

heartlands for organizations such as the Woman's Christian Temperance Union, and it was customary for turn-of-the-nineteenth-century, respectable, middle-class women to shun alcohol and lobby for its prohibition.²⁹ Mrs. Burton's admission that she drank was very helpful to Meredith's case, and he used this to insinuate that it was implausible that such a woman would sit by while others imbibed the free-flowing alcohol:

Q. You never put it to your lips at all?

A. No, I never had any.

Q. You had not had a drink that morning?

A. No, I never had any.

Q. You had not had a drink that morning?

A. No, Sir.

Q. No drink was supplied at your house that morning?

A. No, Sir.

Q. Did Wilkinson go out for a drink that morning?

A. No, not for me; he went for himself, I believe.

Q. Did you drink any portion of that drink?

A. No.

Q. I have Wilkinson's statement here that you did.

A. He told you an untruth, for I did not.

Here was a surprise stratagem indeed. It seems that prior to the preliminary inquiry Meredith had interviewed Harry Wilkinson, Mrs. Burton's good friend, and asked him to execute a written statement attesting that she had been drunk on the afternoon of 8 July. Mrs. Burton's former boarder had apparently betrayed her, and now the lawyer waved the statement under Mary Ann Burton's nose. Unshaken, the witness refused to budge from her own testimony.

Once having introduced the matter of the written statement, Meredith had to question Harry Wilkinson about it when he was called as a witness by the Crown later that day. Meredith set the stage by asking Wilkinson whether he was "fond of a little drop." Wilkinson was fairly jovial at the depiction, adding, "Yes, that is no story, you bet it ain't." Meredith pressed Wilkinson to describe how many rounds of beer the group had drunk on the afternoon in question, and Wilkinson agreed that they were "all jolly." Next Meredith turned to Mrs. Burton's participation:

Q. Did she have a drink?

A. I could not say to be honest.

Q. Be straight upon your word now.

A. Yes.

Q. She may have had a drink?

A. She may have, I could not swear to that one way or the other.

This was quite a turnaround from what Wilkinson was purported to have said in his written statement, and Meredith went after the man over the inconsistency.

Q. What is your impression, now Harry tell the truth, here's your statement ... "She was drunk all that day," that is your signature?

A. You must have changed that, by Jove.

Q. There is no change there.

A. That is my signature, I will acknowledge that.

Q. You mean to tell me that you did not state in the presence of three or four witnesses in my office, "Mrs. Burton was drunk all day?"

A. No.

Q. What did you say as to whether she was drunk or sober?

A. Never said a word as regards of drunk or sober.

Spectators in the courtroom must have been very confused by this point. Wilkinson conceded that he had signed the statement, but he was not prepared to hold to its contents. He refused to testify that Mrs. Burton was drunk, that she had even had a drink. He proclaimed complete ignorance over the state of her sobriety on the day in question. Meredith floundered a bit, futilely repeating his admonition to the witness to tell the truth, and concluded with a query designed to impugn Wilkinson's testimony altogether:

Q. You were asked whether she was drunk or sober and you tell me, now you cannot say, although you did say she was drunk? Do you mean to tell me she was not drunk that day, come and say that on your oath?

A. On my oath I did not know whether she was drunk or not.

Q. I want you to be careful. How many people were in the room where your statement was taken down?

A. Just three.

Q. You did not say in their presence that this woman was drunk that day? ... Is your memory poor?

A. Kind of poor.

Meredith must have been disappointed that Harry Wilkinson had not stood up well on the stand. At the start of the inquiry, Wilkinson's signed statement must have seemed like a trump card, held in reserve to demolish Mary Ann Burton's testimony regarding her professed sobriety. The best Wilkinson could manage in person was the hesitant protestation that he simply could not remember whether his former landlady had been drinking.

Wilkinson's admission of faulty memory provided only a minimal gain to the defence, impugning his credibility at large but doing little to straighten out the obvious inconsistency between the signed statement and the verbal testimony. In retrospect, it is difficult to know with certainty whether Mrs. Burton had joined in the drinking. She swore she did not. Wilkinson had contradicted this in the presence of witnesses in Meredith's law office. No one seemed interested in exploring the circumstances under which Wilkinson had been taken to Meredith's office to make such a statement. A man who was friendly with both the complainant and the accused, a man in need of money to support his confessed alcohol habit, and a man who had been uncomfortably proximate in location and time to the alleged incident of rape, Wilkinson's motivations for signing the statement and then refuting its contents can only be imagined.

