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WEST VIRGINIA DIVORCE LAW

Clyde L. Colson

I. JURISDICTION, VENUE AND PROCEDURE

In West Virginia the circuit courts, sitting in chancery, have sole jurisdiction to grant divorces. It should be noted, however, that this jurisdiction is not part of the inherent jurisdiction of equity, but is based entirely on statute. This being true, in order to maintain an action for divorce it is necessary to show that all the statutory requirements as to jurisdiction have been met and that there have been no violations of the strict limitations imposed by the legislature to prevent the growth of a divorce racket in this state. As was said by the West Virginia court:

"The courts of equity have jurisdiction to entertain divorce cases only by reason of the statute conferring that jurisdiction. Such cases do not fall within their general equitable powers. They are governed by the statute as to jurisdictional facts, and it is well within legislative power to throw strict safeguards around judicial severance of the marriage contract."

Consequently, the lawyer should thoroughly acquaint himself with the provisions of our statute in regard to these limitations. In view of the rather sweeping changes which have recently been made in this respect, there is little to be gained by an examination of the cases. It would seem to be more advantageous to examine the salient provisions of the statute itself.

It was formerly provided that "in no case shall a suit for divorce be maintainable unless the plaintiff be an actual bona fide citizen of this state." The court, however, held that under this provision an unnaturalized foreign-born resident, domiciled in this state, could sue for divorce. As a result of this construction the revised statute is framed solely in terms of the "residence" rather than the citizenship of the parties. Note, however, that when it is said in the statute that one of the parties must be "a bona fide resident of this state", obviously what is meant is that he not only

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1 W. VA. REV. CODE (1931) c. 48, art. 2, § 6.
2 White v. White, 106 W. Va. 569, 570, 146 S. E. 376 (1929).
3 W. VA. CODE (Barnes, 1923) c. 64, § 7.
5 W. VA. REV. CODE (1931) c. 48, art. 2, § 8.
must satisfy the requirement as to residence but must also be domiciled here. As was said by our court in construing a similar provision of the former statute,

"It is the domicil of one or both of the parties in this state, at the time of suit, that gives jurisdiction under our statutes."  

Consequently, for the sake of accuracy in the following discussion both the requirements of domicil and residence will be mentioned in every case.

In determining whether a suit for divorce may be brought under the present statute, three things must be considered: (1) the ground for divorce, (2) whether the cause of action arose at a time when one of the parties was resident and domiciled in this state, and (3) whether the defendant can be personally served within the state.  

First, consider a case in which the ground for divorce is adultery. Whether the cause of action arose in or out of this state, if either of the parties is at the commencement of the suit resident and domiciled within the state, and if the defendant can be personally served with process in this state, suit for divorce may be brought at once, there being in this case no requirement as to a period of residence here on the part of either plaintiff or defendant.  

It should also be noted that in such case it is immaterial whether the cause of action arose before or after one of the parties became a domiciled resident of the state. The only limitation in respect to the time when the cause of action arose is found in the provision that no divorce shall be granted on the ground of adultery which occurred more than three years before the institution of the suit.

On the other hand, when resort must be had to constructive service either by publication or by personal service outside the state, it becomes necessary for the plaintiff to satisfy a requirement as to his period of residence here. This applies not only to suits for divorce on the ground of adultery but to all divorce actions in which it is impossible to obtain personal service on the

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6 Carty v. Carty, 70 W. Va. 146, 150, 73 S. E. 310 (1911).
8 Id. § 5(a).
9 Id. § 14.
10 Id. c. 48, art. 2, § 10, and c. 56, art. 3, §§ 23-30, in regard to constructive service.
defendant within the state. In such a case, the residence and domicil of the plaintiff when the cause of action arose is of importance. If at the time the cause of action arose the plaintiff was a domiciled resident of this state, it is necessary that he should have been so for only one year prior to the commencement of the suit. On the other hand, if when the cause of action arose he was not a domiciled resident of this state, it is then necessary for him to show that he has become and has continued to be such a resident for at least two years prior to the bringing of the suit.11

