

Lindenwood University

To Love and To Cherish:

Marital Violence and Divorce in Nineteenth-Century
America

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Violence against wives has always been an issue for our society and still we fight to prevent it. We know of famous survival stories and we have media devoted to the depiction of domestic violence that turn into revenge tales. Our popular culture depicts it in many ways but no matter, it is a very real thing. The benefit of modern times is that the law tries to prevent it by making domestic violence a crime and it is hard for some to imagine that this was not always the case in our legal system. Marriages throughout history have been blissful but sometimes turn violent. Local history provides real stories of this and from these marriages we can see a much bigger issue concerning women.

The local St. Charles County divorce case of Mary Ann Judge is the perfect example of a marriage that went horribly wrong. The marriage turned violent and Mary Ann Judge eventually needed a way out and to stop her husband, James Judge, from beating her. Unlike current times she did not have the option of calling the police but she did have the option of divorce. The case involves property rights of women, alimony, and of course, divorce. However, it also involves violence, and it is a very intimate violence committed against a wife by a husband. It would not be until 1871 when Alabama would be the first state to rescind the right of men to beat their wives, and it would still be about ten more years, in 1882, when Maryland would be the first state to make it a crime. This case occurs in 1863 before these ideas became law, so the question can be asked, what a woman was supposed to do if she were being beaten by her husband. This paper examines the changing nature of divorce and if divorce was in fact the only option for a woman in an abusive marriage; even though there are social and economic consequences of divorce. The biggest consequence was that a divorce case put a woman's issues out in the open and society thought of women as the moral order of a family, so a divorce would allow the public to see into the private sphere of a woman's life.

Historians have not ignored this issue in lives of American women. Sources on this topic can be split up into two categories, but they are not totally exclusive categories. One side of the secondary research is looking at the act of marital violence and the other side focuses more on American policy and laws regarding divorce. Even when a source focuses just on the act itself, it contains research on policy and law and, of course, the same thing can be said about research that only discusses policy and law, it also has to discuss the act. It is also good to note that sources use the phrases “marital violence” and “domestic violence” almost interchangeably. Before looking at the scholarship, the issue should be understood at a human level.

At the time of the Judges case, in the early nineteenth century, the common law mirrored religious doctrine which put women and children in legal control of the husband who acted as head of household, creating a superior/inferior relationship between a husband and wife.¹ In 1848, the Declaration of Sentiments at the Seneca Falls convention acknowledge this issue and declared women to be “civilly dead” legally when they married.² Some women joined this call for legal rights specifically to challenge oppressive family life like abuse because of financial and physical safety.³ The challenge for legal rights would eventually alter this idea of the husband being this legal representative of the family.⁴

Historian Francoise Basch follows this sentiment of women’s rights but with more of a focused view on marriage. She writes, “in the nineteenth century the oppression of women appeared starkly in the marriage relation: wedding bells rang in major inequalities between bride and bridegroom and sternly prescribed different gender roles.”⁵ Basch argues that very early in

¹Martha Minow, “We the Family: Constitutional Rights and American Families,” *Journal of American History* 74.3 (Dec. 1987): 972.

² Ibid.

³ Ibid., 973.

⁴ Ibid., 974.

⁵ Francoise Basch, “Women’s Rights and the Wrongs of Marriage in Mid-Nineteenth-Century America,” *History Workshop* 22 (Autumn, 1986): 18.

the movement for women's rights, the movement focused on this idea that marriage was a form of slavery and a source of oppression, and that marriage represented the overall issues of the lack of rights for women.⁶ They used slavery as a comparison because most of these women rights activists were also abolitionists so it was easy for them to create a parallel. Elizabeth Cady Stanton, Henry Blackwell, and Lucy Stone would say that women were like slaves because they lost their names and took the name of the person who essentially owns them; they lost all rights once this "transaction" occurred and some were even sold to the highest bidder. These three things can be seen within the marriage relationship and the process of slavery.⁷ Stanton once said if she imagined Saint Peter asking her where she wanted to sit in Paradise she would say "anywhere so I am neither a Negro nor a woman. Confer on me, good angel, the glory of white manhood, so that henceforth, sitting or standing, sitting up or lying down, I may enjoy the most unlimited freedom."⁸ The law was seen as making women *femme covert sub potestate* or, as one British lawyer put it, "the husband and wife are one, and that one is the husband."⁹ As a result of the demand for legal rights concerning marriage there was also a push for more legal rights when it came to divorce.

