

# New Jersey Court of Errors and Appeals.

Between

WARREN F. FULLER,

*Appellant,*

*and*

ANNA M. FULLER,

*Respondent.*

*A Bill for Divorce.*

*On Appeal, &c.*

## APPELLANT'S BRIEF.

The bill of complaint in this cause was filed by the appellant on October 23d, 1878, and prays for a divorce from his wife, the respondent, on the ground of adultery.

See charges as set forth in the bill, printed case, pages 2, 3 and 4.

The answer to said bill was filed December 27th, 1878, and denies all the charges alleged in the bill, and also sets up as defences:

1st. Adultery by the appellant.

See charges as set forth in the answer, printed case, pages 8, 9.

2d. Condonation.

See answer as to general statement thereof, printed case, page 7.

Also stipulation or order amending answer, printed case, page 12.

Replication filed by appellant January 20th, 1879.  
Printed case, page 11.

Upon the pleadings proofs were taken before Howard McSherry, Esquire, one of the Masters of the Court of Chancery. The cause was then, by order of his Honor the Chancellor, upon the said pleadings and proofs, referred to the Hon. J. D. Bedle, Advisory Master, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein, December 15, 1879.

See printed case, page 479.

The cause was argued before the said Advisory Master, and on August 15, 1880, he reported :

- 1st. That he finds the defendant guilty of adultery.
- 2d. That he finds the complainant also guilty of adultery.
- 3d. That he had reached no definite determination as to the condonation.

And thereupon denying the prayer of the complainant's bill, and dismissing the said bill with costs.

See printed case, page 480.

Thereupon, on September 3, 1880, the final decree dismissing said bill of complaint with costs was signed by the Chancellor, and on October 25th, 1880, said decree was duly entered of record.

See printed case, page 482.

The complainant in said bill of complaint filed his appeal from the said final decree of the Court of Chancery on October 26th, 1880, and on the same day filed his petition of appeal in this Court.

See printed case, page 483.

## I.

Is the respondent guilty of adultery as charged against her in the bill of complaint ?

- 1.—The bill charges her with adultery in the month of September, 1877, at No. 222 Hudson street, in the City of New York, with a man described as follows: "A medium sized person of light complexion, and about thirty-five years of age," whose name at that time was unknown, &c.

Printed case page 2, line 23, &c.

- 2.—The bill charges that in the month of October, 1877, at No. 23 Renwick street, in the City of New York, she committed adultery with a man whose name was then unknown, who is described as "a person of medium size, and of light complexion, and about thirty-five years of age."

Case page 2.

- 3.—The bill further charges her with adultery on September 28th, 1878, and also on different days in the month of September, 1878, and also in the months of June, July and August, 1878, at Jersey City, with a man whose name was then unknown, who is described "as a stout man, light complexion, light moustache, from twenty-five to thirty years of age," &c.

Printed case page 3, line 12.

Same charges repeated in a section of said bill.

Printed case page 3, line 30.

- 1.—As to what is sufficient proof of adultery.

Direct evidence is not required to sustain the charge of adultery.

Day vs. Day, 3 Gr. Ch., 453,

The proof of adultery to justify a decree for divorce, must not only be direct, but it must be entitled to and command belief.

Clare *vs.* Clare, 3 C. E. G., 37.

The circumstances to sustain the charge must be such as to lead a reasonable and just man to the conclusion that the crime has been committed.

*Ibid.*

Berckman's Case, 1 C. E. G., 122; 2 C. E. G., 453.

The testimony of a single witness may be sufficient proof of adultery to sustain a decree of divorce, though *denied* by the defendant upon oath. But such effect must depend upon the *probability* of the story, the *character* of the witness and the *consistency* of his evidence, and perhaps somewhat on the *character of the defendant*.

Derby *vs.* Derby, 6 C. E. G., 36.

The complainant must not only show a decided preponderance of evidence in support of the charge, but must prove it to the satisfaction of the Court beyond a reasonable doubt.

Berckman's Case, 2 C. E. G., 453.

When the facts relied on are susceptible of two or more interpretations, any one of which is consistent with the defendant's innocence, they will not be sufficient to establish guilt. Though it is not necessary to prove the direct fact of adultery, it is necessary to show that adultery is the only necessary conclusion from the facts of the case.

Mount *vs.* Mount, 2 McCart., 162.

To prove adultery by circumstantial evidence, two points are to be established, to wit :

1.—The opportunity for the crime.

2.—The will to commit it.

Where both are established the Court will infer the guilt.

Beekman's Case 1 C. E. G. 123, 4 C.E. G. 453.

We insist that the respondent is guilty of adultery.

- 1.—In September, 1877, at No. 222 Hudson street, in the city of New York.
- 2.—In the same month, September, 1877, at No. 23 Renwick street, in the City of New York.
- 3.—In the latter part of September, 1877, at No. 23 Renwick street, in the City of New York.

On each of the above dates with the same man, name unknown, and described as a "stout man, light complexion, about five feet high, dressed in light *gray suit, moustache* in color, and whiskers."

- 4.—On June 22d, 1878, in the City of Hoboken, or in the City of New York, with a man answering the same description of the man above described.
- 5.—On August 14th, 1878, in the City of New York, with a man, name unknown, and described "Black hair, five feet high, 150 or 160 lbs. weight, black eyes, heavy black moustache, light pants, black coat and derby hat.
- 6.—On September 28th, 1878, in Jersey City, at a house of ill fame on Sherman avenue kept by Mrs. Woerner, person unknown,

We prove the several charges by the testimony of the witnesses :

Mrs. Nettie Brehm,  
Warren Harrington,  
Theodore B. Ryerson,  
Frederick Yoe,  
Francis McGrath,  
George D. Watson,  
Charles R. Frauham,  
Henry Stehn,  
Herman Nitribitt, and  
Mrs. Eliza Becker.

1.—Mrs. Nettie Brehm testifies.

Printed case, pages 20-37.

That in the month of September, 1877, she saw Mrs. Fuller go into the house No. 222 Hudson street, New York City, with a man ; they occupied a room together in that house, the front parlor, for about an hour and a half or two hours ; the man when going away paid \$2.00 for the use of the room ; before they occupied that room the bed was made up very nicely—after they had gone it looked as if it had been used.

Pages 21, line 1 to 20.

Witness was in the same house employed there at dressmaking, and she admitted Mrs. Fuller and the man with her to the house.

Pages 21, line 10, &c.

That in the same month of September, 1877, witness again, about ten days after the above, saw Mrs. Fuller and the same man enter the house No. 23 Renwick street, New York City. This house was kept by the same woman who had kept at No. 222 Hudson street, one Mrs. Mellville *alias* Sloeman, who had in the mean time moved her residence from 222 Hudson street to 23 Renwick street ; they, Mrs. Fuller and the man with her, stayed in that house probably two hours.

Page 20, line 18 to 28.

Also saw Mrs. Fuller again with the same man another time, the last week in September, 1877, under the same circumstances as before. They went in 23 Renwick street, between two and three in the afternoon; saw them come out; they remained inside about one hour and a half; they went away together.

There was no danger of not knowing her. I have seen her walking with this man up on the hill towards evening. I don't know where this man lives—some-where in Jersey City.

Page 21, line 28 to 40.

Page 22, line 1 to 5.

Witness describes this man as "*a stout, well-built man, light complected, about five feet high, dressed in light gray suit.*"

Page 20, lines 29 and 30.

Also, "he had a moustache, light in color, and whiskers."

Page 23, lines 18 and 19.

"I had known Mrs. Fuller before that, and recognized her."

Page 20, line 28.

That house is what is called a bed-house.

Page 20, line 36.

I know this man by sight, and would recognize him. I have seen him lately; met him on the Christopher street ferry, going to New York.

Page 23, lines 15 and 15.

Read the whole of Mrs. Brehm's direct examination from page 20, line 1, to page 23, line 20.

Mrs. Brehm's testimony is uncontradicted, and if true settles the question of Mrs. Fuller's adultery in the month of September, 1877, on these three occasions with the same man.

Her testimony is in no way shaken upon the cross-examination.

The character of the houses kept by this Mrs. Mellville, *alias* Sloeman, at No. 222 Hudson street and at No. 23 Renwick street, is fully established by the testimony of the witness Warren Harrington.

Printed Case, pages 49 and 50.

We say Mrs. Brehm's evidence is *true*.

Her story is entirely *probable* and *reasonable*.

It is *clear* and *direct*.

It is entirely consistent.

It is entirely consistent with the proved habits and character of the respondent.

And, therefore, it is entitled to and commands belief.

She stands unimpeached, although the whole force and ability of counsel were used to break her down upon cross-examination.

And the three brothers of respondent, and her two sisters, and her brother-in-law, and her hired detective, and Coroner Rowan, and her friend Muller, all advised by respondent's counsel, were at work seeking to find testimony to destroy her character for truth and veracity and purity.

She is a witness wholly disinterested in the result of this cause; so far as appears, never had any acquaintance with the appellant, except as stated in her own testimony; and it does not even appear that she is a friend or acquaintance of any friend or acquaintance of appellant.

She was threatened with arrest and with bodily injury for testifying in this cause.

Page 22, lines 29, 30.

Page 23, lines 7, 8.

She was offered money—\$50—not to appear before the Master and complete her testimony.

Page 35, lines 5, &c.

A criminal process was issued against her on the complaint of Mrs. Fuller and her brother, and an officer stationed at the door of the Master's office to arrest her as soon as she should leave the witness stand.

Page 462, line 30, &c.

Page 477, line 15, &c.

She is corroborated by the witness Harrington as to the character of the house No. 222 Hudson street, and of the house No. 23 Renwick street. Also as to the removal and the time of the removal of Mrs. Mellville, *alias* Sloeman, from the house in Hudson street to the house in Renwick street.

See Harrington's testimony printed case, pages 49 and 50.

Respondent fails to impeach Mrs. Brehm. Witnesses are produced to show that her reputation for truth and veracity is bad, and that her reputation for chastity is bad, but the attempt entirely failed.

1.—Thomas J. Rowan.

Read his testimony direct, from page 101, line 3, to page 101, line 22.

And his cross-examination, from page 111, line 20, to page 112, line 3.

*Note here* that the testimony of the witness was here interrupted by an adjournment, and after adjournment witness knows very much more than he knew before.

Page 116, lines 27-30.

And upon re-direct examination, contrary to all rules of law and evidence, counsel for defendant asks witness "what else have you heard about Mrs. Brehm?"

Page 117, lines 13-15.

Answer taken under objection: "I have heard that her husband left her, and that she was living in Union

Hill with another conductor, and that she was a liar, and that she used to visit a house named 'Jones,' parties' names were 'Jones,' and that her husband had to come there and take her home frequently; I heard the remark that 'she was a whore.'"

Page 117, lines 26-31.

Read cross-examination on this, from page 117, line 35, to page 120, line 13.

And compare with previous cross-examination, pages 111-112.

2.—John Muller has known Mrs. Brehm for the last four months, it might be six months, &c.

Page 121, lines 3-15.

And compare his cross-examination on this subject, from page 123, line 5, to page 124, line 28.

3.—Mrs. Margaretta Carter.

From page 126, line 26, to page 129, line 3.

"Never heard anybody say Mrs. Brehm would not tell the truth."

Page 128, line 32.

4.—Mary Strunck.

Page 140, line 1 to 38.

Mrs. Brehm owed seven dollars rent.

5.—Henry Strunck (page 141, line 3 to 27) testifies to nothing except what is fully in Mrs. Brehm's favor; lived in the same house with her four or five months; her sister and her little girl, a daughter, lived with her.

6.—Adelia Markey, sister of the respondent, tells her story of the meeting between Mrs. Fuller and Mrs. Brehm on Cambridge avenue, Jersey City. She contradicts Mrs. Brehm in some of the particulars of that meeting.

See Mrs. Brehm's testimony.

Page 25, line 1 to 30.

Page 30, line 5 to 30.

And Adelia Markey's.

Page 143, line 35 to 40.

Page 144, line 1 to 12.

Page 146, line 30 to 40.

Page 147, line 1 to 40.

Page 148, line 1 to 30.

Adelia Markey's testimony is proved by the testimony of Ryerson, Grant, Watson and McGrath to be so utterly false in so many other and material matters in this case that she seems entirely unworthy of credit.

Her credibility, or rather her want of credibility appears :

1.—By comparing her testimony as to the "Truck Drivers' Picnic" on June 8, 1878, with that of Theo. B. Ryerson on the same subject, testified to by him from written memoranda made by him at the time.

See her testimony.

Page 155, line 36 to 40.

Page 156, line 1 to 13.

Page 190, line 12 to 40.

Page 191, line 1 to 40.

Of which the substance is that Mrs. Fuller did not attend that picnic.

See Ryerson's testimony.

Page 78, line 28 to 40.

Page 79, line 1 to 24.

From which it is plain that Mrs. Fuller was at that picnic from about 10 P. M. until 12 $\frac{1}{2}$  or 1 o'clock at night.

2.—By comparing her testimony with that of Francis G. Grant in reference to the scene between Mrs. Fuller and said Grant on July 3d, 1876.

See her testimony.

Page 156, line 30 to 40.

Page 157, line 1 to 40.

Page 158, line 1 to 40.

Page 159, line 1 to 40.

Also her cross-examination.

Page 175, line 30 to 40.

Page 176, line 1 to 40.

Page 177, line 1 to 40.

Page 178, line 1 to 40.

Page 179, line 1 to 40.

Page 180, line 1 to 40.

Page 181, line 1 to 28.

And see Grant's testimony.

Page 38, line 10 to 40.

Page 39, line 1 to 10.

From which comparison it will be seen that she swears that Grant's testimony is false in nearly all its parts.

3.—By comparing her testimony with that of George D. Watson in reference to the bridge scene.

See her testimony.

Page 160, line 20 to 40.

Page 168, line 30 to 40.

Page 169, line 1 to 40.

Page 170, line 1 to 40.

Page 171, line 1 to 40.

Page 172, line 1 to 40.

Page 173, line 1 to 40.

Page 174, line 1 to 40.

Page 175, line 1 to 30.

4.—By comparing the testimony of officer James McGrath in reference to the Watson bridge scene with her testimony on the same matter.

