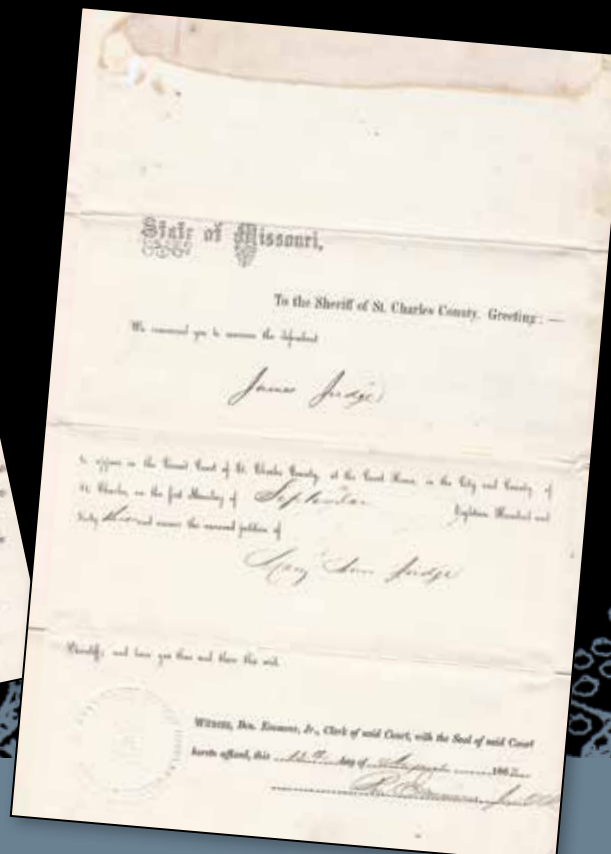


# To Love and To Cherish:

## MARITAL VIOLENCE AND DIVORCE IN NINETEENTH-CENTURY AMERICA

BY JULIAN BARR



James Judge was summoned with this document in September 1863 to appear before the court after his wife Mary Ann filed for divorce. Such separations were relatively uncommon at the time, especially those making such claims for alimony as did that of the Judges. (Image: 1863-70 Circuit Court files; Box 2 folder 48, Saint Charles County Historical Society Archives)

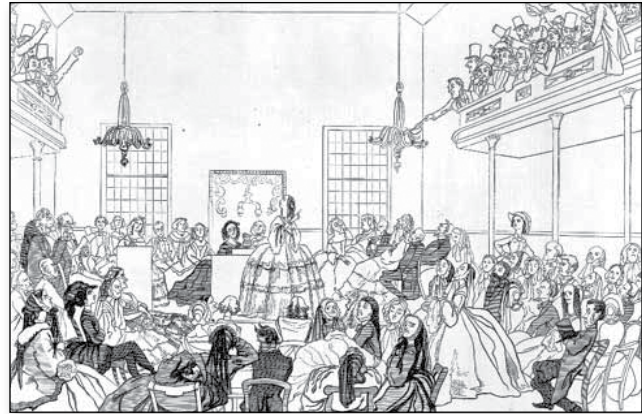
Violence against women in marriages has always been an issue for our society, and still the fight to prevent it continues. We know of famous survival stories, and the media often depicts domestic violence that turns into revenge tales. Popular culture depicts domestic violence in many ways, and with good reason, as it is a very real occurrence. A benefit of modern times is that the law tries to prevent domestic violence by making it a crime, and it is hard for some to imagine that this was not always the case in our legal system. Throughout history, even blissful marriages have sometimes turned violent, and local history provides real stories of real cases which illustrate that domestic violence is part of even bigger issues for women.

The 1863 St. Charles County, Missouri, divorce case of Mary Ann Judge was the perfect example of a marriage gone horribly wrong. When the marriage turned violent, Mary Ann Judge needed a way out and a way to stop her husband, James Judge, from beating her. Unlike today, she did not have the option of calling the police, but she did have the option of divorce. The case thus involved women's property rights, alimony, and of course, divorce. However, it also involved violence—the very intimate violence committed against a wife by a husband. It would not be until 1871 that Alabama became the first state to rescind the right of men to beat their wives, and it would still be about ten more years, in 1882, when Maryland became the first state to make wife beating a crime.

What was a woman like Mary Ann Judge to do in 1863 if she were being beaten by her husband? This analysis examines the changing nature of divorce in the nineteenth century, and asks if divorce was in fact the only option for a woman in an abusive marriage. In addition to the social and economic consequences of divorce, the biggest consequence of a case like Mary Ann Judge's is that it put women's issues out in the open and allowed the public to see into the private sphere of a woman's life.

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

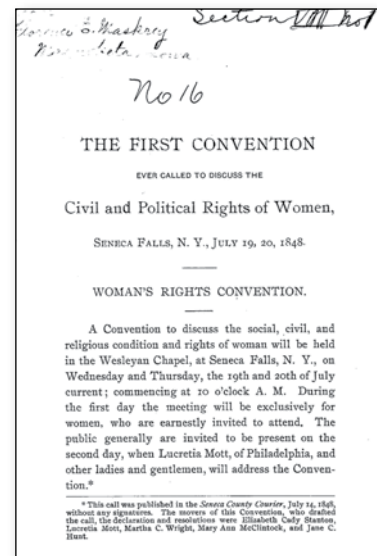
At the time of Mary Ann Judge's case, common law mirrored religious doctrine, which put women and children under the legal control of the husband. The husband acted as head of household, creating a relationship based on superiority of the husband and inferiority of the wife. In 1848, the Declaration of Sentiments signed at the Seneca Falls convention acknowledged this issue and declared women to be “civilly dead” when they married. Some women joined this call for legal rights specifically