The divorce case of Mary Ann Judge and James Judge is a standard divorce of she said, he said. The petition for the divorce was dated August 11, 1863, and after 33 years of marriage Mary Ann Judge was the one to file for the divorce. In the original petition, Mary Ann gave not only her side of the story, but also a background of the relationship that would turn violent. Census records also paint a picture of what this family was like. According to the 1850 Federal Census, Mary Ann and James Judge were both born in England; Mary Ann in about the year

⁶ Ibid., 19.

⁷ Ibid., 22.

⁸ Ibid.

⁹ Ibid.

1818 and James around 1816.¹⁰ In 1830, the couple married in England and immigrated to the United States the same year. Based on these files it is most likely that they went to Charleston, South Carolina, when they immigrated to the United States because they did at one point live in Charleston before they came to St. Charles, Missouri, in 1844. When they moved the couple already had six children and James became a farmer with slaves in St. Charles.¹¹

Before the divorce occurred in 1863, the 1850 and 1860 censuses show a growing family wealth. In the 1850 census James described himself as a farmer and claimed his value of real estate was at \$70,000 and he had 16 hired laborers for his farm.¹² According to the slave schedules of the 1850 census he had 17 slaves, five of which were children.¹³ In the 1860 census he was still a farmer but then claimed \$100,000 in real estate and \$10,280 in personal estate while still having 16 farm hands.¹⁴ However, by the census of 1860 his slave count decreased and he had ten slaves left, two of whom were children.¹⁵ Also by 1860 their four older children John, Albert, Edmond and Emily had moved out and their two minor sons, William and Arthur, still lived with them.¹⁶ Two of the children were legally minors, William Henry Judge (18) and Arthur Judge (14), whom would also be part of the case because of the issue of custody and child support.¹⁷ It is important to note that at this time, according to the 1852 *Bouvier Law Dictionary*, a minor was anyone under the age of twenty one, unlike modern times.¹⁸

¹⁰ “1850 United States Federal Census” Ancestry.com, 22

¹¹ Petition for Divorce, *Mary Ann Judge vs. James Judge*, August 12, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, MO.

¹² “1850 United States Federal Census” Ancestry.com, 22-23.

¹³ “1850 United States Federal Census- Slave Schedules” Ancestry.com, 406.

¹⁴ “1860 United States Federal Census” Ancestry.com, 42.

¹⁵ “1860 United States Federal Census- Slave Schedules” Ancestry.com, 297.

¹⁶ “1860 United States Federal Census” Ancestry.com, 42.

¹⁷ Petition for Divorce, *Mary Ann Judge vs. James Judge*, Box 2 File 48

¹⁸ John Bouvier, “A Law Dictionary: Adapted to the Constitution and Law of the United States of America and of the Several States of the American Union, Revised Sixth Edition,” Constitution Society, <http://www.constitution.org/bouv/bouvier.htm> (accessed November 18, 2011).

In her petition, Mary described herself as a “kind” wife, who followed her duties as a wife and mother.¹⁹ When describing James she claims that he made life “intolerable” with verbal and physical abuse.²⁰ He would call her things such as “a bitch, devil, a sour,” and other verbal abuses.²¹ The physical abuse included kneeling on her chest and beating her, slapping on the face, whipping, throwing her down, threatening to kill her and even using weapons that could have been deadly.²² She also claimed he was then addicted to alcohol for the last two years, but she does not clearly state if the abuse began when he started drinking or if this was an existing issue. Later in the case it was revealed to be an ongoing issue that had existed before he was an alcoholic. She said the abuse got so bad that she left him twice to live with one of the older sons, but he convinced her both times he would get better.²³ Unfortunately he did not and she finally could no longer deal with it, so on August 8, 1863, she left and moved in with her daughter, who also lived in St. Charles.

She requested custody of the two minor children stating that James was an unfit father. She also requested alimony which she said should be based on the fact that James owned a large amount of St. Charles real estate, which she claimed was worth \$100,000 and that he had a personal estate of \$30,000.²⁴ She said she needed the money so that she could support herself and her children because she had no property.²⁵ Mary Ann also claimed that she had a right to the money because she said that part of the wealth came from her running their mercantile business for twelve years in Charleston; and she claimed that for the first three years of business it was in

¹⁹ Petition for Divorce, *Mary Ann Judge vs. James Judge*, Box 2 File 48.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

her name.²⁶ However, there is no official document to prove the claim but it is discussed with in the case by witnesses.

