Clerks Table

1874

N. J. Court of Errors and Appeals, 1

ON APPEAL FROM COURT OF CHANCERY
OF NEW JERSEY.

Between ELIZA CALAME, *Comp'lt,* 2 *and* AUGUSTE CALAME and JUSTIN L. CALAME, *Deft's.*	*On Bill, &c.*

LEONARD & COULT, Solicitors of Complainant.

STONE & JACKSON, Solicitors of Defendants. 3

BILL.

To His Honor ABRAHAM O. ZABRISKIE, *Chancellor of the State of New Jersey.*

Humbly complaining, showeth unto your Honor your oratrix, Eliza Calame, of the City of Newark, in the County of Essex and State of New Jersey, that in the year of our Lord, eighteen hundred and forty-eight, she 4
was lawfully married to her husband, Auguste Calame, (now of the City of Saint Louis in the State of Missouri,) in the Canton of Berne in Switzerland; that in the year eighteen hundred and forty-eight her said husband came from Switzerland aforesaid, where they, on their said marriage, resided, to said Newark; to which last named place she in the next year followed him; that

5 they resided together as man and wife in Newark aforesaid from the time of her arrival in that city to some time in the year eighteen hundred and sixty-five, with the exception of about sixteen months in the year eighteen hundred and fifty-eight and eighteen hundred and fifty-nine, when they resided in Switzerland together and from there returned to Newark; that while they were residing together as man and wife in said Newark her said husband left her, and ceased to live with her as and under the circumstances hereinafter set forth; that
6 while she and her said husband so resided in Newark, aforesaid, her husband carried on the business of an engraver of jewelry there and prosecuted the same so successfully that at the time when he so left your oratrix, as aforesaid, he was worth in clear estate, as your oratrix believes, from twenty thousand dollars to thirty thousand dollars, besides a lot known as No. 12 Mulberry Place, in said City of Newark, on which was and is a dwelling house and shop adjoining it; said house with shop and lot were valued then at about two thousand dollars and
7 now are worth about four thousand dollars.

And your oratrix further showeth unto your Honor that the said property was all acquired by her said husband in his said business while she and he were living together, as aforesaid, in said City of Newark; that she gave valuable attention to his business and his affairs during all the time they lived together and contributed largely to the success of said business and to his acquisition of all the aforesaid property.

8 And your oratrix further showeth unto your Honor that when her said husband so as aforesaid left her he took away with him all of his said property and estate except the said house and lot, shop and the tools in said shop and the furniture in the house, which was of small value.

And your oratrix further showeth to your Honor that her said husband, prior to his leaving her as aforesaid, betook himself to evil and dissolute courses of life, and committed adultery in the said City of Newark, and

N. J. Court of Errors and Appeals.

Between ELIZA CALAME, Complainant, *and* AUGUSTE CALAME, Defendant.	On Bill, &c.

POINTS FOR DEFENDANT, AUGUSTE CALAME.

1. Under the Laws of this State "Alimony and Maintenance" mean a sum of money required by an order of the Court of Chancery, to be periodically paid, and not a gross sum to be paid at once and in full.

2. The amount of alimony and maintenance to be decreed in any particular case, must be governed by its own peculiar circumstances, and in this case was fixed at a much higher sum than is reasonable and just.

STONE & JACKSON,

Solicitors and of Counsel with Defendant.

elsewhere, with various women, whose names (except 9
that of one, whose name was Botiaux, and who lived in Washington street, in said Newark, then), are to your oratrix unknown; that he made no concealment to your oratrix of the fact that he was guilty of adultery, but, on the other hand informed her that he was in the habit of having illicit intercourse with women, and gave to her as his reason for leaving her that he proposed to seek some other woman or women than herself; that your oratrix remonstrated with him, from time to time, as to
his evil course of life, and as to his cruelty in leaving 10
her, as aforesaid, but all her remonstrances were wholly in vain; and at last, in said year eighteen hundred and sixty-five, while, as aforesaid, he and she were residing together as husband and wife, in said City of Newark, he informed her distinctly that he was about to leave her, for the reason aforesaid, and proposed to her that if she would consent to the separation between him and her, and give him no trouble as to his property, that he would convey to her, in con-
sideration of such separation, and as and for a settlement 11
upon her, in consideration thereof, and for her future support, the said house and lot and shop, in Mulberry place, in Newark, and the tools in said shop, principally consisting of lathes, and would pay to her the sum of one thousand dollars in cash; to which proposition she declined to accede.

And your oratrix further showeth that her said husband then left her, and went she knew not where, and
she was unable to find out where he had gone, or where he 12
was, until January, in the year eighteen hundred and seventy-two, when she learned that he was in St. Louis aforesaid.

And your oratrix further showeth unto your Honor that about two years ago, while she was still in ignorance as to his whereabouts, she received from her said husband a letter addressed to her, in substance as follows: "I write to you a few words to renew the offer of arrangement I made you before my

13 departure from Newark. If you will consent to a separation you shall have (referring to said house, shop and lot) my house, shop and the lathes that are therewith, two thousand dollars. I think you will have reflected upon the matter, and hope you will accept. If you don't accept, you need not answer this; if you do accept, send your answer to my brother Justin, from whom I will get it," which last-mentioned proposition your oratrix accepted without delay, in the manner directed in said letter; but her said husband, notwithstanding her said ac-
14 ceptance thereof, has not conveyed to her said house, shop and lot, or paid to her said two thousand dollars, or any part thereof.

And your oratrix further showeth unto your Honor that ever since her said husband so left her she has occupied the said house and shop and lot, and had possession of the tools aforesaid, and that she still has possession of all of said property, and has had possession of the said furniture.

15 And your oratrix further showeth unto your Honor that her husband delivered over to her the title deeds for the said house and lot and shop, and that the same are in her possession at this time; that the said lot is therein described as follows: Beginning on the northerly line of Garden street, at a point one hundred and twenty-four feet six inches distant in a southeasterly direction from the corner of Garden and Mulberry streets, and from thence running north thirty-three degrees, east fifty feet, to the beginning, corner of a small lot purchased by Reu-
16 ben Seely from David B. Day; thence along the line of the same north twenty-five degrees and fifteen minutes, east thirty feet; thence south fifty-eight degrees and forty-five minutes, east twenty-five feet six inches; thence south twenty-five degrees and fifteen minutes, west thirty feet; thence south thirty-three degrees, west fifty feet, to Garden street aforesaid; thence along the line of Garden street, north fifty-seven degrees, west twenty-five feet six inches, to the place of beginning.

That the said lot was conveyed to her said husband by

Reuben Seeley and wife, by deed which is dated Dec. 20, 17
1853, and recorded in the then Clerk's (now Register's)
office of the County of Essex aforesaid, in Book U. 8,
page 583, and was subsequently, when your oratrix and
her said husband returned to Switzerland, as aforesaid,
conveyed by her and said husband to Justin Calame, of
said Newark, the brother of your oratrix's said husband,
in order that said Justin might, as he then agreed that
he would do, hold the same in trust for your oratrix's
said husband; and said Justin then, in order to secure to
your oratrix's said husband the said property so conveyed 18
to him, executed and delivered to him at the same time
of the making of said conveyance to said Justin his (the
said Justin's) bond for the payment of the sum of nine-
teen hundred dollars (with interest), in one year from the
date of said bond, which is the same as the date of said
deed to said Justin (May 27, 1858), the payment of which
bond was secured to said Auguste by said Justin's mort-
gage of and upon said land and premises, of same date
with said bond, which said bond and mortgage are both
in your oratrix's possession. 19

And your oratrix further showeth unto your Honor that said Justin admitted, on the fifth day of January, eighteen hundred and sixty-four, that he did not own said premises, and said that the same belonged to said Auguste.

And your oratrix further showeth unto your Honor that her husband, from the time when he so abandoned her, has remained away from her, and at this time is a resident of the City of St. Louis aforesaid; that although,
after he so left her for many years, she made every prac- 20
ticable effort to ascertain his whereabouts, she was wholly unable to do so until January of eighteen hundred and seventy-two, as aforesaid, when she ascertained that he was living in St. Louis aforesaid, to which place she recently went for the purpose of obtaining from him, if possible, a conveyance of the said land, and payment to her of the said two thousand dollars, with the interest thereon; that when she arrived in St. Louis aforesaid she found that he professed to have been married again to said Mrs. Botiaux, and she also found that he was then

21 living with her there, and declared her to be and gave out to the public that she was his wife; that she obtained an interview with him, and thereupon he informed her that he had procured a divorce from her; but your oratrix says that she has never had any knowledge, notice or information of any proceedings for a divorce instituted against her by her husband; and your oratrix showeth unto your Honor that she has never at any time during her marriage with her said husband given him any cause for procuring a divorce from her; that at the time
22 of her aforesaid interview with her husband in St. Louis, upon her asking him to give to her the conveyance, as aforesaid, for the said lot of land and premises, and to pay to her the said two thousand dollars, according to his said agreement with her, he said to her that he would not give her such conveyance, nor pay her the said money, if he had ever as much money.

