

1868-007
Nansemond, Co.

Chancery Causes: Thomas S. Kilby vs. Nancy Elizabeth K. Kilby

Wyatt, Hargrove, Parker, Peck, Jordan, Arthur,

Kelly

in Kelly: Notes

Kelly -

1866. Sum. in Chy: Spaw returned executed

" Feb: 7th: Bill filed - Conditional decree
in debt.

" " 17th: Depositions filed

" March 5th: Conditional decree confirmed
& Cause set for hearing.

" Apr: 17th: Decree for divorce & to remove the
Cause from the docket &

1868 Apr: 22^d Petition of Thos S. Kelly filed - & decree
for children to be placed under his con-
trol. &

Chy: Notes

Virginia:

To the Honorable Richard M. Baker, Judge
of the Circuit Court of Hanseman County, complaining
shew unto the Court, your Complainant Thomas S. Kilby
of Hanseman County aforesaid. Your Complainant
respectfully represents to the Court and says, that on
the 2^d. day of December 1858, he was lawfully married to
Mary Elizabeth Hyatt, in Hanseman County aforesaid,
by the Rev^d. Reuben Jones, a minister of the Baptist Church,
and duly licensed to celebrate the rights of matrimony, as
well appear by a duly certified copy of said minister's
return to the clerk's office of said County filed herewith
as part of this Bill marked (A.) —

That at the time of said marriage, he resided in
the said County, and has so resided there ever since,
and is now a resident of the same, and which
County is the last wherein he cohabited with his said
wife.

That at the time of his marriage, his
said wife was also a resident of said County —

That at the time of his marriage, he was poor, but
has always conducted himself with propriety, and had
won the confidence and esteem not only of his im-
mediate acquaintances, but of the community in
which he resided, and in obtaining the affection
of the Lady of his choice (and who had his in return)
he hoped to enjoy a reasonable share of the happiness
allotted to man here in this life. That his wife
was attached to him & they lived happily together till
the fall of 1860 when without cause and under
some influence never revealed to your Complainant

she abandoned your Complainant, and deserted him this home, and has ever since, that is to say, from the 5th day of November 1860, continued to do so. That at the time of such desertion & abandonment he was living in the Lower Parish of Stannard County, near Hargrave, Tavern, and was carrying on the same the same business and was doing a good business. That he had erected near by his mill, a plain house, but comfortable, into which he moved with his wife & two infant children, and was living in a manner suitable to his limited means, and in all which, his said wife seemed to take an interest, and appeared contented and happy.

That a few days, before the separation & desertion, his said wife went on a visit to her father & mother, living a few miles distant, and your Complainant took leave of her, expecting her return in a few days, but not returning as expected he rode to her father's to look after, learning that she was sick, not dreaming of the calamity in store for him and ignorant of the determination of his said wife to abandon and desert him. That on arriving at her father's house, he sent word by a servant, that he had come for her to go home, whereupon, her mother, came to the door, and said that your Complainant, must come some other day as her daughter was sick. He went to the door, as naturally he should, to see his wife, and to his surprise found the door locked, and

was refused admittance, and had to return without her. Her father, met him, near the house and said he would bring her home next day, but she did not come, and has never yet done so.

Not your complacant, being anxious to know the cause of such desertion & being greatly distressed at the event, he consulted friends, who advised him to write his wife, on the subject, and he accordingly did so, and sent a letter by Mr. Lem J. Arthur, who was refused admittance to her presence — Not despairing of coming to some understanding & reconciliation, he again got Mr. Sime B. Brewer (now dead) & Mr. Jas. A. Parker, to visit her & to learn what was the matter, & hoping thus to bring about a reconciliation; they visited her father, where she was & made known their business, but they were refused admittance & an interview — That finding that his wife under some strange influence, and without cause had deliberately abandoned him and deserted his bed and board, he had to submit to his fate, and wait to see, what time might bring about. But so it is, that there has been no manifestation of any wish to be reconciled to him, on the part of his wife, but the contrary, and having given up all hope of any reconciliation, and having lost by the extraordinary and cruel treatment of his said wife to him, that affection, which he had for her, and, her abandonment and desertion, having continued for more than five

year: Your Complainant is constrained with
deep mortification, to ask this Court, to release him
from the Bonds of Matrimony, which he has as
above stated, entered into, and to grant him a di-
-vorce a vinculo matrimonii, from his said wife,
Mary Elizabeth.

