Thornton, Elizabeth G vs. Thornton, William T; 1858 Henry Co. #7 Cir

234 1/2

81/4

- Divorce
- committing adultery w/one Catherine Todd
- threatening her life since she caught them in the act
- Affirmed - divorce petition not supported by evidence

Warsaw Mo. May 24 1858

Wm E Duncombe Esq
Clerk Supreme Court.
Jefferson city.

Dear Sir:

Please send a writ of error to the Henry circuit court in the following case on the part of the plaintiff

Elizabeth G. Thornton - pltff in error
vs } error to Henry
William T. Thornton deft

Respectfully your friend
F. P. Wright

Elizabeth T. Thornton = pt 2

vs

Wm T. Thornton

Error to Henry

Precipe

filed May 27, 1858.

Wm E Dunscomb

Clerk

Henry

F P Wright

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Seventh Judicial Circuit in said State, **GREETING:**

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Henry County in the Judicial Circuit aforesaid wherein Elizabeth G. Morton was plaintiff and William F. Morton was defendant

in an action of manifest error hath intervened, to the great damage of the said plaintiff as by her complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, **COMMAND YOU,** that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the first Monday in July next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the twenty seventh day of May in the year of our Lord one thousand eight hundred and fifty eight.

Wm E. Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

State of Missouri }
County of Henry } ss

The execution of the within writ will fully appear from the schedule hereto annexed

Given under my hand this 15th day June 1858

S H Hill Clk
Henry Cir Ct

1)

State of Missouri }
County of Henry } set

Pleas before the Hon. DeWitt C. Ballou Judge of the circuit court in and for the county aforesaid, in the Seventh Judicial Circuit, in the State of Missouri, on the Eighteenth (18) day of May in the year One Thousand eight hundred and fifty-Eight.

Be it remembered that heretofore, to wit, on the 25th day of May AD 1857, Came Elizabeth G. Thornton and filed in the office of the clerk of the Circuit court of said Henry county, against William T. Thornton, which petition is in the word and figures following to wit —

Petition!!

"State of Missouri } "In the Circuit court,
"County of Henry } "of Henry county

Elizabeth G. Thornton Plaintiff } Petition for
" against } Divorce and
" William T. Thornton Deft } alimony &c

"The said Elizabeth G.

Thornton plaintiff states that on or about the 16th day of November AD 1851 in the county of Henry and State of Missouri aforesaid, where she and Defendant have ever since resided, she was legally married to Defendant That she continued to live with Defendant as his wife, from and after that day and year aforesaid, in said Henry County untill about the 20th day of March A.D. 1857, That during all that time plaintiff faithfully demeaned herself, and faithfully discharged all her duties as the wife of Defendant, and at all times treated him with kindness and affection, but, the said Defendant wickedly and ..... disregarding his duties as the husband of plaintiff, and his solemn maritae vows - on or about the 23rd day of February AD 1857, became and was guilty of adultery at the county of Henry aforesaid, by then and there having sexual intercourse with one Catharine Todd, and as plaintiff has good cause to believe and does believe and so charge the fact to be, defendant also had like sexual intercourse with the said Catharine at

Petition

on divers times in said county, since the said Marriage of plaintiff with defendant. — Plaintiff further state that after Defendant became aware of the fact that plaintiff had discovered the said illicit conduct of Defendant and said Catharine, and after plaintiff had caught them in the said illicit act, to wit on or about said 23rd day day of February AD 1857, defendants conduct became unusually strange toward her, and in consequence of his strange conduct, and the - - - - - - use which the defendant made of his revolver pistol, about the house and in her presence, she had good cause to believe and did believe that he designed to kill plaintiff, and by means of his said conduct plaintiff's condition was rendered intolerable - And further that Defendants said treatment was such as to endanger the life of plaintiff —

Plaintiff further states that said defendant is seized and possessed of Real and personal Estate and money ~~to the~~ value of about Forty Thousand dollars, a large portion

Petition

4 of which came to Defendant by means of the said Marriage, and by their mutual industry and care since said marriage — That said Defendant has so received of her property consisting of Bonds & Notes and money amounting with the interest thereon at the time of the marriage to the sum of about Four Thousand two hundred & fifty dollars 21/100 — a list of which is herewith filed and made a part of this Petition, also a tract of Land in Benton County Mo which was sold on or about the 25th September 1854 for the further sum Fifteen hundred and twenty dollars — and which last mentioned sum defendant also holds, All of which several amounts still remains undisposed of, and the defendant still has the same either in money or invested in other property — Plaintiff also says that she has an interest in a tract of land belonging to the Estate Ann Jewel deceased — Plaintiff further states that she had at the time of her marriage a Wardrobe and many

Petition

5 trinkets and keepsakes which Defend-ant still has in his possession, of but little value to him but highly prized by her, and a bed & bedding & other articles, a list of which is herewith filed and made a part of this petition —

Plaintiff therefore prays to be divorced from the bonds of matrimony contracted as aforesaid by and between her and defendant, and that the court will adjudge to her such support and main-tenance of the property of the said defendant and for such time as the nature of the case and the cir-cumstances of the parties shall re-quire, and if necessary to compel the defendant to give security for such maintainance, and to make such further orders from time to time touching the same as shall be just and reasonable, and such other orders and judgments touching the premises as may be proper. And also that the court shall order, adjudge and decree that the property aforesaid which came to

Petition

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defendant by means of said Marriage revert to plaintiff, and that defendant pay over and refund to plaintiff the proceeds of the sale of said land, and of said Bond & Notes and interest thereon, as well as the money received as aforesaid. And that defendant by the decree of this Court be compelled to deliver to plaintiff said articles of trinkets keepsakes, wardrobe. And as in duty bound she will ever pray &c.

Plaintiff further states that her maiden name was Elizabeth S. Jewel and she requests the court to make an order changing her name to her said maiden name.

Wright, Johnson & Goodlett
Attys for Pltff

Petition

This affiant, the plaintiff makes oath, and says that the facts stated in the above petition are true according to the best ~~of his~~ knowledge and belief of plaintiff, and that this complaint is not made out of levity, or by collusion, fear or restraint between the plaintiff and defendant for

7 the mere purpose of being separated from each other - but in sincerity and truth for the causes mentioned in the petition

Elizabeth G. Thornton

Sworn to and subscribed before me this 23rd day of May 1857

W. L. Avery Justice
Co. Court Henry Co. Mo."

Upon which petition there issued from the Clerk's office of said court a summons - which summons is in the words and figures following to wit =

"Summons."

"The State of Missouri

"To the Sheriff of Henry county,

"We command you to summons William T. Thornton to be and appear in the Circuit Court of Henry County and before the Judge thereof on the first day of the next term of said Court, which will commence at the Court House in the town of Clinton in said Henry county on the Ninth monday after the second monday in September 1857, to answer

Summons Petition

to the complaint of Elizabeth G Thornton as set forth in the foregoing petition or bill, and have you then and there this writ and certify how you shall have executed the same

Witness Lewis H Lutt clerk of our said court with the seal thereof hereto affixed at office in Clinton this 26th day of May AD 1857

(L S)

L H Lutt clerk
By V N Jones D.C.

Summons

Upon which summons there is the following return of the service thereof made by the Sheriff of said County — which return is in the word & figures following to wit:

Sheriffs Return

State of Missouri }

Sheriffs Return

I certify that I executed the within by delivering to William S. Thornton an attested copy of the within petition and writ on the 27th day of May AD 1857 at the County of Henry and State aforesaid

D. C. Stone — sheriff Henry Co. Mo

9 And at another day to wit.
at a circuit court continued
and held for said county, on
the 18th day of November 1857 –
"Came the said Defendant by his attorney
"and files herein his answer to plain
tiffs petition. –

And which answer so
filed as aforesaid is in the words
and figures following – to wit:

Answer

Answer!

"The said Defendant William J.
Thornton states that it is true, that
said Plaintiff and Defendant inter
-married at the county of Henry
in the State of Missouri, at the time
stated in plaintiffs petition, and
that said plaintiff and Defendant
have ever since resided in ~~the~~
said county of Henry – Defendant
admits that he and said Plain=
tiff lived together as man and wife
until said twentieth day of March
in the year 1857 – and defendant
and so expressly changes the fact to
be that on or about said last mentioned
time, said plaintiff without a reason=
able cause or provocation, and with=

Answer

10 -out the knowledge of Defendant deserted, abandoned and absented himself from Defendant, and that said plaintiff so continues absent from Defendant.

