

2651

190-389

# Record No. 3550

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**WILLIE A. BOWEN**

v.

**MELVIN P. PERNELL**

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FROM THE CIRCUIT COURT OF BRUNSWICK COUNTY

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## RULE 14.

¶5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

¶6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

190 VA 389



## RULE 14—BRIEFS

1. **Form and contents of appellant's brief.** The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

(d) Argument in support of the position of appellant.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. **Form and contents of appellee's brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate reference to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

3. **Reply brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him, not referred to in his petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

4. **Time of filing.** (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

(c) *Stipulation of counsel as to filing.* Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

5. **Number of copies to be filed and delivered to opposing counsel.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

6. **Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

7. **Non-compliance, effect of.** The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.



CLERK  
SUPREME COURT OF APPEALS



RECEIVED, VIRGINIA

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IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 3550**

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**WILLIE A. BOWEN, Plaintiff in Error,**

*versus*

**MELVIN P. PERNELL, Defendant in Error.**

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**PETITION FOR WRIT OF ERROR AND  
SUPERSEDEAS.**

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*To the Honorable Chief Justice and Associate Justices of the  
Supreme Court of Appeals of Virginia:*

Petitioner, Willie A. Bowen, respectfully represents that he is aggrieved by a final judgment of the Circuit Court of Brunswick County, Virginia, entered on the 5th day of November, 1948, in a certain action at law in which your petitioner was defendant and Melvin P. Pernell was plaintiff.

In the interest of clarity and brevity, the plaintiff in error will be referred to as Bowen; the defendant in error will be mentioned as Pernell; and Frances Virginia W. Pernell will be called Mrs. Pernell.

A transcript of the record in this case is presented herewith as a part of this petition.

## STATEMENT OF THE CASE.

This is an action brought by Pernell against Bowen for the alienation of the affections of Pernell's wife and for criminal conversation with her.

2\* The verdict of the jury, as approved by the trial judge, resulted in a judgment in favor of Pernell against Bowen in the amount of \$15,000. This verdict was broken down by the jury, before amended by the trial judge, as follows: \$5,000 for compensatory damages and \$10,000 for punitive damages.

Bowen is a man 58 years of age, residing in a rural section of Brunswick County, Virginia, about 9 miles southeast of Lawrenceville. He is married and lives with his wife and three daughters.

Mrs. Pernell, the wife of Pernell, is 24 years of age. She is apparently in good health, but according to the evidence of her husband, she was advised by her doctor not to bear children. This admonition, on the part of her doctor, she apparently heeded, for the record tells us that she has never had a child. It is, accordingly, fair to assume that, in obedience to the advice of her physician, she has practiced some method of contraception.

The record shows that after the marriage of Mrs. Pernell to Pernell, they lived for a period of time in Blackstone, Virginia, at which time Camp Pickett was in full operation. Pernell, due to an infected foot, was never inducted into the Armed Forces of the United States of America, but worked at the Post Exchange at or near Camp Pickett, Blackstone, Virginia, during which time he and his wife occupied an apartment in Blackstone.

It would seem, from the evidence, that when the employment of Pernell came to an end at Camp Pickett, he sought and obtained employment as a textile worker with the Rosemary Manufacturing Company of Roanoke Rapids, North Carolina. Immediately before accepting employment in this last position, he, along with his brother, Horace, rented a residence across the road from Bowen's store and residence, about 9 miles from the Town of Lawrenceville, Virginia. The housing shortage was acute at this time, and Horace and his wife, Audrey Lill, shared the aforesaid house with Pernell and his wife. This house was rented from Bowen, the owner. While Pernell and his wife had no children, his brother Horace and his wife had a child. Pernell and Horace Pernell, his brother, worked in a textile mill in Roanoke Rapids, North Carolina, and were away from home a good portion of the

time. Mrs. Pernell became bored by the dullness of life  
3\* under these circumstances, \*and sought company with  
a male companion. The record tells us that she would  
go over to Bowen's store, which was directly across the road  
from her home, and would make an effort to play with him,  
notwithstanding the fact that he was 58 years of age and she  
only 24. On an occasion in his store, she made an effort to  
trip him up. Mrs. Pernell and Bowen, following these trivial  
incidents, commenced a correspondence with each other.  
Bowen says that Mrs. Pernell wrote the first letter, but Mrs.  
Pernell says that Bowen penned the first note. As a deposi-  
tory for their correspondence, the parties used a henhouse  
in the immediate vicinity.

The evidence in the record tells us that Mrs. Pernell at all  
times pursued Bowen. She frequently visited his store. She  
apparently kept watch to determine the time he would appear  
at his home for meals, and would arrive soon after he got  
there. She would lean upon his chair or sit down in some  
chair near him; and when she actually did not dine with the  
family, she would be constantly requesting a cigarette of  
Bowen. Mrs. Pernell would also watch for Bowen when he  
came home in the afternoons to milk his cow, and would ap-  
pear upon the scene and chat with him at length while he  
was milking. Mrs. Bowen thought nothing of these things at  
the time, as she did not realize the fact that Mrs. Pernell was  
pursuing her husband in a lustful way, until she discovered  
what is known as the "Hello Honey" letter, found on page  
25 of the record. This letter was written by Mrs. Pernell to  
Bowen. Among other things, the letter contains the follow-  
ing: "This leaves me with some pains in my stomach but  
hope I will be able to meet you tonight. The pain kinda like  
I am going to start something but I hope it dont start before  
you get some."

Mrs. Pernell, it is true, testified that Bowen became wor-  
ried and upset when he would find or learn that Mrs. Pernell  
had permitted her husband, Pernell, to have sexual relations  
with her. It is perfectly apparent that if Mrs. Pernell's evi-  
dence is true in this respect, it goes to show that Bowen had  
some devotion for her. On the other hand, we find that Mrs.  
Pernell was at least very broadminded and tolerant about  
matters of sexual relations, for we find upon page 26 of the  
record what is known as the "Hi Sweetheart" letter. She

advises Bowen as follows: "I want you to try Mrs.  
4\* Bowen so she wont \*think anything." From the above,  
it would appear that Mrs. Pernell was the aggressor, and  
was anxious to "carry on" an illicit relation with Bowen.

Her written statements in this connection do not evince a love for Bowen, but depict her as a lustful woman, apprehensive lest her association with Bowen might be broken up.

The record does show that Bowen, on one occasion, in the presence of another, said that Mrs. Pernell was prettier now than was shown by a picture taken some years ago. The record also discloses that Bowen, on one occasion, complimented a black dress worn by Mrs. Pernell at the time.

The mind of Mrs. Pernell apparently ran upon matters of vulgarity, and especially upon sexual matters. She admits, in her own evidence, that Bowen knew nothing about ugly jokes or vulgar matters, but that she continuously wrote him about these things. For instance, we find a letter or note from Mrs. Pernell to Bowen in which she tells him about the incident of the man who undertook to buy, and did buy, from a lady clerk, a knife. Upon becoming dissatisfied with the knife, he took it back to the clerk and asked that it be exchanged for a banjo string, which the clerk readily did; and becoming dissatisfied with the banjo string, he carried that back to the clerk and wanted to exchange the same for a box of "rubbers"; and the clerk, at this time becoming impatient, asked the customer whether he desired to "whittle," "fiddle" or "diddle." On another occasion, Mrs. Pernell wrote Bowen a letter or note in which she related to him an incident in which a man went into a store and undertook to purchase a box of "rubbers," and upon being advised that the price of the same was 50c plus tax, the prospective customer then replied that he did not care anything about "tacks" as the instrument would be tied rather than tacked on.

It would seem, from all letters addressed by Mrs. Pernell to Bowen, that her mind was dwelling upon sexual matters.

It will be remembered that, from a reading of the record, Audrey Lill Pernell, a sister-in-law of Mrs. Pernell, did not wish her husband to be seen with Mrs. Pernell, in going to and from the hospital in Roanoke Rapids, North Carolina, in which she, Audrey Lill Pernell, was confined at that time.

Mrs. Audrey Lill Pernell, however, astutely \*explains 5\* this circumstance when she says that it was not through jealousy of Mrs. Pernell but was due to the fact that Mrs. Pernell had so neglected her and her child, while she was sick at her home, which neglect was due to the fact that Mrs. Pernell was constantly going over to the home and store of Bowen, and pursuing him on every occasion.

Bowen and Mrs. Pernell continued to correspond until a certain day in September, 1947, when Mrs. Bowen discovered in Bowen's store a letter to him from Mrs. Pernell, in which



Mrs. Pernell made to Bowen a most indecent proposal—an invitation, in fact, to him to have sexual intercourse with her. Upon finding this letter, Mrs. Bowen became quite upset and almost hysterical. She manifestly was anxious to bring to an end the affair between her husband and Mrs. Pernell, and in an effort to do so, she turned the letter over to Pernell, thinking that he would cooperate with her in suppressing any further correspondence and association between Bowen and Mrs. Pernell. Mrs. Bowen thought, perhaps, that Pernell would use this letter in an effort to obtain a divorce from his wife, or in taking some other action against her. The immediate concern of Mrs. Bowen at this time was to have Mrs. Pernell removed from the vicinity of her home. She was under the impression that Pernell would return the letter to her when it had served its purpose in this respect. Pernell immediately confronted his wife with the letter, and after some discussion with her took her home to her parents, near Kenbridge, Lunenburg County, Virginia.

When the letter was brought to Mrs. Pernell's attention, she admitted having written the same but insisted upon her innocence of any moral wrongdoing. She pointed out that writing the letters to Bowen was no more than what her husband, Pernell, had done some years before. Incidentally, Mrs. Pernell, in testifying in this case, admitted, on cross examination, that while she and Pernell were residing in Blackstone, Virginia, Pernell had a clandestine love affair with her younger sister, a Mrs. James R. Emil. Mrs. Emil was married at the time, but her husband was in the Armed Forces and on duty overseas. Mrs. Pernell further admitted, on cross examination, that Pernell had written love letters to her younger sister, with his initials signed thereto. The letters, according to Mrs. Pernell, were in the handwriting of her husband. This incident brought about domestic  
6\* \*discord between Pernell and his wife. The parents of

Mrs. Pernell became so angry and indignant with Pernell that, for a period of time, they forbade him to enter their home. While testifying to these matters, however, Mrs. Pernell insisted that they had nothing to do with the present case, as she had forgiven Pernell for his conduct in this instance.

Pernell did not return the indecent letter to Mrs. Bowen, as she had expected him to do. On the contrary, after forcing his wife from his home he turned this letter over to his counsel to be used as evidence in the prosecution of this action for alienation of affections and criminal conversation.

Pernell has succeeded, with the active cooperation of Mrs.

Pernell, in recovering a judgment against Bowen in the sum of \$15,000, for alienation of affections and criminal conversation; and it is from the judgment of the trial court, sustaining this verdict, that Bowen now seeks a writ or error and *supersedeas* from this court.

### ASSIGNMENTS OF ERROR.

1. The verdict is contrary to the law and the evidence and is excessive.

2. The court erred in granting instruction No. 6, on behalf of the plaintiff, over the objection of the defendant.

3. The court erred in granting instruction No. 7, on behalf of the plaintiff, over the objection of the defendant.

4. The court erred in permitting the introduction of evidence as to the financial worth of the defendant, over the objection of the defendant.

### ARGUMENT.

*First Assignment of Error:* The verdict is contrary to the law and the evidence and is excessive.

The record does not show that Bowen has alienated the affections of Mrs. Pernell. Pernell tells us that his wife, Mrs. Pernell, was a good, kind, and considerate wife to him until he forced her to leave. Up to this very moment she had never shown any sign of coolness or exhibited to him any evidence of frigidity. Her attitude toward him was unchanged during the entire time they resided near Bowen, while the alleged love affair between Mrs. Pernell and Bowen was in progress. Mrs. Pernell was not enticed away from Pernell. She did not leave her husband voluntarily, but her departure was due to compulsion on the part of her husband. The case of 7\* Pernell, who was the plaintiff in the \*lower court, cannot be made stronger than he makes it. A stream cannot rise higher than its source. Pernell forced his wife to leave his home only after Mrs. Bowen exhibited to him the indecent letter, which was admittedly written by Mrs. Pernell.

The courtship of Mrs. Pernell by Bowen, as disclosed by the evidence, is mild indeed. True it is that on one occasion he complimented a black dress which she wore. And at another time, when observing a picture of Mrs. Pernell, taken some time before, Bowen remarked that she was better looking now than in days of yore.

The record also discloses that Bowen wrote some letters to

Mrs. Pernell. Upon an examination of the same, however, it will appear that they were very foolish and puerile. These letters contained nothing improper. Bowen says that Mrs. Pernell wrote the first letter, but Mrs. Pernell states that Bowen first wrote to her.

It is freely admitted that Bowen has evidenced a feeling of infatuation for Mrs. Pernell. She seems, however, to have been the aggressor. It would seem that the familiarity of these parties was first brought about by Mrs. Pernell attempting, in a playful manner, to trip Bowen. While she failed in her effort to throw his physical person to the floor, nevertheless it is admitted that, by her constant attentions to, and pursuit of, Bowen she had so succeeded in upsetting his mental equilibrium that he became somewhat enamored of her. She went constantly to his store. She frequented his home. She even followed him to the cowpen when he would go on his daily mission to milk his cows. She was the pursuer rather than the pursued. Notwithstanding all this, the record is not convincing that she was actually in love with Bowen. In her letters, notes, and jokes written to Bowen, as disclosed by the record, Mrs. Pernell has painted by far a more accurate picture of herself than possibly could have been drawn by the witnesses, all of whom were immediate members of the Pernell family. A mere cursory reading of the letters, notes, and jokes which Mrs. Pernell penned to Bowen is convincing that hers was not a case of true love but rather that her pursuit of Bowen was prompted by pure lust. Filth seems to have been her watchword, and it appears that she was possessed of a mind and heart bent upon the gratification of her illicit sexual desires. In her pursuits in this respect, she was manifestly not particular in the choice of a partner.

8\* \*Be it remembered that Mrs. Pernell was only 24 years of age, while Bowen had reached the advanced age of 58. Bowen operated a country store and service station, and was uneducated to a point approaching total illiteracy. He was apparently very economical; almost miserly. He never gave Mrs. Pernell any money. He presented her with no gifts, except that on occasions, upon being asked, he would give her a cigarette, and, perhaps, on one occasion, gave her a coca-cola.

The record tells us that Bowen became so much infatuated with Mrs. Pernell that he would become worried at the thought that Mr. and Mrs. Pernell occupied the family bedroom. As evidence, however, that Mrs. Pernell was not in love with Bowen, we point to her tolerant letter to him in which she suggests and advises him to carry on the family relation with

Mrs. Bowen, so that the latter might not suspect any love affair between Mrs. Pernell and Bowen. Mrs. Pernell was not actually in love with Bowen, because her affection for her husband, according to the uncontradicted evidence, never abated. As further evidence that Mrs. Pernell was not in love with Bowen, we direct the court's attention to the fact that, upon the trial of this action, Mrs. Pernell appeared as the star witness for Pernell, her husband. In so doing, she was assisting and cooperating with Pernell in his effort to enrich himself at the expense of Bowen. So we find Mrs. Pernell, after the lapse of more than a year, making another effort to "trip" Bowen—this time financially.

It is significant here to observe that Pernell has never taken any action against Mrs. Pernell for a divorce, notwithstanding the lapse of time since he allegedly suspected her of adultery with Bowen. While there is no direct evidence of connivance between Pernell and Mrs. Pernell, nevertheless, under the circumstances of this case, it might readily be inferred that these parties are still most friendly, and might well effect a reconciliation when the case is concluded.