In the mid-nineteenth century there were no laws protecting women concerning domestic violence. Historian Pamela Haag, when looking at violence in New York City during this time period, recognized that men saw it as their right to beat their wives so it came to be seen as something of a right for men.²⁷ She also noticed in examining criminal trials of wife murders that neighbors would notice domestic violence and do nothing because they saw the beating as justifiable as long no permanent injury was created.²⁸ Other historians also argue that this time period has an increase of violence against women, primarily because family relations were being restructured because traditional patriarchy was in question by women's rights groups and the temperance movement with their idea that a stable family cannot exist with violence.²⁹ Still there were no laws protecting women, especially when this is happening in private; the only legal way for a woman to gain protection was a divorce.

Historian Robert L. Griswold has advanced the scholarship on domestic violence and divorce, and while researching this topic it is very clear that domestic violence and divorce have a needed connection for researchers. Domestic violence against women is a private matter; it does not commonly happen out on the street, so researchers have to look at divorce cases and wife murder cases, in order to understand domestic violence at this time. In this context, divorce was seen as a way to end domestic violence.

²⁶ Ibid.

²⁷ Pamela Haag, "The 'Ill-Use of a Wife:' Patterns of Working-Class Violence in Domestic and Public New York City, 1860-1880," *Journal of Social History*, 25.3 (Spring, 1992): 462.

²⁸ Ibid., 463.

²⁹ Sean T. Moore, "'Justifiable Provocation': Violence against Women in Essex County, New York, 1799-1860," *Journal of Social History* 35.4 (Summer, 2002): 909.

Marriage shifted from an economic purpose to a loving purpose in the mid-eighteenth century; as the nineteenth century progressed and sex roles changed, people demanded more from their marriages and divorce became less uncommon.³⁰ This can be seen at the turn of the century. Between 1867 and 1906, the United States courts granted 945,625 divorces. Of those, 616,909 were between 1886 and 1906, and 218,520 of these divorces were granted based on cruelty, both physical and mental, against a wife.³¹

Up until the 1840s the American legal system followed the English system and focused on granting separation for cruelty but not absolute divorce; however, not all states followed this and in the late 1700s some would grant absolute divorces for physical cruelty starting with New Hampshire in 1791 followed by states such as Vermont in 1798, Ohio in 1804, Pennsylvania in 1815, Michigan in 1832, and Texas in 1841.³² Missouri law did allow for an absolute divorce because of violence; but Griswold makes the point that this is more a Northern idea and that in the South they followed the English and focused on granting separation for violence and only would grant absolute divorces on the grounds of adultery, desertion, and sometimes impotency.³³ It was made very clear that physical violence could be a cause for divorce, but that ignored mental agony and verbal abuse. Mary Ann Judge did accuse James not only of physical but also mental abuse. James also accuses her of infidelity, both of which were very important aspects of violence. Verbal abuse and false accusation is a form of violence; Griswold has focused on this in his work.

³⁰ Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900," *American Quarterly* 38.5 (Winter, 1986): 722.

³¹ Ibid.

³² Ibid.

³³ Ibid.

Mental agony would not be something that a court in 1820 would have acknowledged, and would recommend other solutions such as accommodation and religious guidance.³⁴ America shifted away from the more conservative English viewpoint when this idea of mental cruelty comes in as justification for divorce; however English law had a major effect on why it took until 1850 to look at other things, other than physical abuse.³⁵ In the 1790 English case of *Evans vs. Evans* the judge, Lord Stowell, made it very clear that without physical harm there was no marital cruelty and American courts, according to Griswold, would use this decision as a precedent to deny divorces on such grounds.³⁶ Courts in states like Massachusetts in 1806 and Vermont in 1816 would follow the idea set up by Stowell.³⁷ Rulings like one in Kentucky in 1829 made it clear that the cruelty had to be not only violent but also life threatening; so, for example, a man slapping a woman in the face could be seen as justifiable because it was not a real threat to life.³⁸ An example of this can be found when the New Hampshire high court ruled against a woman after proving that her husband locked her in a room and whipped her twice just because she was not submissive to him.³⁹ These cases show that very early on violence had to be life threatening to justify divorce. Without actual danger to life or permanent injury then, legally, violence against a wife was justifiable.

In the mid-1800s this idea began to shift once the medical community examined the use of words on women's health. These findings seem to be anti-women in the sense they show women as the weaker sex, but as false as these claims were, they did help women when it came to divorce. The medical community began to make the argument that mental agony could hurt

³⁴ Robert L. Griswold, "The Evolution of the Doctrine of Mental Cruelty in Victorian American Divorce, 1790-1900," *Journal of Social History* 20.1 (Autumn, 1986): 127.