Your Complainant, further says, that as yet he
is young, and not knowing what his future may be,
prays this Court, to grant him the privilege of marrying
again, should he ever desire so to do; and not desiring
to inconvenience and restrict his said wife, in
any of her future movements, he prays that the same
privilege may be granted to her.

In consideration whereof, and for as much
as this Court has jurisdiction to grant the relief asked,
To the end your Complainant prays, that the said
Mary Elizabeth Kelly may be made defendant
herein, and be required to answer the allegations
herein - That a divorce, from the bonds of matrimony
as aforesaid, may be granted your Complainant,
and that the privilege of marrying again may be
be allowed your Complainant, and also to the
defendants, and that such other and further relief
may be granted consistent with right and, &c.

Thomas J. Kelly
by John R. Kelly his atty.

Killy p. v.

Thomas S. Killy

7 3 Bee &c.

Mary Elizabeth Killy

Naus? Cir. Ct.

Kilby

2 3/4 turned

Kilby

filed 17 April 1966

1
The answer of Mary Eliza Kilby to a Bill
in Chancery exhibited against her by
Thomas S. Kilby in the Circuit Court
of Chancery County answering says
That it is true as alleged by the Complainant
that he the said Thomas S. Kilby was on
the 2nd day of December 1858 lawfully
married to your Respondent in Chancery
County aforesaid and that the said County
is the last in which the said Thomas S. Kilby
has cohabited with your Respondent. That it
is also true that your Respondent in the Fall
of 1860 abandoned the Complainant but your
Respondent denies that it was without cause
or any undue influence except such strong
and proper cause and influence as justified
and required the abandonment.

Your Respondent states that when she married
the Complainant she loved him sincerely and
entered into the marriage relation with a full
determination to do her duty to her husband
faithfully and affectionately as a good and
dutiful wife should do; that she sincerely
believed that the Complainant was sincere
sincerely attached to her and would make
her a kind and affectionate husband and
that she had reason to expect the utmost
concord and happiness in her conjugal relations

Your Respondent grieves to say, however, that shortly after her marriage she found she had been greatly deceived in the character and disposition of the complainant.

Your Respondent however knew that she had taken the complainant for better or for worse and while she ^{could} ~~cannot~~ not but regret and lament the defects in his character she still loved her husband and resolved to do her duty as a true wife and to endeavor by showing him every mark of affection and every care for his comfort to gain the love she once thought confidently that she already had. To her bitter disappointment these efforts were unavailing; every demonstration of affection on her part was met by coldness or absolute repulse on his ^{part} and every act of submission to his imperious will and selfish requirements only gave rise to other demands more unreasonable than the first. Every day gave rise to some new slight or open neglect or actual cruelty and while in public he restrained his temper, in private he was violent beyond degree having on several occasions threatened her with personal violence from the commission of which she believes he was only deterred by the fear of punishment.

Your Respondent alleges that the ill treatment was not confined to herself but was extended to her child (for it was

not until after she left him that the
second child was born - to whom he
never showed any mark of parental
affection, but on the contrary manifested
the most ungenerous indifference and
even dislike. That he has never given ~~them~~
your Respondent or her children even the
necessaries of life all of their clothing and
nearly all of their sustenance being provided
by her Father while she was still under the
roof of the Complainant and legally entitled
to a support at his hands. Your respondent
would state as one of the many incidents mani-
festing the spirit of the Complainant towards
herself and child that upon one occasion
previous to her abandonment of the Complain-
ant while on a visit ^{at} her Father's house
she was aroused ~~about~~ about 3 o'clock in
the morning by a noise and turning over
to see what was the matter she saw their child
then a little babe lying bruised on the floor
apparently dead. That the Complainant
refused to send for a Physician to ascertain
the extent and prescribe for the child's
injuries and that thereupon her Father sent
for Dr. J. S. Jordan of who lived near them
and who said that the injury ~~must~~ have
been caused by a violent throw which came
very near producing concussion of the
brain; that the child lay in a state of
insensibility a day and night - that the

