

No. 12945

Supreme Court of Illinois

Turbitt

vs.

Turbitt

157-39

John Turbitt

vs

Margaret A. Turbitt

157

1859

17945

John Turbitt Appellant

as
Margaret A Turbitt } In the Supreme Court
Appellee } April Term
A.D. 1859

And the said Appellant
comes and says that in the record
proceedings and in the rendition of
the decree in this cause manifest errors
have intervened to his injury, and
for assignment of error states the fol-
lowing

- 1 The court below erred in permitting
improper evidence to be offered on the
part of the appellee
- 2 The court below erred in refusing to
give proper instructions asked by the
appellant
- 3 The court below erred in refusing
to grant a new trial
- 4 The verdict below was against the
weight of evidence
- 5 The verdict below was against law

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- 6 The verdict should have been for the appellant
- 7 The petition and the matters therein stated are insufficient in law to warrant the decree for divorce
- 8 The decree should not have been rendered
- 9 The decree is against the law & evidence
- 10 The court below erred in rendering the decree in the cause
- 11 The allegations in the bill were not proven
- 12 The decree should have been for the appellant
- 13 The court erred in granting alimony after the appeal was perfected
- 14 Other errors

For which reasons
the appellant prays that said decree
may be reversed and be set aside and
wholly for naught estimated
By leave
Jas. for appellant

Pleas to a Circuit Court
 within and for the County of
 Jaywell and State of Illinois
 at a Term thereof begun and
 held at the Court House in
 the City of Pekin, on the
 Second Monday of the month
 of October in the year of
 Lord one thousand eight
 Hundred and th Fifty Seven;—
 Present the Honorable James
 Harriott, Judge of the th Twentyfirst
 Judicial Circuit of said
 State, Comprised of the Counties
 of Woodford Jaywell Mason
 Menard and Cass, —
 On the Chancery bill of said
 Court

Be it Remembered

that on the second day of September
 in the year of our Lord one thousand
 Eight Hundred and th Fifty Seven —
 Margaret A th Tushitt, by Davison and
 and Parker, her Attorneys filed in
 the Clerks office of the said Court —
 her Bill for Divorce in the words and
 figures as follows (To wit:)

State of Illinois
 Saywell County Ill.

To the October Term
 of the Saywell Circuit Court 1857

In Equity

To the Honorable James Harnott Judge
 of the Twenty first Judicial Circuit of the
 State of Illinois in Chancery Sitting

your Oratrix Margaret.

A. Turbitt, humbly Complaining.
 sheweth unto your Honor, that heretofore
 to wit on the 6th day of September
 A.D. 1855, your Oratrix, was lawfully
 married to John Turbitt, whom your

Bill in Oratrix prays may be made defendant
 In Equity { to this Bill, at Canton in the County of
 Fulton and State of Illinois, and from
 that time forth until the 23^d day of July
 1857, your Oratrix and the said John
 resided, cohabited and lived together as
 Husband and wife in said Town of
 Canton: That your Oratrix ^{during} all said
 time behaved and conducted herself as
 a good true and ^{faithful} ~~devoted~~ wife of the said
 John and to the best and utmost of
 her knowledge and Power performed all
 the duties of a wife to him,

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Bill of
in
Equity

Your oratrix further sheweth that the said John hath been guilty of Extreme and repeated cruelty toward your oratrix in this. that although he was of sufficient ability and worth in property and money from thirty to fifty thousand Dollars; he did not nor would provide your oratrix with a sufficient support suitable to their condition in life, but on the contrary thereof she was frequently during said time left without anything to eat and without any means to procure it for days and sometimes for weeks together:

That on the 13th of September 1856. your oratrix was delivered of a Child the fruits of said marriage, and that her said husband about three days before such delivery left your oratrix and went away and was gone about ten days leaving your oratrix wholly unprovided with either medical attendance provisions or help. so that your oratrix in that time of her trial was wholly dependant upon the charity of her neighbors. Your oratrix further sheweth that frequently during her

cr. 4

Bill }
In }
Equity }

living together with said John he hath
used actual force and violence upon
your oratrix without any reasonable
Excuse, ^{or provocation therefor} ~~therefore~~ your oratrix further
sheweth that the habits of parsimoniousness
of said husband his utter disregard of the
Comfort ^{& violence} ~~violence~~ of his language and
conduct so wrought upon the mind of
your oratrix and disheartened her ~~left~~
^{and reduced her life} so miserable that she was forced and
obliged to leave and abandon her
said husband and that she did on
the 23^d day of July 1857 leave her said
husband and come to the City of
Pekin in Tazewell County where she
had friends to protect her and where
she has ever since resided and still
resides:

In tender consideration of the
premises may it please your Honor
to grant to your oratrix the Peoples
Writ of Habeas Corpus against the said
John Turbitt, and that he be made
party defendant hereto and Compelled
(without oath, his oath being waived)
to answer this Bill, and upon the final
hearing to order and decree that the
bonds of Matrimony heretofore existing

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between your oratrix and said John
be dissolved and henceforth held for
nothing, and that your oratrix have
such reasonable allowance for her
Bill } alimony as may be agreeable to Equity;
In } or for such other ^{and} further relief as
Equity } may be just and she will ever
pray

Margaret A. Thorbit
Dawson & Parker
Cliffs Falls,

Summons Now afterwards to wit, on the day and
year last aforesaid, issued Summons
from the office of said Court directed
to the Sheriff of said Jaywell County
in words and figures as to wit,

State of Illinois. Jaywell County, ss.
The people of the State
of Illinois to the Sheriff of Jaywell
County Greeting

We Command you to
Summon John Thorbit if found in
your County personally to appear
before the Circuit Court of said
County on the first day of the next term

thereof to be holden at the Court House
in the City of Pekin on the second
monday of the Month of October next to
answer to a certain Bill of Complaints
filed in said Circuit Court on the
Chancery side thereof against the said
John Turbit by Margaret A Turbit
and to do and receive whatever our
said Court may order and decree in the
premiss and have you then and there this
writ and make return thereon in what
manner you execute the same

Witness Merrill C. Young
Clerk of the said Court and seal
thereof hereto affixed, at Pekin this
second day of September in the year
of our Lord one thousand Eight
Hundred and Fifty Seven.

M. C. Young Clerk.

which said writ of Summons was on
Sheriffs } the 10th day of October A.D. 1858 returned
Return } by the Sheriff of said County with
the following Endorsement thereon.

the within named not found in
this County,

C. Williamson Sheriff T. C.

No 7
Now afterwards to wit, on the 15th day of
September A.D. 1857 issued an alias
Summons from the Clerks office directed
to the Sheriff of Tullam County in the
words and figures as follows (to wit)

Summons

State of Illinois Page 2 Well County
The people of the State of Illinois to
the Sheriff of Tullam County Greeting;
We Command to Summon
John Turbit if found in your County
personally to appear before the Circuit
Court of said County, on the first day
of the next term thereof, to be holden at
the Court House in the City of Pekin,
on the second Monday of the Month of
October next, to answer unto a Certain
Bill of Complaint, filed in our Circuit
Court on the Chancery side thereof
against the said John Turbit by
Margaret A Turbit ^{and} to do and receive
whateven our said Court may order
and decree in the premises, and have
you then and there this writ and make
return thereon in what manner you
execute the same;

Witness Merrill C. Young Clerk
of the said Circuit Court and

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the seal thereof hereto affixed at Pekin
this 15th day of September in the year of
our Lord one thousand Eight Hundred
and Fifty Seven:—

Read
Merrill C Young Clerk
Clerks of which summons last aforesaid, was
Endorsement on the 8th day of October A.D. 1858 by
the Sheriff of said ^{of} Fulton County,
returned in to the Clerks office of said
Circuit Court with the following
Endorsement thereon (to wit)

State of Illinois ^{of} Saywell County,
I do hereby certify that I have
served by Reading and ~~delivering~~ ^{depositing} a true
Copy of the within summons to John
Cubitt this 28th day of September 1857
William M Stundard *Shff*
By D J Waggoner Deputy

Be it remembered, that at a Circuit
Court within and for the County of
Saywell and State of Illinois at a Term
thereof begun and held at the Court House
in the City of Pekin on the second
manday of the month of October A.D. 1857
and on the thirteenth day of said month
it being the second day of said ^{of} Term

No 9 present the Hon. James Harriott Judge
of the 21st Judicial Circuit of said
State composed of the Counties Woodford
Hagerwell and others
on the Chancery side of said Court
the following Proceeding were had
(to wit)

Margaret A Turbit }
vs } In Chancery for Divorce
John Turbit }

Now on this day came the
Defendant by his Attorney and filed his
Demurrer in the words and figures as
follows to wit:

Margaret A Turbit } In the Circuit
vs } Court Hagerwell
John Turbit } County Illinois

October Term AD 1857 In
Chancery for Divorce

This Defendant ^{by protestation} not confessing
any of the ~~any~~ matters in said Bill mentioned
to be true as therein alledged, Demurs
thereto and for Cause shows

1st that it does not sufficiently appear
that said Complainant now is or was
at the time of filing said Bill a

No 10

2nd

resident of said ^Wagwell County
no such case of Extreme or repeated
Cruelty as is required by law to entitle
said Complainant to a divorce is set out
or shown in said Bill and no other
cause for divorce is shown in said Bill.

3rd

It is not shown what kind of force
and violence was used by Defendant
wherefore and for divers other causes
of demurrer appearing in said Bill.
defendant demurs thereto: and prays
the judgment of the Court whether he
shall be compelled to make further or
other answer thereto:—

And the Court being fully
advised of the matter and things in
said Demurrer contained is of the opinion
that the same should be sustained:

Whereupon on motion of Complainant's
attorneys leave is granted them to amend
said Bill:

Have afterwards (to wit) on the 15th day
of October 1857. the Complainant by her
for witness Attorney Daniel G. Parker. —
comes and files her motion in said
Court for to ~~make application to the~~ ^{make application to the} ~~agwell Circuit~~ ^{agwell Circuit}
~~for to procure witnesses living in the~~
~~County of Carter and County Hutton~~
in the words and figures, as
follows to wit

No 11.

Margaret A Turbit } Haywell County
vs } Circuit Court
John Turbit } in Equity
Haywell County

Margaret A Turbit, the plaintiff in the above suit being sworn saith that the witness on ~~the~~^{her} part & behalf, reside in the Town of Canton in the County of Fulton, and are E. M. Lewis Mary A. Lewis Josephene Lewis Robert Taylor Sarah Ann Thompsons James M Thompson & John Blackadore Miss Weaver & Rebecca King

Deponent further saith that she has not now any means to procure the attendance of said witnesses & nor to pay for taking their Depositions ~~wherefore~~^{for} she prays the Court for an order upon the Defendant for such sum as shall Enable her to take their Depositions or procure their attendance and also Enable her to pay her Counsel for prosecuting this ~~the~~ suit

Sworn to before me this 14th
day of October 1857 }
Margaret A Turbit
Wm B Parker C. D.

~~Now afterwards to wit, Henry Grove Solicitor~~
~~for Depts~~ ~~Now afterwards to wit,~~ on the
 16th day of October 1857. - H. Grove Solicitor
 for Defendant filed his answer to the
 above petition of Plffs.
 in words and figures as follows.

by Turbit } For divorce
 do } application for alimony
 by Turbit }

Depts } and believes that the petitioner owns in
 answer } her own right productive real Estate
 to Plffs } amounting in value to the sum of from
 petition } five to ten thousand dollars He further
 states that he has no personal knowledge
 of her situation as to property but he
 believes that the Defendant can by
 by the next term of this Court. prove to
 the Court the facts above stated.

That the Defendant has left the City of
 Pekin after he was informed by his
 Counsel that the Petitioner would insist
 on a continuance of this Cause until
 the next Term & Defendant does not now
 know where the Defendant is: He states
 that in the absence of the defendant. -

CSO 13

deponent Cannot procure the necessary
evidence to fairly show the pecuniary
means of the petitioner. He therefore prays
the postponement of the motion until
next term. H. Grove —

Subscribed & sworn to
before me this 16th Oct AD 1857
M. C. Young, Clerk
for W. Dan. Mans D, C,

~~Now after words to wit, on the — day
of said Term, the parties came by their
solicitors, and a motion was made for a
continuance. which motion was granted
by the Court, and this case was continued
at Defendants cost, until the next
Term of said Court.~~

~~Be it remembered that at a Circuit Court
within and for the County of Jayeswell and
State of Illinois at a Term thereof begun
and held at the Court House in the City
of Pekin on the first Monday of April 1858~~

Now afterward, to wit, on the 20th day of October 1858. Cooper & Reynolds Solicitors for Deft, filed their answer to plffs Bill, ..