See McGrath's testimony page 52, line 1. to 30.

Mrs. Fuller and Watson and Adelia Markey were there at that bridge for at least *an hour and a half*, which also corresponds with Watson as to the time.

Miss Markey swears it was only about *twenty minutes*.

Page 170, line 15.

5.—By considering her contradictions and inconsistencies and absurdities in her own testimony, which are patent all through her cross-examination, notably :

Page 195, line 20 to 40.

Page 196, line 1 to 40.

Page 197, line 1 to 40.

6.—She contradicts and denies nearly all the facts sworn to by Theodore B. Ryerson as to the times and places in which he saw Mrs. Fuller, and her in saloons drinking beer, &c.

2.—We say the respondent is guilty of adultery on June 22d, 1878, with a man answering the same description as the man described by Mrs. Brehm.

Theodore B. Ryerson testifies: "On June 22d (1878) I saw her (Mrs. Fuller) in Jersey City; she met a light complexioned man on Newark avenue, near Ewald's music store; that man was the same man I saw her with once before on Grove street; I don't know his name; he is the same man I saw her with at the saloon corner of Grove street; it was between nine and half-past nine; they walked up Grove street; the Hoboken car came along and they got in it; I next saw her that night at one o'clock coming up from Hoboken at the elevator on a car; she was alone;

I don't know where she went with the man in the car; she got out at Wolfe's, corner of Ferry street, and walked up Palisade avenue; I should say she had been drinking by her looks and the way she walked."

Page 81, lines 39 to 40.

Page 82, lines 1 to 12.

The significance of this testimony will appear by tracing up through the testimony the history of her connection with this "light complexioned man."

1.—The witness Ryerson saw her with this man first on May 29, 1878, on Grove street in front of a saloon; she shook hands with him.

See his testimony.

Page 77, lines 20 to 40.

Page 78, lines 1 to 20.

Witness describes him as "*About five foot six, very stout, light hair, light moustache, a large Roman nose, dressed well, light pants, white vest, black cutaway coat and Derby hat; he was with light complexion—very light complected man.*"

Page 77 and 78 as above.

2.—Compare this description with the description of the man seen with the respondent by Mrs. Brehm in New York in Hudson street and Renwick street.

Page 20, lines 29–30.

Page 23, lines 19–20.

3.—The witness further testifies that on July 10th, 1878, he saw the respondent in Hamilton Park; a *light complexioned man* was with her, *the man who was with her twice before that*, in the evening between eight and nine o'clock; they were walking down through the park talking and laughing; they sat down on one of the benches to the right of the fountain; they acted very free towards each other; he sat very close to her; had her by the

hand ; saw his arm around settee back of her resting on the railing."

Page 82, lines 30 to 40.

4. "Saw her with a man at Henkel's and at Pohlman's, and she drank beer at both places ; this was a *light complexioned man, the same man* she was with three times before."

Page 85, lines 2 to 12.

5.—On August 8th saw her about 11 o'clock A. M., at Jersey City ; saw her talking to a *light complexioned man* in Hudson street ; she went to Rockaway that day ; after the boat left the dock no one came off ; *he was the same man* I saw her talking to first on Grove, &c.

Page 86, lines 1 to 10.

6.—Saw on August 13th a *light complexioned man* just opposite the house (Mrs. Fuller) on Ogden avenue ; same man I spoke about before ; he was there about an hour.

Page 87, lines 17 to 21.

7.—On August 16th in the evening saw her with *same man* again on Newark avenue ; they walked through Newark avenue to Grove street, &c.

Page 87, lines 24 to 28.

8.—The respondent knows who this light complexioned man is, and she could have produced him as a witness in her behalf to explain her connection with him. She has not done so, and we have the right to infer that she cannot explain consistent with her innocence.

3.—We say the respondent is guilty of adultery on August 14th, 1878, in the City of New York, with a man name unknown, described as a man with "black hair, about five feet high, weighs about 150 or 160 pounds, black eyes, heavy black moustache, light pants, black coat and vest, derby hat."

The witness, Theodore B. Ryerson, testifies that he saw the respondent with this man on August 14th, 1878, on Barclay street, in the City of New York, between Greenwich street and Broodway about noon; she got home about 12 o'clock that night.

Page 86, lines 37 to 41.

Page 81, lines 1-2.

Let us examine into her connection with this man.

The witness says, page 86, beginning at line 10: "On the eleventh of August I saw her" (Mrs. Fuller) "about eight o'clock, in Jersey City, on Newark avenue; she was with a gentleman, and took Grove street car; this man and Mrs. Fuller; this man was about five feet high, weighs about one hundred and fifty or sixty pounds, black hair and eyes, heavy black moustache; he wore light pants, black coat and vest and Derby hat that night; he first met her on Newark avenue; he took the car; they were just standing together when I first saw them; I had never seen her with this man before; they went up on the hill, and got off corner of Palisade avenue and Ferry street; they got out of the car together; she started out ahead, alone; she passed her husband and Morgan in front of Feiler's; she met them; the man overtook her at Franklin street, and they walked together to Hutton street; he then stopped on the corner of Hutton street; she then went up Liberty street to her house; the man followed up and stood on Palisade avenue, opposite Liberty street, looking up that way; he then went over on Stehn's corner; I think he spoke to Stehn's clerk; Stehn's clerk pointed up Liberty street; he then went up that way, and went down towards Mrs. Fuller's house; it appeared to be very dark there, in front of her house; I couldn't see, when I got there, if he was standing at the gate or not; he was down Ogden street; he went into Wolfe's; it was between ten and half-past ten."

Ryerson's testimony, page 86, line 10 to 36.

Connect with this the testimony of Henry A. Stehn as to the movements of Mrs. Fuller and this man on that night.

Page 405, line 13 to 40.

Page 406, line 1 to 40.

Page 407, line 1 to 6.

Also Stehn's cross-examination.

Page 409, line 3 to 40.

Page 410, line 1 to 40.

Page 411, line 1 to 5.

Three days after these suspicious actions and movements of the respondent, on August 14th, 1878, we find the respondent meeting this same man on Barclay street, in the city of New York, at about noon. Then the next that is seen of her is at twelve o'clock midnight of that day. Was this the assignation agreed upon by Mrs. Fuller and her companion of the night of August 11?

The respondent could easily explain by producing this man as a witness in her behalf. She knows who he is, and she knows whether he could tell a story consistent with her innocence.

4. We say the respondent is guilty of adultery at Jersey City on the twenty seventh day of September, 1878, at the house of one Mrs. Woerner, on Sherman avenue, with a man unknown.

Proof—

On that day, Sept. 27th, 1878, the witness Theodore B. Ryerson testifies: "I saw her on Sherman avenue, quarter-past four in the afternoon; I was coming down Sherman avenue to Bowers street. She came out of Mrs. Woerner's house; she had on a gray shawl, a green veil over her face, a dark dress; she went from there, through Griffith street, to her own house."

Page 87, line 32 to 40.

He further testifies that that is the house that Officer McGrath testified to in this case as being a house of prostitution.

Ibid.

Same witness also testifies that Mrs. Woerner's house has the reputation of being a bed-house.

Page 88, line 1 to 30.

James McGrath testifies in reference to Mrs. Woerner's house :

"It is what they call a bed house ; it is known to the police department generally as a bed house."

It is frequented by women of ill fame "on the quiet," women who are not known to be prostitutes, but they are known to be crooked."

Also he mentions *women* who frequent the house, women of bad repute for chastity.

Page 53, line 15 to 40.

Frederick Yoe testifies upon the same subject :

That Mrs. Woerner's house is known to be a house of ill fame.

Page 46, line 1 to 20.

Lord Stowell has observed : "The act of going to a house of ill fame is characterized by an old saying that people do not go there to say their *pater noster*; that it is impossible they can have gone there for any but improper purposes, and that it is held universally as a proof of adultery."

See 2 Bish. on M. & D., 5 Ed., sec. 626.

So if a married woman is seen going into a house of ill fame with a man not her husband, or unattended, that is alone sufficient evidence of adultery.

See 2 Bish. on M. & D., sec. 626, and cases cited in the notes.

In all the above charges of adultery by the respondent, it must be admitted that she did have the *oppor-*

*tunity to commit the crime*, if she had the *will and desire* to commit it.

Her *will and desire* to commit adultery, and her *adulterous intent* are fully proven by her *habits, conduct and character* during the two years previous to the filing of the bill of complaint in this cause.

As to the competency of such evidence there can be no question.

“Libidinous conduct in the wife defendant is admissible in evidence against her, even when not pointing to the particular *particeps criminis*.”

“It is important and permissible to prove a general adulterous intent.”

The married state implies a state of mind adverse to adulterous intercourse; when therefore a particular married person is shown to have passed out of this state, and to be seeking an adulterous connection, the first step toward the offence appears.”

2 Bish. M. & D., 5 Ed., sec. 625.

Hamerton vs. Hamerton, 3 Hag. Ec., 5 Eng., Ec. 11.

As to circumstances showing adultery probable, familiarities and proximate acts.

See 2 Bish. M. & D., 5 Ed., sec. 617, and case cited; Caton vs. Caton, 13 Jur. 431, decided by Dr. Lushington.

Proof—

1.—Frederick G. Grant testifies:

1.—That on July 3rd, 1876, the respondent solicited witness, a perfect stranger, to her to take her into a picnic at Pohlman's Park. Witness did so.

Page 38, line 17 to 20.

2.—She drank beer there with him, and had conversation, &c.

Page 38, line 22 to 24.

3.—She denied to him that she was a married woman, &c.

Page 38, line 24 to 28,

4.—She went out upon the public street and had a long talk with him, and then he escorted her to near her home.

Page 38, lines 36 to 40.

5.—She then made an assignation with Grant to meet him on the corner of Ogden avenue and Liberty street, and did meet him there in fulfilment of that assignation.

Page 39, lines 7 to 40.

6.—She made another appointment to meet Grant at the elevator, and met him there about eleven o'clock at night.

Page 40, lines 10 to 25.

7.—Proposed to deceive her husband by representing to him that her companion was her cousin.

Page 40, lines 35 to 40.

8.—Kissed on the street.

Page 41, lines 4 to 40.

2.—Frederick Yoe testifies :—

1.—She flirted with this witness on the street in in the Spring of 1877.

Page 44, lines 1 to 12.

2.—She went in company of witness—an entire stranger to her—up Clinton avenue in West Hoboken.

Page 44, lines 28 to 30.

3.—Denied to witness that she was married.

Page 44, lines 22 to 24.

4.—She made an assignation with witness to meet him that same night at Pohlman's Park.

Page 44, lines 30—

5.—Made suggestion to witness to have a bottle of wine.

Page 45, lines 12 to 16.

The assignation at Pohlman's was not kept because of witness having in the meantime seen Mr. Fuller.

Page 45, line 20.

3.—James McGrath testifies:—

1.—Have seen Mrs. Fuller out from 11 to 12 o'clock at night alone.

Page 51, lines 38 to 40.

2.—Saw her on the bridge opposite Pohlman's Park in September, 1878, with a man called Watson. They were in peculiar circumstances; very confidential, I should think, for a married woman; she was, in fact, too confidential; they stood up against the rail; well, fronting each other; this was about nine o'clock in the evening; I saw them again an hour and a half afterwards at the same place, &c.

Page 52, line 40.

3.—Has seen Mrs. Fuller under the influence of liquor.

Page 57, line 34.

4.—George D. Watson testifies:—

1.—In September, 1878, saw Mrs. Fuller for the first time on Palisade avenue near Henkel's beer garden; did not have an introduction to her; she spoke to me as I passed by; never saw her before that to my knowledge; she said, "*Good evening.*" "*There's my fellow.*"

I followed them because they (Mrs. Fuller and her sister Adelia Markey who was with her) spoke in a way that *solicited my company, &c.*

Page 58, lines 30 to 40.

Page 59, lines 1 to 40.

Page 60, lines 1 to 40.

Page 61, lines 1 to 12.

2.—She and witness and Miss Adelia Markey continued the scene on the bridge from about 8 or 9 o'clock in the evening until 10½ P. M.

3.—She, Mrs. Fuller, said, referring to witness: "Well, he is a good-looking fellow, or a handsome fellow, anyhow; and again, "Yes, such a plump, stout fellow *as I like*;" I said good night, and the stoutest one (Mrs. Fuller) shook hands.

*Ibid*—pages 60 to 61.

This whole bridge scene is most scandalous and disgraceful, and shows that respondent was lost to every sense of prudence and decency of conduct.

5.—Charles R. Frawham testifies—

1.—Mrs. Fuller made the acquaintance of this witness, without an introduction, on the corner of the streets near Ditmar's Park, and immediately accepted from him an invitation to the side door of Becker's beer saloon, and drank beer with him, in July, 1877.

Page 387, line 35-40.

4.—Went with her down to the Elevator; sat on a string-piece alongside of the railroad track. Mrs. Fuller stayed there with witness.

Page 388. line 30-35.

3.—She allowed witness to escort her to near her home, and, when the witness left her that night, she agreed upon an assignation with him for the Wednesday night following, on the same corner.

Page 389, line 1-20.

4.—She agreed upon the signal, so that they should be able to know each other.

Page 389, line 20-30.

5.—This was at night, between 11 and 12 o'clock,

Page 309, line 8 to 10.

The assignation above made was not kept on account of the rain.

Page 390, line 1.

6.—Herman Nitribit—

Corroborates the last witness as to the beer drinking by him and Mrs. Fuller at Becker's saloon.

Page 432, line 1 to 20.

7.—Mrs. Eliza Becker—

Corroborates Frawham as to the scene at the side door of Becker's saloon between him and Mrs. Fuller

8.—Theodore B. Ryerson—

1.—May 18th, 1878, Mrs. Fuller flirted on Grove street; attracted the attention of men in the street by her laughing; met a tall young man about 11 o'clock at night; walked to Hoboken, &c., and went with that man to Ditmar's Park, and drank beer with him, he takes her near to her house; stands ten or fifteen minutes talking, shakes hands and leaves her about midnight; (man described;) at parting, he said, "Don't forget;" she said, "No, I won't."

Page 72, line 5 to 40.

Page 73, line 1 to 25.

2.—These words, under such circumstances, and unexplained, can only be words of assignation.

