No. 8.

Statement

OF

RUFUS W. GRISWOLD

WITH REFERENCE TO THE LATE

UNSUCCESSFUL ATTEMPT

TO HAVE SET ASIDE

THE DECREE GRANTED IN 1852 BY THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY IN THE CASE OF GRISWOLD *vs.* GRISWOLD.

STATEMENT OF THE RELATIONS

OF

RUFUS W. GRISWOLD

WITH

CHARLOTTE MYERS (CALLED CHARLOTTE GRISWOLD,) ELIZABETH F. ELLET, ANN S. STEPHENS, SAMUEL J. WARING, HAMILTON R. SEARLES, AND CHARLES D. LEWIS,

WITH PARTICULAR REFERENCE TO

THEIR LATE UNSUCCESSFUL ATTEMPT

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It will readily be believed that I come before the public with any details respecting my private and domestic affairs with extreme reluctance. But certain *exparte* statements lately made before the Court of Common Pleas, in Philadelphia, and repeated in the New York Tribune, the National Police Gazette, and other papers, in regard to myself and my family, and particularly in regard to my divorce, nearly four years ago, from Charlotte Myers, called Charlotte Griswold, render it necessary that I should set aside all other considerations, and in justice to a wife whose happiness is dearer to me than my own, and children, for whom at the cost of life itself I would leave a name which they should remember without humiliation, disregard, while unable to overcome, the repugnance I feel to troubling others with my personal griefs, and ask of my few friends, and of those who have had a kindly feeling toward me as an author, a candid and thoughtful reading of the following narrative:

In June, 1845, as is well remembered by the Rev. Herman Hooker, D.D., by Mr. V. Holmes, who has just returned to this country from an absence of four years in the consular service, and by several others at that period residing with me at the Butler House, in Philadelphia, an anxiety, which I might, perhaps, have deemed flattering, was manifested by Miss Sally Myers and Miss Hesse Myers, two maiden aunts of Miss Charlotte Myers, that I should offer my hand to their niece. I ought rather to say, was manifested by Miss Hesse Myers, though felt, as I had reason to believe, by both. The whole family were of the Jewish religion, and enjoyed a respectable social position in South Carolina, whence they had recently arrived on their customary summer visit to the northern states. I was in ill health, and suffering great depression from a fresh and profound misfortune. Influenced by the conversations of Miss Hesse Myers, much more than by my own judgment or feelings, I at length made through her such a proposal as she had suggested, and it was received as I was informed and knew previously that it would be. I may add, what I am ready to believe, that the feelings of the niece were not greatly concerned in the matter—that, with the consciousness of a peculiar misfortune of hers, of which I was altogether ignorant, her action might have been different had her own principles of propriety been allowed to control her, and that, in all she did or suffered or

assented to, she submitted herself to one or both of her seniors and protectors, with whom she lived, by whom she had been brought up, and who, much more than herself, were influenced, it is probable, not only by the common but sadly mistaken and unrefined idea that after a certain time of life it is essential to the proper estimate of woman that her state should be no longer a single one, but yet more by the desire—which was very kind, so far as it concerned their niece—of showing the world that rumors which had been circulated among her friends at home, as to a peculiarity of her case, had no influence upon the belief of others, elsewhere, and thus to prove that this peculiarity had no existence in fact. I do not aver positively that the aunts were privy to the reasons which should have made them discourage and not encourage the alliance of their niece with any one. In the nature of things I could not be certified of their *knowledge*. But I do aver that I believe they had such knowledge, using the term in that sense in which it ought in a case of this kind to be used, in regard to persons of their standing and intelligence. I mean that I believe they had, at least, sufficient doubt or suspicion to suggest a very guarded action in the matter. The reasons of my belief I could state if it were proper; and, if it is alleged that my opinion is incorrect, I shall be happy to listen in the most private manner they may desire to their vindication, and to confess my error on being convinced of it. As I have already said, I refer more especially to one of them. I charge no further motives, than those above indicated, for in point of fortune Miss Charlotte Myers was more than independent, and, as I have said, her external circumstances at home were not other than respectable.

On the first of August the Myers family were in New England, and I was at the New York Hotel. My indisposition to marry Miss Myers had increased with the opportunities for reflection which followed their departure from Philadelphia. In letters to her I had stated that, notwithstanding our engagement, I was desirous that she should consider herself entirely free from all obligations to me, and urged reasons for her reconsideration of the proposed union. In one of her answers, dated the 6th of August, she says:

"You tell me in your last letter, and the one previous, that I am still free; what do you mean? is it that you are making a sacrifice for me?"

She notices the presumed objection that I do not love her: "few persons," she says, "can ever love each other perfectly till after marriage;" yet adds, "act agreeably to your own feelings; consult your own happiness." Satisfied as I was, by better evidences than the revelation here made, both of her own feelings and of her knowledge of mine, I felt that the way was not yet irremediable, and that I could still retrace, without injury to either of us—with no discredit to Miss Myers, and with less consciousness of it myself than under ordinary circumstances would exist—the false step into which no inducements but my own emotions should have led me; and felt bound, from my regard for her happiness even more than for my own, to do so. I therefore wrote to her that an engagement entered into under such circumstances, and the fulfillment of which was urged upon grounds that in my opinion ought never to have influence in such affairs, could result only in unhappiness to us both, and begged her at once and forever to abandon all thoughts of the subject. I was summoned to Boston, and there the matter was discussed, with coldness, but earnestness, mainly by myself and the aunts. Though Miss Charlotte Myers had written to me so distinctly that I might "act agreeably to my own feelings," it was now set before me that they had informed their friends in South Carolina of the anticipated connection, that they would therefore be placed in a most disagreeable position if I persisted in my refusal, and that I was bound in honor to proceed. I returned to New York, and was immediately followed by the Myers party. The morning of their arrival, the 20th of August, the subject was debated across the table at their private breakfast. I heard the aunts and the niece, with attention, and,

rising, said, "I will leave you for an hour: if at the end of that time you still claim a fulfillment of the engagement, you shall be satisfied immediately." At the end of the hour Miss Hesse Myers told me their views were unchanged; and I took a carriage and went for the Rev. Dr. W. R. Williams, who, in the presence of only the aunts, performed the marriage service.

That night I discovered that the person to whom I was thus united had been bound, in honor and law, not to receive any man's offer of marriage. About 3 o'clock she passed from my chamber, into which she did not again enter, through an intermediate parlor into the room occupied by her aunts.

Strongly doubting whether that of which I was now aware, had not been known and considered in advance by the aunts, as well as the neice, I disclosed my purpose to have the nullity of the marriage ascertained and declared by competent authority. Uncertain how to act, and hoping that by a chancery decree or some other process a remedy might be obtained without publicity, I requested that the event might be kept secret until I could consult with counsel, and have time for reflection. The family consented, and I saw the parties already aware of the ceremony, and received from them promises of silence. A day or two after I stated my intention of proceeding to Philadelphia, and Miss Hesse Myers told me her sister and niece would accompany me. Of what followed, I quote the unimpeached testimony of witnesses produced and sworn at the trial for divorce in 1852.

Rev. Herman Hooker, D.D., being examined, testifies as follows:

"At the time libellant, respondent, and myself, were all boarding together at the Butler House—which was from but a few days subsequent to the marriage, and up to the time of the separation—it was apparent to my mind that there was as complete and total a lack of cordiality between them as was possible. I have no belief that their manner toward each other was assumed. I knew the libellant intimately. I thought him in great distress of mind, and such, to my own knowledge, was the general opinion in the house. I heard this opinion frequently expressed by other boarders, both ladies and gentlemen. The libellant gave unmistakeable signs of great mental affliction. For my part, I feared that he would be altogether prostrated by it. He and his wife occupied separate rooms, and came separately to the table. There seemed to be very little intercourse between them. I never saw them together in the parlors, as far as I recollect. I had known the aunts previously to the marriage, and after the marriage there was a marked change in their demeanor toward the libellant: there was less cordiality than before." "About two or three weeks after the coming of the libellant and respondent to the Butler House they separated, by the respondent's leaving, accompanied by her aunts, as I understood, for Charleston, where they reside. This occurred early in the morning. Libellant did not go with them. He continued at the Butler House some time after. It was my impression and belief that he was not present at their leaving, and did not accompany them to the cars. Several days before they left, I heard the aunts say that they intended to go, and would go, whether libellant went with them or not. I understood them to mean by 'they' respondent and themselves." "It is my belief that libellant and respondent have never lived together since that separation."

Mr. Samuel A. Harrison testifies:

"I boarded at the Butler House in Chestnut street, during the year 1845. I remember the return of libellant from New York, with respondent and her aunts, and that they all boarded there. I believe that they returned two or three days after the marriage. I observed a seeming lack of cordiality in the relations of libellant and respondent toward each other, and I know that this was a subject of remark by others in the house. They occupied separate rooms. They never, as I saw, came to the table together. I never saw them together after their marriage. The libellant was evidently suffering very great depression and anxiety. The appearance of such suffering could not have been assumed, but the feeling was real and sincere. The respondent left the house unaccompanied by the libellant. I know that the libellant was not present at her leaving, and did not accompany her to the cars. I had been acquainted with the libellant for about three years previous to that time, and my acquaintance with him has continued until now. Libellant was then residing at the Butler House. It was his home, and he continued to reside there a considerable time afterwards."

Mr. Francis de H. Janvier testifies:

"From what I saw it was my impression that the separation was a permanent one; and I accompanied the libellant to the office of J. R. Tyson, where he went to ascertain if it could be made so, and to obtain information as to means of securing her estate to her."

Hon. J. R. Tyson, LL.D., testifies:

"The libellant consulted me in the year 1845—my impression is that it was a short time after the marriage—to ascertain whether a divorce could be procured, and during the consultation expressed a desire to secure to the respondent all the property of which she was possessed at the time of the marriage. He said that whether he procured a divorce or not, he wished the respondent to have the estate secured to her, so that she could have the separate and exclusive enjoyment of it. I suggested that as the respondent's property was in South Carolina, the necessary legal instrument had better be drawn and executed there."

By what means the marriage was first disclosed in Philadelphia I cannot tell. That I had married Miss Myers, however, and that the state of things* described by these and other witnesses immediately followed, was generally known among my acquaintances. The Rev. Dr. Ide, now of Springfield, Massachusetts, with the Rev. A. D. Gillette, now of the city of New York, called upon me as personal and professional friends, and in a confidential interview I freely stated the cause of a separation so immediate and so absolute. I was one of the editors of the North American, and to the proprietors of that journal, Mr. George R. Graham and Mr. Alexander Cummings, both of whom still reside in Philadelphia, I also deemed it proper to confide the particulars of my misfortune.

The testimony of Mr. Janvier and Mr. Tyson suggests the cause of my going to Charleston. Mr. Hoffman, one of the most eminent lawyers of this country, had drawn up for me a release of the property coming to my possession, but he, too, as well as Mr. Tyson, doubted whether it were not necessary for me to go to South Carolina that the conveyance might be incontestible. In correspondence with the Myers family much anxiety was manifested on their part that I should acquiesce in the marriage, and maintain its outward proprieties; at least that I should make no attempt to have it set aside until after my proposed visit; and they besought me to bring, when I should come, my youngest daughter, whom they had frequently seen in Philadelphia. I proceeded to Charleston early in January. On explaining my situation to counsel, to whom I carried letters of introduction, I was advised that it would not be expedient to execute any release of property until I should myself be released from all marital obligations. The family admitted the wrong that had been done me, but urged that as I had expressed a belief that I should never again marry, if free, I should permit this marriage to remain undisturbed, and accept their efforts for the promotion of my happiness. It was difficult to decide what course to pursue, but I finally consented that if the niece would return with me to Philadelphia, where my pursuits made it necessary that I should reside, and make that city her home, except during the colder months, I would submit with as good a grace as possible to the disagreeable circumstances in which I found myself involved. For several weeks there was, as I supposed, a general assent to this project. I sent for some of my pictures and books, and a suite of apartments was assigned for my exclusive use, to be closed except during my brief annual

* The person with whom I had in this manner become associated, in her affidavit admits some material facts confirmed in the depositions of Rev. Dr. Hooker and Mr. Harrison. She says:

"The said Rufus W. opposing deponent's earnest solicitations, would not publish the said marriage, nor even permit the proprietor of the hotel to know it; nor would he permit deponent to mention the fact to any of his friends."