Margaret A Turbit } Circuit Court
vs } Laywell County, Ills
John. Turbit } Oct Term AD 1858
} In Chancery for Divorce

The answer of the said John Turbit to the Bill of Complaint of the said Complainant Lewis

This Respondent for answer to the said Bill or to so much thereof as he is advised it is necessary or proper to answer unto,

Deft } answering says —
answer }

To plffs } That it is true that Respondent
Bill } and Complainant were intermarried & lived
together as husband and wife as stated in said Bill. But Respondent denies that during all said time said Complainant demeaned and conducted herself as a good & faithful wife and that she to the utmost of her power & knowledge performed all the duties of a wife, to this Respondent — on the contrary Respondent ~~avows~~ ^{avows} that said Complainant almost ever since her said Marriage, has systematically indulged in a course of light and frivolous conduct, and in the circulation of idle contradictions and unfounded tales

No 15.

Whether Complainant was a resident of Claywell County at the
time of filing said Bill Respondent is not advised and calls for the
proof

prejudicial to the standing & fair name of
this Respondent, well calculated, if not
artfully disposed to destroy domestic peace, and
force this Respondent into a line of conduct
which might give color to charges of improper
treatment on his part and lead to a separation

Respondent denies that he has been guilty of
Extreme & repeated cruelty, or of any cruelty, whatever,
towards said Complainant, as charged in said
Bill. He further denies that he is possessed
of anything like the amount of property named
in said Bill, and states that what he has
is for the most part wholly unproductive,
yielding but a small annual income, yet
Respondent ^{avows} ~~owns~~ that he has always felt &
~~manifested a~~ ^{manifested a} disposition to provide abundantly
not only for all the actual wants of said
Complainant since she became his wife, but
to go far beyond this, and minister so far as
Money could do it and his resources would
admit, to every desire which might add to her
personal comfort, and make her appear to
advantage in society - and to this end among
other things, this Respondent has repeatedly
offered to procure for her Rich articles of
dress, which for reasons best known to her
self, she has almost uniformly declined -
This Respondent denies that he left the

Complainant, at any time since their said marriage and while she continued to live with him, without anything to eat, and without the means of procuring food, and Respondent avers that during a large part of the time, to wit, for about eight or ten months or more of the time from the date of their marriage till the time Complainant left the House of Respondent, said Complainant and ~~and~~ this Respondent boarded in the ^{the} families of other persons, and were furnished with all the necessaries of life in food, drink, and lodging that the ^{the} families themselves had with whom they boarded = that after Respondent & Complainant quit Boarding and went to House Keeping, which Respondent, ^{avers} ^{was} with the hearty concurrence and at the request of said Complainant, this defendant Endeavored watchfully to provide and did provide everything necessary in the way of food & otherwise for the use, comfort & convenience of the ^{the} family while he was at Home - and when absent which was but seldom, he always left money and other means in abundance, at the command of his said wife, to procure everything needful or that she might or could reasonably desire. Respondent claims that the only time when he was away from Home for any considerable length of time, was in or about the month of July 1857

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when he was absent for about 2 months, on business in the State of Iowa, and he shows that during that time, besides a garden, well well stocked, with vegetables of various sorts, Respondent & said Complainant lived in the Town or City of Canton in said Fulton County, where Respondent's credit was good, and where he had made arrangements with two storekeepers in the place to supply Complainant with everything in the way of food or otherwise which she might need in the absence of Respondent and which arrangement was well known to Complainant. Respondent also on this and other occasions, when he was about to be absent, left money with his ^{said} wife to supply her wants and not unfrequently tendered her money which she refused, and on the occasion of his absence in Iowa, a considerable sum of money, viz more than \$100. Collected for Respondent in his absence by his agent, was tendered to Complainant under the direction of Respondent & to be used by her if necessary, and which was by her ^{refused} request. In addition to which said Complainant owned and still owns and holds in her own right valuable real & personal Estate and which was then and still is now prosecuted then all the property owned by Complainant

yet Respondent Shows she left his
 House at this time claiming to have done so
 because her wants were not sufficiently
 provided for = Respondent further shows
 that at ~~that~~ no time was money ever asked
 of him by his said wife & by him refused =
 Respondent admits that he was absent
 from home at the time of the Delivery of
 Complainant of her said child, as stated
 in said Bill - But he ~~avows~~ ^{avows} that he had
 no Expectations that she would so soon
 be delivered, and fully Expected to return
 before that event occurred & further ~~avows~~ ^{avows} that
 Complainant so far from making any objection
 to his going, rather urged it herself not
 anticipating her confinement so soon, and as
 the business which called Respondent from
 home at that time was of a character highly
 important to Respondent, Respondent ~~shows~~ ^{avows}
 Shows that such was his solicitation ^{inde} about his
 said wife, lest contrary to Expectations she
 might be confined in his absence that with
 her knowledge & concurrence he conferred with
 the most eminent & reputable physicians and
 accoucheurs in the Town of Canton, and
 engaged his services to attend upon his said
 wife in that Emergency and at a moments
 warning - But Respondent Shows that during

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His absence and under the influence of Evil
Counsels as Respondent is advised & believes and
therefore charges the physician retained by
Respondent, was discharged and another
brought in & procured to act in his place
Respondent also Endeavored to make & believes
did make all necessary arrangements to provide
his said wife with Everything thought likely
to be needed during his said absence --
Respondent therefore Emphatically denies and
repels the charge set up in said Bill.
that in this time ^{of her} after trial "he left his said
wife wholly unprovided with medical attendance
provisions or help, dependant upon the
Charity of her neighbours = Respondent denies
~~that~~ he was frequently or ever with or
with out provocation or excuse used force
or violence upon Complainant as charged
in said Bill = and Respondent denies all
such disregard of the Comfort of Complainant
and all violence of language & conduct
towards her rendering her life Miserable
and ~~forcing~~ ^{forcing} her to abandon his House and
seek the shelter and protection of friends.
as charged in said Bill = Respondent ~~assents~~ ^{insists}
that no cause is made in said petition for a
divorce & ~~this~~ Respondent ^{insists} ~~assents~~ in all
objections to said petition in this his answer

to the same as though he ~~shall~~^{and} demurs
to said petition and pointed out each
defect and as to all matters and things in
said Bill contained & not herein expressed
by admitted the same are decided and being
fully answered. Respondent prays to be
hence dismissed with his Cost &c.

Cooper & Reynolds
for Respondent—

Now afterwards to wit on the
21st day of Oct 1887— the parties by their
attorneys were present in Court
a motion was made for a continuance
of said suit until the next Term of
said Court. which motion was
granted by the Court and the case was
continued at Defendants Cost—

Be it remembered that at Circuit
Court within and for the County of
Wayne and State of Illinois. at a term
thereof begun and held at the Court
House in the City of Peoria on the first
Monday of April 1882 Present the Hon
James Harriott Judge of the 21st

No 21

Judicial Circuit of said State,
Comprised of the Countys Woodford
Wayne, Mason, Menard and Cass
on the Chancery Bill of said Cause
it being the 9th day of said Term
and ~~14th~~ ^{14th} of April 1858. The following
proceedings were had -

^{My} Furbitt } Circuit Court.

^{My} do } Wayne County Ills. vs

^{My} Furbitt } In Chancery for Divorce

Now after this comes
the complainant by her ^{next} Attorney
and enters her motion to suppress
deposition for incompetency and
subornation and the court being
fully advised of the premises
is of the opinion, that the said
motion be overruled

And now afterward took on the 14th day of April A.D. 1858
it being the 12th day of said term. the following proceeding
were had in said Cause to-wit:

Margaret A. Furbitt

^{vs} } In Chancery for Divorce
John Furbitt

And now again came the
Parties by their Solicitors whereupon came a jury
of worthy good and lawful men to-wit: Geo West, Elijah
Timbal, Jas. Simmons, John A. Davis, Uriah N. Emery

Edward Wilson John W. Kinstry William Cunningham
 Jesse Brownridge John W. Ely William Sutton and Thomas
 King Jr. duly elected Just and sworn, who having heard
 the allegations and proofs of the parties and arguments
 of Counsel thereon for Verdict say We the Jury find
 the defendant guilty of Extreme & Repeated Cruelty

Thereupon the Defendant by his Solicitor
 hath a motion for a new trial. And the Court
 being fully advised of and concerning
 said motion is of opinion that the same
 be overruled. It is therefore ordered
 that this Cause be continued as to testimony
 and that a Decree be Divided be
 entered therein.

Thereupon the defendant also prayed an
 Appeal, and it is ordered by the Court
 that the defendant have twenty days to
 file his appeal Bond in the sum of five
 hundred dollars with Jonathan Kleopfer
 and Henry Grier as securities, and the
 Bill of Exceptions to be filed in Vacation

Afterwards
 to wit: on the seventeenth day of April
 AD 1854 the Defendant filed his appeal
 Bond as by the Court ordered, of which
 the following is a copy.

Know all Men by these

Edward Wilson John W. Kinstry William Cunningham
 Jesse Brownridge John W. Ely William Sutton and Thomas
 King Jr. duly elected Just and sworn who having heard
 the allegations and proofs of the parties and arguments
 of Counsel thereon for Verdict say We the Jury find
 the defendant guilty of Extreme & Repeated Cruelty

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 be overruled It is therefore ordered
 that this Cause be continued as to testimony
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 Appeal and it is ordered by the Court
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 file his appeal Bond in the sum of five
 hundred dollars with Jonathan Kleopfer
 and Henry Grier as securities and the
 Bill of Exceptions to be filed in Vacation

Afterwards
 to wit: on the seventeenth day of April
 AD 1854 the Defendant filed his appeal
 Bond as by the Court ordered, of which
 the following is a copy.

Know all Men by these

presents. that We John Turbitt, Jonathan K. Cooper and Henry Grove, are held and firmly bound unto Margaret A Turbitt in the penal sum of Five hundred dollars to the payment of which well and truly to be made, we bind ourselves, our, heirs executors Administrators and assigns, jointly ~~and~~ severally and firmly. by these presents, sealed with our seals and dated this seventeenth day of April AD 1858.

The Condition of the above obligation is such that Whereas the Circuit Court of Izewell County in the State of Illinois, at the April Term thereof for the Year AD 1858 rendered and made a Decree of Divorce in the said Margaret A Turbitt against the above bounden John Turbitt, from which decree the said John Turbitt has prayed an Appeal to the Supreme Court of the State of Illinois which has been allowed. Now if the said John Turbitt shall pay all costs damages and interest, as shall be awarded in Case said decree shall be affirmed, by the Supreme Court, then the above obligation to be void.

Otherwise to be and remain in full
force and virtue.

Witness our hands } John Furbitt Seal
Seals the day } Jonathan K Cooper Seal
and above written } H. Groove Seal

Afterwards to wit on the twenty
sixth day of April AD 1858 a Bill
of Exceptions was filed in the
following words & figures —
namely —

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Margaret A. Turbit } Circuit Court Casswell
 vs } County Ills April Term
 John Turbit } 4th 1858 Bill in Chancery
 for Divorce.

Be it remembered that on the trial of this cause before said Court and a Jury - the Complainant, to maintain the issues on her part, called E. M. Lewis, also testified on oath that he first knew the Defendant in the month of January 1856. That Witness was living at that time four miles South East from Canton - that he met defendant at Mr Bennetts in Canton - that he Complainant - that she was then married. She was living with Mr Bennett when Witness first knew her - Defendant was going to see his wife when Witness met him at Mr Bennetts - Defendant and wife came to board with witness about February 1st 1856 and continued to board with me till after the setting of Breabryer - say three or four months - they then ~~rented~~ an upper Room in my house and boarded themselves. Had no family but themselves they had the use of a little Hall beside the Room - Remained there till the latter part of November 1856 Mrs Turbit had a child

about the 12th or 13th of September 1856 = Defendant left Home the day before and was gone ten or days he left nobody to take care of his wife that I know of - she fell under the care of myself and Family - Her health was not good - some two or three weeks before she had been very sick. I don't know of what Complaint she was not sick long - defendant was not at Home at the time - he was gone some seven or eight days then = we Employed a Physician for her both at that time & when she was confined = we also furnished her table = when defendant came Home after she had been sick the first time - they boarded with us till could go to Canton for ^{my} Flour = health was as good as usual when he went away the first time she had no Flour then = I frequently hear them talking when in the adjoining Room he seemed irritated but don't know what he said = I thought he never provided as well as he ought for his means while they boarded with us he frequently left her for a week at a time = Mrs Turbit once called me to her room. I asked what she wanted she Enquired if I could keep her two or three weeks till she could make some other arrangements - Mr Turbit made strange of her request she said he need not make

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Cross

Strange of that he had ordered her to
 take care of herself = I advised them to
 settle the matter - she left that evening &
 came into my room & stayed that night
 she came to my door and requested ~~me~~
 assistance and I went towards her
 Examination = I was farming when Deft
 lived with me - Had a wife & four
 Daughters - Two of the girls now grown the
 other two were small I had sons also -
 some of whom were grown - and ~~was~~
 generally at home myself - my house was
 one & half stories high - Defendant & wife
 occupied the floor I occupied the lower
 part of the house I was not often up stairs
 my family & Mrs Turbit were on sociable
 terms - when she was sick the first time
 we got Doctor Crowther who came
 twice to see her = she was confined to
 bed at that time 4 or 5 days = I charged
 defendant for the services rendered his
 wife and provisions &c furnished in his
 absence = He paid all my demands = I said
 nothing to him about his wife being out of
 flavor in his absence - I learned that Defendant
 considered Doctor McDowell preferable as
 a Physician and that he wished him to
 attend on his wife when confined

this I learned after her confinement & nat. before - Defendant got meat from us for his family - he had gardens and vegetables of various sorts that season -