3.—Accordingly, next day, May 19th, we find Mrs. Fuller on Sixth avenue and Sixteenth street, New York city, waiting on the street three-quarters of an hour, looking up and down the street.

Page 23, line 25 to 40.

What can this be but the fulfillment on her part of the assignation of yesterday? She did not "forget."

4.—May 23d, 1878—Loitering until 11 o'clock at night on the streets in the vicinity of Mrs. Woerner's house ; drinking beer, and laughing very loud on the street, and coughing to attract attention.

Page 76, line 25 to 40.

Page 77, line 1 to 20.

5.—May 29th, 1877—Met the "*light-complexioned man*" in Grove street, in front of saloon ; stood there half an hour, between 9 o'clock and midnight ; shook hands with him at parting ; very close together ; apparently kissing ; very intimate ; midnight when she reached home.

Page 77, line 21 to 40.

Page 78, line 1 to 23.

6.—June 8th, 1879, Truck Driver's picnic. Respondent attended that picnic, was at a table drinking with others, both men and women—four or five.

Walked around and afterwards was at another table ; drank with another party both men and women.

After that at another table with two more men ; drank beer and remained until 12 $\frac{1}{2}$  or 1 o'clock.

It is plain from the witness's testimony, considering the whole of it as to this night of June 8th, she went to that picnic *alone*, unattended by any proper escort.

Page 28, lines 28 to 40.

Page 79, lines 1 to 24.

*Query?* Do virtuous wives attend such picnics unless accompanied by their husbands ?

June 11, 1878—

Soliciting in the streets in the vicinity of Mrs. Woerner's house.

Drinking beer at Knobloch's, &c. Stood on the street watching the cars about an hour and a half.

In the rear of Mrs. Woerner's house standing there laughing and talking very loud and attracted witness's attention.

Heard the remark "I'll give him the devil when I see him for putting me out," or "not coming."

She reached home that night about 11½.

Page 79, lines 38 to 40.

Page 80, lines 1 to 24.

June 12, 1878—

Mrs. Fuller, Mrs. Jaffray, and "this tall woman," were in the kitchen of Ditmar's saloon drinking for about one and a half hours, pretty well under the influence of the liquor, and pretty noisy; up and down Palisade avenue laughing and talking very loud; attracted attention; went home about eleven o'clock.

Page 80, lines 30 to 40.

Page 81, lines 1 to 5.

June 16, 1878—

Out on the streets of old Jersey City; met a man; walked with him along Grove street to Hoboken, thence to the 100 steps by Ditmar's Park, thence home at 11:45 P. M.

Page 81, lines 5 to 20.

June 21, 1878—

At Letter-Carriers' picnic at Ditmar's Park ; at a table with a man drinking beer ; met a number of men ; danced with three different men ; drank considerable beer which had the effect of making her talk and laugh a great deal, &c.; reached home about 1 o'clock.

Page 81, lines 20 to 38.

June 22, 1878.

She met the "light complexioned man on Newark avenue, near Ewald's, which has been already stated.

Page 81, lines 38 to 40.

Page 82, lines 1 to 12.

June 25th, 1880—

She was around the streets with another woman ; drinking beer in Ditmar's basement ; went home about 10 o'clock.

Page 81, lines 12 to 16.

June 30, 1878—

Sunday afternoon met two men and a lady ; went to Henkel's, thence to Pohlman's ; drank beer ; went to Hoboken ; crossed to New York, thence to Jersey City ; home about 11 o'clock.

Page 81, lines 16 to 30.

July 10, 1878—

Hamilton Park seen with the "light complexioned man" before referred to.

Page 81, lines 30 to 41.

Page 81, lines 1 to 4.

July 18, 1878—

At Shackel's dance-house in Hoboken, on the meadows; with a man there, 24 or 25 years of age; a common looking man; got home about midnight.

Page 84, line 5 to 30.

Character of Shackel's—Resort, by reputation, for common strumpets. Pretty hard crowd there that night.

Page 83, line 4 to 40.

Page 84, line 1 to 5.

84, line 30 to 40.

July 20, 1878—

With the "*light-complexioned man*" and another woman at Henkel's and Pohlman's, beer drinking, &c.; home at 11½ to 12 at night.

Page 85, line 1 to 13.

July 22, 1878—

She was at a saloon in Hoboken known as the "House of Blazes;" lager beer saloon; Mrs. Fuller was in there in room off from bar-room, with the bartender, at night; reached her home 12:45 P. M.

Page 85, line 13 to 33.

August 7, 1878—

She was again in this House of Blazes; in same back room; reached home about 1:20 at night

Page 85, line 33 to 39.

August 8, 1878—

At Rockaway with "*light-complexioned man*," before referred to.

Pages 85 and 86,

August 11, 1878—

Met the *dark-complexioned man*; scene has been already fully referred to above.

Page 86, line 10 to 37.

August 14, 1878—

Same man in Barclay street, New York, already referred to.

Pages 86 and 87.

August 12, 1878—

She and another woman, with two young men, around the streets on the Hill and at saloons drinking beer; home about 11 o'clock.

Page 87, line 5 to 17.

August 13 and 16—

She was in the company of the "*light-complexioned man*," as before stated.

Page 87, line 17 to 30.

August 27, 1878—

She came out Mrs. Woerner's house; fully referred to above.

Page 87, line 30 to 40.

88, line 1 to 38.

August 28, 1878.

Sat at the window of her house; every now and then she would look out; about 8 o'clock P. M. two young men stopped on the corner; she came out and met them at the gate; went to Henkel's; had beer; then to Pohlman's; had more beer; home 11:30 P. M.

It is sought on the part of the respondent to discredit and impeach the testimony of the witness Theodore B.

Ryerson, by other witnesses produced to prove that his testimony as to Mrs. Fuller's presence at the truck drivers' picnic on June 8th, 1878, is false; that as a matter of fact, Mrs. Fuller was not at that picnic; that Ryerson himself was not there, and also that Mr. Fuller, the appellant, was there—claiming and insisting that if Ryerson is false or mistaken in this one matter, that his whole testimony is unreliable, &c.

These witnesses are:

- 1 Adelia Markey.
- 2 Margaret Jeffray.
- 3 Joseph Markey.
- 4 John Collier.
- 5 James Markey.

1.—Adelia Markey's testimony has already been sufficiently discredited above in comparing her evidence with Mrs. Brehm's.

She was not at the picnic herself, and says that she and her sister, Mrs. Fuller, were together on the night of the Truck Drivers' picnic *until 11:30 o'clock*.

Direct-ex., page 156, line 10 to 11.

On cross-examination, page 191, line 38 to 40, she swears it was about *half-past ten when we got to Mr Jeffray's house, &c.*

She has no certain way of knowing or remembering the Truck Drivers' picnic at all, except from hearsay.

Page 190, line 10 to 40.

Page 191, line 1 to 40.

Can't remember the date of any other picnic.

Page 191, line 10 to 20.

2.—Margaret Jeffray, sister of respondent, was with Mrs. Fuller on that night; it was October 8th,

Page 324, line 20 to 30.

Left Mrs. Fuller about 10:30 o'clock, it might be 11 o'clock.

Page 325, line 13 to 15.

Knows it was the night of the Truck Drivers picnic because she met her brother, James Markey, and he told her so.

Page 325, line 28 to 30.

Can't remember the month of her marriage; thinks it was in June, but is not sure.

Page 324, line 40.

Can't remember the day of the month of her marriage.

Page 327, line 20 to 30.

Knows it was the Truck Drivers' Picnic because there was a *flag up there that night with a truck on it.*

Page 329, line 11 to 14.

*Note here* that, as to this flag, she is flatly and positively contradicted by George Ditmar; that at the Truck Drivers' Picnic held at his park on June 8th, 1878, there was no flag with a picture of a truck on it, nor at any other picnic to his knowledge.

Page 369, line 10 to 16.

She denies that she was ever at Knoblock's drinking beer with Mrs. Fuller; never was in Ditmar's basement, and denies nearly all the other facts testified to by Mr. Ryerson as to her movements in company with Mrs. Fuller during the summer of 1878—all of which were testified to by him from written memoranda made by himself at the time, &c.

See her testimony, pages 330-333.

3.—Joseph Markey, brother of respondent: Was at the Truck Drivers' Picnic June 8, 1878, from 8 o'clock until the picnic was out, with my brothers James and John; Mrs. Fuller was not there.

Page 314, line 30 to 40.

Page 315, line 1 to 14.

Remember it was the Truck Drivers' Picnic because he worked in a saw-mill.

Page 319, line 38 to 40.

Page 320, line 1 to 40.

This witness's cross-examination is very amusing, and shows beyond all question that he knows nothing certain about the picnic nor about anything else.

Pages 316-323.

4.—John Collier, 18 years of age: Was at the Truck Drivers' Picnic June 8, 1878, from 7½ o'clock; Mrs. Fuller was not in the park that night; Mr. Fuller was.

Page 205, line 1 to 35.

Ryerson was not in the park that night.

Page 206, line 25.

Saw everybody in the park that night.

Page 206, lines 28 to 40.

Page 207, lines 1 to 40.

The cross-examination of this witness shows him to be remarkably stupid.

Pages 206, 207, 208, &c.

5.—James Markey, brother of respondent, was at the Truck Drivers' picnic June 8, 1878; went there about 7:10 o'clock.

Page 213, lines 37 to 40.

Fuller was at that picnic.

Page 215, line 15.

Ryerson was not at that picnic.

Page 216, lines 20 to 30.

Now, as to the question whether as a matter of fact Mrs. Fuller, the respondent, was at the Truck Drivers' picnic at Ditmar's Park on the night of June 8th, 1878:

The testimony of Adelia Markey and Margaret Jeffray must be considered of no value. They have

no means of fixing the date of the evening when they were together with Mrs. Fuller on Palisade avenue, and at her house, except that they were told by their brothers James and John, that that was the same night of the Truck Drivers' picnic.

The other three witnesses swear of their own knowledge; but the simple fact that all these three witnesses swear that Mr. Ryerson was not at the picnic of June 8, 1878, and that Mr. Fuller was there, proves that all three of these witnesses, to say the least, are mistaken as to the particular picnic of which they testify; it must have been some other picnic held at the same place.

Because it is a fact, beyond any question, that Ryerson was at that picnic of June 8, 1878.

Taking, then, all the evidence of these five witnesses, comparing it with the testimony of Ryerson, and considering the many inconsistencies and contradictions of each one's direct examination with the cross-examination, and considering that Ryerson testifies entirely from his own knowledge, with written memoranda of all the facts, made by himself at the time, there can be no hesitation as to the presence of both Ryerson and Mrs. Fuller on the night of June 8th, 1878 at the Truck Drivers' picnic at Ditmar's Park.

The respondent also seeks to discredit Mr. Ryerson's testimony by showing that there was collusion between him and Mr. Fuller, the appellant, and produce

Thomas J. Rowan,

who swears to a conversation which he says he heard between Ryerson and Fuller about 9th June, 1878, on Franklin street, Jersey City—

“You must follow her, see where she goes, and get in with her.”

Page 100, line 1 to 8.

This is most positively and fully denied by Ryerson.

Page 458, line 1 to 25.

Ryerson's testimony in this case shows that he was careful and prudent in his employment, and that his observations were fairly and openly made. There was no device or trick to get evidence. He merely went to see what the respondent did; saw it; made memoranda, and then carefully and truthfully testified of those things that he had seen and knew, and his testimony is entitled to and commands belief.

There is also some evidence in this case of another element in corroboration of the proof of adultery, and that is the treatment of the appellant by the respondent during their marriage, or at the time of the alleged adulteries.

"Evidence of cruelty, as showing the terms of the matrimonial cohabitation, has always been received to strengthen the other proofs of adultery."

2 Bish. M. & D., sec. 623.

Lord Stowell says: "It adds greatly to the probability that such a charge is well founded if it appears that the \* \* \* \* affections were visibly estranged \* \* \* \* and therefore more likely to be devoted to other less worthy objects."

Forster *vs.* Forster, 1 Hag. Con. 144, 4 Eng. Ec. 358, 360.

Proof—

Henry A. Stehn testifies that a violent and disgraceful assault and battery was committed by the respondent on the appellant in his store in Jersey City, in the summer of 1878, a full account of which is given by the witness.

Pages 402, 403.

Respondent used vile and profane language, &c.  
Ibid.

Arthur E. Fry testifies : Respondent committed an assault and battery upon the appellant on the street in front of witness' house ; she struck him a blow in the face ; witness had to interfere to stop her.

Pages 382, 383.

Against all this proof as to the charges of adultery the respondent produces no testimony, except some witnesses to testify to her good character.

The fact that her answer filed in this cause is sworn to by her avails nothing in the way of evidence.

"The law is well established that defendant can secure no advantage thereby ; such answer can in no way be considered evidence in the case, and it must be regarded as if filed without oath, and the case is to be considered and adjudicated upon accordingly."

Miller *vs.* Miller, Sax., 386.

Tompkins *vs.* Tompkins, Sax., 388.

Anthony *vs.* Anthony, 3 Stock., 70

2.—As to good character, the respondent produces several witnesses, who all say they are more or less acquainted with her, and all of them testify that they never saw respondent drink ale or liquor, and never saw her do, nor heard of her doing, anything that a respectable woman should not do.

1. Lizetta Mersheimer, page 335.
2. Eva Muller, page 337.
3. Edward Dingler, page 339.
4. Charles H. Piebes, page 343.
5. Michael Reardon, page 349.
6. Hubert T. Rourke, page 346.
7. Abram Post, page 349.
8. Edward C. Dickinsoup, page 350.
9. James Corrigan, page 352.

Also she produces Enoch Kessler as a witness to prove that in the month of September, 1877, she

was employed by him, and that she made during that month sixty-one shirts, besides some collars and cuffs; and that in the months of May, June, July, August and September, 1878, she was employed and did a certain quantity of work.

Pages 307 to 313.

The witness states on cross-examination that Mrs. Fuller is a very expert operator on the sewing machine—one of the best.

Page 310, line 37 to 40.

Also, on page 309, line 15, he says a first-rate operator will make a half dozen shirts in a day.