Here is a difficulty, the very day after the marriage ceremony, which demands an explanation; but she gives none. She says, indeed, that I declared "it would ruin me if the fact were known;" but evidently if it had been a real and proper marriage, its publication would not have been disagreeable to me, for it is not pretended that there was any legal disability in the way of my marrying. The reader will not fail to perceive that no cause, except the one suggested in this narrative, would be sufficient to account for that disagreement and alienation which is thus admitted to have existed from the beginning.

visits. But I soon found, or had reason to believe, that all these proceedings and shows of kindly feeling were designed merely to overcome my decision not to relinquish the control of the property, which, admitting the validity of the marriage, was now, in a *legal* sense, my own, unless I should myself be freed in some way from the singular connection into which I had been betrayed. I said, in effect, If I am to confess myself married when not married, I will at least retain the outward prerogatives of a husband. When I arrived in Charleston, the deeds, bonds, mortgages, &c., to which I was entitled as the husband of Charlotte Myers, were placed in my apartment, but near the close of April, I discovered that these evidences of estate had been removed, and secreted from me. When I requested an explanation, I was told that the person calling herself my wife had made up her mind that it was best to separate, altogether and forever, and that her counsel, Mr. J. L. Pettigru, would prepare a deed which would in effect be a divorce, though it would not authorise my contracting another marriage. I waited for the instrument thus prepared, under her own instruction, by her own lawyer. I am described in it as "Rufus W. Griswold, of Philadelphia, in the state of Pennsylvania," and it

"Witnesseth, that for effecting the arrangements with respect to their future life, which the parties of the first and second parts have considered to be indispensable to their peace and tranquillity,"

I, the party of the first part, "grant, bargain, sell, assign, transfer, set over," &c., "all and singular the securities for money, slaves, and real and personal estate of whatever description," which Charlotte Myers had possessed before I became in any way connected with her, to Jacob Cohen, to have and to hold the same, in trust, for her "sole, separate and absolute use and behoof," during her natural life, and for her heirs afterward, as if she were unmarried. Of the contents or import of this deed I was entirely ignorant until the three engrossed copies of it were presented for my signature. Discovering that a provision of $3000 was inserted for my daughter, on her becoming of age, I protested against it, but was told that some consideration must be mentioned to insure the validity of my relinquishment of the estate, and as this had occurred to the other party, and the preparation of a new deed would occasion a needless delay and expense, it was hoped that I would suffer the objectionable feature to stand, especially as I could at any time, in my capacity of parent, decline the money, or restore it. I signed the several copies of the deed, and immediately after drew up and placed in the hands of the other party an unconditional surrender of these three thousand dollars. A similar repudiation of this settlement was made in the Superior Court of New York, in 1852. Of course, therefore, its payment can never be enforced. Mr. Cohen was authorized to estimate the other party's *actual indebtedness* to me, and upon examining bills made out in my name, for furniture, &c., forwarded to her by merchants in Philadelphia, which bills I had paid, or was instructed to pay, and subsequently did pay, he delivered into my hands one thousand dollars. This sum did not equal my disbursements on account of the Myers family, but I accepted it as in full of all demands; and here I assert, as in the presence of God, that I never afterward received from Charlotte Myers or any of her family, one dollar, and that every allegation in her affidavit referring to money, except only that which relates to the payment of this balance, thus adjudged to be due to me, is unqualifiedly false. During the period of my nominal relation to her as husband, on her visits to the North, it is true that I occasionally accepted, but always with unconcealed reluctance, her invitations to breakfast or dine with her, but as my expenses at my own hotel were not affected by it, I derived no pecuniary benefit from her unwelcome hospitality, the motive of which was merely to induce among the persons with whom she was living an erroneous impression of the relations subsisting between us. Indeed, my particularity even as to the small-

est appropriations of her property was such as not unnaturally to arrest her attention, as will presently be seen, though she herself was not always governed by a delicacy in this respect which my example should perhaps have inculcated. I beg the reader to believe that nothing except the temper and minuteness with which this subject is dwelt upon in the affidavit which this woman has been induced to sign, by persons who make use of her merely for the purpose of gratifying their own hostile and revengeful feelings toward me, would have led to an examination of those papers, which prove the entire incorrectness of what is advanced in that affidavit respecting any alleged use or acceptance by me of any portion, however inconsiderable, of her income. During the summer visits which she was in the habit of making to the northern states—visits scarcely ever intermitted before or since my acquaintance with her, for more than twenty years—I had not unfrequently opportunities to incur some expense for her gratification. Although I suspected the feeling by which the conduct of the family was induced was purely selfish, they were certainly kind to my little daughter, and I was glad to avail myself of every fit opportunity of evincing a grateful sense of their kindness.* In New York, in 1851, she sent for me to recommend a physician to her. I mentioned Dr. John W. Francis, and she asked me to request him to visit her. I did so, he attended her constantly for several weeks, and she left the bill for me to settle. Being a Jewess, she wished me to send her the Jewish monthly magazine, "The Occident," and on my order, Carey & Hart forwarded it to her for about five years, charging it to my account. To illustrate still further the incorrectness of what is said in this affidavit respecting money, I copy from two of her letters incidental allusions which in this connection have a peculiar significance.

Under date of Charleston, May 9, 1847, she writes:

"I received you letter containing a five dollar note which I gave to Caroline. There was no necessity to send for any one to pack the books, and if there had been, though my interest is much reduced this year, I think I could have paid the necessary amount."

In another letter, dated simply "Sunday Afternoon," but written, I believe, in 1848, she refers to a request for some service:

"You seem to have a monomania about being under obligations to me. The three dollars you sent for what only twenty-five cents will have to be paid out, I have added to Caroline's little hoard."

My professed *disposition* as to the property of the other party is shown by the testimony of Mr. Tyson, already given; and my *acts* in regard to it by the execution of deeds which transfer and secure it from my own possession. It is stated in the affidavit to which I have so often to refer, that

* In illustration of what is here stated, and as an example of the perfectly civil but distant style of the writer's correspondence with me, the following letter will be interesting to persons who have been sufficiently attracted to the present controversy to inquire with a spirit of candor as to its merits:

"CHARLESTON, 9th Jan. [1848.]

"*Dear Mr. Griswold:* I have been waiting on C. for the last week to write you and thank you for the books you sent her; but really she has so much to attend to that she cannot get the time. She is now at school, but sends her love, and begs you to write her. My aunts desire to be remembered to you, and thank you for the handsome books you sent them. Also receive mine, for the beautiful one you sent me. I hardly expected a present from you since you have become weary of my correspondence, and do not write to me. I cannot even know whether you wish me to write to you or not. I write as little about myself as possible, *knowing you care for nothing on earth but your children and your books:* yet it is right I should let you hear of Caroline constantly. Ben thanks you for the clothes you sent him. Why did you not send a shirt, as I asked you to do? Believe me, &c. C. A. G."

The prime reason for maintaining a correspondence with the Myers family is disclosed in the allusion to my child. The "Ben" referred to was a favorite slave, and a very worthy man. The closing inquiry refers to a passage in a previous letter, in which I was informed that, if I would send a pattern, "a couple of dozen finer shirts" than I could get in the North, should be made for me by the household seamstresses, and sent to me. My reason for declining the offer is indicated in the text. I was at all times, after the partial divorce executed in Charleston in May, 1846, unwilling to accept any favor whatever from any of the Myers family.

"The said Rufus W. Griswold was *about* disposing of deponent's means, in different ways, when a relation of deponent requested him to make over to herself the property of deponent. He *at first* refused so to do, but deponent's friends at last succeeded in inducing him to secure *some* of deponent's property to herself."

The deed, which is on record, and can be seen, shows that I secured to her *all* her property, and I presume it will be admitted that even the entreaties of "deponent's friends" could not have affixed my signature to that deed, had I been disposed to withhold it. Any one in the least familiar with the great law authority, Lord Coke, with whom, as a general scholar, I have some acquaintance, would have told the "lawyer" who claims that he drew up this extraordinary affidavit, that the law takes notice of "no conations and goings *about*," and that in this matter, not what I contemplated—which I know quite as well as he or his client—but what I *did*, of which the deed will speak better than either of us, is the only matter of any pertinence.

After the execution of the deed above referred to I was compelled to remain in Charleston two or three days, waiting for the weekly New York steamer, and in this period had several conversations with Miss Sally Myers, the eldest of the two aunts, whose conduct toward me since the marriage had been considerate and womanly. The unhappy circumstances growing out of my connection with her neice were deplored by her, but she trusted I would maintain a reserve on the subject among my friends; as a more complete divorce could be, with the views I had expressed as to my future life, of no benefit to me, that I would refrain from any action in the matter, at least for a few years, during which existing asperities haply might be forgotten; and as the continued presence of my daughter in Charleston might silence disagreeable suspicions, that I would leave her under her own especial charge, and she would promise the most affectionate and faithful care of her. Such a course I readily promised to observe. Thus, with a sham marriage, and a half divorce, I returned to my literary occupations in Philadelphia.

Before going south I had removed from the Butler House to Jones's Hotel; I now resumed my residence there, and continued in the house more than two years. Mr. Asa I. Fish, a lawyer of good standing in Philadelphia, and known to the profession generally as one of the editors of that useful periodical, "The American Law Register," also became a boarder, and testified on my bill for a divorce as follows:

"I resided at Jones's Hotel with the libellant one year or eighteen months from the spring of 1847. We dined side by side, at the gentlemen's ordinary. I never saw his wife there. My knowledge of his domestic relations is somewhat limited. It seemed to be understood in the house, and among his acquaintances, that he was living in a state of separation from his wife. The character of the separation was not made known to me. It was a delicate subject, and was not much discussed."

Although I never ceased to regard Philadelphia as my home, and kept domicil there, paid taxes there, and nearly all my pecuniary interests were connected with that city, where for fifteen years my principal publishers have been Carey & Hart, and their successors, Parry & McMillan, (four gentlemen among the most honorable and universally esteemed in the mercantile life of this country, between whom and myself during this long period of the most intimate business relationship there was never a syllable of disagreement or a moment's want of friendly confidence,) yet much of my time, for two or three years, was passed in New York, where I was occupied with a specific duty, the completion of which was to end my divided and partial residence there. This duty was the preparation of an extensive Biographical Dictionary, for Harper & Brothers, the contract regarding which was entered into sometime before I proceeded to New York to obtain temporary lodgings, with room for the accommodation of the books I expected to have use for in the execution of that work. For reasons unnecessary to state in this connection, the stereotyping of the Biographical Dictionary was interrupted,

after the completion of more than one thousand pages; and in the autumn of 1851, doubtful whether it would be resumed, I came back to Philadelphia, with the purpose of abandoning all connection with New York, and during the winter entered upon the editorship of a heavy work for Mr. Henry Carey Baird. I was engaged upon this, having advanced more than two hundred pages in the printing, when, in March, 1852, I commenced my suit in the Court of Common Pleas.

In the meanwhile, the peculiarity and strangeness of my position exposed me to a thousand ungenerous suspicions. To a few friends it was known that I did not consider myself married in a legal any more than in a moral sense; this was the opinion of Mr. David Hoffman and of other counsel; but generally it was understood that I was living in separation from a wife, while the cause of that separation was of a nature that made frequent explanations of it disagreeable or impossible. I was never a man of society. Distrusting my abilities to please, compelled by my literary pursuits to almost unremitting labor, and fond of my books, few men have been as much addicted to seclusion, and few, I think, have been personally as little known. Yet with a small number, of congenial tastes and feelings, I have been intimate; and it is among my most pleasing reflections, now that I find myself led near the grave by a painful and incurable disease, that no one who was ever my friend has ceased to be so; no one in whose house I was ever a guest, no one who has been an accustomed visitor at my own fireside, no one who has ever shared my confidences, has faltered in a trustful regard for me, or in kindly praises of me, during all the painful vicissitudes through which I have passed since that scene, so prolific of troubles, in which, at the New York Hotel, I gave my name to Charlotte Myers. Nevertheless, I could not conceal from myself that my anomalous relations gave plausibility to every calumny suggested by literary or other animosities, and were indeed themselves suggestive of doubts which were alone an endangering of good reputation. To the person next to myself most deeply interested in this subject, I frequently wrote about it, or, when I saw her, during her summer tours, conversed with her. I said, the public must see in her my wife, residing at least a considerable portion of each year in my house, or whatever house should be commonly regarded as my home—that, although the essential relation we actually sustained toward each other was irremediable, there must be an outward observance of the usual proprieties of married life—or I must end entirely the pretence of our marriage, by some sort of unconditional separation. She would answer, sometimes, that "for the best husband in the world" she would not leave her aunts; at others, that her income was insufficient for that display of splendor which alone in great cities secured consideration, while my more modest habits of living would not satisfy the tastes to which she had been educated. She was content, as I was in no way burdensome to her, and by exhibiting me at dinner tables occasionally she could persuade her friends that there were no difficulties between us, to let things continue in the way with which we both had grown familiar. Her only care was to prevent me from seeking an absolute divorce. At one time she wrote that her aunts had made their wills, by which my daughter would be rich, and that she had made one, which I should see, securing to myself, if I survived her, and to my children, all her property. In another letter a different influence is attempted: she inquires the cost of an elegant rural establishment in the vicinity of New York, where her aunts and herself might spend the summers, and I should have home and authority. Her inquiries were answered, the subject discussed, and the family decided not to venture upon such an experiment. To any proposals of living with me, the answer, in one form or another, was always a refusal.

