

New Jersey Court of Errors and Appeals.

Between

CHARLOTTE A. FLAVELL, appellant,
and

ABRAHAM W. FLAVELL, respondent.

} *On appeal from de-
cree of Chancellor.*

Bill of Complaint.

[Filed Sept. 10, 1868.]

IN CHANCERY OF NEW JERSEY.

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

Humbly complaining, showeth unto your Honor, your orator, Abraham W. Flavell, of the city of Newark, in the county of Essex and State of New Jersey, that your orator was lawfully joined in the bonds of matrimony to his present wife, Charlotte, on the nineteenth day of March, in the year eighteen hundred and sixty-six, from which time forward until the filing of this bill your orator has been an inhabitant of the State aforesaid, and the said Charlotte has also been an inhabitant thereof; both your orator and the said Charlotte having, during all that period, resided in the city of Newark aforesaid. 10

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

orator unknown; and that, on the thirty-first day of August, in the year last aforesaid, she committed adultery with one George Moore, in said city.

And your orator further shows that by means of the said several premises the domestic peace and happiness of your orator have been entirely destroyed.

In tender consideration whereof, and to the end that the said Charlotte may full, true and perfect answer make to the matters and things herein charged and set forth as fully as if the same
 10 was here again repeated, and she interrogated thereto, and that the marriage between your orator and the said Charlotte may be dissolved, according to the statute in such case made and provided, and that your orator may have such further and other relief in the premises as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Charlotte, commanding her, on a certain day and under a certain
 20 penalty therein to be expressed, personally to be and appear before your Honor, in this honorable court, then and there to make true, full and perfect answer to all and singular the premises, and to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet, &c. And your orator will ever pray, &c.

JOHN W. TAYLOR,

Solicitor and of counsel for the complainant.

State of New Jersey, ss.—Before me, the subscriber, a Master in Chancery of said State, personally appeared Abraham W. Flavell, the complainant in the foregoing bill named, and being
 30 by me duly sworn, on his oath saith, that his complaint is not made by any collusion between him and the defendant in the said bill named for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the said bill of complaint.

ABRAHAM W. FLAVELL.

Sworn and subscribed, this 9th day of September, A. D. 1868, before me, at Newark, N. J.

EMIL SHEUFINER,

A Master in Chancery of New Jersey.

Answer.

[Filed September 24, 1868.]

IN CHANCERY OF NEW JERSEY.

The answer of Charlotte A. Flavell, defendant, to the bill of complaint of Abraham W. Flavell, complainant.

This defendant, now, and at all times hereafter, reserving to herself all manner of benefit and advantage of exception to the many imperfections, uncertainties and defects in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as she is advised is material or necessary for her to make answer unto, she answers and says:

It is true, as stated in said bill of complaint, that she was lawfully married to the said complainant on the nineteenth day of March, eighteen hundred and sixty-six; that this defendant and the said complainant, from the time of their said marriage until the filing of the said bill of complaint, have been inhabitants of the State of New Jersey, and that during all that time they have resided and both still reside in the city of Newark, in said State.

And this defendant, further answering, denies that she ever did on different days or at any day or time in the months of January, February, March, April, May, June, July and August, in the year eighteen hundred and sixty-eight, or in either of those months or any other months or time during her said intermarriage, commit adultery with any person or persons whatever, in the said city of Newark or elsewhere, and denies that on the thirty-first day of August, in the year last aforesaid, or at any other time, she ever committed adultery with one George Moore, in said city of Newark or at any other place whatever, and denies that the domestic peace and happiness of the said complainant has been entirely or in any sense or way destroyed by means of any such alleged premises, or by reason of any such act or conduct whatever, on the part of this defendant.

And this defendant, further answering, says that the charge or charges of adultery made against her in the complainant's said bill of complaint is and are wholly untrue and a most unfounded and cruel imputation, and, on the contrary thereof, this defendant avers the truth to be that she always, since her intermarriage with the said complainant, faithfully regarded towards him her marriage

vows and was always true and faithful to his bed and her obligations as his lawful wife.

And this defendant, further answering, says that the said complainant has wickedly disregarded the solemnity of his marriage vows and the sanctity of the marriage state, and on divers days and times, since his intermarriage with this defendant, at divers places in the city of Newark, and in the State of New Jersey and elsewhere, has committed adultery with divers persons whose names are to this defendant unknown; that the said complainant
 10 now is, and for a year or more last past has been, ill from a vile and loathsome disease contracted by him in and by his adulterous and criminal sexual intercourse with low, vile and abandoned women; that fearing this defendant would apply for a divorce from him in consequence thereof, and with intent to prevent such application, the said complainant and his family, or some of them, secretly took and carried away, and now keeps from this defendant, her marriage certificate, and concocted the vile and malicious
 20 plot of falsely accusing and charging this defendant with committing adultery, as set forth in said bill of complaint, thereby seeking her injury and the destruction of her good name.

All which matters and things this defendant is ready to aver and maintain and prove, as this honorable court shall direct, and humbly prays to be hereon dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

CHARLOTTE A. FLAVELL.

G. W. CUMMING,

Solicitor and of counsel with defendant.

New Jersey, Essex County, ss.—Charlotte A. Flavell, the above named defendant, being duly sworn, on her oath saith that the
 30 matters and things set forth in the above answer, so far as relate to her own acts, are true, and so far as relates to the acts of others, she believes them to be true.

CHARLOTTE A. FLAVELL.

Subscribed and sworn this 23d day of September, 1868, before
 me.

JAMES H. BOYLAN,

Master in Chancery of New Jersey.

Replication.

[Filed Oct. 3, 1868.]

IN CHANCERY OF NEW JERSEY.

Between

ABRAHAM W. FLAVELL, complainant,
and
CHARLOTTE FLAVELL, defendant.

On bill, &c.

Replication.

This repliant, saving and reserving to himself all manner of benefit and advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be 10 ready to aver and prove, as this honorable court shall direct; and humbly prays as in and by his said bill he has already prayed.

JOHN W. TAYLOR,

Solicitor and of counsel for complainant.

Evidence on part of Complainant.

[Filed.]

IN CHANCERY OF NEW JERSEY.

Between

ABRAHAM W. FLAVELL

and

CHARLOTTE A. FLAVELL.

} *On bill for divorce.*

Examination of witnesses in the above stated cause had before the subscriber, at his office in the city of Newark, commencing this 26th day of October, A. D. 1868, the parties appearing by agreement and consent. Present, John W. Taylor, solicitor for complainant, G. W. Cummings, solicitor for defendant.

Abram Flavell, being duly sworn, deposeth and saith as follows:

I know the parties in this suit; I am the father of the complainant in this suit; I reside in the city of Newark; I have resided
 10 in Newark somewhere between twenty-five and thirty years; I was not present at my son's marriage; he was a resident of New York at the time of the marriage; I think it was only a few months that he resided there; he did not keep house there; he has resided in Newark ever since he was married; I know the defendant his wife; they have never been together since the thirty-first of August last, that I know of; they separated then; they separated on account of her conduct; for as much as two months before the thirty-first of August last I saw imprudence that I was very much displeased with; often in private with Mr.
 20 George Moore, when no one was present but themselves; I was not aware that there was anything criminal between them, but I had strong impressions, until up to the 31st day of August; previous to that, for about a week, I put George Moore away from the store, but he still came back, but not to attend the store; on the 31st I saw him there; I took a horse to deliver some goods, and left the store for fully two hours if not more; I was displeased at seeing him behind the counter; I then told Lottie, the defend-

ant, that she could go to her dinner; she went up stairs and I turned my face towards the store door, and I missed Mr. Moore; I went to the back side of the store to see if I could see him, and thought it might be that he had gone into the yard; I saw nothing of him in the yard; I then went easy up the stairs; the door that went into the room where they were was on a crack, about half an inch open; as soon as I opened the door I saw her sitting upon him, with her face towards his, and her clothes were up; as I entered the room she said something in the way of surprise, I could not tell what it was, and jumped off of him; as soon as she went off of him, he put up one of his legs to prevent exposure of his person; his pantaloons were open; I then ordered him up; he replied and said he wanted Lottie, the defendant; I told him that he must get up; he rose up and his pantaloons were open and what he had was exposed; I then came down stairs; he came also, and I ordered him from the house and never to show his face there again. My son was then in a very critical part of his sickness; I hardly expected him to live; I said nothing to the defendant about this. After this I went for her father and brought him to the room where she was. He said to her, why have you brought this disgrace upon the family? She said the devil tempted her.

[All of the statements of the father objected to by the defendant's counsel.]

I don't know that I have heard her say anything in reference to the matter since. I could not see whether Mr. Moore and the defendant had criminal connection; her clothes were up and her legs were over his; I think it was a common chair they were in; I couldn't tell how they were sitting, whether erect or inclined; she jumped off immediately, as I entered the room; I know their faces were towards each other; one time I went into the same room, they were both there private; she was partly undressed, with a cloth about her shoulders, and he was combing her hair; this was a short time prior to the 31st of August; I have found them several times in private together.

I came in the store once and asked Charlie where George was?

he said he was up with Lottie; I said, at the same time, that

he was all the time with Lottie, almost. [Objected to.]

Cross-examined.

And being cross-examined by defendant's counsel, he says:

George Moore had attended my son's store before this, and I

discharged him about a week before this 31st of August; I didn't feel satisfied with his attendance at the store; it had gone behind something like \$500 for the four months previous, and I thought I would attend to it myself, with Lottie's assistance; Mr. Moore was in the store for five or six months; he was some way interested there with my son Abraham in the sale of oil, and for the last five or six months George attended the store, until about two weeks before the 31st of August; I was afraid that as so much had gone astray more would go astray, and I thought I
 10 would attend to it myself; the store had been delivered over to me by my son on account of his sickness and on account of the store going behind; there was no formal sale of the store to me.

Ques. Didn't you discharge George Moore from that store on account of stealing?

