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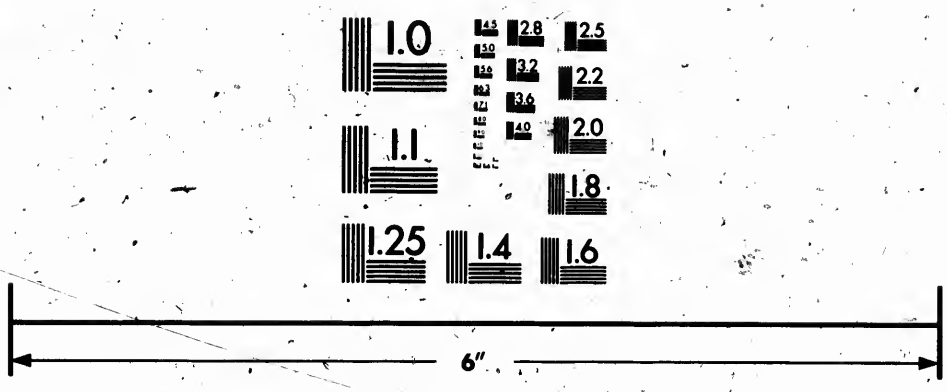

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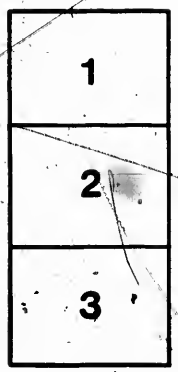

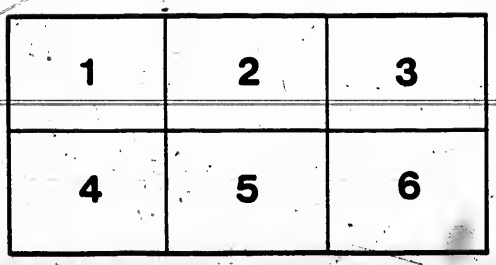

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JUDGMENT

OF THE

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IN THE

IVORCE CASE

OF

UNTER versus HUNTER,

Tried at Fredericton in July, 1862.

ST. JOHN, N. B.:
PRINTED AND PUBLISHED BY GEO. W. DAY.
1862.

David G. Murray
Nov 15 1862

JUDGMENT

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OF THE

Court of Divorce and Matrimonial Causes,

IN THE

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OF

HUNTER versus HUNTER,

Tried at Fredericton in July, 1862.

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JUDGMENT

OF THE

COURT OF DIVORCE AND MATRIMONIAL CAUSES;

IN THE DIVORCE CASE OF

HUNTER VERSUS HUNTER.

PROVINCE OF NEW BRUNSWICK.

IN THE COURT OF DIVORCE AND MATRIMONIAL CAUSES.

JULIA HUNTER, PROPONENT,
and
ROBERT HUNTER, RESPONDENT.

This was a suit instituted by the Proponent, MRS. JULIA HUNTER, against the Respondent, MR. ROBERT HUNTER, her husband, in order to obtain a divorce *a mensa et thoro* and a decree for Alimony.

The "Libel" of the Proponent, filed in March 1862, set forth her grounds of complaint against her husband with much particularity, and the "Answer" of the Respondent, filed in the month of May following, set out his defence at great length. It is not necessary to advert to the facts, as they are fully stated in the Judgment of the Court.

The cause was heard at Fredericton before the Honorable NEVILLE PARKER, Master of the Rolls, and Judge of the Divorce Court, on the 3rd, 4th, 5th, 29th, 30th and 31st days of July last, when, in addition to the parties themselves, a number of witnesses on both sides were examined.

The trial was conducted by the following legal gentlemen, who cited a variety of authorities:

The HON. J. A. STREET, Q. C., and [illegible] for Proponent,
A. R. WETMORE, Esq., Q. C.,
S. R. THOMSON, Esq., Counsel for Respondent.

The learned Judge having taken time to consider the case, on Tuesday, the 28th day of October, 1862, pronounced the following

JUDGMENT.

"This is a very painful case. A marriage between two persons of suitable age and not unequal social position, of highly respectable character and connections on either side, a marriage which to appearance might have fairly warranted a well grounded hope of mutual happiness, has led to a succession of quarrels and disputes, to two separations, the one temporary, but followed by another of a more serious character, to actions at law by the father of the wife against the husband, and finally to the exposure of the scenes of domestic discord in this Court; and this has all occurred in the short space of less than two years from the celebration of the nuptials. All conditions of life have their peculiar sources of disquiet; and married life is not exempt from its own severe trials. Where these arise from hastiness, violence or moroseness of temper on the one side, they may be much mitigated if not entirely overcome by the exercise of forbearance and discretion and the influence of right principle on the other, and thus the connection, though robbed of much of its charm, may be rendered bearable. When these considerations fail to prevent a resort to Courts of Justice for redress, the spectacle is exhibited of a husband and wife mutually exposing to the world the faults and follies which that relation should make them most anxious to conceal, and the memory is *dragged* for all the matters of offence which have been there deposited many months, or it may be years of matrimonial intercourse, many of which may have been long ago forgiven, and it might be hoped forgotten. When cases, however, of this kind are brought forward for public investigation, Courts must deal with them, however reluctantly; that which would otherwise be an impertinence is made a duty, and it becomes necessary to consider carefully but freely the conduct of the parties throughout, as well as the principles of law applicable to the circumstances.

In the present case, Mrs. Julia Hunter seeks a divorce *a mensa et thoro* from her husband, Robert Hunter, on the ground of cruelty, and she details in her libel the particulars of the ill-treatment of which she complains and for which she seeks redress, and the defendant has set out in his answer. The nature of the cruelty on which the Court will feel bound to interfere is variously stated by many authors and in the decisions of different learned judges; though any attempt at exact definition of what constitutes legal cruelty has been rather avoided.

The passage from Poynter on Marriage and Divorce cited by Mr.

Street may be considered to contain a fair statement of the doctrine; and the latest decisions of the Matrimonial Court, as pronounced by its eminent Judge, Sir Creswell Creswell, do not impugn its correctness. "The cruelty which entitles the injured party to a divorce," says Poynter, "consists in that sort of conduct which endangers the life and health of the complainant, and renders cohabitation unsafe."