The ostensible object of the recent proceedings rendered it necessary to allege, and to show if possible, that there had been no such desertion as is so clearly established by the testimony already quoted, and by other testimony on record; and the "lawyer" who prepared the affidavit published in the Tribune, by some means induced his client to swear that I,

"While at the city of Charleston, sometime in the year 1851, wilfully and maliciously deserted, neglected, abused, cruelly and shamefully treated, abandoned and refused to live with deponent."

Now, I was not in Charleston or in South Carolina during the year 1851, nor have I been there at any time since the spring of 1846, except in the early part of 1849. Having conceived the plan of a work on American society in the age of Washington, I made an excursion which occupied nearly three months through the southern states, and was in Charleston and its vicinity about five days, one of which was spent at the Moultrie House on Sullivan's Island, with my literary acquaintances, W. G. Simms, LL. D., and the Rev. William C. Richards. I proposed staying at the Charleston Hotel, but the Myers family would not permit it. I accepted their hospitality with the greater pleasure because it gave me such frequent opportunities of seeing my child who was with them. Explaining the object of my visit, Miss Hesse Myers, with the greatest kindness and politeness, accompanied me in the family carriage to the mansions of those gentlemen whom she knew, and who possessed such portraits or other works as I desired to examine. There was not with the aunts or the niece a single word incompatible with the utmost good feeling. The charge of cruelty, referring to this or to any other time, if by cruelty is meant personal unkindness, or any unkindness other than such as was inevitable in an inability to display affection, I solemnly deny. I never treated the person making oath to the above statement with cruelty. There was nothing in her character, and less than nothing in her misfortune, that could inspire any other feeling than one of profound compassion. Her own testimony on this subject was given in a very express and particular manner to Dr. E. E. Marcy, in 1850, while she was at Bridgeport, in Connecticut. She heard there that I was ill, and wrote to this gentleman, my physician and friend, on the subject, paying me many such flattering compliments as it would ill become me to repeat, and explaining our relations by saying that a misfortune, with which heaven had seen fit to afflict her, had caused our separation soon after marriage, greatly to her regret, but that I was the most generous of men in everything unconnected with this trouble. Having become acquainted with these particulars, when she arrived in town I went to see her, at her hotel, and repeated my offer to commence housekeeping immediately, in Philadelphia or New York, if she would join me upon doing so. I received the customary refusal.

In her affidavit, published lately in the New York Tribune and the Police Gazette, it is alleged, in one place, that I lived with her, as her husband, for "*three* years," and in another, that I so lived with her "for and during the space of between *five and six* years!" In the same paper she is made to say that "the last TWO summers she went north," that is, in the summers of 1850 and 1851—in 1849 she did not come north at all—I "would not permit her to reside with" me, "or stay at the same house with" her; but in the preceding paragraph it is said, with entire inconsistency, that "the *sixth* summer after our marriage," which, as we were married in 1845, must have been the summer of 1851, the *last* summer before our divorce, I "would *come home* sometimes at four or five o'clock in the morning, sometimes stayed out all night, and was generally absent four or five nights in a week!" With so little skill is this strange compound of malevolence and indecency put together. It is true that during the two summers of 1850 and 1851 I declined the exhibition of myself by her at breakfasts and dinners, and it is also true that during those two years I was never alone with her a moment. I called two or three times each summer, while she was in the city, and repeated to her, decidedly, that unless she would reside with me at least half of each year, I should apply for a divorce. These declarations were always made with kindness, and justified by exhibitions of the necessity of my pursuing the course they indicated.

A formal decree of divorce, on the ground of desertion, had been subject to my suit for nearly four years; I had, however, refrained from obtaining

such a decree; I dreaded the publicity which would necessarily be given to the proceeding; I was unwilling to wound or offend any member of the Myers family, notwithstanding the wrongs I had sustained through their indiscretion; and but for the effect of the existing state of things, directly or indirectly, on my personal reputation, I should doubtless have refrained altogether from any attempt for a judicial vindication of my rights.

Early in March, 1852, however, I addressed the other party at Charleston a letter, in which I endeavored to set forth clearly, but with gentleness and courtesy, the injury I had suffered from her conduct, in reputation, in usefulness, in happiness, and in my pecuniary interests; and ended by declaring that unless she would make my home her own, as I had so frequently urged her to do, I should take measures for procuring an entire legal separation from her. To this letter there was never an answer by the person to whom it was sent; but her counsel, Mr. J. L. Pettigru, wrote me as follows:

"CHARLESTON, March 16, 1852.

"*Dear Sir:*—Your letter to Mrs. Griswold, of the 12th inst., contained so much matter that she felt the necessity of advice, and called on me, as a person *already acquainted with the circumstances, which delicacy would confine as much as possible to the knowledge of those who are interested.*

"I am authorized to say that she will conform to your plan of divorce, by *making no resistance,* if the libel is confined simply to the charge of desertion; on condition, however, that your daughter be permitted to remain under the tuition and guardianship of herself and her aunts, not to be removed from their guardianship or control during her minority, unless with her own free will and consent. This condition appears to me so reasonable, in connection with the antecedent relations of the parties, that I anticipate no objection. I hope that everything may be satisfactory in *the winding up of this singular domestic drama,* and am, dear sir, yours very truly, "J. L. PETTIGRU."

Although I deemed it necessary to impose conditions in regard to my child, which will be explained in another part of this statement, yet the wish of Mr. Pettigru that everything might be satisfactory "in the winding up of this singular domestic drama," would have been fulfilled to all the parties legitimately interested in it, but for the impertinent interference of others, actuated solely by enmity toward me, and of whom the two who have been most active and efficient confess this influence, with brazen effrontery, in declarations under oath, that they have not now, and never have had, any acquaintance whatever with the unfortunate woman whom, for their own purposes, that have aided in leading into such a melancholy exposure of herself.

From Mr. Pettigru's letter it should not be inferred that there was any actual consent to a divorce. The Myers family knew that any opposition to my petition would but give notoriety to the suit, without preventing its inevitable result; and making it a satisfaction that I would bring it on the ground of desertion only, agreed that there should be no opposition if my complaint embraced but that charge. My bill of divorce was now filed, in such form as I was advised by counsel was proper in the case, and the writ summoning the other party, "setting aside all excuses whatsoever, to be and appear, in her proper person, before the Judges of the Court of Common Pleas, of Philadelphia, on the first Monday of June, to show cause, if any she have," why I should not be divorced from her, was served upon her by the sheriff of Charleston, on the 31st of March, 1852, as is shown by the sheriff's return.

I had previously been married. My first wife, Caroline Searles, a woman whose memory I cherish with the tenderest emotion, died in 1842, leaving me two daughters. Her only near relations were the families of an uncle, Mr. Waring, and a brother, Mr. Searles. These are wealthy men, but of pursuits, tastes, feelings, habits and associations, as foreign from my own as possible. They were kind to my little girls, and I was grateful, yet I seldom visited them; I rarely went into any society; it is remembered by the family in whose house I had lodgings, in 1850, that during that entire year I did not go out after tea probably a dozen times; upon the Warings I think I did not call for between two and three years; Mr. Searles I visited more fre-

quently; he was the uncle of my children, and I did not fail to communicate to him everything connected with their interests. When I determined to obtain a complete separation from Charlotte Myers, therefore, I disclosed to him fully my purposes; he was very inquisitive, but I answered his every question with unhesitating frankness. He said, "You will be marrying again?" I admitted that I might do so, and in the course of a long conversation, remarked that I had for several years possessed the friendship of a woman whom I should be very glad to marry, though I had no reason for supposing that under any circumstances I could do so. When I mentioned the name of Miss McCrillis he expressed surprise; he thought, he said, it would have been Miss Cary. Miss Cary had dedicated a book to me, and he had heard me speak of her with a degree of respect for her personal character and of admiration for her genius which I have never ceased to cherish. I replied that I fancied it would be very difficult for anybody to persuade her into a marriage, but whether I could win her or not, I had seen and read too much of literary women to believe they were apt to make good housekeepers, and I was of so practical a disposition as to consider probabilities of this kind in choosing a wife. This slight and half-jesting passage, at the private table of a man thus connected with me, comprises all I ever said of marrying that distinguished and estimable person, whose name has so wantonly and with so utter a disregard of decency, been dragged into the affidavits published in the Tribune. I subsequently, upon the assurance of Mr. E. D. Ingraham—to whom I had entrusted my case, mainly because he had been familiar with all its history from my first acquaintance with the Myers family—that the granting of a decree of divorce on the first of July would be, under the circumstances, but a matter of form and of course, ventured to communicate the conditional intentions I had formed on the subject to the lady referred to in my conversation with Mr. Searles, well knowing that she and her friends were aware that eminent lawyers had declared my marriage with Miss Myers void *ab initio;* that whatever its nature, a complete separation had existed from nearly the time of the ceremony, and that the initiated proceedings for divorce were regarded by me as technical, and resorted to as the only means of obtaining declaratory action in the matter.

I soon after made the discovery, which ought not to have surprised me, that the families of Waring and Searles, to whom I supposed the respondent in my suit was an entire stranger, had been for years her most trusted associates and correspondents; that they had acted as spies upon my daily conduct for her; that Waring, with his daughter, Mrs. Lewis, had been on a visit to her in Charleston when the sheriff of that city served upon her my complaint and the accompanying summons; and worst of all, that my eldest daughter had been taught by these people to have no regard for my parental authority, and without my knowledge to receive at the house of Mr. Searles letters from the Myers family, directed to his care, and to answer them there. The suppressed but settled dislike long existing between myself and the Warings became now, of course, an unconcealed hostility, and the baseness and duplicity of Searles, who as a brother-in-law had sought and received my domestic confidences only to betray them in such a quarter, naturally excited my utmost indignation.

As has been already stated, the other party was informed in March, 1852, that the suit for divorce would immediately be commenced; the letter of her counsel, Mr. Pettigru, shows that she at once conferred with him on the subject, and instructed him to write me that no opposition would be offered on her part to my obtaining the sought for decree; and she admits in her affidavit, that the summons of the court was served upon her by the sheriff of Charleston, "but that she never opened or read the said paper, or any part thereof, nor did she know its nature or purport, until sometime in April, 1852." Now, as the writ was served on the thirty-first day of March, and the *next day* was "sometime in April," this may be true; though the im-

portance or significance of the fact, if it is a fact, that she kept a writ, commanding obedience two months after its service, an entire day, before reading it, is not very apparent.* In the following July she was in Philadelphia, and of course perfectly aware of the proceedings in the case, yet she refrained from opposing my petition. In August she was at Schooley's Mountain, and, in her affidavit, declares that I "went there, disguised, with another person, for the purpose of obtaining her signature to a certain paper;" that I conversed with her there, and that, "chagrined and disappointed" at her refusal to sign the said paper, I "operated upon her fears to such a degree, that she verily believed" I "was that night plotting with the low people of the place to induce them to waylay her." Here is an assertion, on oath, of my presence at Schooley's Mountain; it has not only the "circumstance," but many circumstances; the deponent sees me not only "disguised," a matter in which there might be room for misapprehension with a nervous and sick woman, but sees and converses with me *un*disguised; the object of my pursuit and the subject and substance of my conversation are given; and when she goes to New York, I go after her. Now I was never, in the course of my whole life, at Schooley's Mountain, or nearer there than the line of the New Jersey railroad, not thus near, except in going over that road. If I was there, many besides the deponent must have seen me. It was summer time; the place was crowded; it was not long ago. Where are these witnesses? And the "other person" who was "with" me, where is he? He is not produced, or named, nor can he be. The mistake is not in the mere matter of place. The scene never occurred anywhere. She says I "wrote to her that I would take away the child, unless she consented to a divorce." As she had already, through her counsel, Mr. Pettigru, agreed not to oppose a divorce, it may be difficult to understand why I should demand her "consent" to one; but that I ever wrote her any letter whatever, after that of March, in which I advised her of my intention to appeal to the courts, is simply untrue. If the pretended letter was written, let it be exhibited. The child referred to was my daughter, of whom she says she "had already been appointed guardian, by the Chancery Court of Charleston, without opposition from" me. She might have added, without my knowledge.