Ans. I didn't know of his stealing; I discharged him for fear he would steal; I knew the money was gone; I didn't know who had taken this money; there were several about the store; I didn't know that he had let his father have goods from the store which had not been paid for; I didn't charge him with that or with steal-
 20 ing when I discharged him from the store. [Objected to.]

There was no other clerk in the store at the time he attended it; he was then in the store at the time the money or the stock was lost; he was not attending the store, only selling his oil; at the time I sent Moore away I had the defendant assisting in the store; the rooms that I speak of, up stairs, were the rooms that the defendant and her husband occupied "as a dwelling; when my son got sick I took him home; the furniture, and all the goods they had for housekeeping, still remained there, so whenever the defendant went up stairs she still went to her owl rooms; during all
 30 of the time, or a good part of the time, that George Moore attended the store and was selling oil he boarded up stairs; my son had another clerk who boarded up stairs with him; his name is Charles Meeker; there was another clerk before Charles came there; there were two before him, but only one at once; me and my family boarded there also; we boarded there when Mr. Moore did, all of the time; there was no one in the room at the time when I saw George combing her hair; Mrs. Flavell's breasts were bare, only she had a cloth around her shoulders; I could not give the precise
 40 time when his conduct displeased me; I don't know what I was

doing then; I went up stairs, I don't know what for; the store was in Market street and the dwelling was over it; I don't know that I told anybody about the combing of the hair until after the 31st day of August; on the 31st of August Lottie came to the store, as usual, to assist me; she was there while I went to dinner; when I came from dinner that day I did not bring a basket over from the house to the store; I did not tell Mrs. Flavell, the defendant to go up stairs and get some bottles; not when I came from dinner; I did in the morning, after breakfast; I told her my wife wanted some bottles; this was after breakfast, I think; I was not going to carry the bottles home; the defendant was at the store all the time from the time I told her to get the bottles until I returned from dinner; when I came to the store from dinner I told her to go to dinner; I could not say whether she took the basket with her; I don't know that she took the basket with her; I did not tell her to take the basket then; I spoke very short to her when I saw her and him so close together; she didn't go to the house until after I returned from dinner; she got her breakfast, I suppose, at my house in Bank street; I went up stairs, at that time, because I had suspicions that there was something wrong; I don't recollect of Mrs. Flavell saying anything to me about this matter, in the store after it occurred, on the same day, and complaining of George Moore's conduct; George Moore was arrested for this, on complaint of the defendant, and I appeared and went bail for him for his examination at the station house; I also went his bail when he was bound over to appear before the grand jury; I was not arrested on the complaint of Mrs. Flavell at the same time; she complained against me for an assault and battery and the judge sent word that he wanted to see me; that was all there was about it; I had no examination.

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Adjourned to Thursday, the 29th inst., at 10½ P. M.

THURSDAY, October 29, 1868.

Parties appeared as before and continued the cross-examination of the witness *Flavell*.

I did not employ George Moore after I turned him away; I gave him the privilege of selling out of doors and I gave him a commission on what he sold; in consequence of this he had business to come to the store after I had discharged him as a clerk; he had a bill of mine to collect on the 31st of August; I told him

not to collect it; I know Luther Macomber, the father of the defendant; I don't recollect of telling Luther Macomber that I had discharged George on account of his stealing and that he had his fingers too much in my money drawer.

Ques. Did you tell Luther Macomber that the store had gone behind a great deal, that a good deal of money had been taken and that you discharged George Moore because he had his fingers too much in your money drawer, or anything like that? [Objected to.]

10 *Ans.* As far as I can recollect, my invariable testimony was that my suspicions did not rest on any particular one of the three; I said before I knew the money was gone, I didn't know who had taken it. I know Otis Butler, the insurance agent here.

Ques. Did you tell him so? [Objected to.]

Ans. I don't recollect ever telling any one so; I don't think I ever did.

Ques. Did you ever say anything of these things in either Mr. Macomber's or Mr. Butler's presence? [Objected to.]

20 *Ans.* I think not; not knowingly, I think I did not tell Luther Macomber, after the 31st of August, that I had never seen anything out of the way in the defendant; I am satisfied that I never said any such thing—that I never saw anything out of the way. The complainant and the defendant separated on the 31st of August; the defendant staid at my house for a week after the 31st of August, or thereabouts.

Ques. How came she to leave your house?

30 *Ans.* The reason was that she tried to force her way into the complainant's room, and it was on her promise that she would not make any trouble if she remained until some arrangements could be made.

Ques. Repeated.

Ans. I turned her away because she disobeyed her promise; she disobeyed it because she tried to force her way into the room of her husband. I separated the complainant and defendant in accordance with his wishes; he expressed that wish upon the representation I had made to him; he believed what I had said.

Ques. How soon after the 31st of August did Mr. Macomber come to your house to see the defendant? [Objected to.]

40 *Ans.* Well, I suppose about two days after; that was the time that he asked her how she came to bring such disgrace upon the

family? She said, in reply to that question, that the devil tempted her.

Ques. Did she not say, instead of what you claim she said, "Father, it was not me, but that devil?"

Ans. She made use of the expression devil tempting her, more than once; I don't think she answered in that form; I am sure that she said that the devil tempted her; perfectly sure. The door, when I went up stairs on the 31st of August and saw the defendant and Moore, was from a quarter to a half an inch open. They were sitting at the northwest corner of the room; the door is on the east side of the room; more to the southern corner of the room than the middle; the room was used as a dining-room and kitchen when they lived there; they did all of the cooking there; there was no other kitchen; the door that led into the room was about four feet from the top of the stairs; it was the nearest door to the top of the stairs; I opened the door straight off, the first thing; there was a carpet on the stairs; I think there was an oil-cloth over it; I am not certain. When I went into the room, or before I went in, I did not hear the defendant call out stop; I heard her use some expression of surprise; I could not say what—like oh! it was not stop, I am satisfied of that; I went into the room; I did not notice any basket with bottles in it, my eyes were fixed on the parties; I did not notice any basket of bottles there on that day; if there was any taken to my house I did not notice them, that I am aware of.

Ques. What did you say to George Moore the first time you saw him after the 31st of August?

Ans. I told him my object in sending for him was to make a confession of his correspondence with Lottie; he brought his two brothers with him. The defendant did not explain to me this transaction on the afternoon of the 31st of August, and tell me how it was. I don't know that the defendant did anything when I went into the defendant's room and saw Moore combing her hair, but set still, Moore still kept combing her hair; that was in the same room; in the kitchen; I don't recollect what time of the day it was; it was in the day time; I don't know that it was in the afternoon; I don't recollect that the defendant had a calico dress on; I don't think she had any dress on; she had her under clothing on and a cloth around her shoulders; I don't know that she said anything in the way of apology or otherwise; I did not say any- 40

thing; I don't know how long I staid there; I don't suppose I staid more than a few minutes; I looked more particularly at them than around the room; they attracted my attention; there was nobody else in the room beside the defendant and Moore, when he was combing her hair, except myself; I am sure of it; I think it was before me and my family moved; that is, my impression; I think it was while me and my family were boarding there; that is my impression; I am not certain yet.

Ques. Why did you not speak of it?

- 10 *Ans.* I do my speaking by looks, when anything displeases me; my reason for not speaking to them about it is that I seldom feel free on such occasions; I told my wife, and she was the only one, that I had seen considerable imprudence between the defendant and Moore; I told her this before the 31st of August; I told her this, it may be, within side of a few weeks before; I was called upon to swear to the position in which I saw the defendant and Moore on the 31st of August, before the grand jury; I don't think I did explain, so fully, the position to anybody else. I know George W. Libby; I did not tell him, fully explaining the position in which I saw them on the 31st of August. I know William N. Pill; I told him, but did not fully enter into the case of the position; I don't recollect how far I told Luther Macomber; I told him of the case, but how far I explained it to him I couldn't say. Charles Meeker was in the store of my son's part of the time that George Moore was there; he was sent away.

Ques. What was he sent away for? [Objected to.]

- Ans.* As I stated before, we had lost so much money, I was afraid to risk any more; all the money my son had in the business was lost; I heard that Charles Meeker went into business for himself afterwards; I don't recollect that I told Lottie I guessed he had made more money in that store than Abe had.

Ques. Who took the money that was lost in this store?

Ans. I leave that for Mr. Cumming to tell.

Ques. Do you mean that you can't tell?

Ans. I do.

Ques. Who did you think took it? [Objected to.]

- Ans.* I have stated before that I did not know who; all I know is that the money was gone; I didn't settle upon who took it. I do not remember the day I discharged Moore; it was on a Saturday night. I don't recollect of telling the defendant, on the night

I discharged Moore, to hurry around to the store for Moore's father was there with his basket, and to see if he had anything in it. I don't recollect that my daughter Fannie went over to the store with Lottie on the night I discharged Moore. The defendant went over to my house in Bank street on the 31st of August, after this affair happened; I am not positive that she attended the store on the afternoon after it; I think she did not help me count the soap stock in the store after that; I made but little freedom with her after that; I mean holding any conversation or intercourse with her.

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Direct examination resumed.

My son was sick at home on the 31st of August, at the time of the difficulty. My son and his wife had no intercourse with one another, as husband and wife, after I made known to him what had happened; I made it known to him, I think, the next day; it was not later than the next day; she was in my son's room on the night of the 31st of August.

Ques. Why did you not make known to your son, at once, what had happened?

Ans. I was afraid to do it without consulting the doctor, on account of his critical condition; he was weak and helpless at that time.

Ques. State what the advice of the physician was as to the propriety of making it known to your son. [Objected to.]