Said defendant admits that during all the time that said parties cohabited together as stated in said petition, said plaintiff faithfully discharged her duties as the wife of him said Defendant - and also treated defendant with kindness and affection, and defendant expressly charges the fact to be that he said defendant at all times at least equally faithfully discharged all his duties as the husband of plaintiff - and that said Defendant at all times treated said plaintiff with utmost kindness and affection.

But Defendant further answering states that it is not true that he said Defendant on or about the twentieth day of February in the year 1857 at the county of Henry or at any other time or place was guilty of the crime of Adultery with Catharine Todd or any other person

Answer

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whatever in any manner whatever, And Defendant expressly states that it is not true that he said Defendant ever at any time had any sexual intercourse with said Catharine Todd, and that it is not true that said defendant at any time since his intermarriage with plaintiff ever had any sexual intercourse with any person whatever except plaintiff

Defendant states that it is not true that said plaintiff ever did discover any illicit conduct of said defendant and said Catharine Todd and that it is not true that said plaintiff ever caught said Defendant and said Catharine Todd in the commission of the Crime of Adultery, or in the commission of any illicit act whatever –

Defendant states that it is not true that his said Defendant's conduct ever became or in any manner was unusually strange towards plaintiff, and that it is not true that he said Defendant at any time whatever made any unusual ~~use~~ improper use of his said Defend

Answer

ants pistol, or of any other weapon or fire-arms about his house or in presence of plaintiff, or that said Defendant ever pretended so to do, And defendant states that it is not true that said plaintiff ever had or now have any good reason to believe that he said Defendant ever designed to kill or in any manner whatever injure plaintiff, and that it is not true that said Defendant ever did design to kill or in any manner injure plaintiff — And defendant states that it is not true that the condition of Plaintiff was ever rendered intolerable or his said plaintiffs life was ever endangered by any acts ~~of his~~ or conduct or treatment of Defendant whatever —

Defendant admits that he is possessed of about the amount of property stated in said petition, but defendant states that it is not true that any large portion of the same came to said defendant by means of said marriage or that the same was accumulated by the mutual industry or care of plaintiff and Defendant

Answer

13 Defendant admits that he said defendant on his said marriage with plaintiff did received about the amount of Bond notes and money from plaintiff as stated in said petition, and also the proceeds of the tract of land sold situated in Benton County as stated in said petition - but Defendant states and so charges the fact to be, that all of the same became by vertue of said marriage, and so are the sole property of him said Defendant

Defendant admits that plaintiff is interested in a tract of land belonging to the Estate of Ann Jewel, but defendant states that he never hath - any manner received any part of the proceeds of said land, and never in any manner interfered with the same -

Defendant admits that at the time of said Marriage plaintiff had a wardrobe and also some trinkets and keepsakes, but Defendant denies that the list of them filed in said action is correct or true, and states that many of said articles included in said list have been acquired by said parties since said marriage, and other of them have been worn

Answer

=out, lost and destroyed by said parties since their said marriage -

Defendant denies that said plaintiff is entitled to any decree for a divorce from the bonds of matrimony so contracted with Defendant - or to any order or decree of this court reviting in said plaintiff, or compelling said defendant to pay or deliver to plaintiff any money or property received by him of plaintiff by virtue of said marriage and having fully answered Defendant prays to be discharged

(signed) W. T. Thornton

Answer

And afterward to wit at the same term of said Court continued and held for said County on Satur=day the 21st day of November 1857.

"Came the parties aforesaid, and the said Elizabeth E. Thornton now applies to the court to order and decree that said Defendant William T. Thornton pay her a reasonable sum for her support during the pendency of this suit, or for such time during said pendency as the court might direct, - and said motion coming on to be heard, and evidence being in=

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Motions for Alimony

-troduced in said motion from which the court doth find that the said plaintiff is without any visible means of support and it also appearing by the admission in the pleadings that said Defendant is possessed of property to the amount of Forty Thousand dollars, and that the Defendant upon said marriage and by virtue thereof received several Thousand dollars of plaintiffs property, - and it also appearing from the evidence that the sum of Three Hundred and fifty dollars would be a reasonable amount for her support until the next term of this court; It is therefore considered by the court that said William T. Thornton pay to the said Elizabeth S Thornton the said sum of Three Hundred and fifty dollar for her support until the next term of the court, and it is further ordered that if the same is not paid within Thirty days that an Execution issue therefor. -

And at another Day, to wit: At a term of said court continued and held for said county, at the Court House in the town of Clinton on Friday the 15th day of May AD 1858, ——

"Came the parties aforesaid by their
"attorneys, and both parties being
"ready for trial, the same is sub-
"mitted to the Court upon the petition
"answer, and evidence offered in the
"cause; and for want of time this
"cause is continued until tomorrow
"morning—

And afterward to wit, At the last aforesaid term of said Court continued and held for said County, on Saturday the 15th day of May 1858.— Came the "parties aforesaid by their attorneys, and "both parties being ready for trial, "This cause is submitted to the Court upon the petition, answer and testimony of witnesses— and the same being heard and considered and the Court being fully advised thereto doth find the charges and allegations in said plaintiff's petition are not true, and thereupon the plaintiff moved the Court for an allowance against the Defendant for maintenance of said plaintiff, which motion being heard and fully understood, and

Decree

17 the Court fully advised in relation there-to, said motion is by the Court over-ruled. It is therefore ordered, ad-judge and decreed by the Court that said plaintiff's petition be dismissed— And it is further ordered that the Defendant pay the rea-sonable costs of plaintiff in the prosecution of this suit to be taxed by the Clerk—

Decree

And afterward to wit,— At the same term of said Court Continued and held for said County on Mon-day May the 17th AD 1858—

Motion for a new trial

"Came the said plaintiff by her attor-ney and on leave being given by the Court files herein a motion for a new trial in this cause.—

And now at this day to wit at the same (the last aforesaid) Term of said Court continued and held for said County on Tuesday the 18th day of November AD 1858.—

motion for new trial overruled

"Came the parties aforesaid by their attorneys, and the motion filed herein on yesterday for a new trial

"coming on to be heard and argued
"and the same being seen and fully
"understood is by the court overruled
"to which overruling of said motion
"plaintiff by his attorney excepted, and
"presents to the court his Bill of Excep-
"-tions and prays that the same
"may be signed, sealed and made
"a part of the Record- which is ac-
"-cordingly done".

Evidence!!

Be it remembered that on the trial of the abovesaid cause the following is all the Evidence to wit:-

Mason & Sewel, sworn for Plaintiff-

Mason & Sewel's evidence

"I am acquainted with Plaintiff and Defendant- Deft lives in Henry Co. Missouri- I live 1½ or 1¾ miles from him- he has lived there 10 or 12 years- I have lived there over 18 years- Plaintiff came to my house about 20th March 1857- She has since that time lived at Major Wells- The Defendant I suppose was at that time at home- I saw him the day Deft- came to my house- in about two hours ~~after~~ after Pltff. came

to my house - I saw him at his own house - I went there with my Brother Wm Jewel & R. B. Jewel & Robert Allen - went there together - we went there separately - Allen and son went on ~~foot~~ first and got there some minutes before us - I & my brother next rode up - I found Allen & my Son & Dr. Thornton the Deft. in the house - my brother Williams accompanied me - Deft & my brother had a conversation about what had taken place, my brother stated to Deft. that he had not been more ~~surprised~~ shocked to hear ~~what~~ ~~have~~ the news - my brother said if it had not been for that one thing, you and my sister meaning Pelf. would have lived together as long as you would have lived, - my brother repeated that once or twice afterwards - Deft. did not seem to reply, he did not ask what it was - the Deft looked very bad, but did not seem to reply, he had found out that my sister had left him not to live with him any more, my brother had told him this as I have stated, my brother had told the Deft. that Pelf. had left him intend