The first national woman's rights convention, portrayed here, was organized in Seneca Falls, and included both men and women. It passed its “Declaration of Sentiments,” consciously modeled after the Declaration of Independence, stating that “We hold these truths to be self-evident: That all men and women are created equal.” Among the 100 signers—68 women and 32 men—were such notable reformers as convention organizer Elizabeth Cady Stanton, abolitionist Frederick Douglass, and Quaker abolitionist Lucretia Mott. (Image: *The First Convention Ever called to discuss the civil and political rights of women, Seneca Falls, N.Y., July 19, 20, 1848*)

to challenge the oppression of family life that led to abuse and financial and physical risk. The challenge for legal rights would eventually alter the idea of the husband being the legal representative of the family.<sup>1</sup>

Historian Francoise Basch follows this line of thinking but with a more focused view on marriage. She writes, “In the nineteenth century the oppression of women appeared starkly in the marriage relation: wedding bells rang in major inequalities between bride and bridegroom and sternly prescribed different gender roles.” Basch argues that very early in the women's rights movement, the focus was on the idea that marriage was a form of slavery and a source of oppression, and that marriage represented the overall issues of the lack of rights for women. They used slavery as a comparison, because most of the women's rights activists were also abolitionists. Elizabeth Cady Stanton, Henry Blackwell, and Lucy Stone believed that





Elizabeth Cady Stanton (1815-1902) was the primary organizer of the woman's rights convention in Seneca Falls, New York. It spawned a series of subsequent national woman's rights conventions that more or less alternated between northeastern Ohio (such as Salem and Cleveland) and western New York (such as Rochester and Syracuse). Within three years, she was working with Susan B. Anthony (1820-1906), a prominent antislavery and temperance activist in Rochester, New York. In many ways, Stanton and Anthony, who became lifelong friends, represented the intersection of antebellum reform—temperance, antislavery, and woman's rights. (Images: Library of Congress)

women were like slaves because they lost their names and took the name of the person who essentially owned them; they lost all rights once this “transaction” occurred, and some were even sold to the highest bidder. These three factors can be seen within both the marriage relationship and the process of slavery. Stanton once said if she imagined Saint Peter asking her where she wanted to sit in Paradise she would respond “anywhere so I am neither a Negro nor a woman. Confer on me, good angel, the glory of white manhood, so that henceforth, sitting or standing, sitting up or lying down, I may enjoy the most unlimited freedom.” The law was seen as making women *femme covert sub potestate* or, as one British lawyer put it, “the husband and wife are one, and that one is the husband.”<sup>2</sup>

As a result of the demand for legal rights concerning marriage, there was also a push for more legal rights when it came to divorce.

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

to the 1850 federal census, Mary Ann and James Judge were both born in England; Mary Ann in about 1818 and James around 1816.<sup>3</sup> In 1830, the couple married in England and emigrated to the United States the same year. Based on these sources, it is most likely that they went to Charleston, South Carolina, when they emigrated to the United States because they did at one point live in Charleston before they came to St. Charles, Missouri, in 1844. When they moved, the couple already had six children and James was a farmer with slaves in St. Charles.<sup>4</sup>

Before the divorce occurred in 1863, the 1850 and 1860 censuses show growing family wealth. In the 1850 census James described himself as a farmer and claimed the value of his real estate to be \$70,000, and he had 16 hired laborers for his farm.<sup>5</sup> According to the slave schedules of the 1850 census, he had 17 slaves, five of whom were children.<sup>6</sup> In the 1860 census, he was still a farmer but then claimed \$100,000 in real estate and \$10,280 in personal estate while still having 16 farm hands.<sup>7</sup> However, by the census of 1860 his slave count decreased, and he had ten slaves left, two of whom were children.<sup>8</sup> Also by 1860, their four older children—John, Albert, Edmond, and Emily—had moved out and their two young sons, William and Arthur, still lived with them.<sup>9</sup> William Henry Judge

Arthur are still minors. That plaintiff always conducted herself as a kind wife and mother, discharged all the duties growing out of the marriage relation with fidelity and has given the defendant no cause of complaint, but that notwithstanding her said conduct, defendant for a number of years did offer such indignities to her as to render her condition intolerable by calling her very frequently a bitch, a devil, a sow and other vulgar, abusive and highly indecent and improper names and by slapping her in her face, pulling her hair throwing her down and by otherwise maltreating and abusing her, - That defen.

In this excerpt of Mary Ann Judge's affidavit, she claims James' abuse had become intolerable. (Image: 1863-70 Circuit Court files; Box 2 folder 48, St. Charles County Historical Society Archives)

(age 18) and Arthur Judge (14) would also be part of the case because of the issue of custody and child support.<sup>10</sup> It is important to note that at this time, according to the 1852 *Bouvier Law Dictionary*, a minor was anyone under the age of 21, unlike modern times.<sup>11</sup>

In her petition, Mary described herself as a "kind" wife, who fulfilled her duties as a wife and mother. When describing James, she claimed that he made life "intolerable" with verbal and physical abuse. She indicated that he would call her derogatory terms such as "a bitch, a devil, a sow," and committed other verbal abuses. The physical abuse included him kneeling on her chest and beating her, slapping her on the face, whipping, throwing her down, threatening to kill her, and even using weapons against her that could have been deadly. She also claimed he had been addicted to alcohol for the last two years, but she did not clearly state if the abuse began when he started drinking or if it was a preexisting issue. Later in the case, this was revealed to be ongoing behavior that had existed before he became an alcoholic. She said the abuse became so severe that she left him twice to live with one of the older sons, but he convinced her both times he would get better.<sup>12</sup> Unfortunately, he did not, and she finally could no longer continue in the marriage. On August 8, 1863, she left and moved in with her daughter, who also lived in St. Charles.

