

New Jersey Court of Errors & Appeals

Between

JOHN W. PURNELL,
Petitioner-Respondent,

and

MAUDE DICKERSON PURNELL,
Defendant-Appellant.

On Petition for
Divorce.

Appellant's
Brief.

I. No Intent on the Part of the Wife to Desert Her Husband Was Shown.

The testimony discloses no intent whatever on the part of the wife to desert the husband. It appears that the original separation was by mutual consent, the wife living in New York City with her mother and the husband at Pine Brook, New Jersey, where he was engaged in teaching school (Testimony, pages 9, 17). The letters of the husband offered in evidence, affectionate at first, gradually became shorter, less frequent, and finally mere notes, written in cool terms (Exhibits, page 79). It is quite evident from the whole case that the respondent was desirous of getting rid of his wife, and asks the Court to decree that the separation was desertion on her part. Neither the intent

necessary under the decisions, nor any unjustified refusal to live in the home provided, has been shown.

Hunt vs. Hunt, 2 Stew., 96.

Taylor vs. Taylor, 1 Stew., 207.

Wood vs. Wood, 18 Dick., 688.

There is no satisfactory proof that the husband's consent to the separation was withdrawn and the marital duty demanded, nor do the letters in the case sufficiently corroborate the testimony of the respondent to establish wilful desertion.

Currier vs. Currier, 2 Robbins, 7.

II. The Separation was not Against the Will of the Husband.

As has already been stated, the parties began living apart by mutual consent. It is abundantly proved by the evidence that this arrangement was entirely agreeable to the husband; that he was living at Pine Brook with his mother, practically free from all matrimonial obligations; that his contributions to the support of his wife and child were meagre even in comparison to his earnings (Testimony, page 23); that he sought in every way to discourage a resumption of cohabitation.

Under the rulings in a long line of cases the petitioner's case must fail also upon this ground.

Smithkin vs. Smithkin, 17 Dick., 161.
 Grant vs. Grant, 9 Stewart, 502.
 Newing vs. Newing, 18 Stewart, 498.
 Bowlby vs. Bowlby, 10 C. E. Green, 406.
 Ojserkis vs. Ojserkis, 62 Atl., 113.
 Sterling vs. Sterling, 65 Atl., 548.

III. The Wife Herself Sought to Terminate the Separation.

The parties are agreed as to the visit of the wife to the husband at Pine Brook in October, 1902 (Testimony, pages 13, 46). From her testimony it appears that this visit was with the express object of terminating the separation, and that she at this time demanded of her husband that he provide her with a home and fulfill his obligations to her, and that he refused to receive her (pages 46, 47, 67). The husband endeavors to explain her visit as being intended merely to secure a home for the child. The Vice-Chancellor held that the story of the husband was true and that of the wife false. It is submitted that the evidence clearly shows the contrary; that the wife was doing all in her power to end the separation, and that the husband then and there refused her request. Under such circumstances the petitioner's case must fail.

Costill vs. Costill, 2 Dick., 346.
 Chipchase vs. Chipchase, 3 Dick., 549.
 Affirmed on Appeal, 4 Dick., 594.

IV. There was Reasonable Ground for the Husband to Suppose that His Advances or Concessions to the Wife would Terminate the Separation.

The Vice-Chancellor, in his conclusions, decided the case upon the doctrine indicated in *Hall vs. Hall* (15 Dick., 469), deciding that the husband had no reason to suppose that any *bona fide* invitation on his part subsequent to the meeting in October, 1902, would bring her back. This conclusion is not justified by the evidence in the case. It is there shown that there was every reason for the husband to assume that honest effort on his part would induce his wife to return to him. This is borne out by her disposition toward him previously, by her correspondence and by her visit to Pine Brook (page 13). The case does not fall within the case of *Hall vs. Hall*, nor *Trall vs. Trall* (5 Stewart, 231), and no facts are shown excusing the husband from his obligation to use all reasonable efforts to end the separation.

For the reasons above stated it is respectfully submitted that the decree of the Court of Chancery should be reversed.

PIERRE F. COOK,
Solicitor of Appellant.

New Jersey Court of Errors and Appeals.

Between

JOHN W. PURNELL,
Petitioner-Respondent,

and

MAUD DICKERSON PURNELL,
Defendant-Appellant.

**On Petition for
Divorce.**

MEMORANDUM FILED BY EDMUND WILSON,
SOLICITOR OF RESPONDENT.

The evidence presents all the elements of desertion, obstinate and wilful in character, and continued for the statutory period. Both parties to the suit are negroes.

At the time of his marriage the defendant was a school teacher. He was then and is still actively engaged in his profession at Pine Brook, Monmouth County, New Jersey, an Utopian spot where negro children are taught by negro instructors. The wife at the time of the marriage lived in New York and has persisted in living there during her whole married life. They were married in April. A child was born in June. Evidently there had been an anticipation of matrimonial felicity. The reason

of the desertion is clearly disclosed. The marriage was a necessity and the wife probably never had and certainly never manifested any real affection for her husband. His station in life did not please her and his place of abode in the pines of New Jersey was too primitive and rustic to meet her ideas. This is what she told her husband. (See evidence of John W. Purnell, pages 6 to 17.) This she also gave to Samuel and Rowland Polhemus as the reason why she did not occupy the home her husband had provided for her. (See page 27, lines 20 to 40; page 41, lines 20 to 40.) When Rowland Polhemus remonstrated with her for failing to live in her husband's home she replied, "I am out for a good time and am going to have it."

The defendant seeks to escape the legal effect of her desertion continued through a period of several years, by claiming that she offered to return to her husband in August, 1902. She asserts that she did then in fact return to him, actually going to the house where he lived in Pine Brook. (Page 47, line 20.) She is contradicted flatly by her husband. He says emphatically that she made no offer to live with him and expressed no wish to resume their marital relations. He says that upon that occasion she sought merely to leave the baby in his care. He told her that he was willing to support the child as he had done in the past, but could not keep it then, as he was working and his mother was away and he had no one who could give the child personal attention. The wife endeavors to support her version of what happened by the testimony of Obey, who drove her to her husband's house that day. It may be doubted whether he heard the conversation under the circumstances which he disclosed in his testimony, but in any aspect what he claims to have heard does not help the wife but it rather tends to corroborate the husband. He admits that he heard the wife demand "what are you going to do for me?" (Page 67, line 30.) It should be