might prove to the injury of the child.
The Complainant had been abusing it
and wished it dead and Your Respondent
believes that it was injured by the hand
of its own Father. That the Complainant
refused to pay the Physician for his
services in this matter and notified him
that he would not pay for any services
rendered her or her children as she
is informed and believes and that
subsequently her Father paid the
Physician his bill.

Unfortunately for Your Respondent
the very nature of the relation ~~exists~~
existing between the Complainant and
Your Respondent renders it difficult
and in most cases impossible to prove
the many outrages put upon him by
the Complainant as the Court will
readily perceive, that a man who
~~could~~ maltreat his wife would take
care to do so in the absence of witnesses
while many acts cruelly significant
in their attendant circumstances appear
comparatively insignificant in their
~~attendant circumstances~~ ~~when~~ ^{when} stripped
of those circumstances.

Your respondent will not dwell upon
 these matters knowing that the Court
 will appreciate the difficulty of proving
 acts of cruelty from man to wife or even
 of specifying minutely the daily conduct
 which in married life makes up the
 sum of refined and persistent cruelty.
 Your Respondent alleges that from two months
 after her marriage up to the time of
 her abandonment of the Complainant she
 had endured the ill treatment and abuse
 of her husband as patiently as human
 nature could do that she had kept it
 as far as possible even from her own
 family altho her Mother (now dead) with
 a Mother's instinct had divined the
 unhappiness of her child & penetrated
 its cause. At the time Your Respondent
 abandoned the Complainant she was
 in that delicate situation which appeals
 most strongly and most tenderly to every
 feeling husband in which she required
 the tender care of some near friend
 That in this situation she received none
 of that kind consideration she was
 entitled to expect and was allowed no
 servant the only attendant she had
 being a little negre girl which her

own Father had sent to wait upon her
and that she often was without proper
and sufficient food.

Your Respondent states that at the time
of her abandonment.

Your Respondent states that at the
time of her abandonment finding the
period of her confinement drawing
near and there being no female in the
house save the negro girl referred to she
asked her husband to allow some of her
family (whom he had forbidden to
enter his house) the privilege of coming
to see her and care for her at the expec-
ted time to which he replied No! He
would kick them out of the house
- the first one that entered it.

Under these circumstances unable to
help herself, not knowing when she
would be seized by the throes of
childbirth with no prospect of a
physician's assistance her husband
having refused to send for one on
previous occasions with no one
near save her husband from whom
she had received and expected nothing
but harsh treatment the instincts
of self preservation and of maternal
love for the unborn infant prompted
and compelled her to take steps for

the safety of herself and child.
This was the influence confirmed by
the many and persistent wrongs she had
received at the hands of the Complain-
ant that impelled her abandonment
of him and under this influence she
sought the shelter of her Father's
house.

Your Respondent alleges that she did
not wilfully abandon the Complainant
but that that abandonment was forced
upon her by the cruel treatment
she received from her husband and
that the Complainant has no right
to a divorce from the bonds of matrimony.
Your Respondent declares that in
view of the past and on justice to herself
and children she has made up her mind
never again to live with the Complain-
ant. And she prays that her
children now of that tender age
most requiring a Mother's loving
care and the only solace of a life
embittered and forever darkened by
the conduct of the Complainant
may be allowed to remain with the
only parent who has any natural
affection for them and not given over
to the same neglect and cruelty which
their Mother has suffered.

And your Respondent asks that the more confidently that the Complainant in his bill shows that he is indifferent alike to children and wife not even raising the question of their custody and your Respondent can well believe that he is tired of both.

