

## COURT OF ERRORS AND APPEALS.

*Between Ellen M. Close, Appellee,*

*and*

*Joseph B. Close, Appellant.*

*On Appeal from Decree for Alimony.*

The matter came before the late Vice-Chancellor by virtue of two orders, both dated July 20th, 1847, being as follows:

I. Order for divorce on remittitur from the Court of Appeals, referring to the Vice-Chancellor three subjects.

1. Alimony.
2. The custody of the minor children.
3. Counsel fees, &c.

And directing that the testimony already taken on the motion for alimony heretofore ordered, be considered on the reference.

II. Order referring to the Vice-Chancellor an application made that the defendent Close show cause why he should not be attached for contempt in disobeying the order for alimony *pendente lite*.

As to these subjects in order—

I. ALIMONY.

Alimony *pendente lite* was fixed by Chancellor Zabriskie at \$25 per week, by order dated This

conclusion was arrived at, after argument, and consideration of testimony filed December 13th, 1870, for which see *Case*, pp. 51 to 115.

No appeal was ever taken from this order. It was acquiesced in, and paid up to March 25th, 1874.

It is fully supported by the evidence.

*See Case*, pp. 54-57.  
pp. 89-92.  
pp. 103-104.

*Peckham v. Lane*  
*1 Paige 274*  
*Smith v. Smith*  
*2 Phill. 152, 235*  
*Burr v. Burr 10 Paige 26*  
*Rickman v. Rickman*  
*1 Gr. Ch. 90*

The rule of law is that permanent alimony, the circumstances of the husband not having changed, should be greater than temporary.

*2 Bishop on Marriage and Divorce, § 459, § 462.*

*Laune v. Laune 3 Paige 27*  
*Beys v. Beys 2 Phill. 43*

Cases are rare where less than one-third the income is given to the wife.

*2 Bishop, § 467.*

According to circumstances, it rises even to one-half.

I observe—

1. The conduct and history of the defendant proves that a meagre income will be no detriment to him.

2. Punishment is an ingredient in permanent alimony, and defendant deserves it.

3. Mrs. Close tells what she needs.

*Case*, pp. 16-17.

Alone, she needs	- - - - -	\$1600
With her boy,	- - - - -	500
With the two girls, each	- - - - -	650
		650
		<hr/>
		\$3400

This statement scarcely includes education, or the nameless expenses every one undergoes.

But Mrs. Close is entitled to a home, and the society of her children. She has done nothing to forfeit these blessings, of which for over five years she has been deprived.

Has the defendant the right to these comforts? Has he not forfeited them? If both cannot have a home, will a court of equity take it from her?

"It is the delinquent who should have the mere subsistence and who ought to live in retirement."

*Sir John Nicholl in Cooke v. Cooke*, 2 *Phill.*, 40; 1 *E., Ec. R.* 178.

4. But the defendant has plenty of means.

A. His Bayonne property is worth \$200,000. Such is the result of all the evidence.

The assessor estimates at half the sale value, and taxes at \$100,000.

*Case p. 15, l. 20.*

\$400 to \$800 a lot—He averages at \$300.

There are between 600 and 700 lots.

*Mr. Close, p. 89, l. 40.*

He bought two, of small size, in 1870, at \$400 each.

*p. 90, l. 17.*

The experts all estimate at about the same rate, \$300 per lot of 25 by 100.

*Jennings, p. 16.*

*Morris, p. 1.*

*Hamilton, p. 2.*

They fix the price of \$300 as one for which sale can be made now, of much if not all the property.

*Hamilton, p. 2.*

*Smith, pp 15, l. 22.*

*Jennings, pp. 16, l. 3.*

But Mr. Close cannot deny the value of this property. It has been found by a sale, at public auction, for cash, on his own bid

*Parker, p. 18, l. 40.*

The tract sold was 225 by 512, or about two and two-thirds acres—or 32 lots.

It brought \$13,000, on Close's bid, or \$400 a lot.

It was actually sold immediately after for \$10,000, which was \$300 each lot. And this, subject to taxes, accrued for several years.

By the acre, this sale to Close makes the tract worth (53 acres) \$258,275.

The actual sale to Forster, \$198,750.

No witness mentions this land as better or more valuable than the rest of the tract. The most valuable and saleable lots lie near Mr. Close's residence.

*B.* To this Bayonne property must be added that at Washington City, assessed at \$48,000.

A sale there of contiguous property brought \$1000 per acre.

*Plant, p. 7, l. 25, &c.*

*And see Close, p. 91, l. 30.*

Thus Mr. Close is made worth \$250,000, and that, taking into consideration the temporary unsaleability of real estate.

*See Close, p. 90, l. 12.*

It is said this land brings no income; but whose fault is this?

All through this suit, it could have been sold for paying prices; he never tried to sell—never asked his wife to join in conveyance—endeavored to defraud her.

*Close, pp. 28-29.*

*Parker, pp. 17-18.*

We offered to join, before the Vice Chancellor, in any conveyance, or even mortgage to raise money for the alimony, the court taking direction of the money and seeing it invested so as to assure the rights of both parties.

In calculating income, under such circumstances as those of Mr. Close, the court regards the value of land bought for in-

vestment, and regards defendant as taking its interest and growth as income.

2 *Bishop*, § 449.

5. But the defendant has actual income—

The farm brings him \$1,000.

*Close*, p. 24, l. 35

He occupies the house, worth, say \$1,000.

And he has the Washington property which netted him—

*Close*, pp. 22, l. 15.

23, l. 3.

24, l. 23.

24, l. 38.

*Clendennin*, pp. 11-12-13

	Clendennin.	Close,
1870. - - - -	\$3347 60	\$3375 72
1871. - - - -	4327 73	4553 14
1872. - - - -	5438 40	4958 43
1873. - - - -	4636 23	4363 30
1874. - - - -	2937 12	
	<hr/>	<hr/>
Average, - - -	\$4137 41	\$4312 67
Add rents as above - - -	- - -	2000 00
		<hr/>
And by his testimony makes his income -	- - -	\$6312 67
Clendennin and his - - -	- - -	6137 41

Besides which, he has wasted \$12,000 and more, which he had when this suit was begun.

*Close*, p. 23, l. 15-20.

6. But Mr. Close had the opportunity to increase this income largely.

If his property was sold he could have an income from Bayonne of over - - -	\$10,000
From Washington - - - -	4,000

Easily - - - -	<hr/>	\$14,000
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What then is right?

This man has beaten his wife; driven her away; kicked her down his steps; spent all his ready money; set up his son and son-in-law in business, and let them waste his capital; allowed taxes to run up till everything is perilled; neglected his children's education; turned his delicate daughters into the streets; supported in the stead of his wife and daughters, his father, daughter-in-law, &c., and now pleads that all he has is land, and that therefore his wife shall remain penniless as well as an outcast; while she tenders herself willing to aid him sell his land, and he refuses to ask her.

Nay, he has even refused, for more than a year, to obey the court, and now appeals from its merciful decision; his wife is without a cent since March 25, 1874.

## II. As to custody of children.

The little boy must by law go with the mother, at least till seven years of age.

The two little girls should be taken from such a father, and placed under the care of the mother.

His house is no fit home for these children.

The evidence shows it a place disgraced by his drunkenness, swearing, blasphemy, obscenity, vile and filthy reproaches of their mother, and familiarity with servants.

*See the original case, passim.*

*Also, Latourette, p. 4.*

*Bailey, 2.*

*Smith, 3.*

*Wilson, 4.*

*Guy, 109-110.*

The Sunday scene, depicted by associates, who testified for this lady out of very shame, illustrates the character of this defendant.

The case is a flagrant one.

For the good of the children the alimony should be liberal,

to give her the power of establishing a home for them and for herself, for their happiness and education.

The Vice-Chancellor did not give enough. Defendant has no right to complain. \$25 a week *pendente lite*, will give

Mrs. Close alone the right to	\$2200
Her three children should have each \$500	1500

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So, <i>closely</i> calculated, she should have	\$3700
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### *Decree.*

The proceedings in this cause having been duly remitted to this Court by the Court of Errors and Appeals in the last resort in all causes, &c., together with the decree of said court made therein, and it appearing thereby that the said court hath reversed the decree heretofore made by this court in this cause, in the matters in regard to which appeal was taken, and hath decreed that the said complainant and defendant be perpetually divorced *a mensa et thoro*, and that the said complainant is entitled to reasonable alimony and maintenance, to be paid by said defendant; and further, that said defendant do pay the costs of this suit and of the appeal aforesaid, to be taxed, together with reasonable counsel fees for the counsel of said complainant; and that the said court further decreed that their said decree, and all proceedings in the said cause, should be remitted to this court, to be proceeded with according to law and the directions in said decree of said Court of Errors and Appeals made; and it further appearing that due notice of settling this decree has been given to the solicitor for defendant, and the Chancellor having heard counsel thereon, it is now, on this twentieth day of July, one thousand eight hundred and seventy-four, on motion of Parker & Keasbey, solicitors of said complainant, ordered, adjudged, and decreed that the said complainant is entitled to the relief prayed for by her said bill, and that she be perpetually divorced, as aforesaid, from the defendant, her said husband, *a mensa et thoro*, and that it be referred to the Vice

Chancellor, to inquire and report what sum should be allowed to said complainant for her reasonable alimony and maintenance, as prayed for by her bill of complaint, and as to which of the parties should have the custody of their minor children, and under what terms and regulations, if any, as to the rights and privileges of the other party, and what sum should be paid and allowed as and for reasonable counsel fees to said complainant, and that he make such report with all convenient speed. And all other equities are reserved until the coming in of such report. It is further ordered that the testimony already taken on the motion for the alimony heretofore ordered, be taken and considered on the reference hereby directed.

(Signed,)

THEODORE RUNYON, *C.*

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*Order.*

Application being made for an order that the defendant, Joseph B. Close, do show cause why he should not be attached for contempt for disobedience of the order made in the cause, for the payment of alimony *pendente lite*, and a decree having been made this day, referring kindred matters to the Vice-Chancellor, it was ordered, on this twentieth day of July, one thousand eight hundred and seventy-four, that the hearing of this motion be likewise referred to the Vice-Chancellor, Amzi Dodd, esquire, for his determination and report.

(Signed)

THEODORE RUNYON, *C.*

## COURT OF ERRORS AND APPEALS.

*Between*

*ELLEN M. CLOSE, Complainant,*

*and*

*JOSEPH B. CLOSE, Defendant.*

[Filed February 17, 1874.]

*Dewitt C. Morris*—Live in Elizabeth; engaged in real estate business twenty years; have conducted it in Bayonne for the last ten years—buying and selling; I am acquainted with the property there of Joseph B. Close; the land I have seen; I think myself competent to speak of the value of this land; the fair valuation of it is \$300 to \$400 per lot, as shown on this map—I mean lots  $25 \times 100$ ; the land not laid out on the map towards the bay, is worth at least \$300 for every  $25 \times 100$ , exclusive of streets; the whole property is beautifully located—as handsomely as any property in Bayonne; my brother sold, this spring, a tract about 1,000 feet from this property—perhaps 1,500 feet—nearer the point; land  $140 \times 600$ ; about thirty lots with buildings; the improvements worth \$8000; personal property \$1,500—whole \$23,000; nearly \$13,500 for the tract  $140 \times 600$ ; I have a place for sale adjoining my brother's place I have spoken of; sixty-eight lots in it; can be bought for \$40,000; about 2,000 feet from Close's land; sales have been very scarce, as we know, anywhere.

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*Wm. C. Hamilton*—Live in Bayonne; am city clerk; know land of Joseph B. Close; have known it seven or eight years; am acquainted with value of property in Bayonne; own a house and lot there; the property of Mr. Close, as depicted on the map, is worth from \$300 to \$500 per lot, 25 × 100; lots on Avenue B would bring better prices than bay property there is not much property being sold now; I think Close's property could be sold now for \$300 per lot on the front, *i. e.* Avenue D.

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*Halcyon G. Bailey*—I reside in Brooklyn, Eastern District; clothing business; I know Joseph B. Close; have known him since 1845; I came to live with him in New York in that year; lived with him from 1845 to 1862, I think; he was my first cousin; I was partner with him seven years and six months during the last of the above period; I have been to his house at different times during the last four years; I was there three or four weeks ago last Sunday, to dinner; I have visited him three times since last May at his house; twice out  
 20 of these three times I left him so that he couldn't stand up; the last time I waked him up from sleep; the last time I was there from twelve o'clock till two, or after; the little girl was around the house and at dinner, and the little boy, too; his daughter May was there; she was at the dinner table; at the dinner table that day he was very bitter—talked very violently and badly—said he did'nt care a damn how soon God Almighty called him under ground; that he had nobody around him but a damned set of suckers and bitches; that nobody cared for him, that was about the order of his  
 30 language at that time; at the other time I was there very soon after the decision of the Court of Appeals revoking the Chancellor's decision; she had been there when he was'nt there; and he said at the dinner table, that she had been there, and if she came there again when he was there, he would break every bone in her body; he called her a damned old sow; these were his words; he said this at the dinner table; the children were then at table—all six of them, I think; the little girls looked as if they had been crying their eyes out of their heads almost; the time before that I saw him  
 40 at the hotel across the road from his house; his conduct was

very bad; I went from his house with him to the hotel; the hotel was kept by a woman, and another woman was there—they were both attending the house; his language was vile—he spoke to them in obscene language—as bad as I ever heard; one gentleman said he wouldn't hear him talk so; the women didn't say anything about it—they had the appearance of being used to it; that was during May or June—it was while the appeal was pending; he talked about it; I have seen him within the last four years and before; he has grown certainly worse within the last four years; his language is worse, and 10 he is worse, in respect to intemperance and in abuse to his family.

*Edward Smith*—I live in Brooklyn, Bedford avenue, Eastern District; am in the clothing trade—63 years old; know Mr. Close—have known him 30 years, intimately; was his partner four or five years—from 1850 on; I have seen but little of him within the last 4 years; I have been at his house 3 or 4 times in the last 4 years—have dined with him; he is a sociable, agreeable, and companionable gentleman when he is sober, and the reverse when under the influence of liquor— 20 liquor seems to reduce him to a brute, almost—it seems to change his whole nature—has no respect for himself or anybody else; it shows itself in obscene and filthy language; he is not violent unless something crosses him; I dined with him on the day when Mr. Bailey was there; he went over to the hotel to get my horses; he had had brandy at his table, and we got champagne at the hotel; he came over to see us off and I ordered the bottle of champagne; there were two ladies at the bar, and his language was so vile that I objected to it; I told him if he was going to talk that way I would go; he 30 said he had seen the ladies before, and had been into them behind; they laughed and enjoyed it highly; it was evident that he knew them very well; he could scarcely stand up, and didn't know what he was talking about; he is retrograding—going from bad to worse—he seems to have lost all self-respect and respect for his family; I am very sorry to talk this way about him, but I am sworn to tell the truth.

*Charles Wilson*—Live in Brooklyn, No. 132 South Eighth street; am an engineer in machinery; about sixty-five years old; have known Mr. Close about twelve or fourteen years—not very intimate with him; saw him once since, October, 1870; that was when I was dining at his house with Mr. Bailey and Smith; I have heard their testimony about his conduct on that occasion; I say the same—their account is correct.

10 *Guy Latourette*—Live at Bergen Point, N. J., in Bayonne; am twenty-six years old; am a bank clerk; have visited at Mr. Close's during the last three years, about once a fortnight, as nearly as I can say; have had an opportunity of observing Mr. Close's demeanor and habits; never took a meal in his house; I have seen him so drunk, in his chair, on his stoop at night that he could not get up to go to bed; I have left him there at eleven o'clock; he never spoke at all unless you spoke to him, and then if he warmed up at all he became very blasphemous and indecent; his children in the parlor with the windows open could hear what he said; I have often left  
20 him for that reason; I find it difficult to remember his exact language; I remember last year once during the panic that he cursed and swore badly when talking of it; I have heard him say indecent things before his children, but I can't recall what they were; I know his girls are terribly afraid of him—they dread him; his conduct as I have described—it was his habit; I have hardly ever left his house without leaving him drunk—I think I never did; when drunk and a little roused he was violent, abusive and indecent.

[Filed November 17, 1874.]

United States, District of Columbia, *ss.*

Before me, a justice of the peace, lawfully authorized to administer oaths and affirmations in said District of Columbia, on this ninth day of November, eighteen hundred and seventy-four, came Joseph T. K. Plant, who, being by me duly sworn, saith—that he will fairly and impartially take the testimony of N. E. Robinson and George Clendenin, witnesses named in a notice hereto annexed, in the cause above stated, and further saith not. 10

JOS. T. K. PLANT,  
*Com. of N. J.*

Sworn and subscribed this 9th day of November, 1874, before me.

E. C. WEAVER, *J. P.*

SIR—Take notice of the examination before Joseph T. K. Plant, commissioner for New Jersey, at his office, No. 801 East street, Washington City, D. C., on Monday, the ninth day of November next, at ten o'clock in the forenoon, of the following witnesses on behalf of the complainant, namely, N. E. Robinson and George Clendenin, both of Washington City. 20

Yours respectfully,

PARKER & KEASBEY,  
*Sol'rs of Com.*

To CHARLES H. WINFIELD,  
*Sol'r of Def't.*

District of Columbia, *ss.*

*Joseph T. K. Plant*, being duly sworn according to law upon his oath saith—that he is the commissioner for New Jersey, named in the above notice, to take testimony in the above stated cause at his office, No. 801 E street, Washington City, D. C., that he formerly did business and kept his office at No. 801 E street aforesaid, that on or about the middle of February last, he removed from said No. 801 E street to 708 E 30

street, where he now does business and keeps his office; that his said former office is on the same street and nearly opposite his said present office; and that upon the outside wall of his former office, written in large letters, placed in a conspicuous position, are the following words: "Joseph T. K. Plant, justice of the peace, removed to 708 E street," and further deponent saith not.

JOSEPH T. K. PLANT, *Com. of N. J.*

Sworn and subscribed this ninth day of November, A. D.  
10 1874, before me.

E. C. WEAVER, *J. P.*

District of Columbia, *ss.*

On this ninth day of November, eighteen hundred and seventy-four, at my office, No. 708 E street, Washington City, before me, Joseph T. K. Plant, a commissioner appointed by the governor of the state of New Jersey to take acknowledgment and proof of deeds and other writings under seal, to be used or recorded in said state, resident in the district aforesaid, at ten o'clock in the forenoon, being the time mentioned in  
20 the within notice, and the place rendered necessary by my removal as set forth by the accompanying affidavit, came the above mentioned Ellen M. Close, by her attorneys, Parker & Keasbey, (I having first been duly sworn as by the affidavit hereto annexed, fairly and impartially to take the testimony of the witnesses hereinafter named,) and the witness, N. E. Robinson, being produced by said party, being by me first duly sworn according to law, that the evidence he should give in said cause should be the truth, the whole truth, and nothing  
30 lows, that is to say, to—

*Int.* 1. Where do you live?

*Ans.* Near Brightwood P. O., District of Columbia.

*Int.* 2. State your age and occupation?

*Ans.* I am thirty-five years of age, and am an assessor of taxes in the District of Columbia, and the assessor for the portion which is outside of the limits of the cities of Washington and Georgetown.

*Int.* 3. Are you the only assessor outside of the limits of said cities?

*Ans.* I am.

*Int.* 4. Do you know certain lands near the city of Washington forming the Glenwood Cemetery?

*Ans.* I am well acquainted with their position.

*Int.* 5. And also, certain other lands contiguous thereto belonging to Joseph B. Close?

*Ans.* I am.

*Int.* 6. What means have you of knowing these lands?

*Ans.* I was called upon to assess them in the spring of 1872.

*Int.* 7. Did you then assess these lands? 10

*Ans.* I did.

*Int.* 8. Both the lands used for cemetery purposes and the Close farm adjoining?

*Ans.* Both.

*Int.* 9. Has your occupation enabled you to state the market value of lands in Washington county, D. C.?

*Ans.* I think it has.

*Int.* 10. Have you any means other than said occupation which enables you so to do—if yea, state?

*Ans.* By ascertaining sales which have been made, and by 20 getting opinions as regards values from the most reliable real estate agents.

*Int.* 11. At what amount did you assess these lands in the spring of 1872?

*Ans.* Thirty acres in the cemetery proper I assessed at one thousand dollars per acre—the sixty acres in the farm at three hundred dollars per acre.

*Int.* 12. At what amount did you assess the improvements, such as vaults, &c., in the cemetery property?

*Ans.* At ten thousand dollars. 30

*Int.* 13. What proportion did those assessed values bear to the actual value in your opinion?

*Ans.* That was as near the actual value as I could obtain, as the law required the actual value.

*Int.* 14. What in your opinion is the present market value of said lands, either by the acre or in lots?

*Ans.* About the same as it was in 1872; some real estate agents would put it at higher figures.

*Int.* 15. In which way do you think these lands the most saleable—building lots or by the acre? 40

*Ans.* In building lots.

*Int.* 16. Have these lands been assessed since the spring of 1872?

*Ans.* Yes—spring of 1873.

*Int.* 17. By whom?

*Ans.* By Mr. L. S. Emory.

*Int.* 18. Do you know the amounts at which he assessed said lands?

*Ans.* I do.

10 *Int.* 19. How did you ascertain them?

*Ans.* By a reference to the official assessment books.

*Int.* 20. State the amounts?

*Ans.* Exactly the same as my own of 1872.

*Int.* 21. Do you know of any sales of lands adjoining the lands in question?

*Ans.* I do.

*Int.* 22. State them?

*Ans.* The Harewood property was sold by Mr. W. W. Corcoran, the amount was one hundred and ninety acres, sold  
20 with the improvements for two hundred and twenty-five thousand dollars; the improvements were assessed at seventeen thousand dollars, leaving the value of the land two hundred and eight thousand dollars, making about or a little over one thousand dollars per acre.

*Int.* 23. At what time was that sale?

*Ans.* I think in the winter of '72-'73.

*Int.* 24. Do those lands immediately adjoin the lands in question?

*Ans.* They do.

30 *Int.* 25. Do they lie nearer or more remote from the city of Washington than the Close lands?

*Ans.* More remote.

*Int.* 26. Do those lands lie more favorably for building purposes than the Close lands?

*Ans.* I don't know that they do, taking them altogether; although they are nearer level.

*Int.* 27. Account, then, for the high price given for the Harewood property?

40 *Ans.* I account for it by the fact that it was held at great value by Mr. Corcoran; I understood that he would only sell

it as a whole, and it was more valuable to the Soldiers' Home than to any other party—they alone had the money to pay cash for it; and more than all, it was most expensively, elaborately and beautifully laid out and improved.

*Int.* 28. Do you know of any other sale of lands near the Close lands, that would be a better criterion of their value than the Harewood sale—if so, state when and at what price they were sold?