An industrious woman, then, being a first-rate operator, would easily make 120 shirts in a month, and there would be no lack of time for her to go two or three times during a month to spend the afternoon in New York.

This witness also testifies that, so far as he knows, Mrs. Fuller's habits as to sobriety were all right; never saw her under the influence of liquor; never saw her drink.

Page 310, lines 25 to 35.

All these witness testify simply to what they *do not know*, and to what they never heard or saw.

Most of them, from their own story, have had no means of seeing, hearing and knowing any of the matters; their testimony does not relate to *general reputation*, nor does any one of these witnesses testify that he has any knowledge of the *general reputation* of the respondent

It is further claimed by the respondent that her husband was anxious to get rid of his wife, and for this purpose she produces the witness,

James Rykeman, page 239 :

Who shows that in the month of February, 1874, four years and eight months before the commencement of this suit, some trouble existed between Mr. and Mrs. Fuller, on account of which Mr. Fuller kept away from his home a short time, and his wife had him arrested under the abandonment act.

He at once responds and does not attempt to evade his duty and responsibility, and since that time there is not a syllable of evidence that Fuller did not perform his entire duty towards his wife.

Mrs. Fuller herself, told Watson at the Bridge scene that she had a good home.

Page 60, line 15.

Pauline Sunderman also in her testimony confirms the general good treatment of his wife by Mr. Fuller.

Pages 129 to 132.

Mr. Fuller in his cross-examination positively swears that he never wanted to get rid of his wife.

Pages 18, 19.

Again, it is further claimed that there is a conspiracy between the appellant and the witness Brehm and one Margaret Frauham, who they say is the mistress of Mr. Fuller, to convict his wife, &c.; that the appellant, having tracked his wife for five months, and having failed to find evidence against her, as a last resort produces Mrs. Brehm; that her testimony is but a fabrication.

Yet strange to say, the respondent has set up and claims condonement on the part of her husband. The very idea of condonement is inconsistent with a desire to rid himself of his wife.

Anxiety to get rid of one's wife would prompt a man to take advantage of every act on the her part that would tend to effect his object; he would never forgive; he would never condone even the slightest misstep on her part; he would be quick to seize and utilize every advantage.

But why fabricate a story like that which Mrs. Brehm tells; why fabricate events and fix the time of their occurrence a year or more in the past, and so locate them that they cannot be corroborated directly?

Why not fabricate a story that will meet the events that actually did occur between Mrs. Fuller and the "light complexioned man" on the 22d June, 1878, or so as to meet and supplement the events that actually did occur between her and the "dark complexioned man" whom she met in Barclay street, New York, on August 14th, 1878?

There is much greater reason for the appellant to charge conspiracy upon the respondent and her witnesses Rowan and Muller, and Jeffray and Rehill, and her three brothers.

She had the means and the inducement to suborn these witnesses and she would not hesitate to do so.

All the charges testified to by all these witnesses against the appellant are fixed at dates subsequent to the filing of his bill of complaint in this cause, and have every appearance of having been fabricated for the purposes of her answer.

But the appellant insists that leaving out altogether the testimony of Mrs. Brehm, the facts and circumstances proved by witnesses of undoubted integrity and veracity show that for two years before the filing of the bill of complaint in this cause, the character of the respondent and her habits, her associations,

her assignments with strange men, picked up and solicited on the public streets, her late hours, her dissipations, the disreputable places and houses she frequented, prove her to be a guilty woman.

All these things are too well established as facts in this case, and they are irreconcilable with her innocence.

In the language of the Court, as expressed in the Berekman's case, 1 C. E. G. 123, she had the *opportunity* for the crime, and the *will* to commit it; and where both are present the Court will infer guilt.

If the facts proved cannot reasonably be reconciled on the assumption of innocence, but are harmonious with the assumption of guilt, the Court must infer guilt.

2 Bish. M. & D., sec 620.

See also sec. 613 and 614.

The facts proved in this case cannot *reasonably*, or in any way, be reconciled with the innocence of the respondent.

They are not only harmonious with the assumption of her guilt, but they are irreconcilable and inharmonious with any other assumption.

They do not show mere *imprudence, indiscretion or folly*, but they show a long and persistent, and continued, bold and open history of shame, not only inconsistent with the duty which a virtuous wife owes to herself and to her husband, but entirely and only consistent with the life of an adulteress.

## II.

But the respondent says that if she has been guilty of adultery, her said adulteries have been condoned by her husband, and this brings us to the respondent's defence of

### CONDONATION.

Condonation is defined "The conditional forgiveness by a husband or wife of a matrimonial offense which the other has committed."

Bouvier Law Dic., 315.

It is either express or implied :

No insistent is made in this case by the respondent of any express condonement by the appellant.

But it is insisted that the appellant continued to live and cohabit with his wife after he was informed of the story of Mrs. Brehm, and after he had knowledge of his wife's habits and actions.

Any cohabitation with the guilty party after the commission of the offense, and with the knowledge or belief on the part of the injured party of its commission, will amount to conclusive evidence of condonation.

Bouvier Law Dic., 315.

The term condonation necessarily implies that operation of the mind evinced by words or acts, known as forgiveness, the free, voluntary and full forgiveness and remission of a matrimonial offence; unless accompanied by that operation of the mind, even cohabitation is insufficient to establish condonation.

Betz *vs.* Betz, 2 Robt. 694.

Condonation cannot take place without a *knowledge* of the existence of the thing forgiven. This knowledge implies :

- 1.—The existence of the offence.
- 2.—A belief of its existence.

Chief-Justice Parsons, 6 Mass. 147, says, "The true import of the rule, in my opinion, is that the cohabitation of the husband after the commission of the offence, and after he believes on probable evidence the guilt of his wife, is conclusive evidence of the remission. For he cannot be considered as having impliedly forgiven a crime which he does not believe to have been committed, and without that belief he cannot have knowledge of the crime ; for he may have received information without giving it credit."

Cited in 2 Bish., M. and D., sec. 39.

Cohabitation to bar the husband's remedy should be with his knowledge not only of the offense, but of his ability to prove it.

Quincy *vs.* Quincy, 10 N. H., 272 ; 2 Bish. M. and D., sec. 43.

Now it is claimed on the part of the respondent, that Mrs. Brehm told the appellant the whole story of his wife's adulteries in New York in September, 1877, a few days after the same occurred.

And this is all admitted. She told him on the street—Palisade avenue.

Page 22, line 9 to 16.

Page 32, line 1 to 18.

It is insisted by respondent that this was sufficient knowledge to cause Fuller to reasonably believe his wife guilty of adultery, and that by continuing to live and cohabit with her afterwards, he condoned the offence.

Mrs. Brehm swears that when she told this to Fuller she was an entire stranger to him ; had never seen him before to her knowledge ; so far as she knew Mr. Fuller had never seen her before, nor had any knowledge of her. She stopped him on the street—on Palisade avenue—and asked him if he was Mr. Fuller ; then she told him all the events she had seen in Hudson street and Renwick street, New York.

Mr. Fuller said *he did not believe* me ; he said he would watch and find out for himself.

Page 32, line 1 to 13.

There is no evidence that Mr. Fuller at that time had any knowledge of the *assignments* made by his wife with Grant and with Yoe, and with Frauham.

Grant says he told Fuller about this affair soon after it happened ; but there is no evidence that he told him anything more than the fact of his taking his wife into the picnic ; in fact, Fuller saw Grant in company with his wife on the corner of Ogden avenue and Liberty street—this was in 1876—and it is not pretended that there was anything criminal between Grant and Mrs. Fuller.

As to the Yoe scene : There is no evidence that Yoe ever told Fuller anything, or that Fuller ever knew anything more of it than he saw himself on the street after the return of his wife and her companion from West Hoboken, which was simply that they stopped and asked Yoe for flowers, and went to the drug store for a glass of soda water.

Yoe's testimony, page 44, line 33, &c.

As to the Franham affair : There is no proof that Mr. Fuller ever heard of it until after the commencement of this suit.

Now these are all the facts that Mr. Fuller had any knowledge of that in any way could raise any suspicion in his mind against the virtue of his wife at the time of Mrs. Brehm's story to him in September, 1877.

Mr. Fuller did not at that time place the slightest faith in Mrs. Brehm's story; no sensible or fair-minded husband would. In not believing her story at that time he showed himself a good husband.

Mr. Fuller did reside in the same house with his wife up to the 6th October, 1878. He had a right to live there; it was his duty to live there, even if he had strong suspicions of his wife's guilt—even though those suspicions were so strong as to induce him to put a watch upon the actions of his wife. It was his duty to stay there and live with her until he had conclusive proof of his wife's guilt—such proof as would convict her of the offence in Court.

If a man should be obliged to abandon his home and separate himself from his wife sooner than he had obtained conclusive evidence of his wife's guilt, he would perhaps never be able to obtain that evidence, let his wife in point of fact be never so guilty, because the fact of his separation would defeat the discovery.

Now after September, 1877, although Mr. Fuller may have had suspicions of his wife's infidelity, and actually had put a watch upon her movements, there is no evidence that he ever had any knowledge of any of her movements, that is any definite information; there is no proof that the witness Ryerson ever had any communication with Mr. Fuller as to his discoveries.

Mr. Stehn testifies that he told Fuller nothing that he saw.

Page 410, line 35 to 40.

According to the testimony he obtained no further knowledge until after his second meeting with Mrs. Brehm in September, 1878. He met her accidentally in Barclay street in New York, when Mrs. Brehm repeated to him the story of Hudson and Renwick streets.. He had not seen her in a year; had lost track of her; she had moved away from New Jersey; she informed him of her address, and told him that she was willing to substantiate her story under oath in Court.

Then no doubt Mr. Fuller proceeds to investigate the truth of her story; to see what corroboration there may be; finds Mr. Harrington, and corroborates her as to the character of the houses in Hudson street and Renwick street, and the psoprietress, Mrs. Melville, *alias*. Sloeman, and her removal from Hudson street to Renwick street at about the time stated by Mrs. Brehm.

Then finds out from Ryerson all he had discovered in regard to his wife's movements; compared the "light-complexioned man" described by Ryerson with the "light-complexioned man" seen by Mrs. Brehm, and endeavors to discover his name, &c.; learns of the fact that his wife was seen coming out of Mrs. Woerner's September 27th, 1878; consults his counsel, and then, after full comparison and consideration of all the facts and circumstances, and upon advice of counsel, he becomes fully satisfied of his wife's infidelity, and then at once, on October 5th, 1878, swears to his bill of complaint and separates from his wife.

Now the facts and circumstances had reached that point when they had entirely overcome that *confidence* and *trust* and *belief* which husband and wife should have, and which the law presumes they do have, in each other's integrity and virtue,

See 2 Bish. M. & D. sec. 43,

It cannot be insisted, nor does the law insist, that a man who has suspicions of his wife's guilt must abandon his home or turn out his wife from his house. *The law does not require this after full belief and knowledge.* The law only requires there shall be no *marital cohabitation*.

Marsh case, 2 Beasley, 281.

In the investigation of a wife's guilt, so long as there is a *reascnable doubt* of her guilt or a *hope of her innocence*, the husband's forbearance is both excusable and laudable.

Berckmans' case, 1 C. E. G., 122.

It seems that the appellant in this cause has come up to the requirements of the law as cited above. He gave his wife the benefit of every *reasonable doubt*, and to the very last had *hope of her innocence*, and now he should not lose his remedy if his wife has been proved guilty.

But suppose there has been a condonation of the respondent's adultery in September, 1877, and of some of her indiscretions afterward.

Condonation is conditional. Every implied condonation is upon the implied condition that the party forgiven will abstain from the commission of the like offense.

Bouvier Law Dic., 316.

It is an important qualification of the general doctrine of condonation, that a subsequent repetition of the crime revives the former offense, and nullifies the intermediate act of condonation by the injured party.

Burrill's Law Dic., 262.

Condonation is but a forgiveness on condition of subsequent fidelity; if not kept, the rights of the in-

jured party are restored as if there had been no condonation.

*Armstrong vs. Armstrong*, 32 Miss., 279.

*Davis vs. Davis*, 19 Ill., 334.

*Armstrong vs. Armstrong*, 27 Ind., 186.

*Smith vs. Smith*, 4 Paige, N. Y., 432.

*Johnson vs. Johnson*, 4 Paige, N. Y., 460.

*Collier vs. Collier*, 1 Dev. N. C. Eq., 352.

*Whispell vs. Whispell*, 4 Barb., N. Y., 217.

*Calkins vs. Long*, 22 Barb., N. Y., 97.

*Wright vs. Wright*, 6 Texas, 3.

*Nogees vs. Nogees*, 7 Texas, 538.

*Langdon vs. Langdon*, 25 Ver. 678.

The conditional quality of condonation is fully discussed in 2 Bish on Marriage and Divorce, 5th edition, sections 53, 54, 55, 56 and 57.

This doctrine is also fully affirmed in a late case in our Court of Chancery.

See *Warner vs. Warner*, 4 Stew. 225.

Also it is even held on the best authority that the subsequent offense need not be of the same kind; that a course of unkind and cruel treatment of the injured party by the party forgiven, will revive condoned adultery.

1 Edw. Ch., N. Y., 439.

4 Paige, Ch., N. Y., 460.

14 Wend., N. Y., 637.

4 Stewart, 225.

So a conviction of felony after condonation of a husband's adultery, was held to give the wife a right to divorce for that same act of adultery.

*Hoffmire vs. Hoffmire*, 3 Edw. Ch., N. Y., 173.

See this doctrine discussed in 2 Bish., on Marriage and Divorce, sec. 57 and 58.

Although this quality of the condition of condonation does not apply in this case, yet I refer to it to

show how *strongly* and to *what extent* the act of condonation is conditional.

It is further held, and upon the best authority, that where the subsequent acts are of the *same nature* with the former ones, savoring also of them, there is no difficulty of principle in maintaining that *less* is required than would establish an original complaint.

2 Bish. M. & D., sec. 58.

Where the subsequent offence is of the *same kind*, after condonation it may be established by *less testimony* than if there had been no condonation; that is stronger and fuller influences will be made against the defendant from suspicious circumstances.

Ibid.