Mrs Mary Ann Lewis Called by Complainant - testified that she knew Mrs Turbit since before her marriage - She & Defendant came to board with us February 1st 1856 - they went by themselves about May 1st 1856 & I remember when the child was born - Mrs Turbit was confined the next day after defendant left - He was gone ten days - She was in delicate health before for some little time - He provided no help when he went away - Had not spoken to our family on the subject - I went to see her when she was sick - she had a half Loaf of Bread - a little Rice - Some Molasses in a Tumbler - about 3 Pints Corn meal one half Pound Black Tea - no Meat - nor Butter Flour when she was confined - Defendant was gone several days the time she was first sick - no arrangements were made with us to board her in his absence - He was gone considerable of the time after they commenced living up stairs - I have heard him call her poor devil

Liar hypocrite - Heard him threaten to take her by the shoulders & pitch her Down stairs. He once said he ought to have thrown her out of the Buggy & left her lying on the Road - Coming from Mr ^{by} Taylor - This was for something she said at Mr Taylor's - The week before he went to Presbytery he told her he wished her to prepare his clothes - She did it - It took her three or four days - I did not consider her able to do it - she was not able to sit up all the time - she came Down to our part of the House one afternoon she ~~was~~ retired early Mr Lewis went into her room. I went in - Defendant came and wanted in - I asked what he wanted - he said he wanted in and threatened to burst open the Door ~~to~~ Mr Lewis then came and Defendant went up stairs - Ex. Ex. =

I furnished Mrs ^{by} Turbit about 1/4 pound of Butter when she went to live by herself It was after her Confinement when he threatened to Pitch her Down stairs - Don't know how long after - Their room was about 16 feet square and she slept up stairs in another Room. Can't tell what she said at the time of the quarrel They were in there room -

only heard a word now & then. He said I'll take you by the shoulders & pitch you down stairs - saw no attempt to do it. It might have been a month from the time of her first sickness till her confinement. I know of no new supply of provisions after he got home. I heard Dependant tell his wife he had engaged the services of Doctor McDowell. This conversation was after her confinement - the Dept. garden spoke of was $\frac{1}{2}$ mile distant from the house.

Complainant next called Mrs Rebecca Crossin - who testified that she first knew Mrs Turbit in Lawrenceville in this state - next saw her in Canton after her marriage - this was on the 22nd of July 1857 and stayed one night with her - Mrs Turbit her child & my little girl composed the family at this time - soon after a neighbour lady came in - she had a bowl of Cream - some Butter - some Raspberries &c. we had a good dinner - Had Black Tea - my Daughter went to live with Mrs Turbit in May & stayed till she came to my house - she my Daughter was about eleven years old and could go errands when necessary. Mrs Turbit came home with me on the 23rd

31

July 1857. Has continued to live in ^{up} Layswell County Ever since. My husband has many of Mrs ^{the} Lurbits in his hands - dont know how much. Has had it a year or more has paid her some of it. Think it is within two years since Crossin first got this money. Mrs ^{the} Lurbit owns the half of 390 acres of land in Vigo County Indiana which has been under improvements for 23 years Mrs ^{the} Lurbit said Defendant called her land worth five thousand dollars.

Mr E. M. Lewis recalled by Complainant said Defendant never asked me and I do not know that he ever asked my ^{the} family to wait on his wife in his absence.

That part of the foregoing testimony proving threats & of approbrious epithets on the part of Defendant toward his wife was objected to by defendant ~~by his~~ when offered on the ground that no such charges were contained in the Bill - But the Court overruled the objection & admitted the evidence, and the defendant by his Counsel then & there excepted.

The case was here closed on the part of the Complainant.

The Defendant then offered & read in evidence to the jury without objections

32 Except as to the relevancy & competency of a
portion of the evidence therein contained,
and on which the Court was to be asked
to instruct the jury, the Depositions of
John Andrews, David Beale, William Mc-
Dowell, Nathaniel H. Dorrance, Wilson
Hubbs, Robert C. Culton, Margaret T. Bennett
John Blackadore & Charles C. Smith taken
in said cause upon due notice given—
which said Depositions are in the
words & figures following—

The Depositions of John Andrews
David Beales Nathaniel H. Dorrance
~~with~~ Wilson Hubbs Margaret T. J. Bennett
Mr. McDowell Robert C. Culton John
Blackadore and Charles C. Smith, taken
before John M. Shinn Justice of the Peace
of Fulton County Illinois at the office of
said Shinn in the City of Canton in
said County on Wednesday & Thursday, the
24 & 25th days of March 1858 between the hours
of 9 o'clock A.M. and 6 o'clock P.M. of
said day pursuant the notice hereto
attached, said Depositions to be read
in evidence on the part and behalf of
the Defendant in a certain cause now
pending in the Circuit Courts of Taylor

County Illinois on the Chancery side thereof for Divorce wherein Margaret A Turbit Complainant and John ^W Turbit Defendant.

John Andrews being duly sworn testified as follows

Q Int 1 Do you know Margaret A Turbit the Complainant and John ^W Turbit the Def^t in this suit

Ans I do not know Mrs ^W Turbit I have been acquainted with Mr ^W Turbit between two and three years

Q Int 2 What is his business or profession & where did he reside in the Summer and Fall of 1856

Ans I have known him only as a Minister of the Presbyterian Church resided in the vicinity of Canton in the Fall & Summer of 1856

Q Int 3 Are you not a Minister of the Gospel of that denomination

Ans I am

Q Int 4 If you know of Mr ^W Turbit's being absent from home in or about the month of September 1856 - please state how long he was ^{absent} ~~from home~~ at that time the exact time he left home as nearly as you can state when he went and on what business

ans

34

Same where about the 10th or 12th of September 1856
 he called at my place of residence in - Mason
 County Ills, on Friday Evening on his way
 to the meeting of the Presbytery at Clinton
 Duwitt County Ills. and I was in company
 with Mr Turbit more or less until the
 next Thursday Evening and left him at
 Clinton as the Presbytery had not yet
 adjourned - and when I left for Ohio
 Mr Turbit was still in attendance upon
 the Presbytery

Int 5

Was it or not important that Mr
 Turbit should attend the meeting of
 Presbytery and why was it important or
 necessary that he should be there.

ans

It is the duty of all Ministers of the Gospel
 to attend the meeting of Presbytery when
 called it was then and is near Convention
 that he had special and important
 reasons for attending that meeting of
 Presbytery

Int 6

Did not Mr Turbit Express regret
 or reluctance in being obliged to leave
 home at that time. What reasons did
 he give for not wishing to be absent at
 that time or if he manifested any solicitude
 about hastening his return home state as
 nearly as you can what reasons he gives

35

for wishing to get back, and what he did
and did on the subject.

Ans He manifested immediately after he came
to my residence, a great deal of regret that
he was necessary for him to be absent from
home at that time. Stating as the reasons
the health ^{and condition} of his wife in going to and
at Presbytery he expressed great solicitude
for his wife at home two or three times he
came to me to have certain things in which
he was interested - he came up and disposed
of it in order that he might get a way as
soon as possible although he had made all
necessary provisions for his wife at home
yet he wanted to be with them

John Andrews

David Beale first being duly sworn
testified as follows

Ques 1 are you acquainted with Mr & Mrs Turbit
the Complainants and Defendant in
this case and have long have you
known them

Ans I am acquainted with Mr Turbit but
do not know Mrs Turbit - I have known
him since last September 1856 in
going to Presbytery with him I first
became acquainted with him

Ques 2

If you heard Mr Turbit Express any solisistake about being absent from home about that time please state fully what he said and did on that subject and what reasons if any he gave for his absence or about the matter

ans

On our way to Presbytery Mr Turbit same time Expressed great reluctance in being obligated to leave home at that time while at Presbytery he same times urged that his buisness should be brought up and disposed of so that he might leave for home as soon as possible and he Mr Turbit left with me on Friday morning about day light and traveled with great Expenditure traveling 12 miles before Breakfast and Continued Traveling until late at night and day some 70 or 75 miles that day but we got back at 12 o'clock at night and fell short of that distance and the next morning after breakfast we reached my house in Mason County and after he got a little breakfast he started for home, I do not recollect that Mr Turbit told me the reason of his ~~imagining~~ was or not John Andrews at Presby sitting on this occasion and is it not this about the same time he testified to

Ques

ans

Mr Andrews was with us at Presbytery and this is the same time he testified to

David Beale

34)
Dr Wm M. McDowell being duly sworn
testified as follows

Int 1. Are you or not a Practising Physician
and Surgeon if yes ~~how~~ long have
you been in the Practice and at
what place

Ans I am and have been in the Practice
about Eighteen years in all, part of
the time in Denns & Ohio and between
10 and 11 years in Canton Ills

Int 2. Do you know Margaret ^{by} Turbit and
John Turbit, the Complainant & Deft
in this suit and have long have
you known them Respectfully

Ans I have known Mr Turbit previous to his
marriage. I do not know that I ever met
with Mrs Turbit

Int. Was you or not Engaged by Mr Turbit to
attend upon Mrs Turbit on the occasion
of the birth of ^{her} Child about the month of
September 1856 and where did Mr & Mrs
Turbit Reside at that time

Ans About that time and previous to her
Confinement Mr Turbit ^{me} and informed
me that his wife was pregnant and
expected to be soon to be Confined and
solicited my attendance upon that ^{occasions} ~~occasion~~
and ^{I represented} ~~expected~~ that I should attend upon

38

her if was at home when called upon
 and to 3^d Mr Turbit and wife resided at Mr Lewis's
 Int. — at that time about four miles from Canton
 of Dr. McEwells Int. 4th — Did or not Mr Turbit mention

the possibility of his being absent at the
 time of his wife's confinement? If yes, what
 if any thing did he say as to his wish to have
 her ^{carefully} ~~carefully~~ attended upon the occasion

and He represented that he might be absent
 at the time but expected to be at home
 previous to her confinement Mr Turbit after
 her confinement ^{represented} ~~before said~~ that it ^{occurred} ~~accurred~~
 sooner than he anticipated. It was his
 desire if Mrs Turbit was taken sick during
 his absence that I should attend upon
 her, and I agreed to do so if called upon
 Int. Did or not Mr Turbit express to you ^{solicitude} ~~solicitude~~
 that his wife might have all proper attendance
 upon that occasion and have often did he
 see you upon that subject.

and he did speak to me several times on the
 subject and in consequence of her being
 indisposed was apprehensive of difficulty
 and was very anxious that I should
 attend upon her

Dr M McEwells

39

Deposeth and says

Q¹ - What is your name ^{occupation} ~~place~~ of
and place of Residence, where do you
carry on business and how long have you
been doing business at that place

Ans Nathaniel H. Dorrance Family Grocer and
provision store in the Town of Canton &
^{commenced} ~~continued~~ in the business in 1855: and
have been doing business since that time

Q² Do you know Margaret A and John
Durbit the Complainant and Agent in
this cause

Ans I have known Mr Durbit for the last
four ~~ten~~ years - I have seen Mrs Durbit
but am not personally acquainted
with her

Q³ Did they reside at any time at or near
Canton ^{of} Fulton County Ills - State when
it was at what ^{particular} place they resided and
how long they continued to live there

Ans They lived at Lewis Three or four
miles South East of Canton in the year
1856 from thence they came to reside in
Canton and continued to reside in Canton
until she separated from him

Q⁴ After they came to reside in Canton
what kind of ^{premises} ~~residence~~ and accommodations
they occupied -

ans to 4

They were living in a comfortable Roomy brick House with Every Convenience in and about the same

Ans 5

Did Mr Turbit trade at your store and had he or not an open account at your store

ans

He did trade at our store and had an open account and credit then to any amount he might choose to buy

Ans

To what extent did he trade with you and whether or not his family in the habit of getting goods at your store for family use whenever they wanted the same

ans

To the amount of \$30 or 40 Dollars worth the family did purchase goods whenever they wanted the same by his order that is a general order to let them have goods whenever they wanted them and they did come from time to time and buy.