What is clear in retrospect is that the intensity of interest in Mary Ann Burton's alcohol consumption had little to do with whether she was, in fact, raped. The defence wished to portray Mrs. Burton as an inebriate, an abandoned woman who drank with strangers on a weekday afternoon. The intent was to characterize Mrs. Burton as lacking in respectability, as the sort of woman who was not worth the trouble of convicting a man for rape. Within the context of the evangelistic fervour of the early-twentieth-century temperance movement, women who imbibed alcohol were perceived as a disgrace to their gender. Indeed, the Royal Commission on the Liquor Traffic had reported in 1895 that "drunkenness among the women" was "ten times worse than in men, because it causes them to lose their maternal instinct and feeling, and they become thoroughly degraded."³⁰ Newspaper reports fastened upon incidents of women's alcoholism with tenacity and prurience, portraying the consequent wreckage of home and family as shockingly deplorable and woefully inevitable.³¹

In the final portion of his cross-examination, Meredith also insinuated that Mrs. Burton was a sexually promiscuous woman. He clearly intended to shock the jurors with the following question, which came completely unexpectedly after the queries on alcohol:

Q. Did you go out and catch some young fellow by the privates and invite him in?

A. No, Sir.

Q. Did anything of that kind occur?

A. No, Sir.

Q. Fiddling with his privates?

A. No, Sir.

As he had with the question of alcohol, Meredith professed to be able to back up his assertion with independent evidence:

Q. I am told by a most respectable person that there was a man at your house and that you took hold of him and pushed him in the back way. Is that true?

A. No, Sir.

Q. That you at the back door caught hold of some man and ran him right in your back door?

A. It is a story, I did not Sir, I should not think of doing such a thing.

Q. Upon your solemn oath, about four o'clock, you were seen by a lady in the neighbourhood to take hold of a man who was dressed in black and shove him through your back door?

A. It is false.

Q. Not a word of truth in it?

A. No, Sir, false, false.

Q. If I put that lady in the box and she swears you did, that is untrue?

A. I would not care if you put a thousand, it is false.

Q. I have her statement in black and white?

A. It is false, Sir.

Mrs. Burton held firm throughout, never wavering in her denials of the alleged impropriety. Edmund Meredith did not call the "most respectable" woman who claimed to have observed such shenanigans. He had no need to call witnesses to back up his case at the preliminary inquiry. Although an accused person was entitled to do so, the hearing at this stage customarily consisted solely of Crown evidence. A preliminary inquiry was primarily designed to ascertain whether there was a "sufficient case" against the accused to warrant putting the matter over for a full-fledged trial at the next assizes. It also provided an opportunity for the defence to obtain disclosure of all the evidence that would be introduced against the accused at trial, to extract damaging concessions from Crown witnesses, and to figure out the most promising lines of future argument.³² Meredith took full advantage of these prospects, and seems to have positively revelled in his parry-and-thrust with Mary Ann Burton. At no time was this more evident than when he cross-examined Mrs. Burton on the specifics of the actual sexual attack:

Q. Gray caught hold of you by the breast?

A. That was when he caught hold of me, and I scrambled for him to let go.

Q. Did you holler out?

A. Yes, about as loud as I could.

Q. At the top of your voice?

A. I do not suppose I could holler at the top of my voice, the way he kept hold of me.

Q. He caught hold of you from the back?

A. Yes.

Q. Did that interfere with your mouth?

A. Could anybody hear and the door shut?

Q. Did you holler at the top of your voice?

A. I could not say whether I hollered at the top of my voice or the bottom, I hollered, I hollered as loud as I could.

Q. Where is the bottom of your voice?

A. I hollered as loud as I could.

Meredith was insinuating that Mrs. Burton could have called for help more effectively. His goal would have been to plant a seed of doubt over whether the sexual connection had really been against Mrs. Burton's wishes, or to raise the possibility that it had never happened at all. Mrs. Burton refused to concede the point, replying that she "hollered" as loudly as she could under the circumstances. The tenacity of the struggle between witness and lawyer did not diminish as the cross-examination went on:

Q. What did you call out?

A. Let me go, you beast, let me go.

Q. How many times did you holler that out?

A. I could not tell you.

Q. As near as you can?

A. I could not.

Q. Was it ten times?

A. I did not know what I was doing, I suppose.

Q. Was it ten times?

A. I could not count the times.

Q. Was it more than once?

A. Yes.

Q. More than twice?

A. I could not tell you.

The tone of the exchange suggests serious sparring between counsel and witness. At an earlier point in the cross-examination, Meredith had accused Mrs. Burton of becoming "wild" over his questions. "I am not getting wild," she retorted from the stand, "but you are asking me such ridiculous questions I cannot give you an answer." "Do not argue with me," was Meredith's next admonition. "I am giving the answers as well as I can," rejoined Mrs. Burton. Ironically, the determination and forcefulness with which Mrs. Burton resisted Meredith's inquisition seem to have inspired the defence lawyer to extend and escalate his cross-examination. The portion of the transcript that dealt with Mrs. Burton's depiction of the rape itself is typical. Mrs. Burton had described how she and Gray had fallen to the floor scuffling, and how she had tried to escape:

- Q. Did you yell while you were running?
A. No, sir, not as I know of.
Q. What did he do?
A. He got me around the waist and threw me away on the bed.
Q. You are sure of that?
A. I should not tell you if I was not sure.
Q. How did he get you in the room?
A. He lifted me right up and threw me.
Q. Got you in the bed room door?
A. Yes.
Q. Waltzed you in the hall and then into the bed room?
A. Yes.
Q. You did not invite him in?
A. I did not get as far as the door.
Q. How did he get you in the room?
A. He lifted me right up and threw me in the room.
Q. How much do you weigh?
A. I do not know.
Q. No idea?
A. No.

Later newspaper accounts would estimate that Mrs. Burton appeared to be “at least fifty pounds heavier” than Joseph Gray.³³ Meredith probably paused to let the physical bulk of the witness register more fully, and then continued:

- Q. He caught you and threw you two yards from this door and chucked you on the bed?
A. Yes, Sir.
Q. What were you doing with your hands?
A. Struggling to get away.
Q. How?
A. I do not know how, I was so excited.
Q. Do you know what you were doing with your hands at all?
A. No, I do not know.
Q. Do you mean to tell me this yarn occurred?
A. Yes, as true as God is my judge.

The references to “waltzing” and “yarns” were deliberately calculated to mock Mrs. Burton’s testimony. Yet, despite the disparagement, Mrs. Burton appears to have maintained both her position and her composure.

Next, Meredith attempted to ridicule the witness when she tried to describe how her clothes had been thrown into disarray when Joseph Gray tossed her upon the bed.

Q. He threw you across the centre of the bed?

A. Yes.

Q. Then your legs would just be about the end?

A. Yes, Sir.

Q. What part of your legs would come there?

A. I could not tell you exactly.

Q. Where were your clothes?

A. My clothes were all up, sir.

Q. Did you pull them up?

A. No, sir, they were all up the way he threw me.

Q. He threw you with your clothes up, right exposing your person? Did he throw you that way on the bed?

A. Yes, Sir.

Q. He conveniently threw you with all your clothes off your person; that is what you are swearing to?

A. Yes.

Meredith wanted to dwell on the manner in which Mary Ann Burton's clothes had come undone. He insinuated that Mrs. Burton must have volunteered some assistance in disrobing. When she denied this, in the final question in this sequence Meredith expressed disbelief that the petticoat, apron, and dress could have come "off" without deliberate effort. Mrs. Burton had initially testified that the clothes had come "up" not "off" as she was thrown to the bed. Now Meredith had tricked her into agreeing to a somewhat less feasible statement that the clothes were "off" rather than "up."