“It appears, therefore, hardly consistent with common sense that clear proof of an actual fact of subsequent adultery should be necessary to remove the bar; something short should be sufficient. If nothing but clear proof of actual adultery will do away condonation of adultery the rule of revival becomes nearly useless, for the revival is unnecessary.”

Quoted from Sir John Nicholl in *Durant vs. Durant*, 1 Hag. Ec. 734.

3 Eng. Ec. 310; 2 Bish. M. & D., sec. 55.

It is therefore plain that even if Fuller has condoned his wife's offences committed in September, 1877, as proved by Mrs. Brehm's testimony, all the acts proved by the testimony of McGrath, Watson and Ryerson, are conclusive to remove the bar of condonation and revive the appellant's right to proceed against the respondent for the previous acts of adultery, unless those acts themselves have been condoned.

And it cannot be presumed that there was any condonation of the act of September 27th, 1878. Knowledge of this act *must be proved* by the respondent, either directly, or by such facts and circumstances as that knowledge must be legally inferred; no such facts and circumstances have been proved, and they cannot be presumed to exist.

### III.

#### RECRIMINATION.

1.—The defence of recrimination is a good defence, but it must be made out *affirmatively*.

2.—The counter charges must be proved with as much certainty and as conclusively as if they were the subject matter of a bill of complaint filed by the wife against her husband.

See *Cummins vs. Cummins*, 2 McCart. 138.

3.—It must be considered as a separate and independent action, as far as the proof is concerned, brought by a party defendant against a party complainant, and must be proved in the same way and to the same degree; that is, the recriminatory charges must be established beyond a reasonable doubt to be true.

It is certainly a startling proposition that, if an issue be joined as to the same identical fact, a different amount of evidence is necessary to sustain the issue according as the averment is made by the plaintiff or defendant.

2 Bish. on M. & D., 5 Ed., sec. 89, and notes.  
*Sopwith vs. Sopwith*, Swabey and Tristram,  
160.

*Turton vs. Turton*, 3 Hag. Ec., 338, 350.  
5 Eng. Ec. 130.

4.—None of the facts or circumstances tending to establish the defence of recrimination can be used to counteract, rebut, or in any way to weaken, offset or destroy the proof of the charges alleged in the complainant's bill of complaint.

5.—This defence as to its proof is similar to the defence of an *alibi* in criminal law; to be effectual it must be fully and certainly made out.

Upon this subject see

Jones *vs.* Jones, 3 C. E. G. 33.

Reid *vs.* Reid, 6 C. E. G. 331.

Now let us see if the facts and circumstances upon which the respondent in this cause depends to sustain the recriminatory charges alleged by her in her answer are, according to the law and principles above stated, of such a nature and sufficient to entitle her to a decree against her husband if the same charges were made in a bill of complaint, filed by her against her husband for a divorce from him, and the same proof offered to substantiate them.

The charge set out and alleged in her answer is that the appellant committed adultery with one Margaret Frauham at Jersey City, &c.

The proof is entirely circumstantial and depends upon the testimony of these witnesses—

1. Thomas J. Rowan, pages 98, &c.
2. Eliza Sedgwick, pages 197, &c.
3. James Markey, pages 213, &c.
4. Andrew Jeffrays, pages 246, &c.
5. Thomas Rehill, pages 284, &c.
6. William H. Markey, pages 467, &c.

Each of these witnesses as to the facts and circumstances testified to by each respectively, stands entirely *alone* and *uncorroborated*, except that Rehill and

William H. Markey in *one instance only* corroborate each other.

Take each of these witnesses in the order in which they were sworn and consider their testimony, and present the rebutting testimony to each in the same order.

1.—Thomas J. Rowan saw Mr. Fuller and Miss Frauham together twice.

1.—In the month of June, 1878, on Palisade avenue. "I met Maggie Frauham on Palisade avenue, between St. Paul's avenue and the street south, I don't know the name of it; its hardly cut through yet; and then I met Mr. Fuller on Palisade avenue, between Beacon and St. Paul's avenue; I passed him; I turned around after he had gone along and saw Maggie Frauham and Mr. Fuller walk side by side; I then turned around and went towards home; this was between eight and nine o'clock at night.

Page 100, line 20 to 28.

2.—I met Mr. Fuller and Maggie Frauham once after that on Ogden avenue, between the bridge and Liberty street; they stood at the fence, one in front of the other; this I suppose was between half-past nine and eleven o'clock at night; they were alone; I didn't see anybody else there; I couldn't hear any conversation where I stood; they stood facing each other; from the position I stood in I could not tell exactly how close together they stood; but they must have been very close together."

Page 100, line 27 to 36.

It appears from the evidence in the cause that Maggie Frauham, in the month of January, 1878, became the mother of an illegitimate child, and that her reputation for chastity was not good.

The result of Rowan's testimony is that, if true, it proves an acquaintance between Mr. Fuller and Miss Franham in the months of June and July, 1878, as well as a suspicious interview between them on Ogden avenue.

We say that the testimony of the witness as to the meeting between them on Palisade avenue amounts to nothing.

Mr. Fuller and Maggie Fraham might have both been on that street at that time, entire strangers to each other; Fuller going a little faster than her would overtake her, and in passing her on the street under such circumstances must necessarily "walk side by side" with her for a few steps.

See Rowan's testimony, page 111, line 9 to 19.

Q. How far did you see him and her walk together?

A. Well, I couldn't see them a great ways, because there is a little bend about Shannon's house.

Q. Do you know they walked together at all any more than two passers-by going the same way would necessarily be together side by side a few steps?

A. I can't say how far they went together.

Q. Don't you know that you can't stand on Palisade avenue where you stood and see down Palisade avenue past Shannon's house?

A. I know I can't.

We say that the testimony of the witness as to the meeting between them on Ogden avenue is not true—

1.—Because it is directly and positively denied by Maggie Franham.

Page 421, line 22 to 25.

2.—Because it is indirectly and yet certainly denied by Mr. Fuller in his cross-examination.

Page 19, line 7 to 15.

Cross-examination by Mr. Vredenburg :

Q. Do you know Maggie Frauham ?

A. No, sir ; I do not.

Q. Never heard of her ?

A. I have heard of her ; heard of her name around saloons, but don't know her by sight ; I never spoke to her ; never been with her ; never walked with her to my knowledge ; I don't know where she lives.

Although Mr. Fuller in this cause was not a competent witness under the statute, except to prove the *fact of marriage*, yet having been sworn in the cause as a witness in his own behalf to prove the fact of marriage, if the defendant, upon the cross-examination, goes further and examines him upon facts pertinent to the cause, and in no way pertinent to the fact of marriage ; then as to those matters so examined upon by the defendant, his testimony becomes competent, and he stands in the cause the same as any other witness.

3.—Because it is much more likely that Rowan should be mistaken as to the identity of the parties on Ogden avenue than that both Mr. Fuller and Miss Frauham should swear falsely.

4.—Because the story is so improbable that Mr. Fuller would commit such folly right within sight of the doors and windows of his own house, and at a time, too, when he must have known that the slightest indiscretion on his part would be watched.

Witness testifies.

Page 101, line 23 to 26.

Q. How far is it from this bridge, where you saw Mr. Fuller and this Maggie Frauham, to Fuller's home ?

A. About a block ; a short block,

Rowan was distant from them "about fifty feet," page 103, line 14—in the night, between 9 and 11 o'clock, and he don't remember whether it was dark or moonlight.

Page 103, line 20 to 40, etc,

This witness Rowan exhibits a *peculiar interest* in this cause and in this respondent.

1.—About the 9th of June, 1878, he says he heard a conversation between Mr. Fuller and the witness Ryerson on Franklin street, in which he says he heard Mr. Fuller say: "*You must follow her, see where she goes, and get in with her.*"

Page 100, line 4 to 5.

On the very next morning after this conversation he goes to Mr. John Muller, another witness in this case for the defense, and tells "him of this conversation between Fuller and Mr. Ryerson, and asked him if he was acquainted with her; he said nothing more than by her coming in and buying meat."

Page 113, line 30 to 40.

Read this cross-examination, Pages 114, 115 and 116.

Notice that the interest of witness in Mrs. Fuller seems to have begun instantly on hearing an indefinite conversation of a few words of no concern to him, between two persons strangers to him; and immediately he sees *Fuller* and *Frauham* together; gets acquainted with Mrs. Fuller by writing a letter to her, &c.; meets her when she gets the process in this cause, and tells her "I expected that."

Since that time he has been one of the most active parties in this cause.

Page 114, line 27 to 40,

Conversations with defendant about the case ; visits from defendant ; has conferences with the brothers of defendant about the case, and with Reehill, her detective ; and watched and followed Mr. Fuller.

He appears also reckless in the giving of his evidence. See his testimony in regard to the reputation of Mrs. Brehm for truth and veracity.

Page 111, line 20 to 40.

After the interruption in his examination by an adjournment for a few days, he returns to the witness stand with a great deal more knowledge than he had before—which to say the least is very suspicious.

And strange to say he remembers nothing else that happened that night.

2.—Eliza Sedgwick—

It is endeavored by this witness to prove that Mr. Fuller and Maggie Frauham together visited the rooms of a family named Jones, residing in the same tenement with witness, and thus establish an acquaintance and intimacy between them, &c.

It is a fact that Miss Frauham did visit the Jones family, but the witness fails entirely to identify Mr. Fuller as the man who was with Maggie Frauham.

1.—Saw gentleman that looks very much like him pass through the hall by lamp light.

Page 108, lines 5, 6.

Two and a half years ago ; it may be more ; saw this man there two or three times a week ; went up stairs ; stayed until ten o'clock at night, sometimes later ; I never saw anything wrong ; Mrs. Brehm visited there pretty often ; never saw her there with Miss Frauham ; the man who came with Maggie

Frauham was called "Maggie Frauham's fellow;" his business was stated to be an expressman; heard that he gave Maggie a gold watch.

Pages 198, 199, 200, 201.

On cross-examination says: I am not acquainted with Mr. Fuller; never was made acquainted with him.

Q. Did you ever see him before to-day that you can swear to as a fact, sure, that is the man?

A. Well, I can't say that I will swear that I can, but I think he is the man.

Q. Have you ever seen this gentleman (pointing to Mr. Fuller) before to-day?

A. Well, I think I have seen him at night; the man has changed a good deal in two years and a half, since I seen him there.

Q. Then, by that you mean that this man is changed a good deal from the man you saw there at Mrs. Jones'?

A. Yes, sir.

This testimony of Mrs. Sedgwick, if it has any weight at all, is fully rebutted by the testimony of Mr. William Jones.

Pages 439, 444.

This witness lived in the apartments testified to by Mrs. Sedgwick; says he knows Maggie Frauham; she visited his house, &c.; he was at home pretty much all the time, day and night, especially nights. Says, page 440—"I am slightly acquainted with Mr. Fuller; I have seen him within the last couple of weeks; I was not acquainted with him when I lived on Palisade avenue; knew him by sight, but never spoke to him.

Q. During the time that you lived in that house 412 Palisade avenue, did Mr. Fuller ever visit you or any of your family in that house?

A. No, sir; not to my knowledge.

Q. Could he have visited there without your knowledge?

A. Not very well.

Q. Did Mr. Fuller ever visit that house two or three times a week while you lived there?

A. No, sir; he could not (I understood the question different) no, sir, he did not.

Q. Did he ever visit that house with Maggie Frauham?

A. No, sir; not my apartments.

Q. Was it possible for Mr. Fuller to visit your apartments in company with Maggie Frauham two or three times a week on evenings, and stop there with her and your family, or your wife, from seven or eight o'clock in the evening till ten or later at night, without your seeing it?

A. No, sir.

Q. Did he do that?

A. He did not.

Q. Did he ever stay in your house a single evening from seven until ten or later?

A. No, sir; he never was in my house.

Witness then goes on to say that a young man named John McKenna did come there with Miss Frauham, &c.

Maggie Frauham in her testimony denies that Mr. Fuller was ever with her at the house of Mrs. Jones.

Page 454, line 15 to 20.

Mrs. Eliza Becker testifies that the watch and chain that Miss Frauham had belonged to Andrew Jeffrays.

Page 419, line 1 to 15.

Page 453, line 33.

The result of Mrs. Sedgewick's testimony, so far as it relates, or would seem to relate, to Mr. Fuller, amounts to nothing. She fails to identify him herself, and his rebuttal entirely justifies the conclusion that Mr. Fuller was never at Mrs. Jones's house with Maggie Frauham.

3.—James Markey, brother of the respondent.

It is sought by this witness to prove two occasions when Mr. Fuller and Maggie Franham were in company.

1.—Saw Fuller and Maggie Franham once together—"once that I could recognize her."

Page 217, line 7 to 10.

Q. When was that ?

A. *Last December, 1878, three or four months ago; I saw them right near Henkel's, &c.*

Page 217, line 10 to 40.

Page 218, line 1 to 5.

Including the church scene.

2.—Saw them about a week afterwards; she came out of her house and walked along to New York avenue; she met Fuller on that corner—the corner of New York avenue and Franklin street; they walked up to Henkel's and went in the back way to Henkel's; I lost them then.

Page 218, line 5 to 12.

The witness fixes the *time* of both these events in December, 1878, three or four months ago; and in his cross-examination, from page 219, line 30, to page 225, line 3, the witness fixes it so certainly in December, 1878, by various circumstances and facts, that there can be no doubt about it.

Q. When did you see Maggie Franham last ?

A. Some time in December; on a Sunday, it was;  
\* \* \* \* \* that was about very near the end  
of December.

Afterwards he says: "It was Sunday, in the latter part of the month."

Page 220, line 5.

Q. Where had you seen Maggie Frauham previous to that time.

A. With Fuller.

Q. Where?

A. Near Henkel's.

Q. What day of the month was it?

A. I couldn't tell you.

Q. What was you doing up there?

A. Watching Maggie Frauham and Fuller.

Page 220, line 5.

Then he says: "All the house told me I ought to go and see something; everybody knew something about the Hill about Annie, and nobody seemed to know anything about Fuller."

Page 221, line 14 to 20.

I believe Mrs. Fuller told me to watch Fuller.

Q. When did she first tell you to do it?

A. Some time in the early part of June.

Q. Last June?

A. June of 1878; yes.

Page 221, line 20 to 25.