N. H. Duriance

Wilson ^{by} Hubit being duly Sworn
Deposeth and Says

Q¹

In what business are you engaged
when and how long have you been
doing business at that place

A¹

In a general dry goods ^{by} family grocery
business and provisions in Canton ^{since} the
Spring of 1854—

Q²

Has or not ^{by} Mr Durbet in the Habit of
Trading at your Store while he resided
in or near Canton, and had or not
an open account and credit and to
what Extent

A¹

~~He says~~ ^{by} He had so far as he might
wish to buy as we placed no limits
to his credit and we ~~therefore~~ ^{should} sold him
or any of his ^{by} family all the goods they
might have wanted. Mr Durbet ^{by} did
~~attend~~ that allow his account to ^{run very} ~~run~~
~~long~~ ^{long} as he settled punctually

Q³

Do you or not know Dr ~~Reynolds~~
McBowell of Canton if yes state
what is his reputation as a Physician
and Surgeon—

A¹

I know him and his reputation
as a Physician and Surgeon is good

Wilson ^{by} Hubit

42

Robert C. Cutler being first duly sworn
deposes and says

Ques^d Do you know Margaret A. and John
Durbit Complainant & Deft in this
cause, have long have you known
them and where have they lived
since you knew them

Ans I knew them both, I think I first made
my acquaintance with Mr^{ly} Durbit in
Sept. 1853 at Waynesville Ills. the first
time I knew Mrs^{ly} Durbit was in 1854
Mrs Durbit resided most of the time
at Mr Bennetts in Canton since their
marriage they have resided at or near
Canton

Ques^d What was the character of the accommodations
provided by Mr^{ly} Durbit for his family
whilst they resided in Canton

Ans They resided in a good convenient
and ^{convenient} comfortable house when they first
resided in Canton, the house was as
good as any one that could have been rented
in Canton, the second house they resided
in I do not ^{not} know anything about while
they lived with Mr Daylan they had a
comfortable house also Mrs Luwises house
was a good and comfortable residence the
extent of the privileges they enjoyed there I do
not know

Int 3

What do you know of any thing respecting the provisions made by Mr Turbit for the subsistence of his wife and Family as to food and clothing help and otherwise while they lived together

ans

So far as food is concerned I have no positive knowledge except that they both appeared that they had plenty to eat as to help he has frequently spoken of procuring help for her, but ^{she declines} she did on one occasion at my house when they were both together the matter was spoken of but Mrs Turbit said that they did not need the help and in order that she might not put her hands in waters which Mr Turbit thought injured her she banded most of the time previous to their coming to Canton so far as my knowledge, as to their clothing is concerned I always saw them well dressed both Mrs Turbit and also the child on one occasion I saw him buy her five dresses ranging from \$7 1/2 to 10 1/2 yds each the material of most of these dresses were good

Int 4

Have you or not seen Mr & Mrs Turbit ^{frequently} together, and how did they conduct themselves when together

ans

I have frequently seen them together and

44 #
ans to 4

I never saw anything that ~~showed~~^{showed} my dissatisfaction on the part of either of them they have been frequently at my house and I have seen them at Church and I never saw a ^{my} Father release a Mother more in care and attention to her child.

Robert C. Cuttans

Mrs Margaret Bennett duly sworn
testified and says

Int 1

Do you know Margaret A. ^W Lurbit and John ^W Lurbit Complainant & Deft in this cause, and how long have you known them and where did they reside when you knew them

ans

I know Mrs ^W Lurbit about twelve years since, it is about four years since I first saw Mr Lurbit, they resided first in Lawrence County ^{Ill} in Lawrenceville until she came to Canton since their marriage they have lived in Canton and vicinity

Int 2

What do you know if anything of Mr Lurbit procuring or offering to procure hired help for his wife at ~~the time of~~^{after} their marriage - and if such help was not procured why was it not done

ans

Mrs ^W Lurbit once told me that Mr Lurbit proposed to go to Lawrence County to get a girl for her who had once lived in the family of ^{the P.M.} ~~her~~ but this she disclaimed

Int 3 After Mrs Lurbits sickness Did or Did not Mr Lurbit travel round to a considerable extent for the purpose of procuring hired help for her. Please state any knowledge you may have on this subject

ans I have no knowledge on the subject

Int 4 Do you know of Mr Lurbit proposing to purchase a melodian

ans I do not know any except what I have heard from Mrs Lurbit when she said that

Int 5 Do you or not know of Mr Lurbit giving money to his wife at any time

ans I know of one time before they were married of Mr Lurbit giving her \$10. I think that ^{he said} at that time if she wanted it he had plenty more for the purchase of some articles for her wedding dress

Int 6 Do you know of his purchasing any other articles of clothing after their marriage and if so what were they

ans I know of her getting a new bonnet after her marriage but who paid for it I do not know

Margaret J. Bennett

John Blackadore being first duly sworn Depose &c and says

Int 1 Do you know the parties Complainant & Defendant in this suit

ans to 1. I do not know how long I have known them but I suppose for about 3 or 4 years
 Int 2 where did they reside when you knew them
 ans They both resided in and about Canton when I knew them

3rd Q Do you know about the time Mr Turbit was absent in Iowa in the summer of 1857 and did his wife have a small girl living with her at ^{that} time

ans I know the time he was absent in Iowa she had a small girl living with her at that time

4 Q What do you know if anything respecting the provisions made by Mr Turbit ^{for} the sustenance of Mrs Turbit and the Family during his absence on that trip please state the same fully

ans Mrs Turbit informed me in her own House that she had some flour and Mr Turbit had made arrangements with Messrs Bond & Co ^{proprietors} of the Phoenix Mill for supplies during his absence she also said she had picked ^{up} pork Mr Turbit had put up in the ^{in the winter} ~~cell~~ and he had also made arrangements with the ^{up} Family of Mrs Thompson for a supply of butter and Milk

Int 5 Where was Mrs Turbit living at that time
 ans She was living in a House on North part of Town on main street Canton

44
let. 6

Have did you happen to learn the facts
above stated.

ans.

I saw Mrs ^{Cropper} ~~Gurbit~~ from Pekin near with
her at the time and ^{sent} ~~asked~~ for me to call
at Mr ^{Gurbit's} House ^{& while I was there} she Mrs Crossin
complained that Mr ^{Gurbit} had not made
suitable provision for his ^{by} ~~wife's~~ family
during his absence which led me to
make the enquiries out the statements of
Mrs ^{Gurbit}, Mrs James M. Thompson was
with her at the time and Mrs Crossin
~~seemed~~ ^{seemed} desirous of getting our approval of
Mrs ^{Gurbit} going home with her to Pekin
with her on a visit. I however disapprove
of her leaving home at the time during
Mr ^{Gurbit's} absence - as Mr ^{Gurbit} had left
it ⁱⁿ her care during his absence.

but

Have soon after that did she leave
and in what state did she leave
the property.

ans

She left the next day I think and
I do not know in what condition
she left the property.

let

From what Mrs ^{Gurbit} told you and your
knowledge of the parties ^{with whom} ~~that~~ Mr ^{Gurbit} had
arranged to furnish flour Milk & Butter
in his absence did you consider that she
was likely to suffer from articles

whilst he was gone and did you or not
enquire of her or to her supply of any of
other articles except those above named

ans I did not suppose she was likely to
suffer for those articles and did not
enquire further

Int what ^{did} you know of anything have Mrs
Lurbit was supplied with articles of
provision and clothing during her marriage
ans at any time I saw her she appeared
decently clothed

Int Do you or not know Dr. Wm. M. D. Cane
and what is his reputation as a physician
and Surgeon

ans I do know him and his reputation as
a Physician and a Surgeon was very good
Int Did or not Mrs Lurbit ever return to live
with Mr Lurbit since the time she left
with Mrs Crossen

ans She did not

John Blackadar

Charles C. Smith being duly sworn
Deposeth as follows

Int In what business were you engaged
when and how long have you been
doing business in that place

ans In a general Dry Goods and Grocery business

ans to 1st in 1856 & I was in the business until March 1857 then I quit in Canton ^{Ill} Kuttan County Illinois

Int 2. Was or not Mr ^W Lurbit in the habit of trading at your store while he resided in or near Canton and had he not an open account and credit and to what extent

ans yes he was in the habit of trading there and his wife was in the habit of trading also at my store and himself or any of the members of his ^W Family could have bought all the goods they wished Mr ^W Lurbit in the store, with Mrs ^W Lurbit frequently urged her to buy more goods that she appeared willing to & continually solicited their patronage or trade, so far as I could judge from appearances Mr ^W Lurbit, was over anxious to procure all the goods she might possibly want.

Int Do you know Dr Wm M McDowell and what is his reputation as a Physician and Surgeon

ans I do know him and his reputation is good

Int Do you know ^{now} Mrs ^W Lurbit was in the habit of appearing in Public or to Clothing

ans Mrs Lurbit when I saw her, wore valuable Clothing Charles C Smith

State of Illinois }
 Fulton County } I John W. Shine
 a Justice of the Peace of County do certify
 that the foregoing depositions of John
 Andrews & C. ~~and~~ were taken before
 me at my office in Canton on the
 24th day of March 1858 between the
 hours of 9 o'clock A.M. and 6 P.M. of
 said day and the deposition of
 Charles B. Smith was taken by
 me at the same place on the 25th of
 March 1858 adjournment from the previous day
 I further certify that Each of said
 witness was duly sworn by me to
 testify in cause in said caption named,
 that said depositions were duly committed
 to writing by me, and the deposition
 of each witness was signed by him or
 her in my presence.

Given under my hand and
 seal this 25th day of March A.D. 1858
 at the City of Canton Fulton County, Ill.
 John W. Shine, J.P. *W. Shine*

Justices Fees	\$7.45
Constables Fees	2.25
Paid by Dependents	
J. M. S. J.P.	

The defendant here rested his case and no other evidence was offered on either side =

The Complainant then asked the Court to instruct the jury as follows)

(Which said instructions as asked were given by the Court - and the giving of which to the jury the defendant by his Counsel then & there Excepted - The defendant then asked the following instructions numbering from 1. to 7. inclusive)

4th

(The burthen of proof is on the petitioner and unless she has proved that she was an actual resident of Gaywell County at the time her petition was filed in this Cause the Jury should find for the defendant -

5th

If the Jury should believe from the Evidence that at the time the petitioner was confined that the

defendant was absent from home and that he left little or no provisions for his wife this ~~that~~ would be grounds for divorce under the statute unless the petitioner has proved that the defendant did so knowingly & wilfully & that her life and health were placed in peril thereby.)

(the which instruction was refused
"The evidence in this case does not amount to extreme
& repeated cruelty under the statute."
and

7. (Although the jury should believe from the evidence that defendant was guilty of Extreme Cruelty in going off at the time of the petitioner was confined. this alone would not be sufficient to warrant the jury in finding for the Petitioner unless the petitioner has proved that the Extreme Cruelty was repeated.) which said instructions were given to the jury by the Court as asked (excepting) (which the Court refused to give - No 7. which the Court modified by striking out the word "statement" and "and" then gave said instructions as thus modified to which decisions of the Court in refusing to give said instructions & numbered -

and in making said 7th instructions the defendant, by his Counsel then and there Excepted - and thereupon the Jury rendered their verdict in said Cause in words & figures as follows -
 (To wit) We find the defendant guilty
 whereupon the defendant Entered his motion for a new trial in said Cause - which said motion is in words and figures as follows (To wit)

Margaret A Turbity In Laywell Co
 vs } Circuit Court
 John Turbit }

The defendant Enters a motion for a new trial to set aside the verdict in this Cause for the following reasons

- 1 The Court permitted improper Evidence on the part of the petitioner
- 2 The Court Excluded proper Evidence offered by the defendant
- 3 The Court gave improper instructions on the part of the petitioner

within sixty days and that in default thereof a writ of attachment issue against said defendant,

4 ⁽⁵⁴⁾ The Court refused proper instructions offered by defendant

5 The verdict is against the evidence

6 The verdict is against the law of the case,

7 The verdict should have been for the defendant ~~in~~ in modifying defendants instructions and other reasons

J. R. Cooper
Att. Gen.
Sols for Dept

But the Court overruled said motion and then and there rendered the following decree in said cause =

State of Illinois 3rd of the April Term
Wayne County 1st of the Wayne Circuit
Court of D 1858

Now again. Comes the Plaintiff Margaret A. Turbit and it appearing to the Court that the said John Turbit has been duly served with process and it further appearing

to the Court that Jury was called and that the said Jury rendered a verdict that the said John Lurbit was guilty of Extreme and repeated Cruelty towards the said Margaret A Lurbit it is therefore ordered and decreed by the Court that the Bands of matrimony be dissolved between the parties and the said Margaret A Lurbit be restored to all her rights the same as if the said marriage had never taken place. and it is further ordered and Decreed that the Child the fruits of the said Marriage be placed under the protection and control of the mother until it arrives to the age of Eight years - it is further ordered and decreed that said Child shall not be taken to reside out of this State and that both parties shall have the privilege of visiting and seeing said Child.