Consider, next, cases in which a divorce is sought on some ground other than adultery. In all such cases it is of importance to determine whether one of the parties was a domiciled resident of this state at the time the cause of action arose. If at that time either the plaintiff or the defendant was resident and domiciled in this state, suit may be brought if he has been so resident and domiciled for at least one year prior to the commencement of the suit.12 In thus providing for a divorce action when the defendant can satisfy the residence and domicil requirement, a radical departure was made from the former rule in this state under which the residence and domicil of the plaintiff alone was the deciding factor.13 If, on the other hand, at the time the cause of action arose neither of the parties was a domiciled resident of this state, it is necessary that one of them should have established his domicil in this state and should have resided here for at least two years prior to the commencement of the suit. And in such case there is the further alternative requirement that it be shown either (1) that the alleged ground for divorce was a recognized ground for an absolute divorce in the state which was the residence at the time the cause of action arose of the party whose domicil and residence here gives our court jurisdiction, or (2) that the cause of action arose more than five years before the filing of the bill.14 The obvious purpose of these latter restrictions is to discourage the establishment of a domicil here for the purpose of obtaining a divorce, although the privilege of so doing is not wholly abolished.

11 Id. c. 48, art. 2, § 8(c).
12 Id. § 8(b).
13 W. Va. Code (Barnes, 1923) c. 64, § 7; White v. White, 106 W. Va. 569, 146 S. E. 376 (1929) (statute applied).
14 W. Va. Rev. Code (1931) c. 48, art. 2, § 8(c). Query whether the phrase "the jurisdiction in which such party resided at the time the cause of action arose" refers to domicil alone, to residence alone, or to both.
In this state the venue of a divorce suit is the same as the venue of an action to annul or affirm a marriage. Consequently, in the discussion of this section of the code both types of suit will be dealt with. The only situation in which there is any difference in the rules as to venue in divorce and annulment suits is found in the provision that

"In the case of a suit to annul a marriage performed in this State, where neither party is a resident of the State, the suit shall be brought in the county where the marriage was performed."17

In determining the venue of other annulment suits and of all divorce suits, it is important to know whether the defendant resides in this state. If the defendant is a resident, the plaintiff has his option to sue either in the county where the defendant resides, or in the county where the parties last cohabited. On the other hand, if the defendant is not a resident, then suit must be brought in the county in which the plaintiff resides.18

No difficulty has arisen in the application of this section of the statute except in respect to the construction of the phrase "in the county in which the parties last cohabited." Construing this provision in Jennings v. McDougle, the court said:

"The phrase, 'in the county in which the parties last cohabited', used in the statute, necessarily means the place where the parties ceased to live together as husband and wife in the same house, and ordinarily carries with it the idea of a substantial measure of temporal continuity."19

Consequently,

"The mere allegation of separation, abandonment, desertion and refusal of cohabitation in Wood County, an allegation relied on as the legal equivalent of an allegation of the last actual cohabitation, . . . . falls far short . . . . The place of separation, abandonment, desertion and refusal of cohabitation and the place of the cessation of cohabitation

15 Id. § 9.
16 In a former article on West Virginia Marriage Law (1936) 43 W. Va. L. Q. 33, the matter of the venue of annulment suits was left for treatment here.
17 W. VA. REV. CODE (1931) c. 48, art. 2, § 9; Titus v. Titus, 115 W. Va. 229, 174 S. E. 874 (1934) (statute applied). It should be recalled that such case no annulment suit may be brought if the parties have established a matrimonial domicile elsewhere. W. VA. REV. CODE (1931) c. 48, art. 2, § 7.
18 Id. § 9.
19 83 W. Va. 186, 190, 98 S. E. 162 (1919).
by husband and wife need not necessarily be and frequently are not in the same county. . . .'"220

In regard to procedure, the statute provides that divorce suits "shall be instituted and conducted as other chancery suits except as provided in this article."221 The more important exceptions are found in the provision that

"All pleadings shall be verified by the party in whose name they are filed; but the bill shall not be taken for confessed, and whether the defendant answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. . . .'222

Under this provision it is obvious that the material allegations in respect to the ground for divorce cannot be taken for confessed, but must be supported by competent proof.223 Similarly, the necessary jurisdictional facts cannot be established by the allegations of the bill admitted in answer.224 Note, however, that in thus placing emphasis on the necessity of proof, it should not be overlooked that a bill may also be defective for failure to allege material facts. As was said by the court in Jennings v. McDougle, "It is well settled that facts necessary to the conferring of jurisdiction in a divorce suit must be pleaded as well as proved,"225 and the same is of course true in respect to other material facts.226 Jennings v. McDougle also illustrates the proposition that under the rule which requires pleadings to be verified, all amendments must be verified too. In its discussion of this point the court said:

"To hold otherwise would enable a party by amendment to incorporate in a bill already sworn to certain facts essential to his case to which he may not be willing to give the sanction of an oath. Thus the whole purpose of verification could be defeated."227

20 Ibid.
21 W. VA. REV. CODE (1931) c. 48, art. 2, § 11.
22 Ibid.
The rule that material allegations must be alleged and proved and may not be taken for confessed is supplemented by the further provision that "no decree shall be granted on the uncorroborated testimony of the parties or either of them."28 The obvious purpose of these requirements is to lessen the chance that the parties may obtain a divorce through collusion. As a further safeguard in this connection the statute also provides for the appointment, in the court's discretion, of a divorce commissioner whose duty it is to investigate all divorce suits, to appear at all trials and examine witnesses when necessary to defend the interests of the state and generally to "take all necessary steps to prevent fraud and collusion in divorce cases."29 Thus, on the theory that the state is an interested party in all divorce actions,30 provision is made for the appointment of counsel to represent the state. If no divorce commissioner is appointed, it is of course incumbent upon the court to see to it that the interests of the state are protected.

Due to an ambiguity in the statute some confusion in respect to the divorce commissioner has arisen in practice. The statute provides that the court may in its discretion "appoint a competent attorney in each county as a commissioner in chancery, to investigate divorce cases, who shall be designated as 'divorce commissioner'."31 This language becomes ambiguous in light of the fact that provision is also made for another sort of commissioner in divorce cases. In one section of the statute it is stated that a suit for divorce may be tried before the court in chambers or may be referred "to a commissioner in chancery, or a special commissioner, as hereinafter provided."32 It becomes apparent, upon an examination of the subsequent section,33 that the commissioner here referred to is simply a master in chancery whose duty it is to make and report findings of fact to the court. In view of the great difference in the nature of the duties to be performed by the divorce commissioner and by the master in chancery, there would seem to be little ground for confusion. But the fact that in the statute each is referred to as a "commissioner in chancery" has led to the practice in some circuits of referring cases to the divorce com-

29 Id. § 24.
33 Id. § 26.
missioner as a special commissioner to take and hear the evidence. Recognizing that this was not good practice, the Revisers of the Code in 1931 suggested that the matter be cleared up by abolishing the office of divorce commissioner and by denying the court the option of referring divorce cases to a master, but this suggestion was not adopted. While the legislature may have been right in questioning the advisability of the cure suggested, it is most unfortunate that this ambiguity was not corrected. By making no change in the statute, the legislature impliedly sanctioned the indefensible practice of allowing the divorce commissioner, who is really one of the attorneys engaged in the trial of the case, to act as a master in chancery. Fortunately this practice is not widespread, but to remove the confusion which does exist the statute should be amended so as to show clearly that one individual may not serve in the two capacities.

Note that in case the trial is to be held by the court, the plaintiff is required before trial to give the divorce commissioner, if one has been appointed, at least thirty days' notice in writing. On the other hand, if the case is referred to a master, he must give the parties and the divorce commissioner, if any, at least ten days' notice of the time and place at which the hearing will begin.

II. GROUNDS FOR DIVORCE

A. In General

There being no common law of divorce in the United States, divorces may be granted only on grounds established by the legislature. As was said by the West Virginia court,

"The divorce statute of this state . . . fully, completely and comprehensively covering and dealing with its subject matter, is not merely amendatory of other laws; wherefore it alone is to be resorted to for the grounds or causes for divorce."

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34 See Revisers' Notes, Committee's Notes and Legislative Notes in W. VA. REV. CODE (1931) c. 48, art. 2, §§ 23-27.
35 Id. § 25 as amended by Acts 1935, c. 35, § 25. However, substantial compliance with this provision is all that is required. Marcum v. Marcum, 113 W. Va. 374, 168 S. E. 389 (1933).
37 MADDEN, PERSONS AND DOMESTIC RELATIONS (1931) 256-263, particularly at 263.
This being true, the rather sweeping revision which the West Virginia divorce statutes have recently undergone serves to make not untimely a summary survey of the law in this field.

Until quite recently our statute made provision not only for an absolute divorce or a divorce from the bond of matrimony\(^{39}\) but also for a limited divorce, commonly called a divorce from bed and board.\(^{40}\) In 1935, however, the provisions in respect to divorces from bed and board were repealed,\(^{41}\) and with one exception having to do with abandonment or desertion, what was formerly ground only for a divorce from bed and board was made ground for an absolute divorce.\(^{42}\) Before 1935 an absolute divorce could be granted for abandonment or desertion only if the desertion was continued for a period of three years, while a limited divorce could be granted on this ground without regard to the duration of the desertion. When the statute was amended the right to a divorce for abandonment alone was abolished, but the period during which the desertion must continue in order to be ground for an absolute divorce was reduced to two years.