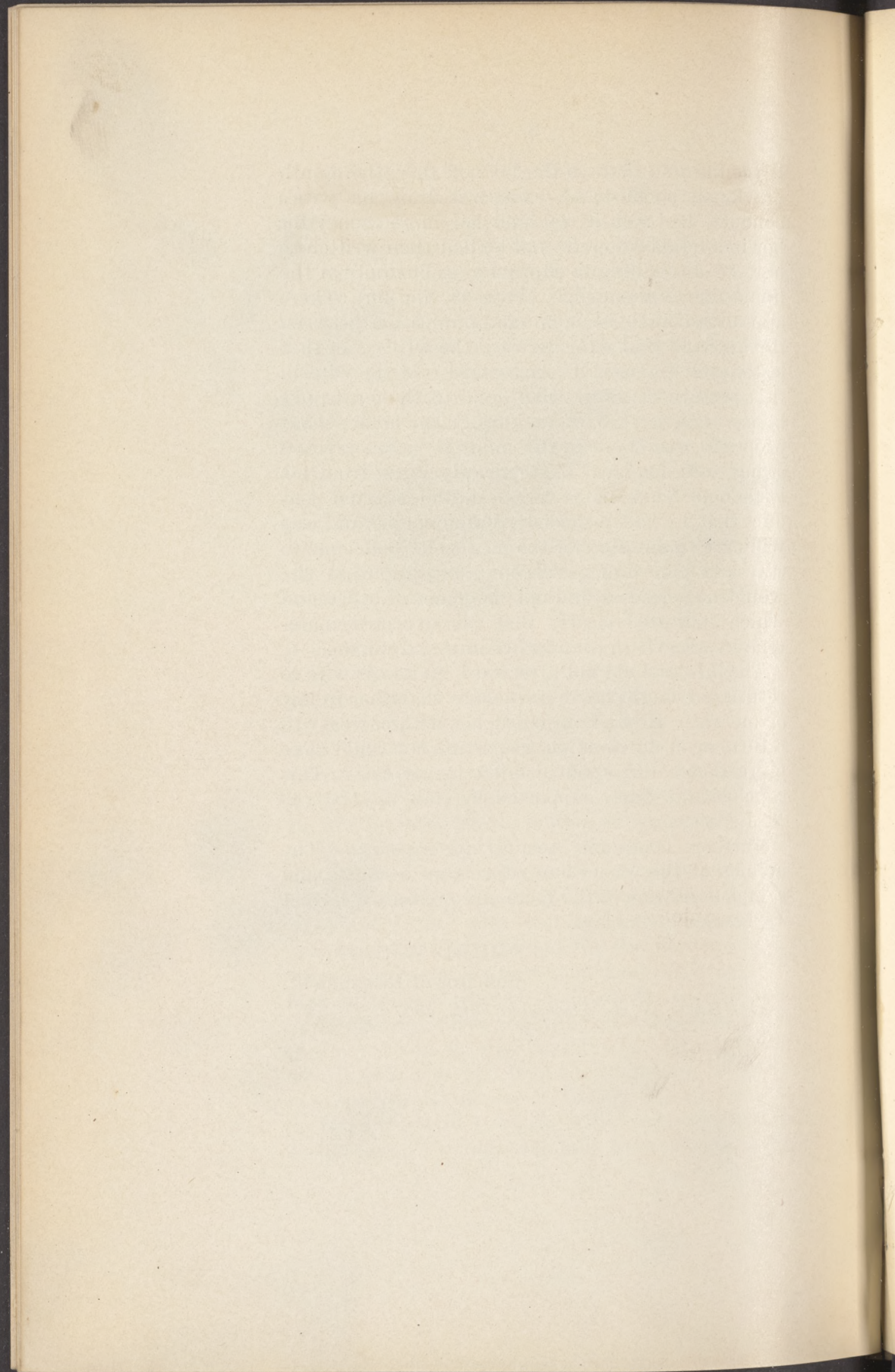
borne in mind that on the 15th of July (the month previous) the husband, exasperated by his wife's conduct, had refused to send her more money for her individual support, and he had then written to her, "I am willing to support you, but only at the home I have provided." (Page 83, line 40.) There appears to have been no communication between the husband and wife between the writing of that letter and the visit of August 2d. If the wife in this posture of affairs had gone to the husband's house with a view of making it her home, what propriety was there in the inquiry "what are you going to do for me?" She already knew from his letter and from his previous statements and conduct that he had provided a home for her and was willing to maintain her there. If she had come to stay and join him in decent companionship she would have said so and not made use of a demand which indicated clearly that she expected maintenance elsewhere than in her husband's home.

The husband did not afterward invite his wife to return nor ought he to have done so, either in law or morals. He had burdened her with entreaty to return upon previous occasions and she could have no further claim upon his affection or care. This conclusion is fairly supported by *Hall vs. Hall*, 60 N. J., 469.

Further comment seems unnecessary. The opinion of the Vice-Chancellor is an accurate and complete resume of the facts and presents a correct application of the law.

EDMUND WILSON,
Solicitor of Respondent.

Red Bank, N. J., December 26th, 1907.



INDEX.

	PAGE
Petition.....	1
Answer.....	4
Conclusions of Vice-Chancellor.....	85
Final Decree.....	91
Notice of Appeal.....	92
Petition of Appeal.....	93
Answer to Petition of Appeal.....	95

PETITIONER'S TESTIMONY.

John W. Purnell,	Direct Examination	6
“	Cross “	17
“	Re-direct “	33
“	Re-cross “	35
“	Re-direct “	72
Thomas Cronmer,	Direct “	25
“	Cross “	27
Samuel Polhemus,	Direct “	26
“	Cross “	29
“	Re-direct “	77
Thomas Murray,	Direct “	38
Roland Polhemus,	Direct “	39
“	Re-direct “	77

DEFENDANT'S TESTIMONY.

Maude D. Purnell,	Direct Examination	43
“	Cross “	50
William H. Dickerson,	Direct “	65
William H. Oby,	Direct “	66
“	Cross “	68
Exhibits.....		79

Petition

FILED FEBRUARY 8, 1906.

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In Chancery of New Jersey.

To Honorable WILLIAM J. MAGIE,

Chancellor of the State of New Jersey:

The petition of John W. Purnell of Pine Brook in the County of Monmouth and State of New Jersey, respectfully shows that your petitioner was married the twenty-eighth day of April, nineteen hundred and one, at No. 237 West Thirty-seventh Sreet, in the City of New York, and State of New York, to Maude Dickerson his present wife; that at that time and for ten years prior to that time your petitioner had resided at Pine Brook aforesaid, and has resided at Pine Brook aforesaid continuously for sixteen years last past, and is still residing there. Your petitioner further shows that at the time of his marriage the said Maude Dickerson was living in the City of New York with her mother. That at the time of the marriage of the said Maude Dickerson with your petitioner she was pregnant and about to become a mother and charged your petitioner with being the author of her trouble, and that shortly thereafter, namely in the month of June, nineteen hundred and one, she gave birth to a female child who is still living and who is named Gwendolin. Your petitioner further shows that in immediate preparation of the marriage he had rented a house at Pine Brook aforesaid, and had furnished the same completely with a view of at once removing his wife from New York to Pine Brook, and for the purpose of living with her there as man and wife; that after the marriage his said wife refused to come to Pine Brook and live with your petitioner, say-

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ing that she wished to stay with her mother in New York until after the birth of her child. To this your petitioner consented. After the marriage and for about a period of ten months thereafter, your petitioner visited his said wife in New York about once in two weeks, being unable to go oftener by reason of the fact that he was constantly engaged in teaching school in Pine Brook; that after the child was born as aforesaid in the month of June he urged his wife to live with him in the home which he had prepared at Pine Brook. Up until the month of March, nineteen hundred and two, she gave various excuses but did not in fact accede to your petitioner's request. In March, nineteen hundred and two, she refused to go with him and told him that she would not live with him. From the marriage until that time your petitioner had amply provided for her maintenance and support and the maintenance and support of the child. After this interview in March, nineteen hundred and two, your petitioner wrote to his wife telling her that he was still maintaining his home in Pine Brook and that the house was ready for her occupation and that he wanted her to come there and live with him. To this she made no response. From the separation in March, nineteen hundred and two, above described, until the present time your petitioner has not supported his said wife although he maintained their child until about two years ago, the child being in the custody of his said wife. That during the last two years he has been ready and willing to support and maintain the child at his home in Pine Brook, but his said wife refused to let your petitioner take the child for that purpose. Your petitioner is informed and verily believes that his said wife still resides in the City of New York and has resided there continuously since the time of their marriage except for a few weeks which your petitioner is informed she spent during one summer at Asbury Park, in the State of New Jersey.

