

14019

No. \_\_\_\_\_

# Supreme Court of Illinois

Birkby

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vs.

Birkby

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State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois,  
To the Sheriff of *Macoupin* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Macoupin* County, before the judge thereof, between *Ann Birkby* plaintiff and *John Birkby Sr* defendant and also *Dr Birkby* her plaintiff and *Ann Birkby*

defendant, it is said that manifest error hath intervened to the injury of said *Ann Birkby*

as we are informed by *her* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *John Birkby*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Springfield, in said State, on the *2<sup>nd</sup>* Monday in *November* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John Birkby* notice together with this writ.

Witness, the Hon. *Saml H. Lusk* Chief

Justice of our said Court, and the seal thereof, at Springfield, this *20<sup>th</sup>* day *November* in the year of our Lord, one thousand eight hundred and

*forty-*

*W. B. Warren*

Clerk of the Supreme Court.

Supreme Court.

*Ann Birtley* Plaintiff in error,

vs.

*John Birtley* Defendant in error,

Scire Facias.

Filed.

State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois.

To the Sheriff of *Macoupin* County.

BECAUSE in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Macoupin* County, before the Judge thereof, between *Ann Birkby* plaintiff and *Lewis Solomons Jr* Administrator with the will annexed of *Geo Birkby Sr* deceased and *Thomas Birkby Sarah A Birkby Mary E Birkby Henry H Birkby Hammond V Birkby* and *John Birkby 3<sup>rd</sup>* devisees and heirs of *John Birkby Sr* deceased defendants it is said that manifest error hath intervened to the injury of the said *Ann Birkby* as we are informed by her complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said defendants, *Lewis Solomons Jr* *J<sup>rd</sup> Birkby S. A. Birkby M. E. Birkby H. H. Birkby - H. V. Birkby* and *Geo Birkby 3<sup>rd</sup>* heirs and devisees of *Geo Birkby Sr*

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Springfield, in said State, on the *2<sup>nd</sup>* Monday in *December* next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said defendants notice, together with this writ.

*S. H. Peck*  
WITNESS, the Hon. ~~WILLIAM WILSON~~, Chief Justice of our said Court, and the seal thereof, at Springfield, this *Nineteenth* day *Nov<sup>r</sup>* in the year of our Lord, one thousand eight hundred and *sixty-two*

*N. B. Warren*  
Clerk of the Supreme Court.

The within notice served on the within named  
defendants by the Sheriff of Macoupin Co Ill  
by sending the same to them in our presence this  
24<sup>th</sup> day of November 1852

J. E. Shaw  
J. D. Marshall

Served the within writ by reading the same to the within  
named defendants before J. E. Shaw & J. D. Marshall good and  
lawful men of said county on the 26<sup>th</sup> day of November 1852  
Serving writ to each 50 cts ————— \$ 3 50  
Mileage for 70 miles travel at 5 cts per mile      3 50  
Returnary writ ————— 1 0  
6 90

Wm. M. Snow - Sheriff of Macoupin  
County Illinois  
By J. L. Plain

Supreme Court.

Ana Berkeley Plaintiff in error,

vs.

Shaw <sup>et al</sup> Solomon, Defendants in error,

Scire Facias.

Filed.

State of Illinois, }  
SUPREME COURT. } ss.

The People of the State of Illinois,  
To the Sheriff of Macoupin County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Macoupin County, before the judge thereof, between Ann Birkby plaintiff and Lewis Solomons Dr ~~admirer~~ with the will annexed of John Birkby Dr deceased and Tho<sup>d</sup> Birkby Sarah A Birkby Mary E Birkby Henry H Birkby Hammond Y Birkby and John Birkby 3<sup>rd</sup> devisees and heirs of John Birkby Dr deceased defendant, it is said that manifest error hath intervened to the injury of said Ann Birkby

as we are informed by her complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Lewis Solomons Dr adm<sup>r</sup> of Tho<sup>d</sup> Birkby. Sarah A Birkby Mary E Birkby Henry H Birkby. Hammond Y Birkby and John Birkby 3<sup>rd</sup> heirs & devisees of John Birkby Dr deceased

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Springfield, in said State, on the 2<sup>nd</sup> Monday in December next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said defendants notice together with this writ.