*Ans.* An adjoining property was sold to Chief Justice Chase at two hundred and fifty dollars per acre, in the year 10 1868 or '9, I am not certain which.

*Int.* 29. Do you know of the said Close owning any other property in said District of Columbia?

*Ans.* I do not.

N. E. ROBINSON,  
*Assessor of Washington county.*

Sworn to and subscribed in presence of—

JOS. T. K. PLANT,  
*Commissioner of N. J.*

And at the same time and place was produced *George Glen-* 20  
*denin*, also a witness for said party, who being by me duly sworn according to law, that the evidence he should give in said cause should be the truth, the whole truth, and nothing but the truth, I did thereupon take his said testimony as follows, that is to say—

*Int.* 1. Where do you live?

*Ans.* On the farm directly north of Glenwood Cemetery, the same being a part of the cemetery property.

*Int.* 2. State your age and occupation?

*Ans.* Sixty-two years of age—am superintendant of the 30  
Glenwood Cemetery, in the District of Columbia.

*Int.* 3. For how long have you been such superintendant?

*Ans.* Since the first day of March, 1853, that is the time we commenced laying out and preparing the cemetery; but the act of incorporation is dated 27th day of July, 1854, at which time I became actually the superintendant of the cemetery.

*Int. 4.* What is the amount of the capital stock of that corporation?

*Ans.* I know nothing of the capital stock whatsoever.

*Int. 5.* How many acres of land does that corporation own?

*Ans.* It was purchased for ninety acres, more or less.

*Int. 6.* State how much is used for cemetery purposes?

*Ans.* Thirty acres.

*Int. 7.* Look at the pamphlet and maps shown you and made *Exhibit A*—are they publications authorized by the corporation?

*Ans.* They are.

*Int. 8.* Are they correct copies and statements of what they purport to contain?

*Ans.* They are correct, as far as I know.

*Int. 9.* Is the copy of the charter therein printed correct?

*Ans.* I hav'nt the least doubt but that it is letter for letter with the engrossed copy.

*Int. 10.* Notice the corrections in red ink, on pages 8, 9, 10 and 12?

20 *Ans.* The correction on page 8, is not in force; the charge is still two dollars; the corrections on page 9, are also wrong—the first one should be five, and the second four; the corrections on page 10 is right; the corrections on page 12 are right, except those made in the concluding sentence but one, there the printed copy is correct

*Int. 11.* Are the rules with the corrections and deviations just given, the present rules as to interments and prices?

*Ans.* Yes.

*Int. 12.* Do you know Joseph B. Close, of Hudson county, New Jersey?

*Ans.* Yes; he lives in Bayonne.

*Int. 13.* Is he owner of any of the property of this corporation—if yea, of how much?

*Ans.* He is the only owner that I am acquainted with.

*Int. 14.* Does he hold any office in said corporation—if yea, what?

*Ans.* He is the president of the company.

*Int. 15.* Who are its directors or managers, by whatever name they may be called?

4) *Ans.* Mr. Close is president and sole manager.

*Int.* 16. Are there no other managers?

*Ans.* None.

*Int.* 17. From whom did said corporation acquire the lands used for a cemetery?

*Ans.* Captain Junius J. Boyle.

*Int.* 18. Did they also purchase the remaining sixty acres at the same time?

*Ans.* The whole ninety acres were purchased at the same time from the same person.

*Int.* 19. For what consideration?

10

*Ans.* Represented to me as \$100 per acre.

*Int.* 20. Was it paid in money, or otherwise?

*Ans.* Part money and part notes.

*Int.* 21. How much money?

*Ans.* As near as my memory serves me two thousand cash, two notes for the balance.

*Int.* 22. Have these notes been paid?

*Ans.* They have; I paid them and took up the deed of trust.

*Int.* 23. What has been the income paid to or earned for 20 said Joseph B. Close for the last six years respectively?

*Ans.* I shall have to look at the books to find that out.

*Int.* Take the books and tell us?

*Ans.* I have the sole charge of Mr. Close's estate in this district, make all disbursements, receive all the proceeds, and render Mr. Close monthly a check for the balance, and have done so for twenty years; this book is a record of such monthly statements; I will read the amounts of the checks sent to Mr. Close for the last six years, as follows:

Check, November, 1868.....	\$499 06	30
“ December, “ .....	409 62	
“ January, 1869.....	340 40	
“ February, “ .....	93 57	
“ March, “ .....	148 03	
“ April, { “ .....	218 11	
“ May, { 2 months, } .....		
“ June, “ .....	167 09	
“ July, “ .....	273 32	
“ August, “ .....	346 96	

	Check, September, 1869.....	209 77	
	“ October, “ .....		
			\$2,706 33
	“ November, “ .....	269 01	
	“ December, “ .....	474 84	
	“ January, 1870.....	261 63	
	“ February, “ .....	146 42	
	“ March, “ .....	123 47	
10	“ April, “ .....	370 56	
	“ May, “ .....	218 77	
	“ June, “ .....	74 16	
	“ July, “ .....	428 04	
	“ August, “ .....	471 96	
	“ September, “ .....	69 83	
	“ October, “ .....	437 00	
			\$3,347 69
	“ November, “ .....	325 76	
	“ December, “ .....	452 93	
	“ January, 1871.....	583 16	
20	“ February, “ .....	331 60	
	“ March, “ .....	268 27	
	“ April, “ .....	380 59	
	“ May, “ .....	506 51	
	“ June, “ .....	187 27	
	“ July, “ .....	495 62	
	“ August, “ .....	445 09	
	“ September, “ .....	83 18	
	“ October, “ .....	247 75	
			\$4,327 73
30	“ November, “ .....	358 00	
	“ December, “ .....	666 10	
	“ January, 1872.....	446 61	
	“ February, “ .....	567 41	
	“ March, “ .....		
	“ April, “ .....	346 13	
	“ May, “ .....	564 40	
	“ June, “ .....	190 25	
	“ July, “ .....	470 35	
	“ August, “ .....	453 26	
40	“ September, “ .....	704 53	

Check, October,	1872.....	371 36	
		<u>          </u>	\$5,438 40
" November,	" .....	402 07	
" December,	" .....	442 06	
" January,	1873.....	323 74	
" February,	" .....	299 25	
" March,	" .....	791 70	
" April,	" .....	699 11	
" May,	" .....	260 09	
" June,	" .....	202 56	10
" July,	" .....	617 27	
" August,	" .....	413 81	
" September,	" .....		
" October,	" .....	184 57	
		<u>          </u>	\$4,636 23
" November,	" .....	258 50	
" December,	" .....	312 60	
" January,	1874.....	365 78	
" February,	" .....	318 58	
" March,	" .....	176 43	20
" April,	" .....	132 00	
" May,	" .....	369 30	
" June,	" .....	195 75	
" July,	" .....	294 90	
" August,	" .....	236 65	
" September,	" .....	11 55	
" October,	" .....	265 08	
		<u>          </u>	\$2,937 12

*Int.* 25. Do you know of any other property, real or personal, in said district belonging to said Joseph B. Close?

*Ans.* I do not.

*Int.* 26. What do you regard as the market value of the Close farm of sixty acres, not used for cemetery?

*Ans.* I have no opinion about it.

*Int.* 27. Do you know by statement derived from said Close, whether he has offered for sale or now offers for sale, all or any part of said sixty acres?

*Ans.* He has asked me to send on the results of sales of

adjacent property, which I have done, saying he might put part of the farm part in the market.

*Int.* 28. State anything else within your knowledge not herein specified, tending to show what the income of said Close is or might be from property in this District of Columbia?

*Ans.* I am not aware of his receiving anything from the District of Columbia, except myself.

GEORGE CLENDENIN.

10 Sworn and subscribed in presence of—

JOSEPH T. K. PLANT,  
*Com. of N. J.*

I, Joseph T. K. Plant, commissioner as aforesaid, do hereby certify the above testimony before me taken, to the Court of Chancery of New Jersey, this ninth day of November, A. D. 1874.

Witness my hand and seal, at the city of Washington, District of Columbia.

JOSEPH T. K. PLANT,  
*Com. of N. J.*

20

*AFFIDAVIT.*

[Filed November 18, 1874.]

State of New Jersey, Essex county, *ss.*

Franklin M. Olds, of full age, being duly sworn according to law, upon his oath saith—that on the ninth day of November, instant, at six o'clock in the afternoon, he received from the hands of Joseph T. K. Plant, a commissioner for the State of New Jersey, at his office, No. 708 E street, Washington City, District of Columbia, the package to which this affidavit is annexed, containing certain depositions taken by said commissioner in behalf of the complainant in the above stated cause, closed and sealed up and directed to Hon. Theodore

30

Runyon, Chancellor of the State of New Jersey, at Trenton, New Jersey, and that the same has not been opened or altered since he so received it.

FRANKLIN M. OLDS.

Sworn and subscribed this 16th day of November, one thousand eight hundred and seventy-four, before me.

THEODORE RUNYON, C.

[Filed November 17, 1874.]

*Francis I. Smith*—Live at Bergen Point, in Bayonne; have been there since 1860; am city clerk, councilman, tax assessor; assessor two years this year; was township and city clerk about nine years; know value of real estate; I know Joseph B. Close twelve years; know his property; he is taxed for personal property a nominal sum, I think; I know his real estate there; farm and residence; cultivated as a farm; land lies in an oblong parallelogram, well located, easily drained, gradual rise, then gradual descent; [looks at map]—this map is laid out as City Map; entire property shown by map is taxed for over \$100,000; this is 50 per cent.; it is safe to put whole at \$200,000; good deal of discount on real estate at present time; it cannot be considered as all active property; lots embraced between Avenue D and Bergen Point R. Road are worth now from \$4 to \$800; the \$800 would apply to very few lots; \$50 per lot would be a fair average for all in this section. 10 20

Cross-examination.

Whole farm is unproductive, except what may be raised on it; no rents from buildings of any account; even barn gone to decay; dwelling-house is an old house, not very valuable; my assessment is a little over \$100,000, I think. 30

*Wm. S. Jennings*—Live at Bergen Point; real estate agent; have been a year and a half; have seen Mr. Close's property;

lots vary in value; taking  $25 \times 100$  feet, I should estimate whole at average of \$300 per lot; taking sections from Avenue D to Avenue C, \$375 per lot; property ought to be saleable now for these prices; if lots larger than  $25 \times 100$ , they would be worth more.

Cross-examination.

Real estate business in New Jersey one and a half years; my business is not very extensive at Bergen Point; have an  
 10 office there; have made no sales; business has been in renting and collecting; by the acre, the property is worth at least \$3,000; twelve lots generally, as stated, are laid out.

*Ellen M. Close*, complainant in this suit—I procure board for myself at \$20 per week; board and washing; includes my board in the city, second floor, front room; clothing costs \$600 per annum; I have my little boy, four years old, born June 8th, 1870; don't suppose I could get him board for less than \$5 per week, his washing \$1, clothing \$100 a year, and inci-  
 20 dentals making it up to \$500; now I am living with friends; have no money; I have boarded in a very plain way and paid \$15 per week; when I went to Harlem I paid \$12 for myself and boy; did not include washing; my other children are—Eva B., she was ten years old September 2d, 1874; Irene H., she was born February 16th, 1862; Charles F., born March 4th, 1859; Jos. B. was seventeen January 15th, 1874; May was nineteen years May 1st, 1874.

As to what is necessary for the two little girls—board would be not less than \$7 per week; washing at least \$1 per week;  
 30 schooling at least \$100 per year; clothing at least \$200 per year; incidentals reach at least \$50; these figures are for each little girl; the others that were sent to school, were \$400 each per year, besides clothing and vacation; I have no separate estate; my oldest daughter Ella M., is teaching on Long Island; she commenced about nine months ago; she is now stopping at her friends; Charles, I have understood, is in a store; May is at her father's house; Joseph is in a store as clerk; both boys and May live with their father; the two  
 40 little girls also live there; the oldest son, Fred, over twenty-one, lives there too; the two oldest daughters, Ella and Ger-

trude, are not members of his household; Mr. Close told me repeatedly the last year that I was home, that he spent \$10,000 that year; the children were educated expensively; May has not had instruction since she was fourteen; Mr. Close told me he had land near Washington for cemetery; has income from it; I have heard him say it was worth \$100,000; I think there was fifty-three acres in Bayonne when he bought it, about twenty-two years ago; we lived there summers, and in New York winters, till about ten years ago.

Cross-examined.

10

In Bayonne, don't know what I could obtain board for; never made inquiry, either for myself or children; don't know about public schools now in Bayonne; they were not considered extra while I knew; my daughters never went to public school, the boys did; don't know what board could be obtained for in country; have not clothing to last me for some years yet; the clothing I purchased when I left home is pretty much all worn out; he told me repeatedly that our household expenses that year had been \$10,000; he was in no business outside of cemetery; no income except what I have stated; 20 the cemetery and the mortgage of \$15,000 were all that produced income; not a mortgage, but \$15,000, but now on deposit with Banks & Co.

*Cortlandt Parker*, sworn for the complainant, testified as follows—

I am counsel for the complainant in this cause; it came to my knowledge, by accident, just after the decree in the Court of Appeals in this cause, that a suit was pending in chancery for the foreclosure of the land of Joseph B. Close, described on the map produced, to pay a mortgage which had been 30 given for its purchase money, and on which an installment of some \$3,600 was due; that a decree had been made for the sale of this farm to pay this money, with interest and costs, and that the sale was advertised to take place, I think, some time about the middle of September; I put myself in communication with the solicitors having charge of this matter, Messrs. Dixon and Collins, and with the complainant in the decree, Samuel S. Zabriskie, whom I knew; and in the in-

terest of my client, I felt it my duty to procure an assignment of the decree and mortgage ; I have that assignment, together with the original mortgage and the bond, and also a paper executed by Mr. Close, and delivered to the complainant, Zabriskie, prior to commencing the suit, all which appears by the pleadings, whereby Mr. Close waived the benefit of a contract made by him and incorporated in the mortgage, the effect of which was that the principal due could not be called for until a certain child of one Albert A. Zabriskie came of  
10 age, and made a release of her interest, if any she had, in the estate ; she had come of age and refused to make that release, so that the mortgage could not be foreclosed, at least not for its principal money ; the effect of this waiver, which was under seal, was to enable the parties to begin and go on with that foreclosure ; I find likewise that the execution upon the decree—though I believe this was accidental—was for the sale of the whole fifty-three acres in one parcel to pay this \$3,600, and interest, amounting to about \$4,000 in all.

Having purchased the decree, I then asked the counsel of  
20 Mr. Close what he meant to do, and said to him that I wanted him to pay the money ; he said they could not, or would not, I don't know which, and asked me what I proposed to do ; I told him to obtain a decree of amendment of the original decree, authorizing the sale in parcels, and then to sell a piece sufficient to pay the mortgage ; he assented to this arrangement.

I then had the map made, which has been exhibited, and acquainted myself with the value of the property, so far as I could, and I caused the sheriff to put up for sale under this  
30 foreclosure a parcel of the property lying on the south side on the Bay, beginning in the southernmost line of the property where it strikes Avenue A ; thence northerly along Avenue A 225 feet, and carrying that width to the Bay about 512 feet, together with one-half of Avenue A in front.

The sale took place on the fifteenth of October instant ; Mr. Close was present and bid upon the property ; upon this  
40 parcel ; he made thousand dollar bids until it reached \$13,000 ; the property was then struck off to his bid, and he signed, or gave the name of Frederick H. Close, his son, as the purchaser ; he was required to pay the ten per cent., or, as

the conditions of the sale first published stated, an immediate resale would be had; after about an hour he reported himself unable to make the payment; the property was immediately put up again; he again bid, and his bid, notwithstanding my protest, was accepted; his counsel was then by him.

The property was finally knocked down to George H. Forster, of New York, for ten thousand dollars, and the ten per cent. paid.

The parcel in question contains something short of three acres of ground.

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*TESTIMONY—Before the Vice-Chancellor.*

[Filed November 28, 1874.]

*Mr. Cortland Parker*, being duly sworn, said—

In relation to counsel fees and expenses of this litigation, I have to say that I have examined in the matter, and find that depositions, *pendente lite*, were taken on four days, November 21st, 22d, 23d, and 24th, 1870; there was after that an argument before the Chancellor on bill and answer, and these depositions are on exhibit; after that depositions were taken in the principal cause, on March 18th, 1871, March 25th, 20 April 15th, April 29th, May 6th, May 20th and 27th, June 3d, 10th, 17th and 24th; and depositions were taken in New York, 1872, June 4th, 7th, 15th, and August 8th; and some depositions were taken in Washington, those of June 14th, and July 26th.

Next, after this in the proceedings in the cause, came the argument before the Chancellor, 13th of September, 1873; there was then an argument in the Court of Appeals, from June 24th to 27th, 1874, in which there appeared, besides myself, Mr. Wayne Parker.

30

And there was additional printing in the original case, for the Court of Errors, the bills for which I will exhibit.

On the 20th of July, 1874, Mr. Winfield and myself were before the Chancellor, when he made the statement of the decrees.

We have taken testimony before the Vice-Chancellor, as the record will show; and taken testimony in Washington before Commissioners; the traveling expenses were paid by me, \$17.25, the bill I will exhibit, besides the services; there have been many consultations, and visits to New York to see about testimony, and to Jersey City for various matters which I suppose I am not to mention here; the services were large, and the ordinary trouble in consultation.

I have received by allowance, of January, 1871, \$100; and  
 10 I am under the impression I have received another fee—my impression is there has been no more than \$250, counsel fees paid.

The original printing has been paid for, but not the additional printing in the Court of Errors; I printed the first and thought it to be enough.

I believe that closes my case.

Cross-examined.

*Quest.* Mr. Parker, was there not something in relation to alimony?

20 *Ans.* My impression is there was something, but I did not want to put that in, because I was not sure about it; I don't think there was anything but a motion to dissolve the *ne exeat*.

By the Vice-Chancellor.

*Quest.* We had stenographic notes here of time of the other proceedings?

*Ans.* Yes, all this evidence is in stenographic notes.

Further Cross-examined.

*Quest.* In whose presence were these depositions taken?

*Ans.* One of my young men, Mr. Olds, went on there; I  
 30 furnished him with questions, which are all here.

*Quest.* There is something about these monthly sales—I will call Mr. Close to state?

*Witness.* These are the amounts that have been transmitted; those are the net amounts, as I understand it; I think you will find it says—[witness reading from printed evidence]—“what has been the income paid, &c., &c., checks of October, 1874.”

Defendant's counsel called—

*Joseph B. Close*, sworn.

*Quest.* What is the age of your youngest child?

*Ans.* Now about ten—no, about four.

*Quest.* I mean of those at home?

*Ans.* About ten.

*Quest.* And the two girls and small boy go to school?

*Ans.* Yes.

*Quest.* Where?

*Ans.* Bayonne City. 10

*Quest.* Fred is of age?

*Ans.* Yes.

*Quest.* And Joseph, what does he do?

*Ans.* He is in a clothing store in Front street, New York.

*Quest.* Who takes charge of his salary?

*Ans.* I believe he does himself, I never had anything from him.

*Quest.* He lives at home?

*Ans.* Yes.

*Quest.* And pays nothing for his board? 20

*Ans.* No.

*Quest.* And does not account to you for his salary?

*Ans.* No.

*Quest.* Who keeps house for you?

*Ans.* My two daughters, Mrs. Bailey and May.

*Quest.* Have you made inquiry as to what good board in a respectable place in the city of Bayonne could be obtained for, and how much?

*Ans.* \$5 a week.

*Quest.* In a good room? 20

*Ans.* The inquiry I made was, a good room on the second floor as large as this room.

*Mr. Parker.* Inquiries are taken under exceptions.

*Mr. Winfield.* Yes.

Further examined.

*Quest.* Have you an account of your money affairs since 1870?

*Ans.* Yes, sir.

*Quest.* When this controversy between you and Mrs. Close began, what did your property consist of?

*Ans.* About \$12,000 in money, and the real estate I now own.

*Quest.* Have you made up a statement of your property, and the income, and expenses, and out-goes from 1870?

*Ans.* Yes, from 1870; four years, I guess it is, up to first January last.

*Witness.* They generally balance the account then.

10 *Quest.* These are the statements?—[Counsel producing paper.]

*Ans.* Yes.

*Quest.* Your cash on hand was \$12,050?

*Ans.* Yes.

*Quest.* Sales of real estate \$3,375.72?

*Ans.* Yes.

*Quest.* That refers to the cemetery?

*Ans.* Yes.

*Quest.* And rent received \$400?

20 *Ans.* Yes.

*Quest.* That was the total income in that year?

*Ans.* Yes.

<i>Quest.</i> Taxes that year were	\$2,223
Interest on Zabriskie bond,	216
City assessment bond,	921 91

What does that mean?

*Ans.* They moved me on the line of Avenue C.

*Mr. Parker.* Is that paid?

*Witness.* No, I paid two payments.

30 Alimony to Mrs. Close,	\$287 50
Counsel fee, Mrs. Close,	150 00
Excavation on 27th street,	317 45

*Quest.* How did you get at your family expenses?

*Ans.* It is the balance of cash on hand.

*Quest.* You estimated it?

*Ans.* Yes.

*Quest.* Family and other expenses \$3,000?

*Ans.* Yes.

40 *Quest.* That leaves a balance on hand January 1st, 1871, of \$8,710 64?

Now for the year ending January, 1872; [Counsel reads]—

Cash on hand,	\$8,710 64
Sale real estate,	4,553 14
Rent of farm,	750 00
Amount due from M. Grall,	600 00
Taxes,	2,475 70
Interest on City bonds,	73 75
Interest on Zabriskie bond,	216 00
Alimony to Mrs. Close,	1,300 00
Extra counsel fee,	100 00 10
Referee and Chancellor,	100 00
Profit and loss account,	10,000 00

*Quest.* Explain that?

*Ans.* My boys wanted to start in business in New York; David, my eldest son, and Mr. Bailey, my son-in-law, they came to me to see if I could not assist them somewhat; I told them I would if they gave their note, and I sent them where they could get the money; they got \$6000; \$1000 I paid for them, the balance I put in the concern; I put in the concern to pay the debts for them; I bought the assignment. 20

*Quest.* You endorsed notes for them?

*Ans.* Yes.

*Quest.* And they failed in business.

*Ans.* Yes.

*Quest.* How did they fail?

*Ans.* They assigned.

*Quest.* In New York.

*Ans.* Yes.

*Quest.* And you purchased as assignee?

*Ans.* Yes. 30

*Quest.* What did you do then?

*Ans.* I went to work to settle and close up the business; I paid seventy-five cents on the dollar for the debts against the concern; for the stock on hand I took the credit and debit on the books, and I found a great many that had been paid, and for which I never got a cent.

*Quest.* You took the credit and debit, and paid seventy-five cents on the dollar?

*Ans.* Yes, seventy-five cents; and afterwards I found that a great many hundreds, yes, I may say, thousands had been 40

paid and had never been put down on the books; that is the reason it is so large.