Mr. Pettigru, the counsel for the other party, it will be remembered, states in the last paragraph of his letter to me the desire of the Myers family that I would permit my daughter to remain with them. In all the period since my visit to Charleston in the winter of 1845 and 1846 there had never been between the respondent, or any of her kindred, and myself a single syllable of incivility. We perfectly understood our relations to each other, and in every conversation and every letter there had been the most unfailing and careful observance of courtesy.† Considering all this, and that the aunt, Miss Sally Myers, had doubtless a real affection for her, I wrote to Mr. Pettigru, that while it would be very difficult, in my opinion, to justify to my acquaintances the surrender of the charge of my daughter to a divorced wife, not in the slightest degree related to her, yet as I wished to oblige the family in every manner possible, after having been compelled in the action for divorce so seriously to wound their feelings, I would consent to Caroline's remaining under Miss Sally Myers's charge the larger portion of each year, *provided* that no attempts should be made to proselyte her from the Christian to the Jewish religion, and that she should on no account whatever have any intercourse with the families of Mr. Waring and Mr. Searles. This last condition was declined; I sent for the child; her surrender was refused; and now, that is, in the beginning of Sep-

* This is according to the Tribune copy. A friend to whom I have shown a printer's proof of the above paragraph says that in the autograph of the affidavit it is distinctly written, "April, 1854." If this is so, I am quite willing to rest the question of a woman's keeping such a paper, under such circumstances, unread, for two years, upon its mere probability.

† See note illustrating this subject, *ante*, p. 8.

tember, 1852, learning that she was to arrive in New York with a party from Charleston, at a certain hour, by advice of the District Attorney and Mr. Richard B. Kimball, my counsel in that city, and attended by police officers, properly authorized, I took possession of her person, as she landed, and conveyed her to the house of a friend. I was inexpressibly pained to perceive how her natural affections had been obliterated. After two days, during which I had had no communication with the adverse party, or her friends, Mr. Waring called at the office of Mr. Kimball, and said he had some terms of "compromise" to propose, and, with Mr. Searles, would gladly call on me for that purpose, if Mr. Kimball would induce me to consent to an interview. I shrunk from meeting these persons. Their unwarrantable interference in my domestic affairs, and especially their conduct in attempting to persuade my eldest daughter into habitual neglect of my authority, caused me to regard them with undissembled loathing. I nevertheless promised to see them, the next evening, at Mr. Kimball's private residence. Mr. Kimball was with me in the parlor when they entered, and he was not absent a moment until their departure. Every syllable that was uttered was heard by him. Mr. Waring informed me that I had placed myself completely in their power by "abducting" and "stealing" my daughter; that he was disposed to have me punished, but that if I would discontinue my application for a divorce, and give up the custody of my child, and never again interfere with what he called the "rights" of his Charleston friend over her, I should not be molested. This was his "compromise." To the first proposition I replied that I should certainly not desist from my suit, but if, against the assurances of her counsel to mine, and the advice of her counsel to herself, his friend should offer any obstacles to the obtaining of a divorce on the ground of *desertion*, I should proceed to obtain a decree declaring the marriage void from the beginning, for reasons with which they were both acquainted. And as to the child, they knew perfectly well the conditions I had stated to Mr. Pettigru as unalterable: that, if under any circumstances I should consent to her being in the south a portion of each year, it must be upon the most solemn and satisfactory assurances that *she should never see or have even the slightest correspondence with themselves or their families.* At this they were both greatly enraged, and Mr. Waring, using the most profane and abusive language towards me, declared (and in these declarations he was joined by Mr. Searles) that they wished me to understand that our relations were hereafter to be of open hostility; that they would pursue me till every cent of their fortunes should be expended, or while a breath of life animated their bodies; that the warfare they had now began should be either my ruin or their own. Mr. Waring ended by taking from his pocket and serving upon me a writ of *habeas corpus*, commanding the production of my child in the Superior Court the next day at noon. Mr. Kimball accompanied them into the hall, and expressed his indignation at the unworthy trick they had played in begging him to bring about a meeting for the consideration of "compromises," merely to obtain an opportunity for displaying their ruffianism toward me, and to serve a writ upon me.

The next day I did not fail to present myself with my child in the Superior Court. The three judges in attendance were Oakley, (Ch. J.,) Campbell, and Payne. The District Attorney, Mr. Blunt, with the present District Attorney, Mr. Hall, appeared in my behalf, and Mr. Henry E. Davies for the other party. Upon examination of testimony, and hearing of counsel, Judge Oakley gave the decision, in which, at great length, he set forth, 1st, that there was not a particle of evidence to show that I had ever consented to any guardianship or custody of my child on the part of the person now claiming it; 2d, that I had protested against any such guardianship or custody; and 3d, that if I *had* agreed to any such guardianship or custody, the agreement, or *any* agreement on the subject into which I could enter, was, as had been decided time after time, ABSOLUTELY NULL AND VOID. The custody of the child was declared therefore to be vested solely in myself.

The contesting party was in the court; Waring, Searles, and Waring's son-in-law, Lewis, were there. They must have heard this decision with equal mortification and astonishment. They now manifested a disposition to approach me with civility. The District Attorney, however, prudently suggested that I should hold no conversation with them, except in the presence of a witness. Until I left the court, therefore, not a moment passed in which one of my arms was not locked in one of those of my counsel, Mr. Kimball or Mr. Hall.

Mr. Searles was now humbled. He, with Waring, had vaunted that in this trial I should receive my first lesson in defeat. Apprehensive that what had occurred in the preceding twenty-four hours might provoke me to an abandonment of the plea of desertion, in the suit for divorce, for that of the original nullity of the marriage, he wished to know what I wanted of his guest and friend. I explained, that Mr. Pettigru had written to my counsel that he had advised her to admit, in any form that might be deemed suitable, the fact that since a period shortly after the marriage she had not intended to live with me as a wife. He conversed with her, and, returning to me, said, "Such a statement shall be made by her, in the form of a note to me: when will you need it?" I replied, that I intended returning to Philadelphia the next day, and of course should require its delivery to me before the departure of the five o'clock train. "Very well," he said, "my house is on your way down to the wharf, and if you stop there, at half-past four, I will deliver it to you." I called the next day at precisely the time appointed. Mr. Searles came to the door, said I was a little earlier than he had anticipated, and requested me to ring the bell again at the end of five minutes. I sat in my carriage, in which I had left a friend, at the corner of the street, holding my watch, till five minutes had expired, then rung Mr. Searles's bell again, and he gave me the following paper, *entirely* in the hand writing of the person signing it, the obtaining of which by "coercion," is the chief "fraud" by which it is alleged I secured a decree of divorce!

"New York, Sept. —, 1852.

"*Dear Sir:*—I will not deny that I left R. W. Griswold for reasons the result of feelings on my part satisfactory to myself, which I do not choose to disclose; and which I still deem satisfactory to myself, though a court of law might deem them insufficient to justify or excuse me in separating myself from him. I have also no difficulty in saying that my intention when I left him was not to return to him, and my course and present position are founded on this determination, which still continues. I have left him, therefore, at full liberty to pursue such legal measures as he may be advised, and which, upon their communication to me, I have not in any way impeded or resisted.

Charlotte A. Griswold.

"To Hamilton R. Searles."

In Mr. Searles's deposition, he says I told him that if the other party did not "sign" this paper I "would apply to the courts for the child;" I "would bring her before the courts of New York." He deliberately swears that I said this the very day after the highest of these courts had decided that the child should remain in my possession! He proceeds: "Before making the last statement, he called at my house every four or five minutes to see if the paper had been *signed*." This "demonstration" of his, that I extorted the paper in question from his protege, has been printed in hundreds of journals, and has rounded the abusive sentences of hireling calumniators employed against me as counsel. It may be that it was not technically a perjury, but it is impossible that I address any person so dull as not to appreciate at its just value the oath of a creature who could torture the simple incident of calling at his house, on his own request, as above related, into an act of "coercion," or in any way allude to it as involving dishonor.

Mr. Waring's son-in-law, Mr. Charles D. Lewis, appears to have neglected a comparison of his deposition with the depositions of the other witnesses. He swears:

"I know of a certain paper being *signed* by Mrs. Griswold *in court* to facilitate libellant in obtaining the divorce; it was a paper that respondent had great reluctance to *sign*, and she would not do so until I had altered certain words at the commencement."

Observe, that the very paper—the letter to Mr. Searles—which Mr. Searles and others swear, with such particular array of circumstances, was signed *at Mr. Searles's house*, this person says was signed "*in court.*" Observe, also, that this paper, now on record, and every word of which is in the most careful and elaborate style of the signer's own handwriting, was "altered" by the deponent, "in court," "before she would sign it."

It may be thought that I have already exposed quite enough of the falsehoods of these unscrupulous defamers; but as the recent proceedings were instituted mainly, if not exclusively, upon the ground that the letter to Mr. Searles was procured by means of intimidation and bribery, it would be improper to pass in silence the most direct and circumstantial testimony in support of this charge. The writer of that letter herself swears:

"The said Rufus W. then TOLD deponent if she would only *sign* a paper consenting to a divorce, that deponent might keep the child forever, and that she would never be troubled or molested again about it; but that if deponent did not consent he would have deponent imprisoned for stealing away his child. It was through such threats, and fears of their execution, that deponent was compelled to sign a paper," &c.

Mr. Searles swears, in answer to the sixth interrogatory:

"She was *annoyed by her husband* during her stay at my house; she was ill at my house, and his *treatment of her during her illness was harsh and unkind;* she was at my house about a month, and was unfit to see *any one.* The *treatment* I have spoken of lasted until within about a week of her leaving my house."

In both these depositions, it will be perceived, are distinct assertions of *personal intercourse* between the other party and myself, during her stay in New York. She says, I "TOLD" her this and that, thus operating upon her fears, till she "was *compelled* to *sign* the paper," &c.; and he, "by all that is written in the Holy Evangelists of Almighty God," makes oath in support of her declarations, that while she was so ill, at his house, as to be "unfit to see *any* one," my "*treatment of her* was harsh and unkind;" that she was "annoyed by me," &c. These things would look very badly, if from credible witnesses, but in the very deposition here quoted Mr. Searles says, in answer to a subsequent interrogatory:

"While respondent was at my house, during the time mentioned by me in answer to the sixth interrogatory, THERE WERE NO PERSONAL INTERVIEWS BETWEEN LIBELANT AND RESPONDENT, to my knowledge."

This express and positive *contradiction* by Mr. Searles, not only of his own most significant and important testimony as to the means by which his friend was induced to write and deliver for me the letter, but of her own affidavit, so far as it relates to the same subject, the New York Tribune, actuated by malevolence, and a desire to prejudice the public against me, in order that it may the more easily defend itself in a suit now pending, brought by me for an unprovoked and atrocious libel, wilfully SUPPRESSES—thus not only confining its report to one side of the case, but from the *exparte* testimony offered by that side, *erasing* with careful malignity the sentences that might lead the public to a favorable and just estimate of my conduct.

At the distance of some twenty feet I observed the other party, surrounded by her friends, in the chambers of the Superior Court, while the Chief Justice was pronouncing his decision against her, but was not at any other time in her presence while she was in New York, and did not once in that year speak to her in New York, any more than I did at Schooley's Mountain, where she is made to swear that I attempted, by my conversation, to intimidate her, though I was never at Schooley's Mountain in my life. In four hours and a half from the moment I received her letter I was in Philadelphia.