Witness, the Hon. Saml H Treat Chief  
Justice of our said Court, and the seal thereof, at Springfield, this 30<sup>th</sup> day November  
in the year of our Lord, one thousand eight hundred and  
forty-

W. B. Warren  
Clerk of the Supreme Court.

The with that came to hand two  
take for service

~~this day~~ this 9<sup>th</sup> day of Dec 1850

Thos H Ross

Sheriff (Mc)

Supreme Court.

Plaintiff in error,

*Ann Buckley*

vs.

Defendant in error,

*Solomon*

Scire Facias.

Filed. Dec. 14<sup>th</sup> 1850

*W. B. Hamer*  
*Ch*

State of Illinois - Macoupin County

Pleas held at the Court-house in the town of Catlinville, in the County of Macoupin aforesaid, before the Honorable Samuel D. Lockwood, one of the associate Justices of the Supreme Court, and presiding Judge of the first Judicial Circuit in said State, sitting as Chancellor in and for said County.

Be it remembered, that heretofore, to-wit, on the twenty-third day of December A.D. 1847, there was filed in the office of the Clerk of the Circuit-Court, in and for said County of Macoupin, and on the Chancery side of said Court, a bill, in the words and figures following, to-wit:

Ann Birtby

v { Bill for divorce

John Birtby Sr.

May Term 1848 - Macoupin Circuit Court

To the Honorable Samuel D. Lockwood, one of the Justices of the Supreme Court of the State of Illinois, and presiding Judge of the Macoupin Circuit-Court, sitting as Chancellor:

Bill  
of  
Ann Birtby

Humbly complaining, sheweth unto your Honor, your oratrix, Ann Birtby, that on the seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-four, in Macoupin County, and State of Illinois, your oratrix was joined in the holy bands of matrimony, with John Birtby Sr., defendant herein - both being residents of Macoupin County, and State aforesaid - your oratrix bearing the name of Ann Harrison - That being thus united, they continued to reside together, until about the month of September 1847 - That your oratrix discharged faithfully and tenderly, all the duties appertaining to the marriage condition, and particularly those incumbent upon a loving and virtuous wife; That upon changing her former state of solitary widowhood, she anticipated much pleasure and comfort, in the company of, and conversation

with the said defendant, and that to win his favor, and to elicit from him, good treatment, she practised every art and endearment known - but so may it please your Honor, so far from answering her attachment, and devotion, with kind words, courteous bearing, and conduct due from a gentleman and husband, he has, almost invariably, met her with treatment, unworthy the name of extreme and repeated cruelty - He has heaped upon your oratrix, curses and imprecations, of the most blasphemous character - he, the said defendant, has virtually repudiated all connection with your oratrix - he has refused to administer to her wants, or even provide for her a comfortable subsistence - and the said defendant not remaining satisfied with these mild outrages, has so far abandoned his marriage obligations, as to strike her with clubs, or sticks, brating her upon the face, so as to cause blood to flow - that said defendant's conduct was particularly brutal to her, about last September, when after cruelly whipping your oratrix, he turned her out from his house, and forced her to obtain from the charity of others, what she, as a faithful, obedient wife, deserved at the hands of her husband, - And your oratrix would further state, that since the event last mentioned aforesaid, he has taken into his house, a girl, by name Ann Sherburne, with whom he evidently lives in open, adulterous, intercourse - thus adding a gross violation of decency, and law, to his former outrages upon your oratrix, all which acts and doings are contrary to Equity and good conscience, and for that they work to her so great injury, as that your oratrix cannot through fear of her person, and life - and her repugnance to his ~~for~~ bad conduct, any longer continue her matrimonial connections - she is remediless in the Courts of law, and therefore files, this, her bill of complaint, for a divorce, in the court of equity, where such matters are alone cognizable - And may it please your Honor, to grant unto your oratrix, a decree of divorce from the said John Birckby Sr, defendant herein - and also, for that your oratrix is exceedingly poor, being without any means whatever, be permitted to prosecute this her suit, and obtain all necessary process, free from charge -