*Quest.* Excavation on Avenue D \$716.30—is that paid?

*Ans.* Yes.

*Quest.* Curbing, guttering, and flagging, \$1500; excavating 25th street, \$696.92; family expenses, \$2700?

*Witness.* If it is necessary, I will state that the man rented the farm for \$1000, and he was to work it out on these excavations.

10 *Quest.* You say from 1870 to 1871 the rent is \$400, and from 1871 to 1872 it is \$750?

*Ans.* That is a mistake, it should be \$1,000.

*Quest.* January 1st, 1872—that leaves you in debt then \$5,265.89?

*Ans.* Yes.

By the Vice-Chancellor.

*Quest.* You started with \$12,000?

*Ans.* Yes.

Further examined.

20 *Quest.* That leaves the taxes unpaid?

*Ans.* Yes, counted it unpaid.

*Quest.* Now January 1872 to 1873?

Sale of reale estate,	\$4,958 43
Rent of farm,	1,000 00
Taxes—City, County and State,	2,051 60
Interest on City bonds,	59 00
Zabriskie bond,	216 00
Alimony,	1,300 00
City tax, Surveyor, &c.,	551 12
30 Excavating on Avenue C,	1,481 62
Excavating on 25th street,	477 00
Family and other expenses,	2,500 00
Leaving a balance against him of	7,943 80

*Mr. Parker.* Carrying on the other balance?

*Mr. Winfield.* Yes.

Now from January 1st, 1873 to 1874:

Sale of real estate,	\$4,363 30
Rent of farm,	1,000 00

Taxes,	\$2,479 42
Interest on Zabriskie mortgage,	216 00
Alimony,	1,300 00
City Surveyor,	258 00
Excavating 26th street,	1,147 60
Family and other expenses,	2,500 00

This leaves him in debt \$10,481.52, considering the taxes as paid, but they are not.

*Quest.* Have you no other income than the sale of real estate, and the rent of the farm? 10

*Ans.* No; and from the affairs of the cemetery, I don't know how much will come to me; there is considerable to be deducted.

*Quest.* Have you any money on hand from any source whatever, except such as has been derived from the sale of cemetery lots and the rent of the farm?

*Ans.* None, except what I borrowed the other day, and I have to pay that again.

*Quest.* Did you borrow money?

*Ans.* Yes. 20

*Quest.* For what purpose?

*Ans.* To pay my family expenses.

*Quest.* How much did you borrow?

*Ans.* Well, I believe the mortgage I gave on my furniture was for \$2,120.

*Quest.* How much money did you actually borrow?

*Ans.* \$2,000, and add interest which makes \$2,120.

*Quest.* The taxes are not paid since when?

*Ans.* 1870; four years.

*Quest.* Are the taxes of 1870 paid? 30

*Ans.* No, sir.

*Quest.* Then there is five years now due in December?

*Ans.* I think it is only four years due.

*Quest.* Then there will be five years due next month?

*Ans.* Probably so.

*Quest.* The land you have there is unimproved—no buildings on it?

*Ans.* No, except my old house and hovel over the bay.

*Quest.* What do you do with the hovel over the bay?

*Ans.* My farm man rented it. 40

*Quest.* What is your furniture in your house worth?

*Ans.* Well, I would be very glad to sell it for \$2,000.

*Quest.* Is this all you could get for it for rental?

*Ans.* Yes; I advertised it as a place to let, and I guess I had sixty, or seventy, or eighty applications; most of them I ask to take and pay the city taxes; I offered to let it for a number of years, if they would pay the city taxes, and I could not find a customer; the best offer I could get for it was \$1,000 from this man, and I let it to him for five years.

10 *Quest.* You let it to him for five years?

*Ans.* Yes.

*Quest.* Does he pay you money for the rental?

*Ans.* No.

*Quest.* He works it out?

*Ans.* Yes; I never get a cent; he works it out in excavating the streets there.

Cross-examined.

*Quest.* From what have you made these statements of the sales—from year to year?

20 *Ans.* From the cemetery, you mean?

*Quest.* Yes.

*Ans.* From the report of the superintendent.

*Quest.* And by the checks sent you?

*Ans.* Yes.

*Quest.* What expenses are to be deducted from that?

*Ans.* Well they are not very heavy—printing books and pamphlets, and some little items, \$200 or \$300, and some more, perhaps.

30 *Quest.* What book or pamphlet did you print in the year of 1874?

*Ans.* I had 500 cemetery deeds printed, and 500 or 1000 seals struck off.

*Quest.* Nothing else?

*Ans.* I don't know that I remember anything in particular.

*Quest.* What would the cost of that printing and striking off of seals be?

*Ans.* I cannot tell until I look at the bills.

*Quest.* About what?

*Ans.* Probably \$100.

*Quest.* Was it anywhere near \$100?

*Ans.* I cannot tell; I think in the printing there was a plate cut, engraving or something.

*Quest.* Was that anywhere near \$100?

*Ans.* I cannot tell.

*Quest.* What other expenses in the year 1874 comes off this amount you received from Washington, besides this printing seals, &c., you have spoken of?

*Ans.* It was considerable; I will have to make out a list and send it to you; I cannot remember. 10

*Quest.* Can you remember any other expense?

*Ans.* Little expenses; different things; I did not put them down, by the \$2 for this or that.

*Quest.* In 1873, Mr. Close, what did you expend for publication connected with your cemetery, and deduct from what you received?

*Ans.* Well, I say I cannot recollect it.

*Quest.* Can you say about what?

*Ans.* Not within 50 cents on the dollar.

*Quest.* Cannot you remember? 20

*Ans.* Don't I say I cannot remember.

*Quest.* Now for the year 1872 state?

*Ans.* The same answer.

*Quest.* State, if you can, any other expense to be deducted from this which you received in 1872 or 1873?

*Ans.* I cannot say.

*Quest.* When did you cease to pay alimony to your wife?

*Ans.* I think I put in a statement six or seven months ago.

*Quest.* In 1870 you had a large amount of cash on hand—why did you not pay out of that cash the taxes of that year? 30

*Ans.* Because I lost the money.

*Quest.* Did you lose the money before 1st January, 1871?

*Ans.* I lost part of it; if you want an explanation, I will give it.

*Quest.* Just remark my question; you reported on the 1st of January, 1870, you had a balance of cash on hand of over \$12,000?

*Ans.* Yes.

*Quest.* Why did you not pay the taxes of that year?

*Ans.* I had not it to spare. 40

*Quest.* You reported cash on hand 1st January, 1871, \$8,710.64—why did you not out of that pay the taxes; I refer to the year 1871?

*Ans.* I think the profit and loss will exceed that; I had not the money.

*Quest.* Did you not forbear to pay these taxes on purpose?

*Ans.* No.

*Quest.* Were you not at the sale on which your property was sold for those taxes?

10 *Ans.* No.

*Quest.* Why have you not during this period, from 1870 to 1874, endeavored to sell some portion of your land?

*Ans.* Because I could not give a title to it.

*Quest.* Did you ever offer it for sale?

*Ans.* Yes.

*Quest.* You wanted to borrow money on it?

*Ans.* Yes.

*Quest.* Did you ever ask for Mrs. Close's consent (will)?

*Ans.* No.

20 *Quest.* Did you ever apply to her counsel for it?

*Ans.* No.

*Quest.* That was the difficulty then for your not making sale of this land?

*Ans.* No.

*Quest.* Was it not because you could not procure Mrs. Close's signature to sell?

*Ans.* Yes, that was the main difficulty.

*Quest.* But for that difficulty, could you not have gotten a market for that land, or some of it?

30 *Ans.* Yes.

*Quest.* At what price?

*Ans.* I don't know that I ever named a price; if I could have given a title I would have made a price for it.

*Quest.* What price, had you had a title to convey, would you have accepted for the land around your house, and around the Dummy Railroad?

*Ans.* I never offered that.

*Quest.* Why did you not offer; you thought that part was the most valuable?

40 *Ans.* Yes.

*Quest.* What part did you offer?

*Ans.* That on the corner.

*Quest.* At what rates?

*Ans.* The prominent lot there I considered worth \$1000.

*Quest.* What size?

*Ans.*  $27\frac{1}{2} \times 108$ .

*Quest.* And the lot held—at what rate did you offer that?

*Ans.* I have not offered that to anybody.

*Quest.* Did you ever advertise this property? 10

*Ans.* It was advertised,

*Quest.* For sale?

*Ans.* Yes.

*Quest.* You mean for taxes?

*Ans.* No, the sheriff did.

*Quest.* Did you ever employ any real estate agent to sell?

*Ans.* Yes.

*Quest.* You did offer this lot for sale?

*Ans.* Yes—I offered to sell the property at that price; I offered to give a lease, with power to buy; I could not give 20 a title to it, but lease it.

*Quest.* If you did not offer the property for sale, did you have persons ask you to sell it to them?

*Ans.* I had persons say they wanted to buy.

*Quest.* What was your answer?

*Ans.* I could not give them a title.

*Quest.* Had Mrs. Close signed the deeds, and the property been offered for sale, in your judgment would that property been marketable?

*Ans.* Yes, at a price. 30

*Quest.* At what price?

*Ans.* A low price.

*Quest.* What low price?

*Ans.* They value a lot there, as a general thing, about \$150; they aggregate \$150 at most; but some lots were a great deal more.

*Quest.* From 1870 to 1873, in September, what, in your judgment, would they have marketed for?

*Ans.* Two years ago, at \$300 a piece, all through.

*Quest.* Who are those boys you started in business? 40

*Ans.* My son and son-in-law, J. L. Baily.

*Quest.* What was the name of your son?

*Ans.* David Close.

*Quest.* And he was a witness in the suit in relation to Mrs. Close's alimony?

*Ans.* Yes.

*Quest.* And also, Mr. Baily, your son-in-law?

*Ans.* Yes, I believe they were.

*Quest.* How came you to start up these young men in business, and furnish this capital in there for them?

*Ans.* Because I wanted to assist them, and help them on in the world.

*Quest.* How old were they?

*Ans.* My son David was thirty-six or thirty-seven, and my son-in-law about the same age.

*Quest.* Before that, what had been your business?

*Ans.* Always in the clothing business.

*Quest.* When did you retire?

*Ans.* In 1861, when the war broke out.

*Quest.* What did you then regard yourself as being worth?

*Ans.* Well, I never estimated my worth—at that time, I suppose, over \$100,000.

*Quest.* After that time you estimated yourself as worth more?

*Ans.* I think I never estimated.

*Quest.* Before you retired from that firm, what was your value in money?

*Ans.* I think I took over \$20,000 out of the concern in money.

*Quest.* Did the concern go on?

*Ans.* Yes.

*Witness.* I had drawn considerable money before.

*Quest.* I want to know what you regarded yourself worth?

*Ans.* About \$100,000.

*Quest.* Before you purchased this property?

*Ans.* Including this property.

*Quest.* Including all?

*Ans.* Yes, cemetery and everything.

*Quest.* What was your income from that day on?

*Ans.* Then I owned property in the Bowery, which rented

for \$2,000 or \$3,000 a year, which property I have sold since ; there was a bond and mortgage on it.

*Quest.* What was your income during the years 1861 to 1870—about?

*Ans.* It was about \$4,000 or \$5,000 a year.

*Quest.* Did you pay the taxes then?

*Ans.* Taxes were low at first—\$30 a year.

*Quest.* You were brought up a merchant, were you not?

*Ans.* No, sir—nothing but a poor tailor.

*Quest.* After that?

10

*Ans.* Then I got to be a cutter.

*Quest.* You carried on at last a large business, and successfully?

*Ans.* Yes; I called myself a clothing dealer.

*Quest.* And that continued with success and profit to 1861?

*Ans.* Yes; I never lost any money in my life in business.

*Quest.* Why during all those years have you not endeavored to earn money for yourself?

*Ans.* I have.

*Quest.* How?

20

*Ans.* By working hard and doing hard work; I done the best I could; we had thirteen children to care for and bring up.

*Quest.* You had capital at that time, you gave it to a couple of young men without security; why did you not go in yourself?

*Ans.* I did try; and that is the reason I bought them out.

*Quest.* And you found they defrauded you?

*Ans.* Yes.

*Quest.* If you had used your capital yourself, you might have done better?

*Ans.* I had the rheumatism.

*Quest.* That is the reason then?

*Ans.* That is the reason I did not look after the matter.

*Quest.* How many children have you with you?

*Ans.* Eight of my children are there now.

*Quest.* At your house?

*Ans.* Yes; my son-in-law.

*Quest.* Do you support your son-in-law?

*Ans.* Yes.

40

*Quest.* And his wife?

*Ans.* Yes.

*Quest.* Anybody else?

*Ans.* Yes; my brother-in-law lives there—he is seventy-five years old; and my father—he is ninety.

*Quest.* Now about your children—there is your son-in-law and your son David; who comes next to this eight?

*Ans.* I have a daughter, Mrs. Henlit; I have a great deal to do for her.

10 *Quest.* Who else?

*Ans.* I have got a servant girl to take care of.

*Quest.* Why take care of her?

*Ans.* She does some work.

*Quest.* About this eight you spoke of?

*Ans.* Do you want the names?

*Quest.* Yes.

*Ans.* Elvina Baily, May Close, Anna Close, Eva Close, Frederick Close, Joseph B. Close, Jr., and Charles Close.

*Quest.* How old is Charles Close?

20 *Ans.* About fifteen, I think.

*Quest.* Does he get anything for his living?

*Ans.* No; he is at school.

*Quest.* What school?

*Ans.* District public school.

*Quest.* Who is the next higher?

*Ans.* Joseph B. Close, Jr.; he is in a clothing store.

*Quest.* Frederick is of age?

*Ans.* Yes; and in the same thing.

*Quest.* Miss Anna is a little girl?

30 *Ans.* About twelve years old.

*Quest.* Does she go to school?

*Ans.* Yes.

*Quest.* And Eva is how old?

*Ans.* Ten; and she goes to school.

*Quest.* And May?

*Ans.* She helps take care of the house with Mrs. Baily.

*Quest.* Has May been at school during these four years?

*Ans.* No, sir.

*Quest.* What is her age?

40 *Ans.* About nineteen, I think.

*Quest.* Has Mrs. Bailey any children?

*Ans.* No, sir.

By the Vice-Chancellor.

*Quest.* What children are with your wife, Mr. Close?

*Ans.* A little boy, an infant, about four years of age now.

Adjourned to Thursday morning, 3d December, ten A. M.

[Filed December 3, 1874.]

*David W. Oliver*, examined by Charles H. Winfield, Esq.,  
on behalf of the defendant.

Direct examination.

10

*Quest.* Where do you live, Mr. Oliver?

*Ans.* In Bayonne.

*Quest.* Are you a neighbor of Mr. Close?

*Ans.* Yes—I live some eight or nine hundred feet distant  
from him.

*Quest.* How long have you been his neighbor?

*Ans.* For over five years, now.

*Quest.* Have you been in the habit of visiting at his house?

*Ans.* Yes—more recently the last couple of years.

*Quest.* Have you seen Mr. Close almost daily, at his house  
or elsewhere? 20

*Ans.* Very frequently.

*Quest.* Have you been at his house, both day and evening?

*Ans.* More frequently in the evening than daytime; I saw  
him most every day, passing.

*Quest.* What are his habits of sobriety?

*Ans.* He uses his liquor; he is a man who uses liquor, but  
I never seen him what we would call intoxicated—so as to be  
incapacitated to do business, or anything of the kind.

*Quest.* What are his habits as to the treatment of his  
family? 30

*Ans.* I have never seen anything out of the way, myself.

*Quest.* Have his family the appearance of being well provided for?

*Ans.* I should say, yes.

*Quest.* Do you know the children go to school?

*Ans.* Yes.

*Quest.* What kind of schools have you there?

*Ans.* Very good schools—good enough for any small children to go to, unless they expect to study the higher branches.

*Quest.* Do you send your own children?

10 *Ans.* Yes.

Cross-examined by Cortlandt Parker, Esq.

*Quest.* A good school for small children?

*Ans.* Yes, for the English branches—unless they wanted to go through the higher studies.

*Quest.* What do you call the English branches—you mean common school, not high school?

*Ans.* Yes.

*Quest.* You know the difference between public common school and public high school?

20 *Ans.* Yes; this is a public common school, not high school.

*Quest.* Be good enough to explain what you call intoxicated?

*Ans.* I call a man intoxicated when he becomes incapacitated to do business; but not a man who takes his drink of liquor; I should not say he was.

*Quest.* Do you mean that until a man using liquor becomes incapacitated to do business, he is not intoxicated?

*Ans.* I mean this—he is a man that takes a glass, but you could not see any difference in his actions—I think he would  
30 be perfectly rational.

*Quest.* Any difference in his temper?

*Ans.* Not that I have seen; I never saw any difference in his temper.

*Quest.* What are those liquors that you know of his using?

*Ans.* I do not know that I could say what kind he is in the habit of using—I have seen him drink ale, beer, and whiskey.

*Quest.* And brandy?

*Ans.* And brandy ; he uses liquor in a social way ; I have never seen him visit a hotel, or go round drinking in that way.

*Michael L. Grath*, examined by C. H. Winfield, Esq.,  
counsel for defendant.

Direct examination.

*Quest.* Where do you live ?

*Ans.* In Bayonne.

*Quest.* Near Mr. Close ?

*Ans.* Yes.

*Quest.* What is your business ?

10

*Ans.* Contracting and farming.

*Quest.* How long have you resided near Mr. Close ?

*Ans.* Since 1866.

*Quest.* Have you been at his house frequently ?

*Ans.* Yes.

*Quest.* How often ?

*Ans.* The last four years, every day.

*Quest.* What times of the day ?

*Ans.* I have passed through there in the morning—during  
the day several times.

20

*Quest.* From morning to evening, at different times ?

*Ans.* Yes.

*Quest.* What are Mr. Close's habits as to sobriety ?

*Ans.* Well, as much as I know about Mr. Close and about his habits, I always found him sober and honest ; I knew him four years before I leased the farm from him ; if I had found any bad habits I would not have anything to do with him.

*Quest.* Did you ever see him under the influence of liquor ?

*Ans.* No, sir.

*Quest.* What are his habits as to the treatment of his 30  
children ?

*Ans.* I think very kind, Mr. Winfield ; as much as any father can do for his children, to my knowledge.

*Quest.* How are his children treated as to being supplied with everything ?

*Ans.* I think most excellent ; there is no need of anything in Mr. Close's family about food, clothing, schooling, or anything.

Cross-examined by Cortland Parker, Esq.

*Quest.* You are his farmer, are you?

*Ans.* I rent the farm from Mr. Close.

*Quest.* And do carting for the pay of it?

*Ans.* Yes, I grade streets for Mr. Close; I do not pay him much money; he pays me more money for doing his work than the rent amounts to.

*Quest.* How long have you rented his farm and done this grading?

10 *Ans.* Four years.

*Quest.* Did you ever have anything to drink with him yourself?

*Ans.* Yes, I have had a drink with Mr. Close several times.

*Quest.* How often?

*Ans.* When he did treat me, only one drink.

*Quest.* How often have you drank with him?

*Ans.* May-be three times in a month, may-be in half a year; once, according as I called to see him.

*Quest.* According as you called to see him?

20 *Ans.* Yes, though I saw him every day.

*Quest.* You saw him every day, but you have not been to see him in his house very frequently, have you?

*Ans.* Yes.

*Quest.* What do you mean by saying "according as I called to see him?"

*Ans.* That is talking about drinking.

*Quest.* You said once in six months, "according as I called to see him?"

30 *Ans.* I mean when I take a drink with him; I see him every day.

*Quest.* I want to know how often you saw him at his house, going to see him?

*Ans.* I see him every day, and when I have some business I go in.

*Quest.* How often do you have some business?

*Ans.* May-be every week, once, and may-be every day.

*Quest.* What, you go to see him in his house may-be once every day, may-be once every week?

*Ans.* Yes, may-be twice a day.

40 *Quest.* Now drop may-be's, and tell us how often it was?

*Ans.* I say again—just as business is.

*Quest.* Do you mean to say that you have visited Mr. Close as a visitor in his house as often as once a week?

*Ans.* Yes, I do; I have visited him sometimes without having any business transaction.

*Quest.* Whenever you go, don't you have something to drink?

*Ans.* No, sir.

*Quest.* How often don't you have something to drink?

*Ans.* I cannot count.

*Quest.* Well, can you count how often you did have a drink? 10

*Ans.* No.

*Quest.* You are not very good at counting anyway, are you?

*Ans.* Not in this way.

*Quest.* Not in any way?

*Ans.* O, yes.

*Quest.* You lived near him you say for some six years—where before that? 20

*Ans.* In the State of New York.

*Quest.* Were you born there?

*Ans.* In Germany.

*Quest.* When did you come over?

*Ans.* In 1863.

*Quest.* What is your business?

*Ans.* My principal business is gardening.

Re-direct examination by Mr. Winfield.

*Quest.* Do you know if Mr. Close is afflicted with rheumatism, sometimes very badly, confined to his bed and cannot step on the floor? 30

*Ans.* I had many times to go to his bedroom.

*Quest.* Did you see him walk on crutches?

*Ans.* Yes.

*Joseph B. Close*—Examined by Mr. C. H. Winfield, counsel for the defendant.

Direct-examination.

*Quest.* Do you recollect the occasion when Halcyon G. Bailey, Edward Smith and Charles Wilson partook of your hospitality at your house?

*Ans.* Yes.

*Quest.* Was there anything occurred in your house at that time of an improper character?

*Ans.* Not to my knowledge.

*Quest.* You entertained them at dinner?

10 *Ans.* Yes.

*Quest.* You had something to drink at the dinner?

*Ans.* Yes, about a bottle of brandy; brought it home on purpose because they were coming.

*Quest.* After dinner were you invited to cross the street to the hotel and partake of a bottle of wine?

*Ans.* Yes.

*Quest.* What occurred over there?

*Ans.* Well, we drank two bottles of wine—I think—four of us, and told stories, and a sociable time.

20 *Quest.* It was a social, jovial occasion?

*Ans.* Yes, as gentlemen friends generally do when they get together.

*Quest.* It was at their request that you went?

*Ans.* Yes.

*Quest.* This Bailey, had you assisted him in business?

*Ans.* Yes.

*Quest.* How much?

30 *Ans.* I took him when he was a little boy, some sixteen years, and brought him up and took him in partner, and continued with him until he became such a drunkard I had to turn him out. He became a vagabond. I had to take him out of the gutters.

*Quest.* Had either of your children been crying that day when they came to the table?

*Ans.* No.

*Quest.* Did they show from their appearance, their eyes, that they had been crying?

*Ans.* No.

40 *Quest.* Was there any unpleasantness in your family that day?

*Ans.* Not the least.

*Quest.* Are your children afraid of you?

