

With *von* **Klein** (C. H.)  
Compliments of the  
For the Library of the Surgeon General

Reprint from the Journal of the American Medical Association,  
Feb. 14th, 1885.

---

# MEDICAL JURISPRUDENCE IN DIVORCE.

—BY—

CARL H. VON KLEIN, A. M., M. D.

DAYTON, OHIO



DELIVERED (BY INVITATION) BEFORE THE "OHIO STATE BAR  
ASSOCIATION." AT THEIR ANNUAL MEETING DEC. 30 AND 31, 1884,  
COLUMBUS, OHIO.





## "Medical Jurisprudence in Divorce."

---

BY CARL H. VON KLEIN, A.M., M.D., DAYTON, OHIO.

---

An address delivered (by invitation) before the "Ohio State Bar Association," at their annual meeting Dec. 30 and 31, 1884, Columbus, O.

---

MR. PRESIDENT, GENTLEMEN OF THE OHIO STATE  
BAR ASSOCIATION:

No branch of science seems to have been more neglected than that pertaining to Medical Jurisprudence in Divorce. Will you, then, pardon my zeal upon this subject? I do not desire to bring to your attention, gentlemen of the bar, a subject with which you are unacquainted, nor is it my object to send this address to the forensic world as upon a new field of science. But rather as an attempt to show what beneficial effects might result from a more thorough and scientific study of the subject. My humble judgment leads me to believe that many cases of divorce are obtained improperly from the very fact, known to laymen, as well as to your own and my profession, that the point of Medical Jurisprudence is very seldom raised. It may sound absurd, yet the fact can not be denied that two-thirds of the cases in divorce are obtained on the ground of willful absence. Though it may remain unadmitted, nevertheless I will assert, that in almost every case where willful absence is the alleged ground of divorce, if the predisposing cause were carefully ascertained, it would disclose the fact, that impotence or some organic perplexity, either local or constitutional was the prime cause. Yet have any of you ever heard of a court that inquired into the prime cause of a wife or husband's willful absence? Right here I would like to be informed of the truth of this matter, that it may enable

me to place you aright before the eyes of the world. It would afford me great satisfaction to know that many of you who are very eminent in your profession can vindicate yourselves honorably from the charges which I am now about to make, to wit: a claim to superior wisdom and infallibility. It is a common thing for a lawyer to claim to be the most learned man in the land, from the very fact that he ought to be. The progressive scientific lawyer is demanded not only to be well posted in jurisprudence, but he must be no stranger to botany, chemistry, pharmacy, microscopy, physiology, anatomy, surgery, medicine, and its collaterals. His application must be indefatigable, and his attention to the operations of nature equal with that of a physician—a philosopher in the true sense of the term. It is not demanded of a physician to understand law, but it is emphatically required of the jurist to understand physic. I will again pray you to pardon my rude charges against your chosen profession, but it is the truth! “A very little truth will sometimes enlighten a vast extent of science.” You may truthfully state that it is impossible for one human mind to accomplish all the branches of science especially demanded by your profession, but there is no excuse for you to ignore our profession. Since you cannot accomplish the entire science of your occupation without our aid, so essential to your assistance, you must, therefore, regard us a part of your profession. In order to prove that a physician is ignored by intelligent courts of judicature, I will show the following cases:

CASE I. Mrs. B, an intelligent lady, age 26, a handsome brunette, applied for divorce to the County Court of Cook Co., Ill, in 1872, on the plea of willful absence. When the case was called, the defendant aimed to prove that it was a necessity for him to be parted from her, but he did not care to be divorced. But the court ignored this, and a divorce was granted. In 1874 she applied to a physician for

treatment for some acute malady. After he became well acquainted with his patient, he discovered by her admission that she was once married, and loved her husband, but she had lost her sexual desire, and venereal intercourse had become almost as a death warrant. She did not even care about being restored, but after expostulating with her for some time, she consented to treatment. She was entirely restored in the course of nine months, when she again renewed her marriage with her former husband.