She requested custody of the two children who were minors, stating that James was an unfit father. She also requested alimony, which she said should be based on the fact that James owned a large amount of St. Charles real estate, which she claimed was worth \$100,000, and that he had a personal estate of \$30,000. She indicated that she needed the money so that she could support herself and her children because she had no property. Mary Ann also claimed that she had a right to the money because part of the wealth came from her running their mercantile

business for twelve years in Charleston, and she claimed that for the first three years of business the company was in her name.<sup>13</sup> Though there is no official document to prove the claim, witnesses did discuss it within the case.

In the mid-nineteenth century, there were no laws protecting women concerning domestic violence. Historian Pamela Haag, when looking at violence in New York City during this time period, recognized that men saw it as their right to beat their wives. She also noticed in examining criminal trials of wife murders that neighbors would notice domestic violence and do nothing because they saw the beating as justifiable as long as no permanent injury was caused.<sup>14</sup> Other historians also argue that this time period saw an increase of violence against women because women's rights groups and the temperance movement were restructuring the traditional patriarchy.<sup>15</sup> Still, there were no laws protecting women, especially when violence happened in private; the only legal way for a woman to gain protection was through divorce.

Historian Robert L. Griswold has advanced the scholarship on domestic violence and divorce. Domestic violence against women was a private matter; it did not commonly happen out on the street, so researchers have to look at divorce cases and wife murder cases in order to understand domestic violence during this time. In this context, divorce was seen as a way to end domestic violence.

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

mental, against a wife.<sup>16</sup>

Up until the 1840s, the American legal system followed the English system and focused on granting separation for cruelty but not absolute divorce; however, not all states followed this practice. In the late 1700s, some would grant absolute divorces for physical cruelty, starting with New Hampshire in 1791 and followed by states such as Vermont in 1798, Ohio in 1804, Pennsylvania in 1815, Michigan in 1832, and Texas in 1841. Missouri law did allow for an absolute divorce because of violence, but this was more of a northern idea; the south mostly followed the English and focused on granting separation for violence and would only grant absolute divorces on the grounds of adultery, desertion, and sometimes impotency.<sup>17</sup> It was very clear that physical violence could be a cause for divorce, but not mental agony and verbal abuse. Mary Ann Judge did accuse James not only of physical but also of mental abuse because he accused her of infidelity; verbal abuse and false accusation are both forms of violence.

Mental agony would not have been acknowledged by a court in 1820, and the court would have recommended

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Central to Mary Ann Judge's case was domestic violence, which was more common in nineteenth-century America than one might think. This drawing, titled "Muscle: Home a Little Hell," was from a satirical booklet *The Tale of a Wedded Life in Ten Scenes*, which included sketches as varied as "smitten" and "betrothed" to "deserted and death" and "life a failure." (Image: Library of Congress)



other solutions, such as accommodation and religious guidance. America shifted away from the more conservative English viewpoint when the idea of mental cruelty became a justification for divorce; however, English law had a major effect on why it took until 1850 to look at factors other than physical abuse. In the 1790 English case of *Evans vs. Evans*, the judge, Lord Stowell, made it very clear that without physical harm there was no marital cruelty; American courts used this decision as a precedent to deny divorces on such grounds. Courts in states like Massachusetts in 1806 and Vermont in 1816 would follow the idea set up by Stowell. Rulings like one in Kentucky in 1829 made it clear that the cruelty had to be not only violent but also life threatening; so, for example, a man slapping a woman in the face could be seen as justifiable because it was not a real threat to life. An example of this can be found when the New Hampshire high court ruled against a woman after proving that her husband locked her in a room and whipped her twice because she was not submissive to him.<sup>18</sup> These cases show that very early on violence had to be life threatening to justify divorce. Without actual danger to life or permanent injury then, legally, violence against a wife was considered justifiable.

In the mid-1800s this idea began to shift once the medical community examined the use of words on women's health. These findings seem to be anti-woman as they portrayed women as the weaker sex, but as false as that perception was, they did help women when it came to divorce. The medical community began to make the argument that mental agony could hurt the female nervous system because women were more sensitive, and that damage to the nervous system could cause issues for child bearing. This argument emerged in court cases such as the 1849 Pennsylvania case in which a judge allowed a divorce because he saw that mental cruelty could, in fact, hurt a woman physically. Like the Stowell position, this became a "watershed" case, and increasingly more state courts began acknowledging mental cruelty as a justification for divorce. By 1860, six states, including Missouri, passed statutes that declared that certain indignities including "rudeness, vulgarity, reproach, neglect, and ridicule" all justified divorce as long as they made life intolerable.<sup>19</sup> This shows courts shifting from a very narrow view of what is needed to justify divorce to a broader view that covers more than just life-threatening cruelty too other, lesser forms of maltreatment such as simple beating and verbal abuse.