*Ans.* No, sir; not to my knowledge.

*Quest.* In the testimony of Guy Lateral he speaks of your being drunk on your front stoop?

*Ans.* It is as big a lie as ever a man told, or boy either.

*Quest.* Do you know if Guy Lateral is friendly, or unfriendly?

*Ans.* All that I know is that I ordered him out of my house for making a disturbance.

10

*Quest.* What disturbance?

*Ans.* Staying up nights, running round the room, dinging on the piano. One [night] I went down at ten o'clock and told him; we then went to bed and closed the house, and did not want any company there after. That is the last I have seen of him.

*Quest.* He says: "I hardly ever left his house without leaving him drunk," is that true?

*Ans.* In my knowledge of the matter, it is as big a lie as an unprincipled liar could utter.

20

*Quest.* You are afflicted sometimes with rheumatism?

*Ans.* Yes.

*Quest.* It is not always of the same intensity?

*Ans.* No.

*Quest.* When you walk—in consequence of the rheumatism—are you sometimes unsteady on your feet?

*Ans.* Almost invariably—weakness in the ancles.

*Quest.* Are you obliged to walk with a cane or crutch?

*Ans.* Yes.

*Quest.* Do you know what board can be obtained for, at Bergen Point, in the best of families? [Question objected to by complainant's counsel as incompetent evidence.]

30

*Ans.* I went to what I consider the best house on Bergen Point—the best furnished. They told me large fine rooms in the second story, they charged in the summer season—and less than that at other seasons—eleven dollars a week.

*Quest.* Do you know what the board is at the Lateret House?

*Ans.* I do not.

*Quest.* This house in which you inquired for board, is it a better house than yours?

*Ans.* Yes.

*Quest.* Better furnished?

*Ans.* Yes; it cost five times mine, furniture and all together.

*Quest.* Is it a more fashionable neighborhood than yours?

*Ans.* Yes.

*Quest.* Nearer to churches than yours?

*Ans.* Yes,

*Quest.* Nearer to conveniences of travel?

10 *Ans.* Yes.

*Quest.* By boat and rail-car?

*Ans.* By boat; mine is nearer to the cars.

Cross-examination by Mr. Cortland Parker, counsel for the complainant.

*Quest.* What house was it?

*Ans.* Mrs. Jacob Van Horn's.

*Quest.* What is it—a boarding-house?

*Ans.* She keeps boarders in the summer season—it is a private family.

20 *Quest.* Who gave you these prices?

*Ans.* Mrs. Van Horn, herself.

*Quest.* Why did not you bring her here?

*Ans.* I did not wish to give her the trouble.

*Quest.* What did you say?

*Ans.* I did not feel disposed to be caught in company with any woman at this time.

*Quest.* What sort of a room was this?

*Ans.* About the size of this room—three of them.

*Quest.* Would there be three for eleven dollars?

30 *Ans.* I did not ask that question.

*Quest.* What question did you ask?

*Ans.* I asked her what she charged for the best rooms in the house, handsomely located and well furnished.

*Quest.* Did you say all that to her?

*Ans.* Yes; I think those were the words, verbatim.

*DECREE.*

[Filed January 29, 1875.]

This cause coming on to be heard before the Vice-Chancellor, to whom the same has been duly referred by orders heretofore made by the Chancellor, in the presence of Cortland Parker, of counsel for complainant, and Charles H. Winfield, of counsel for defendant, and the evidence having been taken and the arguments of counsel heard thereon, and the Vice-Chancellor having advised as hereinafter decreed—

It is on this twenty-ninth day of January, one thousand eight hundred and seventy-five, on motion of Parker and Keasbey, solicitors for and of counsel for complainant, ordered, adjudged, and decreed, that the exclusive control, possession, and custody, of Anna, Eva, and Frank, infant children of said complainant and defendant, be given and committed to said complainant, subject notwithstanding to the right of said defendant to receive visits from his said children, for a space of time not to exceed three hours in the afternoon of Saturday in each week, at any residence he may have in the county of Hudson, and state of New Jersey, and it is hereby decreed, 10  
that said complainant shall do all things necessary to afford to said defendant the enjoyment of such rights whenever by him requested; and it is further ordered, adjudged, and decreed, that the said defendant, Joseph B. Close, do pay to the complainant, Ellen M. Close, or to her order during her natural life, or until the future order of this court to the contrary, the annual sum of three thousand dollars, in twelve equal monthly installments, each payable on the second Monday of every month, the first of such payments to be made on the second Monday of February, one thousand eight hundred and 30  
seventy-five, the same being considered and deemed a suitable allowance, having regard to the circumstances of the parties, respectively, for the support and maintenance of said complainant, and to be used by her for the support, maintenance, and education of said minor children; and she is hereby directed

out of the same to make necessary provision for such support, maintenance, and education.

And it is further ordered, adjudged, and decreed, that the said allowance is made instead and place of the alimony *pendente lite* heretofore ordered in the case, which is continued until the said second Monday in February, one thousand eight hundred and seventy-five; and it appearing that there is now due to said complainant, arrears of said alimony to an amount which, with allowance at the same rate heretofore ordered, 10 until said second Monday in February, will make in all, the sum of twelve hundred and twenty-five dollars; it is therefore ordered that the said defendant do pay to said complainant, or to her order on said day, the said sum of twelve hundred and twenty-five dollars, as and for said arrears of alimony already ordered, and for further alimony up to the time of the said allowance as aforesaid.

And it is further ordered, adjudged, and decreed, that said defendant do further pay to said complainant or her solicitors, on the second Monday in February, one thousand eight hundred and seventy-five, the unpaid costs in this case now taxed 20 and to be taxed, and also, the sum of thirteen hundred and seventy-eight dollars, which is hereby adjudged and deemed to be the reasonable counsel fee of and for the counsel of said complainant.

And it is further ordered, adjudged, and decreed, that the said defendant, Joseph B. Close, do, within ten days after service upon him, or his solicitor, of a copy of this decree, give such reasonable security for the payment of said annual sum of three thousand dollars, as shall be approved of by the Vice- 30 Chancellor, for the punctual payment of such sum at the time above specified; and upon his neglect or refusal to give said reasonable security as shall be required by said Vice-Chancellor within the time so specified, or upon his default and that of his surety, in case such surety shall be given to pay such annual sum at the time when the same may fall due, according to this decree, as above mentioned, that the complainant be at liberty to apply to this court to award and issue process for the immediate sequestration of the defendant's personal estate, and the rents and profits of his real estate,

and to appoint a receiver thereof, according to the statute in such case made and provided, or such other process as this court may, under the circumstances, deem equitable and just, and may be consistent with the power and authority of this court.

And it is further ordered, adjudged, and decreed, that this decree shall, from the date thereof, be a lien upon the personal and real estate of the said defendant in the state of New Jersey; and that a copy thereof be forthwith served upon said defendant, or his solicitors, and that either party be at liberty 10 to apply, upon a future change of circumstances in the parties, or either of them, for such variation or modification of this order and decree, touching the said allowance for alimony and maintenance, and for the support and education, care and clothing of said children, as, under such future circumstances, may be just and equitable.

And it is further ordered, adjudged and decreed, that the said complainant have execution according to the course and practice of this court, for the recovery of said costs, counsel fees, and alimony, awarded up to the second day of February, 20 one thousand eight hundred and seventy-five, or for such parts thereof as shall remain unpaid.

And whereas, the estate of said defendant appears, by the testimony taken, largely to consist of unimproved real estate in said city of Bayonne, in the county of Hudson, the sale of which, it is alleged on the part of the defendant, has been prevented by the necessity of the release by said complainant of her dower-right therein, and the said complainant hath alleged her readiness to release said dower right on any bona fide sale for reasonable price, of any part of said real estate, it 30 is therefore, with the assent of said complainant, further ordered, adjudged, and decreed, that the said defendant shall be at liberty from time to time, at his discretion, to make sale of any part of said real estate and report the same to this court, to the end that it may be seen whether such sale is for a reasonable price and on reasonable terms, and that the rights of the complainant to the value of her dower therein and otherwise, may be protected; and it is ordered that on such sales being approved by this court, the said complainant shall seal,

deliver and acknowledge a release of her right of dower in the lands so sold, according to the assent by her given as aforesaid.

THEODORE RUNYON, *C.*

I respectfully advise the above decree. January 29th, 1875.

AMZI DODD, *V. C.*

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*OPINION.*

THE VICE-CHANCELLOR.

10 The complainant having obtained a decree of divorce against her husband, from bed and board, on the ground of his extreme cruelty, it was referred to me to advise what order should be made touching the custody of the infant children and alimony. The proofs, prior to the decree, were directed to be considered by me, as well as other proofs to be taken. The parties themselves, and the witnesses produced by them, have been examined before me, and testimony has also been taken out of the state by commission.

20 The parties were married in 1846. The bill of complaint was filed in October, 1870. A few weeks prior to that date the complainant was compelled to leave her husband's house, with an infant child about four months old. She was the mother, by him, of nine children, then living, of whom the eldest, a daughter, was about twenty-three years old. The complainant had no estate of her own. Her husband was possessed of a large property, and, for about ten years, had been living in Bayonne, near to Jersey City. He was a retired man of business. The larger part of his property consisted of the tract of land on which they were living, being  
30 into building lots. It had risen greatly in value since it was purchased, and is shown by the proofs to be worth now, at a low valuation, the sum of \$150,000. It is shown by the proofs to be saleable in larger or smaller parcels, for good prices, if the owner were willing to sell. Besides this property, the

defendant is possessed of an interest in a cemetery, in the city of Washington, from which he derives an income, yearly, of several thousand dollars. I think, from the evidence, that his yearly income from this source may be put at \$4000, at least.

An order was made by Chancellor Zabriskie, a few months after the filing of the bill, and after testimony and argument, by which the defendant was directed to pay to the complainant, for alimony *pendente lite*, the sum of \$25 per week. The defendant has neglected to pay this weekly sum since March 4th, 1874. The final decree of divorce was obtained in July, 1874. It appears, I think, quite clearly, from the evidence, that the defendant is so managing his property—allowing it to become so circumstanced as to enable him to offer plausible objections to the payment of anything for alimony. The only difficulty I have had in fixing upon a sum for permanent alimony, grows out of the condition and character of his estate. But I am satisfied that the situation in which he has brought it, or designedly suffered it to be, cannot be allowed to defeat the manifest justice of the case, in respect to the complainant and the children, whose custody should be given her. In judging of his faculties, his large and saleable real estate ought not to be regarded as an ordinary farm. I think it plainly a case where the defendant should be called on to change the character of the property in which his wealth is, to a great extent, invested. If he were to do so, his income would be adequate to a very liberal provision for himself and the complainant and the minor children, however the custody of the latter might be apportioned. In this view, and having regard to the facts of the case, as disclosed by the evidence, I shall advise that the complainant be decreed to have the custody of two of the children, in addition to the youngest child now in her charge. The two children, whose welfare calls strongly, in my judgment, for the society and care of their mother, are the younger daughters, Annie and Eva, aged, respectively, about twelve and ten years. There is no need of referring specially to the evidence to exhibit the probable influence upon these children, of their father's temper and habits. There can be no doubt that such influence would be highly unfavorable.

As permanent alimony for the mother and for the children,

I advise the yearly sum of \$3000, payable monthly. This sum is to cover all her and their expenses, and to provide for their nurture and education, as long as the order directing it shall be in force. I think the mother, being expelled from her husband's house, where her other children still are, should be so provided for that, by economy suited to her husband's means, she may receive visits from all her children, and that she ought not to be limited to an allowance that would prohibit her from a reasonable enjoyment of their society. Looking  
10 to all the facts of the case, my judgment is that the above yearly sum is by no means too large. The order should provide, in usual terms, for a modification of the allowances, as future exigencies may arise.

The order will contain, also, the customary provisions in respect to the methods of its enforcement. Should the defendant desire to make sale of any part of his lands, or to raise money by mortgaging them, the willingness of the complainant to execute the conveyances will, of course, be requisite to enable him to carry out such purposes. Should such willing-  
20 ness be wanting, it would furnish ground to ask for a change of the order now advised. In respect to the unpaid weekly sums, since March last, I do not now advise any order adjudging the defendant to be in contempt.

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### *Notice of Appeal.*

[Filed February 23, 1875.]

The defendant hereby appeals from so much of the final decree made in this court, in the above stated cause, as allows the complainant three thousand dollars per year, as alimony  
30 during her natural life, in twelve equal monthly installments; and as gives into the exclusive control, possession, and custody of the complainant, the three infant children of the defendant, named Anna, Eva, and Frank; and as allows to the complainant's solicitors' the sum of thirteen hundred and sixty-eight dollars as counsel fee; and as orders, adjudges, and decrees,

that said decree shall from the date thereof be a lien on the personal and real estate of said defendant, in the state of New Jersey; and as adjudges and decrees that the complainant have execution for the recovery of her costs, counsel fees, and alimony awarded up to the second day of February, eighteen hundred and seventy-five; and also, from so much of said decree as decrees in favor of the complainant and against the defendant.

Dated February 23d, 1875.

C. H. WINFIELD, 10

*Sol. and of counsel with defendant.*

I conceive there is good cause for appeal in the above stated cause.

C. H. WINFIELD,

*Of counsel with defendant.*

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*Petition of Appeal.*

[Filed February 26, 1875.]

Between Ellen M. Close, complainant and appellee, and Joseph B. Close, defendant and appellant.	}	On Bill for Divorce.	20
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*To the Honorable the Court of Errors and Appeals in the last resort in all causes of law, &c.*

The humble petition of Joseph B. Close, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of the state of New Jersey, bearing date the twenty-ninth day of January, eighteen hundred and seventy-five, in a cause 30 wherein the said Ellen M. Close was complainant, and the said Joseph B. Close defendant, in these respects, to wit:

That the said decree adjudges that the said defendant shall

pay to the said complainant as alimony, the sum of three thousand dollars per annum during her natural life, in twelve equal monthly installments; and in this respect, to wit, that the said decree adjudges and gives into the exclusive control, possession, and custody of the complainant the three infant children of the defendant, named Anna, Eva, and Frank; and in this respect, to wit, that the said decree adjudges and allows to the said complainant's solicitors the sum of thirteen hundred and sixty-eight dollars as counsel fees, to be paid by  
10 the said defendant; and in this respect, to wit, that the said decree orders and adjudges that said decree shall, from the date thereof, be a lien on the personal and real estate of the said defendant in the state of New Jersey; and in this respect, to wit, that the said decree adjudges that the said complainant shall have execution for the recovery of her cost, counsel fees, and alimony awarded up to the second day of February, eighteen hundred and seventy-five; and in this respect, to wit, that said decree is in favor of the complainant and against the defendant.

20 And your petitioner humbly appeals from those parts of said decree of the Chancellor which decrees as aforesaid, on the ground that the said decrees are erroneous, and that upon the pleadings and evidence in said cause the said appellee was not entitled to the decree so made as aforesaid in her favor.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

C. H. WINFIELD,  
*Of counsel and solicitor of appellant.*

*Answer to Petition of Appeal.*

[Filed April 13, 1875.]

*The answer of Ellen M. Close, respondent, to the petition of appeal of Joseph B. Close, appellant.*

This respondent, not confessing all or any of the matters to be true, as in and by said petition of appeal 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 set forth, but as to the date, substance and extent thereof, this respondent humbly craves leave to refer thereto when the same shall be produced. 10

And this respondent humbly conceives and is advised that the said decree in those parts appealed from in said petition is agreeable to equity and justice, and therefore humbly hopes that the same may therein be affirmed, and said appeal be dismissed by this court, with costs.

Dated April 1, 1875.

PARKER & KEASBEY,  
*Sols. and of counsel with respondent.*

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CHAPTER I

THE DISCOVERY OF AMERICA

THE first discovery of America was made by Christopher Columbus in 1492. He sailed from Spain in August and reached the island of San Salvador in the West Indies in October. Columbus was the first European to reach the Americas, and his discovery opened the way for European exploration and settlement of the continent.

After Columbus's discovery, other European explorers followed, including Amerigo Vesputi, who named the continent after himself, and John Cabot, who explored the northeastern coast of North America. The Spanish and Portuguese empires were established in the Americas, and the continent was divided into Spanish and Portuguese territories.

The discovery of America had a profound impact on the world. It opened up new trade routes and led to the exchange of goods and ideas between the Old World and the New World. The Americas became a source of raw materials and labor for the European powers, and the continent was transformed into a major center of world trade and industry.

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*Examination of Witnesses.*

[Filed December 13, 1870.]

Examination of witnesses in the above stated cause, taken at the office of Messrs. Winfield and McLean, in Jersey City, Hudson county, and state of New Jersey, on the 21st day of November, A. D. 1870, before John S. DeHart, one of the masters of said Court of Chancery, in the presence of Messrs. Parker and Keasbey, solicitors and of counsel for the said complainant, and of Messrs. Winfield and McLean, solicitors and of counsel for the said defendant. 10

*Joseph B. Close*, the defendant, a witness produced on the part of the said defendant, being duly sworn, deposes and saith—

[The counsel of both parties desiring that the examination of this witness be taken by question and answer, I think proper that it should be taken accordingly.]

Quest. Are you the defendant in this suit?

Ans. I presume I am, sir.

Quest. You have been arrested on a writ of *ne exeat* in this case?

Ans. I have. 20

Quest. When?

Ans. I declare I can't say; somewhere in the neighborhood of three weeks ago.

Quest. How long previous to your arrest, had your wife left your place? [Objected to by complainant.]

Ans. Well, the last time, I should think it was about two weeks.

Quest. Did you see her when she went away? [Objected to.]

Ans. Yes, sir.

Quest. How did you part; on friendly terms, or otherwise? 30

Ans. Yes, sir; I bid her good bye; she said she would re-

turn in a week or two; was going on a visit; that was the shape it was put in.

Quest. Had you any knowledge or intimation from her, that she intended to leave you and commence this suit? [Objected to.]

Ans. No, sir.

Quest. Had you any knowledge of it previous to your arrest?

Ans. No, sir.

Quest. How many children have you?

10 Ans. I have thirteen living, I believe.

Quest. Have you heard the affidavits in the bill read?

Ans. Yes, sir.

Quest. Are the names and ages mentioned in the bill, correct?

Ans. Yes, sir.

Quest. Are any of those children married?

Ans. Yes, three of them—one is a widow.

Quest. How many are living at home with you now?

Ans. Five at the present time; there was eight when she left.

Quest. How many did she take with her?

20 Ans. She took one little infant about four months old when she left the last time for good.

Quest. Do you mean that there were eight besides the one she took?

Ans. Yes, sir.

Quest. You say there are only five now; what has become of the rest?

Ans. The day I was under arrest, giving bonds here, she came with some strange man and took three of them away; all her clothing and many other things which she packed up; she 30 opened my wardrobe and took out a pair of shoes which I bought for my oldest daughter.

Quest. What were the ages of those children which she took away? [Objected to.]

Ans. One is 15; one, 8; one, 6.

Quest. She has now four children?

Ans. Yes.

Quest. What are the ages of your boys?

Ans. David, 35; James B., 27 or 28; Frederick N., 17 the

28th of March last; Joseph B., Jr., 13 last July; Charles F., 11 last March; Frank, 5 months on the 8th inst.

Quest. Have you ever given any of these children a collegiate education?

Ans. They have all graduated, that are old enough—in such places as Springler Institute, Rutgers Female College, and Cavereck Institute.

Quest. Were you giving your other children advantages of education previous to the time they were taken away?

Ans. Yes, sir.

10

Quest. Have you ever, during the last few years, heard her say anything as to your fitness to have the care and education of your children? [Objected to.]

Ans. Yes, sir, many times.

Quest. What have you heard her say about that? [Objected to.]

Ans. Invariably was, that I deserved a great deal of credit for the manner in which I had educated my children, and brought them up.

Quest. How recently have you heard her say anything of that kind? [Objected to.]

Ans. Well, very lately; she has repeated it a great many times, from time to time, and I never heard her dissent, or any intimation that I was not competent, until I read it in the bill of complaint against me.

Quest. Previous to her going away, or since, do you know of her purchasing anything upon your credit?

Ans. Yes, sir; I have had bills sent to me of the amount of \$2000.

Quest. Have you seen any of the parties who sent those bills since they were sent?

Ans. Yes, sir.

Quest. Have you seen them all?

Ans. I believe I have, sir.

Quest. Did you speak to them about having sent those bills?

Ans. Yes, sir.

Quest. What did they say?

Ans. They said they had sent their goods to her order; they thought it was Mrs. Close, and, in one case, the girl knew that

it was Mrs. Close ; this was my first knowledge that it was her.

Quest. Have you those bills with you ?

Ans. Yes, sir. [Witness produces papers ; the papers are all pinned together, and marked as *D 1.*] They are offered in evidence. Complainant objects to the bills being offered in evidence.

Quest. I see a bill among those for jewelry and watch—had Mrs. Close a gold watch at that time? [Objected to.]

Ans. Yes, sir ; it was in that shop to be repaired.

10 Quest. At the time she made the purchases? [Objected to.]

Ans. Yes, sir.

Quest. Did she have finger-rings at that time? [Objected to.]

Ans. Yes, sir ; she had a number.

Quest. I see a bill there for twenty-two pairs of kid gloves—any of them given to your family? [Objected to.]

Ans. No, sir ; they were \$2 a pair ; none of my family have ever received any of those of goods.

20 Quest. Were the rings she had at the time of the purchase of those mentioned in the bills, valuable?

Ans. Yes, sir ; one of them was ; I was offered \$400 for it, within two months.

Quest. You own quite a large property in Bayonne, do you not?

Ans. Yes, sir ; I own a pretty big piece of real estate,

Quest. About how many acres?

Ans. About forty-eight acres, taking the streets out.

Quest. Is it improved land?

Ans. Yes, sir ; it is cleared.

30 Quest. Any tenement houses upon it?

Ans. One, sir.

Quest. Is your dwelling-house upon it?

Ans. Yes.

Quest. Do you rent your tenement house?

Ans. Yes.

Quest. What rent?

Ans. Ten acres of ground, and the house on it, \$200 per year.

Quest. What is done with the rest of the land?

Ans. Well, I cut a little grass on it, and raise a few potatoes for family use.

Quest. Does it yield you any income besides that?

Ans. No, sir.

Quest. Is that \$200 all the income you have from your property in Bayonne?

Ans. Yes, sir.

Quest. From where else do you receive any income?

Ans. I receive interest on balance of some money I sold a piece of property for—about \$700 or \$800; I believe that is all the income I have from any money at interest, bonds, mortgages, and United States securities. 10

Quest. What has it cost you per year, for the last few years, for the support of your family?

Ans. About \$17,000 for two years; about \$8500 per year.

Quest. If the foregoing income, as you have stated it, is all that you have, how have you been able to support your family at such an expense?

Ans. By selling my real estate from time to time, to make up the difference. 20

Quest. Where else, besides in Bayonne, have you any real estate?