The hand writing of the letter thus obtained was proven, and it therefore became a part of the record of the case; but when it was examined by Mr. Cuyler, who, by the withdrawal of Mr. Ingraham (at this time unable to

give attention to clients, on account of the condition of his health and private affairs,) had become my counsel in the matter before the Common Pleas, he expressed regret that Mr. Ingraham had suggested or that I had obtained any such paper. He did not regard it as of the least importance. It admitted nothing which was not already clearly established by evidence. If he ever referred to it before the court, it was casually and with indifference.

But I have entered thus particularly into the history of what took place between myself and the adverse party, at this time, for a weightier reason than that of disproving the alleged coercion of her will by calling at Mr. Searles's house "every four or five minutes," or by using "threats" to that person while invading her sick room. It will be perceived that in all the depositions of Mr. Waring, Mr. Searles, and Mr. Waring's son-in-law, not a syllable appears respecting my arrest for "stealing," (this is the word used by Waring and his southern friend in their affidavits,) my own daughter, the proceedings in the Superior Court, or the decision of the highest judicial authority in New York that I was not only the sole legal guardian and custodian of this daughter, but that my rights were INALIENABLE—*that*, NO MATTER WHAT AGREEMENT I MIGHT MAKE, IN WRITING OR OTHERWISE, *all attempts to release myself from responsibility in regard to the child, or to release the child from her natural duty of obedience to me, were* UTTERLY WITHOUT EFFECT. The reason for their silence on this subject—their avoidance of allusion to the most important point in the history of their relations with me at this period—will suggest itself to the reader. Observe, that the very day after three judges of the Superior Court, Chief Justice Oakley presiding, had solemnly declared that no such agreement or writing was or could be of any force, significance or obligation whatever, the depositions of Waring, Searles, Lewis, Searles's wife, and the party nominally leading this persecution, all declare that the letter of the latter to Searles was wrung from her by threats that I would withhold, unless such letter were given me, *a written contract that she should have the sole custody of my child, and sole authority over her*: "A GUARANTEE OF THE SAID CHILD AS EXCLUSIVELY HER OWN FOREVER!"

Does any person really believe that they would have demanded, or that I would have promised, as the consideration for an act alleged to be of the highest possible importance to me, such an instrument as by the uniform ruling of the courts was held and known to be unlawful, worthless, null, and the execution of which could by no means whatever be enforced? Is it not at once perceived that, to have stated the decision of Judge Oakley and his associates, would have exposed to derision every allegation made in these malignant depositions as to the means by which the letter addressed to Searles, and *written* by the woman signing it, was obtained?

The most painful emotions awakened by these reminiscences linger about my child. I returned to Philadelphia on Friday evening; during my absence, in contempt of the decision of the court, she was taken, with the connivance, as I suppose, of Waring, Searles and Lewis, on board the Charleston steamer, and from that time I have never seen her; nor have I, nor has her only sister, been permitted since even to correspond with her. She is now sixteen years of age, and I have learned, from persons living in Charleston, that she is beautiful and engaging. To be with her before my death, long enough to convince her that she owes me reverence and affection as well as obedience, has been an engrossing and continual passion. It is in vain. I should not outlive the protracted delays of a suit in the United States courts for her restoration, and I can only implore of the Father of us all that she may sometime learn by how great a wrong she has been won to the embraces of my enemies, and how little I have deserved the hatred with which she has been taught to regard me.

Soon after these proceedings in New York for the recovery of the custody of my child, additional and important testimony, by the Rev. Dr. Hooker,

Mr. Samuel A. Harrison, and Mr. Richard B. Kimball, was taken, upon the court's order, and after more than eight months from the commencement of my suit, a decree of divorce was granted me. I was at the time in New York, where my counsel, Mr. Cuyler, addressed me with his congratulations an announcement of the result.

The proceedings in the case had gone on with as much publicity as was necessary and usual, in cases of this nature. The other party was a portion of the time in the city, and much the largest portion of the whole summer so near it as easily to be advised of every movement in my behalf. Yet no opposition at any time was offered.

A short time afterward I was married—my first wife, the mother of my children, the only being who in any just sense had ever possessed the right to be regarded as my wife, having been dead more than ten years.

I might now have congratulated myself upon the prospect of a happy life; but Mr. Waring and Mr. Searles, baffled thus far in attempts to injure me, had by no means forgotten their oaths to pursue me until I should be ruined; and they were about this time joined by two of the lower order of literary women, actuated by a malice not less determined than their own, though originating in somewhat different causes. These persons took unto themselves an attorney, whose name I believe enjoys its chief distinction about the Tombs, and may be considered as having thus become thoroughly organized for proceeding against me by a course of systematic public and private calumny. Before I had been married a month, one of the women above alluded to, Mrs. E. F. Ellet, addressed to my wife, to whom she was as much a stranger as if she had never been born, a letter filled with abusive falsehoods against me. This letter, with some alterations, she has herself since published. To what degree the writing of such a letter, even if every word of it had been true, to a newly married woman, against her husband, was an outrage of common decency, the reader is left to decide. From time to time during the following three years anonymous letters about me, made up of almost every species of slander and vituperation, were continually appearing in the public journals. In the Charleston Courier it was stated that I had procured a divorce by bribing the Pennsylvania legislature, and that Mrs. Ellet, coming to a knowledge of the circumstances, had caused me to be arrested for bigamy. In a great number of newspapers it was alleged that I had stolen from the office of the prothonotary of Philadelphia county the records of my suit, either to conceal frauds of which it furnished evidence, or to prevent an appeal to the Supreme Court. If I was observed to be a visitor at the house of any gentleman of social or professional eminence, an anonymous letter against me was addressed to him. Gentlemen or ladies called at my own house at the peril of receiving communications of the same description. At length, in the spring of 1855, paragraphs appeared in various quarters to the effect that an extraordinary and unparalleled history of villainy by a clergyman and man of letters was about to be exposed in the courts, and that it would comprise such details of profligacy and cruelty as would put to shame even the most revolting "inventions of the French novelists." All these communications, to individuals, or to the public, were easily traceable to the same circle, and the larger part of them to a single individual.

These significant intimations, which the parties at work did not forget to have sent to me, were followed by the filing of an "affidavit," purporting to be the composition of the respondent in my suit for divorce, tried and decided three years before, and setting forth that the decree then granted me should be vacated, because procured by fraud. Scarcely any of the numerous particular charges contained in this affidavit were pertinent to the matter submitted to the court, and no evidence in regard to them on my part was either necessary or proper to be given. On most of them it would have been difficult to give any evidence. Judge Thompson refers to these in his opinion in the case, as "the many and gross charges which are now made

against the libelant, all of which were as well known by the respondent before her declared acquiescence in the course adopted by him, as now, and were not breathed by any one." Referring to their inconsistency with her former declarations, he says: "The only reasonable explanation is, that since that period her mind has become more excited against the libelant, or *her views so greatly changed that she now sees things through a different medium.*" This remark is justified by the evidence before him, but the true history is, that they are hardly her allegations at all. Those here referred to, as well as those upon which the court has given its discrediting decision, are vituperative and defamatory in the extreme, but so confused as to bear no evidence of being an original narrative. They have been put together by persons who of their own knowledge could say nothing about the matter. They show the affidavit to be the work of more hands than one, and betray just such inconsistencies as are incident to a production in which several persons narrate and exaggerate a history received from others, filling it to what they deem an effective completeness by bald inventions. The affidavit was *exparte*, and by the rules of law I could put in no responsive statement. The court, of course, declared that it "*should not be regarded as evidence.*" Its numerous falsehoods and self-contradictions have been sufficiently exhibited in preceding pages. My reputation, I presume, is sufficiently discharged, by Judge Thompson's decision, from the imputation which was the sole ground of the proceedings by which the other side sought to have the decree granted me in 1852 set aside — the imputation of fraud in procuring that decree. This matter, and no other matter, has been in issue in the question lately presented by so many methods to the public; and it has been decided that there was no fraud in the case. The slanderous allegations in which this imputation has been enveloped, and by which it has been sought to support it, I think those who have read this narrative will admit, have been *disproved*, as far as their nature admitted, for the most part out of the mouths of my accuser and her witnesses.

Of these witnesses I would gladly refrain from saying anything further; but my cause is not my own cause only; and some additional illustrations of my relations with these persons, and of the character and significance of their testimony, seem necessary to the reader's appreciation of the attack they have made upon me. Their depositions, in which the malice of years was concentrated, were given, not in open court, where they would have been subjected to the searching power of *viva voce* cross-examinations, but were taken by commissioners, on interrogatories set down in their commission and framed, for the most part under the supervision of the persons who were to answer them, and with the exact purpose of bringing out all the libellous matter which they wished to get before the public. The leaders, unwilling to trust to Mr. Searles's training, appear to have made up for him an affidavit which, on being interrogated, he proceeded to read, until one of the commissioners told him it was not in order, and that he must answer from his unassisted memory. The cabal consisted of Mr. Searles, Mr. Waring, Mr. Waring's son-in-law, and Mrs. Ann S. Stephens, Mrs. E. F. Ellet,* and Searles's wife.

With respect to Mr. Searles, whose name is brought forward most unwillingly in the preceding paragraphs, I must be permitted to say, that regard for the memory of his sister prevents a more minute exposure to the public of the causes of his alienation from me. The proceeding lately before the court, was by a person claiming to be my second wife. Regarding myself as unmarried, I have been married again, and have other children. The woman whose cause he has espoused is no connection of his, is separated from

* There was inserted in the commission to take the *exparte* testimony of the above named persons, a requisition upon each for the delivery of the letters he or she had received from the party in whose name the proceeding was commenced. Mrs. Ellet discloses her familiarity with the commission, and her contempt of the court granting it, by swearing that she had "*destroyed* some of these letters *since the commission was received.*" The others, I have no doubt, had done the same thing.

him by nearly a thousand miles, and until lately was an entire stranger to him. Little obligation could lie on *him* to aid her cause, however just it might appear. Yet he volunteers his presence and his aid to prove, if he can, that the father of his own nieces, who was the husband of his only sister, is a bigamist and a felon; and being unable to prove anything on this point, contents himself with placing on record for the dishonor of a departed sister's memory, and for the disgrace and unhappiness of her offspring, his deposition that that father and husband was always a common liar, despicable and disesteemed! I have only to say to Mr. Searles, that as he declares he has no special hostility to me, these volunteered reproaches—to whomsoever volunteered reproaches might be becoming—were not becoming to *him;* and that "when men standing in the relation of near kindred, lose *decorum*, they lose everything." Mr. Waring, another witness, was my first wife's uncle, and stands to my elder children in the same relation as Mr. Searles, only that he is further removed from them by a generation. He may consider how far what I have addressed to Mr. Searles is applicable to him.

Those who have read the depositions of the two females who have been more active than any other persons in the recent proceedings against me, must have been struck with the facts, that both of them swear they have not now and never have had any personal acquaintance whatever with the party whose cause they undertake; that not any portion of their entire testimony has even the slightest relevancy to the issue submitted to the court; and that both betray a degree of malice which before a jury would certainly deprive their declarations of influence even if they were pertinent and not disproved. I shall not enter upon any discussion of those published or unpublished opinions of mine respecting their attempts at literature, in which I have been so unfortunate as to dissent from their own well-known and perhaps more just judgments; and in what I have to say of their testimony, I shall endeavor to be as brief as possible.

With Mrs. Ann S. Stephens, I am happy to say, I have never had any personal intercourse of any kind, beyond casual conversations, occupying altogether perhaps twenty minutes, in fifteen years. These conversations were never sought by me. Her deposition on the motion to vacate the decree of divorce, on the ground that such decree was fraudulently obtained, embraces the following allegations—the only distinct "facts" she could remember that in her opinion were pertinent to this issue:

"From the character of the libelant and his acts, as I *know* them, I am hostile to him; have been so ever since I knew him; because it was proved to my satisfaction that he preached the gospel sometime after he was dismissed from the church that gave him the authority; and because when he was employed to get up a design for the cover of Graham's Magazine, *his* name was conspicuous among the first six or eight greatest men in the country."