James Harriatt

To all which said decisions orders and judgments of said Court in overruling

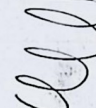
within sixty days and that in default thereof a writ of attachment issue against said defendant.

said motion for ~~said~~ New Trial
and rendering said decree, the defen-
-dant by his Counsel then and there
excepted, and prayed that this his
Bill of Exceptions might be signed
sealed & made of Record by the Court,
which is done. It is agreed by the parties
and ordered by the Court that this
Bill of Exceptions herein made
up signed & sealed in vacation =

James Harriott *Clk*

~~Now heretofore to wit, on the day
of said Term of said Court it being the
day of said month and said
defendant comes by his solicitors and
prays an appeal from the decision of
said Court, to the Supreme Court of the
State of Illinois, and the Court being
fully advised of the premises, orders, that
the petition of the said defendant be
granted, conditioned that the said
defendant file his bonds, for the sum
of five hundred dollars, with J. M. Cooper
and H. M. Graves as securities within~~

And now afterwards, to wit
On the day of October A D 1858
at a Term of the Circuit Court
within and for the County of
Jogwell and State of Illinois
begun and held at the Court
house in Pekin, on the second
Monday of the Month of October
A D 1858 the following proceedings
were had to wit;

Margaret et Turbit  In Chancery
vs  for Alimony
John Turbit 

And now again came the parties
by the solicitors and their cause
coming on to be heard on the motion
of complainant for Alimony pen
dente lite And the Court having
heard the evidence and arguments
of Counsel thereon, does order
and decree that the
defendant do pay to the Clerk
of this Court the sum of seventy five
dollars for the use of complainant
within sixty days and that in default
thereof a writ of attachment issue
against said defendant.

State of Illinois 3
Tazewell County 3 J. Merrill C.
Young, clerk of the Circuit Court
within and for said County, do
certify that the foregoing Fifty Six pages
contain a true perfect and complete
Record of the Proceedings had in
the Cause therein named, as the same
appears of Record in my Office.

In Witness Whereof I have hereunto
set my hand and affixed the
Seal of said Court at Pekin
this 10th day of March A.D. 1859

Merrill C. Young
Clerk

Fee \$15. ²⁰/₁₀₀ 3
Fifteen dollars 3

Set a supersedeas issue as to the record
entered at the October Term 1858. ^{bond} ~~the~~ One hundred
fifty dollars, Henry Grove security

Attest April 6 1859.

J. H. Eaton

John Turbitt
vs
Margaret A. Turbitt

Transcript of Record
& assignment of Ervis

Filed April 8, 1859
L. Leland
Clerk
by J. M. Rice Deputy



Margaret A. Turbit
Appellee

^{vs}
John Turbit
Appellant

And the Said
Margaret A. Turbit now here comes
& says that neither in the record & proceedings
aforesaid nor in the giving of the judgment
aforesaid is there any error. Wherefore she
prays that said judgment may in all
things be affirmed.

A. L. Davison
for Appellee

157

Supreme Court
John Turbit Appt
14

M. A. Turbit Appt
Journals as Enon

Filed April 23. 1839
L. Leland
Clerk

Know all Men by These Presents, That we John Turbit

as principal, and Henry Grove
as security, are held and firmly bound unto Margaret A Turbit

penal sum of one hundred and fifty dollars in the
good
and lawful money of the United States, for the payment of which, well and truly to be made, ~~the said~~
we

bind ourselves & our heirs, executors, and administrators, jointly, severally, and firmly by
these Presents.

Witness, our hands & seals

this 7th day of April - A. D. 1858

The Condition of the above Obligation is such, That, whereas, the above named
Margaret A Turbit

did, at the October Term of the Circuit Court,
held in and for the County of Tazewell in the State of Illinois, A. D. 1858 ~~recover a~~

~~sum judgment against the above bounden~~ obtain a decree for alimony pendente
lite against the above bounden John Turbit.

for the sum of Seventy five dollars
to reverse which said ~~judgment~~ ^{Decree}, the said John Turbit
has - sued out a Writ of

Error from the Supreme Court, within and for the Third Grand Division of said State. Now if the said
John Turbit

shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and
damages which the said Supreme Court shall adjudge against him ~~and also pay or cause~~
to be paid the amount of said Decree if the same shall be affirmed and abide the order and judgment of said
Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

John Turbit [SEAL.]

H Grove [SEAL.]

[SEAL.]

[SEAL.]

John Turbitt
vs
Margaret A Turbitt

Superd Bond

Filed April 8. 1859
L. Leland

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,

To the Clerk of the

Circuit

Court for the County of Tazewell

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Tazewell County, before the Judge thereof, between Margaret A. Turbitt

plaintiff, and John Turbitt

defendant —, it is said manifest error hath intervened, to the injury of the aforesaid

as we are informed by his complaint — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid, at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this eightth day of April — in the Year of Our Lord our thousand eight hundred and fifty-nine!

Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

Margaret A Turbitt
John Turbitt

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned
L. Leland Clerk
by J. D. Rice Deputy

Filed April 8. 1839
L. Leland Clerk



SUPREME COURT.

APRIL TERM, 1859.

TURBITT }
vs } *For Divorce.*
TURBITT. }

PLAINTIFF'S POINTS AND BRIEF.

1. The petition itself shows no cause for a divorce.—See Statute Divorce
2. The evidence wholly fails to sustain the case made in the petition.

The evidence fails to establish or show any act of violence. There is no evidence as to the means or ability of appellant.

The absence of Turbitt at the time of the confinement is fully accounted for.

The testimony shows that Turbitt had credit, and that he did provide for his family

The record shows that at the time petitioner was confined they were living in the house of Lewis. That Lewis had a wife and four daughters. That they were on sociable terms. That Turbitt paid all the bills.

Now, will the absence of a husband under such circumstances authorise a decree for a divorce? I think not. There is no proof that Turbitt knew anything as to the condition of his larder. If a husband is absent on business and his wife is confined during his absence and his larder is scantily furnished and no notice of the condition of the larder is brought home to him, is he guilty of extreme and repeated cruelty? It must be noticed that it was their first child, and he, no doubt, knew the thing would come off, but at what day or hour he could not possibly anticipate.

3. The verdict is against the instruction of the court.
4. The 6th instruction should have been given.—See Bishop on Marriage & Divorce, 457, 478,—481.

Vgnos vs Vgnos, 15 Ill. 186.

Buckley vs Buckley, 15 Ill 121-122.

Turbitt vs. Turbitt
Brief & Pleadings

Filed April 19, 1859
L. G.eland
Clerk

SUPREME COURT.

APRIL TERM, 1859.

JOHN TURBITT, Appellant, }
vs. } *Appeal from Tazewell.*
MARGARET A. TURBITT, }

This case was a petition for Divorce, brought by the appellee against the appellant in the Circuit Court of Tazewell County. The petition was filed September 7th, 1857, and is in words and figures following :

STATE OF ILLINOIS, } ss.
TAZEWELL, COUNTY. }

To the October Term of the Tazewell Circuit Court, 1857.

IN EQUITY.

To the Honorable JAMES HARIETT, Judge of the Twenty-first Judicial Circuit of the State of Illinois, in Chancery sitting.

Your Orator, MARGARET A. TURBITT, humbly complaining, sheweth unto your Honor that heretofore, to wit: on the sixth day of September, A. D., 1855, your oratrix was lawfully married to John Turbitt, (whom your oratrix prays may be made defendant to this Bill) at Canton, in the County of Fulton, State of Illinois, and from that time forth until the 23d day of July, 1857, your oratrix and the said John resided, cohabited and lived together as husband and wife in said town of Canton. That your oratrix all said time behaved and conducted herself as a good, true, and dutiful wife, of the said John, and to the best and uttermost of her knowledge and power performed all the duties of a wife to him.

The objection to the petition if it exists should have been raised by answer - It should have specified the particular acts of cruelty with time and circumstances but that was waived by going to trial on the petition.

Your oratrix further sheweth that the said John hath been guilty of extreme and repeated cruelty toward your oratrix in this : That although he was of sufficient ability and worth in property and money, from thirty to fifty thousand dollars; he did not nor would provide your oratrix with a sufficient support suitable to their condition in life, but on the contrary thereof, she was frequently, during said time, left without anything to eat, and without any means to procure it, for days and sometimes for weeks together.

That on the 13th of September, 1856, your oratrix was delivered of a child, the fruits of said marriage, and that her said husband about three days before such delivery, left your oratrix and went away and was gone about ten days leaving your oratrix wholly unprovided with either medical attendance, provision or help, so that your oratrix in that time of her trial was wholly dependent upon the charity of her neighbors. Your oratrix further sheweth that frequently during her living together with said John he hath used actual force and violence upon oratrix, without any reasonable excuse; therefore your oratrix further sheweth that the habits of parsimoneousness of said husband, his utter disregard of the comfort and violence of his language and conduct, so wrought upon the mind of your oratrix and disheartened her, left and rendered so miserable, that she was forced and obliged to leave and abandon her said husband, and that she did on the 23d day of July, 1857, leave her said husband and come to the City of Pekin, in Tazewell county, where she has ever since resided and still resides.

In tender consideration of the premises, may it please your Honor to grant to your oratrix the people's writ of summons against the said John Turbitt, and that he be made party defendant hereto and be compelled without oath, his oath being waved, to answer this Bill and upon the final hearing to order and decree that the bonds of matrimony heretofore existing between your oratrix and said John be dissolved and henceforth held for nothing, and that your oratrix have such reasonable allowance for her alimony as may be agreeable to equity or for such other and further relief as may be just, and she will ever pray.

MARGARET. A. TURBITT.

Davison & Parker. Plffs. Sols.

Oct. 20, 1858, Appellant fileth the following answer :

MARGARET A. TURBITT,	}	Defendant's Answer.
JOHN ^{vs.} TURBITT.		

The answer of the said John Turbitt, to the Bill of Complaint of the said complainant herein.

This respondent, for answer to the said Bill, or to so much thereof as he is advised it is necessary or proper to answer unto,

ANSWERING, SAYS :

Record pages
14, 15, 16, 17,
18, 19.

That it is true that respondent and said complainant were intermarried and lived together as husband and wife, as stated in said Bill; but respondent denies that during

all said time that said complainant demeaned and conducted herself as a good and faithful wife, and that she, to the utmost of her power and knowlege performed all the duties of a wife to this respondent; on the contrary, respondent avers that said complainant almost ever since her said marriage, has systematically indulged in a course of light and frivolous conduct, and in the circulation of idle contradictions and unfounded tales, prejudicial to the standing and fair name of this respondent, well calculated if not artfully disposed to destroy domestic peace, and force this respondent into a line of conduct which might give color to charges of improper treatment, on his part and lead to a separation. Respondent denies that he has been guilty of extreme and repeated cruelty, or of any cruelty whatever toward said complainant, as charged in said Bill. He further denies that he is a possessor of anything like the amount of property named in said Bill, and states that what he has is, for the most part wholly unproductive, yielding but a small annual income, yet respondent avers that he has always felt and manifested a disposition to provide abundantly not only for all the actual wants of said complainant since she became his wife, but to go far beyond this, and minister so far as money could do it and his resources would admit, to every desire which might add to her personal comfort, and make her appear to advantage in society, and to this end among other things, this respondent has repeatedly offered to procure for her rich articles of dress, which for reasons, best known to herself, she has almost uniformly declined.

This respondent denies that he left the complainant at any time, since their said marriage, and while she continued to live with him without anything to eat and without the means of procuring food, and respondent avers that during a large part of the time, to wit: for about eight or ten months or more of the time, from the time of their marriage, till the time complainant left the house of respondent, said complainant and this respondent boarded in the family of other persons, and were furnished with all the necessities of life in food, drink and lodging that the families themselves had, with whom they boarded. That after Respondent and complainant quit boarding and went to housekeeping, (which respondent avers was with the hearty concurrence and at the request of said complainant,) this defendant endeavored watchfully to provide and did provide every thing necessary in the way of food and otherwise for the use, comfort and convenience of the family while he was at home, and when absent, (which was but seldom) he always left money and other means in abundance at the command of his said wife, to procure every thing needful or that she might or could reasonably desire, respondent claims that the only time when he was away from home for any considerable length of time was in or about the month of July, 1857, when he was absent for about two months, on business in the State of Iowa, and he shews that during that time, besides a good garden, well stocked with vegetables of various sorts, respondent and said complainant lived in the town or city of Canton, in said Fulton county, where respondent's credit was good and where he had made arrangements with two store-keepers in the place to supply complainant with every thing in the way of food or otherwise, which she might need in the absence of respondent, and which arrangement was well

known to complainant, respondent also, on this and other occasions, when he was about to be absent, left money with his said wife to supply her wants, and not unfrequently tendered her money, which she refused, and on the occasion of his absence in Iowa, a considerable sum of money, viz : \$100.00 collected for respondent in his absence by his agent, was tendered to complainant, under the direction of respondent, and to be used by her if necessary, and which was by her refused. In addition to which said complainant owned, and still owns and holds in her own right, valuable real and personal estate and which was then, and still is now, and constituted then all the property owned by complainant; yet respondent shows she left his house at this time, claiming to have done so because her wants were not satisfactorily provided for. Respondent further shows that at no time was money ever asked of him by his said wife and by him refused.