Ans. In the District of Columbia.

Quest. For what is that property used?

Ans. Cemetery.

Quest. How did you get any income from that?

Ans. By selling lots.

Quest. What has been your income from that the last two years?

Ans. About \$6000 for two years—that is, about \$3000 per year. 30

Quest. Have you any other property which you have sold to derive income?

Ans. Yes, I sold a house and lot in New York, in order to raise money to live on a year ago last spring.

Quest. What did you get for it?

Ans. I got, altogether, \$24,975; there was little interest—well, call it \$25,000.

Quest. Have you been using that money, besides the other which you have stated, for the support of your family?

Ans. Yes, sir; from time to time I have needed it.

Quest. Have you now any real estate in New York?

Ans. No real estate.

Quest. Have you ever received any property by your wife, Ellen M. Close?

Ans. No, sir, not a dollar.

Quest. Are you ready and willing to support those children  
10 which your wife took away?

Ans. Yes, sir; I have ample provision already made for them.

Quest. And educate them?

Ans. Yes, sir.

Quest. Do you know where they are now?

Ans. No, sir.

Quest. Were they taken with your consent?

Ans. No, sir—nor had I any knowledge of it at that time.

Quest. On your property at Bayonne—do you know what  
20 your taxes were for the last five years?

[Witness produces tax bills for 1866, 1867, 1868, 1869 and 1870—all receipted by collector except 1870.]

Ans. They are all paid by me.

[The said bills are marked *D 2*.]

Quest. Look at those papers and see if they are receipts for your income tax for the years of 1866, 1867, 1868? [Objected to.]

Ans. They are.

[Offered in evidence, marked *D 3*.]

30 Quest. Was the amount of net income, which you stated you derived from the sale of lots in the cemetery, exclusive of taxes?

Ans. Yes, sir.

Being cross-examined, says—

The cross-examination is deferred, by consent, and is resumed on page fifty-nine of these minutes.

*George B. Whitney*, a witness, produced on the part of the defendant, being duly sworn, saith—

I am Chief of Police, of Bayonne City ; I am acquainted with the defendant—have known him going on four years ; have been accustomed to see him frequently during that time—three or four times a week ; I have had an opportunity of knowing as to his habits of sobriety ; I never saw him anything but a sober man in my life—or out of the way ; never have seen him under the influence of liquor ; I have frequented his house for four or five weeks, last past ; I know his wife, Ellen M. Close ; I was there at the time she left, and before she commenced this suit ; I was sitting by the side of Mr. Close, talking with him at his 10 house ; I heard what was said between them ; she came to the door, had a bundle, and said “good-bye, pa, I am going away on a visit, to be gone two weeks—I may not be gone so long ;” he said, “all right, you can stay as long as you want to ;” that was all that passed between them ; she went away—did not appear to be angry ; he did not show any anger at all ; she didn’t say anything about being driven away by him ; they did not show any difference between them ; from my knowledge I should judge Mr. Close to be a fit person to have charge of his children. 20

Being cross-examined, saith—

I am acquainted with Mr. Close, by seeing him in Bayonne, in the street and different places ; was not acquainted with him as a friend ; did not always speak to him when I met him ; passed the time of day and bowed—sometimes spoke ; do not know his habits in the house ; never heard of his drinking ; Mrs. Close left towards night—I should think about 4 o’clock ; I went up to see Mr. Close when she left ; conversation was about politics and police business and things generally ; Mr. Close was sitting when I first came up ; he did not ask his wife 30 where she was going ; I think he did not rise at all ; it is about one-fourth mile to the depot from Mr. Close’s house ; it is an 08 old-fashioned house—wooden house—rooms on both sides of the hall ; Mrs. Close had a reticule when she left ; her servant girl was with her ; her servant girl had the baby ; I didn’t look particular at the servant girl ; I noticed Mrs. Close ; never saw Mr. Close abuse his wife ; have seen them together before ; have seen them around the garden ; I have stated all the conversa-

tion between Mr. and Mrs. Close when she went away; I saw Mrs. Close go out of the gate; Mr. and Mrs. Close were together about ten minutes; she came out and said what I have stated, and then went away.

GEORGE B. WHITNEY.

Sworn and subscribed this 21st day of November, A. D. 1870, before

JOHN S. DEHART, M. C.

10 *Robert Newall*, a witness, produced on the part of the defendant, being duly sworn, saith—

I reside in New York city; clothing is my business; I know Joseph B. Close, the defendant; have known him over fifteen years—known about his property and business; I know, because I was book-keeper from 1854 to 1862; I know about his business the last two years, and know the statement as to his income, which he made in this examination, is correct; I know it is correct, because all the funds referred to in that statement have passed through my hands, or the our firm's hands; I am aware they are correct, because I keep his accounts, and have for fifteen  
20 years or more.

Being cross-examined, saith—

I am in the firm of William Banks & Co., 79 Duane street; the names of the firm are, said Banks, Jacob Freitag, Robert Newall and James H. Pelton; Mr. Close's business is a clothier; he has no interest in the firm of Wm. Banks & Co.; they succeeded him; they kept his accounts because they were old friends and business men; I do not know that defendant has any interest in any firm; we kept his money as bankers; do not  
30 know as to his sales of land, except the Bowery property and the cemetery property; I can't say about the cemetery property; I know about the income of the cemetery property, by receiving remittances from the superintendent; for the last ten years he has been in the habit of sending on his remittances to our firm and me credit them to Mr. Close; I think Mr. Close owns the cemetery.

ROBERT NEWALL.

Sworn and subscribed the 21st day of November, A. D. 1870,  
before

JOHN S. DEHART, M. C.

*Ella M. Close*, a witness, produced on the part of the defendant, being duly sworn, saith—

I am daughter of the defendant; I reside at Bayonne City with my father; I recollect the day when father was arrested; I saw my mother that day; she came to the house; three children went away with her—all girls; she took them with her; my sister and I keep house—that is, since mother left; my sister and I had charge of the children after mother left, and before she came back the last time; I have seen those children since, at Mr. Wilcox's, at 17 Park avenue, New York; my mother was there; they were with her at the house; she was staying there, I believe; I have graduated at a seminary—at Abbott Collegiate Institute, formerly Spingler Institute; the children which mother took away with her—two of them had not been to school, one had; the two were taught at home; my sister taught them; their ages are six and eight; the children had good care as we could give them while mother was away; 10  
20  
father had always been a good provider.

ELLA M. CLOSE.

Sworn and subscribed the 21st day of November, A. D. 1870,  
before

JOHN S. DEHART, M. C.

*Gertrude Close*, a witness, produced on the part of the defendant, being duly sworn, saith—

I am daughter of defendant; I reside with father at Bayonne; I recollect the day father was arrested in this suit; I saw mother that day, at the house in Bayonne City; there was a man—gentleman, with her; three girls went away with her; she took them away; ages, fifteen, eight and six; she came in the train and went away in the train; my sister and I have been keeping house for father since mother left; we had charge of the children previous to their being taken away; I graduated at the 30

Hudson River Institute, at Claverack, N. Y. ; father has given us good educational advantages.

Being cross-examined, saith—

I am second daughter ; I have lived at Bayonne about nine years ; all the children have been living at home during that time ; graduated at the institute about four years ago ; since then have been at home all the time ; have three sisters younger than myself, and four brothers younger than I.

10 Quest. During the past three years, have you heard Mr. Close use violent language in the presence of these children ?  
[Objected to because it is not cross-examination.]

Ans. Yes, sir.

Quest. Have you heard him use profane language ? [Objected to.]

Ans. Yes, sir.

Quest. Frequently ? [Objected to.]

Ans. Yes, sir.

Quest. Have you heard him use indecent language in their presence ? [Objected to.]

20 Ans. Yes, sir.

Quest. Frequently ? [Objected to.]

Ans. Yes, sir.

Quest. Was this language to the children as well as to their mother ? [Objected to.]

Ans. No, sir.

Quest. To whom has it been addressed ? [Objected to.]

Ans. My mother.

Quest. Has he ever treated the children with violence ? [Objected to.]

30 Ans. Whenever they have done what he thought was wrong.

Quest. At those times, when so punishing the children, has he used profane language ? [Objected to.]

Ans. I think so ; I am not certain.

Quest. Have the family been in the habit of taking their meals together at a common table ? [Objected to.]

Ans. Yes.

Quest. Has Mr. Close, at table at meals, in the presence of

these children, used profane and obscene language to their mother? [Objected to.]

Ans. Yes, sir.

Quest. Has this been a matter of common occurrence? [Objected to.]

Ans. Yes, sir.

Quest. Has he ever been remonstrated with that such language was improper? [Objected to.]

Ans. Not to my knowledge.

Quest. Has he ever, during these three years, in the presence 10 of any of these children, or in your presence, made use of violence towards your mother? [Objected to.]

Ans. Yes, sir.

Quest. Of what character was the violence? [Objected to.]

Ans. He has thrown things at her, and struck her.

Quest. When throwing things at her, has he at the same time used language of the character already mentioned? [Objected to.]

Ans. Yes, sir.

Quest. And on these occasions, when you say he struck her, 20 has he made use of profane and obscene language? [Objected to.]

Ans. Yes, sir.

Re-direct.

Quest. How long since you have seen him chastise or punish any of his children?

Ans. Not for some time—not this summer.

Quest. Have you within two years?

Ans. I think I have; I am not sure.

Quest. Was that for misconduct? 30

Ans. The time I remember my father said my brother had done wrong—my brother said he had misunderstood him.

Re-cross.

Quest. Do you know of your father's taking your mother's watch away a short time before she went away? [Objected to.]

Ans. Yes, sir.

Quest. About when?

Ans. It was the morning he went to New York to stay; I think it was—I am not sure.

Quest. About what month?

Ans. The latter part of September or the first of October.

Quest. Did he take away some of his clothes? [Objected to.]

Ans. He took all his clothes, except some that were in the wash.

10 Quest. As I understood you, on the morning, or before he so went to New York, taking his clothes with him, he took away your mother's watch and took it with him? [Objected to.]

Ans. Yes, sir; I don't know whether he took it when he took his clothes, it was while he was staying in New York; I think he came down afterwards; he took it when he got settled there; it was a gold watch.

Quest. Did he, at this time, take a ring from her? [Objected to.]

Ans. Not at that time—before that.

20 Quest. When was it? [Objected to.]

Ans. It was when he took the watch the first time.

Quest. What sort of a ring was this? [Objected to.]

Ans. A diamond—solitaire.

Quest. On these recent occasions, when, as you say, your father struck your mother, using obscene and profane language in the presence of the children, had he been indulging in excess in drinking spirits? [Objected to.]

Ans. I think he had.

Quest. Did he keep liquor in the house? [Objected to.]

30 Ans. Yes.

Quest. Where? [Objected to.]

Ans. In the wardrobe in the dining-room, and some in the cellar.

Quest. What was it? [Objected to.]

Ans. All kinds, I think.

Quest. Was it, or has it, in the last three years, been a matter of frequent occurrence for him to indulge in excess in drinking spirits? [Objected to.]

Ans. I don't know about the last three years, but it has during the last year.

Quest. Has his violence and bad language to your mother, in the presence of these children, been a matter more noticeable when he had been so drinking? [Objected to.]

Ans. Yes, sir.

Re-direct.

Quest. How do you know that at these times he was under the influence of liquor?

Ans. By his appearance and hearing him go to the wardrobe 10 very often.

Quest. How do you know that it was liquor he went after in the wardrobe?

Ans. I have seen it in the glass and have smelt it when he has treated people.

Quest. When you say he went very frequently, how do you know he always went for liquor?

Ans. He kept nothing else there to drink to my knowledge, and I would hear him go to the ice pitcher and a stirring around with a spoon. 20

Quest. Did you hear that every time he went there?

Ans. I heard it every time I heard him go there.

Quest. Did he not keep garden seeds, glasses and other things there besides liquor? 20

Ans. I think so.

Quest. Was your father not quite frequently in the custom of making lemonade, hot whiskey, &c., for such of the rest of the family as would drink it? [Objected to.]

Ans. Not very often; he would ask us if we would have it.

Quest. Did your mother drink any of this? [Objected to.] 30

Ans. She has at times; not very often.

Quest. Upon the whole, is your father not an indulgent and kind parent, except occasionally when in a passion? [Objected to.]

Ans. Whenever we have asked him for anything, he has generally given it to us, if that is what you mean by indulgent, if he thought it was necessary.

Quest. I suppose you generally persuaded him that it was necessary? [Objected to.]

Ans. I persuaded him all I could to get it, whatever it was.

Quest. Did you generally meet with success? [Objected to.]

Ans. Yes, sir.

Re-cross.

Quest. Do you remember the occasion when your mother finally left the house at Bayonne?

Ans. Yes, sir.

10 Quest. Were the other children at home that day?

Ans. All but the boys; the boys were all at school, except my brother Frederick, who was in business in New York.

Quest. Did you see your father have a cane that day?

Ans. Yes, sir.

Quest. Did you see him strike any one with it? [Objected to.]

Ans. I saw him strike my mother with it.

Quest. More than once?

Ans. Yes, sir.

20 Quest. Do you recollect where she was when he first struck her with it?

Ans. Yes, sir.

Quest. Where?

Ans. In her own room—second story front room.

Quest. Who was in the room at the time?

Ans. My sister Ella, myself, and I think my sister May.

Quest. About what time in the day?

Ans. In the afternoon.

30 Quest. Had your father been in the room long before he struck her?

Ans. He had been up twice and gone down and then came up the third time.

Quest. Been down in the dining room to this wardrobe?

Ans. These two times he had.

Quest. Where was the little baby?

Ans. My mother was sitting in the rocking chair and had him in her lap.

Quest. How many times did he strike her then?

Ans. I think it was four times altogether up in the room.

Quest. Did your mother keep the infant all the time?

Ans. She gave him to me.

Quest. Did he strike her again after that?

Ans. Yes, sir.

Quest. With what?

Ans. His cane.

Quest. Did you or any one else remonstrate with him for doing so?

Ans. I told him that he had said that he wouldn't hurt a 10  
hair of her head; my sister, Ella, said so too.

Quest. Did he make any reply to that or do anything after?

Ans. He struck me on the arm with a cane and told me not  
to interfere.

Quest. Did you see him strike your sister?

Ans. Yes, sir; on the head.

Quest. Did you see him strike your mother after that?

Ans. I don't remember after that in her room.

Quest. Did you see her go down stairs after that?

Ans. Yes, sir. 20

Quest. Did you see her get her hat or things to go away?

Ans. My sister Ella handed them to her.

Quest. Where?

Ans. She gave her her hat as she left the room and carried  
her shawl down stairs; am not sure as to that.

Quest. Did you see your father strike her after she left the  
room?

Ans. Yes, sir.

Quest. Where was she then?

Ans. In the hall down stairs tying on her hat before the 30  
glass on the hat stand.

Quest. With what?

Ans. His cane.

Quest. During this time when he was striking her, did he  
use profane and obscene language to her?

Ans. Yes, sir.

Quest. After he had struck her as she was tying on her hat,  
did she go out doors?

Ans. Yes, sir.

Quest. Did any one else go out ?

Ans. My sister Ella went out on the stoop.

Quest. Was your father outside or inside then ?

Ans. He went out and then came back ; he went after her and came right back again ; I did not go outside ; I did not see Mr. Whitney there at that time ; I saw him there that day, but not when she went out the first time.

Quest. The first time she went out, who came in first ?

Ans. My sister Ella came in first and then my father ; my  
10 mother did not come in then.

Quest. Did your father send or bring your sister Ella in then ?

Ans. He told her to go in the house.

Quest. And did he follow her ?

Ans. Yes, sir ; I don't know whether he had his cane with him then ; he shut the door and went into the parlor I think ; I am not sure ; I went up stairs then.

Quest. How long before your mother came in ?

Ans. About ten or fifteen minutes, perhaps longer.

20 Quest. Did any one come in with her ?

Ans. Mr. Whitney and Mr. Van Pelt came first ; Mr. Van Pelt was a policeman, and Mr. Whitney was the chief of police.

Quest. Did Mr. Whitney and Mr. Van Pelt protect your mother from any further violence of your father on that occasion ?

Ans. They sat on the stoop with him, and he said nothing to her while they were there.

Quest. While they were sitting on the stoop with him, did your mother get the baby and things to go away ?

Ans. Yes, sir.

30 Quest. Did she take the baby and her things, and go away to the depot with them ?

Ans. She took the baby and some of the baby's things, and went over to Mr. Maxwell's—a neighboring store across the way—and from there she went to the train—the depot.

GERTRUDE CLOSE.

Sworn and subscribed the 21st day of November, A. D. 1870,  
before

JOHN S. DEHART, M. C.

*Ella Close*, recalled on the part of the complainant.

Quest. Have you heard the testimony of your sister Gertrude, on her examination before the master to-day? [Objected to.]

Ans. Yes, sir.

Quest. Are her statements, as to the language and conduct of your father, on the occasions referred to by her, correct? [Objected to.]

Ans. Yes, sir.

Quest. Did your father, on the occasions mentioned by her, use violent, profane and obscene language towards your mother? 10  
[Objected to.]

Ans. Yes, sir.

Quest. Do you recollect the day when your mother finally left the house at Bayonne? [Objected to.]

Ans. Yes, sir.

Quest. Did you see your father have a cane on that day?

Ans. Yes, sir.

Quest. What did he do with it?

Ans. Struck mother; in her own room and in the hall.

Quest. Did he strike you? [Objected to.] 20

Ans. Yes, sir; on the head.

Quest. Did you see him strike your sister?

Ans. Yes, sir.

ELLA M. CLOSE.

*David Close*, a witness for the defendant, being duly sworn, saith—

I am son of the defendant by the former wife; I am thirty-five years old; I am a graduate of an institution of learning; I am keeping house—a married man; have been for ten years; live at Bayonne City; have been accustomed of frequenting my 30 father's house the last five or six years.

Quest. Do you know something of his government in his family, and his general fitness for having the care and education of his children? [Objected to.]

Ans. I do.

Quest. Do you consider him a fit person for that purpose? [Objected to.]

Ans. I do.

Quest. What is his general conduct and behavior to his children? [Objected to.]

Ans. Very pleasant and agreeable.

Quest. Do you know whether he is accustomed to get intoxicated? [Objected to.]

Ans. I do.

Quest. Is he accustomed to get intoxicated? [Objected to.]

Ans. He is not.

Quest. Does he sometimes take a drink of liquor?

10 Ans. He does.

Quest. Did you ever see him drunk? [Objected to.]

Ans. I never did.

Being cross-examined saith—

Quest. Have you never heard before to-day that your father used improper language in the presence of his children? [Objected to.]

Ans. I have never.

Quest. Have you not heard it to-day?

Ans. Yes.

20 Quest. Do you consider that a man who uses profane and obscene language, such as you have heard to-day that your father used in the presence of his children, is a fit man to have the care and education of such children? [Objected to, for reason that there has been no particular language mentioned in the testimony to-day, and because it is irrelevant and calculated to mislead witness.]

Ans. If the case demanded it, I think he is.

Quest. Have you ever heard your father use profane or obscene language?

30 Ans. I have—profane.

Quest. You have never heard him use obscene language?

Ans. I never have.

Quest. Have you ever witnessed any of his acts of violence towards his wife?

Ans. I never have.

Quest. Of what institution of learning are you a graduate?

Ans. Solomon Jennar Institute, 79 Henry street, New York; about 1852; I have been in business, since that, in the city of

New York all the time; I am a printer by trade; after I graduated I learned my trade and have since practiced; I am salesman for Brooks Brothers, 44 South Union Square, New York; have been with them about eight years; I support myself and family; I am independent of my father; he has three children besides myself by his first marriage, viz.: Mrs. E. M. Hewlitt, Mrs. J. L. Bailey and James Close; they live in New York city; I believe one lives in the West; Mrs. Hewlitt lives out West somewhere—I think Detroit, Michigan.

DAVID CLOSE. 10

Sworn and subscribed the 21st day of November, A. D. 1870,  
before

JOHN S. DEHART, *M. C.*

Adjourned to November 22, 1870, at 2 P. M.

November 22, 1870, examination resumed pursuant to adjournment.

*Jordan L. Bailey*, a witness for defendant, being duly sworn, saith—

I reside in New York city; clothing is my business; carried on at 22 Bowery; I know the defendant; have known him twenty-five years; I married his daughter; have frequented his house for the last seventeen years; stay all night; 20 stop in there in the evening—make a call, during the last seventeen years.

Quest. Have you had an opportunity, then, of knowing his habits and fitness to have the care, custody, and education of children? [Objected to.]

Ans. Yes, sir.

Quest. During all that time have you had an opportunity to know his fitness for such purpose? [Objected to.]

Ans. Yes, sir.

Quest. Is he a fit person, or is he not? [Objected to.] 30

Ans. He is a fit person.

Quest. Have you during that time frequently seen him exercising goverment over his children, and if so, was it kind and

parental, or otherwise? [Objected to as leading, calling for opinion of witness, where testimony of an expert is not competent, and as calling for mere conclusion of witness, in his own mind, from certain facts which alone should be called for that the court from them may decide from the facts stated, whether they amount to the exercise of any government over his children, or whether kind or parental.]

Ans. It was kind and parental, as far as I saw.

10 Quest. Have you during the period which you have known him been accustomed to seeing him at other places than his house? [Objected to.]

Ans. I have seen him at his place of business.

Question repeated. [Objected to.]

Ans. Yes, sir.

Quest. How frequently?

Ans. Well, sometimes once a week, sometimes six times a week.

Quest. Have you been accustomed to seeing him during the past two or three years as frequently as that? [Objected to.]

20 Ans. There has been times during the past three years that I have not seen him as often as that.

Quest. Have you ever during that time seen him intoxicated?

Ans. No, sir.

Quest. From your intercourse with him, during that time, do you know what his habits are as to sobriety? [Objected to.]

Ans. Yes, sir.

Quest. What are his habits as to sobriety? [Objected to.]

30 Ans. Well, I should say he was a very moderate drinker—if I understand your question.

Quest. I mean by sobriety, whether he is accustomed to drinking so as to get intoxicated? [Objected to as not the definition of sobriety, and generally.]

Ans. Well, no, sir; he is not in the habit of drinking and getting intoxicated.

Quest. Do you know what kind of a provider he is in his family, as regards food and clothing?

Ans. Yes, sir.

40 Quest. What kind is he—good or bad? [Objected to.]

Ans. A good provider.

Being cross-examined.

Quest. What is the name of your wife?

Ans. Elvina; a daughter of Mr. Close's first wife; have been married about eight years; my wife has been at Mr. Close's house when I have been there—not always.

Quest. Prior to the 5th of June last, was your wife generally with you when you made the visits referred to in your direct-examination?

Ans. She was not always with me when I have been there. 10

Quest. Was she generally with you prior to that date?