Ans. He said there was some risk about it, but if I chose to run the risk I might make it known. I allowed the defendant to remain in my house, after what had happened, because we had written to a friend to take her and keep her until the matter was disposed of and settled; we were waiting to receive an answer from this friend; her father was not willing to receive her at home; it was her father's wish, as well as our own, to send her away; we didn't want her in the house; the reason why we wanted to send her to this friend was the woman was very pious, and we thought she would then be under good influences. Another reason was that the defendant had a bible in her hand and was weeping for several days. She professed to have repented and got forgiven before her father—she did not state what for. We finally turned her away, because she disobeyed the orders and what she promised; I think she remained with us a week after the 31st of

August; she had no intercourse with the complainant after I told him what had happened except what she halloed through the door; she tried once to force herself through the door. It was seeing me come into the room that occasioned the expression of surprise from the defendant; this is what I spoke of as having heard when I went into the room on the 31st of August; I did not hear any noise at all before I entered.

Ques. You referred, in your cross-examination, to an interview with George Moore, which was occasioned by your sending for 10 him to make a confession. Please state, fully, the object of that interview and what occurred at it? [Objected to as far as related to anything Moore said.]

Ans. The object of it was to settle this as privately as possible; not to have it public; by obtaining a divorce; I promised Moore, at the same time, that we would not prosecute him for adultery if he confessed. I went bail for Mr. Moore on account of his brother coming to my house crying about his being shut up in jail, and wanted me to be his bail, and also at the request of my son. Mr. Moore was complained of before the grand jury for an attempt to 20 commit a rape. The complaint was made by the defendant; I think the complaint was made about two weeks after the 31st of August; I understood the grand jury did not find any bill.

Cross-examined again.

I understand the grand jury found no bill because it was not brought up, and I also understood it so from some of the grand jury themselves; I did not understand, from some of the grand jury that this case was laid over until the next term; my information from the grand jury was from hearsay and not from any of the grand jury themselves directly; I did not hear, from the same 30 source, that that, with a batch of other matters, was laid over to another term. The orders Lottie disobeyed, and for which I sent her away, were not to go into the complainant's room; she made an attempt to go into his room in my absence, as I understood; I don't know that she disobeyed, except from hearsay; I don't know that anybody attempted to put her out, when she went into the room; I was not present; I understood my daughter Fannie tried to hold the door when the defendant was trying to force the door. I can't recollect the person to whom we were to send the defendant; I don't know his name; I only know he was pious

only from hearsay and his writings; I was going to send her to these persons because of their reputation as good people; they belonged to the Second Advent Church and so do I; he was a doctor of physic and lives down on Jersey shore; after we sent her down there we were going to apply for a divorce. The request of the defendant's father was that she should not make any trouble. I do not know that her husband was up and dressed when she attempted to go into his room. I don't recollect what day of the week it was; I think it was Monday; I don't know that her husband was up and dressed and came down stairs on that 10 day; I think he was down the next day; I know he got better the last week the defendant was at my house; I don't know it was Sunday, or that when I went into the little room to get my hat to go to church I saw the complainant there dressed. I had the keys of the defendant's room over the store, at that time; I think I got them about the time that I turned her away; I did not get them the day after the 31st of August; I did not take them away from her, the day after the 31st of August, by force; I lent her the keys of her house on the morning she went away, and she ran away with them; her things were all in these rooms; I did not 20 get the keys back from her; I gave her the privilege to take her things away. On the day she went away from the house she made an attempt to force herself into the store; I seized her and took her by the wrist; of this she made a complaint against me and had me arrested for assault and battery; I think I did not demand the keys when I seized her; she had the keys; I did not know her business in the store; as soon as I learned what she wanted I let her in; her umbrella was in the store; she wanted to get it; I think she had the keys of the rooms over the store between the 31st of August and the time I sent her away; that is 30 the loan of the keys; the privilege of going into the rooms; I remember that she asked for the keys of the rooms: I told her she could not have them, but that Ella, my daughter, would go over and let her in; the reason I refused to let her have the keys was because there were things there belonging to both parties. During the absence of the defendant I went into the rooms and took the things away, after she took the keys away; I put a new lock on the door, and still she got in; I don't know that the defendant took away anything from those rooms until I had taken away every- 40 thing I wished to take; all the things in the rooms belonged to

my son and the defendant; I don't know what became of the defendant's marriage certificate; I don't know who took it; I have seen it since she went away, my son the complainant, gave it to me to give to Mr. Taylor. The things taken away from that house consisted of furniture, bedding, crockery and house-keeping things; they belonged to the complainant and his wife; we took away what belonged to my son and left what belonged to her.

Direct examination resumed.

We wished to have her go away so that the matter of the divorce could be effected as quickly as possible and prevent her any exposure; it was not to facilitate the divorce or prevent her from resisting it; her father favored this course; the division of the furniture was according to my son's judgment; he directed in the matter; I did not know which was which.

Cross-examined.

After Lottie had packed her trunk I went after the locksmith, and he came and opened the door and I believe made the key to open the door, and I believe made the key to open her trunk; the trunk was opened by my son, in my presence.

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ABRAHAM FLAVELL.

Sworn and subscribed before me, at Newark, this 29th day of October, A. D. 1868.

S. S. MORRIS,
Master in Chancery.

Sidney Augustus Corey, being duly sworn, deposes and saith as follows:

I reside in New York city; I am a minister of the gospel of the Baptist denomination; I have been a minister twenty-seven years; I was a regularly ordained and settled minister on the 19th of March, 1866, over the Murray Hill Baptist Church; on that day I married the persons named Abraham W. Flavell and Charlotte A. Macomber; I married them at my residence, No. 122 East Thirty-seventh street, in the city of New York. Some one called on me a day or two before that day and made arrangements for the marriage; I never saw the lady before or since the marriage; I issued a certificate of marriage to the parties; I had none at the time and sent it to the young man a day or two after-

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wards. The paper now shown to me is the certificate I sent to Mr. Flavell; the likenesses on the certificate have been put on the certificate since I sent it; in other respects it is the same. I cannot identify the parties that I married from the likenesses on the paper. That of the man is a true likeness of the person who called upon me a few days ago in reference to giving my testimony in this case, in reference to his marriage. I can't recollect whether any persons were present at the time of the marriage except we three.

The certificate of marriage is here offered in evidence and marked exhibit A, on the part of the complainant. 10

SIDNEY AUGUSTUS COREY.

Sworn and subscribed, before me, at Jersey City, this 25th day of November, A. D. 1868.

S. S. MORRIS,

Master in Chancery.

Evidence on part of Defendant.

Luther Macomber, being duly sworn, deposes and saith as follows:

I am sixty years of age; I reside in Newark; am a millwright by trade; I am the father of the defendant in this case; I know Abram Flavell, the father of the complainant, who was sworn as a witness here; I had a conversation with him about the 31st of August last, immediately after the alleged adultery occurred; it was about this matter; I had two conversations with him; one in the cellar and the other in the chamber; both at his house. The defendant was present at the conversation in the chamber. At the conversation in the cellar Mr. Flavell said he had caught the

defendant in a very disgraceful position. After he told me of that it struck me with amazement. I said nothing for some time; I couldn't; I was so surprised. I told him then that I should have expected it as soon from any woman in Market street as I would from Lottie; for I always thought a good deal of Lottie. He replied, "so have I always thought a good deal of her." I asked him then, if he had ever seen any thing out of the way in her before. He said, "no." He then wanted to know what we should do about it. I told him, that as Abraham was then
 10 very sick, and it was very doubtful, as I supposed, whether he would get well, or die, that it had better be kept a profound secret until Abraham got well. He said, that it was then known to his folks and the Doctor. He wanted to know then, if I would take her up to my house. Well, not knowing what was best, I did not tell him whether I would or would not. He said, he could not have her in his house, and have her influence with his girls. He said, she kept trying to get in to her husband's room—where he was—disturbing him. That was pretty much all the conversation in the cellar. Then we went up stairs. I spoke to Lottie
 20 when I went up stairs. Mr. Flavell was present. When I spoke to her I asked her what she had been doing to bring such a disgrace upon the family. She said, It wan't me father, it was that devil.

Ques. Did she say the devil tempted her?

Ans. No. She did not say any thing about temptation in my hearing.

I had a talk with old Mr. Flavell about George Moore; particularly about his turning Moore away; it was before this happened. He told me he had turned him away because he had his
 30 fingers too much in the money drawer.

I did not, in any of these conversations with Mr. Flavell, refuse to let the defendant come to my house. We talked over the matter; and he saying he could not have her there, and not knowing what was best for me to do, there was a proposition made, by me, to have her at some place near by. There was no place agreed upon. We finally concluded that she might stay there if she would behave herself, and not try and go in where Abraham was, that is her husband.

Cross-examined by Mr. Taylor.

My hearing is not very good ; I hear such conversation as we have here very good, but ordinary conversation, unless addressed to me, I could not understand. My hearing has been defective ever since I was about seven years old. I was about four or five feet from Lottie when I talked with her up stairs. It was rather dark in the cellar when we had the conversation there. I don't know that noticing the lips of the speaker helps me to hear any. Mr. Flavell has a bad voice for me to hear ; it is bad because I can't hear him ; his voice is low ; I can't hear him as well as I can you ; I don't know but I can hear him as well as I can the majority of persons.

I don't know at whose suggestion it was that my daughter should remain at Mr. Flavell's house ; I don't know that there was any suggestion about it. He consented that she should remain after the conversation we had. I don't know that any length of time for her to stay was mentioned.

I have not mentioned all that my daughter said at the interview up stairs ; she did not say what she meant by that devil ; she said, "that devil" ; she did not point in any direction when she said that.

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Direct-examination resumed.

I did not consent at any time that Lottie should go on the Jersey shore to that Second Advent man's. There was something said at that time, by me, that my house was always open to her. When they got an answer from the man to whose house they proposed to have her go, they offered the letter to me to read, but I did not read it. She is now living at my house. At the second conversation at which Lottie and Mr. Flavell were present, I thought I heard all that was said. I was about four or five feet from her. She looked right at me, and I am sure I heard the answers to my questions. I thought I heard all that Mr. Flavell said that day up in the chamber. Neither Mr. Flavell nor Lottie did not complain that I did not hear them. I heard Mr. Flavell when we talked in the cellar.