One of the indignities that states like Missouri acknowledged was the false accusation of adultery. Although it is not deeply explored by the court in *Judge vs. Judge*, when James attacked Mary Ann's character, he accused her of infidelity. On the national stage, this was used as a way to get a divorce that Griswold examines extensively. These false accusations were more likely to be made public and therefore were seen as damaging to a woman's social standing. In addition, once identified as an adulteress, it was feared that the woman could become a victim for sexual predators. The result was that the

accepted standards for proving grounds for divorce began to spread beyond physical violence. The Indiana Supreme Court ruled in 1854 that a marriage was a bond between two people that should promote “social happiness,” so a false adultery accusation would ruin that social happiness, making divorce justifiable. An adultery claim truly could ruin a woman’s reputation, and courts were deeply concerned about the sexual threat that it could cause for a woman; for example, in one Wisconsin case, a man’s false accusations caused one of his employees to try and have sex with his wife, unsuccessfully, but the court saw that the husband failed to protect his wife’s honor, so a divorce was granted. Essentially, a woman after accusations of adultery would need a divorce and a chance to start anew in order to regain her reputation; that is why the states universally recognized the accusation of adultery to be a cause for divorce and a form of cruelty.<sup>20</sup>

Mental and physical cruelty was not the only reason for a divorce; another common issue of this time period was, as historian Beverly Schwartzberg phrases it, “marital fluidity.” By this she means a situation in which one spouse leaves the other to find work, seek new attractions, raise their social status, migrate, or otherwise leave the spouse. This was seen as a form of cruelty to the victim because it involved desertion and sometimes bigamy. These were not separations by divorce, showing instead other ways that men and even women found to get out of marriage. However, desertion had a different effect on women because it usually undermined their social status. Luckily for women, desertion was an emerging reason for a divorce, so even though the case did not start as a divorce it would usually end as one. Also, some men and even women would just separate from a spouse, never divorce, and then start other relationships, essentially becoming bigamists; this could be used as grounds for divorce as well.<sup>21</sup> By the turn of the century, Griswold notes, the divorce rate was at an all-time high because so many additional factors were emerging as justifiable grounds for divorce.

James Judge responded on October 12, 1863, following her petition and rejecting all of her claims. He denied that she was a good wife and even suggests infidelity; he denied all of the physical and verbal abuse; and he denied the claim of alcoholism. He said she had no reason to leave him, including the times where she stayed with the elder son. Judge did not deny the property wealth but said she had no right to it and that she never ran the business. James said that the only reason she left him was so that she could irritate him, make a groundless divorce, and take large allowances from him. He felt she did not deserve any alimony because she left voluntarily after he gave her good living conditions. James said that the abuse in the marriage was actually on her part, and that she made life “intolerable” for him. He claimed that she locked him in a room with their elder son Albert and encouraged the son to assault him. He claimed that several times when the children slept over, he would have to sleep outside because he feared they would kill him under her influence. He claimed that their other son, Edwin, also tried to assault

him, and that once again Mary was causing this to happen. He also asked for a divorce and custody of the minor children.<sup>22</sup>

In a rebuttal, Mary Ann denied all of James’ claims. She said she and her children did not force him to sleep outside, that she had no knowledge of Edwin’s attempted assault, and she gave a different account of the other assault story. She said her son Albert wanted to talk to him in private, so he took his father to a room connected to the kitchen and the son locked the door to the kitchen to keep the servants out, but there were other doors he could have escaped from if he felt he was in true danger.<sup>23</sup>

In her petition Mary Ann requested an order of maintenance for the term of the court case, which would make James give her money to maintain her life during the case. On September 24, 1863, the judge in the case granted an order of maintenance in St. Charles. James was ordered to pay Mary Ann \$50 on October 13, 1863, \$100 on November 12, 1863, and \$150 every three months after that.<sup>24</sup> Unfortunately, a decision on the divorce was not determined in St. Charles because James Judge also filed for a change of venue on September 24, 1863. He claimed that the judge, Andrew King, had a prejudice against him and could not judge fairly on this case.<sup>25</sup> The reason the judge allowed the change is still a question; it is possible that the judge and James knew each other. The answer could also be connected to how active James was in the St. Charles legal system. James was very much involved in the court system as a plaintiff and as a defendant. Before 1863, James was a plaintiff in 25 separate cases in the St. Charles Circuit Court, with the earliest case dated 1848. After 1863, he was a plaintiff in 14 separate cases. As a defendant he was involved in 26 cases before 1863 and involved in 22 after 1863.<sup>26</sup> He was suing and being sued so much that his negative public reputation may have led to his changing the venue for the divorce case. Based on the index descriptions, these cases were all debts and loans he wanted to collect on or that people were collecting against him; they never seem to have dealt with violence or alcoholism.

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

The deposition of Ferdinand Neckemeyer is an example. Requested by Mary Ann Judge, it was taken on April 20, 1864, and read to the court on April 26. Neckemeyer had known the Judges for 17 years, and 14 years prior to the divorce he witnessed a fight between the couple when he was living with them for a short time. The “eating of the hands” apparently precipitated the fight, that ended with James striking Mary in the face and her asking the farmhands to help protect her against James. He also testified to another incident five years prior when he went to the house and heard “laud [sic] talk”; the children told him that James was whipping Mary Ann and that he should

help their mother. When Neckemeyer went to the house, Mary Ann came running out looking distressed as James was running after her and James went to strike her again, but as he lifted his hand Neckemeyer stopped him. In response, James tried to hit him, but Neckemeyer defended himself. The next time he saw James was a couple of years later in St. Louis, and they agreed to be friends again. Neckemeyer was also questioned by the defense, and that is when he testified that he believed this fight was over a verbal argument between the Judges when Mary Ann questioned why James was burning something on the property when conditions were not favorable for burning.<sup>27</sup>