And your oratrix further showeth unto your Honor, that she is advised by her counsel, and she respectfully
23 insists that she is entitled in this Honorable Court, under the said agreement so as aforesaid made between her and her said husband, to a deed of conveyance in fee simple for said land and premises, and that she is, under the circumstances of the case, entitled to have a decree for the conveyance of the said lot of land, and also for the assuring to her of her title to said three lathes, and also for the payment by her husband to her of the said two thousaid dollars, together with all the interest thereon from the time when he so as aforesaid agreed to pay the same to her, and she agreed to accept the same from him.
24

And your oratrix further showeth unto your Honor that she has no means of support except said land, house and shop, and premises and said lathes, and the other engraving tools with which, since her husband left her, she has managed to make her living, but nothing more, and for the last eighteen months she has not been able to do anything at said business for the reason that there is no demand for that kind of work, and she is apprehensive that there will be no more sufficient demand for it to enable her to get her living at it; and she further saith

that since her husband so abandoned her she has support- 25
ed herself.

And your oratrix further showeth unto your Honor that she verily believes, from information she has obtained on the subject, and which she regards as entirely trustworthy, that the said Auguste Calame intends to convey away the said property or to mortgage the same, or to cause said Justin to convey away or to mortgage it to some person who is not aware of your oratrix's interest in the premises, or claim thereto, in order that he may
thereby oppress your oratrix and wholly deprive her of 26
all means of support and of the benefit of said agreement so as aforesaid made between her and him, in regard to the said house, shop, and lot of land and premises, whereby, as aforesaid, it was agreed between them that she should have the same for her sole and separate use; and she verily believes that unless he be restrained from so doing by this Honorable Court, that he will so convey or encumber the said property, and that she will be irreparably injured.

27

And your oratrix further showeth unto your Honor that her said husband (she and he then being both residents of the city of Newark aforesaid), in the year eighteen hundred and sixty-five, wilfully abandoned and deserted her, and from the time of his said abandonment and desertion of her to this time, a period of more than three years, has wilfully, continuedly, and obstinately deserted her; and she further shows unto your Honor that when the said Auguste Calame so deserted her in
the year eighteen hundred and sixty-five he left the city 28
of Newark aforesaid, taking with him said woman by the name of *Botiaux*, with whom before then he had committed adultery in said year eighteen hundred and sixty-five, and eighteen hundred and sixty-four, in Newark aforesaid, and who was then a woman of bad and depraved moral character, and then known as a woman of bad character as to chastity; and she further shows that, since January, eighteen hundred and seventy-one, at least, her said husband has been living in adultery with said Mrs. Botiaux, in said Saint Louis, and still is

29 living with her as his wife there; and your oratrix further shows unto your Honor that, at said city of Newark, in the said year eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, eighteen hundred and sixty-four, and eighteen hundred and sixty-five, said Auguste Calame committed adultery with a Mrs. Jis and a Mrs. Pellet, then both living in said city of Newark.

And your oratrix further showeth unto your Honor
30 that she is without remedy in the premises, at and by the strict rule of the common law, and can only have relief in this Honorable Court where matters of this sort are cognizable and she is entitled to relief; to the end, therefore, that the said Auguste Calame and Justin Calame, without oath (oath being hereby waived), true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein again repeated, and they thereto particularly interrogated paragraph by paragraph, sentence by sentence,
31 and line by line; and that the said Auguste or said Justin may be decreed to execute such conveyance in fee simple of the said house and shop and lot of land and premises to your oratrix as shall convey and assure to her the title in fee simple of the same; or that said Justin may be decreed to hold the same in fee simple in trust for her in fee simple; and that said Auguste may be decreed to give to her such assurance, by bill of sale or otherwise, as may be necessary or proper, in order to assure to her the title to said lathes, and that said Auguste
32 may be decreed to pay to your oratrix said sum of two thousand dollars, with interest thereon from the time when your oratrix so as aforesaid accepted the said proposition so made by her said husband to her when he so abandoned her as aforesaid; and that the said Auguste Calame and Justin Calame, and their agents, and each and every of them, may be enjoined and restrained by the order, decree and writ of injunction of this Honorable Court from conveying away and encumbering the said house and shop and lot of land and premises, or any part of the same; and that the marriage between your

oratrix and said Auguste Calame may be dissolved, and 33
that he may be decreed to pay to your oratrix a proper sum of money for her maintenance and support, and that they may be decreed to pay your oratrix's costs and charges of this suit, and that she may have such other or further relief in the premises as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix, not only a writ of injunction to 34
be directed to said *Auguste* Calame and Justin Calame and their agents as aforesaid, enjoining and restraining them, and each of them, as hereinbefore is in that behalf prayed, but also a writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Auguste Calame and Justin Calame, therein and thereby commanding them, on a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your Honor, in this Honorable Court, then and there to answer all and 35
singular, and to stand to, abide by, and perform such order, direction and decree therein as to your Honor shall seem meet and shall be agreeable to good conscience.

And your oratrix will ever pray, &c.

RUNYON & LEONARD,
Sol'rs. for and of Counsel with the Complainant.

36

New Jersey, Essex County, ss:

Eliza Calame, the complainant in the foregoing bill of complaint named, being duly sworn according to law, on her oath saith, that her complaint in the foregoing bill of complaint stated and set forth, whereupon she prays for a divorce from her husband, Auguste Calame, one of the defendants to said bill, is not made by any collusion between her and her said husband for the pur-

37 pose of dissolving their marriage, but, in truth and good faith, for the causes set forth in said bill in that behalf.

ELIZA CALAME.

Sworn and subscribed before me, }
at Newark, July 10, 1872. }

A. S. HUBBELL,
Master in Chancery.

38 ---

New Jersey, Essex County, ss:

ELIZA CALAME, the complainant in the foregoing bill of complaint named, being duly sworn according to law, on her oath saith, that she resides in the city of Newark; that she is the wife of Auguste Calame, one of the defendants in the foregoing bill of complaint mentioned; that she and the said Auguste Calame were married at the time and place in the said bill of complaint in that
39 behalf set forth; that they came to this country at the time in said bill in that behalf mentioned; that she and her said husband resided in said city of Newark as in said bill alleged; that in the year eighteen hundred and sixty-five her said husband, without cause of any sort, left her, as in the said bill is in that respect stated and set forth; that when he was about to abandon her he declared his intention so to abandon her for the reasons, and only the reasons, in said bill in that behalf stated; that before he so left her he proposed to her that, in case
40 she would consent to his leaving her, he would convey to her for her own separate, absolute use, the house, shop, and lot in said bill mentioned, with the lathes also in said bill referred to, and would pay to her the sum of one thousand dollars in cash for her own use and further support; that she did not agree thereto, and that afterwards the said *Auguste* Calame left her, and, as in said bill set forth, renewed his proposition to give her the said house, shop, lot, and lathes, together with the sum of two thousand dollars in cash, and as a settlement upon her in consideration of his abandoning her without means of

support; that she afterwards accepted the last-mentioned 41
proposition in the manner in which her said husband in that proposition desired her acceptance thereof, and that she has continued ever since then in the occupation of the said house, shop, and lot, and has had the said lathes as her own separate property, but has never received from her husband any deed for the said lot of land, nor any bill of sale, or other conveyance, of the said lathes; and her husband has never paid to her the said sum of two thousand dollars, or any part thereof; that within the last month, in order that she might obtain from her husband a 42
conveyance of the said house, shop, land, and premises, and payment of the said two thousand dollars, she went from Newark to Saint Louis, to see her husband, who was then, as he still is, living there; that she had not been able to ascertain, until January last, where her said husband, was living nor as to his whereabouts; that she, shortly after she arrived at Saint Louis found her said husband, who was then living with another woman, a Mrs. Botiaux, as she was formerly called, (and, as she was informed, with two or three other women) as his wife, and asked 43
him whether he would give to her a conveyance for the said house, shop and lot of land and premises and pay her the said two thousand dollars; and her said husband thereupon replied to her proposition by refusing to do either the one thing or the other; saying to her, "you have come here after me for money; you want the property so that you can do what you please with it," to which she replied that she had come to Saint Louis for the purpose of obtaining from him that which he had promised to give her—the conveyance of the said house, 44
shop and lot of land, and payment of the said money; and thereupon he informed her that he would not give her said conveyance nor pay her the said two thousand dollars or any part thereof "if he had ever so much money."

And she further says she was afterwards informed that there was danger, and she verily believes that there is now danger, that her said husband will convey away said land and premises or encumber the same, or cause his brother, Justin so to do, in order to deprive her thereof. She fur-

45 ther saith that the statements in said bill as to said Justin's holding the title of said property in trust for her said husband are true, as also are those in regard to the amount of her said husband's property and the value thereof when he abandoned her. She further saith that she has supported herself entirely since her said husband so abandoned her, as aforesaid.

ELIZA CALAME.

46 Sworn and subscribed before me at Newark, this tenth day of July, A.D. 1872.

HENRY YOUNG,
Master in Ch'y of N. J.