In respect to decrees for limited divorce entered prior to the passage of the act, the amended statute allows a revocation of the decree in the event of a reconciliation and also provides that the decree may be "made final in the manner prescribed by the code of West Virginia."\(^{43}\) The provision quoted seems to be a rather awkward method of incorporating by reference and thus re-enacting the appropriate provisions of the amended section. In amending other parts of the statute, however, the legislature adopted the better procedure of expressly enacting the whole section with the necessary changes included.

B. Specific Grounds

1. Adultery. Although adultery is ground for divorce\(^{44}\) and is also punishable as a crime,\(^{45}\) neither the legislature nor the court of West Virginia seems to have defined the term. For the purpose of this discussion it is enough to say that adultery is the voluntary sexual intercourse of a married person with one other than the of-

\(^{40}\) Id. § 5.
\(^{41}\) W. Va. Acts 1935, c. 35.
\(^{42}\) Id. § 4.
\(^{43}\) Id. § 20.
\(^{45}\) Id. c. 61, art. 8, § 3.
fender's husband or wife. 46 From the requirement that the act be voluntary it follows that intercourse under coercion, as in the case of rape, or during insanity is not adultery and hence is not ground for divorce, but it is adultery if one has intercourse while volun-
tarily intoxicated. 47

Aside from these questions, none of which have arisen in West Virginia, as to whether an admitted act of intercourse is adultery, the law in respect to this ground for divorce is clear and fairly easy of application. The only real difficulty is the practical one of proof. In the very nature of things, there seldom being an eye-

witnes, it is usually necessary to resort to circumstantial evidence in order to prove the commission of adultery. As was said by our court in one case,

"Adultery is peculiarly a crime of darkness and secrecy; parties are rarely surprised at it; and so it not only may, but ordinarily must, be established by circumstantial evidence." 48

Of course, the defendant and his or her paramour are in a position to give direct testimony. As a practical matter, however, they are usually reluctant to testify and because of the incrimina-
tory nature of their testimony they could not be compelled to do so. On the other hand, even if they are willing to testify, their evi-
dence alone is not very satisfactory. As for the paramour, if he be credible, his uncorroborated testimony may be sufficient, 49 but courts naturally give little weight to such evidence. Discussing this matter, the Kentucky court said:

"Witnesses, who testify to their own shame and degrada-
tion and especially those witnesses, who testify to un-
chaste acts with females have never been favorites of the courts of justice . . . . Such witnesses are invariably dis-

46 BOUVIER, LAW DICTIONARY under "adultery", which see for further re-
finements sometimes of value in criminal cases.

47 MADDEN, PERSONS AND DOMESTIC RELATIONS (1931) 264; Stedman, 
Adultery of Insane Wife (1918) 4 Va. L. Reg. (n.s.) 248. Query whether 
intercourse during a drunken stupor would be ground for divorce. Query also 
as to the validity of the distinction, found in the cases and discussed by Mad-
den, between intercourse under mistake of fact which is not adultery, and 
under mistake of law which is. It would seem better to say that so long as the 
mistake, whether of law or fact, is reasonable, there is no ground for divorce.

48 DeBerry v. DeBerry, 104 W. Va. 209, 211, 132 S. E. 710 (1927). A 
reference to Murrin v. Murrin, 94 W. Va. 605, 613, 119 S. E. 513 (1923) shows 
that the language which the court here makes its own was originally quoted 
from BISHOP, MARRIAGE AND DIVORCE.

49 MADDEN, op. cit. supra n. 47, at 266.
As for the defendant, it is the general rule that a divorce for adultery will not be granted on his uncorroborated admissions or confessions. In West Virginia, however, under the statutory requirement that the case "be tried and heard independently of the admissions of either party in the pleadings or otherwise," the defendant's confession is not even admissible in evidence. Note that this statute, the purpose of which is to prevent the parties from obtaining a collusive divorce, is applicable to admissions or confessions not only of adultery but of all other marital misconduct. The fact that in the normal case of adultery the only direct evidence is in this state either inadmissible or entitled to little weight, fully substantiates the observation of the West Virginia court that adultery not only may but ordinarily must be established by circumstantial evidence.