40 And your petitioner further shows that for more than two years last past his said wife has wilfully, con-

tinuously and obstinately deserted him. And your petitioner further shows that only one child was born of the marriage, namely, the child aforementioned.

And your petitioner therefore respectfully prays that he may be divorced from his said wife; and that he may have such further and other relief as may be equitable and just.

10

And your petitioner will ever pray.

EDMUND WILSON,
Solicitor and of Counsel
with Petitioner.

County of Monmouth, }
State of New Jersey, } ss.:

John W. Purnell, the petitioner in the foregoing petition being duly sworn says that his complaint in said petition is not made by any collusion between him and the defendant in said petition, for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the petition.

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Sworn and subscribed to before me
this 3rd day of February, A. D., 1906.

JOHN W. PURNELL.

WARREN H. SMOCK,
M. C. C., of N. J.

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IN CHANCERY OF NEW JERSEY.

10	Between JOHN W. PURNELL Petitioner, and MAUDE DICKERSON PURNELL, Defendant.	} On Petition for } Divorce. } Answer. } Filed July 29, } 1907.
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The answer of Maude Dickerson Purnell to the petition of John W. Purnell, Petitioner.

This defendant for answer to said petition or unto so much and such parts thereof as she is advised is material and necessary for her to make answer unto, answers and says:

That it is true as stated in the said petition that the petitioner was married on the twenty-eighth day of April, nineteen hundred and one in the city of New York and State of New York, to the defendant.

And this defendant further answering admits that at the time of said marriage she was living in the City of New York with her mother.

And this defendant further answering denies that the petitioner urged her to live with him at Pine Brook, New Jersey, or that in March, nineteen hundred and two or at any other time she refused to go with him or told him that she would not live with him, or that at any time since said marriage the petitioner has amply or adequately provided for her maintenance and support and the maintenance and support of her child.

And this defendant further answering denies that the petitioner at any time wrote to her telling her that he was maintaining his home in Pine Brook, or that the house was ready for her occupation, or that he wanted her to come there and live with him.

And this defendant further answering admits that

she still resides in the City of New York and has resided there continuously since the time of said marriage with the exception of a few weeks which she spent away from that city.

And this defendant further answering denies that for more than two years previous to the filing of said petition or at any other time she has wilfully, continuously and obstinately deserted the said petitioner, and says that the charge of desertion made in the said petitioner's petition against her is wholly untrue and on the contrary thereof this defendant avers the truth to be that she has always since her marriage with the said petitioner faithfully regarded towards him her marriage vows, and further that she is entirely without means for the support of herself and the child of herself and the petitioner except that derived from her daily labor. 10

And this defendant further answering charges the fact to be that the petitioner in fact deserted her on or about the thirtieth day of October, nineteen hundred and two and has never since that time returned to her. 20

And this defendant humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

MAUDE DICKERSON PURNELL,
Defendant.

PIERRE F. COOK,
Solicitor for and of Counsel
with Defendant. 30

Chancery Chambers, Jersey City,
Tuesday, March 26th, 1907.

IN CHANCERY OF NEW JERSEY.

10	Between JOHN W. PURNELL, Petitioner, and MAUDE DICKERSON PURNELL, Defendant.
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Transcript of shorthand notes of testimony, taken in
the above stated cause, at the Chancery Chambers in
20 Jersey City, on Tuesday the 26th day of March, 1907,
before his Honor Eugene Stevenson, Vice Chancellor.

Appearances:

EDMUND WILSON, Esq.,
For Petitioner.

PIERRE F. COOK, Esq.,
For Defendant.

30 JOHN W. PURNELL, a witness produced in his own
behalf, being duly sworn says:

Direct Examination by Mr. Wilson:

Q. Where do you live?

A. At Pine Brook, New Jersey.

Q. How long have you lived there?

A. About sixteen years.

Q. What is your business?

A. School teacher.

40 Q. And where do you teach school?

A. At Pine Brook.

Q. You are the moving party in this case, the complainant?

A. Yes.

Q. Asking for a divorce from your wife?

A. Yes.

Q. When were you married to her? A. In April, 1901.

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Q. And where were you married?

A. New York City.

Q. Do you remember whereabouts in New York?

A. I think it was 326 West 37th Street.

Q. And with whom was your wife living at that time?

A. With her mother.

Q. Had she formerly lived in Pine Brook, or in that neighborhood?

A. She was born there.

20

Q. And you had known her for a number of years prior to that time?

A. No, sir.

Q. How long had you known her?

A. But a short time.

Q. Well, how long?

A. I am not so sure about that. I know it was comparatively a short time.

Q. Was there a child born to her after your marriage with her?

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A. Yes.

Q. When was the child born?

A. In June, the same year.

Q. You were married in April?

A. Yes.

Q. Now, in preparation for this, did you do anything by way of providing a home?

A. Yes.

Q. What did you do?

A. I secured a house.

40

Q. Where?

A. At Pine Brook.

Q. Of whom did you rent it?

A. Mr. Thomas Cranmer.

Q. Mr. Cranmer a white man?

A. Yes.

Q. How long before your marriage did you procure the house?

10 A. Well, it was on the eve of the marriage. That is to say, I had engaged the house to occupy it at the time of marriage, but there was to be another party in it, and for that reason I will say a few weeks.

Q. You mean in the occupation of it?

A. Yes.

Q. But you had arranged to occupy it some time prior to that?

A. Yes.

20 Q. Did you furnish this house in anticipation of your marriage?

A. Yes.

Q. What sort of furniture did you put in it?

A. Well, I had dining-room furniture; well, parlor furniture, had a piano, a horse and carriage,—two sleeping rooms.

Q. Was the house equipped for occupancy?

A. Yes.

Q. And was it fit and suitable for occupancy in every way?

30 A. Yes.

Q. Were you living with anyone at that time?

A. Yes.

Q. Who?

A. My mother.

Q. Prior to your marriage did you tell your wife that you had prepared this home at Pine Brook?

A. Yes.

Q. Were you teaching then at Pine Brook?

A. I was.

40 Q. (By the Court): Were you living in New York?

A. No, sir, at Pine Brook.

Q. With your mother?

A. With my mother.

Q. Was your mother the sole occupant of the new home that you had prepared, you and you mother?

A. Yes.

Q. That is, during the time of preparation?

A. Yes.

Q. And you had designed it, you say, for the occupancy of yourself and wife? 10

A. Yes.

Q. Did you tell her before your marriage that you had prepared this home?

A. Yes.

Q. And told her that you expected her to live there?

A. Yes.

Q. Did she make any complaint about that at that time?

A. Not at that time.

Q. Now, after she was married, why didn't you take her to Pine Brook, to live in the house? 20

A. It was arranged that she should wait until the birth of the child.

Q. To stay with her mother?

A. To stay with her mother.

Q. Was that her arrangement, or yours?

A. Well, it was her suggestion.

Q. Did you acquiesce in that arrangement?

A. I did.

Q. And the child was born, you say, in June? 30

A. In June.

Q. What then, if anything, was done about her coming to Pine Brook? Did you ask her to come at that time?

A. Shortly afterwards.

Q. What do you mean by "shortly afterwards?"

A. Well, I mean within a month.

Q. When she was up and able to be around?

A. Up and able to be around. I waited until then. I found out that expenses were running so high and 40

that my salary was so small that I couldn't afford to do other than to have her with me.