Ans. Yes, sir.

Quest. Since that date, have your visits without her been increased or diminished in proportion to the entire number of your visits; since that, have you been there more or less frequently alone than before that?

Ans. I have been there more frequently alone since than before.

Quest. Did you ever know of Mr. Close pushing one of his daughters down stairs—or partly down stairs? [Objected to.] 20

Ans. Nothing more than hearsay.

Quest. Did you have any conversation with Mr. Close on the subject? [Objected to.]

Ans. No, sir.

Quest. Did you never make any remark to Mr. Close on the subject? [Objected to.]

Ans. Not to my knowledge.

Quest. Do you mean to swear positively that you never made any remark to Mr. Close on that subject? [Objected to.]

30

Ans. I mean to say that I have never had any conversation on that subject with Mr. Close.

Quest. How soon after the occurrence did you first hear of it? [Objected to for the reason that no such fact has been proved by this witness; he has no knowledge of it except by hearsay.]

Ans. I presume within a day or two, although I can't tell.

Quest. Where?

Ans. In New York, I presume.

Quest. Which of his daughters did you hear that it was?  
[Objected to.]

Ans. My wife.

Quest. Do you mean to swear that, after you heard that Mr. Close had pushed your wife down stairs, you never had any conversation with him to ascertain whether he was in his sober senses when he did it? [Objected to.]

Ans. Yes, sir.

Quest. In forming the opinion which you have expressed as  
10 to his fitness to have the care and custody of his children—  
have you taken into consideration the fact that his habits are  
such as to lead him after dinner and after what you call moderate  
drinking to push or kick his child or children down  
stairs? [Objected to.]

Ans. I formed my opinion from only what I have seen.

Quest. If you should base your opinion on what you have  
heard as to his kicking or pushing members of his family  
down stairs, and his violence, profane and obscene language  
in the presence of his children, would you still express the  
20 opinion that he is a fit person for the purpose mentioned in  
your direct-examination? [Objected to.]

Ans. I would.

Quest. Then your views of parental government are, that it  
conduces to the successful management of a family that a  
father should kick his children down stairs, and use profane  
and obscene language in their presence when he feels disposed  
—are they? [Objected to.]

Ans. I don't think they are.

Quest. If any other father than Mr. Close kicked his children  
30 down stairs occasionally, and was frequently violent to  
their mother, and used profane and obscene language towards  
her, in their presence, would you not consider him a bad man,  
and unfit for their care, custody, and education? [Objected to.]

Ans. A man that done that, I should.

Quest. Have not you expressed the opinion that Mr. Close  
was a bad man—using the expression that no one knew what  
a bad man he was—or the substance of that expression? [Ob-  
jected to.]

Ans. I don't know that I have.

Quest. Do you mean to swear that you have not? [Ob-  
jected to.]

Ans. I may have used that expression, if reports are true.

Quest. Where, to whom, and in whose presence?

Ans. That I don't know.

Quest. Did you not say so to John H. Wilcox, at his store  
in Fourth avenue? [Objected to.]

Ans. I might have said that to him, if reports are true.

Quest. When was that?

Ans. I can't tell now.

10

Quest. Have you said it to him more than once?

Ans. I may have done it; I don't remember.

Quest. Was that your opinion at the time you made that  
remark to Mr. Wilcox? [Objected to for the reason that he  
don't swear that he ever made it.]

Ans. My remark was based upon reports, whatever it may  
have been.

Quest. Can't you tell within five months when that remark  
of yours was made?

Ans. It must have been made within five months, if made  
at all.

20

Quest. What do you now say—was it made or not? [Ob-  
jected to for the reason that the witness has not stated that he  
made it.]

Ans. It might have been made, if reports were true.

Quest. Was it made or not—have you no recollection what-  
ever on that subject?

Ans. Not at present.

Quest. Do you now believe that Mr. Close pushed your  
wife down stairs in the month of August, last? [Objected to.]

30

Ans. I don't believe that he pushed or kicked her down  
stairs.

Quest. Did he ever tell you that he did not?

Ans. No, sir.

Quest. Who told you that he did? [Objected to.]

Ans. My wife is the only one that spoke to me about that.

Quest. Has any person ever told you that he did not? [Ob-  
jected to.]

Witness. That he didn't kick or push her down stairs?

Counsel says—Yes.

40

Quest. Mr. Close told me himself that he did not—Mr. Joseph B. Close that sits beside of you? Ans. Yes.

Quest. When did he tell you that?

Ans. I don't know, sir—it was a remark that he made about certain reports that were going around.

Quest. What was the remark he made on that subject—give the substance of it as near as you can?

Ans. The remark he made on that subject, that they said he had shoved Elvina down stairs.

10 Quest. Is that all?

Ans. He said he didn't do it.

Quest. Where did he make that remark to you?

Ans. It might have been in his own house.

Quest. Are you sure he ever made the remark?

Ans. I think he did.

Quest. Are you sure?

Ans. I am sure he made the remark.

Quest. Do you recollect that he made it at his house?

Ans. No, sir.

20 Quest. How long ago—state as near as you can?

Ans. It may have been a month or six weeks ago.

Quest. Are you sure that it was made between a month and six weeks ago?

Ans. I think, it is—I am not sure.

Quest. From the time that your wife told you he had shoved, pushed, or kicked her down stairs, until a month or six weeks ago, when Mr. Close told you that he didn't do it—did you believe that he had? [Objected to.]

Ans. No, sir.

30 Quest. Is not your wife a truthful woman?

Ans. Yes, sir.

Quest. Why, then, did you not believe her uncontradicted statement made to you within a day or two after the occurrence? [Objected to.]

Ans. I believe she was excited, and don't exactly know how it happened.

Quest. Were you present at the occurrence?

Ans. No, sir.

Quest. Who told you that she was excited? [Objected to.]

40 Ans. She told me herself that she was excited.

Quest. Did she tell you what excited her? [Objected to.]

Ans. Some trouble in the house, I believe she said.

Question repeated.

Ans. Yes, sir.

Quest. Did she tell you that in substance, that Mr. Close on that occasion had been abusive and violent, and had used bad language; had made at his wife with his cane; had seized her arm, flung her across the room, and drove her up stairs, using obscene and profane language and threats, and thrust her up stairs, striking her with his cane; and that your wife then interfering, was pushed by him to the bottom of the stairs, or did she tell you anything of that sort? [Objected to.]

Ans. Anything, implies a good deal.

Quest. Any part of that?

Ans. There was some trouble between Mr. and Mrs. Close, and she attempted to interfere.

Quest. Do you mean to swear that the fourteen words which you have used are all that your wife told you of that occurrence, which you can now recollect?

Ans. Yes, sir. 20

Quest. Do you mean to swear that she did not tell you what the nature of the trouble was?

Ans. I don't remember that she did.

Quest. Had like trouble been of such frequent occurrence before that this made no impression on your memory?

Ans. Not to my knowledge.

Quest. Is your memory extraordinarily defective?

Ans. I don't know that it is.

Quest. Did you not consider trouble between Mr. and Mrs. Close of such a nature as to excite your wife to the extent she told you she was excited, and so as to lead her to attempt to interfere—a very serious matter? [Objected to.] 30

Ans. Well, I did not.

Quest. Do you not consider such troubles between man and wife as lead their children to become excited so as to get pushed down stairs, and to interfere, matters of such importance as to impress your recollection for ninety days, especially in view of the reports which you said had been going around? [Objected to.]

Ans. That it ought to impress my mind and recollection. 40

Quest. You have testified as to your opinion as to Mr. Close's fitness for certain purposes—have you any opinion as to his means? [Objected to.]

[Witness]—What do you mean?

Quest. Don't you know the meaning of the word means?

Ans. The way I understand it is, ability.

Quest. Have you any opinion as to Mr. Close's means?

[Objected to.]

Ans. Yes, sir.

10 Quest. What, in your opinion, is the amount of his means?

[Objected to.]

Ans. The amount probably \$250,000.

Quest. Are you aware that Mr. Close has the right to will his means as he pleases, to a very considerable extent? [Objected to.]

Ans. Yes, sir.

Quest. Are you aware that he has the right to influence his disposition by will of his property, with respect to his daughter, your wife, with regard to the character of the testi-  
20 mony you give on this examination? [Objected to.]

Witness says—Am I aware that he has the right to do as he pleases?

Question repeated.

Ans. I am aware that he has the right to do as he pleases.

Question repeated.

Ans. Did I answer that? I say I am aware that he has the right to do as he pleases.

Quest. Have you not stated since the troubles arose between Mr. and Mrs. Close, that your course must be influenced by  
30 your wife's interest or prospects in her father's estate and good will? [Objected to.]

Ans. No, sir.

Quest. Did you go to the store of John H. Wilcox, in 4th Avenue, New York, with your wife and Mrs. Close in the latter part of September, 1870?

Ans. No, sir.

Quest. Are you sure of that?

Ans. I am sure that I did not do that.

Quest. When did you go there?

40 Ans. In the summer some time, but I could not state.

Quest. What part of the summer?

Ans. Either June or July, I am not sure.

Quest. Who went there with you?

Ans. My wife and Mrs. Close.

Quest. Who did you see there?

Ans. Saw Mr. Wilcox, Mr. Johnson, partner of Wilcox, and the book-keeper.

Quest. Was the conversation in the office?

Ans. There was a conversation; it was in Mr. Wilcox's private office, and up stairs. 10

Quest. Did you go there at Mrs. Close's request, or at your suggestion? [Objected to.]

Ans. At Mrs. Close's request.

Quest. Where did she make that request?

Ans. At 4th Avenue, on the sidewalk, near 26th street or 25th street, somewhere.

Quest. Were you walking with your wife and met her casually, and she made that request to you?

Ans. No, sir.

Quest. Where were you going when you met her? 20

Ans. I was not going anywhere when I met her.

Quest. Were you standing aimless on the sidewalk?

Ans. No, sir.

Quest. Did you meet her by appointment?

Ans. No, sir.

Quest. Did you meet her casually?

Ans. No, sir.

Quest. Did you meet her at all?

Ans. Yes, sir.

Quest. And you neither met her by appointment nor 30 casually?

Ans. She sent for me.

Quest. Whom did she send for you?

Ans. My wife—at the store.

Quest. Were you sent to go anywhere to meet her?

Ans. She sent my wife there to take me up to 4th Avenue, 25th or 26th street, to meet her; I don't remember the place.

Quest. Did your wife tell you where you were to go to meet her? [Objected to.]

Ans. 4th Avenue; she said she wanted me to go up on 4th 40

Avenue ; it was not a store ; it was a brick building ; she was in this brick building when we went in.

Quest. Why then did you say that you did not meet her by appointment ?

Ans. Because I did not make any appointment with her.

Quest. Did you three then go together to Mr. Wilcox's store ?

Ans. Yes, sir.

10 Quest. Did you use this language in substance in the presence of the people you have mentioned at Mr. Wilcox's store, telling Mr. Wilcox that no one knew what a bad man Mr. Close was—that he had abused and struck his wife, and had driven her away from the house—had abused and pushed Elvina down stairs when she attempted to interfere ? [Ob-  
jected to.]

Ans. Not that I remember, sir.

Quest. Will you swear that you did not say to Mr. Wilcox anything of that kind on the occasion when you were at his store with Mrs. Close and your wife ? [Objected to.]

20 Ans. I did not, to my memory.

Quest. Is it possible that you said on that occasion, Mr. Close has abused and struck his wife, driven her away from the house, that no one knows what a bad man he is, that when Elvina interfered he abused and pushed her down stairs, and have forgotten all about it now ?

Ans. I think if I had said it, I should have remembered it.  
Question repeated.

Ans. I think I should remember if I had said that.

30 Quest. Is it possible that you said anything of that kind, and have now forgotten it ?

Ans. I don't think it is.

Quest. Do you now swear that you never said anything of that kind to Mr. Wilcox in the presence of those parties ?

Ans. I don't remember of making any of those remarks.

Question repeated.

Ans. I don't remember of making any of those remarks that you have read.

Quest. Will you swear that you did not make them ? [Ob-  
jected to.]

Ans. I swear that I don't remember making them, and I don't think that I did make them.

Quest. Did you tell Mr. Wilcox of the treatment Mrs. Close had received from her husband, and say that you came there to ask his advice—what she had better do under the circumstances? [Objected to.]

Ans. No, sir, nothing of that sort.

Quest. Had Mrs. Close then come to New York in consequence of cruel treatment she claimed to have received at the hands of her husband? 10

Ans. I think not.

Quest. Were you not told why she had come to New York? [Objected to.]

Ans. Yes, sir, my wife told me; I did not tell Mr. Wilcox what my wife had told me on that subject.

Quest. Did you give Mr. Wilcox any reason why you three people came to see him?

Ans. I don't think that I did.

Quest. Did any of the party?

Ans. Mrs. Close talked with Mr. Wilcox. 20

Quest. In your hearing?

Quest. I was in the office part of the time; I did not hear what she said; I went there at the request of Mrs. Close to see Mr. Wilcox.

Quest. Could not she go and see Mr. Wilcox without you? [Objected to.]

Ans. Certainly.

Quest. Did you not say or do anything on that occasion except to go there with her, and fail to hear anything that she said? 30

Ans. I did hear some things she had to say.

Quest. Did you hear her say anything about the violence or abuse she had sustained at the hands of her husband, or that she had come up in consequence of it? [Objected to.]

Ans. Yes, sir—[ness explains]—Mrs. Close sat on the sofa with Mr. Wilcox, and she talked so low that I couldn't distinctly understand, and I don't think that I could repeat anything that she said to him.

Quest. Was it with reference to the violence and abuse of her husband to her? [Objected to.] 40

Ans. I think that it was.

Quest. Was that the first time you had ever heard of his violence and abuse to her? [Objected to.]

Ans. I don't know.

Quest. In answer to the question, did he ever tell you that he did not—meaning did Mr. Close ever tell you that he did not push your wife down stairs, you said said, no, sir; was that answer true?

10 Ans. I misunderstood your question if I answered it, no, sir.

Quest. In your answer, I may have used the expression that no one knew what a bad man Mr. Close was, if reports were true, was that expression used by you on the occasion at Mr. Wilcox's store when you went there at the request of Mrs. Close?

Ans. It might have been—I don't remember.

Quest. Were you here yesterday?

Ans. Yes, sir.

Quest. Did you hear Ella M. Close testify?

20 Ans. I was in that office most of the time—[pointing to a room adjoining.]

Quest. Was the door open all the time?

Ans. Yes, sir.

Quest. Did you hear Ella M. Close testify?

Ans. I could not hear the answers to the questions.

Quest. Did you hear the master read her testimony over to her after it was all taken down?

Ans. I presume that I did.

30 Quest. Did not the master read her testimony in a remarkably clear, distinct, and loud manner? [Objected to.]

Ans. He read it loud.

Quest. Did you also hear the testimony of Gertrude Close?

Ans. Yes, sir.

Quest. Did you hear the master read that over also after it was written down?

Ans. Yes, sir.

Quest. Do you now recollect the testimony given by those two young ladies as to the language and conduct of their father on the occasions testified to by them? [Objected to.]

40 Ans. No, sir, I couldn't repeat it.

¶ Quest. Have you no remembrance of the substance of it?  
[Objected to.]

Ans. No, sir.

Quest. Is your memory so poor that you forget such matters in one day? [Objected to.]

Ans. I could not hear plain the questions or the answers.

Quest. If you had heard them, would you have been able to recollect them to day?

Ans. I think so.

Quest. Have you no recollection whatever as to the part of 10 testimony you heard read by the master? [Objected to.]

Ans. I have not.

Quest. Did you hear Ella M. Close testify that on the day her mother finally left the house at Bayonne, her father struck her mother with his cane in her own room, and in the hall struck her, Ella M., on the head, and struck her sister?

Ans. No, sir.

Quest. Did you hear the testimony of Gertrude Close on the same subject?

Ans. Yes, sir.

20

Quest. Did that testimony of the statement of Gertrude on that subject change your opinion as to the fitness of Mr. Close to have the care, custody, and education of his children?

Ans. No, sir.

Quest. Could any facts change your opinion on that subject?

Ans. Facts would change my opinion on anything.

Quest. If the statements of Gertrude respecting the conduct and language of Mr. Close in the presence of his children were facts, would that change your opinion as to his fitness? 30

Ans. That does not change my opinion.

Quest. Do you mean that the facts of Mr. Close's violence to his wife, and of his profane and obscene language in the presence of his children, if true, would not change your opinion of his fitness?

Ans. That would not change my opinion.

Quest. That is what you call kind and parental government, is it?

Ans. I never called it anything of the kind.

Quest. Were you at Mr. Close's table about September, 1868, when he was very violent, and used very bad language towards his wife in the presence of his children?

Ans. I think I was at his table in August, '68, and in September, too—I don't remember.

Quest. Did you ever hear Mr. Close use profane and obscene language in the presence of any of his family at his house?

10 Ans. I don't think that I have.

JORDAN L. BAILEY.

Sworn and subscribed the 22d day of November, A. D. 1870, before

JOHN S. DEHART, *M. C.*

Adjourned to November 23d, 1870, at 9 A. M.

November 23d, 1870. Examination resumed pursuant to adjournment.

The defendant being cross-examined, saith—

[The cross-examination is taken subject to all legal objections at the hearing before the Chancellor.]

20 Quest. In your direct examination you spoke of the last time your wife left your place—did you hear the testimony before the master of your daughter, Ella M. Close, in respect to your language and conduct on that occasion?

Ans. Yes, sir.

Quest. Did you hear her testify that you, on that occasion, used violent, profane, and obscene language towards your wife; that you struck your wife and your daughters, Ella and Gertrude, with your cane, on that occasion?

30 Ans. Yes, I heard her testify.

Quest. Did you hear your daughter, Gertrude Close, testify before the master in respect to your language and conduct on the last time your wife left your place, and in respect to the particulars of the occurrences of that day?

Ans. Reserving the right to make an explanation, I say, yes.

Quest. Did you hear the testimony of your daughter, Gertrude Close, in respect to the use, by you at table, in the presence of your children, of profane and obscene language to their mother, and in respect to your violence towards your wife in their presence during the past three years, and in respect to your throwing things at her and striking her?

Ans. Yes, sir.

Quest. Was such testimony of your daughters, Ella and Gertrude, entirely correct in all particulars—and if not, please make any correction you can in respect to the same, giving 10 your full account of the several occurrences testified to by them, so far as you dissent from their testimony as to the same?

Ans. They were not, in my judgment; I never struck her at the table; I never used obscene language to her at the table when my family were present, which I think that states.

Question read again to witness at his request—he says—That was for three years past—up to her leaving.

[Counsel says]—The inquiry relates to the last three years prior to her leaving your house at Bayonne. 20

[Witness]—Three years ago there was a great many serious difficulties existing between Mrs. Close and myself, on account of her improper conduct; from that time along we have had a great deal of controversy about those matters—she charging me with being intimate with the servant girls, and from time to time coming into the kitchen and dining-room where I was and they, brawling about the rooms before the servant girls and my children, and I have invariably taken strong exceptions to it; that and some other matters, such as her leaving for a night or two alone occasionally without my consent, and 30 saying she might stay all night or she might not, but always staying one or two nights, and as I supposed at her Uncle Banks; and on asking him, he replied—[Mr. Banks' reply objected to by complainant's counsel]—that she never staid at his house on such occasions; and I never have heard nor do I know where she staid; I have from time to time remonstrated with her against these clandestine visits, from circumstances that mainly lead to the differences between us from the commencement of the three years; from that time forward, so far as language is concerned, 40

- I used very strong language, and some parties present not knowing the circumstances, might consider obscene; about that state of circumstances existed down to about the last four or five months, I should think, when there appeared to me to be a great change in her, in her feelings and sentiments, disregarding any of my wants and necessities that I think it is the duty of a man's wife to furnish; she, up to two or three months ago, I don't recollect dates, she left her home with her own accord—[objected to as not responsive by complainant's counsel]—packing up all her clothing, sending them to New York, bidding me good-bye when she left, and saying she was going on a visit for two or three weeks; she came back also of her own accord in about three weeks, and resumed her position in the house; after her return she commenced the same old system in the dining room of implicating me with the servant girls; I told her I would not hear such things any longer if I could help it, and directed her to go up stairs; she said she wouldn't for me; I said, if you don't go up I will carry you up; she said she wasn't afraid of me, and dared me to touch her, and if she would go up I would not do it; she said she would do as she was a mind to; I then put my arm around her waist, took her out of the dining room where the servants were, carried her about half way up stairs, the first flight, when she began to kick and strike me in the face; took hold of the bannister; tried to push me down stairs; came very near it; I was unprepared for the attack; screaming at the same time in one of her hysteric fits, which noise brought my daughters, including Mrs. Bailey, to the platform on the stairs above us; Mrs. Bailey descended; she got about opposite me on the stairs, on the same step, made her grab to catch me, missed, or slipped, or fell over, losing her balance, and fell down stairs; at that time Mrs. Close had hold of the bannister holding on; I had let go of her and told her—now, said I, go up stairs; she said, I will, and she went of her own accord, I had no cane with me at that time; never struck her, or kicked her, or attempted to injure her in any respect; after that some time, I don't know how long, several days—[objected to as not responsive]—she went away three days and three nights as she usually has done on those occasions, leaving her little nursing

baby about three months old, I think it was; on her return she was very defiant, and wanted to know of me—[objected to as not responsive]—if I would not make some arrangements with her to allow her a certain sum of money every year for her own use; I told her I did not think I would; [objected to as not responsive;] finally asked her how much she wanted; she said about \$8,000 a year; I told her there was no use of considering that matter at all; she having been confined with this child some three months previous, and having the nurse there; I had not slept in the room with her since her confinement; she stated this matter must be settled some way that time; I told her if it would settle our difficulties, we would go up stairs together that night and try to live together as man and wife ought to; she declined; soon afterwards I learned—[objected to as not responsive, and as hearsay]—of her operations around New York, and she being in the habit when I remonstrated with her of clearing out without hearing what I had to say, I made up my mind that she should hear what my objections were to her conduct, and after going up to our bedroom once or twice, and when sitting there, altered my mind about it, feeling that we had had enough of those difficulties, but felt it a duty—[objected to]—to myself and family to remonstrate with her against those acts; she sitting in the chair with her infant in her arms, I commenced talking to her; she immediately arose and started to leave, as usual; I standing between her and the door; being very lame with rheumatism, I usually carry a cane; at this time I had one of those light sticks which I usually carry about home merely bent at the top, in my hand; as she attempted to leave I put that against her breast in this way, between the child and her head; said I, trying to hold her back from leaving—said I, now I want you to stay and hear what I have got to say; she commenced screaming and hollowing in her hysteric way, which brought the girls to her assistance; they came on the side between her and me, and pressing the cane pretty hard, pulling it off towards me, it slipped over her shoulder and struck or hit the two girls; she then made her escape into the entry down stairs; I followed her down; she was looking in the glass or putting her hat on—appeared to be fixing to go out; I put my hand on her arm, and told her not to be fool-

ish; I think she dropped her hat; I think she dropped her hat and ran out the door—the front gate—about three rods from the stoop; I suppose that latches itself by a weight attached to it; in her haste she ran against the gate, and the rebound nearly knocked her down; she afterwards came back—took her baby; got Mr. Maxwell's servant girl to come with her; I did not see her come in; she came the back way, up the lane; the first I saw of her after that she came out of the front door, her little satchel in her hand, girl and baby with her, and said to me, "good-by, pa, I am going on a visit for a week or two;" my reply was, stay as long as she pleased and I hoped she would have a pleasant time; that, I believe, is about the history of affairs for the three years between us.