CASE 2. Mrs. L., age 22, applied to the County Court of Wayne County, Michigan, for a divorce on the same ground as in the former case. She related a peculiar history. She stated in her petition, after the second night of her marriage her husband left her bed in the middle of the night and had not returned for three years or longer, for a cause that she did not know. But she admitted in court that the fault was her own which caused him to leave her. She testified that she had a boil in the vaginal cavity, and that she could have no connection with him, and for refusing indulgence to his venereal pleasures, he left her. But she loved him and would do so to-day, and he would live with her, provided she could perform sexuality. Nevertheless a divorce was granted. A friend advised her to consult a physician, which was done, and she permitted an operation which restored her to her normal condition by removing three large polypi, each one weighing almost an ounce and a half. She also remarried.

CASE 3. Mrs. D, age 31, married nine years, applied for divorce in New York County Court, on the usual ground of willful absence. She claimed that her husband did not like her, and during all the period of their marriage there was no sexual intercourse between them; she claimed that she liked him and would live with him, if she could raise a family. The defendant also admitted there was no such intercourse between them; that he would live with her if he was

able to accomplish the same. Here the greatest circumspection of medical jurisprudence should have been demanded, but neither the jurist nor the judge of such an enlightened court as New York, demanded or ascertained the incapacity of the unfortunate man, and a divorce was granted. In accordance with the plea of the plaintiff, in a short time after, he consulted a physician who found him to be afflicted with castration; he was immediately relieved by a surgical operation. He went to see his former wife and they were remarried six months after the divorce, and are now living together happily with a family of two or three children.

There are thousands of cases of the same nature that are neglected by the ignorance of the faculty, the caprice of the court, or by the artifices of either or both. From the foregoing and the continuation it can and will be seen, that medical jurisprudence is necessary in almost every case of divorce, but no books in the world will ever make an expert to facilitate the learning of it. It should excite the most strenuous endeavor of those whose business it is to instruct others in the medical science, the utility of which has been confirmed by a long, extensive, and painful experience. Such as they are, mankind are welcome to them, for medical men have no other object in view but human benefit. He who can conceal that which would be advantageous to thousands for the emolument of a paltry individual, is a despicable wretch that deserves very ill of society.

“Si quid novisti rectius istis,  
Candidus imperti; si non his utere mecum.”

*Horat.*

There<sup>1</sup> are many disorders which are generally allowed to constitute the natural grounds for a divorce between two married persons, though particular laws

<sup>1</sup> According to Johanus Fredericus Faselii in his work entitled “*Elementa Medicinæ Forensis*,” Geneva, 1792.

are generally founded on local causes, and probably do not refer to their natural reasons; yet no others concern the medical portion. There are many disorders, by whatever name they may be called, all defects of the human constitution, which appear to constitute the natural reason for a divorce, generally those which are absolute impediments to procreation; these may be considered in accordance with the subject of generation, and may be classed technically under two heads, *impotence* in men and *sterility* in women, which is either positive or perpetual, or such as defies human art to remove. We consider absolute impotence in men when they are eunuchs, or are deprived of both testicles, as these are the receptacles of semen; without them no generation can be performed; or spadones, such as have the nerve or muscle leading to the parts of generation bruised so as to deprive them of all perception of a venereal appetite; or when the penis is perforated in such a manner that the semen can not be emitted with sufficient force. This rule is to be admitted with some limitation, as the theory of generation is not sufficiently established. Even when the penis is too short, by being amputated for disease; or when the penis is too thick; these cases may be respectively considered; when both testicles have become scirrhus, so as to be incurable, or the vesicula seminales have become scirrhus; or the semen is too watery, and will not admit of alteration, nevertheless, it is not an absolute cause, as it admits of a cure; when they are afflicted with castration, or the preputium is so formed or fastened to the glans penis that it cannot be relieved by a surgical operation. All disorders which are impediments to procreation of children, and which are not caused by the organs of generation; such as are of a highly contagious nature, or create an unconquerable aversion, as the lues venereæ, melancholy, epilepsy, scurvy, scrofula, and a highly foetid and disagreeable breath. Absolute sterility in a woman, dis-

qualifying her to perform sexuality, will arise when the parts ordained for the organs of generation are such that they do not admit of relief without great jeopardy of life ; when the vagina is too straight and narrow ; on account of scirrhus tumors, etc., which may be impossible to remove ; when the orifice in the uterus is entirely closed. This is not an absolute impediment, because it may be remedied by the hand of a surgeon.