Bill of Ann Birckby

And also to grant such other (other) relief in the premises, as to your Honor may seem good and fit - or a suitable maintenance for herself, suitable the circumstances of her case, and the condition of her husband. May it please your Honor, also to grant, from under the seal of this Honorable Court, the writ of subpoena, commanding the said defendant to answer the charges in this bill contained - and your orator will ever pray &c

William Weer Jr.

Sol for Plaintiff

At the foot said bill, there is appended, by way of answer thereto, the following, to-wit,

Answer

"All the allegations of the bill denied -

"Davis & Palmer

And on which said bill are the following endorsements, to-wit

Receipt

"Clerk will please issue subpoena for defendant to Sheriff of Macoupin -

William Weer Jr. Sol for plttff

"Filed December 23rd 1847 - A. McKim Dubois Clerk

Filing

And afterwards, to-wit, on the fifth day of May 1848, there was filed in the office of the Clerk aforesaid, a subpoena in chancery, in the words and figures following, to-wit,

State of Illinois, Macoupin County

The People of the State of Illinois, To the Sheriff of Macoupin County -  
(Greeting):

We command you that you summon John Birtley, sent, if to be found in ~~your~~ County within your bailiwick, to be and appear before the Judge of the Macoupin Circuit Court, sitting as Chancellor, in and for the County of Macoupin, on the first day of the next term of said Court, to be holden at the Court-house in the town of Carlinville, on the second monday in the month of May, in the year of our Lord one thousand eight hundred and forty eight, to answer a bill in Chancery, exhibited in our said Court, by Ann Birtley for divorce, and this you will in no wise omit, under the penalty of what the law directs, and have you then show this writ -

Spec of John Birtley Sr.

(L.S)

Witness A. McKim Dubois, Clerk of said Circuit Court, and the seal thereof, at Carlisle, this 23<sup>rd</sup> day of December, in the year of our Lord one thousand eight hundred and forty seven,

A. McKim Dubois CLK

On which said subpoena in chancery, are the following endorsements - to-wit:

Return of Shff

"Served on the within named John Birkby Sr. by delivering to him a true copy of the within writ - January 22<sup>nd</sup> 1848 -

"Serving spa with copy \$1.00 Travel 10 mile 63 1.63

"Ret writ .12 \$1.75

"B. J. Burke Shff M.C

Filing

"Filed May 5<sup>th</sup> 1848 - A. McKim Dubois CLK"

And afterwards, to-wit, on the eleventh day of May 1848, there was filed in the office of the Clerk aforesaid, an affidavit in the words and figures following, to-wit

"Ann Birkby

& { Macoupin Circuit Court, May Term A.D. 1848 - In Chancery

John Birkby Sr.

Ann Birkby being duly sworn says, that she has filed her bill for divorce against said defendant in this Court - that to maintain her suit, she has subpoenaed as witnesses, Seabird England, and Thomas Stewart, residing in this county - that by these witnesses, she expects to prove that her said husband has cruelly beaten, and treated her otherwise, in a violent and outrageous manner - that without their testimony, she cannot successfully maintain her suit - and that she is informed, and verily believes, that said England is too sick to attend this court - and that said Stewart has been, and still is absent from this county, during this term of the Court - wherefore she prays a continuance of this cause - She expects to have said witnesses here next term - further says not to -