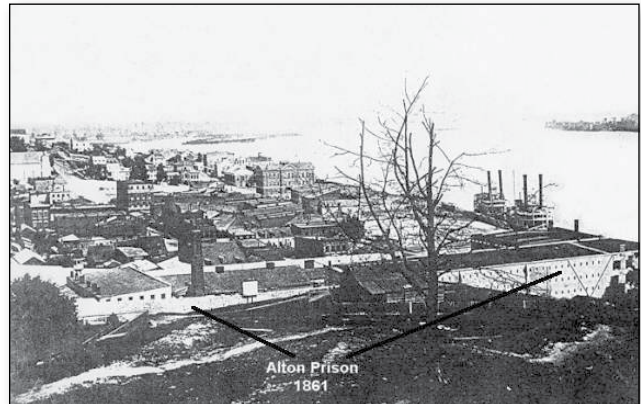
Neckemeyer described Mary Ann as a woman who “has more to say than she ought to have” and he indicated that the fight would have never happened had she just not talked back to James. Even though Neckemeyer defended her physically, he did blame her for the beating. He then describes James as a “peaceful” man with whom he never had a real problem.<sup>28</sup> This deposition was chosen as an example, because Neckemeyer seemed unbiased between the two and genuinely did respect James. His testimony dealt with what this paper analyzes, which is domestic violence as a cause for divorce. He shows that Mary Ann Judge was abused, that it was over very basic arguments, and that the children were very aware of the abuse. This deposition also provides an opportunity to get into the private sphere because, for the most part in this time period, the only way to actually prove domestic violence was if witnesses were present, like in this example. Most of the witnesses, for the rest of the case, would focus on if she had any right to the property because of the business in South Carolina.

It is hard with these court documents to pinpoint the exact date when the divorce was granted, but gathering from the sequence of motions filed, the divorce and alimony were granted in late April of 1864. This assumption can be made due to a motion filed on April 25, 1864, in which James Judge argued that the alimony decree was illegal and unjust (and it is revealed that the alimony was a lump sum settlement of \$50,000). The motion argued that James could not handle the alimony amount and that his wealth could not sustain it.<sup>29</sup> On May 18, 1864, the St. Charles County Sheriff issued a real estate sale in order to pay the alimony because he was required to pay it.<sup>30</sup> Then a sheriff’s statement said that James must pay \$5,000 a year until reaching the amount of \$50,000 and that she had already received \$15,000 from the sheriff’s real estate sale.<sup>31</sup> Essentially, after the real estate sale failed at achieving the \$50,000, James was allowed to make a payment plan to get to the final amount. James then tried to set aside the alimony several times but essentially made the same argument every time. In his third attempt, he made a motion with a new argument.

James Judge was sent to Alton Military Prison during this case, and he was also fined \$10,000, so he used that to argue that his wealth had changed enough for the court to change the alimony, but this failed.<sup>32</sup> According to the Union Provost Marshall papers, James was brought in front of the Military Commission on May 12, 1864, and

found guilty by the commission for the “violation of the oath of allegiance to the United States Government” and for disloyalty to the United States. He was charged with breaking his 1862 oath because he openly stated that the Confederacy was the only salvation this country had left and he sympathized with the rebels; he did this outside of a St. Louis saloon.<sup>33</sup> He was not only fined but also sent to Alton Military prison until the war ended.

Along with the violence and the divorce of this case, there was one more very surprising aspect of this case—the alimony. It was not the idea of alimony that was shocking, but the amount. As indicated earlier, James Judge was ordered to pay alimony of \$5,000 a year in order to achieve a lump sum settlement of \$50,000. Naturally, this broader context must acknowledge that this is a significant amount. No reason for it can be found in the record, and research of other court cases of the period shows that it was not a normal amount. Alimony was



More than 11,000 prisoners were held at the Alton (Illinois) military prison during the Civil War. Originally built as the first Illinois State Penitentiary in 1833, it was a prison for Confederates and Confederate sympathizers during the war. Given the mortality rate and poor conditions, James Judge was lucky to survive the conditions there. The prison closed in July 1865. (Image: [altonweb.com](http://altonweb.com))

something that existed in the English system as well, and it was always separate from child support; this system still exists today. The essential purpose was the idea that it was the husband’s role to support and nourish his wife with a portion of this property. Alimony could be a yearly payment or it also could be ruled as a lump sum settlement, as in this case. Some states, like Indiana in 1852, made it law that alimony had to be a lump sum; however, most followed states like New York, which made it more like an annual payment, but most of the power for distribution of alimony was given to the court. Missouri was like this and gave the court the power to determine the amount and how it should be given. Courts in general considered the wife’s need in order to establish what was fair alimony. One of the biggest issues concerning alimony was what a woman brought into the marriage. The idea was that if a woman brought in something like a dowry she should get that amount back with the alimony, but



While men were more likely to drink to excess than women in the nineteenth century, temperance advocates saw it as a women's issue, arguing that wives were the primary victims. Drunken husbands, they said, took money from the household for drink and beat women and children in drunken rages. By 1882, when this cover of *Puck* appeared, some in the temperance movement suggested that it ought to be precisely that—temperance—and that the choices of pious tee-totaler and drunkard were not the only options. (Image: Library of Congress)

historian Norma Basch argues that women would have to prove that the husband used the money wrongly. Alimony laws also forced men to look at personal wealth and, with the help of attorneys, downplay the wealth in order to pay less alimony. According to Basch, this was very common practice, and it can be seen in *Judge vs. Judge*. Like in the Judges' divorce case, men would try and adjust alimony if they felt wronged not only in the amount, but also how it would be paid. In Basch's research there is nothing to explain why James Judge was sentenced to such a high alimony. She would argue that for most cases in America there was no alimony given because most concerned people were not wealthy and financial troubles would sometimes be the reasons for a divorce, so women were not able to go after alimony.<sup>34</sup> Also, the alimony examples Basch provides are always seen as enough for the women to sustain life, and they are never extraordinarily high. However, it needs to be established that it was up to the