As his final shot, Meredith demanded: "You were after this man's money?" Mrs. Burton retorted: "You be very careful what you say." "I say you were after this man's money," repeated the lawyer. "If you do say so, you are speaking a falsehood, you are not a man fit to speak to. 'After this man's money,' it is disgusting. I refuse to speak to you any more," exclaimed Mrs. Burton. Strangely enough, the newspaper account of the "blackmail" exchange differed a bit from the official transcript. The *London Free Press* reported that Meredith "had quizzed" Mrs. Burton "for about an hour, during which time he had had her pretty well mixed up several times," and then Meredith had said:

"Be honest, now; you were after this man's money, weren't you?" "You insult me," cried the witness, and she rained a torrent of her opinion of a man who would ask any woman such a question upon the attorney's head until he was forced to appeal to his worship to stop the onslaught, only to be met with a smiling reply that he had started it. "Isn't it disgusting," said the witness, "that I have to stand for this?" "Oh, I guess it doesn't bother you very much, if the truth were known," replied the lawyer and the case proceeded.³⁴

Either the court reporter failed to record the dialogue fully in the official transcript, or the newspaper reporter had embellished his copy. But both versions captured something of the bitterness of the repartee, and both revealed a witness who continued to stand her ground no matter what accusations were hurled her way.

The running commentary that accompanied the press narration of Mary Ann Burton's case was somewhat unusual. Early-twentieth-century reporters occasionally interlaced the factual descriptions of court proceedings with their own opinions of the witnesses, but this case seemed to inspire even greater journalistic licence.³⁵ The *London Free Press* reporter clearly thought that Mrs. Burton had been bested by defence counsel Meredith. In one paragraph, he indicated that the "warm wordy tilts" exchanged between the complainant and the lawyer had left Mrs. Burton "mixed up occasionally" and "pretty well mixed up several times." Characterizing the witness as "extremely voluble," the paper noted that Meredith had had "troubles of his own in getting coherent answers from her."³⁶ The *London Advertiser* advised that, "when giving her story," Mrs. Burton did not give "exactly the same account of certain details as in the first recital." The reporter added that "while being cross-examined by Mr. Meredith, Mrs. Burton became greatly enraged by some of the questions asked her, and talked back freely to the attorney for the defence."³⁷

It was quite true that Mary Ann Burton's testimony was not wholly consistent. She had been unclear over the time of her arrival home. She had also been confused over the exact time that Harry Wilkinson arrived in her kitchen, and she had stipulated two different times for his departure – between 4:30 and 5:00 P.M., and after the five o'clock whistle. She had described her clothes as thrown upwards, and then responded in the affirmative when Meredith characterized them as thrown off her body. But a thorough and careful reading of the full examination and cross-examination reveals little other discrepancy in the witness's evidence. The depiction of the complainant as "extremely voluble" is even more bewildering. Mrs. Burton's responses to the lawyers' questions were brief and to the point. She rarely answered a question with more than a one-sentence reply. Meredith's curt upbraiding of the witness for "doing all the talking" rang false at the time, yet the reporters seem to have taken their cue from the defence lawyer, parroting his caricature. It was almost as if the lawyer and the journalists were astonished that a rape complainant could find the words to resist the onslaught of cross-examination at the hands of an experienced defence lawyer. It was as if any reply struck the observers as too long-winded, too fulsome, arrogant.

The reference to Mrs. Burton as "incoherent" is equally odd. The reporters, of course, had the advantage of viewing the cross-examination live, whereas a century later, we are restricted to the typed transcript of the proceedings.

However, the surviving records depict a witness who spoke in sentences, offered clear replies to the questions posed, and who responded logically, if occasionally unhelpfully, at all times. It was not that she was "mixed up" or "incoherent," but that she refused to be pushed into testifying to such things as the exact time that certain events took place, the number of times she called for help, the number of pounds she weighed, and other matters that she could not remember with accuracy. She explained that she was not mixed up about the fact of the rape, who had done it, or that the sexual connection was forced upon her. In fact, she was mixed up about very little. Her hesitance in providing the answers that Meredith was seeking appears to have been a determined refusal to testify beyond her honest recollection.

The description of Mrs. Burton as "enraged" and "raining a torrent of her opinion" upon the lawyer questioning her also seems somewhat exaggerated. The transcript reveals a surprising degree of restraint. Mrs. Burton continued to address Meredith as "Sir" throughout her testimony, replying "yes, Sir," and "no, Sir" throughout. When Meredith tried to bait her with queries about what she meant by the "bottom of her voice," she replied politely and in a measured fashion, and did not get drawn into a nasty exchange. The closest she came to responding in kind was when Meredith asked her, several times over, exactly what Harry Wilkinson had been "helping" her do before Joseph Gray arrived that afternoon. He had apparently been helping his former landlady wash the dishes at the time, and she replied: "I told you twice, 'wash up.'" "Tell me the third time," mocked Meredith. "Wash up," replied Mrs. Burton, deliberately. "Don't be so impertinent about it," interjected Meredith. This was the point at which Mrs. Burton exclaimed, in what must be one of the most powerful statements ever voiced by a Canadian rape complainant, "Don't you bully me, I want to speak justice, and justice I want if there is justice to be had."