Ann <sup>her</sup> Birkby  
mark

Subscribed and sworn to before me this 11<sup>th</sup> day of May A.D. 1848 -

Affidavit for Continuance

D. M. Daniel J. P.

On which said affidavit, is the following endorsement, to-wit:  
"Filed May 11<sup>th</sup> 1848 - O. M. Kim Dubois Clk"

And afterwards, to-wit, on the day last aforesaid, being one of the days of a regular term of said Circuit Court, then being held at St. Louis, as aforesaid, present the Honorable Samuel D. Lockwood, one of the associate Justices of St. Louis, as aforesaid, the following order was entered and became part of the records of said Court, to-wit

Ann Birtby  
vs  
Bill for divorce  
John Birtby Senr

Came the said Complainant by her solicitor, and on his motion, leave is granted said Complainant, to amend her bill herein. And the said complainant having filed her affidavit therefor, moved the Court, for a continuance - which motion having been heard, is sustained, and it is ordered by the Court, that this cause be continued to the next term of this court.

And afterwards, to-wit, on the twelfth day of May A. D. 1848, there was filed in the office of the Clerk aforesaid, an affidavit in the words and figures following, to-wit:

Ann Birtby  
vs  
Macaulay Circuit Court - May Term A. D. 1848 - In Chancery  
John Birtby Sr.

Ann Birtby being duly sworn, says, that having filed her bill for divorce against her said husband in this Court, she has been unable to bring the same to a hearing during this term, in consequence of the absence of testimony - for which, said cause has been continued - that she expects to prove, and charges that her absence and present separation from her husband, is the effect of repeated blows on her person, and expulsion from his house, accompanied with threats of a most horrid character - That she has no friends to whom she can apply in her present necessitous condition - which is much aggravated by the fact of her having two children by her former husband,

Order of Continuance

Affidavit for continuance for support, pending suit

of unsound mind, looking to her for support - that her said husband is a man of wealth - and in view of the facts and circumstances, she prays your Honor to allow such an allowance during the pendency of her suit as may suffice for her maintenance and that of her children, and as to your Honor may seem fit -

Ann <sup>her</sup> Birtby  
mark

Subscribed to and sworn before me this 12th day of May A. D. 1848 -

D. M. Daniel J. P.

On which said affidavit, is the following endorsement, to-wit  
Filed May 12<sup>th</sup> 1848 - A. M. Kim Dubois Clerk

And afterwards, to-wit, on the day last aforesaid, being another of the days of said regular term of said Court, present &c, as aforesaid, the following order was entered, and became part of the records of said Court, to-wit:

Ann Birtby

vs Bill for divorce

John Birtby Senr

Came the complainant by her solicitor, and moved the Court for an allowance of alimony herein -

And heretofore, to-wit, on the thirty first day of March A. D. 1848, there was filed in the office of the Clerk of said Circuit Court, and on the chancery side of said Court, another bill, which is in the words and figures following, to-wit,

In the Circuit Court of Macoupin County, May term A. D. 1848 -

To the Honorable Samuel D. Lockwood, Judge of said Court, sitting in Chancery

Humbly complaining sheweth unto your Honor, your orator John Birtby Senr. of the County of Macoupin, State of Illinois, that on the 17th day of April A. D. 1844, your orator, and one Ann Harrison of the County of Macoupin, (who by her name of Ann Birtby, your orator makes defendant to this bill,) were married according to the laws and customs of this State, and your orator immediately removed the said defendant to his house in this