"It is not, however, in ordinary domestic quarrels that parties are entitled to the interference of the Courts, for there may be much unhappiness in the married state; there may be unkind treatment and even abusive language without any real personal danger."

"But when a series of unkind treatment is accompanied with words of menace, and when from collateral evidence there appears a reasonable apprehension that the menace may be carried into effect unless prevented, these circumstances present a case which calls for the prompt interference of the Courts, and if blows have been struck the case becomes still more aggravated, and the injured party is entitled to the remedy afforded by a sentence of separation."

"But this doctrine is held with this important qualification, that the conduct of the wife who seeks redress must not have been such as to have *caused* the injury of which she complains. It must appear that her own conduct has been guarded and proper, otherwise a remedy for the violence of her husband may be in her own power, merely by a change in her temper and behaviour. At the same time, her misconduct if resented with dangerous and inordinate severity will not bar her right to the interference of the Courts."

To proceed with the facts of the present case.

Robert Hunter, the defendant, was engaged in business at Saint John as a Merchant Tailor and Clothier, which he prosecuted successfully, and was in independent circumstances. He became acquainted with the lady, then Miss Julia Venning, at the house of a mutual friend, and the acquaintance soon opened into intimacy, which led to his announcing his desire of making her his wife. The personal attractions and the respectability of the lady rather than any pecuniary motives would appear to have determined his choice, as we do not hear that there was any fortune in the case, and there were several other children of her father's family besides herself. The alliance therefore would seem to have been a perfectly disinterested one on his part, and it might fairly be considered that the qualifications of the lady made it no unequal one on her side. At the time that he made the acquaintance of Miss Venning the defendant resided with his mother (a widow) and two unmarried sisters, and a good deal of the nuptial unhappiness and discord which subsequently arose is attributed by the lady and her father to the influence of these relations, who continued to reside with Hunter after his marriage. Indeed, the lady has expressed the

opinion, which seems to have been shared by her father, that she and her husband might have lived happily together but for the residence of these relations with them in the same family. How far this opinion was well founded it may not be very easy to decide positively from the evidence; but there are some circumstances bearing upon this point—and it is a very important one in the case—to which it will be necessary to advert.

It is impossible to suppose that the lady and her family could have been ignorant, that at the time the defendant was paying his addresses, his mother and sisters were domesticated with him. His house was pleasantly situated, and comfortably furnished and fitted up. There seems to have been no disguise or deceit used by him on the point; but when after having been in the habit of visiting her during the winter, during which he had announced his wish to make her his wife, without meeting with any discouragement, he stated expressly that it was to be understood that his mother and sisters were to live with them, an objection was made by Miss Venning to such an arrangement. He, however, was unwilling to yield the point of separate residences for his family and himself for reasons which he stated, and there seemed to be a probability of the engagement, which was mutually understood to exist, being broken off. He had been desired by the lady to speak to her father, and had agreed to do so on the following day, the 24th of May, which was a holiday, but on this difficulty arising she had requested him not to speak to her father at the time fixed on. Matters remained in this state for some days, when the subject was again mentioned between them but with the same result. According to the defendant's statement he told her that the matter had better drop, and that he bade her good-bye with the intention of not returning to the house. In fact, he seems to have come to the conclusion that the matter must be at an end. She however does not admit that the match was actually broken off, but there is no material variance. There was clearly a difficulty in the way, and the defendant did not return to the house until the following Monday, when, in consequence of a note he received from Mr. Venning, he went and saw him in a separate room. Mr. Venning undoubtedly seems to have considered that there was an intention of breaking off the match on the part of Hunter, and he admits that he told him he thought he had acted very improperly, and that it was not the way to gain the affections of a young woman and then cast her off like a suit of old clothes. This would certainly corroborate Hunter's account that the previous interview was intended to be a final one. Mr. Venning attributes this impression to the defendant's having ceased to visit his daughter for some days, but as the last visit was on Friday, and the note was written by Venning on the Monday following, it is evident that something more than the absence during

so very brief an interval, is necessary to account for his expressing himself in the manner he did, and it is natural to suppose, that his impressions could only have been derived from his daughter's account of her interview with Hunter. There seems to have been a very strong objection in the minds of the parents to the plan of Mrs. Hunter, senior, and her daughter, living with the young married couple, and there can be no doubt that arrangements of this sort are frequently productive of domestic discomfort. But we know on the other hand where people are well disposed to each other, they may live in this way very happily, the experience of others more advanced in years is not without its advantages to a young housekeeper. At all events it was for the gentleman to decide on the terms of his offer; the rejection or approbation was for the lady and her friends. With the strong opinions Mr. Venning entertained on the subject, it would have been perhaps justifiable in him, and the better for all parties, had he acquiesced in the breaking off the marriage, finding that the defendant was unwilling to alter his plans in this respect. He seems, however, to have thought it best to let it go on, and to accept the assurances given him by the defendant in case of difficulties arising, and both parents and daughter consented to the marriage taking place on the terms proposed. I cannot but think it was singularly unfortunate and augured ill for the success of the experiment, that as the point was to be yielded at last, so much prominence was given to the aversion of the lady and her family to her living with Mrs. Hunter senior, and her daughters; and though Mr. Venning was quite justified in considering what was best for the comfort of his daughter, he seems to have considered the matter rather too exclusively from his own point of view. His daughter says in her evidence, she knew his mother and sisters were dependent on him, and the mutual attachment of those relatives and the defendant, and the steady kindness and protection afforded them, were very honorable traits in his character. Even the resolution to give up a cherished attachment, rather than depart from the rule he had laid down for himself, and abandon a self-imposed duty of this nature, was entitled to respect, and perhaps was hardly appreciated as it was entitled to be. His objection to forming two separate establishments, both as it regarded the happiness of an aged parent and sisters, and as entailing an expense which he did not consider justifiable, was rational and creditable, and the manner in which he had discharged the relative duties of a son and a brother, gave some warrant for supposing that those of a husband would not be disregarded. It was therefore, I think, to be regretted that the lady should enter the defendant's family under the disadvantage of being known to entertain a strong hostility to the arrangement under which she had consented to live, and that the same feeling had been shared by her family. It is asserted by Mr.