Mason & Jewel Evidence

Mason & Sewell evidence

ing never to live with him any more. Soon after that Deft. & Allen went out they were out probably five minutes and returned — after that Deft., myself and brother William went out together when we got to talking Deft. observed that Elizabeth the Plff. was crazy, I think he said she would not tell a lie for the world, it seemed still that he would not deny the charge. I then asked him if he denied the charge, and he said he did, that Plff. was crazy — we went in ~~mighty~~ pretty quick — I do not recollect all the conversation after we got in, while out of doors he said Mr Allen had told him, or he had asked Mr Allen what was the matter — myself & my brother William proposed to the defendant to go over to my house to see my sister the Plff. he said he would not go or could not go that day, but would wait till she became more composed, and would come over the next day, I insisted on his going — I did not ~~think~~ believe he would come, & I wanted to take him along then — he seemed to think it would be improper for him to go then — we wanted him to go over to see about

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vide R. Allen's testimony page 62 of record

21 plaintiffs property - I think it was me who spoke of it - I was at home the next day

Mason & Lewel's Evidence

Deft did not come the next day - Six=teen days after my sister came to my house, he came over to my house - I was at home, when he came in he passed compliments and was asked to sit down Pltff was in the same room, myself and possibly my daughter - Deft looked at her right in the face and asked her how she could have left him in the man=ner she did. - Pltff & Deft had not met before that time - Pltff wished to go over to see Deft - she went over with myself and Judge Merritt - Deft was at home - Pltff & Deft had a conversation at Deft's house at that time - Deft said to Pltff how came you to leave me as you did - Pltff said she had come over to get her things Pltff said to Deft that she thought he would have killed her if she had stayed - Deft asked her why she had come to that conclusion, she replied from his strange action and spoke of his revolver and strange conduct and strange actions - she had come with the carriage to get her things - Deft replied that he was too

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Mason C Fewel's evidence

feeble to get them, she replied that she could get them herself — Deft said that next day he would send them over — she insisted & Deft. replied Betsey when I tell you a thing I will do it — he at that time refused to get her clothing — Plff. went into a room and come out with a little ~~piece~~ purse & ~~pointed~~ poured it out, in hand ~~with~~ hand — there was a gold dollar and some change, she said that that was all the money she had — Deft. told her to keep it & he would also give her all the money he had in the house, & he went and brought her a $20.00 gold piece — she took the little silver pieces & handed them to him — & kept the $.20.00 & gold dollar, and observed to me and Judge Merritt, I have $.21.00 — About that time she got up & got the Bible and said here is my bible I will take it, it is the Bible my father owned — I can not recollect all the conversation — I helped my sister into Judge Merritts Carriage & Defendant remarked to me that he hoped or thought that Betsey would come back and live with him again — and while we were in the House Deft. said to plff. my friends do not believe the report — Plff. said I want to see

Sarah Ann to Elza Jane Poda — Sarah Ann is the mother of Catharine Poda & Martha Jane is the sister of Catharine — Deft replied that she ought not to see them, that they were very much distressed — in a little while she again wished to see them — Deft seemed to be opposed to her being carried by them —

Mason & Jewell's evidence

Plff observed Dr. dont you recollect that I observed to you that the sin you had committed was the only ground for man & wife parting — & and I gave you the Bible and asked you to read the 5th chapter of Mathew — Deft replied I recollect you gave me the Bible and when I read it you kissed me and said that that was the only ground for man and wife parting and I told you I was supprised — and told you that there were many things that were as bad as that — she observed I have been with brother Mason about 20 years and he never had a fan until I was about to marry you; that when she came to my house she came for my accommodation, I had lost my wife, but now she was thrown back it would be for his own accommodation, and

seemed to think so. as she had left my service so much against my will - and she said if we live long I fear we shall separate - and she felt like if they should separate = she would lock herself up and never see any man. —

Mason & Jewell Evidence

Deft. did not send Pltffs Clothes the next day, but the Wednesday week following - I do not know what clothes she first brought to my house - I think she got a paid of shoes the day we were there —

When Deft. came to my house at the time I have stated, he looked at her hard in the face - and said Elizabeth you look composed, you do not think I intend - ed to kill you, do you = she said, yes I do - he asked why she came to that conclusion - he named to her that the Crows had been taking his Eggs, and the Cats his pigeons - he said he would like to continue to visit her and have her live with him again, and she replied "Dr. you would not have me live with you again" she observed that she wanted him to come over and make arrange - ment about her property - that he had destroyed her happiness and that she

wanted her mothers offspring to have her
245 property, If I am Crazy I do not want
my friends to have me to support.-
he replied they will not have to sup-
Mason & port you - She said she wanted a part to
Jewell's live not want to be dependant on her
evidence friends, and wanted a part to support her.
She asked the Dr. what he intended to
do about her property - & he said I shall
do nothing now, but will do right -
she asked him what would be right - I
will leave it to men, - he said he would
be governed by his own Judgment. -
She said you know Dr. I brought a
good supply &c - I packed up your first
wife's bed Clothes - I took to you a good sup-
-ply of Cloth & she had used her own -
and he said he approved it very much
and he loved her as a wife -
I have know Pliff all her life, it has
not been many years since she was with
me - at the time Pliff came to my
house she was as rational as ever
she was - I never saw her otherwise before
or since - if she was insane I had not
~~been~~ sense ~~enough~~ sense to know it -
She heard she said that her sister have
a very sick son in St. Clair County

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She was speaking of what had taken place before, plaintiff spoke of of them together – Deft. replied "Elizabeth you talk strange, She turned in her chair and pointed in a direction, and looked at Deft and said you know what I mean, deft. did not make any reply to that remark – She said you know I begged you not to take Kat, meaning Catharine Soda to Dr. ~~Hobbs~~ Horrlets, that he knew that she had begged him to take her to St Clair Co. instead of taking Catharine to ~~Hobbs~~ Horrlets &c. She said you know I have cried and wept not to have you take Catharine to ~~Hobbs~~ Horrlets &c &c. Deft said he did not know that she was so much opposed to his taking Catharine, but the arrangement was made. he said he had promised to take her to St. Clair she said no, nor have you even carried me yet – she said it was the day before he took Catharine that she pltff. wanted to go to Maj. Ball – he said he had sent her to Maj. Ball and spoke of her being so unhappy that day – She said he named to Paul to go down and bring Sarah Ann & the girls up to his house to start with Catharine – Plaintiff

Mason & Lewis evidence

27 -tiff remarked ~~that~~ if she had known that he was a going to send for there she would not have come home - Deft. replied that if she was going to cut up I hall better let Paul come back - Plff said she had seen Sarah Ann - she said she had set at the Supper table to want you there and did not sleep any that night - and that she was in bed when they started - that Catharine came and kissed her and so had the Dr. when she was crying in bed &c &c. I think Deft did not talk a great deal - I do not think that Deft denied what Plff. said at that conversation -

Masonic Jewel's evidence

Plff - reminded Deft of giving Catharine the Preference & told him he had said the father of Catharine had been mighty good to him -

When Plff. said she had caught them Deft. - replied that she had imagined these things - he did not make any denial, but he spoke several times about imagining these things -

Cross Examination!!

I live in a mile and a half of Defts - my brother William went with me - he

lives 3 miles from us—

Pliff came there in the morning and in 3 or 4 hours after she came—we started for Defts— I went for my brother I sent for Allen

Mason b. Jewels wedm

Our main visit to Deft. that day was to get the property— my brother is an older man— and I think my Brother is a better man than I was— We made no visit to Deft. before we all started, my son went to Allen's after him— Pliff. had a list of her Bonds & money before she was married— & that was handed to my older brother & was taken along with us— these papers had not been made out that day to my knowledge— Catharine Todd's mother is the niece of Defts.

In third day he observed to me that he hoped her mind would get right and would come back and live with him— Howlett was ~~the place~~ where Catharine was taken ~~to~~ school in Pettis county—

My Nephew went on Saturday, Deft. sent clothes them the next day after we were first at Defts.— I can not say whether all her clothing has

29 "been sent to her - I do not know what
"have not been sent if any"!

Mason C Fewel Closea!!