Motion for alimony

Bill of John Birtby Senr

County, in which County, your orator then, and has, ever since, resided. Your orator further states unto your Honor, that he lived with said defendant for a short time after their marriage, and found that she manifested no other fault besides a great irritability of temper, but that then having occasion to visit Morgan County, on business which occasioned his absence for some days, on his return, said defendant, instead of receiving him kindly, broke out in a most violent, and indecent manner, charged this defendant with infidelity to her - told him that he had been spending his time with lewd women, and refused to do any of the needful work about his house, and for some time neglected every act of domestic concern, and devoted her whole time to the annoyance of your orator, by her unreasonable, and jealous clamor - all of which was untrue, and warranted by nothing in the conduct of your orator. And your orator charges, that from that time forward, until their separation, with but slight interruption, said defendant, continued to annoy him, and also his neighbors - charging him with illicit and improper connection with almost all the females in the neighborhood - thereby involving him in disgraceful difficulties with his neighbors, driving him to humiliating apologies, to avoid suits for her slanders, frequently refusing to cook for himself, and his work-hands - refusing to wash his clothes, or in any manner provide for his comfort - telling him, in reply to his remonstrances with her, on these subjects, 'to go to his whores, and get his shirts washed' - and other remarks of a similar character - refusing to cook a meal, or arrange the table, for persons calling upon him on business - leaving his house on a number of occasions, and travelling to Carlinville, some twelve miles, and there attempting to procure suits to be commenced against him, for pretended injuries - endeavoring to induce the Grand Jury to indict your orator, for offences, which she falsely, & untruly alleged that he had committed. Repeat-

Bill of John Birtchley dect.

would listen to her, charges against your orator, emanating from her own jealous brain, sometimes threatening to cut your orators throat; & at other times, to burn his house down over his head, - assaulting persons coming to his house - and endeavoring to involve him in troubles in that way, purloining his money and pocket-book, containing valuable papers - turning out from the pen, the hogs, and other stock which your orator was fattening, and thereby occasioning him great trouble, and loss - declaring that she would make your orator spend his property, that it might not, as she said, be enjoyed by his whores - abandoning his house frequently, and on many occasions, for weeks, and at others, for days at a time, and seeming to exhaust her ingenuity in these various modes she had devised, for his annoyance, she abandoned him, and your orator being exhausted, and worn out, with her unhappy conduct, left his house, being fearful that she would, in fact, return and fire his house over his head, knowing from his deafness, that she might do so, without fear of detection. In all this, your orator alleges, that he has conducted himself with becoming temper - that he has provided for her wants, abundantly - that her complaints and charges, against your orator, are groundless, and untrue. In consideration whereof, and forasmuch as the peace and happiness of your orator, are forever destroyed, by the conduct of said defendant, and that unless he can be relieved from her conduct, and freed from her unhappy presence, his business will be broken up, and he subjected to great loss. he prays of your Honor, to grant unto your orator, the Peoples writ of subpoena, directed to the said defendant, commanding her to personally be and appear before your Honor, at the next term of this Honorable Court, then and there to answer to, and on the hearing hereof, may it please your Honor, to order, direct, and decree, that the bonds of matrimony, heretofore existing

Bill of John Birney dea.

between your orator, and said defendant, be forever dissolved, vacated, and held for naught, and such further relief as the case may require, and to equity belong, and as in duty bound, your orator will ever pray to

John M. Palmer

Solicitor for Complainant

On which said bill, are the following endorsements, to-wit:

*Receipts* "Clk. Please issue spee in chf & def. returnable to next Term of the Court - to Shff of Macoupin Co."

Palmer Sol for Complt."

*Filing* "Filed March 31 - 1848 - A. McKim Dubois Clk"

And afterwards, to-wit; on the fifth day of May 1848, there was filed in the office of the Clerk aforesaid, a subpoena, in Chancery, in the words and figures following, to-wit,

"State of Illinois - Macoupin County, §

The People of the State of Illinois, To the Sheriff of Macoupin County - Greeting;

*Spee of Ann Birkby*  
We command you that you summon Ann Birkby, if to be found within your bailiwicks, to be and appear, before the Judge of the Macoupin Circuit Court, sitting as Chancellor, in and for the County of Macoupin, on the first day of the next term of said Court, to be holden at the Court-house in the town of Carlinville, on the second Monday in the month of May, in the year of our Lord one thousand eight hundred and forty-eight, to answer a bill in Chancery, exhibited in our said Court, by John Birkby Senr., for divorce, and this you will in no wise omit, under the penalty of what the law directs, and have you then there this writ -