Q. Were you paying her board in New York after your marriage?

A. I was giving her money to do that with.

10 Q. You say within about a month, or such a matter, after the baby was born you talked with her about the matter of coming to Pine Brook to live?

A. Yes.

Q. What did she say, if anything, to that suggestion?

A. Well, she gave me various excuses for not doing so.

Q. What were some of them, if you remember them?

A. One was that she dreaded the idea of leaving her mother and the city.

Q. Didn't like to leave the city?

20 A. Didn't like to leave the city.

Q. Yes—well, what else?

A. And then another as to having to do various things in connection with the baby, that she could do them better there in New York.

Q. What do you mean by various things in connection with the baby?

A. In the way of seeing for the baby.

30 Q. How many times after the birth of this child down to March, 1902, that being the time when it was alleged by her conduct she deserted you—how many times between the birth of the child, which was in June, 1901, down to March, 1902, did you ask her to come to Pine Brook to live with you?

A. At each time of my visit, and I should say they were about from two to three weeks.

Q. From two to three weeks apart?

A. Yes.

40 Q. How frequently did you visit her immediately after your marriage and down to the time of the birth of the child?

A. (Question not answered).

Q. You have just now said you visited her every two

or three weeks after the child was born; did you visit her more frequently after the child was born?

A. Immediately after the birth of the child, very frequently.

Q. Why didn't you come to see her oftener?

A. My business would not permit me to.

Q. What about the expense?

A. I was not making the money to afford more frequent visits. 10

Q. (By the Court) : What salary did you receive?

A. About \$48.00 a month.

Q. For how many months?

A. Nine only.

Q. Well, now, you say upon the occasion of these visits, which were two or three weeks apart, between June and March, upon each of these occasions you asked her to come to Pine Brook to live?

A. Yes. 20

Q. Were you maintaining the house during all that time at Pine Brook?

A. Yes.

Q. And you say that she gave various excuses?

A. Yes.

Q. What, if anything, happened in March, 1902?

A. She declared to me that she would rather be dead than to live at Pine Brook.

Q. What else did she say about coming there? Did she say she would come or would not come? 30

A. Would not.

Q. Where did that conversation occur? In her mother's house in New York?

A. Yes.

Q. Did you make any effort to persuade her to come to Pine Brook?

A. I did.

Q. And with what result?

A. With no result whatever. That is to say, with a complete denial—complete refusal—I should say. 40

Q. She said she wouldn't come?

A. Yes.

Q. She said she would rather be dead than to live at Pine Brook?

A. Yes.

Q. Did she give any reason for this?

A. No, specific reason.

10 Q. In your talk didn't she give any reason why she didn't want to come to Pine Brook?

A. Well, sometimes she would say: "I know that I won't be happy if I should come there," furthermore," she says, "I know that your mother thinks me a pretty ill-sort of woman," and the like; and I told her, "Well, that has nothing to do with it; my mother is simply there awaiting your arrival. She has done the drudgery work; she has cleaned the house."

20 Q. Your mother was ready to go out as soon as she came?

A. Ready to go out and I explained that to her.

Q. After this interview in March, how frequently did you see her?

A. March, 1902?

Q. When you say she said she would not come to Pine Brook, she would rather be dead. How often did you see her after that?

A. I saw her some time after that. I wouldn't venture to say just how long.

30 Q. Did you ever have any further talk with her about coming to Pine Brook? Did she ever say after that that she would or would not come to Pine Brook?

A. Yes.

Q. When was that?

A. That was in 1902, after summering at Asbury Park.

Q. Did she summer at Asbury Park?

A. She summered at Asbury Park in 1902.

Q. Did you see her there at Asbury Park?

A. No, sir.

40 Q. You say after she had summered there; where did you see her?

A. I saw her at Pine Brook.

Q. What talk did you have with her then?

A. She brought the baby there and I was alone. My mother was away working with someone that you know at Lakewood, and I was quite alone, and I said to her like this: "I am not"—

Q. Were you in your own home, in this same house 10
that you provided?

A. Yes, she drove there and brought a small vaise with a few belongings of the child. I said, "Now I am not prepared at this time, but I am prepared to support the child where or with whom you name." She refused to take the money I offered her, that I was willing to advance to secure her a place, the child a home—mother not being at home, and, of course, I being at school I couldn't alone look after the child, and she refused to take it, and I finally gave the money to 20
the driver—Mr. — I don't know whether his name was Obey or Obry.

Q. How much money did you give her?

A. I think it was ten dollars.

Q. For what purpose?

A. For the purpose of securing a place for the child.

Q. Some place there at Pine Brook?

A. Any place that she might name.

Q. Before that time, as I understand, down to March, 30
when you had this separation with her, you sent her money for her board and maintenance?

A. Yes.

Q. After that time, after March, did you do anything for the support of the child, and if so what?

A. I paid the board to her mother. Her mother finally agreed to take the child and to board it and I have receipts in my possession from her mother from that time until her death.

Q. Until the mother's death?

A. Until the mother's death. 40

Q. When did the mother die?

A. The mother died in 1903. I am not sure about the month.

Q. After 1903, after the mother died, what, if anything, did you do?

A. I contributed to its support at Pine Brook with an aunt of hers, a Mrs. Charlotte Rock.

10 Q. Did she bring the child to Pine Brook?

A. Yes.

Q. And there you contributed to the support of this child?

A. Yes.

Q. Where is the child now?

A. At Pine Brook.

Q. And is it being supported by you in that way?

A. Yes.

20 Q. (By the Court): Did the child stay in Pine Brook after the summer of 1902, when you say your wife brought it to your home?