Venning and his daughter that the defendant expressly agreed if any difficulty should arise that a separate home should be procured. The defendant does not admit this, but it is corroborated by the evidence of Davis. Ante-nuptial stipulations, if they are to be looked to as of legal obligation, should be put in writing and reduced to proper force. It is not however contended that this was an arrangement which could be enforced against the wishes of the husband, and it was open to the objection that it presented a temptation, if not to *create* difficulties which might otherwise have been avoided, yet to be less careful in giving rise to them. It would indeed require great prudence and discretion on the part of the lady to allay the disquietude which would be apt to arise in the minds of those whose hitherto comfortable domestic arrangements had been at the risk of being overthrown in consequence of the marriage, and we might perhaps expect to have seen some evidence of it in the conduct of the mother and sisters whose sensibility must have been wounded by these discussions. The Libel however and the answer admit that for three months after the marriage, which took place in September 1860, the parties lived together comparatively happily though there were some slight clouds at a very early period. Two incidents have been thought of sufficient importance to bring to the notice of the Court. One was drawn out by the Counsel of Mrs. Hunter, the other on the part of the defendant. The first occurred on the morning of their marriage at the breakfast after the ceremony. It appears that Mrs. Hunter had desired on that occasion to be addressed by her maiden name and not as Mrs. Hunter, and for this she says Mr. Hunter "censured" her. What he said we are not informed. It certainly was hardly worth taking notice of, except in the way of good humoured raillery, though on an occasion of the kind, when it may be presumed relatives and friends of both parties were present, it might have appeared an odd whim in a lady who had just acquired the right, of which young married women are not generally reluctant to avail themselves, of being addressed by the name of the man of her choice. It was a very slight matter in itself, but perhaps at a later day, when quarrels arose and the comparative respectability of the Vennings and Hunters became the subject of angry discussion, it might perhaps have been recalled as not without significance. The second occasion was on board a steamer in Canada during the wedding tour. The lady, very naturally as it seems to me, expressed a wish to look at the dashing of the water from the paddle over the side of the vessel. It was just what a young person in light girlish spirits would be likely to do. Her husband however thought it childish, and an impatient expression on his part to that effect led to an unpleasant discussion—a grave remonstrance on his part and an offended manner on her part. An answer of the lady however in the course of the dispute,

seems to indicate a degree of not merely irritation but resentment which could hardly have been expected. According to the defendant's account, on his stating to her that, instead of a hasty word he had treated her unkindly it would have been a different thing, she replied, *that "if he treated her unkindly once, he would not do it a second time."* This rather startling occurrence, at so early a period, was likely to occasion some surprise and concern, and was interpreted by the husband, not unnaturally, as a threat of leaving him. Mrs. Hunter denies that she threatened to leave him "if he spoke in that way," which was not exactly what he had attributed to her, adding "I don't remember threatening to leave him," and she certainly had not done so in terms, but it is difficult to know what loss could have been meant, in case she met with what she should consider unkindness. There are some complaints by Mrs. Hunter that her housekeeping and cookery did not give satisfaction to the other ladies, but there is very little evidence of actual interference on their part. Some trifling untidiness, or what she conceived such, was on one occasion observed on, and the observation was looked upon as an insult by Miss Hunter, and one of the young ladies remarked on her mother having too much to do. This Mrs. Hunter considered very unreasonable, as her husband had expressed a desire that his mother should be allowed to give directions about the dinner. Nothing, however, seems to have been more uncomplaining and inoffensive during the whole time of the cohabitation, than the conduct of Mrs. Hunter, Senior, so far as the evidence reveals. It is alleged also, that the mind of the defendant had been influenced against his wife by the statements made by his own family; and at an interview at McMillan's, when Mrs. McMillan went over, in order, in the course of a three hours conversation to the defendant, the causes of complaint which his wife had—though at first he contended that *she* had been entirely to blame, yet in the progress of the discussion, according to Mr. Dunny, in some particulars he seemed to think that he had been in error. The question whether he had been under the influence of his family was also treated of. Hunter thought not. Mrs. McMillan produced some instances which she thought proved that his family had interfered. What the nature of the interference was we are not told, nor whether the lady was entirely exculpated. Looking to this part of the case there is nothing in the *facts proved* which leads me to the conclusion, that entering the marriage state with a desire to promote the happiness of her husband, a lady placed in the situation of Mrs. Hunter might not have lived harmoniously with her husband's relations, and it was her duty as well as interest to make the best of the circumstances in which she had consented to place herself, though they might not be in all respects what she desired.

I have anticipated a little the order of events in referring to the

conversation at McMillan's—to recur to what took place before that interview—altercations began to arise, which increased to such a degree that abusive language on the part of the husband, according to the wife, and tart and irritating answers on her part, according to him, became not unfrequent. He charged her with neglect of her domestic duties, and with habitually withdrawing herself from the society of his family. At last, after a stormy night and much angry discussion, in which she says she had asked him to have some rooms, which were used as lumber rooms, fitted up, that they might live apart from his family, which he refused to consent to, she told him she would be then obliged to go back to her father's; he replied that she might clear off, that she had things too comfortable, and a good deal more to the same effect. Notwithstanding what had passed, the defendant does not appear to have contemplated her having formed a *serious* intention of leaving him; and in the morning, when she was preparing to go, told her she would think better of it and come back during the day. At the same time he warned her of the serious step a wife took in leaving her husband. She, however, was resolved to go, and set off very early on foot, on an inclement morning in winter, to return to her father's house. She was then four months from her confinement. She says she had to sit down twice on the way from weakness, and could scarcely get to the house. The question here occurs—and it is a very important one in this case—was this decided step on the part of Mrs. Hunter rendered necessary, or was it justifiable from anything that had then occurred. The consequences were likely to be most serious to both, particularly to Mrs. Hunter. In the first place it was proclaiming to the world their domestic discords, and making them the common topic throughout the community, with the tolerably certain result that the general sympathy would be likely to attend a young and attractive woman, driven, as would be supposed, by ill treatment, from her husband's house, in the situation Mrs. Hunter then was, and under such peculiar circumstances. In regard to the time and manner of leaving, nothing less than misconduct of a very flagrant nature on his part would be suspected, and a proportionate amount of public odium would be incurred by him. Admitting that there may have been something, perhaps a good deal, to put up with, yet balancing advantages with disadvantages, there was not more than in the ordinary circumstances of life many women are called on to endure. The character of her husband stood high. She lived near her own friends and relations, with whom her intercourse appears to have been unrestricted. She had a comfortable residence. Her domestic cares must have been very light compared with those of women with large families and more limited means of support, and the principal grievance seems to have been