³⁵ *Ibid.*

³⁶ *Ibid.*, 128

³⁷ *Ibid.*, 129

³⁸ *Ibid.*

³⁹ *Ibid.*

the female nervous system because women were more sensitive and that damage to the nervous system could cause issues for child bearing.⁴⁰ This argument emerged in court cases such as the 1849 Pennsylvania case in which a judge allowed a divorce because he saw that mental cruelty could, in fact, hurt a woman physically.⁴¹ Like the Stowell position this turns into a “watershed” and then more and more state courts acknowledge mental cruelty as a justification for divorce.⁴² By 1860 six states, including Missouri, passed statutes that declared that certain indignities including “rudeness, vulgarity, reproach, neglect, and ridicule” all justified divorce as long as it made life intolerable.⁴³ This shows that courts are shifting from a very narrow view of what is needed for justify divorce to a more broad view that covers more than just life-threatening cruelty but other lesser forms such as simple beating and verbal abuse.

One of these indignities that states like Missouri acknowledged would be the false accusation of adultery. All though it is not very much explored by the court in *Judge vs. Judge* when James attacks Mary Ann’s character, he does accuse her of infidelity. On the national stage this was used as a way to get a divorce and Griswold examines this heavily. These false accusations were seen as damaging enough to a woman that a divorce was justifiable. These accusations were seen as making life burdensome for women in the social context and this shows the growing reasons allowed for divorce away from physical violence.⁴⁴ The reason for this was because these accusations were more likely to be made public and the courts recognized that socially this can cause contempt for the accused and they also saw that these accusations could cause other men to be predatory sexually and go after the accused woman.⁴⁵ The Indiana

⁴⁰ Ibid., 131.

⁴¹ Ibid.

⁴² Ibid., 132.

⁴³ Ibid., 135.

⁴⁴ Griswold, “Law, Sex, Cruelty, and Divorce in Victorian America,” 725.

⁴⁵ Ibid.

Supreme Court ruled in 1854 that a marriage is a bond between two people that should promote “social happiness,” so a false adultery accusation would ruin that social happiness so divorce was justifiable.⁴⁶ An adultery claim truly could ruin a woman’s reputation and courts were deeply concerned about the sexual threat that this could cause for a woman, like in one case in Wisconsin where a man’s false accusations caused one of his employees to try and have sex with his wife, unsuccessfully, but the court saw that the husband failed to protect his wife’s honor so a divorce was granted.⁴⁷ Essentially a woman after these accusations would need a divorce and start anew in order to gain her reputation back and that is why universally the states recognize this as a cause for divorce and a form of cruelty.⁴⁸

Mental and physical cruelty were not the only reasons for a divorce; another common issue of this time period was, as historian Beverly Schwartzberg phrases it, “marital fluidity”, which is this ignorance toward keeping the commitment of marriage, which in a sense is a form of cruelty to the victim because this involved desertion and bigamy. People began leaving spouses in order to find work, new attractions, migration, and general desertion became prominent around 1860 till the end of the century.⁴⁹ These were not separations by divorce and show other ways that men and even women found to get out of marriage but things like this had a different effect on women because being deserted usually undermined social status.⁵⁰ Luckily for woman, desertion was an emerging reason for a divorce so even though this would not start as a divorce it would usually end as one.⁵¹ Also, some men and even women would just separate from a spouse but never divorced and then would start other relationships and become bigamists

⁴⁶ Ibid.

⁴⁷ Ibid., 728.

⁴⁸ Ibid., 730.

⁴⁹ Beverly Schwartzberg, “‘Lots of Them Did That’: Desertion, Bigamy, and Marital Fluidity in Late-Nineteenth-Century America,” *Journal of Social History* 37.3 (Spring, 2004): 573.

⁵⁰ Ibid., 574.

⁵¹ Ibid.

and this could be used as grounds for divorce as well.⁵² Divorce for physical and verbal violence was emerging, and this shows that other reasons began to emerge for separation and not being devoted to the bonds of marriage. This can all be connected to Griswold's point that by the turn of the century the divorce rate was at an all-time high because so many more issues were emerging as justifiable for divorce.

James Judge responded on October 12, 1863, and follows her petition and just rejects all of her claims. He denied that she was a good wife and even suggests infidelity; he denies all of the physical and verbal abuse; and he denies the claim of alcoholism.⁵³ He says she had no reason to leave him, including the times where she stayed with the elder son. Judge does not deny the property wealth but says she has no right to it and that she never ran the business.⁵⁴ James says that the only reason she left him was so that she could irritate him and make a groundless divorce so that she could take large allowances from him.⁵⁵ He feels she does not deserve any alimony because she left voluntarily after he gave her good living conditions. James says that the abuse in the marriage was actually on her part and says that she made life "intolerable" for him.⁵⁶ He claims that she locked him in a room with their elder son Albert and she encouraged the son to assault him.⁵⁷ He claimed that several times when the children slept over, he would have to sleep outside because he feared they would kill him under her influence. He claimed that their other son Edwin also tried to assault him and that once again Mary was persuading this to happen. He also asked for a divorce and custody of the minor children.⁵⁸

⁵² Ibid., 587.