Witness A. McKim Dubois, Clerk of said Circuit Court, and the seal thereof, at Carlinville, this 31st day of March, in the year of our Lord one thousand eight hundred and forty-eight -

A. McKim Dubois Clerk

§

On which said subpoena, are the following endorsements, viz

Return  
of  
sheriff

"Served on the within named Ann Birkby, by delivering to her a true copy of the within writ - April 26th 1848 -

"Serving spa with copy \$1 - Ret writ 12 \$ 1.12

"B. J. Burke Sheriff M. C

Filing

"Filed May 5 - 1848. A. M. Sims Dubois clerk"

And afterwards, to-wit, on the ninth day of September A. D. 1848, being one of the days of a regular term of said Circuit Court, then being held at &c, as aforesaid, for esont &c, as aforesaid, the following decree was made, entered, and became part of the records of said Court, to-wit,

Ann Birkby  
vs { Bill for divorce  
John Birkby Senr

John Birkby Senr.  
vs { Same  
Ann Birkby

Came the parties by their Solicitors, and by consent it is ordered that these causes be tried together, the bill of the said John Birkby Senr., standing as a cross bill to the original bill of the said Ann - And it was ordered by the Court, that a Jury come, to try the truth of the allegations in the said original, and cross bill set forth - thereupon came a Jury, to-wit, Martin Sims, Jesse W. Reamed, E. C. Vancil, Jonathan Davis, Benjamin Boston, Wm. F. M. Daniel, Thomas D. Moore, Ezra C. Keller, A. G. Leigh, Marshall H. Stratton, Davidson Hankins, and Andrew J. Nash - who being duly elected and sworn well and truly to try the truth of the allegations in said bill, and cross bill contained, and they having heard the evidence, and the arguments of counsel, retired to consider of their verdict, and being now returned into Court, upon their oaths do say, We, the Jury, find that

Decree of divorce

the allegations in the original bill of Ann Birkby are untrue - and that the allegations in the cross bill of the said John Birkby Senr. are true - It was therefore ordered, adjudged, and decreed by the Court, that the said John Birkby Senr. complainant in the said cross bill, be forever divorced from the said Ann Birkby, and that the bond of marriage, heretofore existing between the said parties, be now, and from hence forth forever dissolved, vacated, annulled and made void, and that the said John Birkby, be released, and discharged therefrom &c - and it is further ordered that the bill filed by Ann Birkby against her husband, be dismissed - and it is further ordered, that John Birkby Senr. pay all the costs of both suits: the Counsel of Ann Birkby moves that she be allowed alimony, which motion is continued, but may be heard in vacation, by consent of parties -

Decree of divorce

And afterwards, to-wit; on the tenth day of May A. D. 1849, being one of the days of a regular term of said Circuit Court, then being held at &c, as aforesaid, present, the Honorable David M. Woodson, presiding Judge of the first Judicial Circuit of the State of Illinois, sitting as Chancellor within and for said County of Macoupin, the following order was entered, and became part of the records of said Court, to-wit;

John Birkby Senr.

vs & Bill for divorce

Ann Birkby

Came the parties by their solicitors, and the motion for alimony herein before made, now coming up, the defendant, by her solicitor, moved the Court for leave to introduce witnesses touching the facts proven on the trial of this cause, which motion having been heard, it is ordered, adjudged and decreed by the Court, that said motion be refused.

Order denying alimony

and it is further ordered, adjudged and decreed by the Court, that said defendants said motion for alimony, be denied.

State of Illinois - Macoupin County

I, the Subscriber, Clerk of the Circuit Court, in and for the County of Macoupin aforesaid, do certify that the foregoing transcript contains a full, true, and perfect exemplification of the record, and proceedings had in said Court, in the causes in said transcript entitled - as will from the records and files of said Court, in my office, fully appear.