Respondent admits that he was absent from home at the time of the delivery of complainant of her said child, as stated in said Bill, but he avers that he had no expectation that she would be so soon delivered and fully expected to return before that event occurred and further avers that complainant so far from making any objection to his going urged it herself, not anticipating her confinement so soon, and as the business which called respondent from home at that time was of a character highly important to respondent. Respondent, however shows that such was his solicitude about his said wife, lest, contrary to expectation, she might be confined in his absence, that with her knowledge and concurrence he conferred with the most eminent and reputable physician and accoucher in the town of Canton, and engaged his services to attend upon said wife in that emergency and at a moment's warning. But respondent shows that during his absence and under the influence of evil counsels as respondent is advised and believes and therefore charges, the physician retained by respondent was discharged and another brought in and procured to act in his place. Respondent also endeavored to make and believes did make all necessary arrangements to provide his said wife with everything thought likely to be needed during his said absence. Respondent therefore emphatically denies and repels the charge set up in said Bill, That in this time of her trial, he left his said wife wholly unprovided with medical attendance, provisions or help, dependent upon the charity of her neighbors.

Respondent denies that he has frequently, or ever, with or without provocation or excuse, used force or violence upon complainant, as charged in said Bill, and respondent denies all such disregard of the comfort of complainant and all violence of language and conduct towards her, rendering her life miserable, and forcing her to abandon his house and seek the shelter and protection of friends as charged in said Bill, RESPONDENT INSISTS ON ALL OBJECTIONS TO SAID PETITION IN THIS HIS ANSWER TO THE SAME AS THOUGH HE DID DEMUR TO SAID PETITION AND POINTED OUT EACH DEFECT, and as to all matters and things in said Bill and not herein expressly admitted the same are denied and being fully answered, Respondent prays to be hence dismissed with his costs, &c.

COOPER & REYNOLDS,
For Respondents.

Record,
page 26.

Suffit Record
page 26.

Record,
page 27.

Record
page, 28.

The cause coming on for trial before a jury, the petitioner called E. N. Lewis who stated to the jury that he first knew the defendant in January 1856. He was then living four miles south-east of Canton. He met defendant at Mr. Bennett's. They were then married and living at Bennett's. They came to board with witness Feb. 1, 1856, and remained three or four months. They then rented an upper room in witness's house. They had no family. Had use of a little hall. They remained until the latter part of November, 1856. Mrs. Turbitt had a child about the 12th or 13th of 1856. Defendant left home the day before and was gone ten days. He left no body to take care of her that witness knew of. She fell under the care of witness's family. Her health was not good. Some two or three weeks before, she had been very sick. Don't know what ailed her; was not sick long. Defendant was not at home, was gone seven or eight days then. We employed a physician at that time when she was confined; we also furnished her table. When defendant returned, they boarded with us till he could go to Canton for flour. Her health was as good as usual when he went away the first time. She had no flour then. Witness frequently heard them talking when in the adjoining room. He seemed irritated but don't know what he said. I thought he never provided as well as he ought for his means while they boarded with us. He frequently left her for a week at a time. Mrs Turbitt once called me to her room. I asked what what she wanted. She enquired if I could keep her two or three weeks, till she could make some other arrangements. Mr. Turbitt made strange of her request. She said he need not make strange of that; he had ordered her to take care of herself. I advised them to settle the matter. She left that evening and came into my room and staid that night. She came to my door and requested assistance and I went toward her.

On cross examination the witness stated that at the time defendant lived with him witness had a wife and four daughters, two grown and two small. Had sons some grown, witness generally at home. House was one and-a-half stories high; defendant occupied the floor; I occupied the lower part of the house. I was often up stairs. My family and Mrs. Turbitt were on sociable terms. When she was sick the first time, we got Dr. Crawther, who came twice to see her. She was confined to bed that time, four or five days. I charged defendant for the services rendered his wife, and provisions &c. furnished in his absence. He paid all my demands. I said nothing to him about his wife being out of flour. I learned that defendant considered Dr. McDowell preferable as a physician and that he wanted him to attend to his wife when confined. Defendant got meat from me for his family. He had a garden and vegetables of various sorts that season.

MARY ANN LEWIS,

Testified that she knew Mrs. Turbitt since before her marriage. She and defendant came to board with us Feb. 1 1856. They went by themselves May 1, 1856. I remember when child was born. She was confined next day after he left. He was gone ten days. She was in delicate health for some little time before. He provided no

Record
page, 29.

help when he went away. Had not spoken to our family on the subject. I waited on her when she was sick. She had a half loaf of bread, a little rice, some molasses in a tumbler, three pints corn meal, one half pound black tea, no meat nor butter nor flour when she was confined. Defendant was gone several days when she was first sick. No arrangements were made with us to board her in his absence. He was gone considerable of the time after they lived up stairs. Have heard him call her fool, devil, liar and hypocrite. Heard him threaten to take her by the shoulders and pitch her down stairs. He once said he ought to have thrown her out of the buggy and left her lying on the road side coming from Mr. Taylors. This was for something she said at Taylors. The week before he went to Presbytery he told her he wished her to prepare his clothes. She did it. It took her three or four days. 'I did not consider her able to do it. She was not able to sit up all the time. She came down to our part of the house one afternoon. She retired early. Mr. Lewis went into her room. I went in. Defendant came and wanted in. I asked what he wanted. He said he wanted in, and threatened to burst open the door. Mr. Lewis came and defendant went up stairs.

Record,
page 50.

I furnished Mrs. Turbitt about one-fourth lb. butter when she went to live by herself. It was after her confinement he threatened to pitch her down stairs. Don't know how long after. The room was 16 feet square. My son slept up stairs in another room. Can't tell what she said at the time of the remark. They were in their room. Only heard a word now and then. He said, "I'll take you by the shoulders and pitch you down stairs." Saw no attempt to do it. It might have been a month from her first sickness until her confinement.

Record
page 50.

I know of new supply of provisions after he got home. I heard defendant tell his wife he had engaged the services of Dr. McDowell. This conversation was after her confinement. The garden was half a mile from home.

Record,
page 30.

Mrs. R. J. Crosson.—First knew complainant at Lawrenceville. Saw her in Canton after her marriage. Stayed on the day and night of the 22nd July, 1857, at complainant's house. My daughter was then living with complainant. Mrs. Turbitt, her child, myself and daughter composed the family. Soon after a neighbor lady came in. She brought a bowl of cream, some butter, *raspberries*, &c. We had a good dinner. Had black tea. My daughter went to Canton with Mrs. Turbitt in May and stayed till she came to my house. My daughter was about eleven years old; could go errands. Mrs. Turbitt came home with me July 23rd, 1857. She continued to live in Tazewell county ever since. My husband has money of Mrs. Turbett's in his hands; don't know how much. He had it a year or more. Has paid her some of it. Think it within two years since my husband first got it. Mrs. Turbitt owns the one half of three hundred and ninety acres of land in Vigo county, Indiana, which has been under improvements for twenty-three years. Mrs. Turbitt said defendant called her land worth \$5,000.

Record
page, 31.

Petitioner then recalled Mr. Lewis, who stated that defendant never asked me and don't know that he ever asked my family to wait on his wife in his absence.

That part of the foregoing testimony proving threats and opprobrious epithets on the part of the defendant, was objected to by defendant when offered, on the ground that no such charge was contained in the bill; but court overruled the objection, admitted the evidence, and defendant excepted. Record 31 page.

Petitioner then rested.

Record
page 32.

The defendant then receive evidence without objection, except as to relevancy and competency, the deposition of

John Andrews, who testified that he knew the defendant three years, but did not know Mrs. Turbitt, and only knew him as a Minister of the Gospel of the Presbyterian Church, and he resided near Canton in the fall and summer of 1856.

Record.
page 34.

About the 10th or 12th of September, 1856, Turbitt called at my residence in Mason Co., Ill., on Friday evening on his way to the Presbytery, at Clinton, Dewitt Co. Ill., and was in company with Mr. Turbitt more or less until the next Thursday evening, and left him at Clinton, as the Presbytery had not yet adjourned, and when I left for Ohio, Mr. Turbitt was still in attendance upon the Presbytery; it is the duty of ministers of the Gospel to attend the meetings of Presbytery.

Record
page 35.

Immediately after he came to my residence, he manifested a great deal of regret that it was necessary for him to be absent from home at that time, stating as the reason the health of his wife. On going to and at Presbytery he expressed great solicitude for his wife at home. Two or three times he came to me to have certain things in which he was interested, come up and disposed of in order that he might get away as soon as possible, although he had made all necessary provisions for his wife at home, yet he wanted to be there.

Record,
page 36.

Also the deposition of David Beale, who testified that—I have known the defendant since September, 1856. I went to Presbytery with him. On the way he sometimes expressed great reluctance in being obliged to leave home at that time. While there he sometimes urged that his business should be disposed of that he might leave for home as soon as possible. We left on Friday morning, about day light, and continued traveling until late at night, some seventy miles that day, and next morning reached my house in Mason County. He started for home next morning, after breakfast. Mr. Andrews was with us.

Record,
page 37.

Also deposition of Dr. McDowell—I am a physician of eighteen years' practice. I know Turbitt; but do not know that I ever met Mrs. Turbitt. About the month of September, 1856, Turbitt intimated that his wife was pregnant, and expected soon to be confined and solicited my assistance on that occasion. I represented that I would do, so if I was home at that time. They then resided at Mr. Lewis's, about four miles from Canton. He represented that he might be absent, but expected to be at home previous to her confinement. He afterwards informed me that it had occurred sooner than he had expected. He spoke to me several times on the subject. He anticipated difficulty and was very anxious that I should attend.

Record,
page 38.

Record,
page 39.

Also the deposition of Nathaniel F. Dorrance.—Kept a grocery and provision store in Canton. Commenced in 1855, and continued ever since. Have known Turbitt four years. They lived at Lewis's and thence to Canton and continued till she separated from him. At Canton they had a comfortable, roomy brick house, with every convenience in and about the same. They traded with me and kept an open account and credit to any amount. He gave a general order and the family came from time to time and bought some thirty or forty dollars' worth.

Record,
page 40.

Also the deposition of Wilson Hulit.—I have been engaged in a general Dry Goods and Grocery business in Canton, since spring of 1854. Mr. Turbitt traded at my store and had an open account there. We placed no limits to his credit, and would have sold him or his family all the goods they might have wanted. I know Dr. McDowell, his reputation as a physician and surgeon is good.

Record,
page 42.

Also deposition of Robert C. Cutter.—I know Mr. and Mrs. Turbitt. I have known him since 1853 and Mrs. Turbitt since 1854. She lived most of the time at Mr. Bennett's in Canton. They have lived at or near Canton since their marriage. When they first lived in Canton their house was as good as any that could be rented in Canton. Their second house I know nothing about. While they lived at Mr. Taylor's they had a comfortable house, also Mr. Lewis's house was a good and comfortable residence. I do not know the privileges they enjoyed. They appeared to have plenty to eat; as to help he has frequently spoken about procuring help for her but she declined. She did on one occasion at my house, when they were both together the matter was spoken of, but Mrs. Turbitt said she did not need the help, and in order that she might not put her hands in water, which Mr. Turbitt thought injured her, they boarded most of the time previous to their coming to Canton. I always saw them well dressed, both Mrs. Turbitt and the child. On one occasion I saw him buy her five dresses, from seven and a half to ten and a half yards each. The material of most of those dresses was good. I have frequently seen them together. I have never seen anything that showed dissatisfaction on the part of either. They have frequently been at my house, and I have seen them at church, and I never saw a father relieve a mother more in care and attention to her child.

Record,
page 44

Also the deposition of Mrs. Margaret Bennett.—I have known Mr. Turbitt twelve years, and four years since I saw Mrs. Turbitt. Mrs. Turbitt once told me that Mr. Turbitt proposed to go to Lawrence county to get a girl that lived in the family of the P. M., but this she declined. I know that she got a new bonnet after her marriage—but don't know who paid for it. He paid her ten dollars before they were married and said she might have more, if she wanted it.

Record
pages 45, 46.

Also the deposition of John Blackadore.—I suppose that I have known them about three or four years. They lived in and about Canton when I knew them. While he was absent in Iowa, she had a small girl living with her. Mrs. Turbitt informed me in her own house, that she had some flour, and that Mr. Turbitt had made arrangements with Messrs. Bass & Co., of Phoenix mills for supplies during his absence. She

Record,
page 47.

Record,
page 48.

also said she had pickled pork which Mr. Turbitt had put up in the barrel during the winter, and he had also made arrangements with the family of Mrs. Thompson for butter and milk. She was then living in a house in the north part of town, on Main street, Canton. I saw Mrs. Crossin, from Pekin was with her at the time, and sent for me to call at Mrs. Turbitt's house, and while I was there, Mrs. Crossin complained that Mr. Turbitt had not made suitable provisions for his family, during his absence, which led me to make the inquiries about the statements of Mrs. Turbitt. Mrs. James M. Thompson was with her at the time, and Mrs. Crossin seemed desirous of getting our approval of Mrs. Turbitt going home with her to Pekin and visit. I, however, disapproved of her leaving home at the time, during Turbitt's absence, as Turbitt had left it in her care during his absence. She left the next day, I think. At any time when I saw her she appeared decently clothed. Mrs. Turbitt never returned to live with him again.