Your Respondent has felt that it was due to herself and to the Court to explain the circumstances and causes which led her to the painful yet necessary act of abandoning her husband. Those causes are such that they cannot be proved by other witnesses being known only to the parties and to God but your Respondent solemnly avers them to be true and appeals to the Searcher of all hearts for their truth.

As she has ~~expressed~~ avowed her purpose not to return to her husband she cannot properly object to such a decree as the Court under the circumstances deems that it has a right to grant and will acquiesce in it provided that the custody of her children is secured to her to which she is advised, she is entitled by reason of their tender years and to which she hopes and believes there will be no objection on the part of this Complainant.

City of Norfolk Court

I Westwood Atwood a Notary Public for the County of Norfolk in the State of Virginia hereby certify that Mary E. Kelley made oath before me that the facts stated in above answer of her own knowledge are true and those ~~stated~~ stated on the information of others she believes to be true. Given under my hand this 14th. April 1865
Westwood Atwood Notary Public

Thomas S. Kelly Jr

v

Mary E Kelly

This cause which was removed from the docket at April Court Term of this Court 1866, with liberty to either party to make application to the Court for such further order as are authorized by Law, came on to be heard again on the Petition of Thomas S. Kelly this day filed by leave of the Court, and on consideration whereof the Court doth order that the said Thomas S. Kelly take charge of his two Infant children the issue of his marriage with said Mary E. whose names are ^{he have the} and that ~~the~~ exclusive care, custody and control of said minor children ~~be given to the~~ be free from the control, management or interference in any way of said Mary E.

Thomas S. Kilby

by

Mary E. Kilby

April 10 1868

To be entered

R. H. Baker

Entered

Killy

v

Killy

This cause, in which the process, has been duly executed, came on to be heard ~~on the~~ ^{on} ~~the~~ ~~case~~ of the Complainant, and ^{on} the answer of the said Defendant, this day filed by leave of court, & a general replication to said answer, and an examination of witnesses, and was argued by Counsel; On consideration whereof the Court, being of the opinion that the charge of abandonment and desertion by the Defendant of the ~~couple~~ ^{couple} ~~plaintiff~~, is fully proved, doth adjudge, order and decree, that the marriage heretofore solemnized between the said Thomas S. Killy and the said Mary Elizabeth, he & the same is hereby dissolved, the said Thomas S. Killy separated from his said wife, the said Mary Elizabeth, and all the right, title and interest of the said Mary Elizabeth in or to the estate real and personal of the said Thomas S. Killy shall henceforth cease and determine.

and it is further adjudged, ordered &

ordered, that for the present, the two
Infant children of the plaintiff & deft.
now ~~under~~ the care and control of said
Mary Elizabeth, remain with her, and
under her direction and care - and
~~it ordered that each~~ the Court
doth adjudge order and decree that
the said Thomas S. Kelly and the
said Mary Elizabeth, be and they
are hereby allowed & authorized to
may again to whomsoever they may
~~think proper~~. And the Court
doth order that each party pay
his or her costs -

And nothing further re-
maining to be done in this suit
it is ordered that the same be removed
from the Docket: but leave is reserved
to the parties ~~or either~~ of them, to
make application to the Court for
such further orders as are authorized
by Law.

Killy
n

Killy

1866

ape^{17th} Ch. seen
"

To be entered.

R. H. B.

Entered

To the Hon. R. H. Baker, Judge of the Circuit
Court of Stanswold County.

The undersigned Thomas S. Kelly respectfully represents to the Court, that early in the year 1866 he filed his Bill in said Court against his then wife Mary E. Kelly for divorce from the Bonds of Matrimony, and that at the April Term ¹⁸⁶⁶ of said Court a decree was granted by said Court divorcing him from the Bonds of Matrimony, from the said Mary E., and allowing each party to marry again, if they should think proper — That at the time of the granting of such decree, there were living (now living) two Infants children of such marriage, to wit Sallie & another —

That your petitioner not desiring at that time to appear harsh in his demands, on purpose did not then ask that the custody of said Children should be taken from their mother, preferring to await her future course, but reserves the right to seek & demand his right to the custody of said Children at the proper time, should circumstances make it proper —