In view of the present status of the parties, it would not be amiss to point out that, in event of the death of Pernell, Mrs. Pernell, under the statute of distributions, would receive such sum of money as Pernell might recover in this proceeding. In event of the happening of either of the above contingencies, Mrs. Pernell would become the recipient 9\* of the benefits of her own wrong.

It is patent that Mrs. Pernell is very zealous that Pernell obtain a recovery in this case. It is also noteworthy that the testimony of all members of the Pernell family indicates that they all hold Mrs. Pernell in the highest esteem.

The evidence in this case only shows that Mrs. Pernell, through her indiscretions, her pursuit of Bowen, and her vulgar writings, has disrupted the home of Bowen and has wrought a gross injustice upon Mrs. Bowen and the Bowen children.

The record does not show, with that degree of certainty required by law, that Bowen has had criminal conversation with Mrs. Pernell. No opportunity for adultery is disclosed by the evidence. At all times when the two parties were seen together there were others present. Mrs. Pernell was never seen at the store alone with Bowen. She was never in the Bowen home alone with Bowen. Bowen has never been seen in the Pernell home alone with Mrs. Pernell. In fact, the Pernell home was occupied by Pernell, his brother, Horace, and their respective wives. Audrey Lill Pernell, the wife of Horace,



due to the fact that she had a small baby, was at home constantly. Bowen and Mrs. Pernell have never taken a trip together. They have never been alone in a car. The only place in which they have been seen alone together was at the cowpen, but this was in plain view of Mrs. Bowen and others, and it is inconceivable that any misconduct could have taken place there.

The fact that Bowen and Mrs. Pernell carried on a voluminous correspondence, although they resided in sight of one another, is evidence in itself, and by itself, that they had slight opportunity to be alone. What could have been the occasion to write each other daily letters if, in fact, they were having clandestine meetings?

It is freely admitted that in the letters from Mrs. Pernell to Bowen, she evinces an adulterous disposition. This, however, is not legitimate evidence of an actual act of adultery between the parties. Even had the letters from Mrs. Pernell to Bowen related an actual act of adultery, still this would not have been legitimate evidence of adultery, but mere hearsay. According to the universal rule, letters 10\* \*written by a wife to an alleged paramour are admissible in evidence, but not for the purpose of proving the truth of the contents. The letters are admissible only for the purpose of showing the state of mind, feelings, and emotions of the writer. One may entertain an adulterous disposition for ever so long, and yet not actually commit the offense. It is possible that Mrs. Pernell was laying her plans to commit adultery with Bowen, or to entrap him in some financial way, but her designs and plans were thwarted by Mrs. Bowen's interception of the correspondence and her publication thereof, in an effort to deter Mrs. Pernell's further pursuit of her husband.

This court has had occasion recently to pass upon the sufficiency of evidence to establish adultery in a civil case. We direct the court's attention to the following:

*Haskins v. Haskins*, 50 S. E. (2d) 437; *Holt v. Holt*, 174 Va. 120; 5 S. E. (2d) 504.

The evidence of adultery in each of the cases above mentioned was by far stronger than in the instant case, and yet this court held in each of the above cases that the charge of adultery had not been proved with that degree of certainty required by law.

In American Jurisprudence, Vol 17, Section 397, page 344, it is stated as follows:

“The courts must, perforce, take such evidence as the nature of the case permits—circumstantial, direct, or positive—and bring to bear upon it the experiences and observations of life, thus weighing it with prudence and care and giving effect to its just preponderance. Still, it has been said in weighing the effect of such evidence that it must be so clear and strong as to carry conviction of the truth of the charge, and if it does no more than raise a suspicion of chastity, it is insufficient, and that the circumstances must lead to it not only by a fair inference, but as a necessary conclusion.”

In the case of *Holt v. Holt*, *supra*, we find the following:

“It is always incumbent upon one to prove the case alleged in his bill of complaint. As the offense here is an unnatural one and involves the commission of a crime, the proof offered to establish it must be such as would ‘lead the guarded discretion of a reasonable and just man to a conclusion of guilt.’ This was the wise observation of Lord Stowell in *Loveden v. Loveden*, 2 Hag. Con. 2. It is quoted and adopted by this court in the cases of *Throckmorton v. Throckmorton*, 86 11\* Va. 768, 11 S. E. 289, 290; \**Johnson v. Johnson*, 154 Va. 788, 153 S. E. 670; and *Kirby v. Kirby*, 159 Va. 544, 555, 166 S. E. 484, 487.

“In the latter case we find this quotation: ‘In 2 Bishop on Marriage, Divorce and Separation, Sections 1359, 1360, the rule is thus stated: The rule for the sufficiency of the proven facts to infer adultery is that, if they are not reasonably reconcilable with the assumption of innocence yet are so with that of guilt, the conclusion of guilt will be authorized. But it will not be if either they can be reasonably reconciled with innocence, or cannot with guilt. Circumstances merely suspicious are inadequate, though there are degrees of imprudence from which the offense will be presumed. Still care and circumspection should attend all dealings with this class of evidence.’ ”

The Virginia cases mentioned above were divorce proceedings, but we take it that the degree of proof of adultery is the same in all civil cases.

The verdict of the jury, in the amount of \$15,000, is excessive. Under the circumstances of this case, as disclosed by the record, the verdict is so large that in itself, and by itself,

there is a strong suggestion that the jury was actuated by prejudice, passion, and a mistaken view of the case. The fact that the jury awarded only \$5,000 compensatory damages and \$10,000 in punitive damages would indicate that the jury was highly prejudiced against Bowen. The fact that the amount of the verdict consumes all the cash money which Bowen listed for taxation is further evidence of the fact that the jury was actuated by prejudice.

It is, accordingly, submitted that the verdict of the jury is contrary to the law and the evidence, and is excessive, and that the court erred in failing to set aside the verdict of the jury and grant Bowen a new trial.

*Second Assignment of Error:* The court erred in granting instruction No. 6, on behalf of the plaintiff, over the objection of the defendant.

Instruction No. 6 told the jury that, if they believed from the evidence that Bowen had intercourse with Mrs. Pernell, the jury must find for Pernell.

There was no legal proof of adultery between Bowen and Mrs. Pernell. There being no legitimate evidence to establish adultery, with that degree of proof required by law, it was improper and highly prejudicial to Bowen to submit this question to the jury. This assignment of error is fully dis-

12\* cussed in dealing with the question of \*adultery under Assignment of Error No. 1, above.

It is, accordingly, submitted that the court erred in granting instruction No. 6, on behalf of the plaintiff, over the objection of the defendant.

*Third Assignment of Error:* The court erred in granting instruction No. 7, on behalf of the plaintiff, over the objection of the defendant.

The objection to instruction No. 7 is that it permits the jury to award punitive or exemplary damages against Bowen, when the facts and circumstances of this case do not justify such an award.

According to the weight of authority, punitive or exemplary damages are recoverable only where the defendant wantonly and maliciously alienated the affections of the plaintiff's spouse. In an action for criminal conversation, likewise, where it appears that the defendant's wrongful act was characterized by circumstances of aggravation, such an wilfulness, wantonness, malice, or oppression, exemplary or

punitive damages are, according to the majority view, recoverable. (See American Jurisprudence, Vol. 27, Sect. 546, p. 146.)

There are no circumstances of aggravation, wilfulness, wantonness, malice, or oppression in the instant case, so as to justify the award of punitive damages. While Bowen might have complimented the black dress of Mrs. Pernell, and might have commented that she was better looking at one time than earlier in life, nevertheless such conduct on the part of Bowen does not justify punitive damages under the law. While it is true that Bowen wrote Mrs. Pernell some letters, nevertheless it is apparent, from the reading of the same, that they were characterized by simplicity, puerility, and stupidity, rather than by wantonness, malice, or oppression. Even though Mrs. Pernell apparently extended to Bowen a cordial invitation to have illicit relations with her, nevertheless there is no evidence that Bowen accepted this invitation by consummating the act. It is respectfully submitted that even though the evidence had proved Bowen to have yielded to her importunities, nevertheless, under these circumstances, such an act could not be termed to have been characterized by wantonness, malice, or oppression.

13\* \*Nothing about the instant case characterizes the same as an aggravated one against Bowen; and for this reason, the jury should not have been instructed on a question of punitive damages. That this instruction was exceedingly prejudicial and harmful to Bowen is exemplified by the fact that the jury awarded \$10,000 in punitive damages against Bowen, whereas the award of compensatory damages was only \$5,000.

Notwithstanding there had been domestic discord between Pernell and Mrs. Pernell; notwithstanding the fact that Mrs. Pernell, in this case, was the pursuer rather than the pursued; and notwithstanding the fact that Mrs. Pernell has pictured herself to be a woman of an adulterous and lustful disposition, still the jury, by an award of \$10,000 punitive damages, has sought to protect society against the actions of men like Bowen, and to deter others from offending in like manner. Under the circumstances of this case, such punishment, if any, would have been more properly placed against Mrs. Pernell.

Pertinent here, we think, is an excerpt from the opinion of the court, in the case of *Eshelman v. Rawalt*, 298 Ill. 192, 131 N. E. 675, 16 A. L. R. 1311, which is as follows:

"The verdict was for \$13,500, and it is beyond question that it is mainly for punitive or vindictive damages, which the



court instructed the jury they might allow if they believed from the evidence that the defendant acted with an evil intent or motive to injure the plaintiff. The defendant owned 180 acres of land, worth about \$250 an acre, a half interest in 160 acres, worth \$100 an acre, and \$5,000 or \$6,000 worth of personal property, so that he was worth about \$50,000. The record does not furnish any means of ascertaining what was allowed as punitive or vindictive damages, and the appellate court could not have known how much the jury had allowed for damages of that character. *Chicago, M. & St. P. R. Co. v. Hall*, 90 Ill. 42; *Chicago Union Traction Co. v. Lauth*, 216 Ill. 176, 74 N. E. 738. Punitive, vindictive, or exemplary damages are allowed in this state where a wrongful act is characterized by circumstances of aggravation, such as wilfulness, wantonness, malice, or oppression; but to warrant an allowance of such damages, the act complained of must not only be unlawful, but must partake of a wanton and malicious nature.

"While the doctrine allowing such damages has been criticized, and in some states has been repudiated, it was said in *Holmes v. Holmes*, 64 Ill. 294, that the doctrine is too firmly rooted in our jurisprudence to be disturbed. It was said, however, that the rule allowing such damages has been severely questioned by many able jurists, one of whom is Professor Greenleaf, and the courts, recognizing the doctrine within its proper scope, ought to exercise a high degree of watchfulness to \*prevent it from being perverted and extended beyond the real principles upon which it is based, by allowing plaintiffs, through the instrumentality of instructions to the jury, to characterize the acts of the defendant with degrees of enormity and turpitude which the law does not affix to them. The universally recognized rule where the doctrine is in force is that such damages may be recovered only in cases where the wrongful act complained of is characterized by wantonness, malice, oppression, or circumstances of aggravation. *Chicago v. Martin*, 49 Ill. 241, 95 Am. Dec. 590; *Pearson v. Zehr*. 138 Ill. 48, 32 Am. St. Rep. 113, 29 N. E. 854.

"In the absence of these elements, the damages cannot exceed, and must be confined strictly to, compensation for the injury sustained. Where punitive, vindictive, or exemplary damages may be assessed, they are allowed in the interest of society in the nature of punishment, and as a warning and example to deter the defendant and others from committing like offenses in the future; and a frequent objection to the doctrine is in allowing an individual to recover and appropriate damages for an offense against the social order and

in the interest of society. This consideration enforces the injunction of this court for watchfulness to see that the right is not abused.

"The admeasurement of damages is for the jury under the evidence, but it is a question of law whether the facts of the particular case bring it within the rule in which punitive damages may be assessed. In this case the jury, under the rule of law prevailing in this state, would have been justified in adding to the compensatory damages some further sum as vindictive or exemplary damages. The damages allowed, however, are very large indeed, and far beyond any punishment inflicted by the Criminal Code (Hurd's Rev. Stat. 1919, chap. 38) for the crime of adultery, which is a fine of a limited amount, or a jail sentence. It is true that the Criminal Code does not control the question, but there is no distinction between exemplary damages and damages allowed as a punishment (*Lowry v. Coster*, 91 Ill. 182), and the Criminal Code fixes a punishment designed to be adequate to prevent the offense for the protection of society.

"It is claimed that there were circumstances of great aggravation, and, as before stated, the fact that the defendant attempted to escape and hurried Rosa Eshelman along is pointed out as such aggravation. It was the natural thing to do, and the defendant would not be expected to welcome the state's attorney and the plaintiff. The defendant also wrote a letter to a woman about Rosa Eshelman's pocketbook, suit case, and other things left in Chicago, and said that he would like to hear how Rosa was getting along, and that he had not changed a bit in his feelings. That did not indicate any present intent to renew the offense. There was evidence of a want of harmony between the plaintiff and his wife before she left home, and that she had threatened to leave before, and complained of staying there. She went alone to Chicago and secured a room at the hotel, and while it was certainly understood that the defendant would meet her there, 15\* there was no \*evidence that he enticed her away from her home. After she returned to her home, her conduct and the relations between her and her husband were practically the same as before."

It is, accordingly, submitted that the court erred in granting instruction No. 7, on behalf of the plaintiff, over the objection of the defendant.

*Fourth Assignment of Error:* The court erred in permitting the introduction of the financial worth of the defendant, over the objection of the defendant.

Evidence of the financial condition of the defendant, of how much or how little wealth he has, generally is not admissible in an alienation of affections suit, or in an action for criminal conversation, as affecting compensatory damages to be awarded. (See American Jurisprudence, Vol. 27, Sect. 565, p. 167.) It is freely admitted, however, that, if the court was correct in its ruling in submitting to the jury the question of punitive damages, then evidence of the financial worth of the defendant would be admissible. It is earnestly insisted, however, that there is nothing in the instant case to bring the same without the general rule and to justify the award of punitive damages along with evidence of the financial worth of the defendant.

This assignment of error is so interrelated with Assignment of Error No. 3, above, dealing with the question of punitive damages, that reference is here made to the discussion of Assignment of Error No. 3.

### CONCLUSION.

On the whole, it is submitted that this case is one *sui generis* and without parallel in the judicial annals of this state, or any other jurisdiction. Here we have a recovery in favor of Pernell against Bowen, for the alienation of the affections of the former's wife, the alienation of whose affections had not even been discovered by Pernell until the indecent letter written by Mrs. Pernell was exhibited to Pernell by Bowen's wife. This is indeed an anomalous situation.

We, therefore, respectfully submit that the judgment complained of in the foregoing petition should be reviewed 16\* and reversed, and that a final judgment should \*be rendered by this court in favor of Bowen; or else, that the judgment be reviewed, reversed, and remanded to the Circuit Court of Brunswick County, Virginia, for a new trial.

A copy of this petition for a writ of error and *supersedeas* was delivered to counsel for the defendant in error on the 24 day of February, 1949.

This petition is adopted by petitioner as his opening brief, and he begs leave that his counsel may be heard orally thereon upon a presentation thereof.

Respectfully submitted,

WILLIE A. BOWEN,  
By Counsel.