Cross-examined again.

I think Mr. Flavell asked me to take my daughter home at one of these conversations. I said we had better get a place some-

where near by until Abraham, that is her husband, got well. I said that as I did not know, under the circumstances, what was best for me to do. My house is nearly half a mile from Mr. Flavell's. I did not object to her going to my house because of the distance.

Direct-examination.

Ques. Your proposition to get a place near by was because you did not know how it would answer for you to take her home? [Objected to as leading.]

10 *Ans.* That is what I said; that is what I meant. I was not unwilling to take her home at any time; I did not know under the circumstances how it would do.

Cross-examined.

My objection was not because I thought it would disgrace my family; I did not know what to think of it.

LUTHER MACOMBER.

Sworn and subscribed before me, at Newark, this 28th day of December, A. D., 1868.

S. S. MORRIS,
Master in Chancery.

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Otis C. Butler, being duly sworn, deposeth and saith as follows:

I am forty-five years of age; I reside at No. 232 Bank street, and by occupation am an insurance agent and broker. I know Abram Flavell the elder. I had a conversation with him within a week before this alleged adultery about George Moore. I came down town and stepped into the store of Abraham W. Flavell to enquire as to his health. After enquiring about his health, (Mrs. Flavell was standing behind the counter—old Mr. Flavell 30 was standing in front of it) I asked her whether she was the only clerk; she replied, yes. I turned partly to Mr. Flavell and asked him where Moore was. He said he had turned him away, and at the same time said he had lost a great deal of money, and that he didn't want any clerk in his store that was dishonest. I asked him how he was dishonest; he said he had his hands in his money drawer too often, and that his father had been there several times (Mr. Moore's father). That Moore had put up butter and other

goods in the absence of himself, or Mrs. Flavell, and taken them home for his use—for the family, and not paying for them, and George making no return. [Objected to.]

Cross-examined.

Mr. Flavell said he knew the truth of the statement he made; he did not state that he was so informed by the defendant; he said simply that he had seen it; he did not say where he had seen it. I think my wife was standing at the door; I don't think she could hear the conversation.

O. C. BUTLER. 10

Sworn and subscribed before me, at Newark, the 28th day of December, A. D., 1868.

S. S. MORRIS,
Master in Chancery.

Adjourned by consent of the parties to February 12, 1869, at 10 A. M.

February 12, 1869. Parties appeared as before, and continued the examination.

Charlotte A. Flavell, being duly sworn, deposeth and saith as follows:

20

I am twenty-four years old; I reside in Newark with my father at present; his name is Luther Macomber; I am the wife of Abraham W. Flavell the complainant in this case; I know George Moore—George W. G. Moore the witness in this case. I saw George Moore on the 31st of August last, at 91 Market street, at my husband's store. That was also the residence of myself and husband; we occupied the rooms over the store. My husband on that day was at his father's—sick; all our household things were there; I saw the elder Mr. Flavell on that day, at his house and at the store. I was at that time at my husband's father's, assisting in taking care of my husband and also assisting in taking care of his store. George Moore was not a clerk in the store at that time; he had been discharged some two weeks before. I went to the store early in the morning that day. I was the first one up in the house that morning, and went and opened the store. The elder Mr. Flavell came to the store after he had had his breakfast for me to go to mine. I went back to the store after I had had my breakfast and had attended to my husband's

30

wishes. I bathed him as I had done almost every morning. Old Mr. Flavell brought a basket to the store for me at noon; he told me his wife wanted me to bring around my catsup bottles; she was making some catsup for me and wanted me to bring around some bottles; these bottles were up stairs, over the store, in my kitchen closet, on the upper shelf. I saw George Moore at the store on that day; he came about ten o'clock I should judge, and then went away. Old Mr. Flavell was there, I think, when he came; he then went away to collect some bills for Mr. Flavell; 10 he came back a few moments before Mr. Flavell came for me to go to my dinner. I did not on that day, nor at any time, tell George Moore that I had had nothing to do with my husband for a month, nor any thing like that, nor any thing of that kind. George and I were talking about my husband at the time Mr. Flavell came in the store; he asked me how he was, and I told him he was getting better.

Ques. Did you then make arrangements with him to go up stairs and have connection with him?

Ans. No, sir, I did not.

20 *Ques.* Did you tell him you were afraid of being caught, and getting in the family way.

Ans. No, sir, I did not; I had no conversation with him on any such subject. I never did.

Ques. Did you go up stairs to get the bottles?

Ans. I did; I got them from the upper shelf in my closet in the kitchen; I got upon the chair, and on the back of the chair after that, before I could reach the bottles. Just as I had got to the closet, before I had got up on the chair, George Moore came in the room. I turned to him and said what are you up here for; 30 you have no business here, and Mr. Flavell would be much offended if he thought you followed me up here in this way; I then told him to go down stairs; he did not go. I then turned and got upon the chair to get my bottles; thinking it would take me but a moment to get them, and then I could go out and lock the door, then he would have to go. I got a couple of bottles in my hand and was going to get down from the chair to put them in the basket, which I had set on the corner of the table, Moore said to me let me take the bottles down; I gave them to him; he came for more; I thought it was only encouraging him to stay

so I would not let him have them, and took them down myself. He then went and set in a chair by the table, where I had to pass him each time I had the bottles. I got them all down; then just as I was putting the last bottle in the basket, and going to put the cover on (I stood partly in front of Moore—sideways, partly in front of him and partly in front of the table—he then see I was putting the cover on the basket) he partly raised my dress, and then threw both of his arms around my waist and pulled me down on his lap, saying, come sit down on my lap. I hallooed stop, twice. I said, stop, and placed both of my hands on his shoulders and tried to force myself from his arms; at that moment Mr. Flavell opened the door; Moore immediately let me go; I didn't say any thing for a moment, I was so frightened. I then turned to speak to Mr. Flavell, and he turned from me and went to talking with Mr. Moore. Mr. Moore did not then have connection with me; he never had connection with me; the thought of such a thing was most foreign to my mind. I had Moore arrested for this. Old Mr. Flavell went his bail for this.

Adjourned to Thursday February 18, 1869, at 10 A. M.

February 18, 1869. Parties appear as before and proceed with the examination of Mrs. Flavell.

When Mr. Flavell came into the room and I had succeeded in getting off of Moore's lap I saw Moore's pants were unbuttoned and I saw the white of his shirt, but nothing more. I discovered nothing like that before he pulled me down on his lap; not until after I was up. This occurred in the kitchen. The kitchen door is right at the head of the stairs; at the right of the hall at the head of the stairs. The kitchen was also used as a dining room; my parlor and bed room were on that floor, and three rooms in the story above. I think the first time my husband went home to his father's was about four weeks before this 31st of August; he went home because his mother thought she could take care of him, and I was not accustomed to take care of one that was sick; after he first went he came back and stayed a week and returned to his father's. My husband's father and mother boarded with us in the house at one time; his two sisters also; they came there in the fall and went away about the fourth of July. Their sleeping rooms were in the upper story; the two

bed rooms. During the day they were almost always in the kitchen with me; when not in the kitchen they were in the parlor. There were only two rooms on that floor, besides my bed room. I never set on Moore's lap on previous occasions; I never did at any time. On the 31st of August there was a lounge in this kitchen; the lounge had always been there while I lived there. I remember Moore injuring himself lifting a bag of something; on the afternoon that Moore hurt himself I was up 10
up stairs in mother Flavell's room; my husband came up and told me that Moore had hurt himself, and told me to go down and do something for him—Moore was in the kitchen then—his mother, Mrs. Flavell, told me to take Radway's Ready Relief and bathe him, and give him ten drops of it to take. I went down with my husband and did so; my husband was there while I was bathing him; he lay down on the lounge in the kitchen. I did not kiss Moore at all on that occasion, nor did I at any other time. After I had bathed Moore I went up stairs to mother Flavell's room. I left my husband in the kitchen with Moore when I left. Moore did not have connection with me in the 20
month of June or July.

Moore never came into my room when I had my dress off, and only my skirt and corset on.

Ques. State whether or not, when in such undress, you ran to the next room and leaned partly out of the door and asked Moore what he wanted.

Ans. No sir, no such thing ever occurred. Moore never, on such an occasion, sat down in a chair in the room where I was.

Ques. Did or did not Moore, on any such occasion, while sitting in a chair, hold out his hands to you and say "will you," or 30
"come?"

Ans. He did not. No such thing occurred between me and Moore at any time; nothing of the kind; Moore never had connection with me under any such circumstances; he never had; he never had connection with me in the bed room, up stairs, standing up; nor at any other time or place, nor in any way. Moore never combed my hair when my breasts were exposed; he shampooed my hair one Sunday, also my husband's at the same time; my husband was present at the same time; my husband told him to; I asked my husband to do it, and he turned

and asked Moore to do it; Moore combed my hair one other time; I had been working hard all that day and felt tired; my husband's sister, Fannie, was in the room; I sat down in the chair and said I was so tired I hardly knew how to comb my hair; George Moore said let me comb it out for you; he boarded there then; he went and got the comb, took the hair pins out of my hair, and combed it out; my sister-in-law was present. My dress was buttoned up, as usual; I had it on. I don't recollect of old Mr. Flavell coming into the room, though he said he did; I did not observe him. I had a towel on my shoulders when I sat down to comb my hair myself; the towel remained on while Moore combed my hair; Moore never combed my hair at any other times than the two I have mentioned. 10

When I left the kitchen on the 31st of August, after Mr. Flavell came in, I went up stairs and got a few more bottles; I then came down and took the basket and went to his house.

Ques. Did you on that day tell your husband of this transaction of Moore's?