Milton B. Merritt, sworn for Pltff -

M. B. Merritts evidence

I know Pltff. and Deft. I was at Defts. on the 23rd day of March 1857 in company with Mason C Fewel and Pltff., - heard a conversation between Pltff. & Deft. - at that time Pltff. alluded to catching Catharine Todd and Deft. together - I do not recollect the language - Deft said in reply Elizabeth you talk strange what do you mean, she replied pointing to the door of the adjoining room you know what I mean, I think he turned from her, and said Elizabeth it is not worth while to talk about it while your mind is in the condition it is now - Mason Fewel remarked that Deft knew whether it was true or not - Deft denied the charge, but said he did not blame Pltffs connexions for believing it, or what she said - That he did not believe she would tell a lie but that she imagined it, - I have

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30

been acquainted with Plff. since 1841, the condition of her mind was nothing strange in it nor since, but at this time she appears to be distressed.

M. B. Merritts Evidence

On the 2nd day of July I went with Plff. to Defts again — Judge Avery and Esqr. Fewel went with me — Deft and his children were at home, or come home from his brothers — There was some allusion made to having the young Lady Examined, and Plff. said if she thought she was guilty she would have her Examined — Deft. alluded to the mortification of of young ladies being Examined, that if he had to undergo it, she should have all of Plffs property — Plff asked Deft if he had not gone often with the young Lady after plumbs and to the Water Melon patch — & he replied that he had gone with her, he also remarked that if the young Lady was Examined it would not satisfy her Plff — Plff replied no, that she would not be

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satisfied him from what she had seen with his own eyes, and both have acknowledged — Pliff said to Deft that he had been in the habit of taking the young Lady about in his buggy — and had taken her to school he did not deny taking her to school — he did not acknowledge it, I know the family of Catharine Todd, her mother and sister — Pliff said or asked Deft — why he did not take Catharine's sister about as much as he did Catharine, I do not recollect defts answer! —

No. 13. Merritt

Cross Examined!!

Catharine Todd is the Daughter of Defts niece, it is not considered indecent in this country to go about with his niece — Pliff was claiming her property of Deft. & Deft in the conversation remarked that if Catharine Todd had to undergo the mortification of an examination and was found innocent of the charge she should have Pliff's property — Pliff had

Charged Catharine with the offense
Pltff asked Deft if he believed she
was deranged - and Deft said it
[illegible] be charity to believe it -
D[illegible] all the time said that
she [illegible] deranged - that he knew
the [illegible] of her mind &c!

M. B. Merritt, Closed!

Wm Fewel's evidence

William Fewel sworn for Pltff. says
I know Deft, Pltff is my sister, I saw
Pltff & Deft last March, but not
together on the 20th day of March 1857
My brother came for me we went
to Defts - Allen, & Wm & Mason C
Fewel went together - I had seen
Deft but a short time before at
our Monthly meeting - in Feby &
also on the 2nd Saturday in March
after, I have know in 1845 - in
1850 I moved in his neigborhood -
the last time I saw him before we
went together, he & his wife were
at my house, they stayed all night
we had other Company there - my
sister sat down and related her expe-
riences, Deft. remarked that he had
thought 6 or 7 years ago he had

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enjoyed religion – He said but very little – his manner was different from what it usually had been – I first made the proposition about his property, that she only wanted his property with interest I had before stated to him, that my sister the Plff – had said that she would not live with him again, that she had but one thing against him – I handed him a list of the Bonds, and accounts, he held it in his hand for a considerable time, and remarked he did not marry her for her property – in the yard I remarked to the Deft. how sorry I was to believe that report When I saw my sister that morning I told him I asked her if there was no chance for her to be mistaken about it – and told him she said there was not, that she saw it with her own eyes as plain as she ever saw my face, & pointing to my face – to which the Deft. replied that he had never heard so distinctly or supposing in his life – my brother

Mrs Jewels Evidence

3 4

remarked to him Dr. you do not deny it, do you - and then said he would risk all the world that if Kat was examined that she had the test of her virginity - we then went back in the House, then I told him that Plff - had but one thing against him - he did not ask what it was - & then he said that if Kat was examined &c - was the first I had her name mentioned in his presence -

Wm Fewel's Evidence

Cross Examined!!

Deft - did not say that Allen had told him the Cause of Plff's Cause leaving him - Plff - was about 40 years of age when she was married to Deft - and they lived together 5 or 6 years - she had no Children by Deft - What Deft said about Kat Todd was after Allen & Deft had been out of the House together -

Wm Fewel Closed!

Alfred Askins for Plff

I know Plff & Deft. have known

85

Alfred Askins Evidence

them 16 or 18 years, lived in 2 or 3 miles of Deft. — he waited upon me upon my sickness — I recollect of meeting with Plff & Deft. at meeting in the last of Feby 1857 before they parted — Plff appeared to to be in a great distress of mind and saw Deft. and he appeared nervous — I have known them for some time, never saw the like before of either of them and I spoke of it — I knew Catharine Todd she makes her home at her Grandfather Thornton's, it is about a mile from Defts, never saw him in company with Catharine or his Sister Eliza Jane — saw Deft. at his Grandfather with Deft and his Grandfather told Catharine to set out some little liquor for me to drink — she did not appear to hear & Deft spoke her that is all I know about I noticed Plff & Deft through the whole ~~Summer~~ sermon — I preach sometimes I was not preaching at the time my Preachin was a good strong Doctrinal Preachin — not very polished!"

Alfred Askins Closed!!

W. C. Garrett sworn for Plff —

Knew Plff & Deft have known them since June 1854 — I live a few miles from them — I have frequently seen them at Church seen them on the 4th Saturday in 1857 in March they were at meeting I noticed that when they first came into the House Plff was shedding tears, and did through the meeting & Deft appeared affected in some way I made some remark about his wife's mind being excited and he made some reply and shed tears, he after preaching to be affected, during the preaching his conduct & calm changed — I had heard of no disturbance between them I met with them in March at Plff's brothers — at another time while I was preaching — Deft. looked wild — & during my preaching he had a wild unusual look in his countenance &c. &c. —

W. C. Garretts evid —

Cross Examined!

At Fewels he appeared to belong to —

37 We belong to the old order of Baptists & we were giving our Church Experience — Pltff is a member of our Church — & has contributed to its support — I do not know that the Deft. belongs to the Methodist church — he said at that time he had been a great back slider & was to much absorbed in the things of the world — !

W C Garretta

Re Examined

I never observed anything amiss in the mind of the Pltff from the first to the last — I have seen her often since & before her separation from Deft.

Wm Garrett Closed —

Wm Avery sworn for Pltff —

Know Pltff & Deft I have known Pltff from the fall of 1839 Deft from 1841 — I live in about 3½ miles from Deft — I think Deft had a good mind, had a good opportunity of knowing &c She had a mind rather bright have seen her at intervals — never have seen any change in her

Wm L. Avery

Wm L. Avery's Evidence

mina — I do not recollect of seeing her in March 1857 — may have seen them at meeting — was at Defts in July last — was there with Judge Merritt and Mr Sewel — Pltff. first asked Deft why he had not sent the things as he had promised — he said for the best of Reasons — you have been slandering me — & she asked him if he did not think her sincere & honest in what I have said — Deft asked her if she was sincere in saying that he intended to kill her — she said I am — Deft asked her if he had not been a good husband and why she believed he intended to kill her — & she said it was the way he was handling his Revolver — she said he went to the Cupboard and got his pistol and was handling it & had it pointing right at her — and she said be careful Dr. & that the Dr. let his pistol fall at his side — he said he got his pistol to shoot a Cat that got his Eggs & Crows

39

which got his corn – The Deft did not appear to recollect the matter & she replied you recollect you stepped around the Table to get William to show him how to assist in fixing the Cylinder – you recollect in telling Pane to load all barrels of the Cylinder & to lay it on the Shelf – This was a thing I have never known before – she told him he went to the draw – opened it & looked in & walked the floor, but did not take it out – & had a strange wild look – Deft said he had been using the pistol trying to shoot a Cat that had killed a number of Pigeons – did not say any-thing about trying to shoot a pistol – Deft said to Pltff. you have charged me & the child with Adultery, & commenced suit you have driven to take a stand & that he did not expect that they would ever live together again – he said he had treated her with a great deal of moderation and he would have to defend himself – that he would have to take a

W L Avery

firm and decided — . He said until she had commenced suit he never had entertained a moment doubt but they would have lived together. Deft said the proof will come, it shall come — and that in such a way that no unprejudiced mind can have a doubt — Plff replied why do you not have Kat. Examined Deft said it would be very mortifying to any young lady, feeling to submit to an Examination: he asked him if she would have one of her nieces Examined & she said she would if she were accused as Kat was — if she had any influence with her — Deft remarked that Mason Sewel would have Harriet Sewel Examined: Kat should be Examined Deft then said if Kat was Examined it would not satisfy you — Plff replied no it would not from what I have seen & heard & what you both admitted I know — but you might satisfy others — Plff remarked you know that I caught

Mr L Avery:

41 you in that Room pointing to the room - there in a position I saw Kat throw down her clothes, you turn away buttoning up you pants I come in & put my hand on your shoulder & saying I would not have seen this for the world, take her away - send her away - send her away.