Meredith's cross-examination utilized virtually every technique designed by defence lawyers to demolish a woman testifying about rape. He insinuated that Mary Ann Burton was an inebriate, drunk all day and swilling beer with strangers in her woodshed. He suggested that Mrs. Burton had been the sexual aggressor, waylaying some man whom she dragged into her home for a sexual tryst. He claimed that Mrs. Burton had not cried out, that her description of the physical act of rape was unbelievable, the fantasies of a woman who had actually consented to a voluntary sexual liaison or imagined the whole affair. He asserted that the boarding-house keeper was an extortionist, scheming to extract money from a relatively well-to-do working man by charging him with a fictitious incident of rape. He insisted that Mrs. Burton's recollection of the details of the sexual assault was faulty, inconsistent, and ultimately, incredible in a court of law. Throughout the burdensome ordeal, Mrs. Burton maintained her dignity, held to her narrative

of the incident, and spoke with conviction about the responsibilities of the justice system towards victims of rape.

Betrayal From Other Quarters

The Crown put its full case before the court in the preliminary inquiry. There were some obvious, gaping holes. Crown Attorney James McKillop did not call either of the police officers who investigated the crime scene, an unusual decision in the context of a rape prosecution, where most prosecutors routinely examined the officer who had interviewed the complainant. Constable Highstead and Detective Nickle had been dismissive of the case from the outset, and McKillop may have been concerned that their antagonistic relationship with Mrs. Burton would render them all too helpful to his opponent, defence counsel Meredith, during cross-examination. However, both officers had seen the complainant immediately after the attack and could testify firsthand to her bruising, her physical exhaustion, and her distraught condition. McKillop's decision not to call them prevented the admission of this valuable evidence.³⁸

McKillop did call the physician who had been instructed to examine Mrs. Burton on 8 July. His replies to the Crown attorney's questions were helpful as far as they went. He testified that he had examined Mrs. Burton's "person and also her clothing very carefully." He discovered "five or six" bruises on her left breast, and a swelling behind her left shoulder joint, all apparently "quite recent." Mrs. Burton would later assert in her re-examination that she had suffered serious bruising around her legs, and that Dr. Seaborn had seen these at the time of his examination as well. Perhaps he had forgotten to note the leg injuries in his report, since he said nothing about them in his testimony in court. Without explaining why, Dr. Seaborn also told the court that he had not conducted an internal vaginal examination of the woman, so could give no further details regarding "her private parts." This was another serious omission in the Crown's case. In the absence of any proffered rationale, one can only wonder whether Dr. Seaborn had decided that Mrs. Burton was beneath his consideration, unworthy of the full attention customarily required for medical examinations of rape victims. When McKillop asked what Dr. Seaborn had done with Mrs. Burton's clothing, the physician explained that he had taken away pieces of her petticoat and apron "because there were spots of moisture on them that might possibly have been semen." The logical follow-up, as to what examination had been made of the spots since, revealed a shocking answer: absolutely nothing. Even more shocking, no one seemed apologetic about the omission, no one suggested an adjournment to allow the proper tests for semen stains, and Mrs. Burton was left with no idea why Dr. Seaborn had cut up her apron and petticoat that evening.

Edmund Meredith's cross-examination of Dr. Seaborn was masterful. He asked the physician whether Mrs. Burton's bruising might have been caused in "any number of different ways," and Dr. Seaborn's supportive response was that the injury might have occurred in a "great many ways." He asked the doctor whether the swelling might have been caused by something other than force, and Dr. Seaborn replied: "I could not say anything about it." As for the clothing, he got Dr. Seaborn to state that neither Mrs. Burton's drawers or clothes were torn, and that he could see "no evidence of a struggle at all as far as the clothes were concerned." The two men got into a bit of a spat over the semen stains, with Dr. Seaborn maintaining that it was not too late to run tests upon the stained portions of the clothing, and Edmund Meredith insisting that it would be "impossible" to draw any reliable conclusions after such a delay. Medical texts of the time maintained that seminal stains could be reliably detected on clothing even seven years after the event, but this would remain a moot point.³⁹ No one ever pursued the matter, the stains were never subjected to chemical analysis, and a potentially valuable piece of evidence was left festering in Dr. Seaborn's surgery.