When my counsel read the first of the above statements, he caused an inquiry to be addressed to the Rev. A. D. Gillette, of New York, who was the proper ecclesiastical authority on the subject, and received from that distinguished and most estimable pastor an answer, which was produced in court, that I was "a member and clergyman of the Baptist Church, in good standing,"—as I have been without interruption or question from the period at which I first attained to those honorable relations, more than fifteen years ago. The second of these declarations by Mrs. Ann S. Stephens is quite as incorrect. Never having professed any skill, however, in the arts of "design," I am one of the last persons in the world, perhaps, whom any one would think of employing for such a service as she describes; and besides, if the authoress of "Fashion and Famine" will take the trouble to consult her file of Graham's Magazine, she will discover that my connection with that periodical *entirely ceased in* 1842; that I was succeeded in its editorship, in turn, by Mr. Bayard Taylor and Judge Conrad; and that it was while the latter gentleman was associated with the proprietor in its management, seve-

ral years after, that my name was introduced, with that of Edgar A. Poe, who had been my predecessor in the conduct of the work, and the names of C. F. Hoffman, T. S. Fay, and others who had frequently contributed to its pages, into an engraved border to the cover, "designed," as the performance itself betrays, by Mr. William Croome, a well-known artist of Philadelphia, who had been "employed to get it up." I am sure my readers will agree that quite enough has been said to exhibit the value of what Mrs. Ann S. Stephens "knows" and declares under oath in this matter.

With Mrs. E. F. Ellet, I became acquainted in 1840, while preparing for the press a volume entitled "The Poets and Poetry of America." I was sorry to learn afterwards that my notice in that book of her literary labors was displeasing to her. In writing it I certainly did not intend to say anything which was not as flattering as might be said consistently with truth. It would have been but a poor recommendation of my book had it revealed that the authoresses presented to my readers were either immoral in their characters or without literary capacities. Its whole interest, on the contrary, depended on the displays I offered of the excellence of their productions. I endeavored to exhibit Mrs. Ellet in the most favorable light possible. I quoted several pages of her verses and praised them as highly as I could. Had I been bound to consult no one but that person herself I might have given more, but I had to consult the interest of my publishers and the pleasure of my readers; and as I was not professedly writing the biographies or copying the productions of obscure authoresses, I could do no more for Mrs. Ellet. My sketch of her personal and literary history is before the public in the "Female Poets of America." My readers can judge of it for themselves. I saw but little of this woman until the year 1848. By a note now before me, dated the 29th December, 1847, she informed me she had planned a work on "the heroic women of the Revolution," and, with some compliments referring to my supposed "intimacy with American history," expressed a wish to converse with me on the subject. Before I had had an opportunity to answer this note by another, I met the writer of it in Broadway, and offering apologies for my apparent neglect, assured her of the willingness with which I would give any assistance in my power toward the completion of her undertaking; bu at the same time told her the Historical Society, of which I was a member, would furnish, in its library, the most ample materials for her purpose to be found in the city; and that Mr. Jacob B. Moore, the learned librarian of that society, to whom I would readily introduce her, was far more familiar than I with the domestic life of the country during the period to which her researches would be limited. Mrs. Ellet swears:

"I became acquainted with the libelant by his calling on me at my lodgings at Mrs. Green's, in the Fall of 1847, I think; *he called and introduced himself;* he stated that he *heard* I was preparing a work on the women of the Revolution, and he offered me an introduction to the Historical Society, *which I already had.*"

I must be allowed to correct Mrs. Ellet's recollection by transcribing a note received from her the second day after the above-mentioned conversation. As there is nothing in it of a confidential nature, I present it entire:

"*Friday Morning, December* 31*st.*

"*Dear Sir:*—If it is perfectly convenient for you to accompany me to the library of the Historical Society this morning, I should be *glad to avail myself* of your kind offer. I will call at the New York Hotel, on my way, about half-past ten, (if it does not rain,) as that hour will not break in so much upon your day. In case of any engagement, pray do not put it off for me, as another time will suit as well. Very truly yours.

"To Mr. GRISWOLD." "E. F. ELLET."

The rooms of the Historical Society were in the University, on Washington Square, and I myself, when in the city, occupied others in the same building as a study. Of the means to which, in the following summer, I deemed it proper to resort, in order that Mrs. Ellet might perceive the necessity of pro-

secuting her labors elsewhere than in my study, I shall here offer no particulars. I preferred entire seclusion, rather than her company; and after removing the key of my apartments—too large to carry about my person—from under the mat at one of the doors, where I had been accustomed to place it when leaving the building, to the custody of Mr. Moore, in the Historical Library, with a request that he would deliver it into no hands but mine, all civilities between Mrs. Ellet and myself ceased, for several months. A renewal of intercourse was offered on her part in the following note:

"*7 Park Place, Nov. 24th.*

"*Dear Sir*:—The Editor of the North American Review wants me to prepare an article forthwith, on the American Female Poets. Will not your publishers send me a copy, now—if they have one bound—that I may do it some justice? I will promise not to lend it before publication. Respectfully yours, "E. F. ELLET.

"Rev. Dr. GRISWOLD."

I doubted whether she had received any such application as was pretended, though not her intention to write such an article; but answered, that considering her personal hostility to me, and that her own works, and the works of several authors with whom she had unfriendly relations, were reviewed in my book,* I thought it would be highly improper for her to write *anonymously* anything about it, and therefore should decline furnishing her an advance copy. If she wished to review the volume she must wait until after its publication. In her deposition, Mrs. Ellet swears:

"He afterwards called at my lodgings and offered me a sum of money if I would withdraw an article which I had written and sent to the North American Review, reviewing his work on the 'Female Poets of America,' to make room for another article which he supposed would be more favorable to himself."

And in the letter appended to this deposition she says:

"Mr. Griswold is, perhaps, not aware that the cause of his bitter enmity toward me (my rejection of his offered *bribe* for the withdrawal of an article in the North American Review, and exposure of his fraud on another occasion in a Philadelphia paper,) are well known in this community."

Mrs. Ellet's forgetfulness in this case is even more striking than in that of her introduction at the Historical Society. Having occasion to call upon her, in behalf of another party, on the evening of the 23d of January, 1849, as I discover from a diary I then kept, I casually mentioned my surprise that she *had* written the article proposed for the North American Review (the only article from her pen, I believe, that ever appeared in that respectable periodical,) notwithstanding our correspondence on the subject. She said I was mistaken in supposing her review was in an unfriendly spirit. I assured her I had alluded to the matter merely because our meeting had recalled the fact, learned a few days before, that a paper on the genius of American women, by a gentleman whom I regarded as one of the greatest of living authors, might have been offered to the Review but for the previous acceptance of her communication, in which the same general subject was discussed and illustrated from the same text. Mrs. Ellet at the moment had especial reasons for complaisance, and assured me her article should be withdrawn. Nothing was said about money, but the next day I received a letter from her in which she says:

"*779 Broadway, Jan. 24th.*

"Had she known of the intention of the gentleman in Philadelphia, before sending her article, Mrs. Ellet would have willingly withdrawn in his favor. As it is, the article is in the hands of the publishers, who are of course responsible to her for its price at the usual rate of payment in the North American, [one dollar per page,] the review being intended to occupy about 25 pages. *Mrs. E. would have no objection to their de-*

* Mrs. Ellet says in her deposition: "He published a biography of me which contains misstatements." She refers to the article in this volume. I assure her that every statement in it was made upon what seemed to me adequate authority, and that any "misstatements" which she may point out, shall be corrected with the greatest pleasure.

stroying it, should the editor think proper, *provided the publishers remunerate her for her labor.*"

I suspected the article by Mrs. Ellet had been accepted, in the absence of anything better on the subject, because it was offered as a gratuitous contribution. In no other way could I account for the admission of a writer of her inferior abilities to so reputable a work. I presumed it to be untrue and unfair, merely from the fact that she wrote it, but was confident the editor of the Review would erase from it anything that was manifestly impertinent or grossly unjust. I was, therefore, indifferent about its publication; and regarding Mrs. Ellet's note above quoted as merely an artifice for obtaining $25 from me, took no notice of it.

In the extract alleging an attempt to "bribe" Mrs. Ellet, the reader will perceive that she refers to her "exposure" of some "fraud" which she charges upon me, "in a Philadelphia paper." In the letter from which this extract is taken, she says:

"Mr. Griswold will also recollect a note written by him a few years since, in which he states that Mrs. Alice B. Neal had 'called at his office to apologize for an article in her *Gazette*, which had appeared during her absence,' &c. (The same article before mentioned.")

Instead of the words in parentheses, as in the original, now before me, Mrs. Ellet has substituted in the printed copies of this letter: "The article was in part written by myself." The article referred to appeared in a paper called Neal's Saturday Gazette, for the week ending December 30, 1849. Had it been simply a criticism of my "Female Poets of America," as it purported to be, I should have taken no notice of it, whatever its temper; but it embraced personal imputations that were libellous, and being informed that Mrs. Ellet was its author, I addressed her a note, inclosing a copy of the article, and requesting an answer as to the truth of this information. There was in my note no such statement as is pretended in regard to Mrs. Neal, as the reader will readily infer from the reply, which was as follows:

"779 *Broadway, Jan. 4th.*

"Mrs. Ellet was much surprised yesterday by the receipt of Dr. Griswold's note of Dec. 30th. *She had not seen the article in Neal's Gazette, nor does she know by whom it was written.* It is certainly unjust to charge upon her the responsibility of an anonymous notice treating of published works."

Exposures of this woman's unfortunate habit become tedious. I will only add, that there is not even one allegation in regard to me, in all her deposition, including the letter which, without having any acquaintance with her, she addressed to my wife, and now appends to it, which is not essentially untrue: excepting only, that in reply to an impertinent question which she once asked me in my study, I remarked of the woman to whom she had referred, "She is a very nice person."

I hope in what I have said of these women I have not gone beyond the reserve both of fact and of language which restrains gentlemen in speaking of the other sex. Indeed, averse from controversy with any one, I cannot bring myself to enter the lists at all where women are presented as my antagonists. Honor paralyzes and ought to paralyze the arm of a man who attacks those whom it should ever be the highest pride and pleasure only to defend. And when woman, leaving the domestic sphere, comes before the public, the challenger of public judgment; when, laying down the distaff, she takes up the pen,—not for the illustration of those sentiments which are her proper world, but, as a newspaper reporter or correspondent, to enter into the exciting and rude discussions of the forum and the club-room; to judge for others of public and private characters; or, stepping in advance of attorneys general, grand-jurors, and others, its sworn and responsible administrators, pushes herself through crowds into the heated air of city courts, and without writs or subpœnas calling her there, claims at-

tention as the vindicator of public justice, I shall for myself suffer chiefly in silence whatever she may do or say concerning me. The lists of such combats can be arranged by no court of honor or chivalry with whose laws I am acquainted. They are a problem in sociology which puzzles the "kings at arms." I mean no disparagement of any woman who pursues what she deems her calling in that way. She and not I must judge of its obligation on her, and of its dignity, so far as concerns herself. All that I have to say is, that, "matches or over-matches," in judicial or literary conflicts, to which *woman* invites the whole world: to witness the display, to judge the contest, and proclaim the victory—shall exhibit no further acceptance of challenges, from me, than that simple acknowledgment of the champion's presence and design, the omission to make which would be to treat *her* with disrespect. I have not meant in what I have said to give more than this recognition of their presence to Mrs. Ann S. Stephens and Mrs. E. F. Ellet, and if I have said less of them than some of my readers may desire or expect, those readers have my reason, and I hope my justification of it also.

As I have said, I received, in due course, on the conclusion of my suit for divorce, a communication from my counsel that the decision of the court had been in my favor, with his congratulations on the occasion.

The recent opinion of Judge Thompson, on the motion to vacate that decision, has been greatly misunderstood. It has been extensively published that that learned and upright judge had "decided that no decree of divorce had ever been granted." He neither decided nor said any such thing. The application was to set aside a decree, as fraudulently obtained. In legal language, the matter before him was "a rule to show cause why the divorce should not be set aside." The application, in effect, *admitted* the decree, and was based on an allegation of fraud in procuring it. The judge "discharged the rule," that is to say, he did not grant the prayer of the party. He went over the whole ground of the alleged fraud, and declared that there was *no* fraud: and then, properly, perhaps, though, beyond a doubt, very unnecessarily, adds another ground for discharging the rule, namely, that as the records of his court had been lost and were not exhibited, and, therefore, as no decree of divorce "*appeared*," the rule was to be discharged on this ground in addition to the others: the court not being bound to know that which, although existing, did not "appear." This was true. From some omission—certainly not imputable at all to *me*—no entry of the court's decree of divorce did appear on the court's docket; and on an application of this kind before him, Mr. Justice Thompson was not bound to look beyond the docket of his own court; especially in a case where he had already abundantly shown that it was a matter of no moment, so far as the rule submitted was concerned, whether there was an entry there or not: for that no fraud had been used in procuring it, and that on *that* ground alone the "rule" of the other side would have to be "discharged." I may here say that the question as to the decree of divorce having been obtained was never once mooted on the argument. The fact was known as a fact, and as a fact assumed, all round. No doubt was raised by the bench during argument, or the doubt would have been removed.