That since then the said Mary E. has married a man, unable to take care of the said Children & educate them as they should be, now he willing to do so, and one whose

condition in life and associations, however
respectable, are not such as your petitioner
thinks these children are entitled to &
which he can give them - That the mother
of these ^{children}, has by her marriage with her present
husband placed herself & these children
under the control of parties & surrounded
by associations & circumstances, which
he is unwilling should continue, and
now believes it his duty to seek to have
possession (and control these children
that they may be educated & raised
under such care & with such associations
as will enable them to occupy useful
& respectable positions in society -

That your petitioner has also married
again (and is gratified to say, that his
present wife is a lady of excellent worth
and christian ~~character~~ ^{character} & family, with
associations honorable (and respectable
and is willing to adopt these children
and do by them a mother's part.

That desiring that these (his) children
should be education & raised among their
real friends, and where their morals and
training shall be such as to make them
useful and respected, Respectfully prays
that these children may now be placed

under the care and custody of
your petitioner their legal and
rightful protector —

That when the decree of divorce
was granted as aforesaid, liberty was
reserved to apply to this Court for further
order relating to the care and custody
of said Children

He therefore prays that this Court
will make an order authorizing your
petitioner to take charge of said Children
to wit:

and to control them share the care and
custody of the same, free from the in-
terference in any way of said Mary E.

(And your petitioner will ever
pray &c.

(signed)

Thomas S. Riley

Thomas S. Kilby

vs { Petition

Mary E. Kilby

1868. April 22nd. Filed
cl No

Depositions Taken at Hargrove,
Tavern on the 15th day of February
1866 before John W. Jones, a Justice
of the Peace for the County of Stannum
in pursuance of Notice hereto
annexed to be read on behalf of
the plaintiff in a certain suit
in Chancery in the Circuit Court
of said County in which Thomas
S. Kilby is plaintiff and Elizabeth
Kilby is Defendant.

James Hargrove being duly sworn
deposes as follows.

Question by plaintiff's attorney

1 Where do you reside and how old are you?

Ans I am fifty one years old and reside
in Stannum County two miles from
Hargrove Tavern & have been living
in said County twenty five years and
at my present residence four years

2 Do you know the parties to this suit
and how long have you known them

Ans The plaintiff boarded with me while
putting up his ^{Saw} mill in this neighbor-
hood ~~in~~ in 1859 or 1860 and I have
known him from that time to the present

I know Mrs. Kilby when I see her
but I have no special acquaintance
with her.

3 What was the general deportment of
the said Thomas S. Kilby whilst in
the neighborhood and especially
as to industry sobriety and
integrity

Ans His general deportment was
very good. I never saw a more
industrious man; his sobriety
and integrity were very good and
no man stood higher in my estimation
than he.

4 What was his deportment towards
his wife and family whilst living
in the neighborhood.

Ans I thought he tried to do his part
by his wife and family as well
as any man I knew of. While
boarding with me he built a
house for his family and so
anxious was he to get it done that
he worked ^{almost} night and day on it

5 So far as you know was there any complaint on the part of his wife or others as to his treatment of his family

Ans That I know in person but report said that she was not satisfied after moving here with the location - was satisfied with living in that low place meaning wet and damp location

Cross examined by plaintiffs defendants Counsel

1 Did you have any opportunity of knowing whether the relations subsisting between the parties to this suit were of the kind which should exist between man and wife

Ans I did not

2 What was the character of the dwelling which he built for the reception of his wife & family as to dimensions & other details

Ans It had two rooms in it below and was lathed & plastered; it seemed to be quite a comfortable cottage.

3 Were you even in the house before or after Mr & Mrs Kilby went to live in it

Ans I was in there whilst it was being plastered & even afterwards. I think was in it once after they went to live in it but I am not sure.

4 Do you know whether Mrs & Mrs Kilby were visited socially by their neighbors or whether they lived a secluded life

Ans I don't think she stayed there long enough to be visited by the neighbors. She did not like the place and did not stay there long at a time.