Upon filing the above bill and affidavits let an injunction issue according to the prayer of the above bill, the bond being dispensed with on account of the situation of the property and the special circumstances of the case.

47 A. O. ZABRISKIE,
C.

I respectfully advise that the above order be signed by the Chancellor.

July 10, 1872.

AMZI DODD,
V. C.

48 A true copy.

H. S. LITTLE,
Clk.

Testimony. 49

Taken by commission before CHARLES D. GREEN, Esq., at St. Louis, Mo.

THEODORE B. GAUTIER.

1 Q. State your name, age, residence and occupation?

A. My name is Theodore B. Gautier; I am sixty-two years of age; I reside in St. Louis, Missouri; I have retired from business. 50

2 Q. Do you know the parties to this suit?

A. I know one—Mr. Auguste Calame.

3d Q. How long have you known him?

A. Some eight or nine years ago he stopped at my hotel, Nauvoo, Illinois, for a few days.

4 Q. Have you known him ever since?

A. Not all of the time; I have seen him a number of times.

5 Q. Was he married at that time?

A. There was a lady with him at the hotel. 51

6 Q. When did you next have any acquaintance with him?

A. About three years ago, when he came back to St. Louis. He hired a house of my daughter, and about a year after that he hired one from me. The house was No. 815 Loulard street, having three rooms. There were three ladies in his family; one of them was represented by him as his wife. She took care of the house for the family. He rented these rooms from me for about a year; he left in September last. 52

7 Q. Was the lady who lived with him here as his wife the same person who was with him at your hotel in Nauvoo, eight or nine years ago?

A. The same; yes.

8 Q. Do you know what property he owns, and what business is he in?

A. I do not know what property he owns; he is in the jewelry business in this city; I do not know how large a business he does.

(Signed) THEODORE B. GAUTIER.

53 JULY 16, 1873.

CHARLES AUGUSTE CALAME.

1 Q. State your name, age, residence and occupation?

A. My name is Charles Auguste Calame; I am forty-three years of age; I reside in St. Louis, Missouri; I am an engraver, and a partner in the jewelry business firm of Calame & Marchal.

2 Q. Are you the same person named, as one of the defendants in this suit, as Auguste Calame?

54 A. I am.

3 Q. Do you know the plaintiff in this suit?

A. I do.

4 Q. Were you ever married to her; if so, when and where?

A. I was married to her in Switzerland, in the year 1846.

5 Q. How long did you live with her?

A. About fifteen years.

6 Q. Where?

55 A. Mostly in Newark, N. J.

7 Q. When did you leave her?

A. About eight years ago.

8 Q. Was she your wife at the time you left her?

A. She was my wife, but we did not live together as man and wife at that time.

9 Q. Did she bring you any money or property by the marriage?

A. No, sir.

10 Q. Did you never, during your marriage, receive

56 any money or property from her, or from her relatives?

A. No, sir.

11 Q. Did you have any property at the time you left her; if so, what, and what was it worth?

A. I had a house and lot, in Newark, worth about five thousand dollars. It was No. 5 Mulberry Place. I had no other property. I still own it, unless it was sold for taxes.

12 Q. Where did you go to from Newark?

A. To Nauvoo, Illinois.

13 Q. Who accompanied you? 57

A. I decline to answer.

14 Q. There was some one with you, wasn't there?

A. I decline to answer.

15 Q. How long did you live in Nauvoo, and in what business was you engaged?

A. About six years; I was engaged in farming.

16 Q. Did you own the farm; how large was it, and what was its value?

A. I owned it; it was forty acres, and worth fifteen hundred dollars. 58

17 Q. Do you own that farm still, or if not, when did you sell it, and do you own any property in Nauvoo now?

A. I do not own it now; I sold it last year; I own no property there now.

18 Q. Did you board or keep house while you lived at Nauvoo?

A. I kept house on the farm; I didn't have to board.

19 Q. Who kept house for you?

A. My present wife. 59

20 Q. Is that the wife who brings this suit?

A. No, sir.

21 Q. Where did you first make the acquaintance of the lady you call your present wife?

A. I decline to answer.

22 Q. Has this lady you call your present wife been living with you ever since you left Nauvoo?

A. Yes, sir.

23 Q. What was her name before you married her?

A. I decline to answer. 60

24 Q. Have you seen Mrs. Eliza Calame, the complainant, since you left Newark?

A. Yes; she came here last year and tried to get some money from me.

25 Q. Did you refuse to give her any money?

A. I made her an offer and she declined it. I mistake, I offered to give her some of what she wanted of me, but she would not take it.

26 Q. When did you last give her any money?

A. I cannot remember; it might have been three

61 years ago; I have sent her at different times since I left Newark.

27 Q. Did you consider her your wife at that time?

A. No, sir.

28 Q. Why, then, did you give her money?

A. To help her, not because I owed her anything.

29 Q. Didn't she claim to be your wife, and demand it of you on that account?

A. I can't swear to that.

30 Q. Didn't she claim to be your wife both in conver-
62 sation and in her letter to you?

A. I cannot remember. I decline to answer.

31 Q. Where did you go to from Nauvoo?

A. To St. Louis; I have lived here ever since.

32 Q. Have you any property in St. Louis?

A. No, sir.

33 Q. What did you do with the fifteen hundred dollars you got for your farm?

A. I decline to answer.

34 Q. Do you own any part of the business of your
63 firm?

A. Yes, sir.

35 Q. What part?

A. I decline to answer.

36 Q. What were the profits of that business last year?

A. We made our living, that's all.

37 Q. How does the business of this year compare with that of last year?

A. It is the same.

38 How much did it cost you to live last year?

64 A. About eighteen or twenty dollars a-week.

39 Q. What family have you?

A. My wife and I, and a young girl living with us. No children.

Q. 40. When and where were you married to your present wife?

A. I decline to answer.

Q. 41. Were you ever divorced from the complainant; if so, by what court, when and where?

A. I was divorced, but I refuse to answer further.

Q. 42. Were you divorced from the complainant at the

time you married your present wife? 65

A. Yes, sir; of course.

Q. 43. Do you know whether the complainant was ever notified of that divorce suit?

A. I decline to answer.

Q. 44. Did you take any steps to notify her?

A. I decline to answer.

Q. 45. Who were your attorneys in that divorce suit?

A. I decline to answer.

Q. 46 Do you know a lawyer named Reese in Nauvoo? 66

A. I decline to answer.

Q. 47. Do you own any property anywhere, and if so, what?

A. I own ten acres of timber on the Mississippi river. I decline to tell what State it is in. Also the house in Newark, as referred to, and the interest in my business.

JULY 21. 67

Q. 48. Give the date and name of the Court; also the county and State, when and where you obtained a divorce from the complainant?

A. It was in the State of Illinois, Hancock Circuit Court, March Term, 1866. In Chancery.

49 Q. Had you been living with the complainant up to that time?

A. No, sir.

50 Q. How long before had you lived separately from her? 68

A. Over two years, maybe three.

51 Q. Where did you last live with her?

A. No. 5 Mulberry Place, Newark, New Jersey.

52 Q. Did you or she continue to live in that house after the separation?

A. I did not; I don't know whether she did or not.

53 Q. Did you provide for her during that separation?

A. I had furnished her money at several times, and she had the use and rent of that house.

69 54 Q. How long ago was it you gave her the last money?

A. I think about three (3) years ago.

55 Q. Since you were divorced?

A. Yes, sir.

56 Q. When did you meet your present wife, and where?

A. It was in Nauvoo. I decline to give the date, but it was since my divorce.

57 Q. Did she not keep house with you before the di-
70 vorce?

A. Yes, sir.

58 Q. Where did you meet your present wife?

A. In Newark.

59 Q. Did she come West with you when you left Newark?

A. I decline to answer.

60 Q. Did you take any steps towards notifying the complainant of the bringing of that suit for divorce?

A. She was notified by the publication in the news-
71 papers of the place where the suit was brought.

61 Q. What paper or papers was it published in?

A. I don't know the name of the papers; it was published in that county.

62 Q. Where was the complainant living at that time?

A. I suppose she was living in Newark.

63 Q. Do you know that she had any knowledge of the pendency of that suit before the decree was granted?

A. I don't know.

64 What property did you own at the time the divorce
72 suit was pending?

A. I had that farm at Nauvoo; I had the ten acres of timber land; I had the property in Newark.

65 Q. You have testified that you sold the farm last year; what did you get for it, and what did you do with the money?

A. I sold the farm for fifteen hundred dollars; I spent some of the money and paid some debts.

66 Q. What did you spend it for?

A. I bought some clothes and furniture, and other things, for personal uses, and spent some for my living.

67 Q. What was the value of the timber land? 73
A. One hundred and fifty dollars ($150.00).

INTERROGATORIES AND ANSWERS ON THE PART OF THE DEFENDANT.

1 Q. What is this paper that I hold in my hand?
A. That is my divorce—the certificate of my divorce from the complainant.

Note.—The paper hereto attached as "Exhibit A." 74

(Counsel for complainant objects to the introduction of paper "Exhibit A" on the ground of incompetency to prove the divorce, not being certified in conformity with the Acts of Congress regarding the authentication of records.)

