agent of the Company.

20 Q. Are we to understand that you have received nothing on account of your claim against Mr. Landrum other than the assignment of the policy and the bank share of which you have already spoken?

A. I cannot venture to say whether he did or did not. It is possible he may have made me some other payments, but my books are lost and I can not speak positively on the subject.

Q. If you paid the premium which became due in December, 1859, did you or not charge it up in your account against Landrum?

A. I would say I did.

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Signed, B. W. KNOWLES.

Subscribed and sworn to before me this 24th of June, 1870.

DAVID W. ALEXANDER, *Notary Public New York City and County.*

The foregoing deposition is taken to have like effect and none other as if taken under a Commission regularly issued by the Court after issue joined in this cause.

### Exhibit A.

On part of Defendant, B. W. KNOWLES.

No. 8502.

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY,  
NEWARK, N. J.

Annual Premium, \$56.20. This policy of Insurance witnesseth that the Mutual Benefit Life Insurance Company in consideration of the sum of fifty six dollars and 10 twenty cents to them in hand paid by Lucy A. Landrum and of the annual premium of fifty-six dollars and twenty cents, to be paid on or before twelve o'clock, M., on the twenty-eighth day of December, in every year during the continuance of this policy, do assure the life of Samuel Y. Landrum, of Richmond, in the county of Henrico, and State of Virginia, in

the amount of two thousand dollars for the term of life for the sole use of the children of the said Lucy and Samuel Y. Landrum, and the said company do hereby promise and agree to and with the said assured their assigns well and truly to pay or cause to be paid the said sum insured to the said assured their assigns within ninety days after due notice and proof of the death of the said Samuel Y. Landrum, deducting therefrom all notes taken for premiums on this policy unpaid at that time. Provided always and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Samuel Y. Landrum shall die upon the seas, or pass beyond the settled limits 30 of the United States, without the consent of this company previously obtained and endorsed upon this policy (excepting into the settled limits of the British Provinces of Canada, Nova Scotia or New Brunswick), or shall without such previous consent endorsed, visit those parts of the United States which lie south of the southern boundaries of the states of Virginia and Kentucky, or west of the settlements on the western banks of the Mississippi river, between the first of July and the first of November, or shall without such previous consent thus endorsed enter into any military or naval service whatsoever, (the militia not in actual 40 service excepted), or in case he shall die by his own hand, in or in consequence of a duel or by reason of intemperance from the use of intoxicating liquors, or by the hands of justice, or in the known violation of any law of these States, or of the United States, or of the said Provinces, this policy shall be void, null, and of no effect. And it is also understood and agreed to be the true intent and meaning hereof that if the declaration made by the said Lucy A. Landrum, and bearing date the twenty-eighth day of December, 1850, and upon the faith of which this agreement is made, shall be found in any respect untrue, then and in 50

such case this policy shall be null and void, or in case the said Lucy A. Landrum shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case, the said company shall not be liable to the payment of the sum insured or any part thereof, and this policy shall cease and determine. And it is further agreed, that in every case where this policy shall cease, or become or be null and void, all previous payments made thereon, and all profits shall be forfeited to said company. N. B. If assigned  
 10 notice to be given the company, and the party to whom the policy is transferred, must sign all premium notes with the assured. In witness whereof the said Mutual Benefit Life Insurance Company have by their president and secretary signed and delivered this contract at the city of Newark the twenty-eighth day of December, one thousand eight hundred and fifty.

ROBERT L. PATTERSON, President.

B. C. MILLER, Secretary.

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### Exhibit B.

On part of Defendant KNOWLES.

### ASSIGNMENT OF POLICY.

30 No. 8502.

IN THE  
 MUTUAL BENEFIT LIFE INSURANCE COMPANY.

Life of S. Y. LANDRUM.

FOR VALUE RECEIVED, I do hereby assign, transfer, and set over unto B. W. Knowles or assigns, the above named policy of Insurance, and all sum or sums of money, interest, benefit and advantage whatsoever, now due or hereafter to arise, or to be had or made by virtue thereof; to have and to hold unto the said B. W. Knowles or assigns.

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IN WITNESS WHEREOF, I have hereunto set my Hand and Seal the 20th day of February, one thousand eight hundred and sixty.