L. J. HAMMACK,  
L. J. HAMMACK, JR.,  
Counsel for Petitioner.

I, L. J. Hammack, an attorney practicing in the Supreme Court of Appeals of Virginia, do certify that, in my opinion, there is sufficient matter of error in the record accompanying this petition to render it proper that the judgment complained of be reviewed and reversed.

L. J. HAMMACK.

Received February 25, 1949.

M. B. WATTS, Clerk.

Mar. 9, 1949. Writ of error and *supersedeas* awarded by the court. Bond \$17,000.

M. B. W.

## RECORD

### VIRGINIA:

Pleas before the Circuit Court of Brunswick County, at the Courthouse thereof, on the 5th day of November, 1948.

Be it remembered that heretofore, to-wit: on the 1st day of September, 1948, came Melvin P. Pernell, plaintiff, and filed his notice of motion for judgment against Willie A. Bowen, defendant, which notice of motion for judgment is in the following words and figures, to-wit:

Melvin P. Pernell, Plaintiff,

v.

Willie A. Bowen, Defendant.

### NOTICE OF MOTION FOR JUDGMENT.

To: Willie A. Bowen

You are hereby notified that at 10 o'clock a. m. on Friday, the 24th day of September, 1948, that being the 18th day of the September Term, 1948, of the Circuit Court of Brunswick County, Virginia, or as soon thereafter as this motion may



be heard, the undersigned, Melvin P. Pernell, hereinafter referred to as plaintiff, by counsel, will make a motion before the Circuit Court of Brunswick County, Virginia, at the courthouse thereof, in said county, for a judgment and award of execution against you, Willie A. Bowen, hereinafter referred to as defendant, for the sum of Fifty Thousand Dollars (\$50,000.00), which sum is justly due and owing by the said defendant to the said plaintiff, for this, to-wit:

That heretofore, to-wit, on the 16th day of August, 1944, the said Melvin P. Pernell became lawfully wedded  
page 2 } and married to Frances Virginia Walker;

That for about three years next following the said marriage the plaintiff and the said Frances Virginia W. Pernell lived happily together, first in the Town of Blackstone, Virginia, and thereafter in Brunswick County, Virginia, and plaintiff enjoyed the conjugal love, fellowship and companionship of his said wife, who, during that time, was perfectly contented and happy, and likewise enjoyed the society, conjugal love, affection and companionship of the plaintiff:

That plaintiff and his said wife after residing in Blackstone, Virginia, for about one year following their marriage, moved to Brunswick County, and resided on a farm operated by A. Y. Pernell from September, 1945, to June, 1946; That in June, 1946, plaintiff and his said wife moved and set up housekeeping in a house and on property owned by the defendant, Willie A. Bowen, where plaintiff and his wife lived together as man and wife until the third week in September, 1947, when they separated; That the said house in which plaintiff and his wife resided from June, 1946, until the day of their separation is located directly opposite the residence and general mercantile store of the defendant, Willie A. Bowen;

That the said defendant, who is a resident of Brunswick County, Virginia, bears no blood relationship, either to the said Frances Virginia W. Pernell, or to the plaintiff;

That during the year 1947, including and particularly during the month of September of said year, the de-  
page 3 } fendant, contriving willfully, knowingly, wrong-  
fully, unjustly, and maliciously intended to injure, prejudice and aggrieve the plaintiff in his enjoyment of the companionship, happiness and love of his wife, and with hostile, wicked and malicious intent to destroy and deprive the

plaintiff of his conjugal right to the society, affection and assistance of his wife, did knowingly, wrongfully, willfully, and maliciously, and with ruthless disregard and reckless indifference to the rights of the plaintiff, and absolutely without justification, invade the rights of the plaintiff and his wife in their relationship as husband and wife, setting about a course of action which was knowingly, purposely, wrongfully, ruthlessly, wickedly and maliciously designed and planned to alienate and destroy the genuine love and affection which the plaintiff's wife held for him, and to wreck and destroy the home of the plaintiff and his wife;

That the plaintiff was during the month of September, 1947, and is now when physically able to work, an employee of the Rosemary Manufacturing Company of Roanoke Rapids, North Carolina, and in the course of his employment is required to report to work at 3:30 p. m. of each day and to work from that time until twelve midnight, which employment and hours of employment thereby caused and necessitated the absence of plaintiff from his home from about 1 p. m. of each day until about 1:30 a. m. of the following day;

That during the plaintiff's absence from his home and residence, as aforesaid, the defendant would spend hours of his time in the company of the plaintiff's wife, and  
page 4 } would contrive to meet plaintiff's wife in divers places and at divers times, and would contrive to have plaintiff's wife visit the store of defendant, and would write numerous love letters to plaintiff's wife and encourage her to write him similar letters, and in numerous and divers ways and means and by the use of arts, wiles and artifices the defendant would solicit and secure the love of plaintiff's wife, and would urge plaintiff's wife to desert and abandon plaintiff, and defendant would hold clandestine meetings with plaintiff's wife;

That the genuine and true love, affection and devotion which the plaintiff's wife had for him at the time of their marriage and for some time thereafter, and her enjoyment of and genuine desires for his companionship, and love have been alienated, crushed and completely destroyed and that the plaintiff's wife no longer holds for him any love or affection whatsoever, nor has she any desire or wish whatsoever for his companionship, love or assistance;

That the wrongful and malicious acts of the defendant, engaged in and pursued by him knowingly, unjustly and willfully, and with unjustifiable, hostile, wicked and ruthless intent, and in utter and reckless disregard for the plaintiff's rights, contributed to, procured, produced, brought about and

were the direct and proximate cause of the total loss, alienation and destruction of the true and genuine love and affection of the plaintiff's wife for him.

Plaintiff avers, charges and believe that as a proximate result of the wrongful and malicious acts of the defendant, herein complained of, and as a direct consequence of page 5 } his reckless and unjustifiable disregard for the plaintiff's rights, the plaintiff has been wrongfully and cruelly deprived and robbed of his conjugal right to the society, love and affections of his wife and of her companionship and assistance; that the affections of the said Frances Virginia W. Pernell, the plaintiff's wife, have been wholly destroyed and alienated from him, and his home and marriage state, which was theretofore a happy one, broken up and destroyed, in consequence of which the plaintiff has suffered great pain and distress of mind and body; has lost his home and the society and comfort of his wife, and suffered impairment of his health; all to the damage of the plaintiff in the sum of Fifty Thousand Dollars (\$50,000.00), and, therefore, he institutes this action.

That, in addition to the foregoing allegations which are here repeated and relied upon, the plaintiff further alleges that during the time plaintiff was absent from his home as above alleged, and during the month of September, 1947, the said defendant, wrongfully and wickedly debauched and carnally knew the said Frances Virginia W. Pernell while she was the wife of the plaintiff and thereby the affection of the said Frances Virginia W. Pernell for the plaintiff was then and there alienated and destroyed, and also, by means of the premises, the said plaintiff hath from thence hitherto, wholly lost and been deprived of the comfort, fellowship, society, and aid of the said Frances Virginia W. Pernell, his said wife, in his domestic affairs, which the said plaintiff, during all that time, ought to have had, and otherwise might and would have had; All to the damage of the said plaintiff of page 6 } Fifty Thousand Dollars (\$50,000.00), and therefore, he institutes this action.

Whereupon, and for the reasons aforesaid, judgment will be asked at the hands of said court, and at the time and place hereinbefore set forth, for the said sum of Fifty Thousand Dollars (\$50,000.00) for the damages occasioned the plaintiff by the said defendant, as aforesaid, which sum the plaintiff hath the right to recover of the defendant.

Given under my hand this 31st day of August, 1948.

MELVIN P. PERNELL  
By Counsel.

A. S. HARRISON, JR., p. q.  
Lawrenceville, Virginia.

And at another day to-wit: On the 2nd day of September, 1948, the following order was entered;

This day came the plaintiff, Melvin P. Pernell, by his attorney, and it appearing by affidavit of the said Melvin P. Pernell that certain letters, writing, notes, and memoranda, written by and in the handwriting of Willie A. Bowen, and which said documents and writings may or may not be dated, and may or may not be signed, but which were written by defendant and delivered to or received by Frances Virginia W. Pernell, during the year 1947, and particularly those letters or writings written by Willie A. Bowen and which were in the possession of Frances Virginia W. Pernell and Samuel H. Allen, her attorney, during the latter part of the month of September, 1947, or the first part of the month of October, 1947, and which were exhibited to the said Willie A. Bowen and Mrs. Willie A. Bowen at or near the premises  
page 7 } of Willie A. Bowen in Brunswick County, Virginia,  
are in the possession of Frances Virginia W. Pernell and Samuel H. Allen, her attorney, who are not parties to the matter here in controversy, and that the said writings and letters are material and proper to be produced before this court. It is therefore ordered that the clerk of this court do issue a subpoena *duces tecum* to compel the said Frances Virginia W. Pernell and Samuel H. Allen, her attorney, to produce said writings and letters before this court at the courthouse thereof, on the 24th day of September, 1948, at 10 o'clock a. m. to be examined by the court and counsel for the interested parties, and for such other purposes as might be legal and proper.

Second order of this day.

This day came the plaintiff, Melvin P. Pernell, by his attorney, and it appearing by affidavit of the said Melvin P. Pernell that certain letters, writing, notes, and memoranda written by and in the handwriting Frances Virginia W. Pernell, wife of plaintiff, and which said documents and writings may or may not be signed, and may or may not be dated, but which were written by plaintiff's wife and delivered to or received by the defendant during the year 1947, are now in the possession of the defendant, Willie A. Bowen, and that the said writings and documents are material and proper to be produced before this court; it is ordered that the clerk of this court do issue a subpoena *duces tecum* to compel the said Willie A. Bowen to produce said letters, writings, documents

and memoranda before this court at the courthouse thereof on the 24th day of September, 1948, at 10 o'clock page 8 } a. m. in order that said writings may be available for examination by this court and counsel of record for the plaintiff and defendant, and for such other purposes as might be legal and proper.

And at another day to-wit: on the 27th day of October, 1948, the following Order was entered.

On motion of Willie A. Bowen, the defendant, by counsel, leave is granted to the said defendant to file his plea of not guilty in this action, and his answer to a subpoena *duces tecum*, heretofore executed upon him, which said plea and answer are hereby, accordingly, this day filed.

### PLEA OF NOT GUILTY.

The said defendant, by his attorney, comes and says that he is not guilty of the premises in this action laid to his charge, in manner and form as the plaintiff hath complained, and of this, the said defendant puts himself upon the country.

### ANSWER TO SUBPOENA *DUCES TECUM*.

The said defendant, by his attorney, in answer to a subpoena *duces tecum*, heretofore executed upon him, comes, produces, and files with this answer thereto attached, all letters and documents in his possession in the handwriting of Frances Virginia W. Pernell.

And at another day, to-wit: On the 4th day of November, 1948, the following order was entered:

This day came Melvin P. Pernell, plaintiff, in proper person, and by A. S. Harrison, Jr., of Lawrenceville, Virginia, his counsel, in prosecution of the plaintiff's notice of motion for judgment against the defendant, Willie A. Bowen, for alienating the affections of the plaintiff's wife from him, and for criminal conversation with her;

page 9 } And, thereupon, came the defendant, Willie A. Bowen, in proper person, and by L. J. Hammack, of Lawrenceville, Virginia, his counsel;

And it appearing that on the 27th day of October, 1948, the said defendant, by his attorney, tendered and filed in the clerk's office of this court, his plea of general issue, to the plaintiff's notice of motion for judgment;

And thereupon, the plaintiff, by his attorney, having this

day *ore tenus* tendered his replication in due form to the said plea, issue is thereupon joined between the said parties in the premises upon the said plea;

And, thereupon, of the persons summoned and in attendance on the court, a panel of nine persons, free from exceptions and qualified in all respects to serve as jurors, is accordingly constituted, and thereupon, the plaintiff having stricken one person from said panel, and the defendant one person, the remaining seven persons composed the jury for the trial of the case, to-wit: B. J. Skinner, J. A. Lewis, C. Harroll House, A. J. Hurst, J. Leonard Foster, E. D. Rivers, and J. C. Braswell, who, having been duly selected and impanelled, were sworn to try the issue joined as aforesaid;

And, thereupon, the jury heard opening statements by counsel for the plaintiff and by counsel for the defendant, and heard evidence introduced on behalf of the plaintiff and evidence introduced on behalf of the defendant, and all the evidence in the case except rebuttal testimony of the plaintiff, and such testimony as was agreed by the court and all parties would be heard on the following day, to-wit, November 5, 1948;

page 10 } And accordingly, the jury was thereupon adjourned over until tomorrow (November 5, 1948) morning, at 10 o'clock A. M., after having been admonished by the court not to discuss the case with any person other than a member of their body overnight, or during the recess of the court, and the jury was directed to return to court on the following morning, as aforesaid, at 10 o'clock A. M.

And, thereupon, further proceedings in this cause are continued until tomorrow, November 5, 1948, at 10 o'clock A. M. And at another day, to-wit: on the 5th day of November, 1948, the following order was entered:

This day came again the plaintiff, Melvin P. Pernell, and the defendant, Willie A. Bowen, and their respective attorneys, the jury, sworn on yesterday, again appeared in court, pursuant to the adjournment thereof, to-wit: B. J. Skinner, J. A. Lewis, C. Harroll House, A. J. Hurst, J. Leonard Foster, E. D. Rivers and J. C. Braswell;

Whereupon, the jury heard the balance of the evidence introduced on behalf of the plaintiff, such evidence, together with the evidence which the jury heard on November 4, 1948, being all of the evidence introduced in the trial of this case;

Whereupon, the jury received the instructions of the court, heard argument of both counsel for the plaintiff and counsel

for the defendant, and, thereupon, retired to their room, and after some time, again appeared in court and reported their verdict as follows, to wit:

"In favor of plaintiff	
Compensatory—	5,000
Punitive—	10,000
<hr/>	
Total—	\$15,000

B. J. SKINNER, Foreman."

page 11 } And thereupon, it appearing to the court that the verdict of the jury, as aforesaid, was not in proper form, the court proceeded, without objection on the part of counsel for the plaintiff or defendant, to reform said verdict as follows, to-wit: "We the jury find for the plaintiff and fix his damages, at Fifteen Thousand Dollars (\$15,000.00)", which verdict was duly signed by B. J. Skinner, Foreman, and each member of the jury was polled separately as to whether or not "that was his verdict" and each member of the jury having replied in the affirmative, the said verdict, as reformed, and last signed reported and rendered, being in the opinion of the court in proper form, and there being no objection to the form of said verdict, was received by the court;

And, thereupon, the defendant, Willie A. Bowen, by L. J. Hammack, his counsel, moved the court to set aside the verdict and grant the defendant a new trial on the ground that the said verdict is contrary to law and evidence; and that the said verdict is excessive, and on the ground that there was not sufficient evidence as to criminal conversation to warrant this issue being submitted to the jury, and that the evidence was insufficient to justify an award by the jury of punitive damages, and that, therefore, the court erred in granting any instruction on the question of criminal conversation and punitive damages;

And the court proceeded forthwith to consider the motions aforesaid and heard argument of counsel thereon, and being of opinion that the verdict of the jury was not contrary to the law and evidence, but is amply supported by the  
page 12 } evidence and that there was amply evidence to justify submitting to the jury the issue as to whether or not the defendant had criminal conversation with plaintiff's wife, and whether or not the plaintiff should be awarded punitive damages, and being further of opinion that the ver-



dict of the jury was not excessive, the court doth overrule the motions of the said defendant to set aside the said verdict of the jury and award him a new trial, as aforesaid, to which action of the court the defendant, by his attorney excepted.