5 Did you never hear that Mr Kilby was harsh and severe in his family and that they did not live happily together.

Q. I heard that Mrs. Kilby said that she could not live satisfactorily with him but this is only a report. I did not hear her say so.

Q. Did Mr. & Mrs. Kilby live in any other house near his place than the one you alluded to as a comfortable cottage - if so state the condition of the house.

A. They did not live in any other house to my knowledge.

Re-examined by plaintiff's Counsel

Q. Was there any objection so far as you know on the part of the neighbors to visiting the parties on account of the social standing of the plaintiff or the dwelling he lived in or the business that he followed?

A. None that I know of and further this deponent saith not.

James Hargrove

James H. Parker being duly sworn deposed as follows.

1 How old are you when do you reside and how long have you there resided and do you know the plaintiff and if so for how long

Ans I am thirty five years old, live near Suffolk & resided there all my life. I have known Plaintiff almost all his life.

2 State any facts which you may know relative to the separation of his wife from him

Ans Mr Kilby came to my house and requested that I get Mr Brewer and come to his house which would see if we could not get his wife to come back to live with him. While there he wrote her a letter and gave it to Mr Brewer after reading it to us. We then started for Capt Wyatts where she was then living and found Capt Wyatt at Mr Gaskin's. Mr Brewer had an interview with Capt Wyatt in which Mr Brewer

That Capt Wyatt said
said, he would not allow the letter
to be delivered to Mrs Kilby neither
would ^{he Capt Wyatt} ~~she~~ let him (Brewer) have
an interview with her. Mr Kilby
desired Mr Brewer to have an interview
with her but it was not allowed by
Capt Wyatt. Capt Wyatt then told
Mr Brewer that he was sorry about the
separation of his daughter & Mr Kilby
- that it was final & he could do
nothing with it. Mr Brewer & I then
went back to Mr Kilby's. Mr Brewer handed
Mr Kilby the letter which he had given
him - stating that he could do nothing
for him and advised him to sell and
or leave the neighborhood and make
no further effort to get his wife back
as he thought it was useless. Capt Wyatt
is the Father of Mrs Kilby.

3 When did these occurrences take place

Ans about November 1860, a few weeks after
she left him - I won't be positive as
to the time. I am positive as to the year
but not as to the month.

4 What was the tenor and purport of the letter referred to

Ans It was a very affectionate letter, desir-
ing her to come home

5 What has been and is the social position of the plaintiff & particularly what was his character for industry, sobriety and moral integrity. At the time of his marriage he was worth nothing.

Ans Good.

Cross-examined

1 You say you have known Mr Kilby all your life - Did you ever visit his house during Mrs Kilby's residence with him?

Ans No.

2 Were you a particular friend of Mr Kilby's

Ans Yes.

3 Had you any opportunity what ever of knowing the treatment of Mr Kilby towards his wife at home.

Ans No

4 Did Mr Kilby state to you & Brewer what reason Mrs Kilby assigned for leaving him or did Capt Wyatt state the grounds for her leaving him?

Ans He did not nor did Capt Wyatt and further this deponent saith not

James A. Parker

Ammon Peck being sworn deposed as follows
 1 How old are you - where did you reside and
 where did you reside in 1859, 1860 & 1861
 and what was your occupation during
 those years.

Ans Twenty Six years old. I live in Saratoga County
 A part of the time in Troy in Saratoga
 County & part in Champlain in 1860 in Cham-
 -plain in 1861 part in Champlain &
 part in Island of the Lake. I lived with Mr
 Kilby and was fireman at his Saw Mill from
 1859 (August) to April 1861.