Sealed and delivered in

the presence of

W. R. LANDRUM.

LUCY A. LANDRUM. [Seal.]

"THE MUTUAL BENEFIT LIFE INSURANCE COMPANY" hereby consent to the above Assignment, subject to the conditions of the Policy.

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Signed, B. C. MILLER, Secretary.

## FINAL DECREE.

(Filed January 5, 1871.)

This cause coming to be heard before the Chancellor in the presence of Thomas S. Alexander and Andrew Kirkpatrick of Counsel with the complainants, and George Miller of Counsel with the defendant Knowles, no person appearing for the other defendants, and the pleadings, depositions, exhibits and proofs being read and the arguments of the respective Counsel being heard and considered, and the Chancellor having taken time to advise thereon; It is on this 5th day of January, 1871, ordered, adjudged and decreed, that the complainants were entitled to the cash value of the policy of insurance in question in this cause at the time the policy ceased to be kept alive by the payment of the premiums by Lucy A. Landrum or her husband, Samuel Y. Landrum, to wit: the twenty-eighth day of December, eighteen hundred and sixty, which said sum is to be determined by the rules of the defendants, The Mutual Benefit Life Insurance Company, in determining the cash value of policies surrendered; and Amzi Dodd, Esquire, the actuary of the said company, having by the consent of the parties, certified that the said cash value of the said policy at that time with interest, is two hundred and forty-six dollars and forty-eight cents; It is further ordered, adjudged and decreed that the defendants, The Mutual Benefit Life Insurance Company, pay to the said complainants the said sum of two hundred and forty-six dollars and forty-eight cents. And it is further ordered, adjudged and decreed that the said policy of insurance was at the time of the death of the said Samuel Y. Landrum, a good and valid policy in the hands of Benjamin W. Knowles, the assignee for the whole amount thereof, exclusive of the said sum adjudged to be due the complainants; and it is further ordered and adjudged that the defendants, The Mutual Benefit Life Insurance Company, do pay to the defendant, Benjamin W. Knowles, or his representatives, the whole amount due upon said policy of insurance after first deducting therefrom the said sum of two hundred and forty-six dollars and forty-eight cents, adjudged to be due to the complainants; and it is further ordered that the said complainant and the said defendant Knowles do pay, in proportion to the amount decreed to be paid them respectively, the taxed costs of the defendant, The Mutual Benefit Life Insurance Company.

A. O. ZABRISKIE, C.

The humble petition of Merrit R. Landrum, Eva R. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum, by Lucy A. Landrum, their next friends, the appellants in the above case, and themselves aggrieved by a final decree made in the Court of Chancery by the Honorable Abraham O. Zabriskie, Chancellor of New Jersey, filed January the fifth, eighteen hundred and seventy-one, in a suit wherein the said Merrit R. Landrum, Eva R. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum, by Lucy A. Landrum, their next friends, were complainants.

APPEAL.

(Filed April 10, 1871.)

The complainants Merrit R. Landrum, Ella Landrum, Eva P. Landrum, Charles Y. Landrum and Mattie Landrum by Lucy A. Landrum, their next friend, appeal from so much of the final decree made in the above stated cause as declares that the policy of life insurance in question which forms the subject of this suit was at the time of the death of the said Samuel Y. Landrum, a good and valid policy, in the hands of the said Benjamin W. Knowles as assignee for the whole amount thereof, exclusive of the sum adjudged to be due the complainants, and do appeal from so much of said decree as directs the defendants, The Mutual Benefit Life Insurance Company, to pay to the defendant, Benjamin W. Knowles, or his representatives, the whole amount due upon said policy of insurance, after first deducting therefrom the amount adjudged to be due the complainants.

Dated.

ANDREW KIRKPATRICK,

Solicitor of Merrit R. Landrum, et als. Complainants.

I conceive there is good cause for said appeal.

ANDREW KIRKPATRICK,

Of Counsel with Appellants.

PETITION OF APPEAL.

(Filed April 10, 1871.)

BETWEEN

MERRIT R. LANDRUM, EVA P. LANDRUM, ELLA LANDRUM, CHARLES Y. LANDRUM and MATTIE LANDRUM, by LUCY A. LANDRUM, their next friend,  
*Appellants,*

On Bill, &c.