Wm. L. Avery I turned and there myself on that Lounge crying & bathed in Tears, and you came in & got on your knees by my side and begged & plead with to forgive you & then you said you thought you could, & the child as you were in fanet - Deft - replied Elizabeth that is all false I have told you so before - she asked for her keys - & he said I do not recollect that - Deft said anything about the condition of her mind, he remarked he would take care of her things, she asked Deft if he considered her Crazy - he said he considered it an act of Charity so to view her, she said she supposed a Crazy person needed nothing he said if you are Crazy you do not need them if you are not you do not deserve them - Deft. said

he had rather be without the little things than with them - she replied you keep them to fret me - but a little property shall not run me Crazy - Pfff said you have I am Crazy & that it would take a scientific physian to detect it - He replied No, I have said you were a monomaniac & that it would take a scientific man to discover - he said you are an affectionate mother and kind companion when at yourself - but when Crazy you are like all others - Pfff then remarked then I suppose you said I was Crazy when he married her - Deft replied that he had not said that but that it was coming on her when he married her That he would prove that he would prove she was Crazy at the fair last fall at Boonville She remarked it was strange that they would have her one of the Judges if she was Crazy - That she was suffering from a determination of Blood to the Head - And she asked by what she would prove this -

Mrs L Avery

43 I know Catharine Todd I saw her last fall or winter - the & Deft were then riding together no other persons were with them - the Mother of Catharine is Kin & Fitzhugh Thornton is her Grandfather & her mother is Deft. Neice - Dr Thornton is a practising physician - & had an Extensive practice - & has practised in my father family as well as mine

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Wm M Wall sworn for Plff - I know Plff & Deft - know Plff. since a child and know Deft 15 years & have been a neighbor to him - he now lives in 4 or 5 miles - I was in Boonville last fall a year and Plff. & Deft were there - saw Plff there - her mind has been sound - there was a short time I did not see her ~~after~~ after I left N. Carolina - about 2 years - I put up at -

Wm M Wall

Plaintiff then called Deft. who being sworn says - I received upon my marriage with Plff. $10.00 in money and about $4.000 in Notes - after the marriage I received $1500 for a Tract

Defts Evidence

of Land I sold lying in Benton County and about $40.00 from Mason Farrel some Beds & bedding, & a wardrobe a little Table - this marriage took place in Novr 7 or 8 years ago - we lived together a little over six years - a part of the Cash Notes I collected in money and apart in stock - the Amount loaned is about 10 per cent profit - & the stock would average about 10 per cent - I think it would have averaged about ten per cent for the whole time without compounding it - The $1500 I did not have for three years, but I mean from the time I received it -

Defts Evidence

My son had a revolver about the time of the separation - I had not used one - though I had carried one, I never shot it off - my son generally fixed it up for me - some time before Pfff. left me I was at the stable & saw a Cat in my pigeon box & I got my pistol to kill the Cat - I crippled the Cat - it had killed a half a Dozen Pigeons - My son said at another time ~~[illegible]~~ said there was a Crow at the smoke

45 house, I had no gun about the house, and I took my pistol, and shot at it. I did not kill the cat. The Spring about the ram - we got out, and I asked my nephew how to manage the ram - my son Hall - is in Another in Ohio at School - I have never loaded the revolver - I think I have carried that revolver - after my son bought it back from California - I had no other revolver at that time - I had an other pistol - I think I carried the revolver to Ohio - once - I have no recollection of seeing Pliff alarmed when I had the pistol. She used to caution them - my sons - when they had it - She never cautioned me that I recollect of - She may have done so - Pliff left me about the 20th of March the first information that I received that she did not intend to return - was from Robert Allen - I might have spoken of Pliff's limiting about fire arms to - Mrs Perry - I had no intention to injure her upon recollect I think I mentioned to Mrs Perry - about using the revolver to kill the cat & Crow -

Defts Evidence

Catharine Todd - is about Eighteen or nineteen years I am acquainted with her mother - She has a sister Jane - who is older -

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they live at Fitzhugh Thornton's; there was great intimacy between myself and him he is my brother; he had things put to much in care & his family written — mine — often — but Catharine most. I thought that Pleff and Mrs Todd and her daughters — were friendly — I thought Pleff's feelings were kind toward all — but greater toward Catharine — She was at our house most when not at School — I remember of Boland Thornton being at my house when Catharine was there, he remained there about one & a half hours — Catharine had been there some 4 or 5 days — Catharine left with him — Borland came up to advise with me about purchasing Mr Perry's farm, I advised him against it Pleff — had not made any request of me for Catharine Todd to leave that morning — Pleff — Cuzen in teaching my children after my marriage with her and so did Catharine Todd — it was at the Cottage — the reason ~~that~~ Catharine went to begin was, that Pleff's heath was bad and the other children or some of them were sent to Lexington — Borland came to my house at 10 o'clock — I had

Defts Evidence

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not been from home that morning - I had been down to the stable - I that morning had remained in the family room - Catharine had gone into the Parlor - she had dropped a ball it was dark in there & I went in & ~~picked~~ picked it up & gave it to her, I was in there but a few minutes when the children were there, I saw the ball drop & went in. the ball fell on the floor - I was in there but a few minutes - Catharine did not appear to know to know when it fell - it was a small ball about 2 inches in circumference - Catharine appeared to be looking for it - Catharine sees very well - some of the family have bad sight and I may have spoken well my neice Mrs Loda is nearly blind, but Jane & Catharine I think see very well - I spoke to Dr. Caldwell about the defect in the family - I have not doubt of having spoken of the defect in sight of the family - there is but a window each in each of these rooms - in the parlor there are paper blinds - the room I call the cottage is 5 or 6 feet from the corner of the Parlor room, when

Defts Evidence

a person was in the cottage room a person in the setting or family room could not hear them unless the door was open – A Map was hanging on the East side of the family room & the Children were studying on it – Pltff was teaching them on the Map –

Mary J. Perry sworn for Pltff. says –
I am acquainted with Pltff. & Deft – Known Pltff – 19 years & Deft 17 years
I saw the Deft. after the Separation and had a good deal of Conversation He said Pltff was very much alarmed at the manner in which I used my revolver – he spoke of it as owing to the State of his mind – he said she went off that morning when She left in as good health & spirits as usual before the conversation was through, Defts. countenance looked awful – Blood set thro under his eyes, he said he did not sleep any the night before she left – in the same conversation he said she came rushing down from the upper room thus the words – "Escape for his life – Escape from the place & look not back" – he spoke of her kindness

Mary J. Perry's Evidence

49 affection - industry, was very good
to the Children - kept his purse, attend
-ed to his business - good to go shop
-ping - was saving - he said she was
strictly truthful & strictly religious -
July 2nd I had another conversation
he said he did not intend to set
up insanity any more - he said
she had sworn a lie in her petition
Mary F. and that 40 men swearing a lie
Perry did not make it the truth -
Deft said that Pff was locating in
the cottage the morning he picked
up the ball he said that Borland
Thornton came there that morning.

Cross Examination!

I suggested these last questions to be
asked - I have known Deft for several
years - I was at his house in March
1857 - Deft, a little boy of William
Allen were there - I was there fre-
quently & once I did not see Pff
there - he said she had gone to Mason
Jewel - his manner & demeanor was
not as usual, I got dinner there,
I took a trip to Ohio once - & he was
lamenting he did not talk much -
he was at dinner when I got

There, he appeared to be startled when I opened the door. talk about strart & went & Examine it & state teango home — he stepped opposite the Pigeon Boxes and saw there was one dead — he said it was and I said it was not, he got up & took it out & threw it down — he said it was bit right through the head — the pigeon was dead — the Deft was right — the Pfff. did not live with him after that day — I saw Deft that evening afterward — I did not know that she had left & he did not say any-thing to me about — Allen, R Fewel and after I left I met Mason Fewel, when they came up I thought he coloured strangely — the remarked that they were coming — he walked 10 or 15 steps —

Mary T. Perry

Cross Examined

I am the Nephew of Pfff. and had not seen her at any place that morning —

John Wilson sworn for Pfff.