This fixes *beyond dispute* the time when the witness first began to watch Mr. Fuller and Maggie Frauham, as certainly not before June, 1878. Up to that time, according to his testimony, he says *everybody about the Hill knew something about Annie* (Mrs. Fuller), and *nobody seemed to know anything about Fuller*.

Here the examination of the witness was interrupted by an adjournment from 26th of March to 29th March.

Page 225, line 20 to 30.

At the resumption of the examination on March 29th, upon the first question asked of the witness in reference to these meetings of Mr. Fuller and Maggie Frauham he changes the dates from December,

1878, and he does this at the suggestion of the respondent's counsel put in by way of objection. -

See page 230, line 35 to 40.

page 231, line 1 to 20.

Also says, "I can't remember which was the first or the second, but I saw them twice in that month.

Page 232, line 15.

1.—This testimony of James Markey is so inconsistent and contradictory in itself that it has no weight in the cause.

2.—It is directly contradicted.

1st.—By the testimony of Maggie Frauham as to both these meetings with Fuller.

Page 452, line 3 to 33.

2d.—It is also contradicted by Mr. Fuller indirectly, but yet just as positively.

Page 19, line 8 to 14.

3d.—The story of the witness as to the presence of Fuller in Frauham's house that night in the early part of December, is denied by Anna M. Frauham, the mother of Maggie Franham.

Page 445, line 1 to 40.

Page 446, line 1 to 11.

4th.—If this meeting is said to have taken place in December, 1878, as first stated by James Markey—Mrs. Frauham says that Maggie left home on December 3, 1878, and did not return till after Christmas.

Page 445, line 1 to 11.

5th.—If it occurred in December, 1877, as afterwards stated by the witness, it is then a fact that Maggie was within a very short time of her confine-

ment with the child that was born January 28, 1878.

Page 445, line 24.

Therefore it seems that the whole testimony of James Markey is rendered so improbable by the contradictions of the witnesses on the part of the appellant, as well as by the inconsistencies and contradictions of the witness himself in his testimony as to *time* and *circumstance*, that no reliance can be placed upon it, and it must of necessity go out of the case as utterly unworthy of credit.

4.—Andrew Jeffrays, brother-in-law of the respondent, husband of her sister Margaret.

1.—Saw Fuller and Maggie Frauham together first in July last—1878.

Page 247, lines 9 and 10.

In her step-mother's hallway, on Palisade avenue, Jersey City Heights.

Page 247, line 10 to 18.

Read the whole account of this meeting from page 247, line 5, to page 248, line 8.

2.—Q. Did you ever see Fuller and Maggie Frauham together again?

A. Yes, sir.

Q. When?

A. Just before the Republican Convention of last Fall.

Q. The Republican Convention of last Fall?

A. Yes, sir.

Q. Where?

A. Up on Palisade avenue.

Page 248, line 10 to 20.

Read the full account extending from page 248, line 10, to page 249, line 35.

Then he proceeds, and testifies—

That he didn't see them together after that.

Page 249, line 38.

And as to Maggie Franham's reputation for chastity, he says: "She has got no reputation." "The people all say she is a street-walker; she is around with everybody."

Says she has had a child, and that she told him "that it belonged to Fuller." This was in last September. "I have seen her fifty times."

Page 250, line 1 to 30.

If there is one thing in this testimony more certain than the fact that the witness testifies that he only saw *Fuller and Frauham together twice*—first, in July, 1878; second, just before the Republican convention in 1878—I am at a loss to discover it.

And as to his cross-examination, it is only necessary to read it in order to mark him as a *perjurer*.

It is one mass of contradictions, absurdities, and shows that he himself was the most intimate companion of Maggie Frauham, extending from the first of the year 1877 up to and including October, 1878, and especially during the first four months of her pregnancy; visited at her house, as he says, "*to see how they was fixed up stairs.*"

Got acquainted with her by "*picking her up on the street,*" and made appointment with her, he says, for the Wednesday night following, "*to see what kind of a gal she was.*"

Also, in his cross-examination, he testifies that he saw Fuller and Maggie Frauham together *twice*; once in her own house, and once on the vacant lots.

Yet afterwards he says he saw Fuller and Maggie Frauham together *two or three* times in the hallway—first time in *July, 1877*, some time in the summer; second time in *August last*; and then again he says he saw them *three* times together in the hall-

way—second time in July, 1877; third time in August, 1878. He also says Maggie Frauham spoke to him about the shoes *three different times*; and also says that he can't remember whether it was the second or third time he saw her and Fuller in the hallway that she *spoke to him about the shoes*.

It is impossible to go over in a brief all the cross-examination, and analyze it and set forth all the numerous and material variations, contradictions, prevarications and absurdities; it must be all read.

It shows, however, that the witness Jeffreys is a man of the most degraded character, and is one of the most impudent witnesses ever sworn in a court of justice.

His untruthfulness is proved.

1st.—By comparing his testimony as to the conversation with Mrs. Becker, whose husband kept the saloon in the house where Maggie Frauham resided,

Page 274, line 12 to 40;

Page 275, line 1 to 18;

with Mrs. Becker's testimony upon the same matter.

Page 418, line 1 to 40.

2d.—Also by comparing Mrs. Becker's testimony of his visits to Maggie Frauham at her house, and Jeffray's testimony as to the same.

He says he never was in her house, up stairs, but once, and then he "stumbled in," "to see how they was fixed up stairs."

Page 261, line 20 to 40.

Mrs. Becker says that he was there very often.

Page 419, line 17 to 40.

3rd.—All Jeffray's story as to these meetings between Fuller and Maggie Frauham is positively contradicted by Maggie Frauham.

See her testimony *passim*.

She knows Jeffrays.

Page 457, line 28.

Hall scene denied.

Page 457, line 30.

Never received any money from Mr. Fuller.

Page 457, line 37.

Conversation about the shoes denied.

Page 457, line 40.

Scene in the lots denied.

Page 452, line 3 to 10.

Never spoke to Fuller.

Page 453, line 7.

Nor he to me.

Page 453; line 8.

Never been in his company.

Page 453, line 6.

Never had sexual intercourse with Mr. Fuller.

Page 453, line 21.

Never told Jeffrays that my child belonged to Fuller.

Page 453, line 20.

On the contrary, she tells of her intimate acquaintance and relations with Mr. Andrew Jeffrays.

He made her a present of an umbrella.

Page 453, line 24.

She had a watch belonging to him.

Page 453, line 35.

He had jewelry belonging to her.

Page 454, line 1.

She swears he is the father of her child.

Page 454, line 3.

4th.—Mrs. Becker's testimony also shows the intimate relations at that time existing between Maggie Frauham and Jeffrays, and corroborates Miss Frauham's testimony, and contradicts Jeffrays in many particulars.

Miss Frauham had Jeffrays' watch.

Page 418, line 1 to 11.

Jeffrays visited her very often, once or twice a week.

Page 418, line 17 to 40.

Asked Mrs. Becker to call Maggie down stairs for him. Jeffrays went there very often.

Page 420, line 1 to 3.

Jeffrays took her out riding.

Page 419, line 28 to 32.

5.—Jeffrays is also contradicted in these matters by Mr. Fuller.

Page 19, line 7 to 15.

6th.—Jeffrays' untruthfulness may also be judged by comparing his story of the trouble between himself and Mr. Fuller at Pohlman's Park.

Page 279, line 1 to 40.

Page 280, line 1 to 20.

With the statements of Henry Morgan and Arthur E. Fry, in regard to the same occurrences.

Morgan's testimony, page 371, line 10.

Fry's testimony, page 380, line 30.

7th.—He is also a witness personally hostile to the appellant, and shows strong feelings against him.

Page 278, line 35.

5.—Thomas Reehill, respondent's detective, knows Fuller since the middle of last August, 1878.

Page 284, line 29.

Watched Fuller from middle of November, 1878, till about New Years.

Page 284, line 30 to 40.

Watched him pretty much every night; the greater part of the time I did not see him; saw him generally in Henkel's Pavilion.

Page 285, line 1 to 10.

1.—Saw him Dec. 1st, 1878; Sunday evening. Read his testimony from

Page 285, line 10, to page 286, line 7.

2.—Saw him again Dec. 5, 1878; Thursday evening, &c. Read his testimony from

Line 7, page 286, to line 37, page 286.

Says Mr. Fuller was drunk on December 1st, 1878.

Page 287, line 30.

On his cross-examination witness says :

Was employed as detective in this case by William Markey, brother of respondent.

Page 290, line 3 to 5.

Drinks beer and whisky and drank at Henkel's while on this detective duty.

Page 290, line 18 to 28.

Kept memorandum of December 1st, and have the hour down in my memorandum,

Page 291, line 15 to 28.

In regard to the event of December 1st, 1878, he testifies :

Q. Who was this man with Fuller ?

A. I couldn't say.

Q. Describe him.

A. He was pretty near as tall as Fuller ; he was stout, with moustache ; dark complexion.

Q. How far did that man go with Fuller ?

A. He left him on the corner of Franklin street.

Q. And what ?

A. And Palisade avenue.

Q. And where were you ?

A. I was coming up the street.

Q. Which way ?

A. I was going north.

Q. Behind them ?

A. Yes, sir.

Q. How far ?

A. Half a block.

Q. Half a block behind them ?

A. Yes, sir.

Q. How do you know Fuller and this man didn't turn down Franklin street ?

A. Because they stood on the corner and I passed them.

Q. Which way did this man go ?

A. They must have gone—that man must have gone down Franklin street ; he didn't go up Palisade avenue, nor down it, nor cross it.

Q. What did you mean by saying, "*They* must have gone ?"

A. I didn't say *they*.

Q. Do you actually know what you say from one minute to the other ?

A. I guess I do.

Q. You didn't say they must have gone ?

A. No, sir.

Page 291, line 28 to 40.

Page 292, line 1 to 15.

Witness, in his direct examination, says :

Mr. Fuller and the man with him on December 1st stood on the corner of Franklin avenue and Palisade avenue "for some minutes—I guess twenty minutes; *I went into Mrs. Bubser's lager beer saloon* \* \* \* \* \*; I came out again and seen him cross the street;" and then he met Maggie Frauham by her side gate, &c.

The witness, according to his own statement, lost sight of the two men standing on the corner of Franklin street and Palisade avenue—Fuller and his friend with him; he don't know which way the man with Fuller went, and of course he did not see him leave Euler.

Now Mr. Henry Morgan testifies that he was the man who was with Fuller that night. He also says that on that Sunday, December 1st, Mr. Fuller had supper with him at his home at 258 Webster avenue, near Bowers street; that after supper he and Mr. Fuller walked down the avenue as far as Henkel's, where Mr. Fuller was boarding, and they stayed there till eleven or half-past eleven that night.

Q. Then where did you go :

A. Went home.

Q. Which way did you go ?

A. Well, up to the avenue again.

Q. Up Palisade avenue ?

A. Yes, sir.

Q. How far ?

A. As far as Bowers street.

Q. Then down Bowers street to Webster ?

A. Yes, sir.

Q. Who left Henkel's with you ?

A. Mr. Fuller.

Q. How far did he go with you, if he went with you at all ?

A. I couldn't state the exact distance that he came.

Q. As near as you can in your recollection?

A. We generally walked together about half way up to our street.

Q. Do you remember that night?

A. Yes; I remember that night?

Q. You remember how far you went up that night?

A. I couldn't state the distance exactly that night.

Q. Did he leave you on the corner of Franklin street and Palisade avenue?

A. I wouldn't swear; but I don't think he did.

Pages 370-371.

This testimony proves conclusively that Mr. Morgan was the man with Fuller that night, and also that Mr. Morgan himself *did go up Palisade avenue*, and also that he thinks that Mr. Fuller did not leave him on the corner of Franklin street.

Michael Masterson, a witness, produced by the respondent in regard to this Sunday night, testified that he went out of Henkel's with Mr. Fuller and Henry Morgan, and left them on the corner of Franklin street, and he then went the other way, and he does not know which way they went.

Page 466, line 20 to 30.

William H. Markey, a brother of respondent and a witness produced by her, testified in regard to this Sunday, December ~~1st~~<sup>15th</sup>, that several parties came out of Henkel's and went up Palisade avenue in pairs—three pairs of them; among them were Mr. Fuller and Mr. Masterson. *Mr. Masterson and Mr. Fuller stood on the corner of Franklin street; they stood on the corner about ten minutes; Mr. Masterson went up Franklin street.*

Q. What became of Fuller?

A. He stood on the corner with Masterson; they stood on the corner for about ten minutes; *Fuller* left *Masterson*, and crossed over to the gate to Maggie Frauhan's house on Franklin street.

Q. Alone?

A. Yes, sir.

Pages 470 to 471.

Now, from all this testimony, certain facts appear to be certain.

1st. That Mr. Morgan was the man with Fuller; that they two were together.

2d. That Mr. Masterson according to his own testimony and that of Mr. Morgan *did not stand on the corner with Fuller.*

3d. That Masterson was the man *who must have gone down Franklin street.*

4th. That Mr. Morgan did *go up Palisade* avenue, and did not go down Franklin street.

5th. That Morgan must have gone up Palisade avenue while the witness Reehill was in Bubser's saloon.

6th. That the man who was with *Masterson* was the man who went across to Miss Frauhan's gate.

7th. That that man was not Fuller; both Morgan and Masterson state with certainty.

My conclusion is that while Reehill was in Bubser's saloon, both Morgan and Fuller passed together up Palisade avenue, unnoticed by Reehill, that because when he went in Bubser's he left Morgan and Fuller on that corner, and seeing two men on the corner still when he came out, in the darkness of the night, he

supposed they were the same men who were there when he went in the saloon ; and it is not a very difficult matter under all the circumstances for Reehill to be mistaken as to the identity of Fuller, when it is certain that William Markey, his own brother-in law, was mistaken as to his identity beyond any question.

Another fact in the case which goes to show that Reehill was mistaken as to Fuller is tho fact that he says *Fuller was drunk* that night, whereas Mr. Morgan says Mr. Fuller was *perfectly sober*.

p. 370, line 20.

It is strange that Reehill nowhere in his testimony *even hints* that William Markey was with him on the night, December 1st watching Mr. Fuller.