living with her husband's relations. Had anything been alleged against the character of these ladies there would be much reason for her desiring a change, but they seem to have been persons of unblemished reputations and very strongly attached to her husband. The very circumstance that even during the height of their quarrel she would have been content to remain on condition of his providing separate apartments, in which case she admits she would not have thought at that time of leaving him, is of itself sufficient to condemn the step she then took. He may have been wrong, after what had taken place before the marriage, in not complying with her request; yet the promises and assurances made at that time by him must have been made on the implied condition that the apprehended difficulties were not to be owing to the conduct of the lady herself.

I am bound to say in looking to the evidence, that though this case shows a good deal of harshness and moroseness on the part of the husband, yet the lady appears to have entered the married state with ideas of independence which that relation does not warrant, and that her course was a good deal influenced by her erroneous views in this respect—however much and lamentably in many respects her husband has been to blame, her misfortunes are obviously a good deal attributable to that circumstance. The same spirit would have been apt to have caused discord as well in a separate house as in the way in which she did live. The going abroad without letting the family know where she was going, was an instance of this sort, not that she was *bound* to inform them on the subject, but the communicating her intention was only an act of courtesy usual among people who desire to live on comfortable terms. It would be only natural for a husband on his return home to enquire where his wife was when he found that she was not within; and it would [illegible] ing his feelings as well as those of his relations to treat [illegible] negligence of this sort. At the same time the unavoidable [illegible] of these relatives to such inquiries might create dissatisfaction [illegible] annoyance, and such may have been the communications [illegible] her husband and his relatives to which she has attributed a [illegible] effect, without any departure from truth, or coloring, or any [illegible] intention on their part. A cause of very serious disagreement [illegible] at an early period, with which, any more than the little [illegible] on the marriage tour, his mother or sisters had no [illegible] whatever. It appears that both he and his wife had been invited [illegible] tea at Mrs. Sancton's; and Mrs. Hunter, without [illegible] his invitation to her husband, requested that he would call [illegible] at Mrs. Sancton's in the evening. On ascertaining afterwards [illegible] he as well as she had been invited, he appears to have been [illegible] much irritated, telling her, as he admits, that he did not [illegible] woman in one thousand, or ten thousand, who had been so [illegible]

married, would have treated her husband so; that she gave him reason to imagine anything he liked; that probably she expected to meet parties there she preferred to him, or would rather be without him; that to prevent misunderstanding in future, he was the head of the family, and he would not expect her to answer any invitation for him without consulting him. According to the defendant's statement all her reply was "I did not think you would go," and he told her she might have asked him. It is remarkable that Mrs. Hunter has been quite silent about this transaction, so that we have not her version of the occurrence. From the questions put by her Counsel, however, on the cross-examination of Hunter, it is intended to be inferred that her excuse for not telling him of the invitation was in consequence of his having previously declared that it was a busy time and that she must not expect him to go out to tea with her. It is not proved that he had stated this, and he says he does not recollect it. He had, however, made this answer on one occasion when she asked him to go to tea with her at her mother's, and it might probably have been a reason, though not a very good one, for not communicating Mrs. Sancton's invitation. But the circumstance mentioned by Mrs. Hunter's sister, and which first apprised her husband of his invitation, is irreconcileable with that idea. He says, on the way home her sister Emily said Mrs. Sancton had waited a long time for tea for him. Why she should have been allowed to do this, or to suppose that he was coming when the invitation had never reached him, all of which Mrs. Hunter could have explained, is certainly very extraordinary, and the annoyance and surprise of the defendant under the circumstances were by no means unnatural. This, as well as the previous occurrences on the wedding tour, go to show that independent altogether of jarrings arising from the residence in common of the two families, there were other occasions of sharp disagreement, which makes it very doubtful whether the procuring separate establishments would have been an effectual remedy.

I cannot but consider the ill-judged and unfortunate step which Mrs. Hunter took in leaving her husband in February, was intimately connected with, if indeed it did not lead to, the more serious breach that occurred afterwards.

After the intervention of friends and a long personal interview, she was induced to agree to return to his house, and after some delay did return; but the reconciliation does not appear to have been a cordial one. On his presenting himself at her father's, after she had agreed to go back, he was coldly received by him, as was not perhaps to be wondered at; but it is rather remarkable that the only specified charge Mr. Venning made was, that his daughter had told him on one occasion, when for three days they were without a servant and she was ill, she had been obliged to go down into the

kitchen and prepare breakfast while his sisters, as Mr. Venning added, were lying in bed,—he wanted to know if the defendant had married his wife to make a servant of her. The being without a servant for a few days is not an unusual occurrence. His sisters, no doubt, might have made themselves useful; but it does not appear that they ever did take part in the housekeeping, nor that on this occasion they were asked to assist, or her illness communicated to them. Hunter says he knew nothing about the matter, and Mrs. Hunter does not say that she had ever complained to him on the subject before she mentioned it at her father's. The result of the interview with his wife had been, that she had consented to go back, and he was to call for her at five o'clock; but when the time came she had changed her mind, whether, as she says, from being afraid to do so, or from finding her father averse to her doing so, is not very clear. Venning says he considered her too ill, but she had not made the objection on this ground, though she said she was too ill to go to the Institute, where he was very desirous they should appear together publicly that evening. It was unfortunate that having promised, she had not, even at some risk, been advised to keep her word. On receiving a letter of a very decided character from the defendant the next day, she did actually go back, and apparently without injury to her health. But the grace of her return was in a great degree marred by the delay, and her conduct had the appearance of trifling with her husband. No doubt it caused renewed irritation on his part both with herself and her relatives, which may account for the coldness of her reception. On her arrival at his house it would have been desirable to have forgotten the past as much as possible, at least to have abstained from referring to it, and to have resumed her position frankly and cheerfully, instead of which there was a new attempt to enter into stipulations. On her arrival, without taking off her bonnet, she says she wanted him to promise that if she went to see her mother he was not to be angry with her for two or three days after. That she had given up all her young acquaintances, but she still wanted to see her mother, and more to the same effect; to which he made no reply, only saying: "Why don't you take your things off—what do you sit there for?" She said, "Robert, promise me first." He replied, "Julia, if my answer depends upon your taking your things off you may sit there as long as you please," and then told her if it had not been that he did not wish his child born out of his house, he would neither have sent or gone after her. This was an unpromising commencement, and augured ill for the future. His language was harsh and ungentle, but the sort of speech with which she addressed him was calculated to convey a keen reproach. It does not appear that he had interdicted the society of her young friends, or her intercourse with her mother. What he complained of was, that she was so