And thereupon, the court proceeded to enter judgment upon the jury's verdict, doth consider, and order that the plaintiff, Melvin P. Pernell, recover of the defendant, Willie A. Bowen, the sum of Fifteen Thousand Dollars (\$15,000.00), with interest from the 5th day of November, 1948, at the rate of six per centum (6%) per annum until paid, and his costs by him in this behalf expended.

The court doth further order that the Clerk of this court do further record and index the judgment granted the plaintiff herein against the said defendant.

And it being further suggested to the court by counsel for the defendant that the defendant desires to present a petition to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment aforesaid, it is ordered that execution of the judgment aforesaid be suspended for a period of ninety days from the date hereof, and thereafter, until the said petition is acted on by the Supreme Court of Appeals of Virginia, if such petition is actually filed within the said specified time; provided that the said defendant, or

page 13 } someone for him, shall, within fifteen days from the date hereof, execute before the clerk of this court, a bond, with surety to be approved by the said clerk, in the penal sum of \$18,000.00, with a condition reciting the judgment aforesaid, and the intention of such person to present such petition, and providing for the payment of all such damages as may accrue to any person by reason of said suspension, in case a *supersedeas* to said judgment be not petitioned for within said time, or if so petitioned for, should not be allowed, and be effectual within the time so specified.

The Court doth further order that its "Memorandum" or Oral opinion, and ruling by the court on defendant's motion to set aside the verdict of the jury", which memorandum has been this day reduced to writing by the court, be and it is filed with the papers in this cause of action, and that the same be and is hereby made a part of the record in this case.

Memorandum or oral opinion and ruling by the court.

There are no exceptions to the evidence in this case. The only exceptions to the instructions are to the one submitting to the jury the charge of criminal conversation and to the one on exemplary or punitive damages. The exception to the first named is based on defendant's contention that there is not

sufficient evidence as to criminal conversation to warrant this issue being submitted to the jury. The exception to the other is based on defendant's contention that the evidence is insufficient to warrant an award by the jury of punitive damages. There has been no exception taken to the form of any instruction.

Before granting either of the instructions to which exceptions have been taken the court heard counsel for page 14 } defendant fully and considered the authorities cited. If counsel for defendant now has further or additional authorities he wishes to present, the court will gladly consider them. (Counsel here indicated he had no additional authorities to present.) In the absence of additional authorities to be considered the court feels that there is nothing to warrant a delay in ruling on defendant's motion to set aside the verdict.

The court feels that this is peculiarly the type of case in which the jury was required to find the facts from all the evidence introduced, both substantive and circumstantial. The jury, in reaching its verdict, was entitled to consider such evidence and all inferences which might properly have been drawn therefrom.

The court has carefully followed the evidence and is of opinion that the evidence fully justifies the verdict returned by the jury, and accordingly the motion to set aside the verdict is overruled and judgment is hereby entered on the verdict.

page 15 } Virginia:

In the Circuit Court of Brunswick County.

Melvin P. Pernell, Plaintiff

v.

Willie A. Bowen, Defendant

#### NOTICE.

To—A. S. Harrison, Jr., attorney of record for Melvin P. Pernell:

You are hereby notified that, at 10 o'clock a. m. on Thursday, January 20, 1949, I shall apply to W. E. Elmore, Clerk of the Circuit Court of Brunswick County, Virginia, for a transcript of the record in the above case.

Given under my hand this 18th day of January, 1949.

L. J. HAMMACK,  
Attorney for Willie A. Bowen

Due and timely receipt of the above notice is hereby accepted, this 18th day of January, 1949.

A. S. HARRISON, JR.,  
Attorney for Melvin P. Pernell

page 16 } Virginia:

In the Circuit Court of Brunswick County.

Melvin P. Pernell, Plaintiff

v.

Willie A. Bowen, Defendant

### NOTICE.

To—A. S. Harrison, Jr., attorney of record for Melvin P. Pernell:

You are hereby notified that on Friday, December 31, 1948, at 11 o'clock a. m. on that day, in the City of Petersburg, Virginia, I shall make application to and move the Honorable J. J. Temple, Judge of the Circuit Court of Brunswick County, Virginia, to sign three certain bills of exceptions in the above-styled action, now pending in the Circuit Court of Brunswick County, Virginia, the said bills of exceptions being Nos. 1, 2 and 3, copies of which are hereto attached and made a part of this notice.

L. J. HAMMACK,  
Attorney for Willie A. Bowen

Due and timely receipt of the above notice is hereby accepted, this 29th day of December, 1948.

A. S. HARRISON, JR.,  
Attorney for Melvin P. Pernell

page 17 } BILL OF EXCEPTIONS NO. 1.

Be it remembered that, on the trial of this case, after the jury had been sworn to try the issue joined, the plaintiff, to maintain the issue on his part, introduced the following witnesses, who testified as follows:

FRANCES WALKER PERNELL,  
called by counsel for plaintiff, as an adverse witness, being  
duly sworn, testified as follows:

That witness is 24 years old and was born and raised in Lunenburg County, Virginia, the daughter of Mr. and Mrs. R. L. Walker; that her address is R. F. D., Kenbridge, Virginia; that she attended the public schools of Lunenburg County, Virginia, through the 10th grade, or third year in high school; that she has been married only one time and then to plaintiff; that she married the plaintiff, Melvin P. Pernell on August 16, 1944; that her marriage license was obtained in Lunenburg County, Virginia, and that she and the plaintiff were married by a minister in Kenbridge; that she knew and had dates with plaintiff about eight months prior to her marriage to him; that following her marriage to plaintiff they lived in the home of Mr. and Mrs. Hugh Abernathy, 308 High Street, Blackstone, Virginia, during which time her husband was employed in Blackstone; that she and plaintiff had an apartment at the home of the Abernathys during the first months of her marriage; that during the latter part of the year 1945 she and her husband moved from Blackstone to Brunswick County, where they lived in the Pernell home about six months, and until July, 1946; that in July, 1946, her husband and his brother, Horace W. Pernell, rented a home from the defendant, Willie A. Bowen; that this home is about nine miles from Lawrenceville, in Powellton District; that Horace W. Pernell was also married and had one child at the time they moved into the house rented from W. A. Bowen; that she and the plaintiff, and Horace W. Pernell and his wife, shared household expenses during the time they lived in the residence rented from W. A. Bowen; that the house in which they lived was located across a public highway from the brick residence of Willie A. Bowen and his wife and three daughters, and also across the highway from a store operated by W. A. Bowen as a general mercantile store; that witness and her husband lived in this house from July, 1946, page 18 } until September, 1947; that during this period her husband, Melvin P. Pernell, was employed by the Rosemary Manufacturing Company of Roanoke Rapids, North Carolina, and worked the night shift; that he and his brother, Horace, drove to work each day from their home in Brunswick County, leaving home about 1 p. m. and returning after midnight each night.

*Frances Walker Pernell.*

Witness testified that she was no relation, by blood or marriage, to Willie A. Bowen, and never knew the defendant before she and her husband rented the house from him; that her relations with the Bowen family were very friendly, and that she visited in their home almost daily, and went to church and other places with Mr. and Mrs. Bowen and their three daughters; that the daughters are grown and attending college.

When witness was asked as to the attitude of W. A. Bowen towards her, and when she first noticed his interest in her, she replied, "This sort of thing just happens. I didn't pay any attention to it at first." When asked how the defendant showed his interest in her, she replied, "Well, I just don't know what to say. I didn't think anything of it to begin with, he was nice to me and would give me coca-colas and cigarettes." When asked when she first started writing to Mr. Bowen, and who wrote the first letter, she replied, "He did. He said he was going to write to me and for me to answer." When asked why she did this, she said, "I don't know. I didn't think anything about it at first and I told him I would write to him. This sort of thing just happens. It just happens gradually. I don't know how to tell it." Witness testified that at first they didn't write each other so many letters, but that towards the last they were writing to each other every day.

Witness was asked when and where she would see the defendant, and she replied, "At his store, at his home, at different places." Witness said that she saw the defendant every day. When asked how they arranged to exchange letters, witness testified that they would each hide letters in the chicken house which is located back of the house in which she and the plaintiff and the Horace Pernells lived; that she would leave a letter there for the defendant, and he would get it, and he would leave a letter there for her, and she would get it; that she also wrote letters and would take them to him at his store. When asked why she wrote letters to the defendant, she said, "He (the defendant) wanted me to, he wanted me to write him long letters." Witness testified that she destroyed all the letters that the defendant wrote  
page 19 } her because she was afraid Melvin, her husband, would see them.

Witness was again asked when she first realized that she was interested in the defendant, and he in her, and she replied, "Well, we didn't mean any harm to begin with, but you know when a thing like this starts, it just happens."

*Frances Walker Pernell.*

When asked how many letters were exchanged between the two, witness replied, "A whole lot. We wrote almost every day." Witness testified that the five letters which she filed in court in response to a *subpoena duces tecum* were the only letters of the defendant which she had not destroyed.

Witness was shown an envelope postmarked Lawrenceville, Virginia, dated September 28, 1947, 11 a. m., addressed to Mrs. Frances Pernell, Box 26, Star Route, Kenbridge, Virginia, c/o Mrs. R. L. Walker, and asked if she received it through the mails, and answered, "Yes." Witness was then shown a birthday card enclosed in the envelope, which contained the following words:

"A Birthday Wish Sailing In for You

May every Birthday  
Be pleasant for you,  
The bright side of life  
Be always in view;—  
With glad years ahead  
And good luck on call  
May each new Birthday  
Be nicest of all!"

The witness' attention was directed to the handwriting on the birthday card, apparently reading, "SWAK" and "GUESS WHO." Witness was then asked if the handwriting on the envelope and the handwriting on the birthday card was that of the defendant, W. A. Bowen, and if she had a birthday about September 25th. Witness answered that her birthday was at that time, but that the handwriting on both the outside and inside of the envelope was printed in ink, and that she was not certain that it was from the defendant. (This envelope and card were subsequently identified by the defendant, introduced in evidence, and marked Exhibit 1a.)

Witness was then shown an envelope postmarked Lawrenceville, Virginia, dated October 4, 1947, addressed to her, Box 46, Star Route, Kenbridge, Virginia, c/o Mrs. R. L. Walker, and asked if she received this envelope, and in whose handwriting it was. Witness replied that she did receive the letter, and that it was in the handwriting of W. A. Bowen. (The envelope was introduced in evidence and marked Exhibit B.) Witness was then shown the letter enclosed in the said envelope, which is in the following words and figures:

*Frances Walker Pernell.*

"Mrs. Francis Pernell  
Kinbridge, Va.

My Pernell

I will try anser your last letter. What is the news. I cant here a thing around here. Where are you? And what are you doing? I dont here a thing around here about nothing and I dont know what the are doing. Nobody say nothing. I hope you will get this letter and write me all the *newse*—as no one tell me nothing and I ask nothing. (Page 2) and if you answer this letter. *Put it in care of Mr. L. A. Harris and I will sure get it and no one else.* Write me all the news and what everybody is doing. And are you still at *home* I dont know what to write yet until I hear from you. And then I will *answer* it. Write real soon. I will be looking for it. What have you and M. decided to do.

Will close write real soon.

Good by.

XXXX

(Page 3) As soon as I here from you I will answer right back."

Witness was asked if this letter was in the handwriting of the defendant and she replied that it was. Witness was asked what significance the "xxxx" had, and she replied that it is supposed to mean "Kisses." Witness said that she did not answer the letter. This letter was introduced in evidence and marked Exhibit B2.

Witness was shown an envelope postmarked Lawrenceville, Virginia, October 27, 1 p. m., addressed to her at the same address, and asked if she received the envelope, and if it was in the handwriting of the defendant. Witness replied that she received the envelope but that the address was printed, and that she could not tell if it was in the handwriting of the defendant. The envelope was introduced in evidence and marked Exhibit C. Witness was then shown a card taken from the envelope which had the following printing and writing thereon:

(Printing)

"Something for You

It may not be just what you'd choose  
But hope it's something you can use."



*Frances Walker Pernell.*

page 21 } (Handwriting on inside of card)

"Write me all the new. if you can. Guess Who. If you write put it in care of L. A. Harris and I will get it O. K. What is the *news*."

Witness stated that the handwriting on the card was that of the defendant, W. A. Bowen. The card was introduced in evidence and marked Exhibit C1.

Witness was then shown an envelope postmarked Lawrenceville, Virginia, October 24, 1947, 2:30 p. m., addressed to her at the same address, and identified the envelope as being in the handwriting of the defendant, Bowen. The envelope was introduced in evidence and marked Exhibit D. Witness was then shown the letter contained in this envelope, which is in the following words and figures:

"Mrs. Frances. Pernell.  
Kindbrige, Va.

How are you getting along. I heard you were coming over this way Sunday a Sunday night, and if you do come. I wish you would come by here as I would like to see you on some *Business*. Horace and his family and my people are going up to *H-Burg* to to see the girls. The will go Sundy Morning and come back Sundy night sometime.

10-24-47."

Witness stated that this letter was in the handwriting of the defendant Bowen, and it was introduced in evidence and marked Exhibit D1. Witness was asked if she went to see the defendant in response to this letter, and replied that she did not.

Witness was asked who were the "Horace and his family" referred to in the letter, and she replied, "Horace Pernell and his wife and child." Witness was asked why the defendant's people were "going to Harrisonburg to see the girls," and replied that two of the defendant's daughters attended Madison College and that Mrs. Bowen was going to see them.

Witness was shown an envelope postmarked Lawrenceville, Virginia, November 4, 1947, 1 p. m., and stated that this envelope was in the handwriting of the defendant Bowen. It was introduced in evidence and marked Exhibit A. Witness

*Frances Walker Pernell.*

was then shown the letter contained in the envelope (introduced in evidence and marked Exhibit ....), which is in the following words and figures:

“Mrs. Frances Pernell  
Kindbrige, Va.

I would like to see you on some Business. So  
page 22 } if you can. Come to South Hill Thursdy, Nov. 6,  
1947. At they South Hill Bus Station, I will be  
there by 10 o'clock. I am selling some tobacco up there  
Thursday.

And Oblige

ABC

Tuesday—Nov. 4

Page 2) “If you write to me address it to Jamine Drumgoole. In care of Mr. L. A. Harris. And I will get it all right.

Witness said that she did not meet the defendant in South Hill on November 6th, in response to his request. Witness was asked why the defendant was asking her to write to him in care of someone else and she replied “to keep his wife from getting it, I guess.”

Witness admitted receiving all five of the above letters, and stated that they were all mailed to her after she and her husband had separated, and while she was living in the home of her parents, in Kenbridge, Virginia.

Witness was then shown a writing in the following words and figures:

“Sugar, I had 8 pages written to you and laid the tablet down and cant find it. Hope I will find it tonight.

I have been looking 4 hours.

By Sugar.

Worried to death. It is in the store but I can't find it.

If I find it I will bring it to you tonight. Dont be worried. I will find it. I wore out. ....”

Witness was asked if this letter was in the handwriting of the defendant, and if she received it, and replied that the

*Frances Walker Pernell.*

letter was in the handwriting of the defendant, and that she did receive it. Witness was asked if she was the defendant's "sugar" and she replied, "I suppose I was." (The letter was introduced in evidence and marked Exhibit ....)

Witness was asked if the defendant was in the habit of writing her long 8-page letters, and she replied, "Yes, sir, and he was always after me to write him long letters and I had a hard time finding something to write him."