Quest. In your direct-examination you said you had heard the affidavits and the bill in this suit read—did you pay particular attention to those passages in the affidavits on the application for alimony, where it is stated that you made use of violence, abuse, profane, and obscene language towards your wife, in the presence of your children?

20 Ans. I have no hesitation in saying, that I probably made use of profane, and as I said before, parties not knowing the circumstances, might think I used obscene language to her, and there may have been occasions when some of the children were present; having so many children they are generally scattered over the house.

Quest. You did pay particular attention to those passages in the affidavits containing such statements—did you?

Ans. Yes, sir.

30 Quest. Your last answer is what you have to say in respect to the same?

Ans. Yes, sir.

Quest. When and where were you married to your present wife?

Ans. At Hopkinton, Mass., about twenty-five years ago; I don't recollect exactly to the year.

Quest. How long have you resided at Bayonne?

Ans. Nine years next May; we came down the latter part of April.

Quest. When did you purchase your place there?

40 Ans. About eighteen years ago.

Quest. For what price?

Ans. \$400.00 per acre.

Quest. How many acres did you buy at \$400.00 per acre, then?

Ans. Deed called for 51 73-100 acres.

Quest. Have you bought any more land there since?

Ans. No; not on my own account.

Quest. Have you sold any part of your original purchase?

Ans. No, sir.

Quest. Are you now in business?

10

Ans. No, sir.

Quest. When did you retire?

Ans. 1861; have done no business since.

Quest. Have you, since you retired from business, brought up your family to live in a handsome manner as befits your station in society?

Ans. I have; in accordance with the means I could use.

Quest. Have the younger children been brought up as liberally as your daughters, Ella and Gertrude were, at the same age?

20

Ans. Yes, sir.

Quest. Have you afforded all of them the advantages of the best and most liberal education in expensive schools and institutes of learning?

Ans. I consider I have.

Quest. Have your older children been educated and dressed in the manner calculated to enable them to make a creditable appearance in the society in which your family move?

Ans. I feel that they have.

Quest. When did you last give your wife any money for 30 the necessary expenses of herself and the children?

Ans. The last amount I gave her—she asked for \$50.00—for herself, it was about the time she left the first time.

Quest. Was it in June or July last?

Ans. No, sir; I think it was in September or October.

Quest. Did you not say that the first time she left was in June or July?

Ans. No, sir, I think not.

Quest. Are you sure the last time you gave her any money was the first time she left you?

40

Ans. About the first time she left; I don't remember the date.

Quest. When, prior to that, had you given her any money for the necessary expenses of herself and the children?

Ans. At various times previous to that, when she asked for it.

Quest. Did your wife apply to you at any time for money to purchase the clothing and goods necessary to prepare herself and the children for the coming winter?

10 Ans. No, sir.

Quest. Did she not make several applications to you to furnish her the money to make the necessary preparations for herself and children for the present fall and coming winter, and did you not tell her in substance that she should never have another cent from you?

Ans. No, sir.

Quest. Do you know James H. Pelton?

Ans. Yes, sir.

Quest. Have you not told him since the 1st of August last  
20 that your wife had made such applications to you for money, that you had refused them, that you would so fix and tie up your property that she would not get another cent, or words to that effect?

Ans. I have, since she left for good.

Quest. Have you not told him that you would make Mrs. Close so damned poor that she would have to beg a crust of bread, and that she would never get a damned cent from you?

Ans. Strike out "make," and put "be" there, and I did tell him so.

30 Quest. Did you not tell him that you had told Mrs. Close the same thing in substance?

Ans. Very likely; I was willing to tell her anything I told any one else.

Quest. In your direct-examination you have said in reference to certain gloves, that none of your family have received any of those goods—are you not aware that those goods, so far as they have been delivered, were partly for the necessary and proper apparel of your wife in her position in society, and chiefly for the use of your children, whom your wife  
40 desires the charge of?

Ans. No, sir; it is my opinion—[objected to]—that ladies' gloves are not suitable for little children at \$2.00 a pair.

Quest. Are not three of the children young ladies?

Ans. No, sir.

Quest. How many of your wife's children do you consider young ladies?

Ans. Three, altogether; Ella, Gertrude, and May.

Quest. Where is May?

Ans. I don't know; I havn't seen her since her mother induced her to go away. 10

Quest. You said on your direct-examination that your real estate at Bayonne was about forty-eight acres, taking the streets out—have streets been laid out through it recently?

Ans. One street; 27th street on the north side of it was opened last summer, taking an area of ground from my property 25 feet wide, 2,500 or 2,600 feet long; there has been no other street cut through it in two years.

Quest. Prior to that had any other streets been cut through it?

Ans. Yes, sir; Avenue A on the Newark Bay side. 20

Quest. Has any map of the property, or including the property, ever been made showing other streets in contemplation?

Ans. Yes, sir.

Quest. What streets?

Ans. Avenue B, Avenue C, 25th street, 26th street.

Quest. Was this done by you or with your consent?

Ans. No, sir; it was done by commissioners appointed by the legislature to lay out that part of Bergen Point below the Morris Canal; that is what constitutes Bayonne City.

Quest. And your property is all within the city limits, is it? 30

Ans. Yes, sir.

Quest. Is it in a portion of the city which is valuable, and has largely increased and is still increasing in value?

Ans. I consider it about medium value in comparison to the property in the city.

Quest. Have you ever computed how many city lots you have there, taking the streets out?

Ans. Nearly so.

Quest. About how many did you make it?

Ans. Between 600 and 700; I think they have altered 40

some of the Avenue 3, which they laid out at first at seventy feet to one hundred feet wide; city lots are laid out at twenty-five by one hundred feet.

Quest. Do you know of any recent sales of similar city lots in Bayonne?

Ans. No, sir.

Quest. How lately have you known of such sale?

Ans. There has not been any to my knowledge sold there.

Quest. Do you know of any for sale?

10 Ans. Not single lots—no, sir.

Quest. Could you buy any single lots like yours for \$1,500 a lot?

Ans. I never tried; the nearest I can come to that matter—[objected to as not responsive, by complainant's counsel]—I bought two lots or bargained for two near the corner of Avenue B, opposite my dwelling on Twenty-sixth street, about four or five months ago for \$400 each, they being twenty-five by ninety deep.

Quest. Have you, in the last few years, sold any hay off  
20 your place?

Ans. Yes, sir.

Quest. What amount of hay did you get off your place last year?

Ans. From thirty to forty tons.

Quest. Did you sell any of it?

Ans. \$100 worth.

Quest. What was it worth a ton?

Ans. I sold it for what we considered \$20 per ton.

Quest. Was your crop of hay last year an average crop?

30 Ans. No, sir.

Quest. What is an average crop?

Ans. It is owing to the age of the meadows; I should think it would cut from thirty to forty tons a year—that is an average crop.

Quest. You said in your direct examination that you sold a piece of property in New York—for what price did you sell it?

Ans. \$35,000; I received that amount less \$10,000 mortgage on the property.

40 Quest. When did you make that sale?

Ans. I think it was a year ago last March.

Quest. With whom did you deposit the money received on that sale?

Ans. With Wm. Banks & Co., of New York, 79 and 81 Duane street.

Quest. Do they allow you interest on the balance of deposits with them?

Ans. They allow me interest on the average of the account whatever it averages; they average it every six months; I deposit my funds there, and draw what I want. 10

Quest. How much real estate do you own in the District of Columbia?

Ans. The company own that—that I am president of the Glenwood Cemetery Co—about ninety acres.

Quest. What is the capital stock of the Glenwood Cemetery Co.?

Ans. \$100,000; chartered by congress.

Quest. What are the shares?

Ans. \$50 each—2,000 shares; there has been no scrip issued yet. 20

Quest. What proportion do you own?

Ans. I own it all.

Quest. Do you own any land there outside of the ninety acres?

Ans. No, sir.

Quest. Do you sell lots in the cemetery, or rent them?

Ans. Sell them.

Quest. Do you sell them by the foot or by the lot?

Ans. We sell them by the lot, and if they vary, we add or deduct, calling a lot 320 square feet. 30

Quest. What price do you get a lot?

Ans. \$100.

Quest. When did you buy that ninety acres of land?

Ans. Well, it came into my possession about twelve years ago.

Quest. At what price?

Ans. I think—[witness explains]—a friend of mine had purchased it, and failed; he came to me to assist him; the amount agreed upon was \$20,000, and I was to be half owner

if I was a mind to ; he had ordered a mausoleum built at the cost of about \$10,000, other expenses accruing before the bids for the mausoleum were presented, I had advanced in all about \$27,000; the parties having failed, I objected to advance any more unless I was secured; the party deeded the whole property over to me, providing that I should endorse his note to Banks & Mellen for \$5,000, payable in five years, and on his paying that note at maturity, he was to receive a title for his half of the cemetery, by adjusting between us what I had paid out; he raised the money and took the note up, assigning his half of the title to another party from whom he got the money; he failed to pay said party, and said party sold it to me if I would pay the amount of this note and interest, and I paid it, and he deeded me back the half of the property, so that I was the owner of the whole of it.

Quest. Look at the letter now shown you, addressed Miss E. M. Norcross, calling herself Mrs. Close, and signed J. B. Close, and say whether you wrote that letter?

Ans. I did, sir.

20 Quest. When?

Ans. Well, it was some time after she left—two or three weeks—there is no date to it; after I learned—[objected to as not responsive and hearsay, by complainants's counsel]—that she had been purchasing goods in different places without my knowledge or consent; I sent it to her in that shape that she shouldn't, in showing it to any of these parties of whom she had purchased, buy any more goods on my credit; I had advertised two or three weeks previous I would not pay any debt of other parties contracting.

3) Quest. Where did you write that letter?

Ans. In Duane street.

Quest. Look at the envelope now shown you, addressed Miss E. M. Norcross, called Mrs. J. B. Close, No. 17 Park Avenue, in pencil, and say whether you wrote that address on that envelope?

Ans. Yes, sir.

Quest. Did you write that on the same day, and at the same place that you wrote the letter?

Ans. Yes, sir.

40 Quest. Did you enclose the letter in the envelope?

Ans. Yes, sir, and put it in the post office box.

Quest. Did you stamp it with a two cent postage stamp?

Ans. I know it was done—I don't know that I did it myself—I think Mr. Newel did it.

Quest. Mr. Newel who testified before the master on this examination?

Ans. Yes, sir.

[Letter and envelope offered in evidence by complainant, and marked C 1 and C 2. Objected to as immaterial and irrelevant. The letter is read to the witness.] 10

Quest. Was Geo. W. Whitney, chief of police of Bayonne, who has testified on this examination before the master in your behalf, one of your agents referred to in that letter who had invited your wife to return to your home and family?

Ans. Yes, sir—he had my authority and my permission.

Quest. Did you send and authorize him to go to New York for you and see Mrs. Close and her friends, and try to persuade her to return to your house at Bayonne?

Ans. Yes, sir.

Quest. Did you send and authorize him to state for you the 20 condition of matters at Bayonne, in order to induce her friends to advise her to return, or in order to induce her to return?

Ans. Don't remember.

Quest. Did he report to you that he had been to New York on the mission on which you sent him?

Ans. Yes, sir.

Quest. Whose residence is 17 Park Avenue, which you wrote on the envelope *Exhibit C 2*?

Ans. I believe, Mr. John H. Wilcox. 30

Quest. Are you well acquainted with Mr. Wilcox?

Ans. I can't say I am an intimate friend—I know him very well; I first saw him about eighteen years ago.

Quest. Is his wife any relative of your wife?

Ans. Yes, sir, a cousin; Mrs. Wilcox is the daughter of Abner Mellen, who is my wife's own uncle.

Quest. Are you well acquainted with Mr. Mellen?

Ans. Yes, sir.

Quest. And for how long have you been intimate with him? 40

Ans. The first time I saw him was over forty years ago.

Quest. Have you been intimate with him, and have the relations between your families been very intimate for many years?

Ans. Yes, sir.

Quest. His family are among the nearest kindred your wife and children have in this locality?

Ans. Yes.

10 Quest. When Mr. Whitney returned to Bayonne from the mission on which you sent him to New York, did he report his interview with Mr. Wilcox?

Ans. I think he did say something about it.

Quest. Did he not tell you that he called at the house of Mr. Wilcox, that he did not see your wife, but was referred to Mr. Wilcox, and went to the store and had this interview?

Ans. He did not tell me about not seeing Mrs. Close or being referred to Mr. Wilcox.

20 Quest. Did he tell you that he called at the house of Mr. Wilcox, and also went to Mr. Wilcox's store and had this interview with him?

Ans. Yes, sir.

Quest. Have you since the 1st day of October threatened to your children to terminate your existence?

Ans. No, sir.

Quest. Look at the letter now shown you, and say whose handwriting it is?

Ans. My son David's writing—David who was examined before the master in my behalf.

30 Quest. Do you remember the occasion to which he refers in that note, when your children received from you the impression that you intended to shoot yourself?

Ans. I remember the occasion you refer to; my family on both sides have been subject to paralysis—have died from it; —[objected to as not responsive, by complainant's counsel]—I had felt all the symptoms, so far as I know, the night before, and especially at one time during the night or near morning I was so paralyzed I could not get out of bed; supposing it might occur in a short time, I made what I supposed was proper arrangements for that event.

Quest. Did your arrangements contemplate or require the exhibition of fire-arms to any member of your family?

Ans. I can't say that they did; I can answer that better by saying that I never exhibited any to them.

Quest. Did you call in a physician?

Ans. No, sir.

Quest. Don't you know that your children on that occasion distinctly understood from you that you intended to commit suicide, or threatened to do so to them?

Ans. No, sir—nothing of the kind.

10

Quest. Do you remember that chief of police Whitney staid with you or at your house on the night your wife last left, till two or three o'clock A. M.?

Ans. No, sir.

Quest. How late do you remember the occurrences of that evening?

Ans. Well, I should think, probably, till I went to sleep.

Quest. After the commencement of this suit, and before your examination here, did you prepare what you call a history of the difficulty between yourself and wife, in writing?

20

Ans. Partially so.

Quest. Did that statement, so prepared by you, contain obscene words, and language, and expressions, and references unfit and improper for the eye or ear of any pure minded and unmarried girl?

Ans. No further than was necessary to express the facts that were charged.

Quest. To that extent did it contain such words, language, expressions, and references?

Ans. Yes, sir.

30

Quest. Did you exhibit that statement to, or have it read or copied for you by either of your boys or either of your children?

Ans. I had it copied by one of them; they took it into their own room and copied it at my request.

Quest. For what purpose?

Ans. For the purpose of defending the suit against me; I supposed this was the preliminary matter of the main suit.

Quest. Is it in your opinion a proper exercise of parental

government to permit one of your children to copy a statement of that character for that purpose?

Ans. I see no impropriety in it under the circumstances.

Quest. Was that statement when so copied furnished by you to your counsel in this suit?

Ans. It has been.

Quest. Have you in the last few years kept at your house and used liberally a full assortment of liquors, gin, brandy, and whiskey?

10 Ans. Yes, sir; I can answer yes to each of them, and cider if you want, and beer.

Quest. Which of the above mentioned spirits has been your especial weakness?

Ans. I don't take anything very weak; I adopted the plan over thirty years ago never to drink anything stronger than brandy, if I knew it.

Quest. How much brandy can you drink at a sitting without being drunk?

Ans. I never tried it.

20 Quest. How do you do your drinking now-a-days—along through the morning, and along through the afternoon, or entirely in the evening before you go to bed?

Ans. I suppose I can answer that by saying that I do it through my own mouth, at all times whenever I think it is necessary.

Re-direct.

Quest. Have you got all of that \$25,000 which you received from the sale of that house in New York City?

Ans. No, sir.

30 Quest. How much of it have you left?

Ans. About \$11,000.

Quest. What has become of the rest of it?

Ans. I have had to use it for the purpose of making up the deficiency in my family expenses over my income.

Quest. Then your family expenses during the past few years have exceeded your income?

Ans. Yes, sir, largely.

Quest. How much per year?

Ans. About \$8,500 to \$9,000.

Subscribed the 23d day of November, A. D. 1870, before

JOHN S. DEHART.

Adjourned to November 25th, 1870, at 9 A. M.

Examination resumed pursuant to adjournment. The testimony taken to-day is to be subject to all legal objections which may be taken thereto at the hearing before the Chancellor.

*John H. Wilcox*, a witness for the complainant, being duly sworn, saith—

I reside at 17 Park Avenue, New York City; I own my house; worth \$40,000; it is in a fine location; very best; my place of business is at fifty-nine Fourth Avenue; John H. Wilcox & Co.; business is manufacturing of hair and bedding; I know the complainant, Ellen M. Close; is a relative of my wife; a cousin; she is staying at my house, and has been there about six weeks; I know the defendant, Joseph B. Close; know his son-in-law, Jordan L. Bailey; Mr. Bailey was at my place of business with his wife and Mrs. Close about the middle of August last; he then expressed his opinion as to Mr. Close; he said that Mr. Close was a very bad man; no one knew how bad he was; that he had, at the request of Mrs. Close and his wife, called upon me for my advice—Mr. Close having abused his own wife and knocked Mr. Bailey's wife down a flight of stairs; I said something must be the matter with the man; must be rum crazy; he replied, yes, that was the trouble; that is about all he said at that time; I had a conversation a day or two afterwards; Mr. Bailey came to my store again and repeated substantially the same in the presence of my son Oscar; previously to the occasion when he came there with the two ladies he had stated that Mrs. Close had a great deal of trouble with her husband from his ill treatment; I have seen a man representing himself as the chief of police of Bayonne City; Mr. Whitney; he called upon me at my store; I had no previous acquaintance with him; I should know him if I saw him again; he stated that he had been at my residence to see Mrs. Close, at the request of her husband, and found that she was engaged; declined to see him; called to see me;

if I wouldn't induce her to have an interview with him; well, he was in my office an hour I should think; talked a great deal; well, he said Mr. Close felt very bad; wanted him to request her to come back again; that he had reformed and promised to be a better man; he stated that his habits had been very bad; he had seen him drunk and intoxicated the time his wife went away; I think it was the last time he (Whitney) went over with her to protect her; after she had gone the old man says, "Gentlemen, walk in, let's have something;" he took a little; the old man filled his glass about two-thirds full of raw liquor; after he had filled his glass he set it down and went to the closet for something, turned his back—while his back was turned he (Whitney) emptied out about half of Mr. Close's glass; he said he thought he had enough; he stated that Mr. Close had come to his house drunk and abusive—that he told him that he would not have such language in his house—that he must get out or he would break him in two—that if he would come to him at his office when he was sober, he would talk to him, as he was a public man and expected abuse; Mr. Close went away and came back to him the next day, somewhat sober, but still under the influence of drink; he again stated that he was sorry for his treatment towards his wife, and requested him to come and see her, and get her to come back; that is about all.

He said that he stayed with Mr. Close the night Mrs. Close went away; he came back at 9 o'clock p. m.—he found that Mr. Close had gone to bed with his clothes on, intoxicated; he stayed there till about 2 o'clock that night to protect the young ladies, fearing that Mr. Close might get up in the night and abuse them; Mrs. Close and her children have visited at my house from time to time, ever since I have been keeping house; during that time they have visited our friends; I know some places where they visited when they resided in New York—they visited Mr. Abner Mellen's and Mr. William Banks, Mr. Samuel Smith, Samuel T. Peters, Samuel French's family—they all stand well in society—they are all people of means; I am a married man—I have two children; from my experience as a man of family and knowledge of the position of Mrs. Close and the children, I should say \$2,500 for Mrs.

Close, and \$1,000 a year for each of the children, to bring them up, educate and clothe them as they ought to be, would be little enough.

Being cross examined, saith—

When Mrs. Bailey and Mrs. Close came to my place for advice, I told her she had better go back again—I thought it would be all right down there; she wanted me to write to Mrs. Mellen and state her case to her friends there—they were then at Sharon Springs; I told her if she did not think it was safe she could come to my house and stay, where she was welcome; the conversation was desultory—it lasted half an hour; I cannot recollect any more at present. 10

This conversation took place in the office at my store; there are the counting-room and the office communicate—my private office—simply a fence five feet high divide the office from the counting-room; I have no office up stairs.

I and Mrs. Close went up stairs that day to have a private conversation—Mrs. and Mr. Bailey were with us—we went there to retire from my clerks, so that they would not hear all that was said; the conversation was—Mrs. Close and Mrs. Bailey repeated Mr. Close's abuse to them—Mr. Bailey listened to the whole of it; Mrs. Bailey stated that Mrs. Close and her husband had serious trouble—that in going to her mother's assistance Mr. Close had knocked her down stairs; that is about all. 20

There is a lounge in my private office down stairs—I was sitting upon that some portion of the time while we were talking, and the other time I was sitting upon the chair; Mrs. Bailey and Mrs. Close were sitting upon the lounge and Mr. Bailey in a chair facing us and close to us. 30

I should think they were in the store about half an hour altogether; there is not a lounge up stairs; we all stood by the window; Mrs. Close expressed a conclusion as to returning to Mr. Close's house; she said she would go back to Mr. Close's—the children were there.

Quest. Did you not tell her on that occasion that she had better return to her husband—that you did not think she had sufficient cause for divorce, that she had better provoke him

to commit some overt act, so that she could have good ground for a divorce?

Ans. No, sir.

The next conversation was at my house; after my family had returned; when she came up and said, that her husband had again abused her; I advised her to go back, that was her duty to her children and her husband; when he put her out by force, if he did, she could come to my house and was welcome there, until she could make other arrangements—that is  
10 about all—that is the substance.

I think she went home and came back; it has been a subject that has been thoroughly discussed, at my house, the last six weeks; I can't tell all that was said; I expressed special surprise to see her come into my house with a baby and Mr. Maxwell's servant girl and his son; in asking her how it was, she said her husband had driven her from her home—well, that is about all that amounted to anything; she has staid at my house since; it was about six and a-half o'clock when Mrs. Close came in with Mr. Maxwell's servant girl; I did not give  
20 her any advice that evening; I don't recollect of giving her any advice, special, since that; she stated that Mr. Close had sent an agent there—Mr. Whitney—and asked me what I had better do—my reply was that if Mr. Close was penitent, he ought to call and see her—that he was accessible to my house at all times—that I knew nothing against Mr. Close, personally; that all I have heard was report; if he didn't like to come alone, Mr. Mellen, his uncle-in-law, and Mr. Banks would come with him; I said I was anxious to see her pleasantly situated; that is the purport of the full advice that I  
30 have given her since she has been at my house.