⁵³ Answer to Cross Bill, *Mary Ann Judge vs. James Judge*, October 12, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, MO.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

In a rebuttal, Mary Ann denies all of the claims James made. She said she and her children did not force him to sleep outside; that she had no knowledge of Edwin's attempted assault, and gave a different take on the other assault story.⁵⁹ She says her son Albert wanted to talk to him in private so he took his father to a room connected to the kitchen and the son locked the door to the kitchen to keep the servants out, but there were other doors where he could have escaped from if he felt he was in true danger.⁶⁰

In her petition she requested an order of maintenance for the term of the court case, which would make James give her money to maintain her life during the case. On September 24, 1863 the judge in the case granted an order of maintenance in St. Charles. James was ordered to pay Mary Ann \$50 on October 13, 1863, \$100 on November 12, 1863, and one hundred and fifty dollars every three months after that.⁶¹ Unfortunately, a decision on the divorce was not determined in St. Charles because James Judge also filed for a change of venue on September 24, 1863. He claimed that the judge, Andrew King, had a prejudice against him and could not judge fairly on this case.⁶² The reason the judge allowed the change is still a question; it is possible that the judge and James knew each other. The answer could also be connected to how active James was in the St. Charles legal system. James was very much involved in the court system as a plaintiff and as a defendant. Before 1863, James was a plaintiff in 25 separate cases in the St. Charles Circuit Court with the earliest case being dated 1848 and after 1863 he was a plaintiff in 14 separate cases.⁶³ As a defendant he was involved in 26 cases before 1863 and involved in 22

⁵⁹ Mary Ann Judge Response, *Mary Ann Judge vs. James Judge*, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, MO.

⁶⁰ Ibid.

⁶¹ Copy of Order of Maintenance, *Mary Ann Judge vs. James Judge*, September 24, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, MO.

⁶² Petition for Change of Venue, *Mary Ann Judge vs. James Judge*, September 24, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, MO.

⁶³ "St. Charles County, MO Circuit Court Index," St. Charles Historical Society, January 31, 2001, 141.

after 1863.⁶⁴ He was suing and being sued so much that his reputation could have been perceived negatively and that is why he changed the venue. Based on the index descriptions, these cases were all debts and loans he wanted to collect on or that people were collecting against him; they never seem to deal with violence or alcoholism.

The case officially moved to St. Louis on February 6, 1864, and turned pretty sizeable once it got through St. Louis; many witnesses were called for both sides and depositions were taken. Much of the focus was on the property aspect of the case, which is not essential to the domestic violence issue; however there were depositions taken that did concern the domestic violence.

The deposition of Ferdinand Neckemeyer is an example of one of these depositions; it was taken on April 20, 1864, and read to the court on the twenty-sixth and it was requested by Mary Ann Judge. Neckemeyer knew the Judge's for 17 years, and 14 years prior to the divorce he witnessed a fight between the two when he was living with them for a short time. The fight that he had heard was over the "eating of the hands" from the farm hands themselves, ended with James striking Mary in the face and her asking the farm hands to help her against James.⁶⁵ He also testified to another incident five years prior when he went to the house he heard "laud talk" and the children told him that James was whipping Mary Ann and that he should help their mother.⁶⁶ When Neckemeyer went to the house Mary Ann came running out looking distressed as James was running after her and then James struck her again, but as he raised his hand to do it again Neckemeyer stopped him.⁶⁷ In response James tried to hit him but Neckemeyer defended

⁶⁴ Ibid., 165.

⁶⁵ Deposition of Ferdinand Neckemeyer, *Mary Ann Judge vs. James Judge*, April 20, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, MO.

⁶⁶ Ibid.