AND

BENJAMIN W. KNOWLES and THE MUTUAL BENEFIT LIFE INSURANCE COMPANY, *Respondents.*

Petition of Appeal.

To the Honorable the Court of Appeals in the last resort in all cases of law or equity.

The humble petition of Merrit R. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum, by Lucy A. Landrum, their next friend, the appellants in the above cause, find themselves aggrieved by a final decree made in the Court of Chancery by the Honorable Abraham O. Zabriskie, Chancellor of New Jersey, filed January the fifth, eighteen hundred and seventy-one, in a suit wherein the said Merrit R. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum, by Lucy A. Landrum, their next friend, were complainants,

and the said Benjamin W. Knowles and The Mutual Benefit Life Insurance Company, were defendants, in respect that the said decree adjudged that the policy of life insurance in question in said suit was at the time of the death of said Samuel Y. Landrum, a good and valid policy in the hands of the said Benjamin W. Knowles, as assignee for the whole amount thereof, exclusive of the sum adjudged to be due the complainants, and in respect that the said decree orders the said defendants, The Mutual Benefit Life Insurance Company, to pay to the said defendant Benjamin W. Knowles, or his representatives, the whole amount due upon said policy of insurance, after first deducting therefrom the amount adjudged to be due the complainants. And your petitioners humbly appeal from those parts of said decree of the Chancellor, upon the ground that the same is in those respects erroneous, for that the said policy of insurance was not a good and valid policy in the hands of said Benjamin W. Knowles as assignee, at the time of the death of the said Samuel Y. Landrum; and that the said defendants, The Mutual Benefit Life Insurance Company, ought not to be decreed to pay to the said defendant, Benjamin W. Knowles, or his representatives, the whole amount due upon said policy of insurance, after first deducting therefrom the amount adjudged to be due the complainants in said cause, but that the said Merrit R. Landrum, Eva P. Landrum, Ella Landrum, Charles Y. Landrum and Mattie Landrum, are entitled to receive from the said defendants, The Mutual Benefit Life Insurance Company, the whole amount of said policy without any deductions whatever. Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid, removed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet. 30

ANDREW KIRKPATRICK,  
Solicitor for and of Counsel with the Appellants.

ANSWER TO APPEAL,

(Filed May 4, 1871.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

MERRIT R. LANDRUM ET ALS, by LUCY A. LANDRUM,  
their next friend, *Appellants*,

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AND

BENJAMIN W. KNOWLES ET ALS, *Respondents*.

The answer of Caroline H. Knowles, Executrix of the will of Benjamin W. Knowles, deceased, respondent to the petition of appeal of Merritt R. Landrum and others, by Lucy A. Landrum, their next friend.

This respondent not confessing all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says: that such decree as is complained of, was made by the Court of Chancery, as in said petition of appeal is mentioned and set forth; but as to the date, substance and extent thereof, this respondent hereby craves leave to refer thereunto, when the same shall be produced, and this respondent hereby conceives and is advised that the said decree is agreeable to equity and justice, and therefore humbly hopes that the same may be affirmed and said appeal dismissed in this honorable court with costs.

Dated April 29, 1871.

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DIXON & COLLINS, Solicitors, and  
J. DIXON, JR., of Counsel with Respondents.

MERRIT R. LANDRUM, ELLA P. LANDRUM, CHARLES Y. LANDRUM, CHARLES Y. LANDRUM, their next friend, by LUCY A. LANDRUM, their next friend, *Appellants*,

BENJAMIN W. KNOWLES and THE MUTUAL BENEFIT LIFE INSURANCE COMPANY, *Respondents*.

To the Honorable the Court of Appeals in the best resort in all cases of law or equity.  
The humble petition of Merritt R. Landrum, Ella P. Landrum, Charles Y. Landrum and Merritt Landrum, by Lucy A. Landrum, their next friend, the appellants in the above name, find themselves aggrieved by a final decree made in the Court of Chancery by the Honorable Abraham G. Zabriskie, Chancellor of New Jersey, filed January the fifth, eighteen hundred and seventy-one, in a suit wherein the said Merritt R. Landrum, Ella P. Landrum, Charles Y. Landrum and Merritt Landrum, by Lucy A. Landrum, their next friend, were complainants.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN  
 CHARLOTTE A. FLAVELL, *Appellant*,  
 AND  
 ABRAHAM W. FLAVELL, *Respondent*.