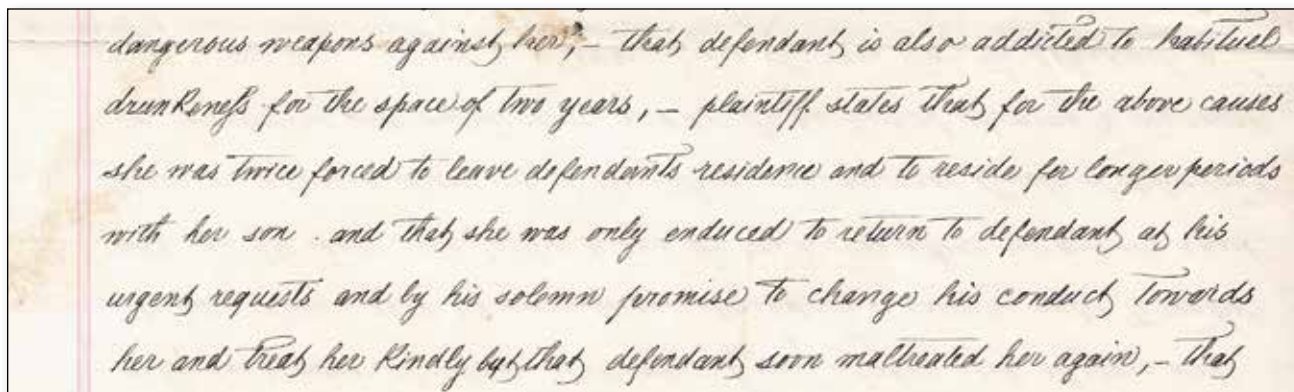
judge, so the alimony amount relied on the judge and possibly his opinion of the husband. In addition, some states would cap alimony based on a percentage of the husband's wealth. For instance, in North Carolina, the alimony for a wife could not exceed over one third of the husband's wealth. Also, North Carolina's law was clear in that a husband who was a "spendthrift" or a "drunkard" could be forced to pay more alimony because of his treatment of money.<sup>35</sup>

Mary Ann was ultimately granted her divorce, but she died in November of 1864, shortly after the divorce was finalized. The St. Louis court case had to address the issue of her death because it occurred after the divorce was granted. James Judge wanted to stop the alimony payments because she had died, but Mary Ann's heirs wanted the next alimony payment, which was due in January of 1865.<sup>36</sup> James Judge even made an attempt to take the case to the Missouri Supreme Court, but it never made it that far in the legal system. One of the final motions in St. Louis was dated January 1867, when James Judge still was fighting to stop the alimony. The court finally agreed to stop the alimony, two years after Mary Ann had died.<sup>37</sup>

Unfortunately, other than what was recorded in the divorce files, not much is known about Mary Ann Judge, including her death. James remarried on June 21, 1866, to Charlotte Elson.<sup>38</sup> James Judge died on January 5, 1872, when a tree branch fell on him.<sup>39</sup> In his will, he still had considerable wealth, and according to a newspaper listing for his real estate sale, he still had several plots of land throughout the county, including his farm in north St. Charles where he resided. He left his stepson \$2,000, while most of his property was split between his second wife and a church he helped found in the 1840s, the New Church General Convention of St. Louis. He left each of his six biological children with Mary Ann only ten dollars each.<sup>40</sup>

Although violence was the main issue driving *Judge vs. Judge*, Mary Ann Judge clearly connected the violence to James' alcoholism. The temperance movement, which began before this divorce, was, according to historian Elizabeth Pleck, "the first American reform campaign to depict for the public the cruelty of domestic violence. Temperance reformers regarded family violence not as [a] distinct social problem, but an evil consequence of alcohol." Temperance activists recognized that male violence was caused by alcohol, so they wanted it outlawed. These activists seldom promoted policies to help the female victims, focusing instead on the men, though some would advocate that grounds for divorce should include male drunkenness because it was a threat to a woman's life. This became a women's rights issue because reformers thought that it was not a wife's responsibility to help her drunken husband and that she was better off without him. As a result, they advocated for more women's rights, including property rights, to make separation possible. Elizabeth Cady Stanton is an example of one of these reformers. She pushed for divorce laws covering drunkenness in New York, which had passed the state house but not the senate. In a speech to the New York State Woman's Temperance Society in 1852, Stanton





Court documents, here, sought to besmirch James Judge's reputation by calling him "a habitual drunkard." (Image: 1863-70 Circuit Court files; Box 2 folder 48, St. Charles County Historical Society Archives)

called drunken husbands the "moral monster" and said that women were the greatest victims of intemperance, yet they did not have the power to end this suffering at the ballot box. She also argued a very common sentiment regarding women who stayed with drunken husbands, that they should not bear children with them because they thought alcoholism was inherited. Stanton and others pushed the idea that this was distinctly a women's issue, that violence was caused directly by alcohol, and that alcohol prevented men from representing the family properly at the ballot box.<sup>41</sup>

This movement, however, was not successful. When women like Stanton in the summer of 1852 gathered signatures for a petition in New York to outlaw the sale of alcohol, the legislators brushed it aside, saying that politics was not the business of women. Even within the temperance movement, men wanted to move away from the women's rights issues and just focus on the moral grounds for temperance. Stanton saw this position as hypocrisy because she felt there was an established connection between temperance and women's rights.<sup>42</sup> Also, there was a religious argument against divorce. Stanton would argue that the church's position was wrong and that it sanctioned drunken men to beat their wives. Unfortunately, even the Women's Rights Convention of 1860 would oppose Stanton's view on divorce on the basis of drunkenness.<sup>43</sup> This caused Stanton and others like Susan B. Anthony to back down on divorce and focus on other women's issues; they would not bring divorce back as an issue until well after 1860. Because this did not work, women's rights activists then pushed to focus on criminal law to punish abusive men.<sup>44</sup> Even though Mary Ann Judge did not use alcoholism as a cause for divorce, she made the point very clearly that James Judge was an alcoholic, suggesting that alcoholism and violence were connected and could also be used as an excuse for a husband's action.

