Heberling Lost His Divorce Case

Mrs. Heberling and Rev. David M. Kirkpatrick Exonerated

A SENSATIONAL CASE

After a Long Trial and Due Deliberation Justice Dunwell Found That the Evidence Was Insufficient—Great Victory for George Raines

A decision has just been handed down by Justice Dunwell in the case of John Heberling against Elizabeth C. Heberling, his wife, for an absolute divorce. The divorce was denied and the complaint dismissed without costs. This ends one of the most famous divorce actions ever tried in Monroe county. The history of the case is familiar to most readers of the Democrat and Chronicle, and in brief is as follows:

The plaintiff in the action suspected that his wife was intimate with Rev. David M. Kirkpatrick, at that time pastor of the Second Universalist Church in this city. On the evening of February 23, 1897, Rev. Mr. Kirkpatrick was seen to enter the rooms of Mrs. Heberling, in the western part of the city. The place was watched, and at about 4 o'clock in the morning, Mr. Kirkpatrick not having left the place, a party led by Mr. Heberling broke in the door. It was claimed by them that the defendant and Mrs. Heberling were discovered in a compromising situation, and upon the strength of this evidence a suit for absolute divorce was brought.

The case was brought to trial before Justice Dunwell early in the summer of 1897 without a jury. The trial was conducted with the most absolute secrecy, no spectators being allowed in the courtroom. There were numerous adjournments before it was concluded, and not until September 20, 1897 was it submitted to the court. Stull Brothers appeared for the plaintiff and George Raines for the defendant.

Following is the decision in full:

"In this action for absolute divorce, said action being regularly upon the calendar at the above term, coming on in its order for trial, before the court without a jury, the parties appearing by their respective counsel, the plaintiff by John M. Stull, and the defendant by George Raines, after hearing all the evidence offered by the parties and the arguments of their respective counsel, all the issues having been tried, and after considering the briefs submitted by the counsel of the respective parties, the court decides as follows:

"That the complaint be dismissed upon the following grounds:

"That the evidence fails to establish any of the allegations of adultery charged in the complaint against defendant.

"I find that the charge of connivance alleged against plaintiff is not sustained by the evidence.

"Judgment is directed that the complaint be dismissed without costs."

The opinion of Justice Dunwell, upon which the decision is founded, is in part as follows:

In actions for divorce the evidence, in most cases, is necessarily circumstantial, and when satisfactory is accepted as sufficient, but the circumstances must be of a highly satisfactory character…

In the present case the charge is sought to be established by circumstances, and it must be admitted that if all circumstances testified to by plaintiff's witnesses as having occurred on the night of February 23d actually took place, the conclusion would be irresistible that the charge was established. If there were no sound explanation of defendant and Kirkpatrick being together at her rooms during the evening and night, and if they were in fact detected in the condition of dress described by some of plaintiff's witnesses, there would be no escape from the conclusion. But many things are to be considered in weighing that testimony. It cannot be said from the evidence that defendant and Kirkpatrick had previously been intimate, or had indulged in familiarities leading to the belief that if opportunity offered they would be guilty of improper conduct. They had not met often or shown a disposition to be frequently in one another's society. The meager amount of correspondence between them that has been introduced in evidence is that of a formal character, barely showing a friendly interest in one another. There are no terms of endearment used and no indication of more than a friendly acquaintance. From the time of the separation from her husband, defendant pursued some employment, attempting honestly to support herself by her own efforts.

The evidence fairly establishes the fact that prior to the evening of February 23d, the defendant had imbibed the idea, whether well-founded or not, that her name and reputation were likely to become involved in that trial of the libel suit that had been commenced by Kirkpatrick against the Union and Advertiser [newspaper] Company. Her parting with Kirkpatrick in the afternoon before the evening in question; her errand to Mr. Raines's office; Kirkpatrick's search for her on Fitzhugh street and at the Erie station; her waiting at Raines's office for his [Raines'] return; and her note written there by her after the interview with Raines, requesting Kirkpatrick to come to her rooms that evening to confer upon the subject of the libel case, indicate that the case was one of real interest to her, and that she in fact desired to see him drop the subject of that case. It is quite clear that before she went to Raines's office, defendant intended to return to Mt. Morris upon the afternoon train, but was only prevented by a delay in seeing Raines. From his going to the station at the hour of the departure of the afternoon train, it is quite evident that Kirkpatrick had no prearrangement with defendant for meeting with her at her rooms in Rochester that evening. It