2 Q. When you gave the place and date of your divorce to complainant's attorney, did you not refresh your memory from this "Exhibit A," which said attorney was 75
then holding in his hand?
A. Yes.
3 Q. These moneys that you gave to the complainant since your separation from her—were they given because she was entitled to them, or as mere presents through pity for her?

(Objected to by complainant's attorney as calling for an opinion of law.)

76
A. They were presents to her through pity.
4 Q. What was your understanding when you gave these moneys to the complainant since your separation from her?
A. I considered it merely as a present, and I considered that she had no right to it.
5 Q. Before you left Newark had you ceased to live with the complainant as husband and wife; if so, how long before your departure?
A. About one year and three months before I left

77 Newark, I stopped living with her as her husband. One year of this time we lived in the same house, but separate, and not as husband and wife. The last three months I lived (boarded) in another house from her.

6 Q. Did she refuse to live with you as your wife?

A. Yes.

7 Q. When you left Newark—when did you leave Newark?

A. About the Summer of 1862, I believe.

8 Q. When you left Newark, was the complainant in-
78 formed of your intended departure?

A. Yes, sir.

9 Q. How long before you left Newark did you inform her that you were going to leave?

A. I don't know how long before she knew I was going away, but she knew we could not live together.

10 Q. To the 50th Question herein, you answer that you had lived separately from complainant "over two years—maybe three;" what do you mean by that?

A. I mean the two or three besides the one year and
79 three months that I refer to in my answer to the 5th Cross-question. I was West the two or three years I referred to in my 50th Answer.

11 Q. Were you not ready and willing to live with the complainant as your wife before your departure from Newark, and was she not repeatedly informed of that fact.

A. If she would live with me as my wife, I was willing. I told her that often.

12 Q. Why was it that, before to-day, you declined
80 to answer several questions put to you by complainant's attorney?

A. Because my counsel was not present; but it was my fault that he was not here.

INTERROGATORIES AND ANSWERS ON THE PART OF THE COMPLAINANT.

68 Q. In your direct examination, in answer to Question No. 7, you stated that you left the complainant about eight years ago, and in your cross-examination, in answer

to Cross-question No. 7, you stated that you left Newark 81
about the Summer of 1862. How do you reconcile these statements?

A. I made a mistake in the first answer. The last answer is correct.

69 Q. Then you had lived separate from her about one year and three months previous to the Summer of 1862.

A. Yes, sir.

70 Q. When you were examined before the Referee in the divorce suit from your wife, did you not swear that you lived and cohabited with the complainant as your 82
wife until about the 15th day of May, 1862.

(Objected to by defendant's attorney because it does not grow out of cross-examination.)

A. I don't remember; it is possible; but I did not cohabit with her up to that time. I did not know the meaning of the word "cohabit" until it was just now explained to me in French by my counsel. I lived in the same house with complainant until about that date. 83

71 Q. Did you not state before the Referee and swear that on or about the 15th day of May, 1862, Eliza Calame, without any just cause, wilfully abandoned and refused to live with you?

(Objected to as last above.)

A. It is so long ago I do not remember.

72 Q. Is it not so stated in "Exhibit A"?

A. Yes.

73 Q. Did she abandon you at that time? 84

(Objected to as above.)

A. Yes, but I went away from the house to a boarding house and I left Newark about three months afterwards.

74 Q. In your cross-examination you have testified, in answer to questions 8 and 9, that the complainant was informed of your intended departure from Newark; how do you know that.

A. I did not tell her myself; I supposed she knew it
85 from my friends; I don't know it of my own knowledge.

75 Q. In your cross-examination, in answer to Question 11, you have testified that if she would have lived with you as your wife, you were willing to live with her and that you often told her so; state when and where you told her so?

A. I told her so before we separated, before I left the house.

76 Q. After you left Newark did not the complainant,
86 both in letters to you and in conversation with you, claim to be your wife, and ask money from you for that reason and for her support?

(Objected to as above.)

A. I received some letters from her, but I don't remember what they were about; I did not answer them; she asked for some money.

77 Q. Was not the complainant here during last year,
87 and did she not then see you, and, claiming to be your wife, demand money from you?

(Objected to as above.)

A. She was here; she did not say anything about being my wife, but she wanted some money from me.

78 Q. You have stated, in your cross-examination that you gave her money out of pity for her. Did she beg it of you as a favor, or demand it of you as a right?

88 A. I don't remember.

79 Q. Is your memory good generally in regard to business affairs?

A. It is pretty fair, but not as good as a lawyer's memory.

80 Q. You can remember that you gave her money, but cannot remember in what character she asked for it?

A. Yes; I don't remember how she asked for it.

81 Q. Might you not have given the money to her be-

cause she claimed to be your wife, and demanded it for 89
her support?

A. No.

(Signed) CHS. AUGUSTE CALAME.

JULY 16, 1873.

ALFRED MARCHAL.

1 Q. State your name, age, residence and occupation? 90

A. My name is Alfred Marchal; I am forty-two years of age; I reside in St. Louis, Mo.; I am a jeweler.

2 Q. Do you know the parties to this suit?

A. I do.

3 Q. State your connection with Auguste Calame.

A. I am his business partner; the firm name is Calame & Marchal.

4 Q. What interest do you and he each own in the business?

A. We have equal shares; we each own half of the 91
stock and each have half the profits.

5 Q. What were the profits of the business last year?

A. We had no profits; we just paid our expenses.

6 Q. What does the stock of the business consist of, and state its value?

A. We have some machinery for manufacturing jewelry; we have some gold on hand, and also some precious stones. I think the tools and machinery is worth about six or eight hundred dollars. The gold and precious
stones are worth about two or three hundred dollars. 92

7 Q. Has Mr. Calame any other property here or elsewhere.

A. Not to *my* knowledge.

8 Q. Is Mr. Calame living with any one as his wife now?

A. He is.

9 Q. How long have you known Mr. Calame?

A. About eighteen years; he was then living in Newark, New Jersey. He was married at that time to Eliza Calame, the complainant.

93 10 Q. When did he leave Newark?

A. I do not recollect the time.

11 Q. When did you next see him, and where.

A. About four years ago at Nauvoo, Illinois.

12 Q. What was he doing?

A We were partners in manufacturing jewelry there.

13 Q. Was he living with any person as his wife at that time?

A. He was; the same person he is living with now.

14 Q. Do you know of Mr. Calame's having obtained
94 a divorce from the complainant?

A. I do not know of my own knowledge, but he told me so when I first met him in Nauvoo.

15 Q. Did he ever tell you where or when he got his divorce?

A. No, sir; not that I remember.

16 Q. Did Calame own any property in Nauvoo?

A. He owned a farm; he sold it last year.

17 Q. If you know, state what he received for the farm, and what he did with the money?

95 A. I think he got fifteen hundred dollars; I don't know what he did with the money; he did not put it in the business.

18 Q. Do you know of any other property he now owns?

A. He did have about ten acres of timber land upon the Mississippi, near the farm at Nauvoo; I don't know whether he has sold it or not. He had property in Newark; I don't know whether he has sold it or not.

19 Q. Have you ever seen Mrs. Eliza Calame since
96 you left Newark?

A. She was here last year.

20 Q. Were you present at any conversation between them; if so, please state what was said?

A. I was not present at any conversations between them; she talked to me personally.

(Signed) A. MARCHAL.

JULES JEANERET. 97

1 Q. State your name, age, residence, and occupation?

A. My name is Jules Jeaneret. I am forty years of age. I am a watchmaker. I reside in St. Louis, Mo., now.

2 Q. Do you know the parties to this suit, and are you related to them?

A. I only know Auguste Calame. I am not related to him in any way. My wife is a second cousin to his present wife. She lived with them eight or nine months before I married her. 98

3 Q. How long have you known Mr. Calame?

A. About eighteen months.

4 Q. Is Mr. Calame living with any person as his wife?

A. He is married. He has been married ever since I have known him. He is living with the person as his wife. I never saw him married to her, but, as far as I have ever heard or known, the lady he is now living with is his wife.

5 Q. Have you ever heard Mr. Calame speak of his first wife, and of having been divorced from her; and, if 99 so, when and where?

A. I have heard him speak of having been divorced from his first wife. I am not certain, but I suppose it was in Nauvoo, Illinois, that he was divorced. I have held in my hand the act or decree of divorce. I saw it published in the papers. It was about a year ago that I saw this paper. I do not now remember its date.

6 Q. State if you know what property Mr. Calame has, where it is situated, and its estimated value.

A. I do not know of any property except that Mr. 100 Calame told me he owned a house and lot in Newark, New Jersey, and the tools, &c., in his shop; there are two interested in the shop. He also told me he once owned a farm at Nauvoo of about forty acres, and that he had sold it for about twelve hundred dollars, I think it was; I live in the same house with Mr. Calame, and know pretty much all about his business.