A. No, sir. It lived with its grandmother, my wife's mother, until she died, and then it came back again to Pine Brook.

Q. When did it come back again to Pine Brook?

A. I am not sure about that.

Q. When your wife came with the child in the summer of 1902, you say she drove up to your house?

A. Yes.

30 Q. Just state what conversation took place?

A. Well, she came in—into the house.

Q. Did she bring the baby in?

A. I think she did.

Q. What time of day or night was it?

A. After school—I should say between three and four o'clock.

Q. Now tell us the conversation.

40 A. The conversation was: She said, "Why, I have come to leave the baby." "Well," I says, "I am not prepared at this time to keep the baby; my mother is away, and you know in what position I am placed." She says, "Well, I am going to New York." I says,

“Yes?” Well, what about it?” “Well,” she says, “that is all. I am going to leave the baby here and I am going to New York.” I said, “Maude, I will tell you, I am perfectly willing enough to support this child and all that; I am willing to do the right thing by you, yet being alone as I am, I am helpless in this case, but I am willing to pay the child’s board at any place that you name.” And various things were said along that same line, until the mother came in, her mother. 10

Q. Was her mother there that day with her?

A. Her mother was there with her that day. She came in and asked her what she was going to do. She says: “I am going back, just as soon as he decides what he is going to do.” I says: “I have decided. I am willing to pay for this child wherever you may name.” And she didn’t say anything one way or the other. She went back and got in the carriage, and her mother did, and she complained of being cold, and she was back in the carriage, and I went out and I says: “Naturally, you have been to some expense coming up here, and I want to defray whatever expense you have been put to, and furthermore to advance something for procuring a place for the child.” She refused absolutely to take the money. 20

Q. Thereupon you gave it to the driver?

A. I gave it to the driver. I says, “driver, take whatever you charge for coming up here; give the rest to my wife, and if she refuses to take it, give it to her mother.” 30

Q. Was anything said during that talk about your wife coming to live with you?

A. Yes.

Q. What.

A. It was this: She said that she would never live in Pine Brook.

Q. How did she come to say that?

A. Well, I told her of my situation and the disadvantage I was under in attending to my school and coming home in the absence of my mother, and trying to care 40

as best I could for the home and for the horse and for the chickens and so forth, but none of these things seemed to appeal to her.

Q. What did you say to her about it?

A. I said to her, "I am willing to support you only in the home I have provided.

10 Q. What did she say to that?

A. She claimed she was going at any rate to New York.

Q. Do you recollect what she said when you made that remark to her?

A. I don't know the exact words.

Q. In substance what did she say?

A. That is it—in substance she claimed she was going to New York at any rate.

By Mr. Wilson:

20 Q. Was it in that connection that she said she wouldn't live at Pine Brook?

A. Yes.

Q. Now, you say that your mother, when they came there that day, was away. Do you mean your mother was away permanently working?

A. She was working.

Q. Was she away working for the day or was she permanently working?

30 A. She was permanently working at Lakewood.

Q. During that time from March when you say you parted with her, down to the time when you brought this suit, did she ever write to you at all and did you write to her during that period?

A. I am not sure.

Q. You don't recall whether you did or not?

A. I think so. I know at one time I sent money from Red Bank and it came back to me, but I don't just remember the address to which I sent it. The records of the postal service will show that.

40 Q. I am asking you whether you wrote her after that time. You say you parted in March; now there was

quite a long interval. During that time did you write to her asking her to come to Pine Brook, or did you write her about anything?

A. Yes.

Q. How frequently did you write to her?

A. I am not sure.

Q. Did you in any of your letters ever ask her to come to Pine Brook and live with you or ask her again if she was coming, or anything of that kind in any of your letters that you wrote to her? 10

A. I am not sure about that.

Cross-Examination by Mr. Cook:

Q. You say that after you and your wife were married by agreement she lived in New York with her mother and you lived in Pine Brook?

A. Yes. 20

Q. What was her condition of health subsequent to the birth of the child?

A. I should say normal.

Q. And how long was it before she was able to be up and about?

A. Well, comparatively a short time.

Q. Month?

A. Well, I shouldn't like to say. I do know of this, that I have a letter saying that the doctor was in attendance for quite some time afterwards, and that on her doctor coming upstairs she would jump in bed, which would show that she was able in a way to be up, but yet a doctor was in attendance. 30

Q. How long did the doctor attend her after her confinement?

A. I am not sure.

Q. Any idea?

A. I have not, no, sir.

Q. How often did you come to see her during that summer? 40

A. About every two weeks.

Q. And how were you employed during the summer season after school closed?

A. At the Monmouth Beach Country Club.

Q. In what capacity?

A. As a sort of bellman.

Q. How much did you receive?

A. About \$40.00 a month.

10 Q. During the winter months, the seven months of school, you received about \$48.00 a month and during the summer vacation you got about \$40.00 per month in the Club?

A. About—there was an interval between the close of school and the opening of the Club.

Q. How much?

A. Well, the Club didn't open until about the middle or the latter part of June.

Q. What time did school close?

A. The school closed in May.

20 Q. Public school, wasn't it?

A. Public school, yes—nine months' term though.

Q. You say you went to see her about once in two weeks during that summer?

A. Yes.

Q. What was the last occasion that you went to New York during that summer?

A. That is to say, between my employment at the Club and until the time school opened?

30 Q. Now, I ask you when you last went to see her in New York that summer?

A. Well, in August.

Q. Did you ever come again to New York?

A. Yes.

Q. When?

A. Well, the visits were, say, a little longer; that is to say, the interval between the time of visits were a bit longer, say about three weeks; prior to that time during the summer about two.

40 Q. Let me get this clear. You have said that you went there every two or three weeks during the summer; that the last of those summer visits occurred in August, 1901?

A. Yes.

Q. When next did you see your wife after August?

A. About three weeks after that time.

Q. And when next after that?

A. About the same interval.

Q. You mean to say you went all winter every three weeks?

10

A. About that time, yes.

Q. You went to see her at intervals all through that winter?

A. All through that winter.

Q. Isn't it a matter of fact that you never saw your wife between August, 1901, and this interview which you have testified to in Pine Brook in October, 1902?

A. No, sir.

Q. You are sure about that? A. Positive.

Q. This visit of which you have told us in March, 1902, that was during the school time, wasn't it?

20

A. During school time, yes.

Q. What day of the week was it that you saw her?

A. I am not sure whether it was on Friday or on Saturday.

Q. One of the two? A. One of the two.

Q. You came to New York? A. Yes.

Q. Where did you go?

A. I am not sure of the address. She had about four within a short space of time.

30

By Mr. Wilson:

Q. You mean she lived in four different places?

A. Four different places.

By Mr. Cook:

Q. You say you saw her often? A. Yes.

Q. Who was present at the interview besides your wife and yourself?

A. No one.

40

Q. In whose house did it occur?

A. Mr. Samuel Polhemus's house.

Q. And you say that you there asked her to come back with you?

A. Yes.

Q. That day?

A. Yes.

Q. Right away?

10 A. Right away, yes.

Q. And she refused? A. Yes.

Q. Now, on this occasion when she saw you in Pine Brook, in the fall of 1902, she had her baggage with her, didn't she?

A. No, sir.

Q. You said she did, didn't you?

A. No, sir.

Q. What did she have with her?

20 A. She had a small valise, containing a few belongings of the child.

Q. How do you know what it contained?

A. She told me.

Q. You didn't look in it?

A. No, sir.

Q. Didn't she tell you that she had come back to you?

A. No, sir.

Q. Didn't she ask you to take her in?

30 A. No, sir.

Q. Didn't she ask you to take her and the baby and provide a home for them?

A. No, sir.

Q. And didn't you refuse? A. No, sir.

Q. This young man sitting here in Court drove her over?

A. I don't know whether that is the man or not. It was some man.

40 *By Mr. Wilson:*

Q. Was it a colored man? A. Yes.

By Mr. Cook:

Q. And where was he?

A. Outside.

Q. How long did this interview occupy?

A. I should say about an hour.

Q. Did you ever write to your wife, asking her to come back to you? A. Yes.

10

Q. How many times? A. I am not sure.

Q. Have you any copies of those letters?

A. Letters I wrote her?

Q. Yes? A. No, sir.

Q. Have you any letters of hers refusing to come back to you?

A. I have not.

Q. Did she write you any such?

A. Well, she guarded those things.

20

Q. What do you mean?

A. I mean to say that she would clothe them in the manner that I have said before, but that it would be because of something to do, or mother couldn't arrange to accompany her, or something of that kind. They were evasive.