Divorce can be called a remedy for abuse, but it does have consequences. The inability of women to own property hurt them financially, but Norma Basch would say what divorce truly did for women was make them single, which in turn allowed them to remarry. Without

Images like this one from *Puck* in 1896, titled "It Never Loses Its Popularity," reinforced idealized notions of marriage, which made arguments like those of Mary Ann Judge even more difficult to refute. (Image: Library of Congress)



remarrying, the financial burden could be very high, despite some getting alimony; but at least they did get out of relationships that hurt them and that were not working. This also had a great social consequence, because while the financial issues could be overcome, the social and moral issues sometimes could not. Divorce cases put a woman's issue out in the open, and society thought of women as the moral order of a family; when these immoral issues came out, a woman could be blamed easily. However, these women should be also praised for their willingness to stand up and let their personal lives be exposed to the public. Basch argues that this shows the confidence women gained in the American divorce system.<sup>45</sup> They felt the system would fairly help them and allow them to escape bad marriages.

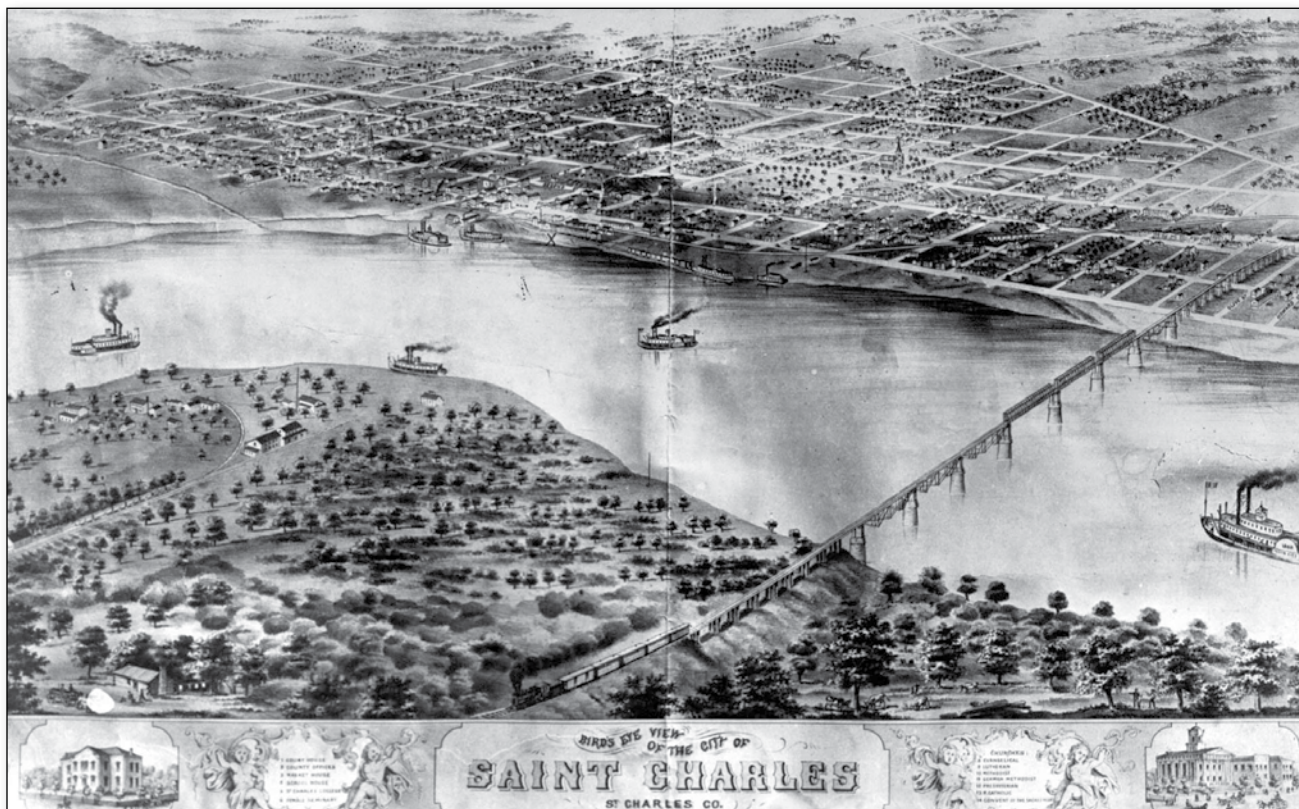
The mid-nineteenth century was a time of great change for divorce in the American legal system. More and more divorces were filed, leading up to an explosion at the turn of the century. During this time, divorce law was defined as more reasons and justifications for divorce emerged. The courts redefined and liberalized ideas about and definitions of cruelty, for example. Simply hitting a wife could now justify divorce; the abuse did not have to cause permanent injury. Verbal and mental abuse was finally considered a form of abuse and grounds for divorce. As

women gained rights within the marriage relationship, divorce was also reevaluated.