Due possibly to a feeling that circumstantial evidence is less reliable than testimonial evidence, some confusion has arisen in respect to the degree of proof necessary to establish adultery in an action for divorce. Since a suit for divorce is a civil action, one might suppose that all that is required is proof by a preponderance of the evidence. On the other hand, although it is a civil action, it is one charging the commission of a criminal act, and there is authority that the rule for criminal cases should apply and that the adultery should be proved beyond a reasonable doubt. Probably a majority of the courts, however, take an

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50 Wesley v. Wesley, 181 Ky. 135, 144, 204 S. W. 165 (1918). See also Engleman v. Engleman, 97 Va. 437, 34 S. E. 50 (1889); cf. DeBerry v. DeBerry, 104 W. Va. 209, 139 S. E. 710 (1927) where although the paramour testified that he had intercourse with the defendant, the court treated the case as involving primarily a question as to the sufficiency of the corroborating circumstantial evidence.

51 MADDEN, op. cit. supra n. 47, at 266.

52 W. VA. REV. CODE (1931) c. 48, art. 2, § 11.


54 That our court has something of this sort in mind seems a reasonable inference from its language: "To establish adultery, positive and direct evidence is not required, but if it is sought to be established by circumstantial evidence, such evidence must be strong and clear. . . ." Vickers v. Vickers, 89 W. Va. 236, 240, 109 S. E. 234 (1921). As to the relative value of direct and circumstantial evidence, however, see 1 WIGMORE, EVIDENCE (2d ed. 1923) § 26.

55 That this is the general rule, see 5 WIGMORE, EVIDENCE § 2498, 2(1-2); Ellett v. Ellett, 157 N. C. 161, 72 S. E. 361 (1911) (charge that evidence of adultery must be "strong, convincing, and conclusive" held reversible error).

56 Gray v. Gray, 100 N. J. Eq. 71, 135 Atl. 54 (1926).
intermediate position and require that the proof be "clear and satisfactory" 57 or that it be "clear, unequivocal and convincing." 58

As accurate a statement as any of the principle followed by most courts is found in the much quoted language of Lord Stowell in 

*Loveden v. Loveden* to the effect that to warrant a finding that adultery has been committed, "the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion" of guilt. 59 It is arguable that in these cases the court is requiring no higher degree of proof than in other civil cases. The more reasonable view, however, would seem to be that while not requiring proof beyond a reasonable doubt as in criminal cases, something more is necessary than a mere preponderance of the evidence. 60

It is not so easy to say which of the three positions has been taken by the West Virginia court, there being some ground for arguing that at one time or other it has adopted each view. In *Anderson v. Anderson* the court said:

"True, as argued, it is not necessary, as in criminal cases, to make out the case beyond a reasonable doubt, but it is necessary for the plaintiff to prove his case by a preponderance of the evidence." 61

However, it can hardly be said that in this case the court applied the same rule as in other civil actions because not only did it say in the same paragraph that "the evidence must be clear, positive and satisfactory", but it was also found that the charge had not been supported even by a preponderance of the evidence. Also in *Sharp v. Sharp* where the court said it had "come to the conclusion that there is a preponderance of evidence" in support of the charge, 62 it was again stated that the evidence must be "clear and positive". Thus it is seen that there is little basis for arguing that it has ever been the rule in West Virginia that a mere preponderance of the evidence is sufficient to establish the charge of adultery.

58 Lang v. Lang, 135 Md. 464, 142 Atl. 485 (1928).
60 Cf. 5 WIGMORE, EVIDENCE § 2498, 2(3), where it is recognized that a stricter standard of proof is imposed by the phrase "clear and convincing proof" as used in cases of fraud, undue influence, etc.
61 78 W. Va. 113, 123, 88 S. E. 663 (1916). But see 5 WIGMORE, EVIDENCE § 2498, n. 10, where this case is used as an example of the application to a civil action of the criminal law standard of proof.
62 91 W. Va. 678, 685, 114 S. E. 280 (1922).
In by far the greater number of cases the intermediate rule was apparently adopted. In Miller v. Miller, 63 though misquoting the language of Lord Stowell in Loveden v. Loveden, the court correctly stated and seemingly approved the principle he applied in that case. But the inference which might otherwise be drawn from this case is somewhat weakened by the court's statement that it "must take such evidence as the nature of the case permits . . . and . . . weighing it with prudence and care, give effect to its just preponderance." 64 There are, however, numerous cases in which no mention is made of proof by a preponderance of the evidence, the court setting up some such standard as that the evidence must be of a clear and positive nature or that it must be so clear and strong as to carry conviction to the judicial mind. 65