2 State if you can the character of his dwelling house
 near Hargrove's Tavern - the furniture in same
 - the provision he made for his family and his
 deportment to his family and generally all
 you know of his conduct whilst you were
 with him

Ans He put up two dwellings - first was not
 very good - the second was very good - two
 rooms below lathed and plastered and
 one room above - the upper room was not
 lathed and plastered - the dwelling was
 neat & comfortable - The house was well
 furnished. He lived well the provis-
 -ion he made for his family was good
 The provision was good & plentiful. He
 was kind and good to his wife. I never

known him to say a cross word to his wife in my life. He had one servant to wait for him and wait on his wife. He had a buggy and would carry her to her her father's and returned when she pleased. Her Father lived about four miles from ~~his~~ their House. After she left him I carried her several letters not knowing what was in them - at one time she did not send back any answer & at another she said that she would not come

3 Whilst you were in the employment of Mr Kelby did you eat at the same Table & occupy a portion of the same premises.

Ans I did

4 Were you daily or often in their Company and did she ever complain of his treatment to her or provision for her

Ans I was daily in their Company & never heard her complain of his treatment to her

5 Did you see his wife the day she finally left him - in what conveyance did she leave & in what humor did she leave

Ans I did see his wife the day she left him
she went in a buggy. She left him in
a pleasant humor & heard nothing dis-
agreeable

6 Was the location of his dwelling a new settlement
where all the houses had to be built anew

Ans It was. I helped to build it

7 What was his character for industry sobriety
and gentlemanly deportment

Ans It was good

8 You spoke of carrying letters to his wife. On how
many occasions did you do so & what direc-
tions did you have from him on the subject

Ans I carried two letters. He told me to give them
to her & she would send an answer by me
She answered one verbally that she would
not come home

9 When was it she finally left him.

Ans It was in the fall of 1860

Cross-examined -

1 Did you have a room in the same building
in which Mr & Mrs Kelly resided

7. What was Mrs Kilby's ~~badly~~ condition at the time she finally left her husband
Was she not in a delicate situation requiring the most considerate attention

Ans She was not sick; but was in the family way -

8 Did you not speak to Capt. Wyatt more than once of the harsh & severe treatment of Mr Kilby towards his wife

Ans etc I did not

9 What did you say to him of that treatment

Ans I never said anything about the treatment to Capt Wyatt. There was no treatment except kind so far as I saw.

10 Did you ever see Capt Wyatt or his wife at Mr Kilby's house

Ans I saw both of them there once in a buggy. They staid there ^{about} fifteen minutes.

11 Do you know whether ~~there~~ Mr Kilby was on friendly terms with Mrs Kilby's family

Ans

Ans I do not know whether they were ^{on} ~~not~~ at that time

12 Do you know whether or not Capt Wyatt sent large supplies of provisions to Mr Kelby's house

Ans I recollect that he sent two or three bushels of oysters to them on one occasion

13 What kind of servant was living with them -

Ans Part of the time a colored woman - at the time ^{his wife.} ~~she~~ lived with him -

14 Did not they have at one time only a small girl belonging to Capt Wyatt

Ans They did have a little girl there for a nurse

15 How was the house supplied with water

Ans It was very good. There was a well between the kitchen & the house - just as you step out of the house you got the water.

16 Did you not have to descend a ladder to get to this water

Ans Not at the time she was living with

17 Was it necessary before & afterwards
Ans It was not.

18. You are positive that Mrs Kilby left her husband
on the day of her final separation in an
apparently good humor.

Ans I am so far as I know

19 Were you near enough to hear any conversation
which occurred between them at that time

Ans I was not - I was at the Mill - they were
at the house. I was at the house a few minutes
before she started and I saw no difference
between them then and further their departure
seem not

Examiner. Recd.

William Jordan being duly sworn deposed
as follows

1 How old are you - where do you reside & how
long have you thus resided

Ans I am sixty eight years old ~~reside~~ live in
three miles from Hargrove in Vanamano
County & have lived there all my life.