In witness of which, I have herewith subscribed my name, and affixed the seal of said Court, at Carlinville, this the twentieth day of December A. D. 1849.

A. McKim Debois Clk.

### Assignment of Errors

- 1 - Bill of John Birney contains no allegation justifying a divorce.
- 2 - There is no proof of said allegations nor was any proof legally taken.
- 3 - distinct causes of divorce are improperly joined together -
- 4 - The Court erred in ordering a jury to try the cause.
- 5 - The Court had no jurisdiction.
- 6 - The Court erred in not granting a divorce.

- 7 - Court erred in denying a dinner
- 8 - Court erred in denying Memory,  
I refused to hear evidence on the merits
- 9 - Court erred in making one case like  
a cross bill to other.

Wm. J. Chesnut  
for Plaintiff in Error

Ann Birkeby

et {

John Birkeby senr.

John Birkeby senr.

et {

Ann Birkeby

Copy of Record

14019

Filed Jan 25 9<sup>th</sup> 1880  
f. s. p. n. s.

Fees

Making transcript } \$ 3.90  
3904 words @ 10¢ p. c. }  
Certificate & seal .35

\$4.25

Refused

Birby }  
+ }  
Birby }

Brief.

1 - Defendant filed no answer to  
Ann's Bill - & should have been tried by Court.  
Woods & Morell 1. J. C. R. - 103.

2 - Court should have allowed her term -  
jurony Alimony during pendency of suit.

Mix & Mix 1 J. C. R. - 109.

Osgood & Osgood 2 Page - 622

Wright & Wright 1 Edw. Ch - 62

Benton & Benton 1 J. C. R. - 364

Wood & Page 2 Page -

Hammond & Hammond 1 Clav. R. - 152

Smith & Smith 1 Edw. Ch.

Stanford & Stanford same - 319

Ames & Ames 3 Green Ch -

Richardson & Richardson - 4 Porter -

Story & Story - Drucker. Ch.

Whitell & Whitell S. B. Mon - 50

Patterson & Patterson 1 Halst Ch. 389

Balentine & Balentine same - 471

Ricketts & Ricketts 4 Gill.

Synde & Synde - 4 Saneled Ch. 373

3 - Court erred in making John's Bill a  
Cross Bill to the other

Dun & Keegin 3 Seam.

Payne & Frazier 4 Seam

Edwards & Helm - same.

4 - The Bill of John Birby contained  
no grounds for divorce.

Bills consists

- 1 - Of charges by her of infidelity on his part.
- 2 - Of neglect by her of domestic duties.
- 3 - Of inducing Grand Jury to indict him.
- 4 - Threatening his personal property.
- 5 - Abandoning his house.

1 - The cruelty that would authorize divorce must endanger life.

Perry & Perry 2 Paige C.R. - 501

Mason & Mason 1 Edw. Ch. 290.

Graven & Graven 1 Green Ch. 459

Kentley & Kentley 1 How. Miss - 751

Payne & Payne - 4. Humphr -

x Finley & Finley 9 Dana - 52

x Hill & Hill 2 Mass - 150

Wamen & Wamen 3 Mass - 321

Brainard & Brainard, Bragt.

Conn & Conn Myrdal - 513

x Thorp & Thorp - Myrdal - 763

x Shaw & Shaw - 17 Conn - 190

+ Moyler & Moyler - 11 Ala - 622

+ Cheatham & Cheatham 10 Miss -

Perry & Perry 1 Barb Ch. R. 517

Rose & Rose 4 Eng 508

+ Lucas & Lucas 2 Texas 113

Bill had for want of certainty  
2 - ~~Court tried in refusing to hear evidence on the motion for alimony.~~

Jervis & Jervis 8 Conn 146.

Myrdal & Myrdal 3 Tex - 168

Payne & Payne - same - 331.

3 - Presents no ground of Jurisdiction.