As to the alleged meeting between Mr. Fuller and Maggie Frauham on Thursday, the 5th December, 1878, the witness Reehill says he saw Fuller and Frauham on that day, about 7:15 o'clock in the evening, go into a house on the south side of Bowers street, between Hancock and Sherman avenues. Did not see any numbers on the house ; went to look afterwards if there was any number on the house ; there was none. It was the *fourth* house from Hancock avenue going up the hill ; it is a little row of cottages that stand off from the street. For a certainty it was the fourth house.

Direct ex., p. 286, line 8 to 38.

Cross ex., p. 298, line 2 to 40.

p. 288, line 1 to 40.

p. 290, line 1 to 40.

p. 300, line 1 to 20.

This testimony is false.

1.—Joseph Edwards testifies that he saw Mr. Fuller on Thursday evening, December 5th, 1878, at Henkel's from about 7:15 in the evening until after nine o'clock, and that Mr. Fuller was not out of his presence during the whole of that time. He says he remembers it was December 5th, because that was

the first Thursday in the month of December, and it was a meeting night of a Lodge in Hoboken to which he was going, and he went to Henkel's that night to meet a gentleman to go with him.

p. 355, line 10 to 40.

And on cross-examination the witness only makes his testimony more particular and certain as to the *alibi*—passim.

This same witness also describes all the houses on the south side of Bowers street, between Sherman, Hancock and Cambridge avenues; in fact every house on the south side of Bowers street from Palisade to Cambridge.

He says there are *only two houses* between Sherman and Hancock on the south side of Bowers.

p. 363, line 12.

He says that between Hancock and Cambridge avenues, on the south side of Bowers street, there are *three dwelling houses*, and a *store* on the corner of Cambridge.

p. 363, line 29.

It is impossible for Reehill's testimony as to December 5th to be true if Edwards tells the truth. Edwards is fully corroborated by

2. —Arthur Edwards Fry.

See his testimony as to the houses on south side of of Bowers street, between Sherman and Hancock and Cambridge avenues.

p. 384, line 3 to 40.

p. 385, line 1 to 12.

Houses are all plainly numbered. The two between Sherman and Hancock are Nos. 83 and 85; those between Hancock and Cambridge are Nos. 99, 101, 103 and 105.

It may be said by respondent that the witness Reehill may be mistaken as to the street, etc., but if that

be so he had ample time after the testimony of Messrs. Edwards and Fry was taken before the closing of the evidence to go and examine the locality and find the exact house, and then correct the testimony previously given by him. He has not done so, therefore it cannot be done. It cannot be said that he is unable to identify the exact house, because according to his own statement he returned to that house afterwards to see if was numbered, &c.

3.—Anna M. Frauham, mother of Maggie, testifies distinctly and positively that her daughter Maggie left Jersey City on the 3d day of December, 1878, and that she was not in Jersey City again till after Christmas; that she was not in Jersey City on Dec. 5, 1878.

Page 445, line 1 to 10.

4.—Maggie Frauham testifies that she left Jersey City on Dec. 3d, 1878, and went to work in New York City on Sixty-first street, between Lexington avenue and Fourth avenue, and that she was not in Jersey City again until after Christmas; was not in Jersey City on December 5th, 1878; did not go to any house at that time, with Mr. Fuller, on Bowers street, &c.

Page 450, line 10 to 25.

5.—Charles R. Frauham, brother of Maggie, testifies that his sister Maggie left Jersey City Dec. 3, 1878, and did not return to Jersey City again until the latter part of December; she was not home on Dec. 5th, 1878.

Page 386, line 36 to 40.

Page 387, line 1 to 5.

6.—Mr. Fuller's testimony, already referred to, denies the testimony of Reehill as to both Dec. 1st and Dec. 5th.

The respondent also produced John McKenna as a witness to prove the fact that Mr. Fuller and Maggie Frauham were acquainted with each other, and that he had seen them in company together, but he can't swear that he has ever seen Mr. Fuller, and he testifies to nothing but hearsay. He says he saw Fuller and Maggie Frauham walking together near the reservoir, but he only knows that was Maggie Frauham because a boy, whom he sent to see, told him it was she:

See his testimony.

Page 463, line 20 to 40.

Page 464, line 30 to 40.

Now can it be said that the charges of adultery alleged against the appellant are sustained? From the whole evidence it appears that these charges are hardly rendered probable, much less established in such a manner as to lead a reasonable and just man to the conclusion that the crime has been committed.

Every charge attempted to be proved has been fairly and fully rebutted by plain and positive testimony.

It is a peculiar fact that every charge attempted to be proved against Mr. Fuller is alleged to have been committed by him after the filing of his bill of complaint in this cause.

There is contained in the defence of this cause the strongest suspicions of conspiracy between the respondent and her three brothers and the witnesses Rowan, Muller, Jeffrays, Reehill and perhaps Adelia Markey and Margaret Jeffrays.

Rowan says he discovered, about June 9th, 1878, that Fuller was watching his wife; immediately he communicates with Mr. Muller, the butcher; at once they concoct a letter and send it to Mrs. Fuller, notifying her of the discovery.

Why? She was a total stranger to Rowan, and to Muller, except that Muller had sold her meat a few times. Why are these men so interested in this woman? the wife of a man also a stranger to them?

But immediately after this Mr. Rowan curiously enough begins to watch Mr. Fuller, and begins to see him in company with Miss Frauham once in that same month of June, and again in the next month of July. Jeffrays gets on Fuller's and Frauham's track, and James Markey is told, "*All the house told him he ought to go and see something; everybody knew something about the Hill about Annie, and nobody seemed to know anything about Fuller;*" then the work began—Rowan, Muller, James Markey, Jeffrays and Reehill—was there ever so bald a conspiracy?

Every charge, except the one of Dec. 1st, 1878, and every fact and circumstance connected with charges are testified to by *one witness* only—not a corroborating circumstance from any one; each one a story utterly improbable, and all of them contradicted both by Mr. Fuller and Maggie Frauham, besides other witnesses.

"The testimony of one witness uncorroborated, unsupported, and in its details improbable, is not sufficient to establish the charge of adultery against the *full and explicit* testimony of the person accused and the *particeps criminis*.

Berkman's case, 1 C. E. G. 122.

2 C. E. G. 453.

Reid vs. Reid, 2 C. E. G. 101.

Again, not a word of testimony is offered to show that Mr. Fuller's habits and general character are bad, or were such as to render such charges against him probable.

The whole testimony shows that but *one woman, known or unknown*, was ever by anybody seen in the company of Mr. Fuller.

The whole charge against Mr. Fuller relates only to Maggie Frauham, and all the testimony offered in support of the charge relates to their conduct in Jersey City—*on the Hill*—right within full view of his own home; right in full view of all his neighbors and friends, and of numbers of people who knew both him and his wife and Maggie Frauham; and if the charges are true right in the face of his wife's brothers and his and her brother-in-law's; and right in the face of his wife's hired detective, known by him to be such, and all of this at a time, too, when he had filed his bill of complaint in this cause and had separated from his wife, which facts were patent to all in that vicinity; and at a time when he himself was seeking to collect evidence against his wife to sustain his own suit, and when of all other things it behoved him to be especially on his guard against even the suspicion of anything improper.

The charges cannot be true.

I therefore submit—

1.—That the charges alleged in the bill of complaint are fully established, and that the respondent has been guilty of adultery as follows:

1.—Three acts of adultery in the month of September, 1877, at New York, with the same person, name unknown.

2.—Adultery with the light-complexioned man described by the witness Ryerson in the City of Hoboken or in the City of New York—name unknown—on the 22d June, 1878.

3.—Adultery with the dark complexioned man described by the witness Ryerson, in New York, August 14, 1879—name unknown.

4. Adultery with some person unknown at Jersey City September 27, 1878, at the house of Mrs. Woerner on Sherman avenue.

2d.—That there has been no condonation of the respondent by the appellant of any of the said acts of adultery; and if such condonement has at any time existed, the bar thereof has been removed by the subsequent acts of the respondent.

3d.—That none of the charges made by the respondent in her answer against the appellant have been sustained.

4th.—That the appellant is entitled, upon this whole case, to a decree of divorce from the respondent.

5th.—That the final decree of the Court of Chancery should be by this Court reversed and set aside.

THEO. RYERSON,  
*Of Counsel with the Appellant.*

1870

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

# In Chancery of New Jersey.

Between

WARREN FULLER,  
Compl't,

and

ANNA M. FULLER,  
Def'dt.

On Bill for  
Divorce.

## BRIEF FOR DEFENDANT.

This suit is brought to have the bonds of matrimony dissolved.

The cause alleged by complainant for this relief is adultery of defendant.

The bill is sworn to October 5, 1878.

The adultery is alleged to have taken place in the month of September, 1877, over one year (13 months), before the filing of the bill of complaint.

The bill of complaint also alleges adultery since that date, but this allegation is unsupported by any proof.

The adultery complained of is proved by one witness alone, a Mrs. Brohm. Her testimony as to this is found on pages 20, 21 and 22.

As to her story of the adultery.

I call attention to the following reasons against its truth :

1. To her bad character and want of standing.  
     Her cross-examination, p. 23 to 32.  
     Coroner Rowan, p. 101.  
     John Muller, p. 121.  
     Margaret Carter, p. 126.  
     Mrs. Sedgwick, p. 199, 202 and 203.  
     By her own statement that she was acting for the  
     keeper of a brothel at the time of the alleged  
     adultery.
2. Her intimacy with Fuller's mistress, Maggie  
     Franham.  
     Mrs. Sedgwick, p. 199, 202, 203.  
     William Jones, p. 439.  
     Anna Franham, (the mother), p. 448.  
     Adelia Markey, p. 147.
3. The improbability of her story.
4. Unsupported in any way by any collateral evi-  
     dence.
5. The fact that she is contradicted by  
     Adelia Markey, p. 143 and 147.  
     Mrs. Carter, p. 126.
6. That Fuller in the position he was, desiring  
     not to live with his wife, made no move when  
     she alleges she informed him.  
     Fuller a bad man. His cross-examination, p. 15.  
     Had detective Howard watching Mrs. Fuller  
     three years before.  
     Dingler, p. 340 and 341.  
     Forced by law to support his wife on the com-  
     plaint of the overseer of the poor.  
     Justice Rikeman, p. 238, 240, 241, and Ex-  
     hibits D. 4, D. 5, &c.

## 7. Mrs. Fuller's good character.

Dingler, Reardon, Piebes, Rourke, Post,  
Dickenson, Corrigan, from p. 342 to  
353.

Fry, (witness for complainant) p. 381.

Mrs. Muller, p. 337, 338, line 10.

Kessler, p. 307. That in the month of September she was exceedingly busy, as follows :

Sept. 4th.	Cuff.	Collars.	11	Shirts
6th.			11	"
11th.			11	"
12th.	1 pr.	2	1	"
15th.			1	"
17th.			7	"
20th.			6	"
28th.		8	12	"
		<hr/>	<hr/>	<hr/>
		1	10	61

She kept her house up, clothed herself, prepared her meals, repaired his and her clothing, and made 61 shirts, ten collars and a pair of cuffs.

Was she the woman, or had she the time, to be running over to New York in the middle of the day to commit this offence?

## 8. The fact that under the law she is not permitted to prove by her own oath the falsity of the charge.

The evidence of young Ryerson is, it seems to me, not in aid of the complainant.

He swears he was put to watch defendant by his father on May 15, 1878, and he dogged her from that date until September 30, 1878, and he testifies to nothing which is not consistent with entire faithfulness to Mr. Fuller, the complainant, or which throws any light upon the alleged adultery committed in September, 1877. He was cross-examined as to one pic-nic, as to which he was contradicted by four witnesses.

That pic-nic was what is called the Truck Drivers' pic-nic. He swears to it, p. 78 and 79, and on p. 94, 95, 96 and 97. On p. 156 he is asked to read memorandum in book.

He is contradicted as to this whole statement by

Adelia Markey, p. 155 and 156.

Margaret Jeffries, p. 325 and 326.

John Collier, p. 205 and 206.

James Markey, p. 215 and 216.

Joseph Markey, p. 314.

Mr. Ryerson's son swears that he saw, p. 87, line 30, Mrs. Fuller in Sherman avenue. "I was coming down Sherman avenue and Bowers street. She came out of Mrs. Werner's house." He had not seen her visit any one for many days. He saw no man with her then. It is not all clear whether he supposed or actually saw that she came out of Mrs. Werner's house, but in either case Rehill, on cross-examination, p. 303, swears that she (Mrs. Werner) "had never seen Mrs. Fuller;" it was not for Mrs. Fuller after that to produce such women as Mrs. Werner is claimed to be. In fact the testimony of Ryerson on that point was so indefinite that I attached no weight to it. It will be noted that Rehill's inquiry of Mrs. Werner was prior to Ryerson's statement.

As to Watson's story.

No criminality in it. In the presence and with the knowledge of her husband. He talked with one who coughed. Miss Markey coughed.

Adelia Markey, p. 153.

Mrs. Fuller was always with her sisters?

Francis G. Grant testifies on p. 38, to a pic-nic held July 4, 1876. The testimony of Adelia Markey on p. 156 and 156, shows she came there because her husband was there.

The defence of defendant is a denial of the alleged offence. As far as it is possible we have disproved it.

To meet an allegation so remote and so little sur-

rounded by facts capable of being disputed, is exceedingly difficult, if not impossible; when offending party is not named the difficulty is increased.

But if proved conclusively, she still has two complete defences:

1. Adultery on the part of the complainant.
2. Condonement.

1. As to the adultery of husband with Maggie Franham.

It is fully told by Jeffries, p. 248 and 9. It appears everywhere in the case that Maggie Franham was a strumpet, and that she was intimate with the complainant's sole witness Mrs. Brohme.

James Markey, p. 217.

Complainant's witness Mrs. Becker.

It is also told by Rehill and William Markey.

Her intimacy with Fuller is corroborated by

Coroner Rowan, p. 100, 102-3-4-5.

Mrs. Sedgwick, p. 197-8.

John Rehil, p. 285-6.

William Markey, p. 467.

John McKenna, p. 459.

Michael Masterson, p. 465-6.

James Markey, p. 217.

Maggie Franham is brought from New York and she and the complainant are bound by her statement that "she never heard" of Fuller before the day on which she was being examined.