Conceding that on the docket no entry of divorce "appears," who, looking at the facts of the case, doubts that a divorce was in fact granted? *First*, the very rule taken in the case assumed it: why was a rule taken to set aside a divorce if no divorce was granted? *Second*, it was assumed by the party, witnesses, and counsel, against me: was not this alone strong presumptive proof, in a case where the ordinary proof, the *record*, was confessedly lost? may not parties who confess against their wishes and interests, in such a case, be trusted to have confessed nothing which their knowledge has not compelled them to confess? And, *third*, an *appeal* was confessedly taken to the Supreme Court from a decree. *This* record is not lost. It may be seen, I

understand, by any one who choses to look among the files of the Supreme Court, for December term, 1853. Now every lawyer knows, that no appeal from a decree can be taken until some decree has been entered which can be appealed from. The right of appeal to the Supreme Court exists but in virtue of a statute which gives an appeal only from "the *final sentence or decree* of the Court of Common Pleas." If there was no decree, from what did the other party, under orders and assistance of her counsel, Mr. H. M. Phillips, appeal? Certainly she did not appeal from my right to *ask* for a decree. Will any person at the bar of Philadelphia accuse Mr. H. M. Phillips of having taken an appeal to the Supreme Court when there was no decree in the court below? Has that shrewd gentleman been practising in criminal courts for a quarter of a century, to learn his professional duty for the first time now, and from *me?* The very writ of appeal (the *certiorari*, as it is called,) issued by the appellant's counsel, Mr. H. M. Phillips, upon her own affidavit, is headed, "In the matter of the appeal of Charlotte A. Griswold from the DECREE in the case *sur* divorce Rufus W. Griswold." The writ of appeal itself, now in that court, brings up as part of the docket entries in the court below, (and the entry in both courts may be seen, I understand, by any one who will be at the trouble to go and look at them,) the following entry in the Common Pleas: "Respondent appeals from *decree* of Court," and goes on to add that the "affidavit is filed, recognizance entered, and surety approved." And this writ was issued on the order of the counsel, Mr. H. M. Phillips, his client's affidavit being added, that she appeals, "because she firmly and verily believes injustice has been done." Injustice! how, or when, if the court had not decreed against her? This entry of appeal from a *decree*, was perhaps not known to Judge Thompson, when he gave his opinion. And I submit it to any and every member of the bar of Philadelphia who may read this paper, and to the other party's own counsel, Mr. H. M. Phillips and Mr. D. P. Brown, to declare whether there is the least doubt of a decree having been made; though from the carelessness, not of myself, but the clerk of the court, it may not have "appeared" at the end of three years. Does Mr. Justice Thompson know that his present clerk—whose care he commends—has never, *to this day*, entered on the docket the record of the court's *discharge of the recent rule to vacate* the decree? But with what truth would the court infer hereafter, from this omission, that the rule was never discharged, in fact? I make no reproach to the court for the carelessness and blunders of its clerk, appointed by the people, and not by itself.

The value of a *recital*, in subsequent judicial records, of a fact in a preceding part of the record, (the preceding part being lost,) was very fully considered and very conclusively settled in Pennsylvania, in *Cromwell* v. *The Bank of Pittsburg*, decided by Judge Grier, and reported in Wallace, Jr., ii. 569, and since confirmed, after solemn argument, by the Supreme Court of the United States, Howard xvi. 571. In that case, the docket, supposed to contain the entry of judgment, was lost, just as the record was here. There was, indeed, no specific or usual evidence at all of an entry of judgment by the court. But an execution had issued, *reciting the fact of a previous judgment*, and this was held by both courts to be enough. If an execution, issued by the party *interested to sustain* the judgment, be evidence of a judgment, the rest of the record being lost, I may safely rely on the *appeal*, in this case, taken by the party *interested to subvert* the decree, and who would be the last to confess its existence, unless its existence was a fact.

There cannot be the least doubt that a decree was given by the court, though perhaps neglected to be entered by the clerk any where. A part of the missing record has lately been found in the possession of one of the judges, who had by accident taken it to his house. I have taken measures to have the whole searched for and perfected. The process causes some delay, which, in the expectation that the evidence, when brought out, will be so full as to silence all opposition, I am obliged to encounter. In the meantime, how-

ever, there is, as above shown, abundant evidence of a decree for every purpose of protection of my character, and the character of others dearer to me than my own.

Some persons have been disposed to censure me for marrying so soon after I received intelligence of my divorce, and before the year allowed by law for an appeal, had expired. I may ask, what course would these persons have imposed upon me in those states where there is no limit as to the time during which appeals may be taken in such cases? But what reason had I to expect that an *appeal* would be taken? rather, what reason had I not to suppose that *no* appeal would be taken, and that the whole matter was at an end with the decree of the inferior court? The other party had given her consent to my proceeding, provided I would not exhibit her misfortune to the world: which I did not. She had never once appeared in court during the suit. Every thing, says Judge Thompson, in his opinion discharging me from all imputation of fraud, was "as well known by the respondent before her declared acquiescence in the course adopted by the libelant as now," and "the only reasonable explanation is, that since that period her mind has become more excited against the libelant, or her views so greatly changed that she now sees things through a different medium." This, however, was a matter which I could not foresee. My marriage with her, if it was a marriage, being pronounced legally dissolved, what suggestion of law or of propriety called on me to wait a year to know what action would next be taken by a person who had expressed her satisfaction with all that was being done: a person whom I never considered, in truth, as my wife, at all, and with whom for years I had had no intercourse—whatever? The appeal which was subsequently taken, was in the nature of a fraud upon my rights and expectations; and it is not to my discredit, I hope, that I did not presume that it would be practised.

I have now brought to a close my narrative, and have sufficiently displayed, I trust, in what I have deemed it necessary to say of the parties who have appeared against me, the secret of the late proceedings. Of all the charges presented as grounds for the sought for action of the court, Judge Thompson has decided that *not one* is sustained by proof. On every point at issue in these proceedings I have been judicially acquitted. Here I might rest, but a question, not of law, but simply of social ethics, referred to in the preceding paragraph, and, as I conceive, without any sufficient justification, brought before the public, demands for this reason, some further consideration. With a few observations illustrative of this, and designed more for the vindication of another than of myself, I will end.

The question whether my alliance with Miss Myers was altogether void, or only voidable, was one to which my thoughts were directed within a few hours after the ceremony. Believing then, as I had good reasons for believing, and as I have since had more conclusive reasons for believing, that the peculiarity of the case was understood both by the niece and at least one of her aunts; and knowing, as I knew, and others knew and could testify, the extent to which my addresses had been invited by one or both of these aunts, and the manner in which they had been received by the party most especially concerned, my own individual opinion was that there was no marriage in the case, any more than there would have been had the ceremony taken place between parties of the same sex, or where the sex of one was doubtful or ambiguous. I regarded it as a fraud going to the foundation of the matter — to those essential motives which religion itself consecrates as fundamental in this ordinance. Though not bred to the profession of the law, I knew very well that the foundation of all law is good faith and morality, and I had sufficient familiarity with legal writers to be acquainted with the doctrine declared by Chancellor Kent, that "a marriage procured by fraud is void *ab initio*, and may be treated as *null* by every court in which

its validity may be incidentally called in question;" that "this ingredient is as fatal in this as in any other contract."* Let me not be misunderstood: at no time have I entertained latitudinarian opinions on this important and sacred subject; I advance none now; I concede now as I thought then, that no mere error, no misrepresentations which could be called simply disingenuous, scarcely any *fraud* even, if in respect to the condition, rank, fortune, manners, character, or any external circumstances whatever, of a party, would make the marriage either void or voidable. These are accidents of the contract, not interfering with its essential ends. But the contract has some requisites that are imperative: ever implied, never expressed, fundamental; and when these are known by those who alone can know them, to be wanting, and the other party is led and invited, *tanquam conspiratione*, to the alliance, the inclination of my mind was to the belief that he contracts no marriage whatever. It was not from any conviction of my own private judgment as to the moral existence of this marriage that I applied for a decree of divorce. I was told by counsel to whom I confided my case, that this was a *form*, proper to be adopted wherever the marriage ceremony had been solemnized, though the ceremony might have been absolutely without effect; and in this position he was supported by the great jurist I have named, who says, that though a marriage "be *absolutely void*, and no sentence of voidance be absolutely necessary, yet as well for the good order of society as for the peace of mind of all persons concerned, it is expedient that the nullity of the marriage should be *ascertained and declared* by the decree of a court of competent jurisdiction."† The position seemed to me reasonable; and whether there might not exist a bare legal form of marriage—a form that might be called "outstanding"—obligatory as a legal form simply, and in violation of the spirit of law, and fit to be acknowledged only in the preamble of a petition which sought a declaration of its nullity—as a question of law too nice for me to determine. No mode of judicially *ascertaining and declaring* a marriage void from the beginning, existed in Pennsylvania, where I was then domiciled, so far as my counsel knew, nor, I believe, does exists at all, otherwise than through the *form* of dissolving one admitted to be valid. The proper application of this form to my case was a question for my counsel to decide, and he did decide it, in a way which under his arguments and authority satisfied my conscience both then and now. It was a matter in which, of course, I could submit myself with safety only to my legal adviser, under whose doubts my original opinion on the subject was controlled at that time. But without going into any further exhibition of my grounds or authorities of belief, I may say, that if I was correct, as I solemnly assert my conviction that I was, as to the previous knowledge, and correct, as I know I was, as to the fact of the infirmity itself, and correct, as others stand ready to prove that I was, as to the inducements placed before me, then I was correct in thinking that no valid marriage—in other words, that no marriage at all—had ever taken place with Miss Myers. That none had taken place, can, indeed, from these circumstances, be maintained, on the authority of rituals and religious writers, on that of canonists, civilians, and common lawyers, before any tribunal or tribunals, ecclesiastical or civil, legislative or judicial, of any civilized country.

My case was unembarassed with any question whether, by long cohabitation, I had made a "condonation" or forgiveness of the great wrong which was practised. *Cur tamdiu tacuit?* was a question which no man could ask. On the very night after the ceremony the parties separated on account of this wrong. The ceremony itself was private, and the marriage which it was meant to create, concealed, disowned, and discredited. My action was prompt and absolute at that time, so much as to give rise to the imputation of cruelty. Every right of property which the ceremony gave, if it gave any, was as soon as possible declared to be and to remain in the state in which it

* II. Commentaries, p. 75. † Ibid, p. 76.

would have been if no ceremony at all had taken place; and the woman, separating herself from me by half a continent, and so remaining, except on a few occasions when she has been seen with me in public, but never seen with me otherwise, has persisted in such a life from the day of that ceremony to this. That I should regard as of slight obligation such a performance: a union which, as I have shown, was no marriage, an operation, which began like a fraud, and was continued like a farce, will not, I presume, be surprising to any man; and that with proceedings already taken to secure a judicial declaration of its nullity, and with the assurance of my counsel that such declaration would, as a formal thing, be a matter of course, on the first of July, 1852, it is not perhaps so surprising as it would naturally otherwise appear, that I should, between six and seven years from the time of the original separation, have made known to a lady the sentiments recently inspired by her, nor blameworthy in such a lady if, removed from the scenes of these matters, indulging in no idle conversation, or idle listening, and relying implicitly—as was amiable, and natural in her sex—on the truth of all, both of fact and of view, that *I* represented to her, she should not have felt bound to give a positive and final rejection to my address—which indeed deserved rather the name of *my confidence*.

Let no one charge cruelty or inconsideration upon me in the matter of the present publication. For more than ten years my lips have been profoundly sealed toward the public upon this, the primal and eldest cause of the other party's separation from me. For years I consented to live in the painful and anomalous condition of a man who was suspected of being single, yet without the right to marry, and of being married, without the existence of a wife. From regard to the feelings of the other party, and the feelings of her friends, I was willing to incur the reproach of deserting a woman who called herself my wife, or of so treating her as to oblige her to desert me; and from this same regard to the feelings of herself and her family, for which I am sure, I shall not be blamed, I have gone near the limits of my conscience in presenting secondary instead of primary grounds as the motives of my petition for judicial assurance in the matter. I am not saying in this that the secondary grounds are not true: they are strictly true, and are proved; but they followed from the first grounds, which, if I had felt willing to offer them, would have been far higher, more satisfactory, and more moral than the ground of two years' desertion, acknowledged as a cause of divorce only by a statute of local application.