2 On what land was the Saw Mill and dwelling
house of plaintiff erected.

Ans It was erected on land purchased from me
about three hundred yards from Hargrove
Tavern on which my father formerly resided

3 State what you may know of any thing relative to the abandonment of the ~~defendant~~ plaintiff by the defendant & any and all circumstances relative to the same

~~Ans~~ I know but little about it. I happened at Mr Kelby's after his wife had left probably for the last time - I don't know whether it was or not - he named to me something of her leaving and that ~~he~~ ^{she} was very sorry that she had done so that he loved her - that he had tried to provide for her comfort as fast as he could. He asked me into the house. I went in and he said you see what I have done, having reference to the arrangements about the house - making it comfortable and providing it with furniture. The Chamber which he had prepared for her was well furnished. He remarked that when she left, was about to leave he went to his wife and she sent him a bunch of keys perhaps all the keys - and left. He was greatly mortified at the event. He said he did not know how to account for it for he had done all he could to make her happy. I suppose he did from all appearance. I should consider the house as comfortable as any one would want it to be - that is considering his limited means.

4 What was his character for integrity, indu-
-try - sobriety & gentlemanly conduct,

Ans It was unquestionable, as good as I
could ask it to be.

5 Was his conduct generally that of an indu-
-trious poor man - honestly endeavoring
to make a living -

Ans It certainly was - I never saw a more indu-
-trious man in my life

6 Had he endeared himself to the citizens
of the neighborhood by his correct depen-
-ment -

Ans So far as I knew he had generally endear-
-ed himself to the people of the neigh-
-borhood - I never heard ~~say~~ any one
speak other wise than in his praise
and further this defendant saith not

Wm. E. Jordan
H. J. Arthur being duly sworn deposes as
follows

1 How old are you - where do you reside &
how long have you thus resided

Ans I am twenty eight years old - I reside in
Stansmond County about 4 miles from

Hangovers and have resided in the County all my life.

2 Are you acquainted with the parties to this suit and if so how long have you been. State if you know any thing of the abandonment of the Plaintiff by the Defendant

Ans I have been acquainted with Mr Kelby since he was a boy and with Mrs Kelby some eight years. I was at Mr Kelby's since his wife left him the last time - directly afterwards - he regretted his wife's leaving very much and remarked at the time that he did not believe she was the cause of it - that she was a good woman. I carried a conciliatory letter to her ^{from him} which he asked me to read and which I did read and he asked me if there was anything offensive in it. My reply was I thought not and I carried the letter to her Father's house. I saw Capt Wyatt I asked an interview with Mrs Kelby she came to the head of the stairs and I asked her if she would not return under any circumstances and her reply was that she never would return to him again. She gave no reason for her refusal. I remarked that she

Had better settle the matter & return
which she refused. I then retired.

I What was the character of the Plaintiff
for sobriety industry & integrity & was
he respected by the Community generally

Ans His character was good & he was generally
respected and further this deponent
saith not.

Wm J. Arthur

County of Tangamand Town.

I John W. Arnes a Justice of
the Peace for the County aforesaid in the
State of Virginia hereby certify that
the foregoing depositions were taken
subscribed and sworn to before me
Given under my hand this 15th day of
February 1866.

Jno. W. Arnes. J.P.

Thomas S. Kilby
vs } Depositions
Mary Elizabeth Kilby

1866. Feby. 16th: Came to hand
under cover sealed.
Peter B. Prentiss, Clerk.

To Mrs. Mary Elizabeth Kelly

Take notice that I shall on the 15th day of February 1866, next, at
Hargrove, Tavern _____ in _____
Nauvoo County between the hours of 8 a. m. and 6 p. m. of that day, proceed to
take the Depositions of Wm. J. Arthur, Wm. E. Jordan, Jas. Hargrove, Jas. A. Parker
_____ and others, to be read as evidence in my behalf, in a certain suit
in Chancery for divorce, depending in the Circuit Court of Nauvoo
County, wherein I am _____
_____ are plaintiffs, and you _____

are defendants; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed,

Respectfully,

Sergeant
To the Sheriff of the City of Portsmouth
County to execute.

Thomas S. Kelly

Thomas S. Kelly

n { notice to take
sep. 15 feby
1866

Mary Elizabeth Kelly

The sergeant will
make return on this notice
Executed January 22
1866 by serving
a true copy on the
within named person

Jas. M. Fleming
Sgt