John Wilson

Know Pfff & Deft — Known them 15 or 18 years — I saw them together

Sam McCuk in 1857 — There was a trial before the Church at the House of Mr Duncan's in August or September last Deft & Pltff were there —

Richard B Fewel sworn for Pltff

I know Deft & wife — I have known Pltff. ever since I can recollect — she is a relation of mine — I went to Defts house in March 1857 — I went when Allen and Mason & Fewel went — I and Allen got there first — Julius Wall & Deft were there. When we first saw Deft he was at his little gate we passed compliments and deft asked us to the house. It was two or three paces when we got into the house. Allen commenced the conversation — about the conversation — Allen said to deft Elizabeth has left you and determined not to live with you any more — or again — deft hung his head — and replied — and said "if Elizabeth has determined not to live with me. I will have to submit to it. Allen then said we have come over to try to get the property that you got by the marriage with her — Deft raised his head, and said — Well Robert —

R B Fewel

52 does she seem rational? Allen replied
yes - as much so as ever I saw her -
Deft said Robert she left this morning
in as good health and Spirits as
I have seen her in a long time -
Allen said it is not worth while to
multiply words; ~~with~~ you and Eli-
zabeth know all about it - and if it had
not been for one thing you would have
lived together happily all your days
Deft did not reply - sat with his
head hung down - in a few moments
William Fewell and Mason Fewell
R B Fewell my father - came in - after talking a
little while - we commenced talking
about the Seperation - I think it was
Uncle Wm Fewell he repeated to
Deft about what Mr Allen had
said that Jeff had left him - and
did not intend to go back and live
with him any more. and if it
had not been for one thing - they
would have always lived together
he did not reply, nor ask what
it was - I said the same thing
and he made no reply -

~~43~~ 53 William Fewell handed to the deft a paper - and named that Sister wanted to have him - make some arrangement about the property - deft held it in his hand - did not open and handed it to Mason C Fewell and said Elizabeth may have a use for it and she had better keep it in a few moments Allen and deft - walked out - I had not been out

R B Fewel of the company of Allen and deft up to that time I was listening to hear all I could - they were out a few minutes, after Mason Fewell deft and Wm Fewell walked out - deft looked very serious and pale - deft asked Mason and Wm Fewell about plff's being rational they asked deft to go over - deft said he could not go - over that evening - but that she would be more composed to morrow - and he would come over in the afternoon deft did not enquire what that one thing was.

Cross Examination

We were there in the afternoon, I do not live with my father Mason C Fewell I think you me ruled that plff have -

54 left deft Wm Fewell lives about 2 1/2 miles from Mason C Fewell - I went to my father's house I understood my father had gone for William Fewell and our purpose in going to deft was to see deft before he went off or did himself any injury it had been talked about - we did not know but he would run away it was to see deft right soon - to see if he would make some arrangement about the property - I went for Mr Allen - I do not know really that our object was to see about the property - it was to see him but I suppose it was for that purpose deft asked me when I came up if I was riding or walking I had a little mule - as I pulled the gate open - Allen said something to deft - before me went into the house deft did not make any reply to Allen - when he said Elizabeth had left nothing was said at the gate - that I heard - I did not hear uncle William admit in any conversation that plff's mind was affected nor heard my father admit or

R. B. Fewel

~~55~~ 55

say at any time to deft that plff mind was impaired I do not remember that any one said any thing about any text of scripture at that time - I am a nephew of plff, I did not hear Allen refuse to go into the house deft did not inquire while I was present for the cause of plff leaving

R. B. Fewel

Re Examined by Plff -

I have referred to injury that deft might shoot himself or hang himself or kill himself or run off & we wanted to get there before it happened - We went there at my fathers suggestion I think, though I do not know whether my father or plff proposed it there was a conversation about it before us & plff participated - all were present with plff at Mason Fewell's I do not recollect that she was present at all the conversation with all before we started - Plff was in the room adjoining I recollect being with her just before we started I think plff participated in some of the conversation, but I cannot say, all were present

about our going to defts - Allen was no connexion of the - - -
The Pltff asked the two following Questions - 1 & 2 The deft did not
R B Fewel object to the first - but to the second the pltff declined to asked the first and did not profound it the court as to the second decided that the witness might state what the object of their going to defts was but should not state the conversation of pltff - but might state the object they had in going to defts

Pltff Excepted

Mrs Duncan Sworn for pltff - Know pltff and deft - have known
Mrs Mrs Duncan them about four years I was at defendants house on Monday after the Friday that deft said his wife had left - Deft said his wife had the worst spell the day before she left that she had gone deranged and left him Mrs Mayor was with me he insisted on our staying to dinner he seemed to be in so much distressed he said it was the hardest trial he had to bear since the death of his first wife

57 She had gone deranged he said Allen and Fenell and others had come for pltffs property that pltff did not know what she was talking about, that they went away, and come again crying that they would not have feet worse if they had been dead he said that they were all crying he spoke of pltff speaking so hard of him. that it was not uncommon for deranged persons that I had a sister that was deranged for thirty years, that she was so deranged - that she would say the hardest things that a person could - but when she came to her self she was kind and good - she said she had been there that morning before I had come I was tolerally well acquainted with her, I did not see any difference in her manners I thought she was more sprightly than common never have seen any difference - since her leaving Deft - nor seen any indication of insanity we stayed until after dinner we live about seven miles from them -

Mrs Dunn
Chas

58 ~~[illegible]~~ He seemed to be in great distress and cried a great deal he alluded to the cause of her leaving - that she was jealous of him -

Boland Thornton

Borland Thornton Swon for pleff - was at Alfts in February 1837 I got there about ten oclock & m was there but once that month I went to sent Alft about buying Mr Perry's place - was there about one and a half hours I knew Perry's farm - I had talked of selling and moving and we had concluded to buy a small place and risk selling our own - I wanted him to go over there, the reason we did not go over to Perry's was that the farm was larger than we had supposed - Alft said he had three or four Eighties I met Alft at his door and went in Catharine Todd was setting at the fire place Alfts Children were in the Cottage did not see Pleff - did not see her while there, I set by the fire in the family room - I did not make any inquiry about pleff

~~4~~ 59

Some three of the Children came in at first - a short time before I left Catharine went out and came back - and a little daughter came back with her I did not hear

Boland Thornton

Jeff's voice that day Catharine had been there 4 or five days Catharine left with me I did not visit Jeff often - I do not recollect of being there before without seeing Jeff Catharine before I started remarked that she wanted to ride down with me - nothing had been said to me that day about bringing her home once before that she went home with me - before she never rode on a horse behind me before - Jeff stayed in the room all the time I was there - Catharine left the room some five or six minutes she went to get her Bonnett I live at home with my father - Fitzhugh Thornton - my fathers family consists of Mrs Todd and her daughters myself and brother these are the whites I do not know that Jeff showed any prefference for Miss Todd. but I think he paid the most if any to the Youngest - she had been the pet in his family

and ours –

Cross Examined

Mrs Todd – is my sister – Catharine my niece – Dept my uncle and Fitzhugh Thornton my father

Dr Wall Sworn for plff

I know plff and Catharine Todd I know her when I seen her in July or August 1836 I saw Dept and Catharine together I met her and Dept together – they were on horses I spoke to them we passed compliments – Dept said he had started to take Catharine home and they had concluded to go by Mason & Fenelli farm to get Water melons they turned and went back to Fitzhugh Thornton's and he put her down – I met them near the fence he said they had concluded to go by the fence of Fenelli's in the prairie to get a melon it was at the South end of Dept field I met them It was in the prairie – when I met them it was a half a mile from Fitzhugh Thornton we all went together – Dept sister was at