Also Deposition of Charles C. Smith.—I was engaged in a general dry-goods and grocery business, in 1856, and until March, 1858, in Canton, Fulton county, Illinois. Turbitt and his wife were in the habit of trading at my store, and himself and his family could have bought all the goods they wished. Mr. Turbitt, in the store with Mrs. Turbitt urged her to buy more goods than she appeared willing to. I continually solicited their patronage. So far as I could judge from appearances, Mr. Turbitt was ever anxious to procure all the goods that she might want. Mrs. Turbitt, whenever I saw her, wore valuable clothing.

The defendant here rested; and no other evidence was offered on either side.

Record,
page 52.

The defendant asked the following instruction, which was refused:
"The evidence in this case does not amount to extreme and repeated cruelty under the statute."

The Court gave the following instructions for the defendant.

Record,
page 51.

"The burden of proof is on the petitioner, and unless she has proved that she was an actual resident of Tazewell county at the time her petition was filed in this cause, the jury should find for the defendant.

Record,
page 51, 52.

"If the jury should believe from the evidence that at the time the petitioner was confined that the defendant was absent from home and that he left little or no provisions for his wife, this would be no grounds for a divorce under the statute unless the petitioner has proved that the defendant did so knowingly and wilfully and that her health and life were placed in peril thereby."

Record,
page 52.

"Although the jury should believe from the evidence that the defendant was guilty of extreme cruelty in going off at the time the petitioner was confined, this alone would not be sufficient to warrant the jury in finding for the petitioner, unless the petitioner has proved that the extreme cruelty was repeated.

Record,
pages 53, & 54.

The Jury found the following verdict : " We find the Defendant Guilty."

The Defendant then entered a motion for a new trial for the reasons following :

1. The Court permitted improper evidence on the part of the petitioner.
2. The Court excluded proper evidence offered by the Defendant.
3. The Court gave improper instructions on the part of the petitioner.
4. The Court refused proper instructions offered by defendant.
5. The verdict is against the evidence.
6. The verdict is against the law of the case.
7. The verdict should have been for the defendant—in modifying defendant's instructions and other reasons.

But the Court overruled said motion and refused to grant a new trial, and the defendant excepted.

The Court then made the following Decree :

" Now again comes the plaintiff, Margaret A. Turbitt, and it appearing to the Court that the said John Turbitt has been duly served with process, and it further appearing to the court that the jury was called and that the said jury rendered a verdict that the said John Turbitt was guilty of extreme and repeated cruelty towards the said Margaret A. Turbitt, it is therefore ordered and decreed by the Court that the bonds of matrimony be dissolved between the parties, and the said Margaret A. Turbitt be restored to all her rights the same as if the said marriage had never taken place ; and it is further ordered and decreed that the child, the fruits of the said marriage, be placed under the protection and control of the mother until it arrives to the age of eight years. It is further ordered and decreed that said child shall not be taken to reside out of this State, and that both parties shall have the privilege of visiting and seeing said child.— To which the defendant excepted and prayed an appeal which was granted and perfected.

The Court then afterwards made the following order :

Record,
page 57.

And now again came the parties by their solicitors and this cause coming on to be heard on the motion of complainant for alimony.

And the Court having heard the evidence and arguments of Counsel, does order, adjudge and decree that the defendant do pay to the Clerk of this Court the sum of seventy-five dollars, for the use of complainant within sixty days, and that in default thereof a writ of attachment issue against the said defendant.

The plaintiffs in error now assign the following errors upon the record:

1. The court below erred in permitting improper evidence to be offered on the part of the appellee.
2. The court below erred in refusing to give proper instructions asked by the appellant.

3. The court below erred in refusing to grant a new trial.
4. The verdict below was against the weight of evidence.
5. The verdict below was against law.
6. The verdict should have been for the appellant.
7. The petition and the matters therein stated are insufficient in law to warrant the decree for divorce.
8. The decree should not have been rendered.
9. The decree is against law and evidence.
10. The court below erred in rendering the decree in the cause.
11. The allegations in the bill were not proven.
12. The decree should have been for the appellant.
13. The court erred in granting allimony after the appeal was perfected.
14. Other errors.

For which reasons the appellant prays that said decree may be reversed and be set aside, and wholly for naught esteemed.

H. GROVE.,
Solicitor for Appellant.

157-39
John Turbitt
vs
Margaret A. Turbitt

Opinion of the
Court in the
case of
Turbitt vs. Turbitt.

Filed April 8, 1859
L. Leland
Clerk

The Appellee in this cause, filed her Petition for a Divorce against the Appellant her Husband in the Circuit Court of Tazewell County, Ill. The prayer of her Petition was granted. The Husband or Appellant Appeals to this Court from the decree of the Court below. Fourteen errors are assigned by the solicitor of the Appellant only one of which I purpose discussing before this Court of dernier resort. That question is what constitutes "extreme" and repeated cruelty for the space of two years "as between Husband and wife within the meaning of our Divorce Act (Hoots Statute 150 Section 1). Two questions ordinarily arise in our Courts upon the construction of the clause of the Section in question. First, what is "extreme" Cruelty. Secondly, how long must it continue as between Husband and Wife in order to justify

a Divorce. The latter point has been adjudicated upon by this Court in the case of

The first point is fairly presented by this Record

There has been a great diversity of opinion among the Bar as to the true construction ^{or interpretation} of the clause in the Divorce act above recited. For instance some ^{have} contended that the cruelty to sustain a decree for a Divorce must occur between the parties every minute or hour or week or month for the term of two Years, this doctrine this Court has repudiated in the case above cited. Another construction is (and that is distinctly presented by the Record in this case) that the cruelty mentioned in the Statute means striking - striking - jostling, attempting to poison, drown or otherwise assault beat ~~or strike~~ maine or attempt to strike maine beat or assault a Wife or Husband. ~~A~~ This class of Lawyers to sustain their construction of the Statute assume that the Cruelty which would justify a Divorce must be an attack upon the personal liberty or personal security of the Petitioner must amount to a bodily injury of the Petitioner in other words the act of cruelty to justify a

Divorce must constitute a crime against
 the person of the Petitioner as recognized or
 defined by the Common or Statute Law of
 this State. Another class of Lawyers deny-
 ing that the body - "the Tabernacle of flesh"
 or casement which encloses the eternal
 portion of human ~~being~~ beings -
 alone constitute an object of Cruelty on the
 part of a Husband or Wife in their contact
~~and~~ intercourse with each other and
 association with each other take the ground
 that injuries to the soul the heart and the brain
 of a married Woman or man constitute Cruelty
 of the extremest kind. not comparable with
 the temporary pain of that Tabernacle of flesh.
 In other words mental anguish wantonly
 wilfully maliciously and persistently ^{caused} by one
 person upon another constitutes a greater
 provocation - greater exasperation upon the
 injured one in marital cases - and conse-
 quently is more exciting and lasting as a
 disturbing cause of domestic life than any
 mere bodily injuries. To this class the
 Counsel for the Appellee belongs. To illustrate
 the proposition still stronger we respectfully
 put this question to Your Honors. - Supposing
 a Husband kicks or strikes his wife

-in the excitement of provoked anger four times a Year for the space of two Years under the Statute this by general concession "constitutes a case of extreme and repeated cruelty" Now supposing further instead of personal violence the Husband is guilty of the following acts of Omission or Commission

1st ~~First~~ He neglects his Wife and violates her rights by a continual course of Adultery - he fails to provide food and clothing suitable to her condition he unnecessarily absents himself from her continually - or is guilty of any other continual wrong
or

2nd He curses and damns her from day to day or

3^d Never speaks to her but treats her with silent contempt or

4th Instead of having an harmonious intercourse with her he of his own malice devises every species of annoyance for the purpose of driving her from his domicile
or

5th While able to provide for all her wants abruptly absents himself from the Wife of his bosom ~~continually~~ gives her no notice of his destination - the length of time he will be absent - the period of his return

leaves no food or other necessities with her upon his departure - no money to provide them - and although he has a credit in the place or near the place of his residence where she can supply her wants during his absence - departs without giving her notice of the fact or

6th Suppose a still stronger case W. Husband and Wife ^{intemary} on the first of January 1857 - on the first day of October of that Year according to the ordinary rule of Gestation supposing the Husband to be a man capable of propagating his species and it is apparent to him from all the indications arising manifested to any of the senses of the Husband that his Wife is Pregnant and the Husband under these circumstances abruptly leaves her to weather the storm without food or money to procure it or the little delicacies usually required upon such occasions without domestic accouchees or Physicians - without any arrangements being made with friends or neighbors for the protection or comfort of his Wife in her travail or

7th In any other parable, imitations of the rights of a Woman which

may suggest themselves to this Honorable Court upon the inspection of the Record in this cause?

Can this Court hesitate to decide that the mental anguish occasioned by these acts of cruelty ~~of the~~ on the part of the Husband constitutes less evidence of "extreme cruelty" than the bodily pain suggested in the preceding part of this argument? If the Court will refer to Webster's Quarto Dictionary unabrridged titled Cruelty they will perceive that the word in its ordinary acceptation means not only ^{the infliction} bodily pain but also that of a mental character. The Language of the definition is First Inhumanity 2nd Barbarity and under this last definition he says "Any act of a human being which inflicts any unnecessary pain! any act intended to torment; vex or afflict; or which actually torments or afflicts without necessity; wrong-justice-oppressions

The word Cruelty as used in the Statute is not a technical expression known to the Common Law Except in the single instance when it is used by the Test miter in relation to bodily pain inflicted upon animals

by inhuman Monks-Servants or Strangers
 Again no divorce could be obtained in
 the Common Law Courts of England—
 Jurisdiction in this class of cases was vested
 exclusively in the Ecclesiastical tribunals
 of the Kingdom. The only supervision
 by the Common Law Courts over these
 Ecclesiastical tribunals in cases of divorce
 was by writ of prohibition where the
 latter Court assumed or exceeded
 its point of jurisdiction. In these
 Ecclesiastical tribunals the effect of the divorce was 1st "A vinculo" or 2nd "A mensa &c". In
 the first class of cases "Cruelly" was
 not a ground of divorce. In the
 latter "Cruelly" was. And this
 Court will perceive on an examination
 of the cases cited upon this point
 from the Ecc. reports that "Cruelly"
 to mind as well as body was
 a cause of divorce "A mensa". Our
 Statute revised the Common Law ~~as~~
 as to Causes of divorce, ~~the~~ the
 mode of ~~the~~ procedure & the form
 for hearing or trial. The Ecc. decisions
 in England are ^{not} applicable to our

"Condition" for the reason 1. Their decisions were not a part of the Common law. & 2. Our Constitution which abrogates religious tests, denies the doctrine of the Union of Church and State (and secures to every citizen ~~the right of~~ freedom of conscience is at war with the doctrine of the English Ecclesiastical ~~tribunals for two reasons. 1. The~~

The only authorities which tend even to militate against our position in this cause are the cases 1. of *Birkby v Birkby* 15 Ill. 120 and 2. *King vs King* same book 186

The question presented by this record did not arise in either of said causes but there are expressions contained in the opinions pronounced in each cause by our present Chief Justice which would seem to indicate that the extreme cruelty contemplated by our Statute consisted alone in personal violence by the husband or wife

These cases are relied upon & pressed by the appellants as authority for each of which reasons we deem it essential to the interest of our Client to not only argue the question upon its merits but refresh your honors memory by a recurrence to some very fundamental principles 1. The binding authority of a decision of a Court of Justice to use the language of Chief J. Marshall "is coextensive only with the facts upon which it was founded" all else is dicta Marshall on Const. 643, 4th N. S. Cond. Rep (Pet.) 409 - 1 Bla. Com. 69, 1 Kent 473 3^d Conn. A. R. 638 1 Scam. 412 *Kemp vs Linn* 13. Ill

If this rule is the law of the land we insist upon the specific execution of it in this Cause and now proceed to show that is question is a novel one never having been adjudicated upon by this Court never arose in point of fact upon any record before this Court & consequently the remarks made by his Honor in his opinion in the Cases above referred to are to be regarded as dicta & have evidently misled the Counsel for the appellant in this Cause.

In the case first above cited the bill or petition was filed by the wife against her husband - He filed a cross bill praying a divorce - The issues were made up & the Cause tried by a jury & the verdict on the issue was for the ~~petitioner~~ defendant husband on his cross bill and against the wife on her original bill. After the decree was rendered the wife prosecuted a writ of error against the husband of the husband to reverse the decree on the cross bill with a view to restore her rights as a widow. This Court reversed the decree & did her to those rights. The Case as reported does not show the ground of her petition nor is it necessary to a correct understanding of the decision as far as its applicability to this Cause is concerned.