Dr. Seaborn's apparent indifference to the prosecution of Mrs. Burton's case may have reflected common attitudes among male physicians of the time. Medical textbooks in circulation during this era urged doctors to exercise skepticism when examining women and children complaining of rape. One of the most popular treatises on medical jurisprudence asserted as common knowledge that it was doubtful that a rape could be committed "on a grown female, in good health and strength," adding, "For a woman always possesses sufficient power, by drawing back her limbs, and by the force of her hands, to prevent the insertion of the penis, while she can keep her resolution entire."⁴⁰ Physicians were cautioned that "false accusations" were "frequently made for the gratification of malice and revenge."⁴¹ One eminent forensic manual urged doctors not to be the "dupes of designing persons," estimating that for every case of "real rape tried on the circuits, there were on average twelve pretended cases."⁴² Texts advised doctors to go beyond the simple observation of the vulva, the vagina, and stains on the underclothing. They were told to consider in addition the patient's "walk or attitude, bodily and mental," "bruises and injuries found on the body generally," the "physical development of the limbs for powers of struggling," and whether the woman's story sounded "concocted or genuine."⁴³ Many physicians also seem to have believed that physical force was an acceptable part of sexual coupling. One widely circulated treatise advised readers that signs of the "employment of force, such as contusions on various parts of the extremities and body" were "compatible with final consent on the part of the female."⁴⁴ Another text asked physicians to consider whether "the marks of violence found on the genital organs" were "no more than you

would expect to find in a girl who had really given consent."⁴⁵ The issue of class also permeated medical diagnostic practices. Forensic medical specialists wrote openly about the need to be particularly skeptical of working-class women. One text-writer commented: "Women of the lower classes are accustomed to rough play with individuals both of their own and of the opposite sex, and thus acquire the habit of defending themselves against sportive violence. In the majority of cases such a capacity for defence would enable a desperate woman to frustrate the attempts of her intentioned ravisher."⁴⁶ Dr. Seaborn's failure to conduct a complete examination and his half-hearted testimony may have simply reflected his dismissive attitude towards a working-class complainant whose physical injuries failed to meet his own estimation of what was required as evidence of a real rape.

The final witnesses for the Crown were the young boys who had passed by Mrs. Burton's home on 8 July, stopped to examine the broken window, and then rescued the bound and gagged woman. Percy Sullivan didn't help the picture much when he testified that, at first, he and his friends thought nothing of the smashed window, knowing there had been "trouble there before," and assuming it was "just a quarrel" between Mr. and Mrs. Burton, who fought "frequently." James Ingray was a somewhat stronger witness, describing how he and his friend approached the half-open door between 5:00 and 5:30 P.M. and saw a groaning woman, lying flat on her back, her head between the parlour door and her feet between the street door. Ingray testified that there was a rope tied "pretty tight" around Mrs. Burton's head that had left "a blue line right around her neck." Ingray swore that he had untied the rope with his fingers, but Percy Sullivan also testified that it was he who pulled out his knife and cut it away. According to Sullivan, the rope was loose enough to allow him to get two or three fingers down behind it. "That would not be very tight," noted defence counsel Meredith. "You can stretch the flesh," replied Sullivan. "It would be like this handkerchief on my neck?" queried Meredith. "Yes, a little tighter," replied the witness. "Nothing of any consequence?" concluded Meredith. "No," stated Sullivan. "It was not necessary to cut it, it was not bothering her very much?" continued Meredith. "I just wanted to cut it," offered Sullivan, without more. The discrepancy between the witnesses made the press account in the evening's news, with the *London Free Press* noting that "many of the witnesses varied in their stories more or less materially," one testifying he had "cut the string from Mrs. Burton's neck" and "a moment later" another boy swearing he did the deed.⁴⁷ The divergence of opinion on the tautness of the rope was equally damaging.

Both witnesses were consistent, however, concerning the bulky handkerchief stuffed in Mrs. Burton's mouth. Percy Sullivan described how the handkerchief "came up bit by bit" and fell out on the floor as the complainant