Q. (By the Court): Have you any of your letters, —any letters of any kind?

A. Well, I have some, yes.

Q. How many do you think you have?

30

A. I am not sure about that.

Q. Can't give an idea?

A. (Question not answered.)

Q. Have you got them with you?

A. I have very few with me.

Q. Have you got all that you have got?

A. No, sir, I have lost some.

Q. (By the Court): How many letters have you in your possession that you received from your wife?

A. I should say about eight or ten I have here.

40

Q. Here? A. Yes.

By Mr. Cook:

Q. You say she never flatly refused in any of those letters to live with you? A. No, sir.

Q. Your letters to her grew more infrequent as time went on, didn't they?

A. I don't know. Of course, my writing to her would depend upon my visits.

Q. What do you mean by that?

A. I mean to say, when I would visit her naturally I wouldn't write to her.

Q. (By the Court): When you visited her on these occasions during 1902 did you spend the night with her?

A. Yes—the last one I did not.

Q. That was the one in March that you referred to?

A. No, sir, that one I did not.

Q. How often did you write her, do you remember?

A. No, sir.

Q. Sometimes several months would elapse wouldn't they?

A. I am not sure.

Q. Isn't it a matter of fact that your letters which were first affectionate, cooled off, until they finally grew to be nothing but mere mentions of enclosures of money?

A. I am not sure about that.

Q. Do you remember the postal card that you wrote her?

A. No, sir, I remember one I got from her, though.

Q. Did you ever write her a postal-card?

A. I am not sure.

Q. Did you ever write her a postal-card, saying that it was not convenient for her to come, that you would not be at home, or something to that effect?

A. I wrote her a postal-card at the time she was at Asbury Park. She wrote me she had some effects she was going to send, of the baby's, or she would probably bring the baby at that time, and I had a teacher's meeting at that time and I wrote a postal-card, and in substance it said: "I will not be at home."

Q. How much money have you given your wife since you were married? A. I don't know.

Q. Any idea? A. No, sir.

Q. Give her as much as a hundred dollars?

A. I should say so, yes.

Q. You are sure about that? A. Positive.

Q. How much money did you give the driver that day? 10

A. I am not sure just how much that was. I rather think it was \$10.00. I am not sure. I wouldn't say.

Q. Where are you living now, Mr. Purnell?

A. At Pine Brook.

Q. Keeping house? A. No, sir.

Q. Boarding? A. Yes.

Q. What have you done with this house that you furnished?

A. Given it up. 20

Q. When did you give it up?

A. Gave it up in 1905—May, 1905.

Q. Up until that time you occupied it?

A. Yes.

Q. With your mother? A. Yes.

Q. Where is the old lady living now? A. Philadelphia.

By Mr. Wilson:

Q. You say that this interview in March occurred at the house of Samuel Polhemus, in New York. Was Samuel Polhemus the husband of your wife's mother? 30

A. Yes.

By Mr. Cook:

Q. She was living there at that time with her mother?

A. Yes.

By Mr. Wilson:

Q. As I understand you to say, she was always living with her in New York? 40

A. Yes.

By Mr. Cook:

Q. You said she had three or four addresses. What did you mean by that?

A. I meant that they moved, I suppose.

10 *By Mr. Wilson:*

Q. That her mother moved, and that she moved with her mother?

A. Yes.

By Mr. Cook:

Q. Do you know where she lives now?

A. By referring to the address I know.

Q. She is working for her living, isn't she?

20 A. I don't know that she is.

By Mr. Wilson:

Q. She worked for a living before you married her, didn't she?

A. No, sir.

Q. What did she do then?

A. Practically nothing.

By Mr. Cook:

30 Q. How do you know that?

A. By experience.

Q. How long had you known her before you were married?

A. A short time, but I had known her folks for quite a long time.

By the Court:

Q. What is her age?

40 A. I am not positive about that.

Q. What is your age?

A. I am thirty-five.

By Mr. Wilson :

Q. Is she about the same age, or younger?

A. Younger.

THOMAS CRONMER, a witness sworn for the petitioner, being duly sworn, says:

Direct Examination by Mr. Wilson :

10

Q. Where do you live?

A. I live at Long Branch.

Q. And do you know this complainant here?

A. I do, yes.

Q. Did you ever rent a house to him? A. yes.

Q. Was it about the time of his being married?

A. Well, I think it was. He told me that he was going to be married, and that this house didn't quite suit him in the shape it was in, and he asked me if I would build an addition to it to suit him and I told him I would and did. 20

By the Court :

Q. Where was the house?

A. This house was at Pine Brook.

By Mr. Wilson :

Q. And did he then rent it of you?

A. He did. 30

Q. Do you know whether he furnished it or not?

A. I have often been in the house and I suppose he furnished it. It was furnished.

Q. Was it suitably furnished, according to his conditions and surroundings in life?

A. I suppose it was furnished as good as any house around there.

Q. How long did he continue to occupy it?

A. I think it was between four and five years. I think five years. I am not positive. It was kind of forgotten by me. I never got in with this occurrence. 40

By the Court:

Q. Can you tell us the year when he hired it?

A. I wouldn't just say for certain about that. I think it was 1901 or 1902—something around there.

By Mr. Wilson:

10 Q. Do you remember hearing of his being married about that time?

Mr. Cook: I object to that. I don't think it is evidence, in the first place. It has already been brought out that the man said he was going to be married.

The Court: It is not a matter of much consequence, but it is asked to fix a date.

20 Q. I ask you if you remember hearing that he was married about the time he rented this house of you and made arrangements to have the addition put on?

A. Yes, his mother told me he was married and also Mr. Purnell told me, and his mother often spoke to me when I would be there, and of course I wouldn't speak much to him; but his mother told me he was married and he was waiting for his wife to come out there, so that she could go away to Philadelphia where her husband was.

Mr. Cook: No questions.

30 SAMUEL POLHEMUS, a witness sworn for the petitioner, being duly sworn, says:

Direct Examination by Mr. Wilson:

Q. Where do you live? A. Pine Brook.

Q. And were you born and raised there? A. Yes.

Q. That is near Eatontown, New Jersey? A. Yes.

Q. You married the mother of this defendant?

A. Yes, I did.

40 Q. She is not your child, however? A. No, sir.

Q. A child by a former marriage?

A. I presume so. I couldn't say anything about that.

Q. Was she living with you in April, 1901, at the time of Purnell's marriage?

A. She was, yes.

Q. And where were you living at that time?

A. 326 West 27th street, New York City.

Q. Do you remember the occasion when Mr. Purnell married this woman at your house? A. Yes. 10

Q. Do you remember what day of the week it was he was married?

A. On a Sunday. I think Sunday afternoon—I think it was.

Q. Do you remember whether there was a child born after that?

A. After the marriage there was, yes.

Q. Shortly after the marriage? A. yes.

Q. After the marriage, for a matter of some months—ten months—how frequently did Purnell come there to see his wife? 20

A. Well, I couldn't say exactly, but he used to come up two or three weeks at a time.

Q. Every two or three weeks?

A. Something like that, yes.

Q. Do you know what Purnell was doing at that time?

A. Well, he was teaching school at Pine Brook.

Q. During the occasions when he would come up to see his wife at your house, did you ever hear him ask her to come to Pine Brook and live with him? 30

A. Well, two or three times I heard him ask her.

Q. You heard them talking about it?

A. Yes.

Q. What, if anything, did you ever hear her say in that connection?

A. Well, that she just would not do to live in Pine Brook—she didn't care for the place.

Q. Did she say why she didn't care for it?

A. Well, it was not lively enough for her there. 40

Q. Was that the expression she used? Or did she use some other expression?

A. Something of that sort. It was too dull down there for her.

Q. Did she use the expression too slow?

A. Something like that, yes.

Q. Do you know Purnell sent money to your wife for the maintenance of this child and his wife down to the time of your wife's death?