Ans. No. I told my husband's sister as soon as I got to the house, before I went up stairs to where my husband was; I told her I was going to tell him; she begged of me not to, saying, that it might excite him and make him worse; he was sick at that time; that is the reason I did not tell him. I remained all of the week, after the thirty-first of August, at my husband's father's. I did not tell my husband of this at any time during this week. That afternoon of the thirty-first of August I went back and tended the store again. When I went back to tea his mother told me not to tell him. I slept with him that night. In the morning I arose earlier than common; to my surprise I found my husband's father up before me, for the first time since I came there. I asked my husband how he felt; how he had rested; he said he felt better, and said he wanted me to give him a good bath when I came back from opening the store, and be sure and bring the paper; I kissed him good bye and went to the store. That is the last time I have ever spoken to him; excepting once, that is the last time he has spoken to me. When I went back that morning to the house I went directly through the kitchen, and was going up stairs to my husband's room, my husband's sister, Ella, stepped up to me and said, Lottie 30

here is your chain ; it was my watch chain given to me by my father ; the watch was given to me by my husband ; that was taken away ; you can't go up stairs ; Abe never wants to see you again. I went up the stairs and found the doors that went into his room locked ; I then came down and laid down on the sofa nearly all the day, crying ; I sent messages to my husband requesting an interview ; he would not see me ; they told me he would not. I remained there a whole week, and whenever they went in and out of his room they always locked it ; once I tried to go in his room
 10 when his sister Fannie left the door open ; she pushed me out ; I saw my husband standing in the room, all dressed ; this was on Sunday.

Ques. Was your husband then as sick as his folks pretended ?
 [Objected to.]

Ans. No, he was not.

That Sunday afternoon I went up home for a few moments ; when I came back to Mr. Flavell's I went into the front door, then into the dining room, and in a little room off from the dining room ; I saw my husband standing in the library reading a book ;
 20 he was looking at it, I supposed he was reading it ; he was dressed ; had his hat and coat on ; I was very tired, and seeing him made me feel very faint, I sat down on a chair by the door ; just then his father passed me and went into that room ; got his hat and went to church ; then his sister Ella went into the room, then came out and shut him in ; shut the door ; then they tried— they, my husband's sisters and his mother—tried different ways to get me out of the room. This was Sunday evening. They asked me to go into the parlor and play and sing ; play on the piano. I told them I felt like any thing but singing and playing.
 30 I did not see my husband ; his mother came in with a lamp in her hand and told me to go to bed ; she wanted to lock up the house ; I told her I wanted to rest me a while before I went up those two pair of stairs, and said you won't lock the door until Mr. Flavell comes home ; she said I want you to go now, while Fannie will help you up stairs.

Ques. State whether or not you was prevented from seeing your husband all that week ? [Objected to.]

Ans. Yes, I was.

I remember when old Mr. Flavell brought my father there to
 40 see me.

Ques. What did your father say to you? [Objected to.]

Ans. He said, Lottie, why have you brought such disgrace on the family; I said, Pa, it was not me, but that devil; I referred to George Moore.

Ques. Was that, or not, the only answer you gave your father to his question? [Objected to.]

Ans. It was.

Ques. State whether or not any effort was made by old Mr. Flavell to send you away among Second Advent people, and if so, what was it? [Objected to.] 10

Ans. He did. He sent a letter down to South Jersey to some of his Second Advent friends, asking them if they would let me come there and stay, and work for my board, until they could get matters settled. Then my mother-in-law proposed that I should go to Philadelphia and get a situation in some store, or to run a sewing machine. I never consented to go at any time.

Ques. Is Mr. Flavell, the elder, a strong Second Advent man? [Objected to.]

Ans. He is.

Ques. Are you? 20

Ans. I am not.

After this week I went to my father's; I went on Monday; one week after the 31st of August; I have remained with my father ever since; the day I left Mr. Flavell's, to see Mr. Cummings, Mr. Flavell turned me out of the house that morning, saying to me I could not stay there any longer. I then went directly to Mr. Butler's office, and from there to Mr. Cummings; but first I asked Mr. Flavel for the key to my room; he refused me the key, saying he would go and unlock the door for me, and he did so. I went from Mr. Cummings' office back to the house, and asked 30 Mr. Flavell for the key; he didn't give it to me, but he turned to a young gentleman in the store and said, Joe will you attend store for a few minutes; he then went up stairs and unlocked the door for me. I wanted to get the key, and he had left it in the door and was walking up and down the kitchen, and as he got to the further end of the room I took the key from the door and ran down stairs, and out through the back yard to the store door, and when I got to the door Mr. Flavell was there; he took hold of my waist and said, give me that key; I told him I would not do

it, that the things in the room were mine; he then took hold of my arm above the elbow and told me to go out of the store; I carried the print of his hand on my arm for three weeks—black and blue.

Ques. Did you have old Mr. Flavell arrested for this assault and battery? [Objected to.]

Ans. I did.

Adjourned till to-morrow at 10 A. M.

February 19th, 1869. Parties appear as before and continued
10 the examination of Mrs. Flavell.

I complained of George Moore's conduct to old Mr. Flavell in

the afternoon of the 31st of August, in the store. He didn't wait to hear me through but turned and went out of the store; I tried to have another conversation with Mr. Flavell, on this matter, during the week after, at his house; I sent for him, and he came in the room where I was. I asked him first if he would pray; he replied, that what praying he did for me he could do in private; I was feeling very badly; he then went out of the room, shut the door, and went down stairs. I had a certificate of my
20 marriage to my husband in my bureau drawer on the 31st of August. One of my husband's sisters went to my drawer and got it; she went without my permission; I next saw the certificate here before the Master. I don't know who produced it; I didn't.

Ques. State if you have seen your husband drunk, and if so, when and how often? [Objected to.]

Ans. He has been in the habit of drinking ever since he has lived in Market street; since the 1st of May, 1867; I have put him to bed drunk a good many nights when living in that house; I
30 have even been to a saloon in Commerce street and found my husband drinking on Sunday night, and brought him home. He told me he was going there to see a young man by the name of Harry Widner, and I went to the saloon for him.

Ques. Did you ever talk to him about his habits of drinking?

Ans. I have oftended threatened of telling his father. He told me if I ever told his father he would leave me forever.

Ques. What do you know, if any thing, about his having inter-

course with other women? [Objected to.]

Ans. He went down to New York to buy goods, and came home drunk. After retiring, he put his arms around me and called me by another name; I think the name was Ellen, or Ella,—one of the two; I asked him why he called me that name; he told me he had been in a house of ill-fame in New York, that day, talking with a girl of that name; I spoke to him of it in the morning, he first denied it but afterwards acknowledged it.

Ques. State whether, or not, your husband has had any bad disease since you were married. [Objected to.] 10

Ans. Yes, sir, he has at three different times since we were married; he has been broken out in running sores; I dont know what it was; he did not get any such disease from me; I never had any disease; private disease, of that kind.

Master here states that all the testimony of Mrs. Flavell was taken subject to objection, duly made.

Adjourned to March 5, 1869, at 10 o'clock, A. M.

March 5, 1869. Parties met as before and continued the examination.

Mrs. Flavell being cross-examined by Mr. Taylor, says: 20

On the 31st of August last Mr. Moore and I were not present in the room over five or eight minutes; I had not got across the kitchen before Mr. Moore entered; I had not got to the closet door yet; I objected to his entering the room as soon as I saw him enter the room; I objected because I did not want him there. I did not think it looked well his following me up stairs; I told him to go down stairs, Mr. Flavell would not be pleased to see him there, and I did not want him there; old Mr. Flavell; I did not know what his object was in coming up; I did not suspect his object. I told him to go down stairs I did not want him there; I did not suspect he had any wrong purpose in coming up; I did not suppose he had any wrong object in view; I did not want him and told him to go down. 30

Ques. Why did you suppose Mr. Flavell would object to his going into the room? [Objected to.]

Ans. Because he only sent me up into the room on a errand for a few moments, and I did not think it called for, for him, Moore,

to come up; I objected on my own account. Once before, when I was sitting in the kitchen with my husband's sister, I was sewing, and went up into Mrs. Flavell's room to sew on the machine for a moment, he followed me up there; it was some time in the summer before old Mr. Flavell moved away. He said to me there, in the room, you are looking very nice to-day; will you let me kiss you; I told him, no; and told him to go directly down stairs, and he went. Then I went down in the kitchen again and told my husband's sister all about it. I told her I would tell my
 10 husband, but she told me not to do it, as it would only make a quarrel; it was Fannie. I did not insist upon his going down because I thought it would only take a moment to get the bottles then he would have to go down; I could not force him down.

Ques. Then you concluded to let him remain in the room until you went down?

Ans. Yes.

Ques. Had you any objections to having him remain there after you went down?

Ans. I had to lock the door when I went down; he expressed
 20 no desire to remain.

Ques. Then you were satisfied to get him down when you went?

Ans. Yes.

There was no conversation going on while we were there; he merely asked me to have him take the bottles, and I gave him two; I was really in earnest to get him out of the room, because I didn't want him there.

Ques. Did you scream when he caught hold of you?

Ans. I did; I said stop. He did stop, for at that moment Mr.
 30 Flavell came in the room. When he got up I saw the white of his shirt; that is, his pants were unbuttoned.

Ques. Were his pants unbuttoned before he pulled you down?

Ans. That I don't know, for I did not see.

Ques. If they had been unbuttoned would you not have seen them?

Ans. I did not look to see, not thinking of any such thing as that.

Ques. Could he have unbuttoned his clothes after he had taken hold of you?

Ans. No, sir, he could not.

Ques. When he came to you for the bottles were his clothes unbuttoned?

Ans. That I don't know.

Ques. When you passed and repassed him did you notice him?

Ans. No, I did not.

Ques. Did you shut your eyes, or did you turn them away from him as you passed him?

Ans. I did not; I did not look towards him; I merely put my bottles in the basket; I attended to my business, and not to him. 10

Ques. How could you help but see him as you passed and repassed him?

Ans. I might have seen him, but I did not look directly at him.

Ques. What color was his pantaloons?