} *On appeal from Chancery.*

BRIEF AND POINTS.

I.

The proof does not show the Respondent guilty of adultery.  
 See testimony of Abram Flavell, page 6 to 16.

II.

The proof on the defense shows the Respondent was not guilty of adultery.

See testimony of Luther Macomber, page 17 to 20. Also testimony of Charlotte A. Flavell, page 21 to 34.

“When the conduct of a party admits of two interpretations, equally consistent with probability, the one involving guilt and the other consistent with innocence, the rules of evidence as well as the dictates of justice require that the interpretation shall be in favor of innocence.”—*Berchmans vs. Berchmans*, 1 C. E. Green’s Chancery Report, page 122.

See also last case affirmed in Court of Errors, 2 C. E. Green’s Report, page 453.

“When facts relied on are susceptible of two or more interpretations, any one of which is consistent with the defendant’s innocence, they will not be sufficient to establish guilt.”—*Mount vs. Mount*, 2 McCarter’s Report, page 162.

See also 2 Haggard’s Report, page 1, and *Ferguson vs. Ferguson*, 3 Sandford’s Report, p 307.

“The proof of adultery, to justify a decree of divorce, must not only be clear and direct, but it must be entitled to and command belief.”—*Clare vs. Clare*, 4 C. E. Green’s Report, p 37.

## ANSWER III. APPEAL.

The whole case shows it to have been a conspiracy against the defendant.

See testimony of Abram Flavell; his fears arising from losses in the store; his turning Moore away for the same cause; his becoming bail for Moore when he was arrested; his promising Moore not to arrest him or prosecute him for adultery if he would confess, &c.; his being contradicted by witnesses Macomber and Butler, and the defendant; his efforts to get defendant away to south part of the State until a divorce could be got; his and his family's refusal to allow the defendant to see her husband; his crazy Second Advent notions, &c.

See also testimony of Ann Flavell and Fannie Flavell called by complainant after closing his case.

Also complainants' testimony, none of whom gave rebutting evidence.

Also their contradiction by the defendant.

## IV.

There should have been a decree dismissing the bill.

See the whole case.

## New Jersey Court of Errors and Appeals.

Between

CHARLOTTE A. FLAVELL, appellant,

and

ABRAHAM W. FLAVELL, respondent.

} On appeal from de-  
} cret of Chancellor.

### Bill of Complaint.

[Filed Sept. 10, 1888.]

IN CHANCERY OF NEW JERSEY.

To the Honorable Abraham O. Zahriskie, Chancellor of the  
State of New Jersey:

Humly complaining, sheweth unto your Honor, your orator,  
Abraham W. Flavell, of the city of Newark, in the county of  
Essex and State of New Jersey, that your orator was lawfully  
joined in the bonds of matrimony to his present wife, Charlotte,  
on the thirteenth day of March, in the year eighteen hundred and  
sixty-six, from which time forward until the filing of this bill your  
orator has been an inhabitant of the State aforesaid, and the said  
Charlotte has also been an inhabitant thereof; both your orator  
and the said Charlotte having, during all that period, resided in the  
city of Newark aforesaid.

And your orator further shews that the said Charlotte, since  
her said marriage with your orator and on different days of the  
months of January, February, March, April, May, June, July and  
August, eighteen hundred and sixty-eight, and at divers other  
times, wholly disregarding the solemnity of her vows and the  
sanctity of the marriage state, hath committed adultery with cer-  
tain persons in the city of Newark aforesaid, at present to your

### III.

The whole case shows it to have been a conspiracy against the defendant.

See testimony of Abram Flavell; his fears arising from being in the store; his turning Moore away for the same cause; his becoming bail for Moore when he was arrested; his promising Moore not to arrest him or prosecute him for adultery if he would confess, &c.; his being contradicted by witnesses Macomber and Bether, and the defendant; his efforts to get defendant away to some part of the State until a divorce could be got; his and his family's refusal to allow the defendant to see her husband; his crazy Second Advent notions, &c.

See also testimony of Ann Flavell and Fannie Flavell called by complainant after closing his case.

Also complainants' testimony, none of whom gave repeating evidence.

Also their contradiction by the defendant.

### IV.

There should have been a decree blanketing the bill.  
See the whole case.