must be assumed that he came to her rooms that evening in consequence of the note sent him by the defendant from Raines's office. The meeting therefore between defendant and Kirkpatrick at her rooms on Campbell street on the evening of February 23d was apparently, so far as the evidence in this case shows, for the purpose of considering defendant's interests in relation to the libel suit, in view of the advice and information communicated to her by Raines. Their coming together, then, was not for an improper purpose. The wrong, if any, was committed afterward.

The want of delicacy in defendant receiving Kirkpatrick in her rooms with no one else present may well be questioned. The question here is not one of propriety, but whether the misconduct for which the statute permits a divorce took place. The fact that Kirkpatrick remained in the defendant's rooms during that evening until nearly four o'clock of the succeeding morning, without explanation, is in the highest sense damaging to defendant. She and Kirkpatrick concur in saying that she prevented his going away earlier because she had seen her husband and the witnesses—who afterwards broke in her door—passing and repassing her rooms during this time, and feared that if he left it would result in an affray between her husband and Kirkpatrick, bringing her and them into publicity and compromising her. I am not unmindful of the argument that departure from the rooms, when defendant alleges that she first discovered her husband on the street at a not unusually late hour in the evening, would not have been attended with grave suspicion if he had been discovered by the husband and those assisting him: that it must have been present in the minds of defendant and Kirkpatrick that such a course would have been wiser than the one adopted by them. Admitting this, it does not prove that because they were foolish they were guilty.

Notwithstanding the legitimate character of their meeting in its commencement that night, and in spite of the lack of evidence to show previous disposition to commit the act charged, nevertheless, if the testimony of the detectives, Smith and Watts, corroborated in its essential details by Reilly and Purcell, and in some particulars by Havens, is unmistaken and can be adopted as the true state of affairs when defendant's rooms were broken into, the charge must be considered as established.

Smith and Watts were hired detectives and eager to discover evidence; Purcell and Reilly were in the employ of the defendant in Kirkpatrick's libel case, and perhaps felt a greater interest in serving their employer than the detectives who were performing a temporary service. Havens, the lawyer in that case, gives every indication throughout his testimony of being a conscientious and cautious witness; yet all those engaged in the enterprise of attempting to discover defendant's infidelity that evening were under the direction of Havens, who must be judged of as having his client's interests in

charge and feeling his responsibility to be very great. It must be conceded that all were deeply interested in destroying Kirkpatrick, and incidentally in finding the defendant guilty. Besides laboring under this pressing interest to convict, the witnesses for plaintiff were subjected to other difficulties and annoyances that led them into mistakes and militate against the correctness of their descriptions of what they claim to have seen. When they entered, and while they were present within the rooms, they must have been laboring under considerable excitement.

As an instance of a mistake in the testimony, Mr. Havens stated as his recollection that defendant's hair was down and hung a foot or a foot and a half below her collar. Defendant took down her hair in court, and it could not be stretched to reach more than an inch or two below her collar, and the hair dresser who had cared for defendant's hair for a year or two since she had had a fever, testified that its length in court was its greatest length since the fever, a time prior to the 23d of February.

When some highly important and vital statements of plaintiff's witnesses have been shown to be errors, it causes hesitation in accepting the rest of their evidence where it comes in conflict with details and explanations on the part of defendant and her witnesses and is inconsistent with some of the important circumstances. Under the admonition of the court of appeals, where the case is susceptible of two conclusions, that in favor of innocence is to be preferred. Upon a careful and somewhat prolonged investigation of the facts of this case, I have come to the conclusion that the whole evidence, taken together, fails to establish the charge advanced in the complaint, but the circumstances and testimony presented to plaintiff at the time of bringing the action were so highly suspicious that his investigation by this action was properly warranted. Therefore the dismissal of the complaint is without costs.

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