Mix & Mix 1 D. C. R. 204

Williamson & Parison same,

Jarris & Jarris 13 Edw Ch. 412

M'Neil & M'Neil same - 550

Hartean & Hartean - 14 D. C. R. - 181

Chanter & Turner - 14 Mass - 229

White & White - 5 N. H. - 476

More & More - 2 Mass - 117

Richardson & Richardson - same - 152

Jackson & Jackson - 1 Johns. R.

Clark & Clark 8 N. Hamp.

Furk & Furk - 5 Gery.

Mandijo & Mandijo 15 Verm.

Hesby & Hesby Mich'd 210

Fellows & Fellows - 8, N. H.

Greenlaw & Greenlaw - 12, N. H.

Smith & Smith - 12, N. H.

Sawtelle & Sawtelle - 17 Conn. 285

Kimball & Kimball - 13, N. H.

Harrison & Harrison 7 Fedell.

Cheatham & Cheatham 10 Wis -

Batchelder & Batchelder 14 N. H. 380

2 Kent. Com - 106 to 118

5 - Court should have heard evidence on motion  
for Alimony.

Burn & Burn 7 Hill - 210 -

Wren & Moss 2 Gilman.

6 - Court should not have denied the motion  
for Alimony, even though wife was in fault,

Richardson & Wilson 8 Gery 67

x Men & Moss 1 Gilman  
 x - Davis & Davis 1 Scan  
 x - Leitch & Leitch - 11 Ala -  
 Pence & Pence - 6 Br. Mon. 496  
 Turk & Turk - 8 Blawie - 561  
 Wright & Wright 3 Tex - 168  
 Byrne & Byrne - same - 336

7 - If wife is entitled to nothing - Bill must contain a clear case.

x Palmer & Palmer - 1 Paige C.R. 278  
 In N. York husband cannot be divorced for wife's cruelty  
 x Van Veyhten & Van Veyhten 4 J.C.R. 501  
 as common law contains no such grounds of  
 divorce - Quare? if admitted here  
 x Burtis & Burtis - Ho.R.

8 - At most the Court could only render a decree of divorce a mensa - & the wife would be as a matter of course entitled to alimony.

State of Missouri  
County of Sangamon

William Neely  
being duly sworn - says - that John Birckby  
Sr - late complainant in a suit for divorce from his  
wife Ann - begun & held in the Macoupin Circuit  
Court - has died since the termination of said  
suit - to-wit since the May term AD 1849 of said  
Circuit Court - at which term a motion for alimony  
made by said Ann Birckby - based upon the fact  
of the said John Birckby Sr - having at a previous  
term obtained a divorce from her - was denied by  
the Court - that said John Birckby Sr - had  
no children - nor heirs in a direct line - but  
by a will duly executed & proved in the Probate  
Court of said County - has bequeathed his property  
both real personal & mixed - the same being of a  
large amount - to John Birckby 3rd - son of John  
Birckby 2d - deceased - who was the nephew of  
the said John Birckby Sr - complainant in said  
suit - and also to the unknown children of the  
said John Birckby 2d - that said John Birckby Sr  
appointed an executor of his will - but the Probate  
Court of said County has duly appointed Lewis Ad-  
mon administrator of his estate with the will  
annexed - that so far as appears can learn - there are  
no other persons in any manner interested in said  
estate - there being no judgment creditors - mortgages &c.  
that the said Ann Birckby defendant in said suit  
of divorce has filed a record of said suit in this court  
& prays from the same a writ of Sei Tangere to issue  
against the said Lewis Admon Administrator of the said  
John Birckby 3rd & the other unknown children of John  
Birckby 2d - defendants without judgment. That said affidavit  
is true of course of said Ann Birckby.

sworn to before me this  
29<sup>th</sup> Decr 1849  
J. Callahan, Mayor City Springfield

William Neely

Sam Baskby  
John Baskby

Affidavit

Filed Jan 9 9 #1850