Witness was then shown six written pages, which were filed in court by the defendant in response to a *subpoena duces tecum*, served on him, and which were introduced in evidence in the following words and figures, to-wit:

page 23 } (Page 1, marked Exhibit F.)

"I do love you Honey Sweetheart.

"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"
"	"	"	"	"	"

You know I do

"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"

Love and kisses."

(Page 2, marked Exhibit F 1.

"And he decided he didnt want the knife so he carried it back in and asked to exchange it for fiddle string so she did so he went back and didnt like that, so he came back and asked her to exchange it for some rubbers, so she told him she which he would make up his mind what he was going, whittle, fiddle, or diddle, so he made up his mind (on back of this page) end I think.

*Frances Walker Pernell.*

"vi one went in drug store to get some rubbers. He asked the man how much so he told him .50 plus taxes, so he thought he said tacks. He said never mind about the tacks, we can tie on. Ha! I will close now. I love you.

Love Love  
Love Love I love  
you love love  
you so Be good."

(Page 3, marked Exhibit F 3.

"Or are you. Well I do love you  
" " " " "  
" " " " "  
" " " " "  
" " " " "  
" " " " "

page 24 } "I do love you  
I am true to you  
" " " " "  
" " " " "  
" " " " "

I dont love you for your money either. I just love you at nature. That is the reason. I dont mind asking you for some money because I love you and I know you love me and"

(Page 4, marked Exhibit F 4.)

"I do love you  
Old fusspot  
be good  
I am always good  
Love  
I love you  
" " "  
" " "  
" " "  
" " "  
" " "  
" " "

*Frances Walker Pernell.*

I love you  
" " "  
" " "  
" " "

(Page 5 introduced and marked Exhibit F 5.)

"I love you Sweetheart  
" " " "  
I love you darling  
" " " "  
" " " "

That from my heart  
" " " "  
" " " "  
" " " "  
" " " "  
" " " "  
" " " "  
" " " "  
" " " "

I love you  
" " "

*Sweetheart*

(Page 6, filed as Exhibit F 6.)

"You are my darling sweetheart Honey and sugar pie  
so be good  
until we meet  
I love you."

Witness admitted that the six pages shown her page 25 } were in her handwriting, and were written by her to the defendant, W. A. Bowen. Witness was asked why she found it necessary to repeat and avow her love for the defendant so many times, and use so many ditto marks, and she replied that the defendant would fuss if she didn't write him long letters and that he wanted every letter to be a long one and that she had to fill up the pages with something. Witness was asked if her statement to the defendant that "she

*Frances Walker Pernell.*

loved him and was true to him" was a true statement. She replied that it was and that she did love the defendant, Bowen. Witness was asked to explain the reference to loving Mr. Bowen for himself and not for his money, and she replied that he (the defendant) was always worrying and saying that she didn't love him for himself, but because of his money, and that was why she wrote him that it was not his money that she was interested in. Witness was asked if she had ever received any money from the defendant, or asked him for money, and she replied that the defendant had never given or offered her money at any time; that on one occasion she nursed Mrs. Bowen for a week and was paid \$7.00 for this service.

Witness was asked to explain why she wrote the defendant the indelicate jokes, and she replied, "mostly to fill up the letter and so he would get a long letter like he wanted". Witness was asked if Mr. Bowen liked the jokes and she said that he did. Witness was asked if Mr. Bowen ever told her any jokes, and she replied that she didn't reckon he knew any.

Witness was then shown a letter which was introduced in evidence and marked Exhibit G, and admitted that this letter was in her handwriting; that it was written by her to the defendant, and is in the following words and figures:

"Hello Honey

Hope this letter find you feeling fine. This leaves me with some pains in my stomach but I hope I will be able to meet you tonight. The pain kinda like I am going to start something but I hope it dont start before you get some.

How are you today? Fine I hope. I am alright except for the pains in my stomach. I had a nice time yesterday and last night at church. Well i really laughed my part yesterday. You know darling you can think of more things to write than I can. I guess I will go over and work on my dress some, but I dont know where to put your letter and I will put it out when and after the colored people leave. I think that  
page 26 { the best way don't you. I sure did hate to see  
Easterbelle and Bob leave this morning, but they  
was happy look like.

Well I guess I will close now and you be good. Love always

Your darling."

*Frances Walker Pernell.*

The witness was asked if the first paragraph of the letter did not mean that she expected to be sick, and she replied that it did. Witness was asked if she and the defendant, Bowen, both understood the meaning of the statement in the first paragraph of the letter, "the pain kinda like I am going to start something but I hope it dont start before you get some", and she replied that they did. Witness was asked to explain what she meant by "you can think of more things to write than I can", and replied that the defendant would write her long letters and that she had a hard time finding things to write him. Witness was asked if the reference to "putting the letter out" did not mean that she planned to deliver it to Mr. Bowen at his store, and at one of the places they had for exchanging letters. She replied that it did.

Witness stated that Easterbelle and Bob, mentioned in the letter, were daughters of the defendant who returned to college the morning the letter was written.

Witness was then shown a letter which was introduced in evidence, marked Exhibit H, and which was in the following words and figures:

"Hi Sweetheart

I hope this letter find you feeling better than I am. I am still sick. But it want so bas as it was yesterday. I took some asprian to day too. I have realy got pains in my stomach but keep on working, but keep on working, but I can't give up for the way I feel. If I did nothing would get done. Darling he didn't say any thing about nothing that nite he knows how I felt I guess—I just won't want no one to touch me when I am that way. I am real nervous and I can't help it sugar pie. I got my snaps on cooking and Now I am fixing to wax and scrub a little. It was real storm this afternoon. don't you think my stomach has hurts so I am real sore in it. Well it is still raining now hope it does clear up before to-morrow. He was telling me about the calf. I bet it pretty. I may be well bye F'riday let hope so anyway or Thursday. I want you to try Mrs. Bowen so she wont think any thing. Sugar Pie he will get a kick out about the black dress. don't you think so. Well how is all at the house today. I think she is fixing to have a baby but don's say anything about. Well Sugar Pie I will close now and write you a letter tomorrow. So be good love always your true Darling.

Love .....



*Frances Walker Pernel.*

page 27 } Witness was asked if this letter was written by her to the defendant, and she replied that it was. Witness was asked to give an explanation for the writing of the last two letters introduced in evidence and replied that she "had to write them" to the defendant. She stated that the two letters were written about the same time; that the defendant had become very jealous of her and her husband. Witness was asked if the sickness which she referred to in both letters did not relate to her menstrual period, and she replied that it did.

Witness was asked to explain that part of the letter marked Exhibit H, which reads, "Darling he didn't say anything about nothing last night. He knows how I felt I guess, I just don't want no one to touch me when I am that way. I am real nervous and I can't help it Sugar Pie." Witness stated that either the night before, or several nights before, this letter was written, the defendant came over to plaintiff's house and stood on the outside of their bedroom window and eavesdropped on her and her husband; that witness and plaintiff were in their bedroom together at the time, and that the defendant thought they were having marital relations and became upset about it; that the next day he told her he stood outside her window the night before and heard her and Melvin in the bedroom; that defendant thought that they were having marital relations, and due to his love for her it worried him. Witness was asked if the defendant objected to her having sexual relations with her husband, and she replied that he did, because he was jealous of Melvin.

Witness was then asked to explain the sentence in her letter reading, "I want you to try Mrs. Bowen so she wont think anything," and replied, "Well, you know how it is when people are married, if they don't live together and do what married people do, the wife will become suspicious."

Witness was asked to explain the reference to a black dress in the letter, and stated that she had gotten a new black dress and that the defendant had said he liked it. When asked if this pleased her, and if she particularly wanted him to like it, she replied that it did please her for him to like it. Witness was asked if the reference in the letter to "be well by Friday, let's hope so any way," did not mean that she was referring to her monthly sickness being over by that time. She replied that it did. When asked to explain the reference in the letter to "I think she is fixing to have a baby," witness replied that this reference was to Mrs. Horace W. Pernel.

*Frances Walker Pernell.*

page 28 } Witness was asked if she and the defendant did not realize the consequences of what they were doing, and she replied that the defendant said that if witness and Melvin, her husband, ever broke up he would see that she did not suffer.

Witness then was asked when and how her husband had found out that she was having a love affair with the defendant, Bowen, and she replied that Mrs. Bowen found one of the letters (Exhibit G) which she had written the defendant and told her husband about it; that as soon as plaintiff found out he took her back to her parents, and to her home near Kenbridge, Virginia; that this occurred during the latter part of the third week in September, 1947, and that she had not seen or heard from her husband or any member of his family since they separated, and before being summoned to court to testify in the case. Witness testified that she and her husband lived together happily until the discovery of the letter by Mrs. Bowen, upon which they separated.

Witness was asked if she and the defendant, Bowen, loved each other, and she replied that they did, "that love just comes gradually and naturally"; that when she started exchanging notes with Mr. Bowen she didn't think there was any harm in it, but that "one thing just led to another".

On cross examination, the witness was asked if the day Mrs. Bowen found her letter to Mr. Bowen the witness had not told Mrs. Bowen that this is the same thing that happened to me—my husband wrote some letters to another woman. Witness replied that she did not say that; that her sister, Mrs. James R. Emil, received some letters from a man and that she recognized the handwriting to be that of the plaintiff, but that he denied it and that she never could prove it. The letters bore the initials of her husband; she was convinced they were written by him; that it caused quite a disturbance in her family, and that her husband hadn't visited with her folks since that time. The parents of witness forbade him to do so, but she forgave her husband and they continued to live together; that this happened while they were living in Blackstone.

Witness was asked if she did not think the jokes which she wrote Mr. Bowen were mighty dirty jokes, and she replied that she did not think so; that ladies frequently  
page 29 } tell jokes like that. When asked where she heard such jokes, she replied that she did not remember; that she might have heard them over at Mrs. Bowen's.

Witness was asked if her husband did not catch a man in her

*Willie A. Bowen.*

room, one time in Blackstone, and she replied, "Absolutely not; that is not true".

Witness was asked if she did not flatter Mr. Bowen and lead him on, and she replied that she did not. She was asked if she did not write Mr. Bowen first. She said, "No, he wrote the first letter".

Witness was asked about her testimony to the effect that Mr. Bowen would come by the house every day, and asked if Mr. Bowen did not own the farm on which they lived and have crops and tobacco barns on that side of the road which he had to look after. Witness replied that he did have tobacco barns on that side of the road and would visit them.

Witness was asked if she and her husband hadn't had a lot of trouble about other men and women, and she replied that they had not; that the only trouble they had had was about the letters which she thought he wrote Mrs. Emil, but that she had forgiven him for that.

Witness further testified that, while living across the road from the Bowens, in the residence owned by Mr. Bowen, that she and her husband had no discord and got along as well as they ever had up until the date of the discovery of the letter written by witness to Willie A. Bowen, which letter was found by Mrs. Bowen and turned over to plaintiff. Up until this time, witness had accorded her husband, the plaintiff, every consideration and had made a good wife to him. The finding of the letter by Mrs. Bowen, and the exhibition of the same to the husband of witness, brought about the breach between witness and her husband; and after reading the letter and talking with Mr. Bowen, he immediately carried witness back to her father's home in Lunenburg County, where she has since remained.

Witness admitted in her testimony that the Mrs. James R. Emil, to whom she thought her husband had addressed the love letters, was the younger sister of witness, being under 21 years of age at the time; that the husband of Mrs. Emil was not at home, but was in the service of his country and stationed overseas when this incident happened.

page 30 }

WILLIE A. BOWEN,

the defendant, called by counsel for plaintiff as an adverse witness, being sworn, testified, when examined by counsel for plaintiff, as follows:

That witness is the defendant in this action brought by Melvin P. Pernell; that he was 58 years of age; that he had been

*Willie A. Bowen.*

married for 23 years, and has three girls, all now students in college; that he is the owner and operator of a general mercantile business and gasoline filling station, located in Powelton Magisterial District, Brunswick County, Virginia; that this business is conducted in a frame building; that he and his family live in a two story brick residence located near his mercantile business, and on the same side of the road; that he also operated and rented several farms; that in July, 1946, he rented a residence to Melvin P. Pernell, the plaintiff, and his brother, Horace W. Pernell, known as the "Gray Property", which property is located across the road from his store and residence, and about 200 or 300 *years* distant therefrom; that he had known Melvin P. Pernell for a number of years, but was no relation to him by blood or marriage; that he had known plaintiff's wife, Frances Walker Pernell, since she and her husband, the plaintiff, moved on his property in July, 1946; that he is no relation by blood or marriage to Frances Walker Pernell.

Witness admitted that he knew that Melvin and his brother, Horace, worked the "night shift" at Rosemary Manufacturing Company in Roanoke Rapids, North Carolina, and that they left home each day about 1 P. M. and did not return until after midnight, or about 1 A. M. the following day. When asked to state when he first started paying attention to or courting Mrs. Pernell, he replied that he didn't think he did that; that she would come over to the store and would get a cigarette from him and would be playful, and that one day she tried to trip him up. Witness was shown all the letters introduced in the evidence and admitted that he wrote plaintiff's wife the letters which Frances Walker Pernell testified that he wrote. Witness admitted that, in addition to writing the letters which had been identified by Frances Walker Pernell, he also wrote the birthday card (Exhibit W. A. Bowen #1-A). Witness could not recall, or would not  
page 31 } state, when the first started writing to or exchanging letters with Mrs. Pernell, but said he meant nothing by it. When asked why he wrote her love letters if so doing meant nothing, he replied that he did not think they were love letters. When asked if his reference to Mrs. Pernell in a letter as "sugar" and his reference to her as "my Pernell" or "my precious" were not terms of affection or endearment, defendant admitted that they were. When asked why he was writing letters, and particularly the eight page letter referred to in Exhibit E-1, defendant made no answer. When

*Willie A. Bowen.*

asked what he thought would be Mr. Pernell's attitude or Mrs. Bowen's attitude if they found out about the letters, and the relationship between him and Mrs. Pernell, he replied that he did not expect them to find out. When asked why he sent Mrs. Pernell a birthday card, he said just because he wanted to. When asked if the letters on the birthday card, which appear to be SWAK, did not mean "with a kiss" he replied, "I don't know". When asked why he signed the birthday card "guess who" instead of his name thereto, he made no answer. When asked why he failed to sign his name to any of the letters he wrote Mrs. Pernell, he gave no answer. Witness testified that the letters did not mean anything. When asked why, if they did not mean anything, he did was ashamed to sign his name to the letters, he said he just didn't know. When asked if the "XXXX" signed to his letter of October 4, 1947, to Mrs. Pernell (Exhibit B), did not mean "kisses", defendant replied, "I don't know that". When asked why he wanted letters sent to Mr. L. A. Harris, who witness identified as the rural mail carrier, Lawrenceville, Route 2, which leads by his store, he said so that no one else would get hold of the letters. Witness declined to identify or admit knowing Jamine Drumgoole, the person mentioned in his letter of November 4, 1947, to Mrs. Pernell (Exhibit A). When asked why he wanted a date with Mrs. Pernell in South Hill, Virginia, at the bus station on Thursday, November 6, 1947, at 10 o'clock A. M., he said he wanted to see her. When asked why he wrote to Mrs. Pernell, as he did in his letter of October 24, 1947 (Exhibit D), to come to see him, he said he just did. When asked if the meeting was to be innocent why he picked a time when all his family and Horace Pernell's family were to be away from home, he did not reply. When asked why, after breaking up the marriage between Melvin  
page 32 } Pernell and his wife, he still persisted in courting, making love, and writing to plaintiff's wife, as evidenced by the four letters and the birthday card, plaintiff made no reply. When asked where and how he and plaintiff's wife exchanged letters, he said that they used the chicken house over at Pernell's, and that he would bring letters and leave them, and would get letters which plaintiff's wife had left there for him. Witness also testified that plaintiff's wife would also bring letters to the store and would slip them in between the counters, and that he would get them there. When asked if all the envelopes were addressed in his handwriting, witness identified the letters postmarked October 4, October

*Willie A. Bowen.*

24, and November 4, as his handwriting, and stated that the envelope containing the birthday card, postmarked September 25, 1947, was in the handwriting of Mr. L. A. Harris, as was the letter of October 18, 1947. When asked why he was getting Mr. Harris to address some of his envelopes, he gave no explanation.