⁶⁷ Ibid.

himself and the next time he saw James was a couple of years later in St. Louis and they agreed to be friends again.⁶⁸ Neckemeyer was also questioned by the defense and that is when he testified that he believed this fight was over a verbal argument between the Judges because Mary Ann questioned why James was burning something on the property when conditions were not favorable for burning.⁶⁹

Neckemeyer, based on his knowledge, described Mary Ann as a woman who “has more to say than she ought to have” and that the fight would have never happened had she just not talked back to James.⁷⁰ Even though Neckemeyer defended her physically, he did blame her for the beating. He then describes James as a “peaceful” man with whom he never had a real problem.⁷¹ The reason this deposition was chosen as an example is because Neckemeyer seems unbiased between the two and genuinely does respect James. His testimony dealt with what this paper analyzes, which is domestic violence as a cause for divorce. He shows that Mary Ann Judge was abused, it was over very basic arguments, and the children were very aware. Also this gives us the opportunity to get into the private sphere because, for the most part for this time period, the only way to actually prove domestic violence was if witnesses’ were present, like in this example. Most of the witnesses, for the rest of the case, would focus on if she had any right to the property wealth because of the business in South Carolina.

It is hard with these court documents to pinpoint the exact date when the divorce was granted, but gathering from the sequence of motions filed, the divorce in this case and alimony was granted in late April of 1864. This assumption can be made due to a motion filed on April 25, 1864 where James Judge argues that the alimony decree is illegal and unjust (and it is

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

revealed that the alimony was a lump sum settlement of \$50,000).⁷² The motion argues that James cannot handle the alimony amount and that his wealth cannot sustain it.⁷³ On May 18, 1864 the St. Charles County Sheriff issued a real estate sale in order to pay the alimony because he was required to pay it.⁷⁴ Then a sheriff's statement said that James must pay \$5,000 a year until he reaches the amount of \$50,000 and that she already received \$15,000 from the sheriff's real estate sale.⁷⁵ Essentially, after the real estate sale failed at achieving the \$50,000, James was allowed to make a payment plan to get to the final amount. James then tries to set aside the alimony several times but essentially makes the same argument every time. In his third attempt he makes a motion with a new argument. James Judge was sent to Alton Military Prison during this case and he was also fined \$10,000, so he used that as an argument that his wealth has changed enough for the court to change the alimony, but this failed.⁷⁶ According to the Union Provost Marshall papers, James was brought in front of the Military Commission on May 12, 1864 and was found guilty by the commission for the "violation of the oath of allegiance to the United States Government" and for disloyalty to the United States.⁷⁷ He was charged with breaking his 1862 oath because he openly stated that the Confederacy was the only salvation this country had left and he sympathized with the rebels, he did this outside of a St. Louis saloon.⁷⁸ He was not only fined but also sent to Alton Military prison until the war ended.

⁷² Motion to set aside decree for alimony, *Mary Ann Judge vs. James Judge*, April 25, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, MO

⁷³ Ibid.

⁷⁴ "Sheriff's Sale of Real Estate", *Mary Ann Judge vs. James Judge*, May 18, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, MO

⁷⁵ "Sheriff's Statement", *Mary Ann Judge vs. James Judge*, June 11, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, MO

⁷⁶ Motion to set aside decree for alimony, *Mary Ann Judge vs. James Judge*, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, MO

⁷⁷ "General Orders No. 70," May 12, 1864-Head Quarters of the Department of the Missouri, Union Provost Marshall Papers, Missouri State Archives- Jefferson City, MO, Reel F1353.

⁷⁸ Ibid.

Along with the violence and the divorce of this case there was one more very surprising aspect of this case and that was alimony. It was not the idea of alimony that was shocking, but the amount. As said earlier, James Judge was order to pay alimony of \$5,000 a year in order to achieve a lump sum settlement of \$50,000. Naturally this broader context must acknowledge that this seems hefty and a lack of reason for it exists because of the court documents but research shows this is not normal. Alimony was something that existed in the English system as well and was always something separate from child support, and this system still exists today. The essential purpose was this idea that it was the husband's role to support and nourish his wife with a portion of this property. Alimony could be a yearly payment or it also could be ruled as a lump sum settlement, as in this case.⁷⁹ Some states like Indiana made it law (in 1852) that alimony had to be a lump sum but most followed a state like New York that made it more like an annual payment, but most of the power for distribution of alimony would be given to the court.⁸⁰ Missouri was like this and gave the court the power to determine the amount and how it should be given. Courts in general considered the wife's behavior and her need in order to establish what was fair alimony.⁸¹ One of the biggest issues concerning alimony was what a woman brought into the marriage. The idea was that if a woman brought in something like a dowry she should get that amount back with the alimony, but historian Norma Basch argues that women would have to prove that the husband used the money wrongly.⁸² Alimony laws also forced men to look at personal wealth and with the help of attorneys they did try to downplay wealth in order to pay less alimony that, according to Basch, was very common practice. This can also be seen in

⁷⁹ Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 109.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid., 110.