7 Q. What is his business worth a year, about?

101 A. I can't tell exactly, but I think only a little; I suppose he must make a living out of it.

8 Q. Do you know of his owning any property in Indiana?

A. I never heard of it.

9 Q. State if you know what the name of the present Mrs. Calame was before her marriage?

A. I know neither her maiden name nor the name of her first husband, she being a widow when Mr. Calame married her.

102 (Signed) J. JEANERET.

Testimony taken in the cause before the Hon. Amzi Dodd, Vice Chancellor, on Friday the 7th day of November, 1873.

Mr. Leonard for complainant.

Mr. Stone, *contra*.

103 Complainant's counsel called Mr. Thompson; sworn:

Q. Where do you reside?

A. At Newark.

Q. What is your business?

A. Surveyor.

Q. Do you know Justin Calame?

A. I suppose that I saw him once; at least he told me that it was he.

Q. Where did you see him?

A. Fair street.

104 Q. Did you make a memorandum of the conversation you had with him?

A. Yes, sir.

Q. Look at that paper?

A. That is my handwriting; that was made January 5th, 1865; I saw him on that day; the same day that I made the memorandum.

Q. State the substance of the interview?

A. I was sent over by Mr. Whitehead for the purpose of finding out whether he owned a certain piece of property.

Q. Where was it? 105

A. In Mulberry Place, No. 5; he said it did not belong to him; he said it belonged to Auguste; I made a memorandum of that conversation and *that* is it.

(Memorandum offered in evidence.)

Q. Did he say where Auguste was?

A. He said somewhere out of the States, I think.

Complainant's counsel also called ISAAC ALLEN; sworn: 106

Q. Where do you reside?

A. No. 37 Walnut street. I have lived in Newark all my life. I knew Auguste Calame, the defendant in this suit; I know Mrs. Calame; I can't tell how long I have known them exactly, but I think since 1853 or 1854; I am a manufacturing jeweler; Mr. Calame did work for me from the time I first became acquainted with him; he then lived in Beach street; he worked for us there, and afterward when he moved into Mulberry Place; I have visited his shop where he worked, in Mul- 107 berry Place; I used to carry work there often; sometimes I sent it with the boys, sometimes I took it myself, and sometimes came after it; I have seen Mrs. Calame in the shop during working hours; sometimes she would take work from me, and sometimes give it to me, and I sometimes saw her putting work on sticks to help him; she used to help him; she used to help the first part, not the last time so much, perhaps.

Cross-examined: 108

1 Q. Do you remember when he did the last work for you?

A. I can't tell exactly; my impression is it was up to the beginning of the war—up to 1860; I am not sure of that, and I think he did some after the war; we got an engine turner of our own, and sometimes we would have more than he could do, and then we would slip a job over there.

Q. How often, at the last part of the work that he was doing for you, would you see him?

109 A. Probably along in '58, when he was doing the last part of our work, I might see him once a week, perhaps once a fortnight; he would sometimes send me work there and then fetch more by the boys, and sometimes he would get a good deal on hand, and I would go there sometimes and stir him up.

Q. The last work he did for you was when?

A. About 1861.

Q. Then how often would you go to the shop?

A. I cannot tell; about once a month, I think.

110 Q. Do you recollect whether you saw him on all occasions there?

A. Not always; I did sometimes.

Q. Was the shop in the house?

A. Yes, sir; the shop was attached to the house in Mulberry Place.

Q. During the latter part of the time that he was working for you can you give any idea at all as to whether she was working there or not?

A. She was there and received the work and gave it
111 out to me; I could always find her when I could not find him, when sometimes he would step out.

Q. Would she always be in the shop or in the house?

A. I have been there when she has been in the house and they would have to call her out, and she would come out and take or give me the work, or tell me something about it.

Q. Was that the principal thing you saw her doing—giving you work and taking it from you?

A. I have seen her putting the work on what you call
112 cement sticks to engrave it or engine turn it; she used to help him that way.

Q. You are not sure whether you saw her doing that or not?

A. I believe I have seen her do it; I have seen her do it.

Q. You cannot give any estimate how often you saw her doing that kind of work?

A. No, sir.

Complainant's counsel also called Mrs. CALAME; 113
sworn:

Q. You are the complainant in this cause?

A. Yes, sir; I was married to Auguste Calame on the 4th of January, 1848; *that* is the certificate of my marriage; it is signed by the minister which married me; his name is Besson.

(Certificate is here offered in evidence.)

I was married in Berne, Switzerland; I came from 114
there to Newark; my husband did not come with me; he preceded me about 14 months, and then I followed him, and we lived together in Newark from that time, 1849, when I came, till he went away in 1864; his business was engraver of jewelry; he carried on that business No. 12 Mulberry Place; before that in Beach street; he was successful in his business; he wrote to me, when I was in Switzerland, that I should come and meet him here, and in the course of eight years that we would be rich enough to go back to our own country; I 115
suppose at the time he left me he was worth about $25,000 or $30,000; in 1864 that was; I assisted him in his business most of the time; I did cementing and sinking the work, and sometimes I did turning in a straight line; making a straight line on the jewelry; I assisted him in the shop every day, after my house work.

Q. Did you have conversations with him as to his habits?

A. Yes, sir.

Q. Be good enough to state what he said? 116

A. Many times I told him, Auguste, if you would only live different—as a man should live—we could be happy. This was before he deserted me.

Q. What were his habits?

A. He used to go out nights, and get drunk every day and every night, and he would not come back before one or two o'clock, and then he would tell me he had been with somebody—with women; I used to tell him it was not right for him to do so, and then he would tell me that they were nicer women than me.

117 Q. After your husband left you did he say anything about a house and lot, in which you were living?

A. Yes, sir; he made this proposition: to give me $2,000, the house, the tools, the shop, and everything, and the furniture; I didn't accept the proposition; there was another proposition made to me; many times he made the same thing.

Q. Was there any proposition made that you accepted?

A. Yes, sir.

118 Q. Look at that paper; what is it?

A. It is repeating the agreement that he had proposed to me before, that he would give me the house, the shop, the tools and the furniture, and $2,000, which I accepted. It is in my husband's handwriting, and it is addressed to Justin Calame—my brother-in-law. I responded to that; I wrote to my husband that I accepted this proposition; he never carried out this agreement with me.

119 (Proposition from Auguste to Mrs. Calame, above referred to, here offered in evidence.)

Q. What are these papers?

A. These are the deeds of the property; they have been left in my safe by him—the deeds for the property No. 12 Mulberry Place—the property that he agreed to give me.

(Three deeds and a bond and mortgage are here offered in evidence.)

120

Q. Do you remember the time your husband conveyed the property to Justin?

A. It was a few months before we started for Europe. He accepted it on condition that if my husband should want it again he should have it for the same money.

Q. Why did Justin give this bond and mortgage?

A. I can't tell.

Q. Who has occupied the property ever since it was conveyed?

A. He occupied the property until we came back from

Switzerland—about fourteen or sixteen months. Since 121
that time I have had possession of the property—since I came back from Switzerland. I have never paid any rent; I am in possession of it now, and the tools and furniture. Justin lived upon the property when we were in Switzerland; when we came back he was a workman in our shop. Justin has never made any claim for this property, nor for rent. I have never talked to him about it. I knew it didn't belong to him, and he has never said anything to me about it.

Q. After your husband deserted you, how long was it 122
before you heard from him?

A. After he went away I never heard since three years—about two years—when I went to his cousin, Charles Gavelien, and his cousin told me that he had sent me word by Mr. Monperin that if I would know where my husband was, that he was in St. Louis; that he carried on business there, and if I would call in his office, which I did, to see if he would advise me to go to St. Louis to see if he would agree to give me this property and settle the case; and he received me very unkindly; 123
my counsellor, Mr. Lathrop, told me that I should not go there, that it would be unsafe for me.

Q. You saw him?

A. Yes, sir.

Q. What did he say to you?

A. He met me very disrespectfully, as if he was going to strike me; and he told me that I was very bold to go there after him; my husband said so; and I told him, which was the boldest, him or me—he, who deserted his wife, or one who goes and asks for her right; and he told 124
me that I was not his wife; that he was living with his real wife, and that he was married lawfully; and he called his partner and he said: Mr. Marchal, call a policeman, or else throw her down the stairs.

Q. When did you first hear that he had obtained a divorce?

A. From Mr. Whitehead; Mr. Whitehead found out all the particulars; that he was living there with a woman, and which everybody considered her as his wife, and that he had come to St. Louis about two years ago

125 from Illinois, and brought this woman with him, and that he was considered as an honest man there.

Q. Did you ever ascertain that your husband pretended to have obtained a divorce from you?

A, No, sir; he told me he was married; I never received any notice of any divorce; I never knew that any proceedings had been instituted against me for a divorce; I have been living in Newark all the time, and I never knew that my husband applied for a divorce.

Q. How have you lived since he left you?

126 A. I lived this way: I had no money at all, and I didn't know how to get along, and I went to Mr. Fairchild and I said: do you want to trust me with some work? and he said yes, he would; and so I have been ever since working, and I have been making my own living ever since, except sixteen months, as my brother-in-law will know; I have earned my own living by my own hands.