much abroad, and went out without giving information of where she was going. He had promised she should have fire in her room, and sit more there, of which she availed herself; but he was not prepared for her withdrawing herself to so great an extent from the family. There was, no doubt, whether with or without reason, a strong disinclination on her part for the society of her sisters-in-law, and her manners do not appear to have been more conciliatory when she went back. According to her husband, on her return she took a stand; had a fire in her own room every morning, and sat there all day, except when he came home to his meals, and saw the members of her own family when they came in her own room. On being remonstrated with on this exclusive way of living, she told him that she would not sit with his mother and sisters, or near them.

The quarrel of Tuesday, before the final departure of Mrs. Hunter, is variously stated by the two parties. Mrs. Hunter says that after breakfast, as he was going out, she went out into the hall and asked him to step in the parlor, as she wanted to speak to him. She says: "I then asked him what was the matter, if I had done anything to displease him, and why he had treated me so coldly and indifferently. He said, I intend to treat you that way, and worse, until you learn to behave yourself." I asked him what I had done. He said I went to my mother's on Saturday, and to church on Sunday; *that* was the reason. I said, Robert, I have given up all my young friends, but I *must* go to see my mother. He might treat me unkindly, but I could not help it; I must go to see my mother. He got very angry with me then, and said—"You infernal little devil, you will come and ask me when you go, or I will kick you out of my house. I will beat you every day of your life if you stay here." With that he caught me by the chin and shook me. He was very angry. I said to him—"You are a gentleman, Mr. Hunter, to treat a lady in that way." His account is that on the occasion in question, she asked "why I had been so disagreeable to her for the last few days? I told her, in the first place, this infernal *running*, morning, noon and night, and I don't know where you are or what you are doing. For instance, I said, you went out on Saturday and did not return till 11 o'clock at night. You went out on Sunday to Zion's Church and did not return till we were in our church in the evening. You went out on Monday after dinner, and did not return till 9 o'clock at night, stopping out some place for tea, and I don't know where you were, nor do I know yet. She replied—Indeed! is that all? I am very glad to know. I will go where I like and when I like. I have always been accustomed to it, and I'll do it, and I don't care for you. I told her she was a little devil—that she might not tell me she did (not) care for me, for I knew *that*; that if she would go

out without my leave I would put her out of the house. She then stamped her foot and dared me to lay a finger on her. But he adds that he never attempted to beat his wife, nor threatened to kick her out of the house.

Here are two very different statements,—in the one, that of Mrs. Hunter, it is not very easy to see what could have enraged the husband in the gentle language she describes herself as using. In the other, although according to his own admission there was language on his part very harsh and improper, (the personal violence charged he does not admit) there were circumstances of considerable provocation in the defiant conduct and language of his wife, as he reports it. Moreover, the lady was wrong in supposing her actions were entirely under her own control. No doubt her husband might *lawfully* restrain her intercourse even with her own family if he thought proper, though certainly in ordinary circumstances a husband would exercise his marital authority very harshly who should impose such a restriction, but this he does not seem to have attempted. The same evening the quarrel was renewed in their bed room, and he fairly ordered her to pack up her things and begone—this both parties agree on. The cause was evidently, from the testimony of both, the answer she had given him in the morning. She says, "he said 'I will have no woman eating and drinking at my expence who will tell me she will go out when she likes.' She said she had gone once and he had come for her and promised to treat her better, and now she would not go." She did not, however, deny that she had asserted the right of regulating her own motions as she thought fit. She says this was followed by coarse abuse of herself and her family. Hunter's account is, that he told her when a wife would stand up and tell her husband she would go where she likes and when she likes, and that she did not care for him, he thought it was about enough. He adds, "I told her if she remained she would have to act quite differently; if she did not, I would put her out of the house. She told me I dare not put a finger on her, and stamped her foot and said, 'the idea of a *Hunter* putting his finger on a *Venning*.'" She says that on this occasion he threatened to murder her if she stayed, to beat her every day, and shook his fist in her face, that he would tie her neck and heels and pitch her into a cart and compel her to go, all of which he positively denies. She admits that on the threat of beating her she said it would be a sad day for him if he lifted his hand to a Venning.

This was all that passed on that occasion. Notwithstanding the violence of this quarrel, and the threats imputed to him, there appears to have been no actual attempt on his part then, or in the morning, to put her from the house, and the parties appear to have occupied the same apartment and bed as usual. The following day, in consequence as he says, of something which had been