When asked what effect he thought his courtship of Mrs. Pernell would have on the Pernell marriage, he said he did not expect Mr. Pernell to find out. When asked if he thought about it, he said he didn't know. When asked if he cared, he said he reckoned so. When asked if he knew that the Pernell home was broken up, after his affair with Mrs. Pernell was discovered, witness stated that he knew that plaintiff and his wife had separated and that he had taken her back to her folks. When asked if he had not continued his pursuit of Mrs. Pernell after the parties had separated, by writing letters and otherwise, the witness made no reply. Witness was shown the letter which was written him by plaintiff's wife, identified as Exhibit G, and the first paragraph thereof read to him. He was asked if there was any doubt in his mind as to what that paragraph meant, and he said that he knew what it meant. When asked about the reference in the letter to "you know darling you can think of more things to write than I can" and if that did not mean that he wrote her lengthy letters, he replied that he did not write such long letters. When asked if the reference in the letter "but I don't know where I will put it out when and after the colored people leave. I think that the best way don't you", did not mean that she intended to leave the letter in the store in their regular hiding place, after the colored customers had left, he replied that it did. Witness was asked who "Easterbelle" and "Barb", re-

ferred to in the letter were, and he replied that they  
page 33 } were his daughters. Witness was asked if Mrs.

Pernell signed the letter "I will close now and you be good love always your darling" did not mean that Mrs. Pernell regarded herself as his darling, and he replied that he didn't know. Witness was shown the letter, introduced in evidence as Exhibit H, and asked if he received this letter. He replied that he had. Witness was asked if this letter wasn't found in his pocket by Mrs. Bowen on February 1, 1948, over four months after he had caused plaintiff and his wife to separate, and witness replied that it was found in his pocket by Mrs. Bowen, and that he didn't know it was there; that he thought he had destroyed it. Witness was asked if he

*Willie A. Bowen.*

didn't know what Mrs. Pernell meant by the first sentence in the letter, and her reference to being sick, and he replied that he did. Witness was asked if he didn't understand the reference in the letter, found in the paragraph "Darling he didn't say anything about nothing last night", as referring to the plaintiff Melvin Pernell, and he said that he did. Witness was asked if the reference to a "calf" in this letter did not refer to his calf, and he said that it did. Witness was asked if that did not mean that Mrs. Pernell had gotten to the point that she was interested in any little event in his life, to which witness did not reply. Witness was asked if he did not understand the statement in the letter "I may be well by Friday. Let's hope so anyway, or Thursday", and replied that he did. Witness was asked if he did not understand what was meant by Mrs. Pernell's reference to "trying" Mrs. Bowen, and he said that he did. Witness was asked if the reference in this letter to a black dress did not refer to a new black dress which Mrs. Pernell had purchased about the time the letter was written, and which is admired very much. He said he remembered the dress. When asked if he had not complimented Mrs. Pernell on the dress, he replied that he might have. Witness was asked if the reference in the letter to the fact that Mrs. Horace Pernell was to have a baby did not indicate that his relations with Mrs. Frances Walker Pernell were such that they could discuss even the intimate affairs of Horace and his wife, witness gave no reply. Witness was asked how plaintiff found out about his affair with Mrs. Pernell, and replied that Mrs. Bowen got hold of one of Mrs. Pernell's letters (Exhibit G). Witness was asked if he did not write Mrs. Pernell the first letter, and he replied no, she wrote the first letter. Witness was asked if he con-

page 34 } sidered Mrs. Pernell as making the advances, why, in view of her youth and the youth of her husband, he, as an older man, and one occupying a high station in life, did not do something to discourage her advances, to which witness made no reply. Witness was then asked if he did not feel that his wealth, the fact that he was a large property owner, drove a big car, lived in a nice brick home, and could afford to send his girls to college, might not have somewhat blinded or dazzled Mrs. Pernell, whose husband was making only \$35.00 a week, and witness said he didn't know, but he did not mean anything by what he was doing. Witness was asked if Mrs. Pernell's statement that they exchanged letters every day during the past several months was not true,



*Audrey Lill Pernell.*

and witness replied that he did not think they wrote every day. Witness was asked where all the other letters were which he received from Mrs. Pernell, and he replied that he had destroyed them.

Witness was asked if he did not consider it his duty, as an outstanding citizen of the community, to help young married couples instead of doing something which was calculated to break up a marriage, to which he replied he reckoned so. Witness was asked if he ever objected to Mrs. Pernell's association with his wife and three daughters, and he replied that he did not. Witness was asked if he did not see Mrs. Pernell daily, either in his home, or in the store, or over at her house, and he replied that he did. Witness was asked if Mrs. Pernell did not have to go home at nights alone after visiting in his home, or in the store, and he replied that sometimes his girls would walk with her. Witness was asked if, after the Pernells separated, he had not stated that he wished he could put things back like they were, and that he would give \$10,000 to undo what he had done, and he replied that he had not said that. When asked if he would not like to undo what he had done, he said that he reckoned so.

Counsel for plaintiff then asked witness a question concerning his financial condition, to which counsel for defendant objected. The court sustained the objection, with the understanding that after all the evidence was introduced he would hear counsel for the plaintiff and defendant on the admissibility of such evidence, and that if the court deemed the evidence admissible, it could be introduced by plaintiff later, which ruling was acceptable to counsel for all parties.

Witness was then excused, counsel for defendant stating that he had no questions to ask defendant at that time.

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AUDREY LILL PERNELL,

was called as a witness in behalf of the plaintiff, and being duly sworn, testified on direct examination:

That she is 23 years of age, and was born in Derby, England, and raised in Kettering Northlants, England; that she met her husband, Horace W. Pernell, while he was serving overseas with the United States Army during World War II, and came to the United States of America as an English bride; that she has been living with her husband, Horace W. Pernell, in Brunswick County, Virginia, since coming to the United States; that in July, 1946, her husband and Melvin

*Audrey Lill Pernell.*

P. Pernell rented a dwelling house from Mr. Willie A. Bowen, and that this house is located across the road from the brick residence and store of Willie A. Bowen; that the residences are about 200 or 300 yards apart, and are separated by a public highway; that Mr. Bowen's store is about 100 yards from his residence and on the same side of the road as the Bowen residence; that she and her husband, and plaintiff and his wife, lived together in the house they had rented from Mr. Bowen, from July, 1946, to September, 1947, when Melvin took his wife back to her parents in Lunenburg County, Virginia; that while the two families lived in separate parts of the residence, they shared living expenses and used the same kitchen, dining room, and living room; that the two families were very happy together and congenial; that Melvin and Frances (plaintiff and his wife) appeared to be a devoted couple, and to be very much in love with each other; that they were both considerate of the other and got on together all right; that they had no more fusses or disagreements than she and her husband had, or any other married couple.

Witness was asked if plaintiff's wife, Frances W. Pernell, made plaintiff a good wife, and her reply was, "Yes, I think she was a very good wife; she could cook, sew, and was a good housekeeper; that she kept her own person neat and dressed properly." When asked if plaintiff's wife could cook, she answered, "Yes, she taught me to cook the American way. I couldn't cook at all when I came over to this country, and I had never seen a biscuit. Frances taught me how to make biscuits and to cook the American way. I think she is a good cook." Witness testified that plaintiff and his  
page 36 } wife were very affectionate to each other and considerate of one another.

When asked if and when she observed any improper relations or conduct between plaintiff's wife and the defendant, W. A. Bowen, witness replied that until plaintiff and his wife separated she had suspected nothing; that after they separated she did recall a number of little things which she did not think about at the time, but which she does now recall. When asked what she meant by this, she stated that she noticed that Mr. Bowen would come by the house every day and would stop and talk with her and Frances and her little child; that she thought nothing of it at the time; that she also noticed that when Mr. Bowen would come over to their house, he would go by an old chicken house, and that sometimes after he had left, she would notice Frances go out in the yard at

*Audrey Lill Pernell.*

or near the same chicken house; that she thought nothing of it at that time, and gave it no thought until she found out that defendant and Frances were using the chicken house to hide letters which were being exchanged between the two; that Frances did go over to the Bowen store often during the day, and would go over there to the Bowen residence every night; that she would usually go over to the Bowen residence about dark and would come back after she (witness) had gone to bed; that witness had a little baby and since her husband was working in Roanoke Rapids on the night shift, she would go to bed about 8 o'clock when she put the baby to sleep; that Frances would come in later and after she was asleep. Witness further stated that on one occasion she went into the bedroom occupied by plaintiff and his wife and found Frances at her window talking with Mr. Bowen, who was standing on the outside; that Mr. Bowen spoke to her and moved on off, and she thought nothing of it at the time; that on another occasion Mr. Bowen came through the yard and they invited him to come into the house and see the baby; that while in the house, Mr. Bowen saw a picture of Frances and said to Frances, "Is that a picture of you," and when told that it was he said, "You are much prettier now than when that picture was taken."

Witness stated that she and Frances came to Lawrenceville on one occasion and that Frances purchased a black dress, and that the first time she wore it Mr.  
page 37 } Bowen liked her dress and thought it was pretty;  
and that Frances seemed very pleased that Mr. Bowen liked her dress. Witness testified that a day or two after plaintiff and his wife separated, she found the letter which was written by Mr. Bowen to Frances (Exhibit E1); that this letter was in a bureau drawer used by Frances for her personal effects.

When asked about the chicken house which the defendant and plaintiff's wife used as a postoffice to exchange letters, witness testified that this was an abandoned house and was not used by her or Frances, and that there was no occasion for Frances to go to the house except for the exchange of letters, although she thought nothing of it at the time.

Witness testified that she knew nothing of the affair between defendant and plaintiff's wife until after Mrs. Bowen had shown plaintiff the letter which Frances wrote Mr. Bowen. When asked if she had ever seen Frances reading any letters written by the defendant, she testified that she

*Horace W. Pernell.*

had seen Frances reading letters but thought they were from members of her family; that she noticed that Frances would tear the letters up and would burn them, or the scraps, but thought nothing of this at the time. Witness testified that she did not discuss the matter with Frances on the day plaintiff found out about the affair; that she knew something was wrong, but she said nothing about it to Frances and Frances did not mention it to her; and that on the following day plaintiff took his wife back to her folks.

Witness was told that in some of the letters written by Frances W. Pernell to W. A. Bowen, Frances used language which was intimate, and wrote Mr. Bowen several "off color" jokes. Witness was asked if plaintiff's wife was in the habit of telling such jokes around the house, and if her language was generally vulgar or uncouth. To this witness replied that she never observed any vulgar conduct or language by plaintiff's wife in their home; that all of them might have told jokes from time to time, as is usual among married couples, but that they were not particularly bad jokes, but such as might be told within the family circle or among friends.

On cross-examination, witness was asked if she did not object to her husband, Horace, bringing Frances to the hospital to see her while she was confined there, as she did  
page 38 } not wish her husband to have any association with plaintiff's wife. Witness replied, "That is not true. I was not jealous of Frances and Horace. I did get peeved with Frances, because before I went to the hospital she went over to the Bowens' every night and all the time, and I thought that if she didn't stay with me then I didn't see any reason why she should come to the hospital to see me. It was not because I objected to her riding with Horace, but because

I was fretted that I said what I did." Witness also stated that she and Frances were good friends and that they got on together all right.

**HORACE W. PERNELL,**

was called as a witness in behalf of the plaintiff, and being duly sworn, testified on direct examination:

That he is a brother of plaintiff, Melvin P. Pernell; 26 years of age; and that he works for the Rosemary Manufacturing Company, of Roanoke Rapids, North Carolina, and lives in Brunswick County, Virginia; that he is the husband of Audrey Lill Pernell, a native of England, whom he met

*Horace W. Pernell.*

while in the Army; that he and his wife and the plaintiff and his wife lived in a house which they rented from the defendant, W. A. Bowen; that this house is located about 200 or 300 yards across the road from the Bowen residence and store; that witness' family and Melvin and his wife lived in this house from July, 1946, until September, 1947, and that during that time plaintiff and his wife appeared to be a happy couple and lived and got on together as well as the average family; that plaintiff and his wife appeared to be very much in love, and that, in his opinion, plaintiff's wife was a very good one; that she could cook, sew, and was a good housekeeper. Witness stated that plaintiff's wife taught his wife how to cook.

Witness testified that during the time he lived with plaintiff and his wife at the Bowen residence, they both worked in Roanoke Rapids, North Carolina, at the Rosemary Manufacturing Company; that it was necessary for them to leave home every day about 1 o'clock in the afternoon and that they did not return home until after midnight; that he knew nothing of the relationship between plaintiff's wife and the defendant, Bowen, until after the letter was found by Mrs. Bowen (Exhibit G), and until after plaintiff had taken his wife back to her family; that he did know that  
page 39 } Frances was going over to the Bowen residence and store a lot, but thought nothing of it since his wife had a young baby and had to stay at home, and that he thought Frances, being a young girl, simply had to go some place.

Witness testified that he had talked with Bowen about the affair after it had happened; that Bowen simply hung his head and said he wished it had not happened and would give anything if he could put everything back like it was. When asked as to the effect the separation had on plaintiff, witness stated that his brother had not been well; had been right much upset by it; that he had been sick most of the time since it happened and he and his wife separated; that he had to break up his home and go back and live with his parents; that he seemed to worry right much about what had happened; that he was sick.

On cross-examination, witness was asked if he had written Mrs. Bowen, or anyone else, a letter within the past few days, and he replied that he had not.

Witness was further asked on cross-examination if, in a conversation with Willie A. Bowen, after the discovery of the letter from Mrs. Pernell to Mr. Bowen by Mrs. Bowen, and

*A. Y. Pernell.*

after the separation of the Pernells, he did not state that it was no more than he expected, because plaintiff's wife was no "one-man" woman. Witness replied that he did not make such a statement.

**A. Y. PERNELL,**

was called as a witness in behalf of plaintiff, and being duly sworn, testified on direct examination:

That he is the father of plaintiff, and that he and his wife live in Brunswick County, Virginia; that plaintiff is now living in their home, where he has resided since he and his wife separated in September, 1947; that plaintiff and his wife had lived in the A. Y. Pernell home for about six months prior to July, 1946, when they moved to Bowens; that during that period of time he had an opportunity to observe plaintiff and Frances W. Pernell and their conduct; that they appeared to be very much in love with each other and were a devoted couple; that he thought that Frances made his son, Melvin, a good wife; that she was considerate of him, kind to him, and could cook, sew, and was a good housekeeper; that Melvin and his wife got along together just fine while  
page 40 } they lived with him, and that there was no trouble between them.