Q. Who did you say handed this note to you?

A. Justin Calame, my brother-in-law. It was inclosed in an envelope.

127 Q. Did Justin see this?

A. He gave it to me, and I read it to him.

Q. And how often did Justin see you about accepting your husband's proposition?

A. I think I have about six or eight letters—propositions the same thing. Justin brought them to me, and to this last one I sent an answer to my husband.

Q. Can you remember what Justin said to you when he brought this last proposition to you?

A. I think he left a letter accidentally, which was 128 written to him, which said: "Justin, I hope you will talk with my wife, and tell her she had better accept this proposition;" and that is what my brother-in-law has told me every time when he used to bring me a letter. I can't remember when this letter was handed to me by Justin. It is about three years ago, I think. I don't recollect the precise date.

Cross-examined:

Q. Do you know what that house and lot are worth where you live?

A. No, sir. We paid $1,900 when we bought it. That 129
was without the shop. We built the shop on it after.

Q. Do you know what the tools and fixtures there are worth?

A. No, sir.

Q. Do you know what the furniture is worth there?

A. Nothing at all; it is twenty years' furniture.

By the Vice-Chancellor:

Q. Have you any children?

A. No, sir. 130

Re-cross-examined:

Q. Who has paid the taxes on that property?

A. My brother-in-law, except these last two years.

Q. Has any one paid the taxes for the last two years?

A. I owe one hundred dollars still, and I borrowed the money to pay the one last year from my brother-in-law.

Q. You paid the taxes for 1871, and the taxes for 1872 have not been paid?

A. No, sir. 131

Q. And the taxes for this year have not been paid?

A. No, sir.

Q. How much did you pay in 1871?

A. I think about $50.

Q. Any insurance on the property?

A. Yes, sir.

Q. Who paid that?

A. I did.

Q. All along?

A. All along. 132

Q. How many rooms are there in that house?

A. Seven rooms, an open garret and a cellar.

Q. Do you occupy the whole house?

A. Yes, sir; I don't rent any part of it; I can't rent it; it is untenantable now; it is so unhandy for any one, it is very bad to rent; I have not rented any part of it at all; I have been to the agent, and he says it is not possible to rent.

Q. Have you never had tenants in the house?

A. Yes, sir; we have rented it. I thought you asked

133 me whether it was rented now. I have no tenants now, but we have had.

Q. When did you have tenants in the house?

A. I have had tenants, except this last sixteen months. Sometimes it would not be rented for six months, but I would rent it again.

Q. When you had tenants, what rent did you get for the part that you rented?

A. $12, and sometimes $15 a month.

Q. You stated that your husband left you in 1864?

134 A. Yes, sir.

Q. Did he send you any money soon after he left you?

A. No, sir; he never did send me money, except, when I was sick, my brother-in-law brought me fifty dollars, which I didn't accept it; I said I could not take; it was too late for him to bring me money; that it was not then, when I was dying, that he should bring me money; I had the mortgage of Mr. La Rose, from which I didn't cover the expense of the house, and when my husband
135 left I had the basement made lower and many repairs, from which I borrowed the money, and this didn't cover this expense at all.

Q. When your husband left, then, you had the basement repaired and other repairs to the house?

A. Yes, sir; it was done when he left; just when he left it was.

Q. What I want to know is whether your husband ordered these repairs made, or whether you did?

A. My husband didn't want to spend a cent for me; I
136 was sick in health and he didn't want to spend a cent, and I engaged a man to do it.

Q. Before he left?

A. That was just before he left.

Q. Was any part of these repairs paid before he left?

A. I cannot tell you, sir; I guess not.

Q. Do you know what these repairs all cost?

A. I cannot tell exactly, but I suppose it has cost from 4 to 500 dollars.

Q. Where did you get money to pay for that from? Did it come from your husband?

A. He left $60 in trust with Mr. Pergeaux; he said, I 137
leave $60 for my wife; when I have been gone you can give it to her; he said, I will be gone three months, and then I shall be back; I wish you would give her so much every week.

Q. I want to know how much your husband has furnished you in different ways? He left $60 with Mr. Pergeaux?

A. Yes, sir; I got that.

Q. Those repairs—the first repairs before your husband left—you don't know how much it was; you say you paid for that, and with money got from Mr. Per- 138
geaux?

A. Yes, sir.

Q. Do you know where they got the money; didn't they get it from Mr. Calame?

A. I borrowed the money from them. He only left $60, and that $60 went on account of that; and beside that he gave me the balance of it, Mr. Pergeaux did.

Q. How has he been paid back that balance—from whom?

A. He has never received the money from my husband. I did pay him back. I got that mortgage of 139
$500 from Mr. . My brother-in-law had $1,000, and I received $500.

Q. And that mortgage was your husband's mortgage?

A. I don't know.

Q. Have you had any other money from your husband, or from your brother-in-law, Justin, except what you have mentioned—the $60 and the $500?

A. I had this bond; it was a bond or paper simply, which said that Mr. Constant Leoup owed so much, and he sent me the signature from St. Louis, and so I got this money—I think $200 and some balance—from his 140
uncle, Mr. Jule's Braud, my husband's uncle.

Q. And they got your husband's signature for that money, and you got it?

A. Yes, sir.

Q. You don't know how much over $200 it was?

A. I don't know. It was something like that; I can't tell exactly.

141 Q. Has anything else been sent you or given you by your husband, except what you have mentioned?

A. No, sir; that includes all.

Q. Didn't you get some similar sums of money?

A. Never did, except this $50.

Q. I thought you said you would not take it?

A. I said that I didn't want to take it. As I told you a little while ago, he came and brought that $50 while I was sick.

Q. Did he leave that $50, and did you use it?

142 A. I am sure I could not state exactly now. I know that he pressed me to take it.

Re-examined:

Q. When was it you received this money from your husband—how many years ago?

A. This mortgage—well, I suppose, about five years—this $500 of the $1,000 mortgage which Justin had.

Q. Have you received any money from your husband since you received this note?

143 A. No, sir; nothing whatever.

Complainant's counsel also called HENRY F. GOEKEL; sworn:

Witness, on being shown the note from Auguste Calame to the complainant, making the proposition above referred to, says:

Q. Have you read this paper?

A. Yes, sir.

144 Q. Have you read the part of the bill in this cause which purports to be a copy of it?

A. Yes, sir.

Q. Is it a copy?

A. It is a grammatical translation. It is not a literal translation.

Q. Look at this paper—what is it?

A. It is a copy of this letter.

Q. Is it literal?

A. It is, as near as I could get it, to the best of my knowledge.

Q. You understand the French language thoroughly? 145

A. Yes, sir. This note is written in French.

Mr. Leonard, counsel for complainant, being sworn, says:

At the time this bill was filed, I called on Mr. Justin Calame, at his place of business, and served, I think, an injunction upon him, or some paper—I think it was an injunction. He asked me what it was, and I explained it to him. He then asked me what it meant. I said it was to prevent his conveying that property that was deeded to him by his brother. He said there was no fear 146 of that; that he did not intend to convey it; that it was not his; that it was his brother's, and he did not intend to convey it.

Complainant rests.

Defendant's counsel called Justin Calame; sworn:

Q. You are a brother of the defendant in this cause?

A. Yes, sir.

Q. Those deeds, and that bond and mortgage that are 147 before you, just look at them. Your brother gave you that deed?

A. Yes, sir.

Q. And you gave in return that bond and mortgage?

A. Yes, sir.

Q. State the circumstances under which that deed and the bond and mortgage were given?

A. My brother intended to go to Europe, and stay there, and he sold that property to me with the understanding that, if he should change his mind and come 148 back here, that I would sell it back to him for the same amount of money.

Q. Why was the bond and mortgage given?

A. Because I paid only part of the money.

Q. You paid some money, did you?

A. Yes, sir.

Q. Has that money been repaid to you by your brother?

A. Yes, sir.

Q. This property is your brother's, then?

149 A. Yes, sir; but he neglected to have the papers made over.

Q. What is that property worth now?

A. I should say 5 or $6,000.

Q. How large is the lot?

A. 25 by 100 feet—I think a little over 100.

Q. On which side of the street is it?

A. On the east side of Mulberry Place, between Mulberry street and the railroad.

Q. When you say between $5,000 and $6,000, do you
150 mean the lot, house, and shop?

A. I mean the land and the buildings.

Q. Not the tools and furniture?

A. No, sir.

Q. Have you any idea what the tools and fixtures in there are worth?

A. I should say about $500; they cost more when they were new.

Q. They would not be worth anything except for the purposes of the business?

151 A. No, sir.

Q. Have you any idea what the furniture is worth?

A. Not much.

Q. Do you know what your brother was worth when he left, over and above this property, in money?

A. $10,000.

Q. Was that everything except this real estate?

A. All except the real estate and the tools. The $10,000 was in money and bonds that he took with him.

Q. Do you know what money he has sent, or fur-
152 nished, or in any way supplied for the use of Mrs Calame since he left altogether?