Ans. I cannot tell. He wore light ones all summer, but the color of these I don't remember.

Ques. What color was his shirt?

Ans. White.

Ques. If his shirt had been out would you not naturally have seen it? 20

Ans. I would. His shirt was not out—only a little piece of it. I only saw the white of it.

Ques. How much of it did you see?

Ans. As his pants opened I only saw the white of it; as much as half of my hand.

Ques. Did you see any part of his person?

Ans. No, sir, I did not.

Ques. When he said to you, "come and sit on my lap" were you looking towards him.

Ans. No, sir. 30

Ques. Where were you standing?

Ans. Just at the corner of the table, partly in front of him, and partly in front of the table. I suppose my dress touched his pants. He was sitting at the end of the table and I was standing at the corner; he was sitting in a chair, sideways, to the end of the table, facing the corner at which I stood. I was putting bottles in the basket, which stood on the corner of the table; I was looking towards the corner of the table where the basket was; he was a little one side of me, looking towards the corner. He

seized me at the moment he said, "come set on," or "across my lap." As soon as he seized me he put both arms around my waist—that is the way he seized me. He kept his hold permanently; his hands were clasped around me; he first raised my dress; he then threw both hands around me.

Ques. Why didn't you run the moment he seized hold of your dress?

Ans. It was all the work of a moment, I didn't have time. He did not rise from his seat when he seized me that I know of;
10 I was so near to him that he could seize hold of my dress sitting in the chair.

Ques. Then you were facing each other, were you not?

Ans. I was standing angling; there was nothing intervening between us.

The table was a common breakfast table; there was nothing on the table but the basket; he was sitting at the end of the table that was nearest to the closet.

Ques. Why did you do your work on that end of the table nearest to him?

20 *Ans.* Because it was nearest to me, and I had set the basket there before he sat down.

Ques. You might have avoided him by going to another part of the table.

Ans. I might have done so had I have thought what he intended to do.

Ques. Mr. Moore is rather small in person?

Ans. Not quite as large as my husband; I think he may be a little taller than I am.

Ques. Do you think he weighs more than you?

30 *Ans.* I don't know.

Ques. Is he any stronger than you?

Ans. I should think he was; he held me fast that day.

Ques. When he seized you, you were front to front?

Ans. Yes; I had both hands on his shoulders.

Ques. Why did you not pull his hair?

Ans. Because I was trying to push myself off.

Ques. Don't you think that if you had given a good sharp pull of the hair, or scratched his face, he would have promptly released you?

Ans. I am not used to pulling hair, or scratching peoples' faces, I didn't think of it.

Ques. When was it that your husband had the bad disorder that you spoke of?

Ans. The first time was about six months after we were married; the other two times were while we were living in Market street; the second nearly a year from the first time; the other a year ago this spring.

Ques. Did you say to Fannie Flavell, your husband's sister, shortly after the 31st of August last, when this matter between 10 you and Moore was being talked about, that your husband had always been true to you, or something to that effect?

Ans. I don't remember of saying anything of the kind.

Ques. Didn't you, on the same occasion, say to Fannie Flavell that your husband ought to forgive you this time, or something to the like effect?

Ans. I don't remember of using just those words. I said I thought he might see me, and let me talk with him; I don't remember saying anything about forgiving me.

Ques. Will you deny using to her language, on that occasion, 20 conveying substantially the same idea.

Ans. I deny asking forgiveness. I don't know, Mr. Taylor, what I said that week; I was crying nearly all the time; I remember of saying something of that kind.

Ques. Didn't you, about the same time, while referring to this transaction with Moore, which took place on the 31st of August, say to Mrs. Flavell, your mother-in-law, that the devil tempted you, or something to the like effect?

Ans. No, sir, I never did.

Ques. Didn't you at that same time, or about that time, ask 30 Mrs. Flavell, your mother-in-law, for money, or express a wish for money and say, that you would go where they would never see you again, or use language substantially like that? [Objected to.]

Ans. I don't remember of anything of the kind.

Ques. Didn't you about the same time, in allusion to the same transaction, say to Mr. Flavell, in substance, or in so many words, that you would jump in the canal before you would go home to your father's?

Ans. I said I would go to the bottom of the river before I would go home disgraced.

Ques. Disgraced : how ?

Ans. They had been telling me that Abe was going to get a divorce from me, because Moore had had connection with me.

Ques. Who ?

Ans. Mrs. Flavell; I told them it would be a long time before they would get a divorce from me, on that ground.

Ques. How soon after the 31st of August, 1868, and from what cause, or motive, did you complain against Moore for attempting to ravish you ?

10 *Ans.* The following Monday after; it was one week; because I thought he deserved it, and I was advised to.

Ques. Was it after you had heard of your husband's intentions to apply for a divorce ?

Ans. It was after his mother told me such was his intentions. On the afternoon of the 31st of August I went to old Mr. Flavell and complained to him of George Moore's conduct, not thinking he would turn against me, but would give Moore his just dues. I told him how Moore came up there in the kitchen; how I told him to go down, and how he had treated me before; I had hardly
20 finished before Mr. Flavell went out of the store and left me.

Ques. Did you tell him that this was an attempt against your will; to have connection ?

Ans. I didn't tell him just those words, but to that effect.

Ques. Hadn't Mr. Flavell and his family, prior to the 31st of August, treated you kindly.

Ans. Yes, sir.

Ques. Didn't you feel relieved and free when Mr. Flavell came into the room on the 31st of August.

30 *Ans.* I did. I left the room thinking he would attend to Moore, instead of me. I knew he had seen all that had happened.

CHARLOTTE A. FLAVELL.

Sworn and subscribed, before me, at Newark, this 5th day of March, A. D. 1868.

S. S. MORRIS,

Master in Chancery.

The examination is adjourned to the 11th day of March next; and then again to the 19th day of March next; and then again to the 1st day of April next, at 2 o'clock, P. M.

April 1st, 1869. Parties appear as before and continue the examination.

Ann Flavell being called for complainant, and being duly sworn deposeeth and saith as follows :

I am the mother of the complainant; I know the defendant, of course. I remember the occasion of the transaction with Moore on the 31st of August last. I saw the defendant in the evening of that day, first, after I heard of the affair.

Ques. Did she soon after, and if so how soon, and when, did she speak to you in reference to that occasion? 10

Ans. She spoke to me the next day about it, in the dining room of my house in Bank street. I don't recollect what she said, particularly, about it that day; I talked with her several different times about it; she was so excited my son couldn't bear it; she said that she was either tempted of the devil, or it was a temptation of the devil, I don't know which. [This is objected to as not rebutting testimony.]

I think Mrs. Valle was present at the time. I am not certain that this conversation was the next day; it was within two days after. She further said, she prayed that the Lord would forgive me for being so wicked. She was raving all the time, and crying, and was very much excited. One time I was talking with her and told her Abe could not live happy with her; she said she would rather remain there and be his slave, if she could not be his wife. [The foregoing objected to by the defendant's counsel.] 20

She never made any threats; she said she would jump into the canal rather than go home, for she would not be treated well; she said when she was praying on her knees, she said if she could only live those few moment over again.

Ques. When she said, "the devil tempted me, or it was a temptation of the devil," did she, or not, indicate by her language, or manner, or gesture, that she referred to Mr. Moore or any other human being? [Objected to.] 30

Ans. Well, I think that Mrs. Vallie was talking to her on the subject of religion when she said that; it was in answer to some conversation they had together that she made the reply; I don't think she referred to Moore, or any other being, but to the old serpent.

Cross-examined.

I don't know that any one was present at the time of this conversation but Mrs. Vallie and myself. She is a Second Adventist. Mrs. Vallie is a missionary out South, in Memphis; Mrs. Vallie was at our house; perhaps it was a week, or it may be a little over. I was not personally acquainted with her until that week.

Ques. Did not you, and your husband, and Mrs. Vallie, make an effort that week to get defendant to go to the Southern part of this State, and remain a while?

10 *Ans.* My husband didn't know anything about it until it was matured between Mrs. Vallie and Lottie.

Ques. How do you know that any arrangement was made between Lottie and Mrs. Vallie?

Ans. I know because Mrs. Vallie came and spoke to me on that subject, and I told her, perhaps Lottie wouldn't like to go; all I know about that is what Mrs. Vallie told me. Mrs. Vallie kept up a continual conversation with the defendant; she was in her room most of the time.

I remember the time when Mr. Macomber, Lottie's father, came
20 there; I don't recollect the date; it was a few days after this occurrence. I didn't hear the conversation between the defendant and her father. If my husband told me any thing about what Lottie said about the devil tempting her I don't recollect what he said about it; I don't recollect of any conversation in the family about what Lottie swears, but what Mr. Macomber swore to on that subject. I don't recollect of any conversation with my son on the subject of what Lottie swore to. I have not been subpoenaed to come here as a witness; my husband requested me to come; I
30 understood Mr. Taylor wanted me to come. There was nothing said as to what I was to swear to when I came here. I have told in the family a number of times what I heard the defendant say. I don't know that the subject of the devil tempting her was particularly spoken of; I know I told of this subject before Lottie was sworn in the case.

I boarded in the house with the defendant from the latter part of November to the latter part of June last; I think that was the time.

Moore staid there at the same time I boarded there; he boarded there the latter part of the time.

Ques. Do you remember of telling Lottie at the dinner table, or about dinner time, some two or three weeks before the 31st of August last, that she ought to treat Moore with more respect. [Objected to.]

Ans. I don't remember of speaking of it in that way; I told her she allowed Moore to take too many liberties in the house, and if she treated him with more respect and dignity he wouldn't act so.

Ques. Do you remember of telling Lottie that you never treated a servant girl as bad as Lottie treated Moore. 10

Ans. I recollect of saying something like this; the more respect we treated servants with the more respect they would have for us. I might have said more, but don't now recollect what I said.

Direct-examination.

What conduct of his did you refer to as wanting in respect?