Jude vs. Judge.⁸³ Like in the Judge divorce case men would try and adjust alimony if they felt wronged not only in the amount, but also how it would be paid.⁸⁴ In Basch's research there is nothing to explain why James Judge was sentenced to such a high alimony. She would argue that for most cases in America there was no alimony given because most were people that were not wealthy and financial troubles would sometimes be the reasons for a divorce, so women were not able go after alimony.⁸⁵ Also, the alimony examples Basch provides are always seen as enough for the women to sustain life and never exuberantly high. However, it needs to be established it was up to the judge, so the alimony amount relies on the judge and possibly his opinion of the husband. It should also be noted that some states would cap alimony based on a percentage of the husband's wealth. For instance in North Carolina, the alimony for a wife could not exceed over one-third of the husband's wealth.⁸⁶ Also North Carolina's law was clear that a husband that was a "spendthrift" or a "drunkard" could be forced to pay more alimony because of his treatment of money.⁸⁷

Mary Ann was ultimately granted her divorce, but shortly after the divorce was finalized; she died in November of 1864. The St. Louis court case had to deal with that issue because this occurred after the divorce was granted and James Judge wanted to stop the alimony payments because she had died, but Mary Ann's heirs wanted the next alimony payment which was due in January of 1865.⁸⁸ James Judge even made an attempt to take this to the Missouri Supreme Court but it never made it to the court. One of the final motions in St. Louis was dated January 1867

⁸³ Ibid., 112.

⁸⁴ Ibid., 113.

⁸⁵ Ibid., 114.

⁸⁶ Loren Schweninger, "'To the Honorable': Divorce, Alimony, Slavery and the Law in Antebellum North Carolina," *The North Carolina Historical Review* 86.2 (April 2009): 129.

⁸⁷ Ibid., 132.

⁸⁸"Motion to dismiss alimony," Nov. 1864, St. Louis Circuit Court, Case Files- Civil, February Term 1864, NO. 131. Missouri State Archives- St. Louis, Box 63, Folder 11.

when James Judge still was fighting to stop the alimony and finally the court agreed to stop the alimony, two years after Mary Ann had died.⁸⁹

Unfortunately other than what was said in the divorce files, not much is known about Mary Ann Judge including her death. James remarried on June 21, 1866 to Charlotte Elson.⁹⁰ James Judge died on January 5, 1872, when a tree branch fell on him.⁹¹ In his will he still had considerable wealth and according to a newspaper listing for his real estate sale, he still had several plots of land throughout the county including his farm in north St. Charles where he resided. He left his stepson \$2,000 while most of his property was spilt between his second wife and a church he helped found in the 1840s, the New Church General Convention of St. Louis, and lastly he left each of his six biological children with Mary Ann only ten dollars each.⁹²

Although violence is the main issue driving *Judge vs. Judge*, Mary Ann Judge clearly connected the violence to James' alcoholism. The temperance movement, which began before this divorce, was according to historian Elizabeth Pleck, "the first American reform campaign to depict for the public the cruelty of domestic violence. Temperance reformers regarded family violence not as distinct social problem, but an evil consequence of alcohol."⁹³ These temperance activists recognized that male violence was caused by alcohol so they wanted it outlawed, but they never seldom promoted policies to help the victims, and focusing instead on the men, but some would break away from this and advocated that grounds for divorce should cover male drunkenness because it was a threat to a woman's life.⁹⁴ It became a woman's rights issue

⁸⁹ "Motion to quash execution," Jan. 1867, St. Louis Circuit Court, Case Files- Civil, February Term 1864, NO. 131. Missouri State Archives- St. Louis, Box 63, Folder 11.

⁹⁰ "Missouri Marriage Records, 1866" Ancestry.com, 291.

⁹¹ "Obituaries," St. Charles Newspapers Daily and Weekly, 1820-1898 vol. 1, St. Charles Historical Society, E23.

⁹² "Last Will and Testament of James Judge," St. Charles Historical Society.

⁹³ Elizabeth Pleck, *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present*, (Chicago: University of Illinois Press, 1987), 49.