But the ground of divorce in the Cross bill is specifically recited in the opinion.

As recited the allegations were 'that the wife had become jealous of the husband' had accused him of improper intercourse with other women. That this jealousy involved him in difficulties in the neighborhood where he resided. That the wife refused partially to attend to her household duties and absented herself from his domicile for weeks & days together. That she threatened to take his life to burn his buildings & destroy his property. These were the allegations — The proof upon the points does not appear in the case as reported —

But conceding that the allegations & proof agreed the Court said "We are of opinion that the allegations of the Cross bill are not sufficient to authorize a decree for a divorce" And the Court then upon reversed the decree. Two grounds were evidently taken by the Court for the basis of the husband 1st That the acts charged in the Cross bill constituted 'Cruelty' within the meaning of the 1st Sec of our Statute relating to divorces 2^d That if insufficient under said Sec. the bill ought to be sustained under the 8th Sec of the act which provides that "In addition to the causes provided for

in the first Sec. for divorces from the hands of Matrimony Courts of Chancery in this State shall have full power & authority to hear & determine all causes for divorce not provided for by any law of this State "

In the opinion the Chief Justice decided 1st That the effects of jealousy on the part of the wife manifested by her declarations in the neighborhood did not constitute a case of Cruelty. 2nd That a violent Termigancy of temper on the part of the wife did not constitute Cruelty. 3rd It was conceded in the argument by the Counsel of the heirs ~~beated~~ admitted by the Court (which of course implies that the question ~~was~~ not argued), that the facts of the case did not constitute Cruelty under Sec 1, but the Counsel for the Defls in error contended that the Court below had power to grant a divorce under Sec 8.

To this suggestion the Chief Justice replied that it was unnecessary upon that record to determine the question mooted by the Counsel as to whether or not Sec. 8 of the divorce act conferred unlimited jurisdiction upon the Court below for every conceivable injury which it might in its judgment deem

Sufficient to authorize a decree for a divorce - Or 2^d whether the words all causes for a divorce meant 1st those causes not enumerated in Sec 1. And which at the Common or Canon Law were held sufficient causes for a divorce Or 2^d In cases where the marriage was prohibited by law.

The Chief Justice without adopting or rejecting the opposing constructions of either party to the record deemed it sufficient to say "that the law did not confer upon the Court below an unlimited discretion to grant divorces in all cases where they deemed it expedient or advisable. The Court then proceeded in reasoning upon this conclusion to remark in substance in two different passages of the opinion 1st That where the cause of divorce was specifically described in the Statute as in Sec. 1. the degree of the offence depended upon a sound construction of that clause of section 1. which designates Cruelty as a ground for the decree And 2^d. That upon a sound construction of the Statute which authorizes divorce upon the ground of Cruelty the allegations & evidence are insufficient to justify the decree a lesser degree of

allegation & testimony will not authorize a divorce under the said Sec 8.

The Court did wisely in declining to determine the question pressed upon them by the Counsel for the parties aforesaid, and although the true construction ^{of the Statute} upon this point is immaterial to a correct decision of the question presented by this record we respectfully suggest that while Sec 1, which specifies the causes of divorce relates to *divorcio a vinculo matrimonii* ~~exclusively~~ exclusively Sec 8, relates to divorce *a mensa & thoro* grounded upon such causes as were recognized by the Canon Law as grounds of divorce from bed & board. The Canon Law permitted limited & unlimited divorces. Our Statute specifies in Section 1, the causes of unlimited divorces and in Sec 8, gives to the Courts a discretion to grant a divorce *a mensa & thoro* in all cases which are not provided for in Sec 1, and which by the Canon Law authorized a divorce of that kind. Or in their discretion to grant an unlimited divorce for the same causes. One other word of a digressive character. The divorce law of this State is becoming an extremely important one and it is essential that the Courts shall

not by dicta commit themselves to a particular construction or interpretation of the Statute. Let us return to Berkley vs Berkley. The charge of Cruelty in that case was made by the ~~wife~~ ^{husband}. Is there not in law & in physics ~~an~~ a distinctive difference between Cruelty on the part of a male & a female? In cases arising upon a sound construction of the act in question. In other words, is the woman the weaker vessel? The Scriptures say she is the common Law says that she & her husband constitute one person. Then both the laws of God & man recognize this distinction & now the question arises whether or not the Statute law of Illinois does not require as intimated by this Court in Kirby vs Kirby a greater degree of violence Cruelty, barbarity & inhumanity on the part of the wife than on the part of the husband as a ground of divorce either under Sec 1, or 8.

~~Reflect upon this suggestion~~
 an analysis.
 It will be perceived from ~~analysis~~ of the opinion in Berkley vs Berkley that no intimation was given by the Chief Justice upon the question whether bodily or mental Cruelty constitutes

a cause of divorce. Yet in Vignas v Vignas this Court through its organ above indicated commenced his opinion by stating that "the principles involved in this case are precisely like those decided in the case of Brink v Brink, & must be decided in the same way" whereas the facts in the latter case were that the wife brought the petition for divorce based upon the allegation of Cruelty. What the specific allegations of Cruelty were do not appear in the report but we may infer from the decision the following facts 1. That the husband was unkind to his wife 2. That his disposition was tyrannical 3. But there is no personal violence shown 4. "That it might be inferred from his silence upon one occasion that he kicked her while they were in bed together 5. "but whether he did in point of fact kick her was a debatable point 6. "He upon one occasion commanded her

- 1 To make a fire
- 2 To get him some dinner
- 3 He reproved her harshly for talking with a neighbor passing by but whether that neighbor was a man or woman does not appear from the report

- 4 The cause of the reproof was "a groundless jealousy on his part"

6 He drove her from his home

7 She never returned to his domicile

Now the simple question presented by the record above referred to was whether a groundless jealousy on the part of the husband and driving her from his domicile constituted Cruelty within the meaning of the Statute in question. The decree below was for the wife. That decree was reversed by this Court.

And in the opinion delivered the Court said after recapitulating the facts "All this comes far short of what we conceive to be the requirements of the Statute to constitute Extreme & repeated Cruelty."

The Court then proceeded to moralize upon the subject & remarked 1 That the marriage Contract should not be dissolved for slight & trivial causes, 2, That parties should not be encouraged ~~to~~ by the decisions of the Sup. Court to come into the Circuit Court. Then the Court added this qualification "Unless they can show such a cause as the law requires." And the Court added as reasons for this construction of the Statute 1, It was not enough ^{if} that parties do not live happily together 2, That threats of personal violence were insufficient 3, That abusive epithets by either party growing out of a groundless jealousy were insufficient

to constitute the extreme Cruelty contemplated by the Statute)

The Court then returned to the moral question and suggested first that the whole Community was interested in maintaining the obligation of the marriage contract 2 That public policy forbade its dissolution even with the consent of the spouses unless the facts palpably justified the decree — The only We do not dissent from the Conclusion which the Court arrived at in this case nor with the general reasoning contained in their opinion, but we do on account of the pertinacity of the Counsel for the appellant in this case in relying upon two ^{in this opinion but referred to} simple expressions as conclusive upon the question involved in this record. These expressions were 1. "There is no personal violence shown" 2 "Threats of personal violence may have been made"

It might be inferred from these intimations that this Court construed the Statute to mean that while personal violence was sufficient evidence of Cruelty Threats of personal violence ^{even not} & further no other acts than personal violence would constitute Cruelty under the Statute. If we may be permitted to criticize the opinion

of the Court (in the absence of a true statement of the facts) by the reporter or the judge who delivered the opinion and the transcript of the record upon which the decision was based) in the use of the word "erro" we would respectfully suggest that this word implies personal violence

It will be perceived that neither of the cases above quoted are binding as precedents upon us in this cause for the reason 1. That the facts in the two cases are neither similar nor analogous and 2. The reasoning of the Court is inapplicable to the cause at bar. The distinctive differences between the two cases are that the question of mental anguish occasioned by the act of omission or commission by the husband did not arise in the case of Kirby v Kirby and in the case of Vignos v Vignos the cause was regarded by the Court as "light & trivial"

In one case the act of cruelty charged against the appellant & proven upon the trial can in no sense be regarded as 'light & trivial'

On the contrary the epithets barbarity & inhumanity peculiarly designate the kind & degree of cruelty alluded to

in the Statute if mental Cruelty can include
any conceivable state of circumstances
constitute a cause of divorce —

Now look at the facts for a moment. The husband purported upon his face to be a Christian was a member & pastor of the Presbyterian Church and was as the record shows a delegate to the Presbyterian & Synods of the Church. He was a man of means and of credit. He as shown by the Testimony pretended to his brethren to be extremely domestic & attached to his family — His age does not appear from the record we wish it did, but the presumption of Law & probabilities of fact indicate that he had arrived at the age of discretion in law & morals he was married to the appellee Sept 6, 1853 that he resided with her for the short period between that day & July 23 1854. There is no evidence in the record that his wife was a termagant or a jealous woman or that she failed in any sense to perform all of her duties as a wife — The evidence does show when carefully scrutinized that independently of the great act of Cruelty we charge upon him that he was a

hypocrite in religion & ^{Tyrant} ~~Arrogant~~ in his domestic relations — On the 13 Nov his wife was delivered of a child begotten by him as we have a right to infer by the record. The day before her confinement he left her & went to the County of ^{Adams} ~~Mass~~ at least a hundred miles from his residence.

He was absent from home at the time of said Confinement & continued absent from her upon this occasion for the space of ten days — His place of residence was 21 miles from the City of Canton the principal town of Fulton County. He had a credit in Canton & had physicians there with whom he was personally acquainted who would perform any professional service for him or his wife upon request & give him a reasonable credit therefor —

He had equal credit with the ~~merchants~~ merchants of Canton who would furnish him with any necessities which the exigencies of his family might require from time to time. The inference from the record is that his wife was ignorant of the existence & extent of his credit & also of the physicians & merchants with whom he transacted business — There were no stores or physicians in the immediate vicinity

when he resided, the nearest point for assistance & Supplies was Canton.

He left his wife on the day before her confinement without a servant without the ordinary food of a family within the house without an accoucher or physician without any money to procure the necessaries or delicacies usual on such occasions without employing a physician or accoucher or servant of which she had any knowledge. In other words he made no communication to her upon his departure in reference to her probable wants. When he left he knew that she was about to be confined.

He never told her as may be reasonably inferred from the record when he would return — He never wrote to her during his absence. He never enquired about her nor spoke of her except to his brethren & this with the evident design of manifesting an excuse for his conduct. His wife was confined without his aid receiving from the charities of her neighbors the assistance & Supplies requisite under such circumstances. No excuse was made by him to her for his neglect

— No not neglect for his barbarity his inhumanity his cruelty Upon an occasion when if even the affection or the sympathies of a human being could be excited in behalf of a dependent wife according to the laws of God & man — On the contrary he treated her with contumely & contempt Under these circumstances she left her husband & took refuge from his cruelty in a family of friends — Was she justified in leaving him? Does public policy or the sanctity of the marriage obligation require a woman to live with such a brute? Can happiness or domestic bliss be expected under such circumstances? And when this public policy compels a respectable woman & such a brute to cohabit & associate with each other for life for no other reason than ^{that} the marriage relation ought not to be dissolved for such "slight & trivial" causes? Is the wife to be subjected during life by such a gay law to continual repetitions of the same acts of cruelty on the part of the husband upon every recurrence of her travail? Is it not about time that the lords of Creation shall be taught by the Courts of the country the principles of Christianity.

& Civilization? Is it not time that the
 barbarous idea of the Common Law, that a
 husband & wife are one person in law shall
 be abolished in all cases where the rights of
 the wife are violated? These questions
 necessarily arise & must be answered by the Court
 in this Cause. And the Court not being
 by either ^{the} Common Law; the Common Law
 furnishing no precedents contrary to the rule we
 contend for the Statute of this State being
 susceptible of a two fold construction
 affords to this Court an opportunity
 of definitively settling upon Christian
 principles a question which affects the honor
 the peace & the happiness of every family in
 the State. We concede in the language of
 of this Court on a former occasion that
 divorces ought not to be granted for "light
 & trivial" Causes — That the policy
 of the Law is by a refusal to grant
 divorces to compel the husband &
 the wife so to conduct themselves
 as to live in harmony with each
 other. But when it is apparent as in this
 Case that the Court ~~before~~ ^{tortured} this woman for life
 by reversal of this decree we respectfully
 suggest that this Court of last resort
 ought to ponder the question well
 & sentence it clearly before reaching a ^{decree}

Whereby this Imbibe is to placed in
the custody of a brute forever.

David W. Blackwell

P.S. Do not the facts in this cause also
show bodily cruelty?
DWB.

Turbitt

vs. $\frac{1}{3}$

Turbitt

Argument of
Counsel for
Defendant in
error.

Filed May 19.
1859.

L. Island
Clerk

Dawson & Macbain