told him by Mr. Ewing, he could eat no dinner, and his mother said she could not eat when she saw him in such a state. Mrs. Hunter says that this was in reply to *her* when she offered to help her mother-in-law to some pudding, and that she added, "Julia, you have got a kind, good husband," and left the room. This was stated in her cross-examination. In her examination-in-chief she passes over what took place at dinner, and only says that after his mother and sisters had left the table he said "he had as leave live in hell as with such a woman as I was," without stating what led him to use this unseemly language; but on cross-examination she says "he accused me of telling stories about town about him. He said Mr. Ewing of Boston had told him that every one was down upon him. He said it was me and my gang that were telling the stories about him." The defendant's account is that Mr. Ewing had come to him that morning and told him something which he stated to her to be that the whole town was down upon him for the *way she had been talking of him*, turning his former friends against him, and then referring to what she had said, that she would go where and when she pleased, he says he used the expression "he had as leave live in hell as with such a woman," and that he could hardly consider such a woman as his wife. After this, for the few days they continued to live together, they occupied separate bed rooms. Matters remained in this state until the final scene on the following Monday morning. Mrs. H. says when she went down to the breakfast room Hunter was there. She proceeds: "I said good morning, Mr. Hunter, where did you pass the night—were you in the street all night." He said, 'right well you know I was not in the street all night. I am not in the habit of spending my nights in the streets, but one thing I can tell you, I did not pass it with a vile, treacherous woman in my bosom.' I said I did not know but what he had. He then called me a lying little devil." On her cross-examination she says "when I said 'good morning Mr. Hunter,' I meant it kindly," which she repeats afterwards. "He would not answer me, and then I said 'how are you this morning.' I did not say it in a sarcastic manner. I wished to know how he was. I did not feel ugly or angry with him then. He made no answer to me and then I said 'did you pass it the street,' I put two questions. And she adds, 'when I said this, I did not say it for the purpose of insulting him. I did not intend to annoy him. When he said he did not pass it with a vile treacherous woman in his bosom, then I felt annoyed, and then I said I did not know but what he did." Harbus band's account of the conversation is that she addressed him, "good morning Mr. Hunter, how are you, how did you spend your night, was it in the street?" without any interruption. He answered, "right well you know it was not in the street. I have never been in the habit of spending my nights in the street." She then said she did not know

but probably he had. This was said in a tart sarcastic manner—he adds something more was said, which probably may refer to his allusion to a vile treacherous woman, which he does not deny stating though he does not admit it. Looking at the statement of Mrs. Hunter in her examination-in-chief, which agrees with her husband's in that respect, I apprehend that this was if not one continuous speech, and not two separate questions, yet that the pause was so slight that the effect was much the same. The Libel says that proponent asked the said Robert Hunter one morning where he had passed the night, and if it was in the street, and the answer states it in the same way.

Thus the libel, answer and examination in chief of both parties represent it as one consecutive speech. Hegan relates the circumstance as narrated by the defendant pretty much as Mrs. Hunter does, but on his cross-examination he cannot say whether it was all one sentence or not. The remainder of what took place is thus narrated by the wife. After denying her right to question him where he was, "he said, why don't you clear off as I told you to? I again said that I would not go, that I would stay then.' He again said he would beat me every day of my life if I stayed there. I said I was not afraid of him beating me. He said 'you are not—take that then.' He came across the room and struck me across the face and eyes with his hand. It stunned me and brought tears to my eyes. He was very angry—the mark of the blow remained till evening. This statement of the immediate cause of the blow is not corroborated by Hegan, who says, Hunter said the blow followed immediately on his saying, he did not spend his night with a vile, treacherous woman like her, and says nothing of a blow being given in proof of an intention to beat, which is the color given to it by Mrs. Hunter.

On cross-examination Mrs. Hunter says, "I was sitting in the rocking chair when he struck me. He was as pale as death." She proceeds; "I then said to him 'you are a mean, contemptible man to strike a woman—you are no man—you are only the ninth part of a man—a mean, contemptible tailor.' I told him I would go to the Police Office and complain to the Magistrate. He said 'now I'll clear you out of the house. Now I'll get rid of you.' He then went to the stairs and called to the servant to bring up breakfast. I put on my things and went to my father's store." *His* account is that after what had passed, as he had before stated, he got up to leave the room to escape further annoyance—he says "She got up too, and turning towards me said 'you are a devil—you are no man but a poor miserable tailor, only the ninth part of a man,' and that it was on her applying these disparaging terms to him, he said 'you little devil,' and gave her what he describes as a slight tap on her cheek with his open hand. She said," he adds, "in a very exulting tone,

'Oh you have struck me now, you devil—I'll have you in the Police Office in five minutes.' She ran up stairs as fast as she could and put on her things and went out. As she went out she said, 'Now I have caught you.'

There is an important difference in these two statements. The wife's statement is, however, so far corroborated by the testimony of John Hegan, inasmuch as he says Hunter mentioned to him on the same morning what had passed, and that the blow preceded the insulting language on her part. It is to be remarked that there is a coolness between Hunter and Hegan growing out of this matter, and the latter appears to be a warm friend of the wife. The evidence of Mr. Hegan was rather confused when relating the conversation, and there is a want of candor observable in one respect. He says the coolness commenced on Hunter's part. He met him on the street and Hunter would not notice him, and his evidence in chief would lead one to infer that he was quite unable to account for it. Upon a close cross-examination, however, he admits he had said to Mr. Whitney that he would be ashamed to be seen walking with Hunter on the street. If this had been his language previously, and it had come to the defendant's ears, Mr. Hegan could not have been surprised at the conduct of the defendant in passing him without notice. Mr. Bennet, on the other hand, who appears perfectly friendly with both parties, says Hunter always told him that the blow was the *result* of her remark. This, however, is only his own statement in his favor, and therefore, though the matter is not free from doubt, the evidence preponderates against him on this point, and it must be taken that the blow was *followed* by the contemptuous language of the wife. What then was the provocation which led to it? He accused her of going about with stories to his disadvantage respecting the usage she received. That these stories were current about the town, there can be no doubt. He had heard of them in various quarters, repeated probably with the usual exaggeration; he had found them most damaging to his character and destructive to his happiness. As I have already stated, the step she had taken of leaving his house in the winter, and the negociations which led to her return had made their differences a public topic. She denies that before she first left she had spoken abroad of their domestic unhappiness, but she admits that after her return, when her friends and relations made enquiries of her if things were pleasanter, she would answer they were not so, but that she would put up with anything till the spring. For the sake of peace, and on every consideration, while she was living with her husband the topic should have been *absolutely prohibited*, and even the guarded admission thus made could account for the spread of the unfavorable reports that were abroad. The conversation with Mrs. Margaret Hunter at the house of the latter shows that these conversations were not confined within her own doors, and further, that her feelings towards her husband were not amicable.