Witness testified that his son was pretty much "broken up" by the separation with his wife; that he had lost weight; and was now sick, suffering with osteomyelitis; that his son could not work at this time, and that the doctors had ordered him to keep quiet and to rest; that his son had worried about the affair and that he seemed to be embarrassed when he got around people, and stayed at home most of the time; that sometimes he would go down to the store or service station, but that he didn't go out much.

On cross-examination, witness was asked if he did not object to his son, Melvin, marrying Frances Walker at the time their marriage took place. Witness replied that this was not true. That he had no objection to the marriage; that, in fact, he had to sign for Melvin to marry at the time, since plaintiff was under twenty-one when the marriage took place.

Witness was further asked if he did not say that this thing had to happen and it is just as well it did. Witness replied that he did not make any such statement; that he did not recall having made any statement, but that he might have said if such a thing is going to happen anyway, now is as good a time as any for it to happen.

*Ida May Pernell—Melvin P. Pernell.*

IDA MAY PERNELL,

was called as a witness in behalf of the plaintiff, and being duly sworn, testified on direct examination:

That she is a sister of plaintiff, and that she is employed as Clerk of the Trial Justice Court of Brunswick County, Virginia; that she has known Frances Walker Pernell since 1944, when her brother, Melvin, started going with her and married her; that her brother and Frances had lived in her home for about six months during their married life, and that they appeared to be a happy and devoted couple; that they got on together fine, and were very much in love; that Frances was considerate of Melvin and that she got on well with the Pernell family while living in their home; that Frances could cook, sew, and kept her room and person neat while living with them; that her conduct while in their home was good, and that she observed nothing wrong with the relationship of the parties; that they were just like  
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any other young married couple; that she thought Frances made her brother a good wife; that witness did not see much of plaintiff and his wife after they moved to the Bowen place, but that they did visit some, and that plaintiff and his wife seemed to get on all right together right up until the time they separated; that she knew nothing of the relationship between Mr. Bowen and Frances until after her brother had separated from his wife; that her brother's wife never used any vulgar or uncouth language while in the Pernell home; and that, so far as she knew, her reputation and character were good.

MELVIN P. PERNELL,

the plaintiff, was called as a witness in his own behalf, and being duly sworn, testified as follows:

That he was the plaintiff in this action against Willie A. Bowen; that he was 24 years old and resided in Brunswick County, Virginia; that he was presently unemployed due to illness; that prior to his illness, he was employed by the Rosemary Manufacturing Company of Roanoke Rapids, North Carolina, and made a salary of \$35.00 a week.

Witness stated that he married Frances Virginia Walker of Lunenburg County, Virginia, on August 16, 1944; that he and his wife obtained their marriage license at Lunenburg Courthouse and were married by a minister in Kenbridge,

*Melvin P. Pernell.*

Virginia; that neither he nor his wife had ever been married prior to their marriage to each other; that he met Frances Virginia Walker, who is the same age as witness, during the early part of the year 1944, and "went with" her and had dates with her from that time until they were married on August 16, 1944. Witness was asked why he married his wife, and replied that after going with her for several months he found that he "loved and respected her, and that was the reason he wanted to marry her." Witness testified that at the time he married her and up until the time they separated, his wife had an excellent reputation and that her character was good. Witness testified that he and his wife resided together from August, 1944, until September, 1947; that immediately after they were married they had had an apartment in Blackstone, Virginia, their address in that town being 308 High Street, the home of Mr. and Mrs. High Abernathy, formerly of Brunswick County, Virginia; that he was em-

employed in Blackstone and they lived there for about  
page 42 } eight months; that when the personnel at Camp

Pickett was reduced, he and his wife moved from Blackstone to the home of his parents, Mr. and Mrs. A. Y. Pernell, where they lived until July, 1946; that in July, 1946, he and his brother, Horace W. Pernell, rented a residence from the defendant, Willie A. Bowen, and that in July, 1946, he moved from the home of his parents to the house rented from the defendant, Bowen. Witness stated that this house was occupied jointly by witness and his wife and Horace W. Pernell and his wife; that the dwelling house was located directly across the road from the residence and store of the defendant, Bowen; that witness and his wife, and Horace W. Pernell and his wife, lived together in this residence from July, 1946, until September, 1947, when witness and his wife separated.

Witness stated that his wife was in good health; that when she was a child she had rheumatic fever, but that she had apparently recovered from this, except that the doctors advised her against having children, and that this was the reason that he and his wife had no children. Questioned as to his wife's abilities and qualities, witness stated that she was affectionate, considerate of him, and sympathetic when he was sick; that she was an excellent cook, could sew and make some of her own clothes, kept a neat house, and was neat in appearance. When asked as to her community activities, witness stated that his wife attended church regularly and took



*Melvin P. Pernell.*

part in church affairs and in other community activities; that he and his wife enjoyed the same things and had the same interests, such as playing cards and going to the movies. When asked if he and his wife had suffered any hardships or adversities during their married life, witness answered "yes," that they had lived together in Blackstone while Camp Pickett was there and in a small apartment; that both he and his wife had been confined to a hospital during their married life; that his wife had lived with her in-laws, that is, his parents; that he had never made a big salary but that they had gotten by on what he had made. Witness stated that his wife was very much in love with him during their married life, and showed it in every way. When asked as to his feelings toward her, witness replied, "I loved her. She was as good a wife as any man had." When asked if he had noticed any change in her conduct or in her attitude towards him, he replied that he had not until after he found  
page 43 } out she had been carrying on with Mr. Bowen.

When asked when he found out about his wife's affair with the defendant, Bowen, witness replied that the first he knew about it was one day about the middle of September. His wife told him that Mrs. W. A. Bowen had found a letter which she wrote Mr. Bowen, and was mad about it. His wife did not tell him the contents of the letter; just said it did not amount to anything. Witness then stated that he tried to find out that day what it was all about and went over to see Mr. Bowen about it, but that he could not find out anything on that day, and since it was time for him to go to work, he didn't get at the bottom of it that first day; that on the following day, Mrs. W. A. Bowen saw him and showed him the letter which she had found and which was written by witness' wife to her husband, the defendant. Witness identified the letter which Mrs. Bowen showed him as the "Hello Honey" letter, or Exhibit G; that when Mrs. Bowen showed him the letter she was crying and very mad; that immediately upon reading this letter, witness went to his wife and demanded an explanation, and that his wife then admitted that she and Mr. Bowen had been writing letters to each other for some time, and that this particular letter (Exhibit G) was written because Mr. Bowen "made her" and because he (Bowen) was jealous of her and witness. Witness stated that his wife's explanation was not satisfactory, and that he then knew from what he had seen, and from what his wife said, that she and the defendant, Bowen, were in love with each other, and that he could never live with her again. Wit-

*Melvin P. Pernell.*

ness stated that he immediately took his wife back to the home of her parents, Mr. and Mrs. R. L. Walker, at Kenbridge, Virginia, and that he had neither seen nor corresponded with her from that day until the present time. When asked why he took his wife back to her parents, witness replied that "she did not love me any more. She was in love with another man and she could not love Mr. Bowen and me. A woman can't love two men at the same time, and I know that she loved him or she would not have done what she did with him." When asked if his wife loved him at the present time, he answered, "No, she wrote Mr. Bowen that she loved him, and she said on the stand today that she loved him. She couldn't love me." When asked if there could be any reconciliation, or if he could be happy living with his  
page 44 } wife again, witness replied that he could not; that he could not enjoy any happiness or peace of mind with his wife; that he would always be worried that the same thing would happen again, and he would think about that every time he left home, and would think about what happened when he was with her.

Witness was asked if he noticed anything in the conduct of his wife or the defendant, Bowen, prior to the finding of the letter by Mrs. Bowen. He replied that he did not; that he knew his wife visited over at the Bowens a lot and went with the Bowens a lot, but he thought nothing of this since they lived right across the road from each other, and the Bowens had three daughters about the same age as his wife. When asked if he went to Mr. Bowen when he found out about the affair, and what he did, witness replied that he thought about a number of things; that he thought once about shooting or going over and beating him up, but finally decided that that would not help anybody and might get him (the witness) in jail; that when he demanded an explanation of Mr. Bowen, Mr. Bowen would say very little, would cry, and say that he would give anything if he could put things back like they were before.

When asked if his wife and Mr. Bowen had any opportunity to meet, witness replied that his job in the Rosemary Manufacturing Company required him to leave home every day about 1 p. m. and that he remained absent from home from that time until after midnight, and that this fact was known to Mr. Bowen; that the residence which he rented from Bowen was some 200 or 300 yards across the road from the store operated by Bowen. When asked if he had lost anything as a result of the conduct of his wife and Mr. Bowen, witness re-

*Melvin P. Pernell.*

plied that he had lost a wife who was as good as anybody had; that they had never had any trouble during their married life and had lived together happily until they moved near the Bowens; that if anybody knew anything against his wife he had never heard it, and that she suited him and they were happily married and living together until Mr. Bowen broke up their home. When asked for an explanation of his wife's conduct and the language in some of the letters, witness stated that his wife was madly in love with Mr. Bowen and that he could only explain it by saying that she was crazy about him, or she would never have done what she did or have written the letters.

When asked what effect the separation from his wife had on him, witness stated that he had lost about 10 lbs. in weight; had been sick a great deal of the time since his wife left and was sick at that time. Witness stated that he has a disease known as osteomyelitis, and that the doctors have stopped him from work and have required him to remain quiet and to rest and not worry. Witness stated that he had been constantly worried since "this thing happened" and had been unable to sleep at night; that he was embarrassed around his friends, and that he found it hard to go out to public places, because a lot of people still did not know what had happened and would ask about *this* wife, and that some people did not know whether it was his fault or not, and that he could not go into details and tell everybody about it; that he was embarrassed around his preacher; that his home had been broken up and that he had been forced to move back to live with his parents; that because of his present illness he requires nursing attention and that the only people who can now give him that attention are his parents, who are aged and not in a position to nurse him. When asked if his wife nursed him when he was sick, he answered that she did; that she was just as nice and good to him as she could be. Witness testified that he did not know of the existence of any of the letters exchanged between his wife and the defendant prior to being shown the letter (Exhibit G) by Mrs. Bowen; that after his wife left, his sister-in-law, Audrey Pernell, in cleaning out a bureau drawer of his wife, Frances W. Pernell, found the letter which was written his wife by the defendant, known as Exhibit E 1; that he did not know of the letters written his wife by the defendant until after they were filed in court; and that he had not seen the letter (Exhibit H) until several days ago.

*Melvin P. Pernell.*

Upon cross examination, and in response to questions asked witness by counsel for the defendant, witness testified:

When asked if he had not written letters to his wife's sister, Mrs. James R. Emil, while witness and his wife were living together in Blackstone, which had considerable effect and caused considerable trouble in the Walker family, witness testified that he had written no letters to Mrs. Emil; witness stated that Mrs. Emil had received from someone, whose initials were the same as his, letters, with only the initials signed thereto, and that his wife accused him of writing the letters; that he denied at the time that he wrote the letters and offered to pay the fee of any handwriting expert to prove his innocence; that the whole matter was then dropped. Witness repeatedly denied having written the letters, and said that he had repeatedly offered to establish his innocence by handwriting experts at that time, or now. Witness stated that his wife was apparently jealous, but that it caused no trouble between them and that they lived together during this entire episode; and that they lived happily together thereafter until they separated. Witness stated that he had no feeling towards Mrs. Emil whatever, except that which he should have towards his wife's sister, and that he felt towards his wife's sister the same as he did towards his own sisters; that she was a young girl whose husband was then in the Army and serving overseas, and that he was living with his wife in Blackstone at the time, and it never occurred to him to write any letters to Mrs. Emil. Witness was then asked if he did not catch a man in his wife's room one time while they were living together in Blackstone, and replied, "Absolutely not. That is false." He was then asked if he did not catch one of Mr. Hugh Abernathy's sons in a room with his wife once, and replied that he never caught any man in a room with his wife; that Mr. Hugh Abernathy had two boys, one about 12 years old and the other about 15 or 16, and that these children were considered almost as members of his family; that while they had an apartment and lived in the Abernathy home, the boys were in and out of the rooms all the time. In fact, witness stated that his wife helped the boys with their lessons and that they frequently were in his apartment, but that there was nothing wrong with it, and nothing had ever been said about it by him or anyone else. Witness was asked if he did not think, in view of the letters which his wife wrote Mr. Bowen, and her conduct with

*Mrs. Willie A. Bowen.*

him, that he was "well rid of her," and he replied that he didn't think so; that his wife was a good wife to him and suited him; that she was all right until she had the affair with Mr. Bowen. Witness was asked if the letters his page 47 } wife wrote were not mighty dirty letters, and he replied that they were bad letters, but that his wife was head over heels in love with Mr. Bowen and that was the reason why she wrote them.

Witness, during the course of cross examination, testified that his wife at no time had ever exhibited to him any coolness or lack of affection, until the time of the discovery of the letter, and the time he carried her back to her home, in September, 1947. All the time plaintiff and his wife lived in the residence belonging to defendant, across the road from the home of defendant, the wife of witness accorded him every consideration, and had done or said nothing to cause him to believe that she had lost her affection for him or had developed a love for someone else, until the letter written by plaintiff's wife to the defendant was delivered to witness by Mrs. Bowen: whereupon, he learned for the first time that his wife had been carrying on and corresponding with the defendant.

**MRS. WILLIE A. BOWEN,**

a witness for the defendant, being sworn, testified, when examined by counsel for the defendant, as follows:

Witness is the wife of the defendant. She and the defendant have been married 21 years. They have three children, all daughters, 17, 18 and 20 years of age, respectively. The two older girls are in school at Harrisonburg, Virginia, and the youngest one is at school at Danville, Virginia.

After plaintiff and his wife, Frances Walker Pernell, moved into the dwelling belonging to defendant, just across the road from defendant's residence and store, witness was kind and neighborly to Frances Walker Pernell. Mrs. Pernell visited frequently in the home of witness and her husband. Witness taught Mrs. Pernell how to sew. Witness never suspected any improper relations or love affair between her husband and Mrs. Pernell until she, some time in September, 1947, found a letter written by Mrs. Pernell to witness' husband, which was found between the showcases in the store of defendant. Upon finding this letter, witness was so distressed

*Mrs. Willie A. Bowen.*

that she became almost hysterical. She wished to break up the affair between her husband and Mrs. Pernell and thought that the proper thing to do would be to exhibit this letter to Mrs. Pernell's husband, the plaintiff, which she did. She was desirous of having plaintiff to move his wife away  
page 48 } from the vicinity of her home, so that there would be no further interference on the part of Mrs. Pernell with the husband of witness. She delivered the letter to plaintiff, thinking that he should be advised of the situation, and thinking, also, that plaintiff might wish to use the letter in a divorce proceeding, or proceeding of some nature against his wife. It was the thought of witness that plaintiff would return the letter to her when the same had served its purpose

While prior to the discovery of the letter from Mrs. Pernell to defendant, the husband of witness, in the store of defendant, witness did not suspect any infatuation or improper relations between Mrs. Pernell and the husband of witness, nevertheless, in looking back, witness can now plainly see that Mrs. Pernell, from time to time, was paying undue attention to her husband. She now recalls that when her husband would come home from the store to his meals Mrs. Pernell would arrive at the home of witness soon after her husband got there. She would sit at the table, or stand near the table when the husband of witness and their family were eating their meals. Sometimes she would eat with the family, also. When she did not eat with the family, she would sit at the table and carry on a conversation with the defendant, and request a cigarette from him from time to time. Late in the afternoons, when the husband of witness would come home to milk, Mrs. Pernell would come across the road from her home to the cowpen, and stand there and chat with the defendant while he was milking the cow.