10

A. I know he sent money for the child, yes.

Q. When did your wife die?

A. She died in November, 1903.

Q. Where did she die?

A. In 59th street, New York.

Q. Do you know where the child went to live after your wife died?

A. She lived in New York until the summer, I think, and then came to Pine Brook.

20

Q. With Mrs. Charlotte Rock, who was an aunt?

A. Yes.

Q. Do you know whether Purnell had a house at Pine Brook to live in? A. Yes.

Q. Did you ever hear him tell his wife anything about that when they were talking together in your house about his having a house there?

A. I don't remember hearing him telling her anything about having the house, but I was in the house at Pine Brook.

30

Q. You have been in the house?

A. Yes, at the time he occupied it.

Q. Was it the house that Mr. Cranmer owned?

A. Yes.

Q. How was it furnished and equipped? Was it fit for occupancy?

A. Yes, furnished very neatly.

40

Q. Do you remember Mr. Purnell being there in March or sometime in the spring? He appears to have been married in April, 1901; now the next spring, the next March, about a year after, do you remember his coming up there and having any talk with his wife about her coming to Pine Brook?

A. Well, I remember his being there, but the conversation I couldn't—

Q. You didn't hear the conversation?

A. Didn't hear the conversation.

Q. Do you remember that after the occasion to which I have directed your attention, he stopped coming altogether?

A. Yes, he stopped coming, yes. 10

Q. Did you ever hear from this defendant afterwards—did she ever tell you afterwards what happened on that occasion?

A. Nothing, no sir, whatever.

Cross-Examination by Mr. Cook:

Q. Where were you in the summer of 1901?

A. I was in Asbury Park.

Q. When did you come to that place? 20

A. I went there in June, I think.

Q. How long did you stay there?

A. Let's see—from the last of May or the first of June.

Q. And how long did you stay?

A. I stayed there until September.

Q. Then how were you employed down there?

A. In a stable—livery stable.

Q. Did you return there subsequently, to Asbury Park, to work? 30

A. No, not until I went down there with my wife, one summer afterwards.

Q. You were not home at all during the summer of 1901?

A. Not during the summer.

Q. Was your wife home? A. Yes.

Q. And this lady was living with your wife?

A. Yes.

Q. How much money did Purnell send up for the child? 40

A. During the summer?

Q. Yes?

- A. I couldn't say—I wasn't there.
- Q. Then you don't know anything that occurred during that summer, except from hearsay?
- A. I don't know anything about the summer.
- Q. Did he ever send any money for her, or was it—
- A. He sent money after the visit to Pine Brook, for
 10 the child.
- Q. Just for the child? A. For the child.
- Q. Never contributed anything to her that you know of?
- A. When they were first married.
- Q. How much—how often?
- A. Apparently every time he would come up he would give her something.
- Q. You would see him do it?
- A. I didn't see him, but she would say he gave her
 20 something.
- Q. Who paid the doctor?
- A. Mr. Purnell gave her the money and she paid the doctor, I suppose.
- Q. She was sick some time after this little baby was born?
- A. That I couldn't say exactly. It was quite a while too. She was apparently delicate all through life.
- Q. Well, it was rather hard on her, wasn't it? A. Yes.
- Q. And trying to her anyway? A. Yes.
 30
- Q. And she did not recover very rapidly from her illness, did she?
- A. I couldn't say. I was not there.
- Q. Coming down to this time in the Spring of 1902, please tell us about that visit of Mr. Purnell's in New York.
- A. 1902?
- Q. Did he ever come in the spring of 1902 that you remember?
- A. Why, he was there, I think, in March, just for a
 40 short while.

Q. Did he come unexpectedly, or was she looking for him?

A. I couldn't say whether she was looking for him or no.

Q. Where you looking for him?

A. No.

Q. Anybody with him?

10

A. Not when he came to the house.

Q. Where were you living then?

A. I don't just remember where I was living, whether it was 59th street—

Q. It was in New York, however?

A. It was New York, yes.

Q. What time of day did he come?

A. That I couldn't say the time. It was in the evening or afternoon.

Q. How long did he stay?

20

A. I couldn't say that.

Q. Were you home?

A. I don't think I was home when he came.

Q. What time did you get home that night?

A. As a general thing, I got home about six o'clock.

Q. What was the nature of your employment at that time?

A. In the house-cleaning business.

Q. Taking care of furnaces and that sort of work?

A. I used to take care of furnaces—most everything that came along. I even swept chimneys.

30

Q. What time did you come home on that particular evening.

A. I couldn't tell you—I don't know.

Q. Get home to supper?

A. Yes, I was home to supper.

Q. Mr. Purnell assisted at that meal with you?

A. I couldn't say that.

Q. Asked him to sit down and have a bite?

A. I couldn't say about that.

40

Q. Do you know whether he did sit down to supper that night or not?

A. I don't remember. I think, though, he and I went out together.

Q. Now, the conversation which occurred between Mrs. Purnell and her husband, in what room did that take place?

A. Why, it was in our front room.

10 Q. Who was present?

A. There was no one there in the room, but her and her husband.

Q. They two? A. Yes.

Q. Where were the rest of the family?

A. My wife was, I think, in the kitchen and myself likewise.

Q. And how far from the kitchen is the front room?

20 A. I couldn't tell you that, because I don't know just exactly what house we was living in. Of course, in 326 West 27th street there was two rooms between the front room and the kitchen, and in 59th street where we lived there was one room, I think between the front room and the kitchen.

Q. Where were you?

A. Well, if I were home at the time, I was in the kitchen, but I couldn't say just whether I was home at the conversation or not.

Q. You say you went out with him?

30 A. I am pretty sure I went out, because as a general thing when he would come up I would take a walk with him.

Q. Do you remember anything about this particular occasion that leads you to think that you went out with him that night?

A. I can't exactly say whether I did or didn't, but I generally did.

Q. And judging from that you think it was quite possible that you did that night? A. Yes.

Q. Now, there was nothing unusual occurred that evening, which fixes it in your mind?

40 A. No, sir.

Q. Nothing different from any of these other visits?

A. No.

Q. No unpleasantness occurred that you know of?

A. No.

Q. As far as you could say, everything was all right?

A. Yes.

By the Court:

10

Q. Do you recollect hearing about any special trouble between him and his wife that night?

A. I didn't hear of any special trouble whatever.

Q. Do you recollect whether he came back with you that night?

A. I hardly think he did, because I think he was in a hurry to get away.

Q. Did you have any talk with Mrs. Purnell after he had gone away?

A. No.

20

JOHN W. PURNELL, heretofore sworn, is recalled for further examination as follows:

Direct Examination by Mr. Wilson:

Q. You were being interrogated about the letters that you had received from your wife. Did you receive a letter during the summer after you were married and while you were at the Club house at Monmouth Beach in which she said something about her coming to Pine Brook? 30

Mr. Cook: I object.