McKenna's testimony seems to me to be conclusive, p. 458.

Rehill, p. 85, lines 10 to 30, shows that Maggie Frankham and Fuller were together on December the 1st, at between eleven and twelve o'clock. Morgan, on p. 370 and 371 locates him at the same place at the same time; Michael Masterson, p. 466, locates Fuller there at the same time.

William Markey, p. 467, corroborates Rehill. Rehill's testimony commends itself to belief.

They attempted to contradict him as to the meeting, December 5, between Frankham and Fuller; *a* by showing that Maggie Frankham had left her home on December the 3d; that might be a reason why Fuller did not meet her at her own house; *b* by showing that Fuller was at Henkels' at half-past seven by Edwards, Rehill says that he had no memoranda of time, that it was about seven; also Edwards might be mistaken in the night; Edwards was very positive that Fuller told him about it prior to Christmas, yet the answer was not sworn to until the 27th of December, and Fuller could not have seen it till after the first of January; *c* by attempting to show a mistake as to the row of houses into which she entered. There was a little row of cottages such as Rehill describes, between New York avenue and Sherman avenue, according to the testimony of the complainant's witnesses. The map of the city used before Governor Bedle showed four small cottages standing back from the street, as shown by the testimony of Rehill.

## 2. Condonation.

I think it is fully made out and is a bar.

1st. Both these defences are set up and claimed by the answer, yet, that no mistake should be made, an order was petitioned for and signed—p. 12—setting up condonement.

The specific offence attempted to be proved occurred in the month of September, 1877. He was informed of it immediately. Mrs. Brohme testifies that she, the same month, went to Mr. Fuller and told him fully all she knew, p. 22.

What occurred with Grant in 1876.

Grant told Fuller whose friend he was, about the same time.

Grant's cross-examination, p. 42, &c.

What occurred with Yoe in 1876. Fuller saw Yoe.  
Yoe, cross-examination, p. 46.

What McGrath and Watson saw in 1877 or 1878.  
Fuller admitted he saw.

Watson, cross, p. 62.

Adelia Markey, p. 160.

Young Ryerson told Fuller each night almost what  
he had seen.

Ryerson, cross, p. 92, line 30.

Mrs. Brohm testifies on p. 22 as follows :

“ Q. How did your acquaintance with him commence,  
just shortly after this ?

A. I stopped him in the street and asked him if he  
was the gentleman.

Q. You mean Mr. Fuller ?

A. Yes.

Q. Why did you stop him and ask him that ques-  
tion ?

A. Because I wished to tell him what I knew.

Q. Did you tell him the same as you have told here  
to-day ?

A. Yes, sir.

*Cross-examination*—page 31-2.

I first saw Mr. Fuller the first time in Palisade ave-  
nue ; I knew him by stopping and asking him. I had  
the description of him from his wife.

Q. When had you seen his wife to ask her ?

A. About a month before.

*Cross-examination*—page 32.

Next before that time I saw Mr. Fuller last Septem-  
ber in Barclay street, near the ferry. It was towards  
evening ; I met him by chance.

Q. What was said ?

A. He asked me if I remembered what I told him

a year ago, and I told him I did; and he said if I needed you, and call upon you, will you come and testify to what you have said, and I told him I would; and he asked me my number and where I could be found if he needed me, and I gave it to him; that was all that was said. I am sure that was all that was said. Next before that was the time I met him in Palisade avenue. That was in September the year before. It was in Palisade avenue near Franklin street. I don't remember exactly the time of day, it was towards evening. No one was present. After I found out that he was Fuller, I told him what I saw in New York. I told him about meeting her at 222 Hudson street, and of seeing her at No. 23 Renwick street. I told him fully all that I have told here—just the same. It took me to tell him all this in about five minutes. I think I told him all in about five minutes. He did not ask me who the man in light gray suit was. He did not say he knew him. He said he did not believe him. To that I said nothing. He asked me who I was. I told him. I don't think I told him where I lived. I don't remember. He said he would watch and find out for himself. I told him what she had done, what she had said, the same as I have told you. I told him that she had called on me. I don't think I told him the conversation I had with Mrs. Fuller when that woman was with her. I don't know I didn't. I told him what sort of a house 23 Renwick street was. I told him it was called a bed house."

Notwithstanding the offence was known to Fuller in September or October, 1877, he continued to cohabit with Mrs. Fuller until October 6, 1879.

Her answer claims this.

The testimony of Fuller, p. 14 is, that he Fuller, lived at Ogden avenue, No. 105, up to October 6, 1878, when he went to Henkel's to board.

Henkel, p. 50, swears that Fuller came to his house to board on October 6, 1878.

Adelia Markey, p. 150, and Pauline Sunderland, p. 129 to 131, swear that Fuller lived with Mrs. Fuller, his wife, at 105 Ogden avenue, Jersey City, until October 6, 1878.

The evidence is full that while they lived there they held themselves out as man and wife ; walked together, talked together, and to all outward appearances seemingly occupied their apartments as husband and wife.

At 105 Ogden avenue Fuller and his wife occupied the second floor with the exception of the front hall room.

The second floor consisted of four rooms in addition to the front hall room, viz.:

1. The front room.
2. The back room.
3. The room between the back room and front room.
4. The back hall room.

No. 1. The front room was occupied as a parlor and a sitting room.

No. 2. The back room was used as a kitchen.

No. 3. The middle room as a store room.

No. 4. The back hall room was the bed room.

The situation of and use of the rooms is sworn to by Pauline Sunderland, p. 131, the landlord's daughter, and who occupied the front hall room as a bedroom.

Adelia Markey, p. 150 and 152.

They lived together as man and wife to that time.

Pauline Sunderland, p. 129.

Lizetta Mersheimer, p. 335.

Eva Muller, p. 337.

Joseph Markey, p. 314.

Margaret Jeffries, p. 323.

Adelia Markey, p. 149.

Condonation is an absolute bar to the remedy for the particular injury condoned.

Bishop, vol. 2, § 33.

Cohabitation after knowledge of the offence and belief of it is conclusive proof of condonation.

Husband presumed to believe when the information is given to the husband by the same person whom he uses as witness to prove the offence.

§ 40, vol. 2, Birt. M. & D.

L. R. 2 P. & D. p. 306, Newsome v. Newsome.

Delay in bringing suit while not constituting a bar in many cases, ought to deter the Court against granting the relief.

Cummings v. Cummings, 1 McCarter, 315.

2 " 138.

Chapman v. Chapman, 10 C. E. G. 394.

This is stronger against husband.

Berckmans v. Berckmans, 1 C. E. G. 122.

2 " 453.

Condonation.

Marsh v Marsh, 2 Beas: 283.

Green, Chancellor, in this case cites from Shelford & Bishop a definition of condonement in words as follows—283.

"If the party accused of adultery shall prove that the accuser before the commencement of the suit had probable knowledge of the crime committed, and yet afterwards cohabited with the accused, in such case the accuser shall not obtain a sentence of divorce for the crime that shall be supposed to have been committed."

In case of Marsh v. Marsh :

The adultery was alleged to have been committed on March 23, 1857, and bill filed for divorce in January, 1858.

In this case adultery proved September, 1877, bill filed October, 1878.

In that case the only witness by whom the occurrence from which the adultery is proved, testifies that she told the complainant by or before July 4, 1857.

In this case, this only witness told complainant in September, 1877, immediately after it occurred.

In both cases he had the very information from the lips of the same witness upon which he asks the Court to pronounce his wife guilty.

In that case the proof that they continued cohabiting was

1. The wife's answer, we have same proof.
2. Four witnesses testified that they occupied the same room until March, 1858. In this case four witnesses state the same fact, and one states fully the sleeping together of complainant and defendant.

But one bed in their room.

In that case there was some opposing testimony. In this case there is none.

It is enough as against husband to establish condonation that he had been once in bed with his wife after knowledge of her adultery.

Bish. on M. & D. § 364, cited approvingly.  
 Marsh v. Marsh, 2 Beas. 285.  
 Timmings v. Timmings, 3 Hagg. Ecc. 76.  
 Newsome v. Newsome, *ibid*.

"The presumption is that husband and wife living in the same house live on terms of matrimonial cohabitation."

Marsh v. Marsh, 2 Beas. 285, and *cities*.  
 Beebe v. Beebe, 1 Hag. Eccl. R. 789.  
 Also Marsh v. Marsh, 1 McCarter, 315.

What evidence is there to overcome this presumption. He shows none. Certainly the allegations of his bill of complaint cannot be taken

On the contrary, on the direct examination of the complainant, he swears,—p. 3, line 20, “ I resided there four months ; after that I resided at 105 Ogden avenue ; that was the place of my last residence, up to the 6th of October ; my wife resided there with me when she was there, when she was home.”

He swears to his bill of complaint on October 5, 1878.

Finally :

If condonation is proved it cannot be avoided by the complainant in this suit.

1. Because he has proved nothing which could avoid it.

He has proved no adultery since. No intimacy with the same man.

The man that Mrs. Brehm speaks of is five feet ; the man the Ryersons speak of is five and a half feet in height.

The testimony of all the witnesses is that Fuller put no restraint upon his wife.

There is no proof that he ever in any manner sought to prevent her from visiting her family in the evening, or from drinking beer, or from doing anything about which young Ryerson testifies.

On the contrary Mrs. Jeffries testifies that she often called upon them, and that she never saw anything disagreeable between them, p. 326, line 40.

And that Fuller took his wife to just such places, p. 330.

The testimony of Adelia Markey to the same effect.

2. Because the complainant encouraged defendant in the very thing which he now claims avoided the condonement.

3. Because if complainant would avoid the effect of the condonement proved he should have set up this matter in some way in answer to the answer.

His replication was merely a denial of the condonement. If he desired to avoid its effect he should have set it up.

Bishop Mar. & Div. vol. 2, § 318.

Jean v. Jean, 2 Harring, 4 (Del.) 38.

4. The alleged acts avoiding the condonement were themselves condoned as soon as committed.

On the first day of October, 1878, Fuller, the complainant, knew of everything which he now alleges as a ground for reviving the adultery claimed to be proved by Mrs. Brehm. He had met Mrs. Brehm; she had advised him that she remembered fully, as to the alleged adultery, and that she was willing to be a witness in New Jersey.—p.

Young Ryerson had already received \$65, and presumably informed him of all the various alleged misconducts on her part, yet Fuller slept in the same bed with her that night. He also slept with her on the 2d, 3d, 4th, 5th and 6th.

He swore to his bill of complaint on the 5th.

Did he learn anything additional during that week? He had employed a lawyer (Ryerson), in May, previous, to obtain a divorce. Why sleep with her? If, with these facts we take into account that the object of the whole doctrine of condonement is to keep married people from obtaining a divorce.

Beeby vs. Beeby, 1 Hagg. Ecel. R., p. 792.

and that condonation is more easily inferred, and more strict a bar against the husband,

Bishop, Vol. II, § 49, (368).

Beeby vs. Beeby, 1 Hagg., 793.

and that the result of the testimony is that the complainant enjoyed his wife to the last minute, and then cast her off for offenses known to him while enjoying her, which Parsons, C. J., says would be both immoral and unjust.

Anon. 6 Mass., 147.

Bishop, Vol. I, § 38, (357).

The conclusion is irresistible that the cohabitation by the complainant with the defendant, from October 1st to October 6th, was a complete condonement in the law of all previous offenses.

Parties cohabiting forgive daily, by the very cohabitation.

Bishop, Vol. I, § 61.

He does not explain in any way why he resided with his wife from that date in September, 1878, when he ascertained again from Mrs. Brehm, all about her story, and her willingness to come to New Jersey and be a witness, until October 6th, 1878.

The proof is clear that he did reside with his wife, as man and wife, until October 6th, 1878.

Without the proof the presumption which is in no way rebutted, is that once having been proved to be living with his wife, as man and wife after the offence committed, he continued so to live with her until October 6th, 1878.

I say that the conclusion is inevitable that all the offences proved or attempted to be proved, have been in law condoned.

Nor is it necessary that there should be alleged or proved that the husband had actual connection with the wife to establish condonement.

I respectfully insist that under the cases cited it is sufficient if we show that the husband occupied the same bed with his wife, to raise a presumption of condonement.

He was not forced to occupy the same bed from October 1st to October 6th, with his wife.

It was so immoral and unjust on his part towards his wife that the law takes it as full proof of condonement.

I insist that the condonement has been fully proved.

What was the condition of mind of these parties in the summer of 1878?

FIRST. He had abandoned her twice before, and twice subsequently ; and she had applied to the overseer of the poor in both instances and forced him to support her.

Rikeman, p.

Fuller, p.

SECOND. He was running after another woman Maggie Franham.

THIRD. His previous life. He had abandoned one woman ; he had lived several years under a false name with the second, and supporting the two children resulting therefrom ; his character is bad ; his own testimony, p.

FOURTH. The slighting way in which he speaks of his marriage to her, p.

FIFTH. The method he pursues to trap her, or lead her into doing something that would lay a foundation for a suit.

On May fifteenth he employes Ryerson and his son to work up his suit ; in other words to obtain a divorce ; and while it is being worked up he continues to live with her, cohabit with her, pretending to be satisfied with her ; giving her no note of warning, no advice, and even after he swears to the bill on October 5, he goes home and sleeps with her.

He is 50 ; she is 28 years of age.

SIXTH. He urges his detective to get in with his wife that they may have some proof of her adultery ; he, man of fifty ; this, a boy of twenty-one.

Coroner Rowan, p. 100.

“Mr. Ryerson (meaning young Ryerson) and Mr. Fuller stood leaning up against the house ; Mr. Ryerson had either a book or a piece of paper in his hand, I think he was writing ; I heard Mr. Fuller say, ‘You must follow her, see where she goes, and *get in with*

*her.'*” On p. 114 he shows that he followed this up by writing to Mrs. Fuller about it. Muller, p. 122, corroborates him; on p. 114, Stehn corroborates it. The only contradiction is young Ryerson, p. 458, and he is then asked the question, “Did you ever have a book or paper in your hand in the street, writing in connection with this case?” His answer is, “No, sir; not in the street” On his former cross-examination he states that it was a common thing for him to write in the street in his book—p. 91.