In conversations between witness and Mrs. Pernell, on one occasion Mrs. Pernell had told witness about the difficulties which she had with her husband, the plaintiff, while they were living at Blackstone, Virginia, when he had addressed a series of love letters to another woman. Mrs. Pernell also related to witness an instance in which she and her husband had had some domestic discord, when they were living in the home of Mr. Hugh Abernathy, in Blackstone, Virginia, when plaintiff found a man in the room with Mrs. Pernell. Upon cross examination, Mrs. Bowen admitted that this man to whom she referred was the 17-year-old son of Mr. and Mrs. Abernathy.

*Mrs. Willie A. Bowen.*

Witness, upon the discovery of the letter from page 49 } Mrs. Pernell to her husband, was so worried and grieved that she went to Mr. A. Y. Pernell, the father of plaintiff, in order to talk the situation over with him. In this conversation, Mr. A. Y. Pernell, plaintiff's father, told witness that what had happened was inevitable, and it was well that it had happened and was over with.

Upon cross examination, Mrs. Bowen was asked if she knew that her husband had continued to write to Frances Walker Pernell after September, 1947, and after Mr. Pernell had taken his wife back to her parents, and she replied that she did not know this. Then counsel asked witness if Mr. Bowen had told her of the existence of these letters before summoning her to testify, and she replied that he had not.

Counsel for plaintiff further asked the witness why, if she thought Mrs. Frances Walker Pernell was such a "bad woman" she did not object to Mrs. Pernell's association with her daughters, to which witness did not reply. Counsel asked witness if she ever made any objection to Mrs. Pernell associating with her or her daughters, or visiting in her home, and she replied that she did not.

Counsel for plaintiff reminded the witness that she was summoned by her husband and not by the plaintiff, and asked if she (witness) had not written counsel for plaintiff a letter which contained the following paragraph: "I have heard a little something about a suit coming up in court the latter part of this month. I didn't help commit the crime so I want it settled without me. I am trying to keep my home together for the sake of my three girls, although it is a hard thing to do. It would do me still more harm to be dragged in the courtroom to hear more. So don't ask me to witness anything please." Witness admitted that she wrote plaintiff's counsel that letter, and that she knew that she was testifying at the request of her husband.

Witness admitted that her finding the letter which Mrs. Pernell wrote her husband (Exhibit G) was the first she knew about the affair between her husband and Mrs. Pernell, and that she showed the letter to Mr. Pernell. Witness said she showed him the letter because she thought he ought to know what was going on and that she gave this letter to page 50 } him so that he could get a divorce from his wife.

Witness further stated that, after she found that letter, she said that either she (Mrs. Pernell) or witness had to leave. Witness admitted that Mrs. Pernell visited in her

*Mrs. Willie A. Bowen.*

home frequently, stating that she stayed over there even while the family were eating their meals, and that she (Mrs. Pernel) would stand back of, and lean over, defendant's chair, and would get cigarettes from him.

Following the introduction of testimony by the plaintiff and by the defendant, the court heard argument of counsel, out of the presence of the jury, on whether or not this is a proper case to submit to the jury the issue of punitive damages, and whether or not to admit evidence concerning the financial and pecuniary circumstances of the respective parties. The court ruled that, in view of the evidence adduced, it was within the province of the jury to determine if punitive or exemplary damages should be awarded the plaintiff; and the court further ruled that evidence as to the wealth of the defendant was admissible in connection with exemplary or punitive damages.

The jury, upon being recalled to their box, were instructed orally by the court, and, substantially, as follows:

"Gentlemen, counsel for the plaintiff now proposes to introduce some evidence of the financial status of the defendant, Willie A. Bowen. The court tells you that this evidence is not to be considered by you in determining whether or not the defendant alienated the affections of the plaintiff's wife, or had criminal conversation with her. And the court further tells you that this evidence is not to be considered by you in determining the actual or compensatory damages to which the plaintiff may be entitled, if you decide from the evidence and instructions that the plaintiff is entitled to actual or compensatory damages; and further, that even though you find for the plaintiff and award actual or compensatory damages you are not required to award punitive damages.

"The evidence which counsel will introduce is to be considered by you only if you believe that the actions and conduct of the defendant were wilful, malicious, or of a wanton character, and only in event you find, under the evidence and instructions to be given you by the court, that the plaintiff is entitled not only to actual damages but to punitive or exemplary damages. I am permitting this evidence for  
page 51 { that purpose, and for that purpose only."



## J. C. LUCY

was called as a witness in behalf of the plaintiff, and being duly sworn, over the objection and exceptions of the defendant, was permitted to testify, on direct examination, as follows:

That witness is Commissioner of the Revenue of Brunswick County, Virginia, and the county tax books disclose that for the year, 1948, the defendant, Willie A. Bowen, who is a farmer and merchant, is assessed for taxation with seven parcels of real estate in Powellton District, Brunswick County, Virginia, shown on the land books as containing one-third of an acre; 116 acres; 54 acres, 110 acres; 1 acre; 71 acres and 50 acres, respectively; that the defendant, Willie A. Bowen, further listed money in the bank on January 1, 1948, at \$15,000; valued his tangible personal property at \$1,595.00, and merchant's capital at \$2,350.00; that his personal and real property records did not disclose the income returned by the defendant for taxation or stocks and bonds which the defendant might have owned; that witness' testimony was taken from the official land books of the county and from the tangible personal property tax return of the defendant.

And the court doth hereby certify that the evidence above set forth was all the evidence introduced in this case, either for the plaintiff or for the defendant; and that on the trial of the case, and after the foregoing evidence had been introduced, and after the jury had been instructed on the law, as set forth in Bill of Exceptions No. 2, to which reference is here made, the jury retired, and after some time returned into court and rendered a verdict in favor of the plaintiff against the defendant in the amount of \$15,000, as more fully set out in the final order entered in this case, under date of November 5, 1948.

And thereupon, immediately, the defendant, by counsel, moved the court to set aside the said verdict and grant him a new trial, upon the grounds that the verdict was contrary to the law and the evidence; that the verdict was  
page 52 } excessive; that there was not sufficient evidence as  
to criminal conversation to warrant this issue being  
submitted to the jury; that the evidence was insufficient to justify an award by the jury of punitive damages, and that the court erred in granting any instruction on the question of criminal conversation and punitive damages. All of which more fully appears from the final order entered in this case on November 5, 1948, which is here referred to and made a part of this Bill of Exceptions.

But the court overruled the said motion of the defendant to set aside the verdict and to grant him a new trial, to which action of the court, in overruling the said motion, the said defendant then and there excepted, and tendered this, his 1st Bill of Exceptions, which he prays may be signed, sealed, and enrolled and made a part of the record in this case, which is accordingly done.

Given under my hand and seal this 31st day of December, 1948.

J. J. TEMPLE, (Seal)

Judge of the Circuit Court of Brunswick  
County, Virginia.

page 53 } BILL OF EXCEPTIONS NO. 2.

Be it remembered that, on the trial of this case, and after the jury had been sworn to try the issue joined, and after the evidence, as set out in Bill of Exceptions No. 1 had been introduced, which said Bill of Exceptions is here referred to and made a part of this Bill of Exceptions, the following written instructions were given to the jury on behalf of the plaintiff:

1. The court instructs the jury that this is an action for damages brought by the plaintiff, Melvin P. Pernell, against the defendant, W. A. Bowen, for alienating the affections of the plaintiff's wife from him, and for criminal conversation with her.

A cause of action for alienation of affections consists of three elements (a) unlawful conduct of the defendant, (b) loss of affection of consortium, (c) a casual connection between such conduct and loss. And in this connection the court instructs the jury that while the alienation of the affection of one spouse from the other must be with malice or improper motive, malice in this connection means the intentional doing of an unlawful act.

A cause of action for criminal conversation consists of adulterous intercourse by the defendant with the other spouse.

2. The court instructs the jury that when a plaintiff comes into court in a civil case of this sort, he is bound to establish a case against the defendant by what is known as a preponderance of the evidence. The plaintiff is not required to prove his case beyond a reasonable doubt, but the burden is upon the plaintiff to prove his case, as alleged in his notice of motion by a preponderance of the evidence before you can render a verdict in his favor. The preponderance of the evidence does not mean a greater number of witnesses, but is the

greater weight of all the evidence before the jury. In ascertaining upon which side is the preponderance of evidence, you should consider not only the number of witnesses, but also their credibility, their interest in the case, if any, and the reasonableness of their testimony, when considered in connection with all the facts and circumstances of the page 54 } case.

3. The court instructs the jury that every married man has a right to complete immunity from unlawful interference by strangers in blood with the sanctity of the marriage tie, the purpose of the law being to establish such rules as shall constitute complete protection against any intentional and unlawful interference with the relations of husband and wife by parties strangers in blood to the husband and wife. If a stranger intentionally and designedly interferes with the relation of a married person and such interference constitutes the controlling cause of the alienation of the affections of one of the spouses from the other, either wholly or partially, the party so interfering is liable in damages to the injured spouse.

4. The court instructs the jury that the burden is on the plaintiff to prove, by a preponderance of the evidence, that the defendant, either wholly or partially, intentionally alienated the affections of the plaintiff's wife from him before there can be any recovery for alienation of affections, but this may be proven by circumstantial evidence as well as by direct evidence. It is not necessary that any one act or circumstance be sufficient to prove the case, but, if, after considering all the circumstances in the case, with all reasonable and natural inferences to be drawn therefrom, the jury is satisfied from a preponderance of all the evidence, that the defendant wrongfully and intentionally alienated the affections of the plaintiff's wife from him, then you should find for the plaintiff.

5. The court instructs the jury that it is for the jury to determine from the evidence what the true facts are in this case and to draw reasonable inferences from the facts and circumstances proven. While it is necessary to plaintiff's recovery for alienation of affections to show that the defendant's misconduct was an effective cause of the loss of his wife's affections, it is not necessary that it shall have been the sole cause. Any unhappy relations that may have existed between the plaintiff and his wife, not caused by the conduct of the defendant, may be considered by the jury as affecting the question of the amount of damages, but cannot constitute a justification of any wrongful conduct on the part of the defendant.

6. The court instructs the jury that if you believe from the evidence that the defendant had intercourse with the plaintiff's wife, the jury must find for the plaintiff. It is no bar to an action for criminal conversation, nor is it any defense for criminal conversation that the plaintiff's wife consented to defendant's act or was guilty of improper relations or conduct with men other than the defendant. Such wrongful acts, if proven, can be considered in mitigation of damages.

The court further instructs the jury that it is not necessary to show an act of intercourse by direct proof, so long as there is proof of facts and circumstances which would satisfy the minds of reasonable men that there had been intercourse between the parties.

7. The court instructs the jury that damages recoverable in this case, if the jury believe that the plaintiff is entitled to recover, are of two kinds: (1) Actual or compensatory damages; and (2) Exemplary or punitive damages.

Actual or compensatory damages are the measure of loss or injury sustained, and may embrace shame, mortification, humiliation, mental pain and suffering, the value of the wife's services, and the value of the loss of her society, affections, assistance, aid and companionship.

Exemplary or punitive damages are something in addition to full compensation, not given as the plaintiff's due, but given rather with a view to the enormity of the offense, to punish the defendant and thus make an example of him so that others may be deterred from committing similar offenses. Exemplary or punitive damages are given only where the wrongful act is done with a bad motive, or is characterized by circumstances of aggravation, or in a manner so wanton or reckless as to manifest a wilful disregard of the rights of others. Therefore, if from the evidence, the jury believe that the defendant committed the wrongful acts complained of in reckless disregard of the rights of the plaintiff, or with a bad motive, the jury may, in addition to compensatory damages, award as exemplary or punitive damages, such further sum as they may think right, in view of all the circumstances of the case, not exceeding the amount claimed in the plaintiff's notice of motion for judgment.

page 56 { And the following written instructions were given to the jury on behalf of the defendant:

a. The court instructs the jury that if they do not believe from the evidence that Willie A. Bowen alienated the affections of Mrs. Pernell or had sexual intercourse with her as charged, they shall find for the defendant.

b. The court instructs the jury that if they believe from the evidence that Mrs. Pernell developed an affection for Willie A. Bowen, yet if they further believe that such affection was voluntary on the part of Mrs. Pernell without any wrongful act, inducement, enticement, or encouragement on the part of Willie A. Bowen, and if you further believe from the evidence that the defendant, Willie A. Bowen, has not been proven to have had intercourse with the wife of the plaintiff, then you shall find for the defendant.

And thereupon, the defendant, by counsel, objected and excepted to the action of the court in granting instruction No. 6, on behalf of the plaintiff, upon the ground that there was no evidence sufficient to submit to the jury the question of whether or not the defendant actually had intercourse with the plaintiff's wife.

The defendant, by counsel, likewise objected and excepted to the action of the court in granting instruction No. 7, on behalf of the plaintiff, upon the ground that, inasmuch as there was no evidence indicating that the defendant entertained any malice against the plaintiff, and was not in any way actuated by malice in his relations with the plaintiff's wife, it was improper to instruct the jury on the question of punitive or exemplary damages, and to authorize a recovery for such.

But the court overruled the objections and exceptions of the defendant, and gave to the jury instructions Nos. 6 and 7, as requested by the plaintiff and as above set out, to which action of the court, in giving to the jury the said instructions on behalf of the plaintiff, the defendant then and there, by counsel, excepted and tendered this, his 2d bill of exceptions, which he prays may be signed, sealed, enrolled and made a part of the record in this case, which is, accordingly, done.

Given under my hand and seal this 31st day of December, 1948.

J. J. TEMPLE, (Seal)  
Judge of the Circuit Court of Brunswick  
County, Virginia.

#### BILL OF EXCEPTIONS NO. 3.

Be it remembered that, on the trial of this case and after the jury had been sworn to try the issue joined, the plaintiff sought to maintain the issue on his part by attempting to introduce evidence as to the financial worth of the defendant, which evidence is more fully set out in the testimony of the

witness, J. C. Lucy, as appears at large in Bill of Exceptions No. 1, which is here referred to and made a part of this Bill of Exceptions.

And thereupon the defendant, by counsel, objected to the introduction of evidence as to the financial worth of the defendant, upon the grounds that such evidence is inadmissible, irrelevant, and immaterial to the issue involved in this case; that said evidence was incompetent and could serve no purpose except to prejudice the jury and increase the amount of any verdict which might have been found for the plaintiff in this case.

But the court overruled the objection of the defendant to the introduction of the evidence, as aforesaid, and permitted the same to be introduced, to which action of the court the defendant, by counsel, excepted and tendered this, his 3rd Bill of Exceptions, which he prays may be signed, sealed, enrolled, and made a part of the record in this case, which is, accordingly, done.

Given under my hand and seal this 31st day of December, 1948.

J. J. TEMPLE, (Seal)  
Judge of the Circuit Court of Brunswick  
County, Virginia.

page 58 } I, W. E. Elmore, Clerk of the Circuit Court for  
the County of Brunswick, Virginia, do hereby certify that the foregoing is a true copy of the record in the case of Melvin P. Pernell *against* Willie A. Bowen. I further certify that notice required by law was given before said record was copied and delivered.

Given under my hand this 20th day of January, 1949.

W. E. ELMORE, Clerk.

Fee for record, \$15.50.

Teste:

W. E. ELMORE, Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

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