It is difficult to imagine how stories of this kind, if not absolute inventions, unfavorable as they were to her husband, could have got abroad, except through the observations of herself or those who had conversed with her, although it might be very difficult to trace them. That they were calculated to render the life of her husband miserable there can be no doubt, and looking at her proceedings as the source of this trouble and annoyance to both himself and his family, he could not fail to have been incensed. Bearing this in mind, and that these matters had been

so recently and painfully forced on his attention by his conversation with Ewing, the irritated state of his feelings on the Wednesday preceding her departure, and the withdrawal from cohabitation which ensued is accounted for. The subsequent violence on the Monday following is wholly unjustifiable; notwithstanding any reason he had, or thought he might have had, nothing would justify a blow, and his conduct was unmanly in assaulting a woman, particularly his wife, and in the circumstances in which she was, even in the slightest manner. On this there can be no difference of opinion. The question however remains, was this act committed under such circumstances, that sort of cruelty which coupled with what had preceded it, justifies a Court of Justice in putting those asunder who had pledged their solemn vows for better and worse to be companions for life. There had, no doubt, been a severe disappointment to the husband in the happiness he expected and which he had a right to expect from his marriage; his wife had not been disposed to conciliate the regards of his family with whom he had lived in great harmony. There was evidence of something approaching aversion for them, which she does not appear to have been at much pains to conceal; and there had been an assertion of independence on her part which he thought, and not unjustly, was incompatible with the duty of a wife.—There had been finally the injury to his character, which had formerly stood high, by the reports abroad, which had undoubtedly grown out of the connection he had formed, and which there was reason to suppose were traceable to her. Looking to this, it seems to me on the best consideration that I have been able to give to the evidence, and on the most mature reflection, that though the husband has been in many respects very much to blame, it is not a case in which a decree of separation should be pronounced. The blow is not such as caused at the time any serious injury—it cannot be looked upon as either menacing life or health, it was inflicted under circumstances of exasperated feelings and certainly considerable provocation, when the wife had been the aggressor by asking the very unnecessary and taunting question to her husband, as to whether he had slept in the street when she had every reason to know he had passed the night in the adjoining apartment to her own. There has been a blow on the one side and whatever the smart may have been, it was retaliated if not caused by language the most stinging and severe on the other. I dismiss all idea that the lady was in fear of serious ill usage. She said she was not afraid; and there can be no doubt that no woman in fear of a man, as she describes the defendant pale with anger, would have ventured on the bitterly contemptuous language she made use of.

There is a very serious charge at the conclusion of the Libel, in the 17th Article. The allegation is as follows: "That a short time before leaving her husband's home the proponent, owing to trouble and anxiety of mind arising from the ill-usage of her husband, was taken ill, during which illness no attention whatever was paid to her by her husband or his mother and sisters, and but for the kindness of a neighbor, who seeing proponent's state insisted upon sending for a physician, proponent believes she would have died." The evidence in support of this charge is, that Mrs. Hunter was ill, and that she was kindly attended by a neighbor (Mrs. Sancton) whom she had sent for. On the arrival of that lady she went into a fit, and Mrs. Sancton rang the bell and desired that some of the family should be called. Old Mrs. Hunter and Miss Hunter

came, and she told them to send for a doctor. Mrs. Sancton says she did not see old Mrs. Hunter do any thing. Hunter came in, and Mrs. Sancton went down stairs and met him. He seemed, she says, quite angry; said his wife was running about the streets talking about him, and made herself ill; and said as soon as she got well she might clear out as soon as she pleased. In fact, his language was that of an irritated, angry man, very harsh and unjustifiable, particularly in the state his wife then was. He seemed, she repeats, quite angry. Mrs. Hunter was ill, she says, several days, and she went several times to see her. Her sister came to attend her. She never saw the Miss Hunters in the room assisting her. Mrs. Hunter was always alone when she was. This undoubtedly shows the extreme want of cordiality between Mrs. Hunter and the ladies of her husband's family; but it does not decide who was to blame; at first sight it conveys the impression of gross neglect on their part, which the libel imputes. But it does not appear that the family knew of her illness till they were summoned to the apartment by a neighbor who had been sent for. If Mrs. Hunter had desired the attendance of her mother or sisters-in-law would it not have been as easy to have had the servant ask one of them to come to her, as to send out of the house for a neighbor? Those ladies, finding Mrs. Sancton there, might reasonably suppose that that lady's services were more acceptable, and, moreover, were not likely to feel greatly pleased at another person taking the charge and giving directions which more properly belonged to them, or at the censure of themselves implied by sending to a neighbour. Mrs. Hunter was attended by her own sister, and it is to be presumed, if her illness had been such as to require it, her own mother or some other of her relations would have been ready to aid her, and indeed her mother and sisters were with her when the Doctor arrived. With this abundance of aid at her command, I cannot think, therefore, there were grounds of any imputation of inhumanity to old Mrs. Hunter or her daughters, though a more attentive conduct would have appeared more amiable. Mrs. Hunter says her husband addressed to her the same sort of language which Mrs. Sancton speaks of—about clearing off home as soon as she was able to, and that he would not trouble himself to bring her back again. What the immediate cause of irritation was, does not appear; but it was probably connected with what he heard abroad of the reports in circulation, which seemed to have made him suspicious even of the visit of Mrs. Sancton.