Ans. I thought he took too much liberty in the family; he found fault with the victuals; he took too many liberties in the family by way of complaining. I spoke to her about his being up in the room so much; I told her it didn't look well, and it might make trouble. She told me she couldn't help it, and I told her I thought she could. 20

ANN FLAVELL.

Sworn and subscribed before me, at Newark, this 1st day of April, A. D., 1869.

S. S. MORRIS,
Master in Chancery.

Fannie Flavell being called for the complainant, and duly sworn, deposeth and saith as follows: 30

I am the sister of the complainant, and live with my parents. I never was in the room on any occasion when Moore combed the defendant's hair; I never saw Moore comb her hair. She never spoke to me about Moore wishing to kiss her, or attempting to kiss her. I heard her say that her husband might forgive her once as she had forgiven him several times for going out and getting drunk. I asked her if my brother had ever been untrue to her and she said not; this was a few days after the 31st of August.

And being Cross-examined she says :

This conversation was in the dining room in the house ; my mother was present ; I don't know of any one else being present. She did not say that she did not know of any particular time when he had been untrue to her ; she only said those words.

Ques. Did you ever hear of Moore's combing her hair. [Objected to.]

Ans. I only heard of it after the examination here ; it was a matter of table talk ; I listened—did not talk about it. It was said, in that conversation at the table, that Lottie said I was present when Moore combed her hair ; I denied it. My brother said I was to come here as a witness. I did not talk over with him this matter of combing of the hair when he said I was to come ; I never did.

FANNIE FLAVELL.

Sworn and subscribed before me, at Newark, this 1st day of April, A. D., 1869.

S. S. MORRIS,

Master in Chancery.

20 *Abraham W. Flavell* being called for complainant, and being duly sworn, deposeth and saith as follows :

I am the complainant in this case ; I have not since my marriage with the defendant had any intercourse with other women, nor been affected in any way by what is termed the bad disorder ; I never told her that I had had intercourse with other women, or been so affected. I have not had sexual intercourse with my wife since the 31st of August last. I have not been urged by my father and mother to commence divorce proceedings.

And being Cross-examined he says :

30 I have doctored with a physician in New York ; I don't know his name ; it was two years ago ; I didn't get a book from him—it was a book my wife got for me ; I don't know what I doctored for. The physician told me my system was weakened by fast living, I suppose ; I went to New York to see him ; the physician's office was in Bond street, in New York ; I don't know the number. I went there because I was sickly at the time. I accused my wife of taking medicine to produce a miscarriage ; she

denied it and said it was my fault; I told her I would go down and get the opinion of one of the best physicians in New York I could afford, and find out; I don't know how much money I paid the doctor; \$35 or \$40; I could not tell; I paid him money more than once; I don't know how many times; I don't remember how long I doctored with that physician; two or three months. He gave me medicine in packages and bottles; to be taken internally not to be applied externally; he told me to bathe myself every day; that is all; sometimes I would take a bath all over; sometimes I would bathe my chest and around my private parts, and sometimes a sitz bath. I never had any sores about me; I have, since I have been married, applied camphor or liniment to my privates; camphor and water to allay inflammation caused by a disease, or weakness, which my wife had, called 'whites'; that is what she said Doctor Lowrey told her it was. I did not have the bad disease. [Objected to.] 10

Ques. Have you ever had the bad disease?

Ans. I refuse to answer that question.

Adjourned to Monday next at 2 P. M.

Monday, April 5, 1869. Parties appear as before and continue 20 the *Cross-examination* of Abraham W. Flavell.

The name of that physician was Dr. Beck; he kept his office at No. 40 Bond street, New York City; I do not know what his first name was. I did not kick my mother the last day when I was here; I shoved her chair; she was talking so fast I wanted her to stop; I didn't touch her with my foot; I did not do the same to my sister when she was testifying.

Direct-examination resumed.

I have ascertained the name of the doctor since the last day of the examination; I sent my father down to ascertain for me; I 30 think Doctor Beck doctored me for about two months; I used to go down once a week; he did not tell me I had the bad disorder. [Objected to.]

I did not purchase the book referred to in my cross-examination; my wife gave it to me; I don't remember of her saying where she got it; the first I heard of the book was when she gave

it to me. He did not say directly that my private parts should be bathed.

ABRAHAM W. FLAVELL.

Sworn and subscribed, before me, this 5th day of April, A. D.,
1869.

S. S. MORRIS,
Master in Chancery.

[Complainant rests.]

Luther Macomber being recalled for examination; his examination is objected to by the counsel of the complainant. Counsel for defendant states he was called as to matters that occurred on the last day of the examination; and the testimony of that day being read, the witness Abraham W. Flavell asked to have his testimony amended, according, as alleged, to the facts. And the witness, Flavell, now says, that when his mother was being examined, the Master spoke to her about talking so fast, she was hard of hearing, and I shoved her chair with my foot to stop her. That was part of my answer as given to the question, by counsel, why I kicked her?

20

S. S. MORRIS, *Master.*

Mr. Macomber being examined, says as follows:

Ques. Was you present when Abraham Flavell's mother was on the stand here as a witness? [Objected to.]

Ans. I was.

Ques. Did you see complainant do anything to his mother while she was testifying in this case, and if so, what did he do? [Objected to.]

Ans. He kicked against her clothes where her leg ought to be; immediately after that she stopped talking; he did it several 30 times before she stopped talking.

Ques. Did you speak to him about it, and if so, what did you say to him and what did he reply. [Objected to.]

Ans. I did speak to him; I said, why Abraham are you kicking your mother? he said, you mind your business and I will mind mine.

Cross-examined.

I do not know why he kicked towards his mother; I did not

hear all that was said of her testimony at the time; I did not hear what the Master said; I am hard of hearing; I don't know that I heard all the questions that were asked; I don't think I heard what the Master said; I heard one remark he made when he turned his face around towards me.

LUTHER MACOMBER.

Subscribed this 8th day of April, A. D., 1869.

S. S. MORRIS,
Master in Chancery.

10

Charlotte A. Flavell being recalled, in examination, under objections by complainant's counsel, she says:

I did not make an arrangement with Mrs. Vallie to go down to South Jersey. [Objected to.]

I never said to Mrs. Flavell, during the week I was at her house, after the 31st of August, that I was tempted of the devil, or that it was a temptation of the devil; I said nothing of the kind to her, or in her hearing. I did not say to Mrs. Flavell, or in her hearing, that I would rather remain at her house and be a slave if I couldn't be Abe's wife. I said I would jump into the 20 river rather than go home disgraced; I didn't say that I would jump into the canal rather than go home; I didn't say I would not be treated well if I went home; I didn't say, when praying, 'if I could only live those few moments over again;' I never said any such thing.

Mrs. Flavell did tell me that I ought to treat Moore with more respect, at the same time she told me that she never treated a servant girl as I did Moore? [Objected to.]

I did not say to Fannie Flavell 'that my husband might forgive me once, for I had forgiven him a number of times for going out 30 and getting drunk.

Ques. Did you tell Fannie that Abe had not been untrue to you? [Objected to.]

Ans. I told her I didn't know of any time when he had been untrue to me. I did not have any talk about Moore combing my hair, but Fannie was present when he did comb my hair.

During the time my husband was doctoring with Doctor Beck my husband bathed his privates every morning; I brought the

water for the purpose every morning, and brought him a sponge at his request. [Objected to.]

CHARLOTTE A. FLAVELL.

Subscribed before me, at Newark, this 8th day of April, A. D., 1869.

S. S. MORRIS,
Master in Chancery.

Opinion of the Chancellor.

[Filed.]

10

IN CHANCERY, October Term, 1869.

FLAVELL,
v.
FLAVELL.

}

This was a suit by Abraham W. Flavell, for divorce from his wife, the defendant, Charlotte A. Flavell, on the ground of adultery. The answer denied the adultery, and also charged the complainant with adultery, by way of recrimination and as a defence to the suit.

The case was argued upon the pleadings and proofs.

30

MR. J. W. TAYLOR for Complainant.
MR. CUMMING for Defendant.

THE CHANCELLOR :

The first question to be met in this cause is upon admitting the testimony of George Moore. He was sworn on the part of complainant, and his cross-examination had been commenced by the defendant. The examination was adjourned at the close of the

day. The witness did not appear at the time to which the examination was adjourned; and he has either absented, or secreted himself; both parties have endeavored, without success, to find and produce him. He had not signed his direct examination, nor his cross examination so far as proceeded in.

The suppression of his testimony is asked for on both grounds, that he has not signed it, and that his cross-examination has not been completed. I am not aware that either of these questions has ever been considered, or decided, in this Court, no decision upon either has been brought to my notice. In England, the signature of the witness to his examination is held necessary to entitle it to be read. In *Copeland v. Stratton*, 1 P. W. 414, decided by Lord Chancellor Parker in 1718, this was settled to be the rule upon consultation with the Master in attendance, and it never has been questioned, or varied since. The practice there, is to require the witness to sign each deposition when taken, before he leaves the Master's office, and he signs each sheet with his name; 2 Dan., ch. Pr. 920 and 921; and he signs the direct examination and cross examination separately. In fact, until the new order of Lord Lyndhurst, in 1828, the cross-examination could not be taken before the same examiner who took the direct examination; and by statute the witnesses of each party must be examined before a different examiner: 2 Dan. ch. Pr. 921. 10 20

The English mode of taking testimony, in Chancery, was first changed in this State by the act of November 22, 1790: Pam. Laws, 681; by which witnesses were required to be examined in open Court, and their deposition to be reduced to writing by some person appointed by the Court for that purpose. Nothing is said in this act about the signing of the depositions. The act respecting the Court of Chancery in the revision of 1799, by section 35, Pa. Laws, 432, provided that the mode of proof, by oral testimony, and the examination of witnesses in open court, "shall be the same in the Court of Chancery as in the Supreme Court of this State, at common law; and that such examination shall be reduced to writing by some person appointed by the Court—*signed by the examinant*—filed with the clerk, and made use of in the cause." A supplement to this act passed December 3, 1801: Bloomford, comp. 84; directed "that thereafter examinations of witnesses in suits in Chancery should be taken and re- 30

duced to writing by examiners of that Court; were authorized to administer the oaths to the witnesses, (which in England could be administered only by Masters,) and each party was at liberty in person, or by counsel, to examine or cross-examine witnesses. These examinations were to be filed with the clerk. Nothing is provided as to signing the depositions by the witness. These provisions were substantially re-enacted in the revisions of 1820: R. L., 730, § 3; and of 1846: Nix. Dig., 110, § 41. There is no statute or rule of this Court expressly requiring
10 the signature of the witness.