Quest. Did you not advise her to run Mr. Close in debt all she could before she began a suit for divorce?

Ans. No, sir.

Quest. Do you not know that she did so to the extent of nearly \$2,000? [Objected to.]

Ans. Not of my own knowledge—I have heard that she did.

Quest. Did you ever hear it from her? [Objected to.]

Ans. She told me that she purchased several bills for her  
40 self and children—she didn't tell me specially—it was a remark to my family in my presence.

Quest. How long since you first heard her remark it?

Ans. Some five or six weeks since.

Quest. Who is your lawyer in New York?

Ans. I have none at present, having no legal business to attend to.

Quest. Who have you been accustomed to having do your legal business?

Ans. Brown, Hall & Vanderpool and Thomas D. Robinson.

Quest. Has Mr. Forster, the counsel here, or his partner, ever done any law business for you? 10

Ans. No, never, in any way, shape, or manner.

Quest. Did you not take Mrs. Close to the office of Weeks & Forster, in Wall street?

Ans. I never went to Mr. Forster's office with her.

Quest. Was it through your advice that she procured counsel to proceed in this suit, or did you advise her to procure counsel?

Ans. I did not advise her to procure counsel, originally.

Quest. What conversation have you had with her concerning that matter, and where, and when? [Objected to.] 20

Ans. At my residence; can't say when; I told her if she was determined to make a case against Mr. Close, she had better employ the best counsel possible; I think that is all I have ever told her or advised her.

Quest. Have you not promised to assist her in paying the expenses of this suit against Mr. Close?

Ans. Pecuniarily, not one cent—not even promised that she could stay at my house, freely, my wife being an invalid; I did suggest she could stay there three or four weeks; she has staid six. 30

Quest. How long have you known Mr. Close?

Ans. Twenty years; I have been in the habit of seeing him frequently during that period of time; I don't think I have heard anything against Mr. Close's character, except from the source I have stated.

Re-direct.

Quest. On your cross-examination you have stated that Mrs. Close remarked in your presence, that she purchased sev.

eral bills for herself and the children—did she say that those purchases were necessary to supply her or their pressing wants, at the time she made the remark, or anything of that kind?

Ans. Yes, she did say they were for their wants—that they had asked for clothing for the winter, and Mr. Close refused to get it.

10 Quest. Did she say anything as to Mr. Close's refusal or failure to furnish her with money, or how lately within the past six months he had furnished her with money, in any of these conversations, as to which you have testified on your cross-examination—if so, what did she say on those subjects?

Ans. I have heard her say—the last and only money that he has given her, adequate to her personal necessities, \$50, last July; she had asked him since, and he had refused her, unless it was for car fare to come down to New York.

20 Quest. With regard to the \$2,000, which you say you heard she had run Mr. Close in debt, did you also hear at the same time that Mr. Close had stopped the great part of the goods covered by the bills for that \$2,000, and that she had been unable to get the goods she had so ordered by reason of his stopping their delivery—and what did you hear on that subject, if anything? [Objected to as leading.]

Ans. Heard that Mr. Close had been to three or four of the establishments, and forbidden the delivery of any goods purchased by any person calling herself Mrs. Close; I heard that she had been unable to get them in consequence.

Re-cross-examination.

30 Quest. Have you taken any interest in behalf of either of the parties to this suit? [Objected to.]

Ans. No further than duty as a charitable man prompted to both sides.

Quest. To which side has your charity inclined?

40 Ans. I have always thought equally well of Mr. and Mrs. Close, until the report of these serious troubles—always considered Mr. Close as a gentleman in every respect; consequent to these feelings I sent him a message through his agent, Mr. Whitney, to have him come and see his wife, at my house, with Mr. Banks, Mr. Mellen, or any other friend

he chose, to try and settle the unhappy matter; my words have been similar to Mrs. Close, no stronger and with no other motive but to have them again united; hence, I don't feel that I have leaned on either side, and consider that I have been perpendicular in all respects; the most serious things I have heard have been through Mr. Close's agent, Mr. Whitney.

Quest. If your feelings are entirely impartial in this difficulty between Mr. and Mrs. Close, how happens it that your recollection of matters which are favorable to her, is so good, 10 and those which would be favorable to him, so bad? [Ob-  
jected to.]

Ans. I don't remember that my recollection has been at fault in answering questions as to events on either side.

JOHN H. WILCOX.

Subscribed and sworn the 24th day of November, A. D. 1870,  
before

JOHN S. DEHART, M. C.

*Samuel French*, a witness produced for the complainant,  
being duly sworn, saith— 20

I reside at No. 9, Park avenue, New York; know Mr. Close; have known him twelve or fifteen years, more or less; know his wife and family; Mr. and Mrs. Close and some of the children have visited at my house; Mr. Close and I have been intimate friends, and are so still, so far as I know; I am a married man and have a family.

Quest. Can you state from your acquaintance with Mr. and Mrs. Close and family, and from your own knowledge of the expenses of living, what would be a reasonable and proper annual allowance for the support and clothing of Mrs. Close, 30 and also for the proper support, clothing, and suitable education of each child? [Objected to.]

Witness says, that would be of course for support in the country; there would be a large difference between the city and country.

Counsel. Answer as to each, if you please?

Witness. I should think Mrs. Close could support herself respectably, for from \$2,000 to \$3,000 a year, and for the

children, at from \$500 to \$1000 a piece, in the country; and they can't live as well in the city for much less than double.

Quest. What is your business?

Ans. Publisher and printer, at 13 Park Row, and 122 Nassau street, New York City.

Being cross-examined.

I have a wife now and one son.

10 Quest. It is quite an aristocratic place where you live—is it not?

Ans. It is just as a man may think—I do not think it an aristocratic place.

Quest. For what would a house, such as you live in, rent for in that vicinity?

Ans. A house, without furniture, would rent for \$2,500 to \$3,000.

Quest. How much does it cost you for your necessary expenses?

Ans. I couldn't tell you; I have many that are unnecessary.

20 Quest. Have you lived in the country with your family?

Ans. No, sir, not with my family; previous to my having a family I lived in the country.

Quest. Upon what knowledge do you base your estimate for expenses for living in the country?

Ans. From what my expenses were, and others that I have lived with previous to my coming to the city, and from my frequent visiting in the country, and conversing with parties as to their expenses.

Quest. How long since you came to the city?

30 Ans. Some twenty years ago; I came from Massachusetts, town of Randolph, county Norfolk; I was a single man when I came from the country.

Quest. What were your expenses then? [Objected to.]

Ans. My individual expenses were about \$400 a year.

Quest. Is your basis for expense for living in the city based upon New York City?

Ans. Yes, sir.

Quest. Upon what facts do you base your opinion?

Ans. From what I know to be the rents and expenses of ordinary families in the city.

Quest. What families have you reference to?

Ans. Such as Mr. Close and myself are acquainted with.

Quest. Name some of them?

Ans. I don't care to name them; I mean families of clerks on moderate salaries, and so on up to merchants; I respectively decline to give any particular names, unless there is a special object.

Question repeated.

10

Ans. I should rather not answer; I don't see any good of putting in names; I know the rents and have general experience; I mention Mr. William Banks, Mr. Marshall—there are a large number; the only objection I have to mention names, is that I don't like to mention them; having no right to bring their names in; I have had a very general experience of the rents, especially since the war; I will give you Mr. Ward and Mr. Brooks—don't know their first names—P. H. Drake and E. A. Brooks.

Quest. Where does Mr. Brooks live?

20

Ans. East 34th street, between Lexington and 3d avenue; Mr. Marshall lives in the same block; Mr. Drake lives in 34th street, between Park and Lexington avenues; Mr. Ward and Mr. Brooks live in 30th street, between Lexington and 4th avenue; two of these parties keep horses and carriages—Mr. Drake and Mr. Banks.

Quest. What do you know about their expenses?

Ans. I know their rent and I know the cost of marketing, of gas bills, coal, and I know the prices generally—the cost of clothing, of school bills; the cost of clothing a child from six to fifteen years, yearly, is from \$150 to \$200 on an average; the board would cost in a cheaper locality, down in Fourth to Bleeker street, is \$5.00 per week—this was the price for board for a boy about seventeen years old—this is in a common class of boarding houses; the schooling in the first class schools of New York, it would cost from \$200 to \$300, ordinary branches without music.

Quest. Do you know anything about the expenses in educational seminaries in the country?

Ans. Yes, sir, \$400 or \$500 to \$1000 ones, and you can pay a good deal more for more expensive ones.

Quest. What seminaries do you refer to?

Ans. Such as Fairchild's, of Flushing; it is difficult for me to give you names; in my business I receive circulars from a great many; I have sent out circulars of my own business to several thousand of them—seminaries of Great Barrington and near Utica, New York.

SAM'L FRENCH.

10 Sworn and subscribed the 24th day of November, A. D. 1870,  
before

JOHN S. DEHART, M. C.

*Margaret A. Maxwell*, a witness produced for the complainant, being duly sworn, saith—

I live right opposite Mr. Clôse, at Bayonne City, on the Plank road; I don't know Mrs. Close intimately—I know her; I remember the occasion when she left with her baby; I lent her my servant—she requested me to; my servant girl  
20 went over to New York with her to carry the baby; on a Sabbath afternoon prior to that, I saw Mr. Close use violence to Mrs. Close; it was some weeks before I heard a noise in my own house—I came out—I saw Mr. and Mrs. Close on the stoop; I saw him kick her off the stoop, and ask her why she had ordered him down stairs in his own house; the noise was the sound of voices, loud; those are the words I heard him repeat, and also profane language, which I wouldn't want to utter.

Being cross-examined, saith—

[Counsel for defendant objects to the whole of the testimony  
30 of this witness as irrelevant.]

I live as near opposite to Mr. Close as can be; I was in the garden when I saw and heard this; two fences were between me and Mr. Close's house; there are trees and shrubbery in Mr. Close's yard; my house is lower than his; I could not give any idea what the distance is—I never heard it; his house stands back some distance from the road; so does mine; they are on opposite sides of the Plank road; I

don't know how wide the Plank road is—it may be seventy feet—I don't know; Mr. Close sued my husband; a paper was left at my house for me by some officer; I don't remember whether there was more than one paper; I know there was one; it was for rent due for the store; the lawyer settled the suit; my husband authorized him to do it; I have never had any feeling against Mr. Close.

MARGARET A. MAXWELL.

Sworn and subscribed the 24th day of November, A. D. 1870, before

JOHN S. DEHART, *M. C.* 10

*James A. Maxwell*, a witness for the complainant, being duly sworn, saith—

I live at Bayonne City; have lived there two years; know the value of real estate there; know Mr. Close's property; I can't say how many acres there are; it extends from the Plank road to Newark bay; it is worth about—some of it, from \$500 to \$1,000 a lot—lot 25 × 100 feet; some of the choice lots are worth pretty near \$1,000; any of the lots \$500; the last witness is my wife; I heard her testify; I saw the occurrence on Sunday to which she testified, and I corroborate her statement. 20

Quest. Did you see Mr. Close kick his wife off the stoop?  
[Objected to.]

Ans. I did.

Quest. What did you see Mr. Close do on that Sunday?

Ans. I saw Mr. Close kick Mrs. Close off the stoop?

Quest. Did you hear any language?

Ans. Yes, there was a good deal of language used; he was very much excited at the time; as near as I can remember, it was, "You damned whore, you order me out of my own house, do you?" I believe the children were all there near where I was; the language was very loud. 30

Being cross-examined, saith—

I stood about ten feet from my stoop when this occurred, nigh the front fence—directly in front of my stoop; the difficulty was on the top of Mr. Close's stoop when it commenced; it was all over the stoop before it got through.

Quest. What part of the stoop did that difficulty to which you have reference, occur upon?

Ans. Top part.

Quest. How far does the stoop extend?

Ans. Well, there is a verandah that passes the whole front; the stoop is from ten to twelve feet—may be more—I mean wide.

Quest. How long is it?

10 Ans. Ordinary width of stoops—five or six feet; I am not aware that Mr. Close's property is laid out in lots; it is something like a farm, uncultivated; I don't know whether it yields much income; a portion of it is cultivated—about two or three acres; vegetables are raised upon it; don't own any land there; never did; I believe one street is cut through—called Avenue C; it runs to the point on the side next to Newark Bay—I don't know its name—I thought it was Avenue C; I am not aware that I have been sued by Mr. Close; I got a notice; it never came to a suit, that I am aware of; I am not aware that a person is sued as soon as he is served with  
20 a process; I received a notice of that kind; I consider Mr. Close a friend of mine—always did—no feeling whatever—only friendly as far as I am concerned; came here to-day under subpœna; very much against my will or wish.

JAMES A. MAXWELL.

Sworn and subscribed the 24th day of November, A. D. 1870, before

JOHN S. DEHART.

30 *James Guy*, a witness for complainant, being duly sworn, saith—

I live at Bergen Point, Bayonne City, with the Rev. Geo. Zabriskie; I am gardener; I have seen Mr. Close; have lived with him; I went to him in 1869, and lived with him a little over a year, and left May 30th, 1870.

Quest. During the time that you lived with Mr. Close, did you see any violence or hear any language made use by him towards his wife in the presence of his children or any of them—if so, what did you so see or hear? [Objected to, because irrelevant and immaterial]

Ans. I have heard him make some language, but have not seen him; I was in the kitchen when I heard that, and he was in the dining room.

Quest. What was the character of the language you so heard? [Objected to.]

Ans. I have heard him blaspheme and—well, I just couldn't say the words that Mr. Close said.

Quest. What was the nature or substance of them, as near as you can give it? [Objected to.]

Ans. I have heard him call her a whore; say it was the 10 street she ought to be on; I believe that is all I heard that I can recollect that time.

Quest. How was Mr. Close in his family when you were there; was he, when in the house, usually with his wife and children, or where was he? [Objected to.]

Ans. He was generally in the kitchen with the girls; with servant girls.

Quest. What was he doing there?

Ans. Talking with the girls.

Quest. What do you mean—giving them directions as to 20 their duties about the house, or conversing with them in a familiar manner? [Objected to.]

Ans. Sometimes conversing with them, other times telling them what to do.

Quest. Was he ever telling stories, joking, or laughing with them? [Objected to.]

Ans. Yes, sir.

Quest. All of those?

Ans. Yes, sir.

Quest. How frequent? [Objected to.] 30

Ans. Four or five times a day.

Quest. How frequently did you in the kitchen hear him in the dining room using blasphemous language, or language of the character mentioned by you? [Objected to.]

Ans. About once in two weeks; probably a little oftener, I disremember.

Quest. Do you mean that his use of such language was constantly recurring at about the lapse of that interval of time while you were there? [Objected to.]

Ans. Yes, sir. 40

Quest. When these occasions came around, was his language loud?

Ans. Yes, sir.

Quest. Were these occasions at any particular part of the day?

Ans. Generally in the evening.

Quest. Do you know whether Mr. Close had been drinking any on those occasions? [Objected to.]

Ans. That I couldn't say; I havn't seen him.

10 Quest. Did you ever see him drink while you were there? [Objected to.]

Ans. Yes, sir.

Quest. Often? [Objected to.]

Ans. I have not seen him drink oftener than three times a day.

Quest. What did he drink?

Ans. I have drank some of the same; I believe it was Bourbon; he asked me to drink; we both drank together; that took place sometimes as often as three times a day; I  
20 would not be with him three times, but I have seen him three times.

Quest. What was your position with Mr. Close?

Ans. Between gardening and farming; he always treated me liberally.

Quest. During the time you were there did his children have any fear of him, or not, on these occasions of his use of the language mentioned by you at other times? [Objected to.]

Ans. That I could not really say.

30 Quest. What do you mean by that—havn't you any idea on the subject?

Ans. Nothing more than I have heard.

Quest. Heard from whom? [Objected to.]

Ans. From the servant girl.

Quest. What did you hear from the servant girl on that subject? [Objected to.]

Ans. I have heard her say that when he was using that language they would run and hide from him.

40 Quest. Did you ever see Mr. Close affected by the liquor he drank? [Objected to.]

Ans. Yes, sir.

Quest. How often?

Ans. Might see him once or twice a week a little affected by it.

Quest. What effect did it have on him that you saw? [Ob-  
jected to.]

Ans. It generally made him very cross and ugly,

Being cross-examined, saith—

Quest. When you heard him using this language to which you refer, you were in the kitchen and him the dining room, 10  
were you not?

Ans. Yes, sir.

Quest. Could you tell to whom he was using it?

Ans. Yes, sir, by hearing the girls say so; that it was his wife.

Quest. What girl was this?

Ans. The waiter girl.

Quest. What was her name?

Ans. Sarah, they called her; I don't recollect her last name.

Quest. Was she at Mr. Close's when you left? 20

Ans. Yes, sir.

Quest. Is she there yet?

Ans. No, sir; I do not know where she is now.

Quest. Do you know how she left Mr. Close's, whether by her own accord, or whether Mr. Close discharged her? [Ob-  
jected to.]

Ans. I seen her on the day she left; she said Mr. Close discharged her.

Quest. Did not Mr. Close, while you were there, gather 30  
most of the vegetables for family use?

Ans. Yes, sir; peas, beans, and everything of that kind he took into the kitchen and gave the girls directions about shel-  
ling them.

Quest. Help them shell them sometimes?

Ans. Well, I was not in the kitchen at all times; I have seen him carry them in.

Quest. Was Mrs. Close much about the kitchen?

Ans. No, sir.

Quest. Did Mr. Close ever scold you while there?

Ans. He has, once or twice.

Quest. What did he scold you for?

Ans. Sometimes he would tell me to do something; he would come out and say it wasn't done as he said; then he would commence cursing me.

Quest. Didn't he sometimes scold you for being intoxicated, coming home late and lying down stairs?

Ans. No, sir; I never laid down stairs as much as he did.

Quest. Weren't you under the influence of liquor sometimes while you were there?

Ans. No, sir; not that I know of.

10 Re-direct.

Quest. To how many girls did Mr. Close give directions about shelling peas, and how often did they require such directions from him? [Objected to.]

Ans. He gave it to one girl, directions, I couldn't say how often.

Quest. What other girls were there besides the waiter girl?

Ans. Cook, a girl they call the seamstress, who took care of the children—three in all; there was no man there besides me, except one month.

20 Quest. What is this lying down stairs—where was the place, and why was it that Mr. Close laid down stairs more than you did? [Objected to.]

Ans. Those times when he had trouble with his wife he would be sitting in the parlor—I have heard the girls say he would sit in the parlor the most part of the night.

Quest. Where was this—was there a room by the parlor where he would sleep then?

Ans. There was a room, but I don't know whether he slept in it.

30

JAMES GUY.

Sworn and subscribed this 24th day of November, A. D. 1870, before

JOHN S. DEHART, *M. C. C.*

The defendant being recalled by his counsel, saith—

I got no property by my wife; I got my property my economy and hard labor; no one ever gave me \$5 in my life.

Quest. How many children have you had living at home during the last three or four years?

Ans. Nine; two or three of them have been at boarding school.

Quest. The oldest ones are girls, are they not?

Ans. Yes, sir.

Quest. Have you supported them all? 10

Ans. Always, from their birth up.

Quest. Have you kept horses and a coach?

Ans. Not latterly; none for family use in three or four years; not since my buildings were all burned down; probably five or six years.

Quest. In what kind of style have you and your wife been accustomed to live in, moderately and economically or extravagantly, and in an aristocratic style? [Objected to.]

Ans. Well, I should say moderately and economically.

Quest. Have you always lived in that way since you were married? [Objected to.] 20

Ans. Yes, sir; more moderately and economically in former years than in later years.

Quest. The place where you live, is it a grand, stylish looking place, and furnished grand, or is it a moderate looking place and moderately furnished? [Objected to.]

Ans. It is an old dilapidated house, and has been built over fifty years; the furniture is below medium.

Quest. Have you any one else besides your family, which you have mentioned, dependent upon you wholly and in part for support? [Objected to.] 30

Ans. Wholly my father, and partly my brother, and several of my older children; I am sixty-one next April; my wife is about forty-five.

Being cross-examined.

Quest. Is the meaning, which you attach to the words moderately and economically in your testimony on this recall, express by your purchases and use of liquors in your house?

Ans. I did not answer the question, not supposing it included anything but my style of living and household matters.

Quest. Do you not consider the use of liquors, or of other luxuries, a part of the matters which go to constitute the style of living of a man and his family?

Ans. Liquors, I do not.

Quest. Then you do not claim that your use of liquors has been either moderate or economical, but admit that it has been extravagant and imprudent?

10 Ans. I don't admit it.

Quest. Do you apply the term moderate and economical as you understand the meaning of those words to your use and purchases of liquors?

Ans. Not so far as my friends are concerned who call upon me.

Quest. Do you so far as your own personal drinking of liquors is concerned, apply the term moderate and economical to your use of liquors, as you understand the meaning of that term?

20 Ans. As much so as my eating.

Quest. Then in the item of food and provisions for the eating of your family you have been no more moderate or economical than in your own personal drinking of liquor? [Objected to.]

Ans. I believe we have both been supplied with our necessary and proper wants.

Question repeated.

Ans. I know of no better answer than that I have provided nothing more than was proper and necessary for food and  
30 drink for both of us.

Quest. Do you mean to say that you have practiced the same and no more moderation and economy in your provision of food and clothing for your family as in your provision of liquor for yourself? [Objected to.]

Ans. My provision for my family, whether in liquor or otherwise, was all provided for them as well as for myself.

Question repeated.

Ans. Yes, sir; I do not provide any more liquor for myself than anything else for them.

40 Quest. Have you heard the testimony of Mr. Wilcox, Mr.

French, Mr. and Mrs. Maxwell, and Mr. Guy, given before the master this day?

Ans. Yes, sir.

Quest. Are you acquainted with Mr. Marshall, who was mentioned in Mr. French's testimony as living in 34th street, near Mr. Banks?

Ans. Yes, sir; not acquainted with his family; have known Mr. Marshall before the republican party was formed; I think he was a clerk in the dry goods business; I am acquainted with Mr. E. A. Brooks, mentioned by Mr. French; 10 he is one of the employees of my son David, who was examined here the other day.

JOS. B. CLOSE.

Subscribed this 24th day of November, 1870, before

JOHN S. DEHART, *M. C.*

Those parts of the foregoing examination which were taken by question and answer, were so taken because the counsel of the respective parties so desired, and because it seemed necessary that the examination be so taken for a correct understanding of the evidence.

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JOHN S. DEHART, *M. C.*

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