Dr. Wall

61 Fitzhugh Thornton's and she went home with Deft - the Water melon field was 3/4 of a mile from Fitzhugh Thornton, there was Corn in the field - when Deft would be at the Water melon field - he would be farther
Dr. Wall from Fitzhugh Thornton than when at home. Deft did not say where his wife was when I met him we went there - I do not recollect that he Called for his wife when he got to Fitzhugh Thornton but Catharine got down and pleff Came out and got on the horse and went home with Deft -

Plaintiff Closed

Robert Allen Sworn for Deft -
I and Richard Fenell went to
R. Allen Defts we met Deft at the barn lot. Julius Wall and Deft were together when we got there - ~~Julius lid~~. We passed compliments. Julius lid as good lye as we went into the yard When I got into the Yard - Deft invited us into the house I told him there was no use in going to the house I told him we had come over -

I told his wife had left him and did not intend to live with him any more - and that he had come over for the purpose of arranging about her property - Deft then asked me the reason why Peff had left him I evaded giving him an answer

R Allen

at last I did not tell him the reason - but I suppose he and her know the reason he insisted on our going into the house and we went in - and seated ourselves by the fire - Mason and William Farrell then came in and they took up the conversation after they had talked a little while the Deft asked me out of the house and he asked me the reason why Peff had left him I told him that Peff had accused him of cohabiting with Catharine Todd -

Deft asked that Defts answer should be given in evidence Peff objected and the Court sustained the objection Peff objected to the evidence of Allen as to his stating to Deft what the reason was -

68 why Pltff had left him objection
overruled and pltff Excepted —
from that time he seemed to be
affected and was greatly shocked
at the time I told him I did
not notice any thing peculiar in his
demeanor he complained of being
R Allen unwell when I first addressed
him — Deft made some jovial remark
to Richard Ferrell about his riding —
when we rode up, Ferrell was
present when the deft had left him

Cross Examined —

I talked with R Ferrell as
we walked along about the
deft and the matter I have
no recollection of saying that
guilt was depicted in his counte
nance I generally speak what
I think I believed him guilty
at the time — I may have said it —
I recollect of making a remark
of being astonished why he had
not made enquiry the Ferrells
spoke of being astonished at
defts not enquiring what the
matter was

R Allen

And I spoke of that I was astonished at the whole of it. I went back home by myself but not in company with the others. I do not think there was an injury made in the house by Deft about the cause of Pltff leaving ~~him~~ they were talking about the one person spoken of by the other — they were talking about the seperation

Defendant Closes —

And upon which evidence the Court found the issues for the defendant —

Bill of Exceptions

Pltff then asked the Court upon said Evidence — to allow her maintenance for such time as might be reasonable which the Court refused —

Pltff then filed a motion to set aside the verdict and finding in this cause and grant a new trial which motion is as follows to wit —

Motion

" The said plaintiff moves the court
" to set aside the verdict or finding
" of the Court in this Cause and
" to grant a new Trial
" 1st Because the court admitted
" improper evidence on the part
" of the Deft
" 2nd Because the court exclu-
" ded and refused to hear proper
" evidence on the part of the Pltff -
" 3rd The verdict is against the
" evidence
" 4th The finding upon the evidence
" should have been for the Pltff -
" instead of the Deft -
" 5th The verdict is against the
" law and evidence
" 6th The Court erred in refusing
" to allow Pltff maintenance
" for a limited time"

Bill of Exceptions

And which motion was by the Court
overruled - and to which Opinion
of the Court and overruling said
motion Pltff Excepted and prays
this his Bill of Exceptions shall
be signed sealed and made a part
of the record - which is accordingly
done -

Dewitt C Ballou
Cir Judge

State of Missouri }
County of Henry } ss

I Lewis A Tutt Clerk of the circuit court within and for the county of Henry in the State of Missouri do hereby certify the preceeding (65) sixty-five pages contain a full, true & perfect Transcript of the Record and proceedings had in a certain cause pending in said Court wherein Elizabeth G. Thornton was Plaintiff and William T. Thornton was Defendant, together with all the Testimony offered in said cause as fully and completely as the same appear of Record in my office

In Testimony I do hereto sign my name and affix the Seal of said Court at office in Clinton this 15th day of June AD 1858

L A Tutt Clk

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51. ~~34.~~

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Elizabeth G. Morton

vs

Reed

Wm T. Morton

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filed July 2 1888

Wm E Dunscomb

Clerk

Henry

7th

In the Supreme Court
January T. 1858

Elizabeth G Thornton Pltff. } Error to
vs } Henry Co
Wm S. Thornton. vs Pd }

Now at this day comes the said Plaintiff and says that in the record & proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this to wit – that it appears by the record aforesaid judgment was given for said defendant – whereas by the law of the land, upon the evidence judgment should have been given for plaintiff and a divorce should have been granted according to the prayer of her petition and alimony & maintainance allowed her – The court erred in refusing a new trial and in admitting improper evidence on the part of defendant And the said Elizabeth G Thornton prays that the judgment aforesaid for the errors aforesaid & other manifest errors may be reversed annulled and for nought held and that

she may be restored to all things whereof she has lost by reason of said judgment &

F. P. Wright
atty for pltff.

And the said William T. Thornton the defendant in Error comes and for his joinder in Errors says that there is no error in the record and proceedings aforesaid; nor in giving judgment for the defendant below, by said Circuit Court. Nor is there error in refusing to decree alimony & maintenance for the plaintiff below; nor in refusing a new trial. nor in admitting any evidence on part of defendant. And he prays that the judgment below be in all things affirmed —

Ryland & Son
Attys for defendant

34
Elizabeth G Thornton
vs
William T Thornton

assignment of Errors.

Filed Jany 13. 1859
W. E. Duncan Clk

E. G. Thornton
vs.
Wm J Thornton

Error to the Henry Cir Cuit Court.

We have examined the record in this case. No question of law is presented for our determination: Neither branch of the case is at all supported by the evidence that for the divorce nor that for alimony. The statement of the evidence as preserved on the record is a full vindication of the judgment of the court and it is of such a character, that it needs no argument or comment to show that it warrants the decree: Its bare statement is suffe cient to satisfy the mind, that the case made in the petition is not sustained & we deem it unnecessary to set it out as it could serve no useful purpose. affirmed

J. Richardson concurs. J. Napton absent

W. Scott

34

Thornton
vs.
Thornton

Opinion

Affd

Opinion filed March 1853

Wm C Drummond
Clerk

In the Supreme Court
January 7, 1859

Elizabeth G Thornton } Pltf
vs } Error to Henry -
Wm T. Thornton Deft }

This case arises on a bill for a divorce brought by plaintiff against defendant in the Henry circuit court and for alimony and maintainance
The charge is that defendant has been guilty of adultry with one Catherine Todd, cruel treatment & indignities &c - Plaintiff avers that she caught them in the illicit act on the 23d of February 1859 & that she had good reason to believe and does believe that they had been guilty of the same act before that time - That after she discovered the act. defendants conduct towards her was such as to render her condition intolerable and was also such as to endanger her life -
The bill also charges that the defendant is possessed of property to the amount of forty thousand dollars - a large portion of which came to defendant through her by means of the marriage and by their mutual industry - and that defendant has now about six or seven thousand dollars undisposed of. received by the marriage through her -

They were married in Henry county in this state in November 1851. he being then a widower - and she a maiden of about 35 years of age

Defendant in his answer denies the charge of adultery - and of any conduct on his part rendering her condition intolerable or endangering her life

He admits that she conducted herself as a dutiful and faithful wife
He admits he is worth about forty thousand dollars - and that he received by her sex or about seven thousand dollars -
Plaintiff is defendant's second wife
there was no issue by this marriage - The court refused a divorce also alimony or maintainance - She is thrown upon the world without any means of support

The court found the issues for the defendant - plaintiff then asked the court upon that evidence to decree maintainance for such time as might be reasonable That the court refused
Plaintiff filed a motion for a new trial which the court overruled and defendant excepted & brings the case here by writ of error

1

F P Might for plff

1 A divorce should have been granted upon the evidence. It was sufficient to produce both moral and judicial conviction, not only that defendant had been guilty of adultery but also of the cruel treatment endangering plaintiffs life and such indignities that rendered her life intolerable — The evidence as to the adultery was circumstantial, but as that crime is usually committed in secret, such must ordinarily be the evidence, and is sufficient. — Bishop on Marriage & divorce — 422 — See. Burgess vs Burgess 4 English Ecclesiastical R 527. and the opinion of Sir William Scott. in that Case —