A. About $1,200.

Q. That includes the $500 and the $200 that she speaks of?

A. Yes, sir.

Q. Who paid it over to her?

A. I paid it.

Q. This proposition—just look at that paper. Did you hand Mrs. Calame that paper?

A. Yes, sir.

Q. When was that? 153

A. About three years ago.

Q. What did she say when you handed it to her.

A. I cannot recollect exactly.

Q. Did she ever communicate to you, at the time that you handed her that paper, or shortly after, whether or not she accepted the proposition made in it?

A. Sometimes she would agree, and sometimes she wanted more than my brother would offer.

Q. I am speaking in reference to this one paper. What did she say about that when you handed it to her? 154

A. This time she wanted $3,000; my brother offered only $2,000. That was when I gave her *this* paper.

Q. Did she accept or decline this proposition?

A. It is so long ago that I could not be positive about it. She didn't say yes. She might have said that she would write to him; that is my belief.

Q. Did she let you know anything about it, whether she was satisfied to take it or not?

A. I believe she was not satisfied. She thought she ought to have more. She said she wanted $3,000. There 155 have been several offers and several refusals.

Q. Do you know how much property your brother has now?

A. I only know except what he told me. I have no reason to doubt what he told me. There was another letter that said in case she refused that offer he would stop all money. That was before this.

Q. You paid the taxes just as Mrs. Calame mentioned, I suppose?

A. Yes, sir. 156

Q. Is there anything else you know which affects the question as to how much your brother is worth?

A. He lost a great deal of money, being several years doing nothing, and afterwards he tried to start business where he failed altogether. I used to get his letters; that is how I know. I don't know of my own knowledge.

By the Vice-Chancellor:

Q. Have you any charges yourself for your own personal expenses or for this money?

157 A. Whatever I have paid has been advanced by my brother.

Re-examined:

Q. Do you know how old these parties are?
A. I should say forty-five.
Q. And how old is Mrs. Calame?
A. I suppose forty-three.
Q. Have they had any children?
A. Yes; one died.

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Cross-examined:

Q. After you left this paper with Mrs. Calame didn't she give you a letter addressed to your brother?
A. Probably so.
Q. You say that you gave Mrs. Calame about $1,200; did that include the taxes that you paid on the property, too?
A. No, sir.
Q. Be good enough to state how you gave it?
159 A. There is that mortgage, $500; there is a note $200 and something, and several times $50 and $100.
Q. Have you any memorandum of that?
A. I could produce receipts in a few days

ELIZA CALAME

160 *vs.* } *Opinion.*

AUGUSTE CALAME.

Mr. LEONARD for Complainant.

Mr. STONE for Defendant.

The VICE-CHANCELLOR:

The complainant seeks a divorce from her husband, the defendant, for the cause of desertion, together with

adultery. She asks, also, that a certain portion and de- 161
scription of his property be decreed to her as a provision for her future support, and in lieu of all future claims.

The amount of property she seeks to have awarded her is the sole matter of dispute. The desertion and adultery are proved by plenary evidence and cannot be denied.

The parties were married in January, 1848, in Switzerland, their native country, and are severally about forty-five years of age. They have had but one child, and that is now dead. They came to this country 162
in 1849, and settled in Newark, where he worked at his trade as an engraver of jewelry. She was skillful and ready, and worked with him when not engaged in the work of the family, and by their united industry they acquired in 1853 a small property in Mulberry Place, consisting of a house and shop, and some furniture, fixtures and tools, worth about two thousand or twenty-five hundred dollars. They were prosperous and accumulated money. In 1858 they visited Switzerland, and before going conveyed to Justin Calame, his 163
brother, the Newark property for the consideration of two thousand dollars, as expressed in the deed. He gave back a bond and mortgage for nearly all of the price. The conveyance, though absolute on its face, was only provisional, and after their return Auguste refunded to Justin his advances and payments, and the latter is now a party to the suit, because the holder of the title. He has testified as a witness, and admits that he has no beneficial interest or estate in the premises, and holds them 164
simply for his brother. The bond and mortgage which he gave as above are still in his possession, uncanceled of record. In 1864, or thereabouts, Auguste, who had contracted and was living in dissolute habits, deserted the complainant, and went West with a woman who he has since lived with as his wife, and whom, after a pretended divorce, procured there without the knowledge of complainant, he claims to have married and is living with in St. Louis, where he is a partner in a firm doing business as jewelers. At his desertion, in 1864, all his property

165 except the Newark premises and appurtenances was personal, and he took it all with him, leaving his wife in possession of the property in Newark. The value of what he took with him was ten thousand dollars at least. His brother Justin testifies to the last mentioned sum and the complainant testifies to her belief that it was very much more. Justin says it consisted of money and bonds. For several years the complainant knew nothing of his whereabouts, but received afterwards, through Justin, occasional remittances of money, the precise
166 amount of which does not distinctly appear, nor is it material to be known. The remittances were discontinued, and thereupon a separation, together with a provision for her in full was proposed by him in writing through Justin, by which proposition she was to have the Newark property and two thousand dollars in money. "If you will not accept," he wrote, "it is unnecessary to answer me; if you accept you will send your answer with Justin, whom I shall instruct to receive it." She objected, at first, to the
167 amount as insufficient and unfair, but afterwards accepted his offer. The defendant then delayed, and refused to fulfil it, and the complainant having gone to St. Louis to see him and secure its fulfilment, was coarsely repulsed. To her bill, now exhibited against him and against Justin, praying for a divorce, and for a conveyance or transfer of the Newark property, and for the payment of the sum of two thousand dollars, neither defendant has answered, pleaded or demurred. An appearance was entered, and evidence on both sides has
168 been taken. On the part of the defendant the evidence and argument were confined exclusively to the question of amount, and were directed to show that the defendant's property and means are not sufficient to justify so liberal a provision as the provision he offered. No question was raised or suggested as to the power of the Court to decree the conveyance of the property and the payment of the money, as prayed for in the bill, nor was it insisted that, at the time the offer of such conveyance and payment was made, the offer was too large in view of what the defendant then had; but the point insisted on

was, that, since the offer was made, the defendant's cir- 169
cumstances have changed and his pecuniary ability been diminished. But this point is altogether unsustained by the proofs. The defendant was sworn for himself, and, in testifying before the Commissioner in St. Louis, speaks of his property and affairs as if seeking to produce the impression that, by losses incurred, his means are now less than when he made his own estimate of what part of his property his wife was entitled to receive, but he avoids saying so in terms, and I have no doubt, from his testimony, that his means are at least as great as they 170
were when his offer was made. The amount offered was less, probably, than the value of one-third of his estate, perhaps less than one-fourth, and was proposed in consideration of what he was well aware were his wife's circumstances and situation, and of the share she had had in the earning and accumulation of whatever means he possessed. He intended it as a provision in full for her future support, and of all further claims. It will be the only provision to which she will be legally entitled from him or his estate, after obtaining her 171
divorce. The divorce will deprive her of dower, and of all right to any part of his estate at his death. The question then presented by the evidence and the argument is, should the defendant's estimate of what was proper and right, when his offer was made, be held now, from any alleged change of his circumstances, to be excessively large. There can certainly be no difficulty in coming to the decision that it should not.

As I have already said, the power of the Court to decree the conveyance and payment was not denied or 172
drawn in question at the argument. I do not doubt that the power exists, and is conferred by the Act concerning divorces, Nixon's Digest, 4th Edition, 247. The bill seems to claim that, by virtue of the written offer of the husband, and the acceptance of it by the wife, a contract arose, which this Court should specifically enforce, but the decree I shall advise will be upon the ground that the division of the property agreed on by the parties was no more than was due to the wife under the facts of the case, and that their joint judgment in regard to it then

173 should be adopted now by the Court in determining the amount and description of property which, under the statutory enactment touching alimony and maintenance, it is the right and the duty of the Court, when decreeing an absolute divorce for the misconduct of the husband, to secure for the benefit and the protection of the wife. In such cases, I do not doubt the power of the Court, under the statute referred to, to decree a sum in gross to be paid, instead of the periodical sums which, under the name of alimony, are allowed where the divorce is only
174 qualified and limited—where it is merely a separation and not a dissolution of the marriage relation. In the ecclesiastical law, as it existed in England prior to the statute there in 1858, no divorces from the matrimonial bond were decreed by the Courts. All divorces so decreed were only from bed and board, and whatever provision was made by the Courts for the wife while the separation continued was made with a reference to a probable or possible reconciliation, and was not meant to discourage it. Hence, alimony as a general term, if not restricted in
175 meaning to stated allotments of income, was yet a provision which, in point of fact, was made in that class of cases by payments from time to time, and not at once and in full of all future demands. It could not well be, and certainly did not need to be, the latter. But where the divorce, as under our law, is unqualified and absolute, and the wife is no longer the wife, and no longer holds her dower or other interest in the property of the husband, to be asserted in his life or at his death, the nature and principles of the provision to be made for her rights by
176 the Courts are essentially and radically different. If the word alimony without the word maintenance were made use of in statutory enactments for absolute divorces, a broader and juster meaning would attach to it than the meaning which the ecclesiastical law, by its limited operation in divorces has in England, assigned to that word. But it must not be overlooked that the word maintenance is added to and regarded as of less technical and broader significance than alimony.