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

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St. Charles was a prospering town at the time the Judges divorced, as seen in this 1869 birdseye map of the city. (Image: St. Charles County Historical Society)



## NOTES

- <sup>1</sup> Martha Minow, "We the Family: Constitutional Rights and American Families," *Journal of American History* 74 (Dec. 1987): 972, 973, 974.
- <sup>2</sup> Francoise Basch, "Women's Rights and the Wrongs of Marriage in Mid-Nineteenth-Century America," *History Workshop* 22 (Autumn, 1986): 18, 19, 22.
- <sup>3</sup> "1850 United States Federal Census" Ancestry.com, 22.
- <sup>4</sup> Petition for Divorce, *Mary Ann Judge vs. James Judge*, August 12, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, Missouri.
- <sup>5</sup> "1850 United States Federal Census" Ancestry.com, 22-23.
- <sup>6</sup> "1850 United States Federal Census—Slave Schedules" Ancestry.com, 406.
- <sup>7</sup> "1860 United States Federal Census" Ancestry.com, 42.
- <sup>8</sup> "1860 United States Federal Census—Slave Schedules" Ancestry.com, 297.
- <sup>9</sup> "1860 United States Federal Census" Ancestry.com, 42.
- <sup>10</sup> Petition for Divorce, *Mary Ann Judge vs. James Judge*, Box 2 File 48.
- <sup>11</sup> John Bouvier, "A Law Dictionary: Adapted to the Constitution and Law of the United States of America and of the Several States of the American Union, Revised Sixth Edition," Constitution Society, <http://www.constitution.org/bouv/bouvier.htm> (accessed November 18, 2011).
- <sup>12</sup> Petition for Divorce, *Mary Ann Judge vs. James Judge*, Box 2 File 48.
- <sup>13</sup> Ibid.
- <sup>14</sup> Pamela Haag, "The 'Ill-Use of a Wife': Patterns of Working-Class Violence in Domestic and Public New York City, 1860-1880," *Journal of Social History*, 25 (Spring, 1992): 462, 463.
- <sup>15</sup> Sean T. Moore, "'Justifiable Provocation': Violence against Women in Essex County, New York, 1799-1860," *Journal of Social History* 35 (Summer, 2002): 909.
- <sup>16</sup> Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900," *American Quarterly* 38 (Winter, 1986): 722.

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- <sup>17</sup> Ibid.
- <sup>18</sup> Robert L. Griswold, "The Evolution of the Doctrine of Mental Cruelty in Victorian American Divorce, 1790-1900," *Journal of Social History* 20 (Autumn, 1986): 127, 128, 129.
- <sup>19</sup> Ibid., 131, 132, 135.
- <sup>20</sup> Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America," 725, 728, 730.
- <sup>21</sup> Beverly Schwartzberg, "'Lots of Them Did That': Desertion, Bigamy, and Marital Fluidity in Late-Nineteenth-Century America," *Journal of Social History* 37 (Spring, 2004): 573, 574, 587.
- <sup>22</sup> Answer to Cross Bill, *Mary Ann Judge vs. James Judge*, October 12, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, Missouri.
- <sup>23</sup> Mary Ann Judge Response, *Mary Ann Judge vs. James Judge*, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, Missouri.
- <sup>24</sup> Copy of Order of Maintenance, *Mary Ann Judge vs. James Judge*, September 24, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, Missouri.
- <sup>25</sup> Petition for Change of Venue, *Mary Ann Judge vs. James Judge*, September 24, 1863, Box 2 File 48, St. Charles County Historical Society, St. Charles, Missouri.
- <sup>26</sup> "St. Charles County, MO Circuit Court Index," St. Charles Historical Society, January 31, 2001, 141, 165.
- <sup>27</sup> Deposition of Ferdinand Neckemeyer, *Mary Ann Judge vs. James Judge*, April 20, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, Missouri.
- <sup>28</sup> Ibid.
- <sup>29</sup> Deposition of Ferdinand Neckemeyer, *Mary Ann Judge vs. James Judge*, April 20, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, Missouri.
- <sup>30</sup> "Sheriff's Sale of Real Estate," *Mary Ann Judge vs. James Judge*, May 18, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, Missouri.
- <sup>31</sup> "Sheriff's Statement," *Mary Ann Judge vs. James Judge*, June 11, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, Missouri.
- <sup>32</sup> Motion to set aside decree for alimony, *Mary Ann Judge vs. James Judge*, 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63 Folder 11 Missouri State Archives, St. Louis, Missouri.
- <sup>33</sup> "General Orders No. 70," May 12, 1864-Head Quarters of the Department of the Missouri, Union Provost Marshall Papers, Missouri State Archives- Jefferson City, Missouri, Reel F1353.
- <sup>34</sup> Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 109, 110, 112, 113, 114.
- <sup>35</sup> Loren Schweningen, "'To the Honorable': Divorce, Alimony, Slavery and the Law in Antebellum North Carolina," *The North Carolina Historical Review* 86 (April 2009): 129, 132.
- <sup>36</sup> "Motion to dismiss alimony," Nov. 1864, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63, Folder 11, Missouri State Archives-St. Louis.
- <sup>37</sup> "Motion to quash execution," Jan. 1867, St. Louis Circuit Court, Case Files-Civil, February Term 1864, No. 131, Box 63, Folder 11, Missouri State Archives-St. Louis.
- <sup>38</sup> "Missouri Marriage Records, 1866" Ancestry.com, 291.
- <sup>39</sup> "Obituaries," St. Charles Newspapers Daily and Weekly, 1820-1898 vol. 1, St. Charles Historical Society, E23.
- <sup>40</sup> "Last Will and Testament of James Judge," St. Charles Historical Society.
- <sup>41</sup> Elizabeth Pleck, *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present*, (Chicago: University of Illinois Press, 1987), 49, 50, 57, 58.
- <sup>42</sup> Ibid., 58, 59.
- <sup>43</sup> Basch, "Women's Rights and the Wrongs of Marriage," 27, 28.
- <sup>44</sup> Pleck, *Domestic Tyranny*, 60, 66.
- <sup>45</sup> Basch, "Framing American Divorce," 117, 118.



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