And now that, after the end of three years, when, to use the language of Judge Thompson, this woman's mind, "more excited" against me than it had been, or "her views so greatly changed that she now sees things through an entirely different medium" from that through which she saw them, and which was the true one, she, with others—following them, and not leading, I am sure, and even, as I would believe, lending her name only in the matter, not foreseeing how far she was to be committed—has been the means of a defamation of me that has been circulated through half the newspapers of this country, and given that opportunity for which the whole of the recent proceeding to set aside my divorce originated—an opportunity, I mean, by which *others* might put on record matter wholly irrelevant to the issue—vituperative on its face, meant to be defamatory only—and placed on record only that it might come before the world with the protection and air of a legal proceeding: I say, I hope that I shall be pardoned if at such a time, when the persons who were the originators and actors in the proceeding in which this woman appears as the ostensible head have for years, with the utmost activity of hostile exacerbation, been circulating in every town throughout the Union, wherein my name is known, such offensive libels as have been described in these pages, I shall on one occasion unseal my lips to self-justification. It is a matter on which I have well interrogated, as I was bound

to interrogate, my honor and my conscience. One of my deepest regrets is for this woman: her condition is much to be pitied: the necessary allusions to it which I have made have caused me much pain. It was her misfortune only. The fault, in attempting to make me the victim of it, was with others perhaps as much as with herself. In some senses perhaps more so. But when my character and peace and power of usefulness, for whatever residue of life God may yet be pleased to grant me, are assailed in this fierce and fiend-like manner, under a proceeding to which she gives the sanction of her name, and appears, to the world at least, to give the sanction of her action, by no principle of delicacy or of justice ought the true cause of all this trouble to be concealed, and another's calamity to be thrown with such terrible consequences on me and mine.

RUFUS W. GRISWOLD.

Girard House, Philadelphia, May, 1856.

Mr. Justice Thompson's decision refusing the motion to vacate the decree of divorce, was given on the 15th of March. It is as follows, (an omitted paragraph having nothing to do with the matters declared by the court to be in issue):

COURT OF COMMON PLEAS—THOMPSON, P. J.

GRISWOLD *vs.* GRISWOLD.—*Sur motion to vacate Decree of Divorce.*

This is a motion on the part of the respondent to vacate a decree of divorce alleged to have been entered by this court sometime in the year 1852. It is asserted that the libelant obtained the decree by means of fraud and imposition upon the court. The application is based upon the inherent power of the court to protect itself from imposition; and the right of the court to vacate a decree obtained by fraud is not questioned nor denied.

* * * * * * *

The reasons adduced upon the argument to sustain the present motion are so numerous, that it is somewhat difficult to ascertain with precision the real grounds upon which the respondent claims the action of the court. They seem, however, to be comprised within the two heads, of collusion between the parties, or of fraud or imposition upon the court.

It was strenuously urged, on the part of the respondent, that none of the proceedings in the case have been regular, that the cause stated in the libel was utterly untrue, and that the proceedings were carried on while the respondent was kept in ignorance of them. That by this manner of conducting the case the libelant had imposed upon the court and fraudulently obtained a decree in his favor.

These positions are not, however, sustained by the evidence which has been submitted to us. It appears clearly by the written evidence, that the respondent had notice, not only of the intended application of the libelant before his suit was commenced, but that the subpœnea, with a copy of the libel was served upon her, and that, relying on the advice of her counsel, (not her present counsel,) she intentionally disregarded the notice, and permitted the cause to proceed, as it might, against her. It further appears by the respondent's own showing, that one of the difficulties which embarrassed the case, aud prevented for a time any action of the court, was removed by her own declaration, made in her own handwriting, and intended by her to be used in order to remove the objection made to the proceeding. In this letter, which is now before me, having been discovered since the argument, the respondent not only admits the truth of the complaint contained in the libel, that she left the libelant for reasons satisfactory to herself, but that her intention was not to return to him, and that her course was founded on that determination, which still continued leaving him at full liberty to pursue such legal measures as he might be advised to adopt.

Prior to the appearance of this letter, testimony had been taken *ex parte* and submitted to the court. At a subsequent period, certain other evidence was adduced, which, in connection with the letter just referred to, and with the fact that the respondent had full opportunity to take any defence that she might deem proper, *satisfied the court that such grounds were presented as would justify the further action that tended to a final determination of the case.* The many and gross charges which are now made against the libelant, and which the evidence taken upon this motion is adduced to sustain, all of which were as well known by the respondent before her declared acquiescence in the course adopted by him, as now, were never breathed by any one. The court was permitted to act, as though the case was in all respects fair and free from any collusion or fraudulent design. It becomes, then, a question of serious import, whether under such circumstances a court ought to listen to the party who claims to impeach the proceedings, either upon the ground of collusion, to which, *if it existed*, she was *a party*, or of fraud which she knew of and declined to expose.

As to the alleged collusion, it does not satisfactorily appear that it existed in such form as to demand our action upon that ground. The proceedings were commenced and carried on adversely with full notice to the respondent. She was required to appear, but did not. The charge of desertion was distinctly stated in the libel filed, and the truth of the charge was attempted to be sustained by evidence. Her declaration that the charge was true and the desertion presisted in, and

that she had left the libelant to his legal remedies, cannot be regarded as collusion. A party to a suit who has a defence, but who chooses not to use it, cannot be said to collude with the party suing. He would not be listened to upon such a suggestion. Rights may be waived without subjecting the party to any imputation. So a defence may be waived or a proceeding acquiesced in without any impropriety.

But it is said, on behalf of the respondent, that the letter written by her was obtained by force and fraud, and should be now disregarded. *This, however, is not sustained by the evidence, nor by her own statement in regard to it.* It seems that the letter containing the declaration referred to, was written at the libelant's request, and upon his promise to permit his daughter to remain with the respondent, if she would write the letter. This was no coercion, and with every allowance upon the score of the affection entertained by her towards the libelant's daughter, it is certainly not sufficient to justify or excuse the respondent, in thus stating, what her assertions now made would show to be grossly false and unfounded. The only reasonable explanation of this transaction is, that since that period her mind has become much more excited against the libelant, or her views so greatly changed that she now sees things through an entirely different medium. The affidavit of the libelant should not be regarded as evidence, and even if it were, we cannot perceive the justice or propriety of permitting a party who, by the suppression of facts, and by the assertion of the existence of contrary facts, has allowed action to be taken, by which the dearest interests of others have become involved, to take advantage of her own wrong in order to call such action in question.

Neither have we been able to discover any such gross fraud perpetrated upon the respondent, or upon the court, as has been suggested on her behalf. The proceedings were commenced by the libelant upon full notice to the respondent, and carried on without any effort to conceal them. It may be that some formal requisition or notice was not strictly complied with, but when it was expressly communicated to the respondent that without her admission of the truth of the charges alleged in the libel, the divorce could not be obtained, and she gave that admission, certainly the charge of fraud against her cannot be sustained. Nor is it perceived that the court has been imposed upon by the libelant as far as we have been able to ascertain the action taken in the case. *The case of the libelant was sustained by what appeared to the court to be adequate testimony,* and the objection of the want of sufficient notice to the respondent being removed by her admission, *we granted a rule on the libelant to show cause why a divorce should not be granted.* Thus far we perceive no evidence of fraud or imposition; no such allegation is sustained by adequate testimony. But it is alleged that prior to the granting of the said rule to show cause, an amended or supplemental libel was filed by the libelant of which the respondent had no notice, and that additional testimony was taken under said supplemental libel. It does not appear whether the supplemental libel was ever brought to the consideration of the court, and the strange confusion which exists as to the records and papers filed in this case, prevents us from ascertaining whether any action whatever was had upon said supplemental libel. The charge contained in it was the same as that stated in the original libel; the testimony alleged to have been taken under it, was addressed to the same facts and circumstances, as that which had been previously taken under the original proceeding. The supplemental libel had no effect whatever upon the action of the court, if, indeed, it was ever brought under consideration, of which we entertain considerable doubt. The filing of this paper, even without notice to the respondent, as it did not vary the charge, and produced no special action, cannot be considered a fraud or imposition upon the court.

The main ground, however, upon which we feel obliged to refuse the present motion, is the uncertainty which exists as to the fact of any decree of divorce having been entered by the court. There is no *entry* of such decree either upon the minute book, or upon the motion list of the court; nor do the docket entries in the case show that such a decree was entered. Whether the papers originally filed and the testimony and exhibits, which the rule of court requires to be annexed thereto before the case is submitted to the Court for its consideration, would show any thing in regard to the decree, we are entirely unable to say. *By some strange fatality, incident, perhaps, to the manner in which our records are kept, those papers have disappeared from the office of our Prothonotary,* and their contents cannot be supplied. The Judges have no recollection which would enable them to speak on the subject of the decree, further than of the fact, that *they regarded the evidence, as it was presented to them, as sufficient to entitle the libelant to the usual rule to show cause why a decree should not be granted.* It is, of course, impossible to rely upon the recollection of counsel for that as to which our records are silent, and when we find that there is nothing upon our record to show, that notice of the rule to show cause was ever served upon the respondent, or advertised so as to give notice of such rule, without which service or advertisement no decree could be entered without a violation of our rule of court, it seems to us that the preliminaries to the granting of a decree are entirely wanting. When it further appears that the rule referred to was not placed upon the list of motions, to be disposed of in the usual manner, the doubt as to the decree being made is so much increased, that we are compelled to take the only safe course, which is to regard that which does not appear, as that which does not exist. We are informed by the testimony, that the libelant acted as though he had in his possession some evidence of a decree having been made in his favor. What that evidence was, we have not been informed, nor have we the means of ascertaining. It does not appear by any evidence, that even a certificate of the decree was given by the Prothonotary, nor if such a certificate was obtained, upon what it was founded. In this absence of all evidence of any proceeding beyond that which appears of record, we are compelled to decide that there is no sufficient evidence of a decree of divorce having been entered, and consequently the motion to vacate that which has not been shown to exist, cannot be sustained, and the rule must be dismissed.

It is but due to the present Prothonotary of this Court to say, that he is not responsible for the absence of the proper records in this case, or for any defect in the entry of the proceeding, as the case occurred before he entered upon the duties of his office, and does not appear to have been subject to his supervision or control.

The motion to vacate is, therefore, refused.

Immediately after the reading of the above decision by Judge Thompson, the following action was taken:

Griswold *vs.* Griswold. On motion of Mr. Cuyler, the court granted a rule to show cause why

the record should not be perfected by the substitution of copies, and by evidence of the contents of lost papers.

In offering this motion, Mr. Cuyler expressed his satisfaction with the decision, which on every moral and legal ground perfectly exonerated his client from censure. If a question as to the existence of any decree of divorce had been raised during the argument of the case, the court would have been satisfied on that point without the least difficulty. The counsel, on both sides, however, he said, had considered this fact settled and entirely unquestionable. The defects of the record were of course in no way chargeable to the libelant, nor should he be held responsible for "the strange fatalities incident to the manner in which the records of the court have been kept." His client's dearest interests had at all times been involved in the preservation of the records of this case. Mr. Cuyler was happy, he added, in the conviction, that by the completion of the records, from authenticated copies of the missing parts of it, this strange and unparalleled persecution was to be concluded, and the good fame and legal rights of his client completely vindicated.

POSTSCRIPT.

This pamphlet was written and nearly printed two months ago, and soon after the publication of the above opinion, relieving me from the imputation of any undue means in obtaining a divorce. The publication of the pamphlet at that time would have gratified, no doubt, a morbid public appetite, and led to a much more extensive and interested reading of it, than it will now have. But such appetite I have not desired to gratify. And I have withheld the publication till such time as this unworthy eagerness for a knowledge of other people's private concerns, has passed away. I design it for those sober-minded persons—whether, my friends or otherwise—who take a sufficient interest in the *truth* of what has been brought before the public, to read a statement on the subject with the same interest, now, as when it was "the talk of the town." To them I submit it.

New York, June 9, 1856.