"There are" says Bishop on Marriage and Divorce, Vol. 2, Section 481, "some plain propositions of common

sense governing this matter of alimony on a divorce from 177
the bond of matrimony, as follows: First: The innocent
party should not be left to suffer pecuniarily for having
been compelled, by the conduct of the other, to seek
the divorce. Secondly: The wife, made thus, in a certain
sense, a widow, should not usually be set back simply
where she stood in point of property when she entered
the marriage. She has given her time, her virginity, her
earlier bloom, where she has been rewarded only with ill
faith in return for her faith. Thirdly: She should not
stand worse there if death instead of divorce had dis- 178
solved the connection."

By the statute of this State, above cited, the Court of
Chancery is empowered to decree both kinds of divorce—
from the bond of matrimony and from bed and board.
Following the sections describing and authorizing these
different kinds is the ninth section, giving power to the
Court to make provision for the wife, such as each of
these kinds shall require. It does not distinguish for
this purpose, but includes both, under the general name
of divorce. It authorizes the Court "to take such order 179
touching the alimony and maintenance of the wife by the
husband as from the circumstances of the parties and the
nature of the case shall be fit, reasonable and just." It
provides methods for enforcing decrees for periodical
payments where the divorce is only a separation, and
provides also in general terms for all that is needed to
enforce the collection of a commuted or gross sum, or
the transfer or conveyance of a specific and definite por-
tion of property suited to the necessities and rights of a
wife abandoned and injured, as in this case, by a hus- 180
band who, withdrawn from the jurisdiction of the Court,
has nothing within reach of its process but property
whose rents and profits would be wholly inadequate to
yield her a support. The section is comprehensive of
ends and of methods by which, in every case, the decree
of the Court can be efficient to meet the equities pre-
sented, so far as property can be discovered and reached.
It enacts that security may be taken, the personal estate
of the husband sequestered, together with the rents and
profits of his real estate, and a receiver appointed to col-

181 lect and apply them. Besides the methods thus specified, orders and decrees for alimony and maintenance may be enforced by such other lawful ways and means as are usual, and according to the course and practice of the Court. The ample and necessary powers which this statute confers are not derived by influence or construction, but are plainly expressed. If inference were needed, the section is highly remedial in character, and ought to be liberally and beneficially construed. Under it, as by the usual course and practice of the Court, real estate
182 may be ordered to be sold, or the defendant be decreed to convey. Its provisions are well adapted to meet the exigencies of a hard and exceptional case like the present.

In Illinois and Missouri the statutory words authorizing orders for alimony and maintenance are nearly identical, and in meaning and effect are the same, with the words of the ninth section of the statute of this State; and by virtue of the power which the statutes of those States bestow, a gross sum amounting to one-fourth of
183 the husband's estate was, in Plaster *v.* Plaster, 47 Ill., 290, allowed in lieu of other payments, and was held to be in discharge of all further claims of the wife to a future support. In Schmidt *v.* Schmidt, 26 Missouri, 235, it was held that in the allowance of alimony the Court is not restricted to the income of the husband, and that such principle would in many cases deprive the wife of alimony entirely. (See also Bishop on Divorce, vol. 2, chapter 27.)

I am satisfied that the power exists to afford in this
184 case the relief which reason and justice demand, and shall advise a decree for the conveyance and transfer of the Newark property, and the payment of two thousand dollars in full discharge of all future demands for alimony and maintenance, in accordance with the prayer of the bill. The bond and mortgage on the premises, which were executed by Justin, should be given up to be canceled.

IN CHANCERY OF NEW JERSEY. 185

Between ELIZA CALAME, *Complainant.* *and* AUGUSTE CALAME and JUSTIN CALAME, *Defendants.*	ON BILL, &c. *Final Decree.*

186

This cause, coming on to be heard on the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-three, and of the term of October before the Vice Chancellor, to whom the same was referred in the presence of the Solicitor, for and of counsel with the complainant, and the Solicitor for and of counsel with the defendant, and the pleadings in the case having been read, and the exhibits therein submitted, and the evidence on behalf of the said complainant 187
and both of said defendants having been submitted and heard, and the arguments of the counsel of said complainants and the counsel of said defendants having been heard and considered:

And it appearing, from the bill of complaint and the proof in this cause, that the defendant Auguste Calame has been guilty of adultery charged against him in said bill of complaint; that he has abandoned the complainant and removed to the State of Missouri, where he now 188
and for a long time past has resided; that he is the owner of the land and premises described in the said bill of complaint; that the said land and premises are held by the said Justin Calame in trust for the said defendant, Auguste Calame; that the said defendant, Auguste Calame, is the owner of the tools, lathes and household furniture described in the said bill of complaint, and it further appearing that the offer in writing to the said complainant by the said defendant, Auguste Calame, made after his desertion of and as a pro-

189 vision for his said wife in said bill mentioned, was duly accepted by the said complainant, and the same being considered by the Vice Chancellor as a fair and reasonable provision to be allowed for alimony to the complainant :

It is, therefore, on this twenty-ninth day of November, in the year aforesaid, upon and by the advice of the Vice Chancellor, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and au-
190 thority of this Court, and the Acts of the Legislature of this State in such cases made and provided, doth order, adjudge and decree that Eliza Calame, the complainant, and the defendant Auguste Calame be and they are hereby divorced from the bond of matrimony for the cause of adultery, and the marriage between the said complainant and the said defendant be and the same is hereby dissolved accordingly, and the said parties and each of them are and is freed and discharged from the obligation thereof.

191

And it is further adjudged and decreed by the said Chancellor, pursuant to the power and authority vested in this Court, and the statute in such cases made and provided, that said defendant Justin Calame do, within ten days from the date of this decree, convey, by a good and sufficient deed of conveyance in fee simple, to the said complainant, Eliza Calame, the land and premises by him held in trust for the said defendant, Auguste Calame, and described in the bill of complaint in this
192 cause. And it is further ordered, adjudged, and decreed that when the said conveyance shall have been made to the said complainant, she shall stand seized of the said land and premises as of the same estate as the same was held by the said defendant Auguste Calame, before the making of the deed of conveyance by him, and the complainant to the said defendant Justin Calame, mentioned in said bill of complaint, discharged and freed from all and all manner of claim or claims, lien or liens, estate or estates, title or titles, or interest of the said defendants Auguste Calame and Justin Calame, or either of them.

And it is further ordered, adjudged and decreed that 193
all the lathes and tools in the shop, and all the household furniture in the dwelling-house mentioned in said bill of complaint, shall belong to and be the separate and sole property of the said complainant, and that the said defendant Auguste Calame, within thirty days from the date of this decree, execute and deliver unto the said complainant a bill of sale, sufficient to assure to her the title of all and singular all the lathes and tools in the shop, on the land, in the said bill of complaint mentioned, all the household furniture in the dwelling- 194
house upon said lot of land, in said bill of complaint mentioned. And it is further adjudged and decreed that the said defendant Auguste Calame, within ninety days from the date of this decree, pay unto the said complainant the sum of two thousand dollars, in good and lawful money of the United States of America; the said lands and personal estate above mentioned and described to be taken by said complainant as alimony and in full of her claims in that behalf.

195

And it is further ordered, adjudged and decreed, that the said defendant Auguste Calame pay to the said complainant all her costs which have accrued in the prosecution of this suit, to be taxed by the Clerk of this Court; and also that the said complainant be at liberty to apply to this Court, on the foot of this decree, for any further order or direction that may be necessary and proper to carry into full effect this decree.

THEODORE RUNYON,
C. 196

I respectfully advise his Honor the Chancellor to sign the above decree.

AMZI DODD,
V. C.

November 29, 1873.

A true copy.

H. S. LITTLE,
Clerk.

197 NEW JERSEY COURT OF ERRORS AND APPEALS.

Between AUGUSTE CALAME *and al.*, *Appellants,* 198 *and* ELIZA CALAME, *Appellee.*	*On Bills, &c.* *Petition of* *Appeal.*

To the Honorable the Court of Appeals, in the last resort in all causes at law.

The humble petition of Auguste Calame and Justin Calame, the appellants in the above stated cause, 199 respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-ninth day of November, eighteen hundred and seventy-three, wherein the said Eliza Calame was complainant, and the said Auguste Calame and Justin Calame were defendants, in this respect, to wit: That the said decree ordered said Justin Calame to convey in fee simple to said complainant the land and premises held by him in 200 trust for the said Auguste Calame, and described in the bill filed therein; and also decreed that the tools and lathes in the shop and all the household furniture in the dwelling house mentioned in the said bill should belong to and be the separate and sole property of the said complainant; and that said Auguste Calame should execute and deliver to her a bill of sale of said property, and pay unto her the sum of two thousand dollars as alimony; and your petitioners appeal from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that

the conveyance of said land and premises and property 201
and payment of said sum of money to said Eliza ought
not in equity and good conscience to be required.

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

STONE & JACKSON,

Solicitors of and of Counsel with Appellants. 202