Mr. Hunter's account of this illness was, that the night before, his wife mentioned a pain, which at her instance he endeavored to relieve by rubbing; that the next morning the servant came to the store for him, when on [illegible] at home he found Mrs. Sancton in his wife's room—that he rem[illegible] the forenoon, and treated her as kindly as he could. She prop[illegible] advice [illegible] Doctor, and he asked if he had not better g[illegible] Sinclair, who was their family physician. She objected to him as being an unmarried man, and said she wanted Dr. Botsford.—He strongly objected to having Dr. Botsford, on the ground of his having been, as he said, an enemy of his late brother, with whom Dr. Sinclair had been a student. He then suggested Dr. Livingstone as an elderly man, and a skilful one, or any other in the City than Dr. Botsford. It does not appear the suggestion was adopted. However, in the evening, after sending up tea for herself and her sister, who was then with her, and whom he did not desire to meet, on hearing that she was suddenly taken very ill he went up and proposed himself going for Dr. Botsford,

which he accordingly did; but not finding him at home, he ascertained where he was, and went there and asked him to come and see his wife, which he declined doing, on the ground of being otherwise engaged. On his reporting this on his return to his wife she made no further objections to his going for Dr. Livingstone, which he accordingly did, and she was attended by him during her illness. She appears to have been so well satisfied with him that she employed him afterwards to attend her during her confinement. Dr. Livingstone's evidence is important, he being on friendly terms with all parties, and having attended Mrs. Hunter not only at her husband's suggestion, while under his roof, but also at her own request after she had left him. He can scarcely therefore be suspected of an undue bias either way. He accounts for her illness very naturally. The immediate cause of her illness he says was from neglecting her bowels. She was slightly hysterical, and irritation of the mind *might* produce hysterics; but hysterics may be produced by neglecting the bowels without any irritation of the mind. The state of the bowels he says is common to women in her condition. He says he saw nothing in Hunter's conduct that looked like neglect, and nothing in his language or conduct that was anything like unkindness. Hunter, he says, went for him and returned with him, and went into the room with him. If medical attendance had not been procured he thinks it might have produced premature labor. This is all the evidence in regard to this point, and looking to it throughout, I cannot but think there is very little foundation in support of this very serious article of the libel.

In his evidence Mr. Venning, who in this case must be considered as identified with his daughter, and has brought two actions at law against the defendant for the maintenance of his daughter, says,—that when her child was born it had a mark across its face similar to the mark across his daughter's face that he observed on the morning she left her husband. It is singular that neither his daughter or her mother, however, have attested to a circumstance which it may be supposed they would have been quite as quick to notice, and if so, would likely have called the attention of the Doctor to it, but Dr. Livingstone entirely ignores the existence of such a mark, and says, it must have been very minute if he had not himself observed it. He moreover evidently disbelieves in any such effect being produced by a blow of the nature described, though a blow he says might have occasioned premature labor.

There is another charge in the Libel of Mrs. Hunter, on one occasion asking the defendant for money which she required, and being unkindly refused, and that the defendant told her if she did not look after his house she should not get any money from him. But the libel omits the important fact, that, though on the occasion in question, he did at first refuse, and took the opportunity of reproving her for her want of interest in the house, yet he did in point of fact, and at that interview, supply her with the money she wanted. This is the only occasion on which it is alleged that she was refused money when she required it.

I have been compelled to go into this case at great length, from the necessity of carefully sifting the evidence on which it depends, particularly that of the parties themselves who have been called on to give their own history of transactions of so much delicacy, and their accounts varying in many particulars, though I do not impute to either a disposition willfully to mistake facts. Neither party has been free from blame. The charges as respects the family of Mr. Hunter have very little to

support them. The instances of interference on the part of the sisters are trivial in the extreme. Against Mrs. Hunter there is still less. It is alleged in one article of the libel that both Mrs. Hunter and her daughter took every opportunity of insulting the proponent. This is not only improbable but it is unsupported by evidence, and quite inconsistent with the sentiments of respect which Mrs. Hunter professed to feel for her mother-in-law though not for her sisters-in-law.

The language of Mr. Hunter and his threats were objectionable in the extreme as proved by Mrs. Hunter, but his own account varies very much from hers, and the threats of sending her from the house always seem to have been coupled with the condition, unless there was a change of conduct on her part, and never were followed by any act of expulsion, unless the blow or slap in the face can be so considered. That, however, wrong and reprehensible as it was, was rather the result of sudden provocation under very peculiar circumstances, than a deliberate act. That sort of cruelty, which in the eye of the law calls for the decree of divorce, I do not think, on the best judgment I have been able to form, and looking to the conduct of both parties, has been established.

The language of Sir Wm. Scott in Evans *vs* Evans, 2 Hag. Ec. R. 37, is as follows: "Everybody must feel a wish to sever those who wish to live separate from each other, but my situation does not allow me to indulge the feelings, much less the first feeling of an individual. The law has said that married people shall not be legally separated from the mere disinclination of one or both to cohabit together. "Though in particular cases," he adds, "the repugnance of the law to dissolve the obligation of matrimonial cohabitation, may operate with great severity upon individuals, yet it must be carefully remembered that the general happiness of the married life is secured by its indissolubility. When persons understand they must live together, but for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off, they become good husbands and good wives; for necessity is a powerful master in teaching the duties it imposes. If it were once understood that upon mutual disgust married persons might be legally separated, many couples who now pass through the world with mutual comfort, with attention to their common offspring, might have been at this time living in a state of mutual unkindness, in a state of estrangement from their common offspring, and in a state of the most licentious and unreserved immorality;" and the policy of law is against sanctioning on slight grounds that state of things by which, as the same judge says, "persons are to pass their lives in the character of husbands without wives and wives without husbands."

The cases of Evans vs. Evans and Waring vs. Waring show the necessity of making due allowances for the excitement or exasperation of the feelings under which evidence is delivered in cases of this sort, even by third persons; much more is it now required where the parties themselves are admitted to testify, which was not allowed when those cases were decided. In the very recent case of Thwaites vs. Thwaites, before Sir Creswell Creswell, however, the lady was a witness for herself under the new law, and she swore to various acts of cruelty which were not established, but it was acknowledged by her husband that he had on one occasion boxed her ears, and that was for calling him a liar. The learned Judge said he did not consider that an apology for the husband, for the thing was very wrong; but he, nevertheless, regarded it as a reason-

why the Court should not interfere, and the prayer of the petition was refused.

I do not think it necessary to go further into the circumstances subsequent to the separation and the birth and baptism of the child, but I may express my regret that if these parties cannot be cordially reconciled and live together as man and wife, which I still hope may not be impossible, that the overtures of the defendant who does not appear to have been indisposed to make an allowance for his wife, to Mr. Venning had not been met in a way which might have led to a compromise—a compromise which it may be still hoped may not be impracticable.

With these views on the case, I am of opinion the Libel must be dismissed.

J. A. & W. STREET, Proctors for Proponent.

BAYARD & THOMSON, Proctors for Respondent.