When there is an ulcer in the uterus, which might have penetrated the rectum and bladder, even when oppressively afflicted with leucorrhœa or whites, great care and attention should be given before an absolute judgment is rendered, as this admits a cure ; but if everything failed, the husband should also be examined carefully in regard to his own adequacy. There are many other causes of sterility, which are caused by obstructions or injuries in the organs of generation ; but it is all darkness, and it would be inhuman to determine by any other method than by the inspection and careful examination of the parts by some scientific and honorable physician. There are, besides these, many other circumstances that may not render either sex absolutely impotent, yet may be considered defective. There are certain obstructions to the generative organs that in no way constitute reason for divorce. Ignoramuses may consider them as such, but the progressive physician will guard against such an error. The following occur in the male sex : Monorchides—such as have only one testicle. These are by no means incapacitated, as this secretion is only made in that organ, from which it is carried to the vesiculæ seminales, and there deposited for use, so that one testicle is as effectual as two ; the secretion is always proportionate to the evacuation. Triorchides—those who have *three* testicles ; spadones, where one testicle is injured. Chrysporchides are those whose testicles do not lie in the scrotum, but in the abdomen or in the groin ;

those who have præputium buttoned on the glans; those who labor under phymosis, or paraphymosis, a disorder where the præputium is brought over the glans penis or contraction of the prepuce behind the corona in such a way as to prevent its return over the glans, and cannot be retracted but by art; those whose penis is shorter or longer than natural, unless extremely so; those who are circumcised. This is an advantage rather than an impediment. Hermaphrodites, or Androgyni. Those are unfortunate living beings, sometimes capable of all the functions of society. Yet their situation should arouse our pity, for they are not only deprived of common pleasures of mankind, but are subject to disorders, painful, uncomfortable, incommodious, constantly having desire when in society of either sex. A perfect hermaphrodite has distinguished marks of both sexes, with a power of enjoyment with each. An imperfect hermaphrodite may be classed according to the sex, into what are called Androgynus and Androgyna.

The former is the male, who has his own organs tolerably perfect, but has some division in the flesh above and below, or in the scrotum, which makes an appearance of the female pudendum. The penis may also be obliterated so as to give no exterior appearance of the male, but the general constitution of the body, whiskers, etc., confirm him to be of that sex.

The Androgyna is a woman who has the parts of generation nearly like another but, at the same time, the clitoris grows so large that it has the form of the male penis. This may be a very inconvenient disorder, as she is sometimes deprived of pleasures peculiar to her sex and suffers much from the disorders of the parts. From her mammary glands and imperfection of beard, however, she is distinguished from the male. As a rule such women are subject to robust and masculine constitutions. It is evident that those sexes are as completely marked as in other

persons, and to all legal intents and purposes, they are men and women. Women are claimed to be incapacitated entirely, as the various disorders of anteversion and retroversion, anteflexion and retroflexion of the uterus may be only temporary, and may be remedied by art; when they have too large a clitoris or nymphæ, or when they are androgynæ or hermaphrodites, from various causes; where the pudendum is too large and wide; when they are irregular menstruants, or have received a rupture of the perineum, or the part between the fundament and pudendum, etc. I will not enter into further detail, as there are many other points which might be raised in jurisprudence; but, in conclusion to my foregoing, I shall narrate to you, as well as to my professional brethren, the improvements of this science. I am sure they can have no objection to my course. The love of truth is of equal importance in the reception of facts and in the formation of opinions, and it includes, also, a readiness to relinquish our own opinions when new facts or arguments are presented to us which are calculated to overthrow them. Let us inform ourselves with all the modern education of the present day. Lord Bacon says: "Knowledge is more beautiful than any apparel of words which can be put upon it." Let us investigate that which we have neglected, and acknowledge the errors, which we lamentably regret, and unite our attainments of science in whatever language we may use. In natural science there is but one language universally intelligible. The language of facts belongs to nature here, therefore I trust that the forbearance of the past will be gravitated by the future, and we can rest assured that the most excellent and refined felicity springs from the disinterested and varied endeavors to lessen the evils of life and add to the enjoyment of our fellow-citizens.