On the basis of these cases one might suppose that in West Virginia, as in most other states, the degree of proof required is something less than that necessary in a criminal case but something more than proof by a mere preponderance of the evidence. However, our court in its more recent discussions of this problem appears to have adopted a standard certainly as high, if not higher, than that of proof beyond a reasonable doubt. In Edwards v. Edwards the court said:

". . . no wife should be pronounced a violator of her most solemn vows, unless upon evidence that will admit of no other conclusion. There must be convincing proof." 66

This language has been quoted with approval in two subsequent cases. 67 Even before these decisions Wigmore was of the opinion that our court demanded the same degree of proof in an action for divorce on the ground of adultery as would be required in a criminal case. 68 However that may be, in light of this recent requirement that the evidence be so clear as to "admit of no other

63 94 W. Va. 177, 180, 118 S. E. 137 (1923).
64 Id. at 181.
68 5 Wigmore, Evidence § 2498, n. 3 and n. 10.
conclusion," one cannot reasonably deny that at the present time our court requires at least proof beyond a reasonable doubt.

There is little to be gained by a review of the circumstances which have been held sufficient to establish the charge. Suffice it to say that in the comparatively few cases in which the finding of adultery was sustained, the evidence would "admit of no other conclusion." In fact, if attention is paid solely to the result rather than to the language of the cases, Wigmore's conclusion that our court has always required proof beyond a reasonable doubt seems not unwarranted. It should be noted that while findings of fact by a trial chancellor will not ordinarily be disturbed on appeal, the high degree of proof necessary to establish a charge of adultery makes it more likely here than in other cases in equity that upon a re-examination of the evidence a contrary finding will be made by the appellate court.69

It is often stated that in order to prove adultery by circumstantial evidence not only must an opportunity be shown, but it must also appear that the guilty party was of an adulterous disposition.70 As was said by the West Virginia court in one case,

"It is well established that adultery may be proved by circumstantial evidence, but the evidence must be clear and positive, showing opportunity as to time and place to commit the act, and a willingness on the part of the defendant."71

Thus the mere fact that the defendant frequently visited a lady of good reputation at her apartment, remaining several hours each time, will not sustain a finding of adultery, there being no evidence that the parties were adulterously inclined.72 On the other hand, the adulterous disposition may be inferred from the nature of the place visited by the defendant, as where he was seen at a house of prostitution,73 or from the character of the corespondent, as where the defendant had women of ill repute visit him at his home.74

Our court has never passed on the question as to the weight which should be given in a divorce suit to the testimony of a hired detective. The Virginia court, however, has adopted the general rule that though such testimony will be carefully scrutinized it

70 Madden, op. cit. supra n. 47, at 206.
74 Miller v. Miller, 94 W. Va. 177, 113 S. E. 137 (1923).
should be weighed and considered like other testimony, and the fact that the witness was paid to obtain the evidence is simply one of the factors to be considered in determining his credibility.\textsuperscript{75} That our court would probably follow this general rule may be fairly inferred from this statement in \textit{Nicely v. Nicely}:

"If Boso was in fact so employed.... the fact of such employment would certainly have an important bearing on the value of his evidence...."

Note, however, that in this case the witness was not employed solely to obtain evidence of adultery, but according to the defendant was to act as paramour in an effort to place her in a compromising situation.

There remains for consideration a procedural problem as to the particularity with which the alleged acts of adultery must be set forth in the pleadings. In \textit{Anderson v. Anderson} it was held that a bill would be good on demurrer if it specified the time, the place and the person with whom the alleged act of adultery was committed, even though it failed to allege any of the other circumstances.\textsuperscript{77} If the identity of the other party is not known, it is of course sufficient if an allegation to that effect be made.\textsuperscript{78}

\textit{(To be continued.)}

\textsuperscript{75} Colbert v. Colbert, 162 Va. 393, 173 S. E. 660 (1934). For other authorities see \textit{Madden, op. cit. supra n. 47, at 267.}

\textsuperscript{76} 81 W. Va. 269, 275, 94 S. E. 749 (1917).

\textsuperscript{77} 78 W. Va. 118, 88 S. E. 653 (1916).