But the act of 1801, which repealed the act of 1799, and the practice of examining witnesses in open court, which had been in use for eleven years, in requiring the examination of witnesses to be taken and reduced to writing by examiners of the court, intended by this reference to these disused officers of that court to revive the old practice of examination, except so far as changed by that act. It provided for oral examinations and cross-examinations by counsel present at the time, and for filing the depositions without the formality of publication, but it must be intended that
20 it did not mean to dispense with signing by the witness, it was at least as necessary as when the witness was examined in open court, in which case it was required by the act then repealed. Besides the general and, I believe, universal practice by all examiners since the act of 1801, has been to require the witness to sign his depositions, it having been first read to him. The latter is a safe and prudent practice, and the many gross and palpable errors in the other depositions in this case show, both that it has not been attended to and the importance of its being done. For these reasons, and especially relying on the long established practice in
30 this State as settling both the construction of the statute and the rule of this Court I am of opinion that depositions not signed by the witness are imperfect and cannot be read.

The settled rule in the English Courts requires that the party producing a witness should retain him before the examiner for cross-examination. The rule in Chancery there requires that he should be retained at least forty-eight hours for the cross-examination to begin: 2 Dan., Ch. Pr., 921; 1 Barb., Ch. Pr., 385 and 286. If a witness who had signed his direct examination died before he was cross-examined his testimony was allowed to be read.

Arundel v. Arundel, 1 Rep. in Chan., 90, decided in 1635, by Lord Kerper Coventry, recognized by Lord Bedesdale, in O'Callagher v. Murphy, 2 Sch., Lef. 158, and by Sir Ant. Hart in Nolan v. Shanner, 1 Molloy, 157, Lord Eldon held that if the witness appeared for cross-examination, and refused to answer, his direct examination should not be suppressed, because it was in the power of the party wishing to cross-examine to take measures to compel him to answer—*Courtenary v. Hoskins*, 2 Russ., 253; but where the witness secretes himself, it is held that his deposition should be suppressed on the ground that such witness is not 10 worthy of credit—Lord Hardwicke so held, in 1756, in *Flowerdly v. Conet*, 1 Dick., 288. The deposition in this case comes within the letter and reason of Lord Hardwicke's rule, and upon principles in which I entirely concur must be suppressed.

The authorities on this subject are collected in the opinion of Justice Story, in *Gass v. Samson*: 3 Sumner, 98.

The defendant has, in my opinion, entirely failed to sustain, by proof, her defence of adultery in the complainant set up by way of recrimination. His admission that, when in New York, and intoxicated, he had met a girl named Ella, and the fact that he 20 called out her name in his sleep, or when partly intoxicated and half asleep, might excite suspicions but fall far short of proof of adultery; and all the defendant's testimony with regard to his diseases, without any regard to the denials on his part, do not show or even raise any strong suspicions that he has ever had any venereal disease since his marriage with her. This view of the evidence makes it unnecessary to consider the questions of condonation by the defendant, and whether the acts of adultery set up by way of recrimination are sufficiently specified in the answer. 30

The main question in the cause to be determined is one of fact. It is whether the charge of adultery, on which the application for divorce is founded, is sufficiently proved. Upon a careful consideration of the evidence I am of opinion that the adultery of the defendant with George Moore, on the 31st of August, 1868, charged in the bill is fully proved. The direct evidence of Abram Flavell as to the position in which he found them, and their conduct at the time, is sufficient to establish the fact. The denial by the defendant, under oath, and her explanation of her situation,

and the facts which led to it are plausible, and might lead me to hesitate as to her guilt, were it not that her conduct at the time and during the whole week she continued in the house of her father-in-law, and her implied admission made to the mother and father and sister of her husband are inconsistent with it. It is incredible, that if the father of her husband found her in such equivocal situation as she admits, and she was in the act of resisting the attempts of Moore against her virtue, that she would have immediately escaped from the room, in silence, as one caught in
 10 an act of shame, instead of loudly denouncing to her father-in-law the man whom she knew he disliked, and whom he found attempting to force or seduce the wife of his son. If she found that her husband's relatives wrongly suspecting her of crime, when she had only been sinned against, she would not for a week have submitted herself tamely, in tears, of apparent penitence to their reproaches, and to exclusion from the presence of her husband, who was in the room next to her, but would have been roused to assert her rights, and if she could not have had fair treatment, then would have gone to the house of her father,
 20 which was not far away, and appealed to him for redress and protection. When her father came to her she made no attempt to vindicate herself before him, and did not impress him with her innocence and injury so as to make him willing to take her to his house. Her previous conduct in regard to Moore had been, before the 31st of August, such as to excite and justify suspicions in the father and mother of her husband. This conduct had caused the father to watch her movements with Moore, and to follow them to the room where he caught them in the position which he describes.

30 There must be a decree for divorce.

Decree.

[Filed Oct. 20, 1869.]

IN CHANCERY OF NEW JERSEY.

Between

ABRAHAM W. FLAVELL, complainant,
and
CHARLOTTE FLAVELL, defendant.

*On bill, &c.**Final Decree.*

This cause coming on to be heard at the October Term, A. D., 10
eighteen hundred and sixty-nine, of the Court of Chancery of the
State of New Jersey, in the presence of John W. Taylor, of
counsel with the complainant, and Gilbert W. Cumming, of
counsel with the defendant, and the pleadings and proofs having
been read, and the arguments of the respective counsel heard and
considered, and the Chancellor being of the opinion that the
complainant is entitled to the relief prayed for by him in his said
bill. It is therefore on this twentieth day of October, eighteen
hundred and sixty-nine, ordered, adjudged and decreed by Abra-
ham O. Zabriskie, Chancellor of the State of New Jersey, and
the said Chancellor, by virtue of the power and authority of 20
this Court, and the acts of the Legislature in such case made and
provided, doth hereby order, adjudge and decree, that the said
complainant, Abraham W. Flavell, and the said defendant, Char-
lotte A. Flavell, be divorced from the bond of matrimony, and
the marriage between the said complainant and the said defendant
is hereby dissolved accordingly, and the said parties, and each of
them, are and is hereby freed and discharged from the obligations
thereof.

A. O. ZABRISKIE, *C.*

I, Barker Gummere, Clerk of the Court of Chan-

SEAL.
}
 cery of the State of New Jersey, do hereby certify 30
 that the foregoing is a true copy of the Final Decree
 in the cause wherein Abraham W. Flavell is complainant and
 Charlotte A. Flavell is defendant, now on the files of my office.

In testimony whereof I have hereto set my hand and affixed
 the seal of the said Court, at Trenton, this tenth day of Novem-
 ber, A. D., eighteen hundred and sixty-nine.

BARKER GUMMERE, *Ck.*

[Five Cent Stamp Cancelled.]

Appeal.

IN CHANCERY OF NEW JERSEY.

[Filed November 29, 1869.]

Between

ABRAHAM W. FLAVELL

and

CHARLOTTE A. FLAVELL.

} *On bill, &c.*

The defendant hereby appeals from all and every part of the final decree made in this Court in the above stated cause, bearing
 10 date the twentieth day of October, eighteen hundred and sixty-nine, to the Court of Errors and Appeals.

G. W. CUMMING,

Solicitor for and of counsel with defendant.

Dated Nov. 25, 1869.

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

G. W. CUMMING,

Of Counsel.

November 29, 1869.

Petition of Appeal.

[Filed November 29, 1869.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CHARLOTTE A. FLAVELL, appellant,

and

ABRAHAM W. FLAVELL, respondent.

} *On bill, &c.*

To the Honorable the Court of Errors and Appeals of New Jersey.

The humble petition of Charlotte A. Flavell, the appellant in the above stated cause, respectfully shows, that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery, by the Honorable Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the twentieth day of October, eighteen hundred and sixty-nine, wherein Abraham W. Flavell was complainant and your petitioner was defendant, in this respect that the said decree adjudges that your petitioner and the said complainant be divorced from the bond of matrimony, and that the marriage between the said complainant and your petitioner be dissolved accordingly, and the said complainant and your petitioner, and each of them, are and is freed from the obligations thereof. 10

And your petitioner humbly appeals from all and every part of said decree, upon the ground that the same is erroneous, for that the said complainant is not entitled to the relief prayed for in his said bill of complaint, or any part thereof.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed and 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. 20

G. W. CUMMING,

Solicitor for and of counsel with the appellant.

Dated November 25, 1869.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CHARLOTTE A. FLAVELL, appellant,
and
 ABRAHAM W. FLAVELL, respondent.

} *On appeal, &c.*

The answer of Abraham W. Flavell, respondent, to the petition of Appeal of Charlotte A. Flavell, appellant.

This respondent, not confessing or acknowledging all or any of the matters and things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereto says: That he believes it to be true that such decree as is complained of by the appellant was made in the Court of Chancery as in the said petition of appeal is set forth; but as to the date, substance and contents thereof this respondent prays leave to refer thereto, when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity and justice, and therefore prays that the same may be affirmed so far as
 10 it relates to or affects this respondent, and that the said petition of appeal may be dismissed this Honorable Court, &c.

JOHN W. TAYLOR,
Solicitor and of counsel for respondent.

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