2d Defendants conduct towards plaintiff ~~after~~ after she had charged him with adultery, if it was not so cruel or barbarous as to endanger her life, constituted, at least such indignities as to render

her condition intolerable —
Plaintiff had reasonable cause to apprehend that a continuance of cohabitation with defendant would be attended with bodily harm to her —
(Bishop on marriage & divorce. 464 —) The careless use he made of his pistol in her presence under the false pretence that crows were destroying his eggs — and calls his pigeons connected with his strange looks & conduct then before that time he had not been in the habit of carrying his pistol was sufficient evidence to the wife that her life was in danger —
A reasonable apprehension of personal injury is sufficient. Whispell vs Whispell 4 Barbour. N.Y.R 217 — Evans vs Evans 4. Eccl. R. R. 312. — Defendant is a physician — he insists that his wife was partially insane — and if so his conduct was calculated to increase her disease and endanger her life —

3. But if the court should be of opinion that the evidence does not justify a divorce, defendant is clearly entitled to maintenance, for a reasonable time at least. He admits she

had ever been a kind & affectionate wife - she had shown an extraordinary willingness to promote his interests - attending not only her own but to his domestic affairs, and though they were wealthy she devoted a portion of her time as school teacher, instructing his children by his former wife - not an unkind word had passed between them until the fatal discovery - whether true or imaginary, powerful reasonment hence actuated her to leave him - He insists that she is partially insane - or was at the time - He waited sixteen days after she left him, before he visited her and then made no endeavors for her return, and no provisions for her support or welfare - Twenty dollars is the only amount he has ever advanced to her or to any one for her support - He has all her property amounting to six or seven thousand dollars and she is thrown upon the world without any thing - and I insist that this amounts to an abandonment on his part without cause, and a refusal & neglect to maintain and provide for her

19 Mo 355 -

Elizabeth G Thornton

William F P Thornton

Plaintiffs Brief

In the Supreme Court
January Term 1859 -
Elizabeth G. Thornton - Pltff
against } on Mot of Error -
William T. Thornton, Deft -

The plaintiff in Error who was also plaintiff below, filed her petition in the Henry Circuit Court against the defendant praying for a divorce from the Bonds of Matrimony - She charges, in her petition, that the defendant was guilty of illicit sexual intercourse with a certain woman whom she names in her petition that defendant had on a certain day committed adultery with said woman - and that on divers other days and at divers other times, said defendant had illicit sexual intercourse with said woman - in said County of Henry -

The petition then charges that defendant's conduct after he became aware, that plaintiff had discovered his said illicit conduct with said woman, "became

unusually strange towards her and in consequence of his strange conduct, and the use which he made of his revolver pistol, about the house and in her presence, she had good cause to believe and did believe, that he designed to kill plaintiff, and by means of his said conduct, plaintiff's condition was rendered intolerable - and further that defendant's treatment was such as to endanger the life of plaintiff"

The petition states certain amount of notes & bonds of plaintiff which after the marriage came to defendant - and that he sold a tract of land belonging to plaintiff for about $1500 - and also mentions some other property, house hold articles, wardrobe - trinkets, keepsakes &c which she carried with her to defendants' after the marriage - The petition prays for a divorce - for maintenance, and for an order that all the property plaintiff brought with her to defendants revert to plaintiff - that he pay

over to plaintiff the proceeds of the sale of the land and the bonds and notes with interest thereon and that her maiden name be again that by which she shall be known hereafter –

The defendant answered the petition. admits the marriage, the amount of money received by him on his marriage to be ten dollars; about four thousand dollars in notes & bonds which he afterwards collected in money and in stocks. that he sold the land as mentioned for the price as stated &c But most emphatically denies the charge of adultery – illicit sexual intercourse with the woman mentioned or any other woman – at the time charged or at any other time. denies all intention ever to hurt or injure the plaintiff with the pistol or with anything and denies that his conduct was such as to give rise to any such suspicion or was such as to render plaintiff's life intolerable or in any manner to endanger her life – puts in issue every material charge on which the

plaintiff relied in his petition for a divorce -

There is a long string of witnesses and many pages of evidence, for this Court to examine - We can not do justice to the defendant in Error by abridging it - From beginning to end there is no proof of adultery - no proof of illicit intercourse by defendant with the woman named in the petition or with any other woman - The plaintiff utterly failed to substantiate the allegations in the petition - utterly failed to prove any improper conduct on the part of defendant towards plaintiff and utterly failed to prove any circumstances or act done by defendant, by which plaintiff's life was endangered or rendered miserable or intolerable

There is but one exception we think saved on taken to any testimony offered by defendant in the whole record - and

we will hereafter examine this par
ticularly – After plaintiff had closed
her case – Defendants introduced Robert
Allen as a witness, who stated that
"I told him (defendant) his wife had
left him and did not intend to live
with him any more, and that we
had come over for the purpose of ar
=ranging about her property – defend
ant then asked me, the reason, why
plaintiff had left him, I evaded giving
him an answer, at least, I did not
tell him the reason, but – I suppose
you and her know the reason – he
insisted on our going into the
house and we went in and seated
ourselves by the fire – Mason and Wil
liam Fowell then came in and
they took up the conversation; after
they had talked a little while, the
defendant asked me out of the house
and he asked me the reason why
plaintiff had left him – I told him
that plaintiff had accused him of
cohabiting with C – T –" the defend
ant asked that his answer should
be given in evidence – plaintiff objected
and the Court sustained the obje

= Fox - Plaintiff objected to the evidence of Allen as to his stating to defendant what the reason was why plaintiff had left him - objection overruled and plaintiff excepted - This is we think the only exception - The case was tried by the Court and the Court found for the defendant -

No declaration as to law was asked - and no exceptions taken on trial except as above -

And this case is now brought here, for a <u>trial</u> <u>de novo</u> not by re examining the witnesses before ~~face to face~~ this Court, but by simply weighing the written evidence in the Bill of Exceptions and deciding whether the Court below found for the defendant properly or not -

Points & Authorities -

The testimony (if this Court will weigh it) makes out no case against defendant - The Court

will liken this finding of the lower Court, to the verdict of a jury - which will not be disturbed if there be contradictory evidence; which it is the province of the Court below or the jury to weigh — 26 Mo. 355. 13 Mo. 308 - 24 Mo. 97 -

There is nothing in the exception taken to Allen's testimony - it does not affect the plaintiff's case injuriously - without the defendant's answer, it is against rather than for defendant - But Allen's answer had been in substance already given to the Court by Mason C Fewell the plaintiff's witness - at least the door opened for defendant to get Allen to state what he told defendant -

In this case the plaintiff introduced a witness who knew, if any human being did whether the defendant was guilty or not - and the plaintiff knew that this witness must know; yet she failed and omitted to question him on the important subject

a circumstance that out weighs a hundred suspicions and surmises: a circumstance that shews she had no grounds for the charges, by which she had brought ruin and blight into one hitherto happy family and degradation and shame into another —

In two hours after plaintiff left her home and her husband, ~~against~~ from whom not one unkind remark or deed or act toward plaintiff has been shewn in evidence. She had her brother and others, agents with an inventory of the property she had brought in marriage to that husband, on the way to his residence, in order to demand and take away the property — to make arrangements about her property — did she feel the blight of ruin — the desolation of heart, which the conduct she pretended was the cause of her leaving, must necessarily occasion to the delicate and refined sensibilities of an injured woman?

or was the property - the nine or ten thousand dollars in her husbands hands that she wished back, to go to her own Mothers Children as she says -

This is a strange and uncommon case - the Plaintiff married at forty lives with her husband in happiness until all hopes of an offspring between them are given up - and then anxiously searches for some event upon which to make a pretense for leaving, deserting him and carrying back the estate she first brought him - The green eyed Monster soon furnishes what she looks for - ~~and trifles light as~~ "Trifles light as air,
Are to the jealous, confirmations strong,
As proofs of holy writ."
She makes the charge, fails utterly to prove it - but still comes before this Court and asks for maintenance - for alimony -

Ryland & Son &
Freeman for Deft

Thornton
against
Thornton

Brief of Statement
for defendant
below —

Ryland & Son
and
Freeman