⁹⁴ Ibid.

because reformers thought that it was not a wife's responsibility to help her husband and that she was better off without a drunken husband so they advocated for more women's rights, such as property rights, to make that possible.⁹⁵ Elizabeth Cady Stanton is an example of one these reformers who pushed for divorce laws covering drunkenness in New York, which had passed the state house but not the senate, and she spoke at the New York State Woman's Temperance Society in 1852. She called drunken husbands the "moral monster" and said that women were the greatest victims of intemperance, yet did not have the power to end this suffering at the ballot box.⁹⁶ She also argued a very common sentiment to women who stayed with drunken husbands, that they should not bear children with them because they thought alcoholism was inherited.⁹⁷ Stanton and others pushed the idea that this issue was distinctly women and that the violence was caused directly by the alcohol and that alcohol also prevented men from representing the family properly like in the ballot box.⁹⁸

This movement, however, was not successful and when women like Stanton in the summer of 1852 gathered signatures for a petition in New York to outlaw the sale of alcohol; the legislators brushed it aside and said that politics was not the business of women.⁹⁹ Even within the temperance movement men wanted to move away from the women's rights issues and just focus on the moral grounds for temperance. Stanton saw this position as hypocrisy because she felt there was an established connection between temperance and women's rights.¹⁰⁰ Also there was a very religious argument against divorce. Stanton would argue that the church's position was wrong and it sanctioned that drunken men would be allowed to beat their wives.¹⁰¹

⁹⁵ Ibid., 50.

⁹⁶ Ibid., 57.

⁹⁷ Ibid.

⁹⁸ Ibid., 58.

⁹⁹ Ibid.

¹⁰⁰ Ibid., 59.

¹⁰¹ Basch, "Women's Rights and the Wrongs of Marriage," 27.

Unfortunately even the Women's Rights Convention of 1860 would oppose Stanton's view on divorce on the basis of drunkenness.¹⁰² What this causes is Stanton and others, like Susan B. Anthony, to back down on divorce and focus on the other women's issues and they would not bring divorce back as an issue until well after 1860.¹⁰³ Because this did not work, women's rights activists would then push to focus on criminal law to punish abusive men.¹⁰⁴ Even though Mary Ann Judge does not use the alcoholism as a cause for divorce, she does make the point very clear that he was an alcoholic. In the 1860s it was very much rejected that alcoholism could be used as a divorce reason unless actual violence occurred but then the focus was on the violence not the alcohol. Even though it was not grounds for a divorce, this seems to suggest that alcoholism and violence were connected and could also be used as an excuse for a husband's action.

Divorce can be called a remedy for abuse but it does have consequences. The lack of women having property hurt them financially but Norma Basch would say what divorce truly did for women was make them single which in turn allowed them to remarry.¹⁰⁵ Without remarrying, the financial burden could be very high despite some getting alimony; but at least they did get out of a relationship that hurt them and that was not working.¹⁰⁶ This also had a great social consequence, where the financial could be overcome the social and moral issues sometimes could not. Divorce cases put a woman's issue out in the open and society thought of women as the moral order of a family and when these immoral things come out, a woman could have easily been blamed.¹⁰⁷ These women should be also praised on their willingness to stand up and let their personal lives be exposed to the public, and Basch argues this shows the confidence that

¹⁰² Ibid., 28.

¹⁰³ Pleck, *Domestic Tyranny*, 60.

¹⁰⁴ Ibid., 66.

¹⁰⁵ Basch, *Framing American Divorce*, 117.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

women gained in the American divorce system.¹⁰⁸ They felt this would fairly help them and a bad marriage could be escaped.

The mid-nineteenth century shows a time of great change for the American divorce legal system, more and more divorces were occurring, leading up to an explosion at the turn of the century and is rooted in this period when divorce law is being in a sense, defined. More reasons and justifications for divorce emerge. The courts redefined and liberalized ideas about and definitions of cruelty. Simply hitting a wife could cause a divorce, and it did not have to cause permanent injury. Verbal and mental abuse was finally considered a form of abuse and grounds for divorce. Women were gaining rights within the marriage relationship but that also caused a reevaluation of divorce.

Mary Ann Judge lived in a time where a woman had a way out of marriage that was not healthy and at times dangerous. She tried to change him but she was not successful so they came to the conclusion that she had to leave him. Fortunately she had the option to do so and she, like many woman, benefited from the changing attitude on divorce. She faced the public's attitudes but perhaps women like her understood that those did not matter. What mattered in her life was to end her abuse. She clearly stuck it out as long as she could and there seemed to be a strong effort on her part to fight for her marriage but she failed. She came out of the divorce, abuse free and financially she was stable. Unfortunately, she died without seeing a life without her abuse but she did succeed against James. We know that James was abusive and some of these actions can be seen as less than kind; for example leaving his own children only ten dollars when he died. Even though he remarried, he now rests at Oak Grove Cemetery in St. Charles, Missouri next to seven empty lots that his heirs bought but never used, so he lays in rest forever alone. As

¹⁰⁸ Ibid., 118.

much as this divorce seems like a tragedy, it must also be looked at as a victory for a woman and it was for a woman who needed a victory.

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