The Court: That is not the way to get at it. You should produce the letter.

Q. Have you got that letter? Is it anywhere on earth that you can get ahold of it?

A. I am not sure about it.

Q. I understood you to say that that letter you did not have? 40

The Court: The witness says positively that he did not know whether that letter is in existence or not.

By the Court:

Q. Have you looked for it?

A. Yes.

10 *By Mr. Wilson:*

Q. Have you been able to find it?

A. I have not. As I told you before, in moving some of my mail has been lost or destroyed. I handed the same letter, however, to a friend of mine.

Mr. Wilson: But you can't go into that until you satisfy the Court what became of the original letter.

Q. Have you hunted for the letter?

A. I have.

20 Q. Have you been able to find it?

A. I have not.

Q. Do you know of any place where you could hunt and find it, where you have not already hunted?

A. I do not.

By the Court:

Q. You have a bunch of letters here, you say, that you received from your wife?

A. I have some letters.

30 Q. How did you come to have these? Where did you find them?

A. I found them among the remains of letters that I had after moving.

Q. When did you get these letters together?

A. Well, after I had entered suit.

Q. Then you looked for these letters, did you?

A. I looked for all letters.

Q. Did you find and other letters besides the ones you have got here today?

40 A. Yes.

Q. Where are they?

A. They are home.

Q. Why didn't you bring them.

A. They didn't affect the case whatever.

Q. Where they written after your marriage?

A. Some were and some were before, but there was nothing material in them.

By Mr. Wilson:

10

Q. Amongst those letters that you have left home, was there this letter to which I have directed your attention—the one that she wrote to you in the summer after you were married, while you were at Monmouth Beach, the contents of which you say you have some independent proof—was that letter amongst them?

A. No.

Q. Do you know where that letter is?

A. No, sir.

Q. Have you hunted every place for it that you could think of, where the letter might be? 20

A. Every place that I could think of, and I have written to Philadelphia and since my mother is rather aged, why she was not able to find anything and I don't know whether it has been destroyed or not.

Mr. Wilson: Subject to your Honor's ruling, I desire to ask the witness now—

Cross-Examination by Mr. Cook:

Q. When did you begin looking for this letter? 30

A. Oh, I have looked for it quite a time.

Q. What was the date of it?

A. It was in August.

Q. What year?

A. 1901.

Q. How soon after the last visit of yourself to your wife?

A. Well, I should say about ten days had elapsed. It is between the fifteenth and the last of the month.

40

By Mr. Wilson:

Q. When you received the letter?

A. When I received the letter.

By Mr. Cook:

Q. Where were you when you received it?

A. Monmouth Beach Country Club.

Q. And you answered it, didn't you?

10 A. I am not sure.

By Mr. Wilson:

Q. Did you show this letter to anyone?

A. Yes.

Q. To whom did you show it?

A. To Mr. Murray, at Asbury Park.

Q. Was he a friend of yours?

A. He was working with me.

Q. Was he a friend of yours?

A. Yes.

20 Q. What did this letter say, if anything, about her coming to Pine Brook to live?

A. Well it ran something about so: That she couldn't say as to when she could come; that it would depend upon the time that she got clothing ready for the baby, and as she wished to put it in short clothes, it would depend as to that. So I don't know about that. So I asked him—

30 *Mr. Cook:* I don't see how a conversation between him and Murray binds this woman.

Mr. Wilson: I don't think it binds her at all.

Q. Did you show the letter to Murray on that occasion?

A. Yes.

Q. Why did you show it to him?

40 A. I didn't just understand it. I took it in a way—well, I thought it was only a way of putting me off indefinitely, and I wanted to assure myself as to how long it did take about to do that thing. So he says, "I am not sure about that."

Q. Is he a married man?

A. Yes.

Q. And so you appealed to him?

A. Yes I appealed to him.

Q. And you say you showed him the letters?

A. I did.

Q. And did she say anything else in the letter about your having asked her to come to Pine Brook, or anything of that kind in it? 10

A. I am not sure about that.

Mr. Cook: It is all right for him to prove the contents of the letter by secondary evidence and to search his memory, but when he comes to leading him, I must object.

The Court: It is proper, after the witness has tried to state the contents of the letter, the examining counsel can suggest to his mind whether the letter stated anything in regard to certain topics. 20

Q. Have you stated all that you now recollect in that letter, about her coming back to Pine Brook, and the connection in which she made that statement in the letter? Just give us your best recollection about that, if you have not already given it.

A. The best recollection I have of it is that I had written her to come and that this was her answer, and that was about the main feature of the answer.

Q. That she couldn't go until she had made short clothes for the baby? A. Yes. 30

Cross-Examination by Mr. Cook:

Q. What was there so mysterious about that that needed explanation from Mr. Murray?

A. Because I had been subject to such a great expense, why I had been placed at such a great expense that it was imperative to me that I should reduce my expenses. 08

Q. What did you ask Mr. Murray about the letter? 40

A. I asked Mr. Murray about the letter, as I said to Mr. Wilson—I wanted to know about how long be-

bore a baby was put in short clothes.

Q. And you thought he would be able to furnish that information?

A. Yes.

Q. Was he a married man?

A. Yes.

10 Q. Didn't have any children, though, did he?

A. I don't know; his wife had.

Q. You are sure about that?

A. Yes.

Q. You are sure that Murray's wife had a child?

A. Had a child.

Q. What is Murray's name?

A. Thomas Murray.

THOMAS MURRAY, a witness sworn for the petitioner, testified as follows:

20 *Direct Examination by Mr. Wilson:*

Q. Where do you live?

A. Asbury Park.

Q. How long have you lived there?

A. Sixteen years.

Q. Do you know Purnell?

A. Yes.

Q. How long have you known him?

A. I have known him about twelve or fourteen years.

30 Q. Do you remember the time when he was married?

A. I remember the time he said he was married. I was not up to the ceremony.

Q. Some time in the spring of 1901?

A. 1901, Yes. I thought it was in March.

Q. Do you know whether he had a home equipped and furnished at Pine Brook at about that time?

A. Yes.

Q. How do you know it?

40 A. Well, I was there. I know it from the fact that he consulted me quite frequently as to the furnishing of the home.

- Q. Consulted you about furnishing it?
 A. Yes.
 Q. You and he had been friends?
 A. Yes, between twelve and fourteen years.
 Q. Are you a married man?
 A. Yes.
 Q. Have you had any children? 10
 A. No sir.
 Q. But your wife has had?
 A. Yes, she has had children.
 Q. Where were you working in the summer of 1901
 —that is, the summer after this marriage?
 A. At the Monmouth Beach Country Club.
 Q. Do you remember his having a conversation with
 you and showing you a letter from his wife?
 A. Yes.
 Q. Did you read the letter? 20
 A. Yes, I did.
 Q. Do you recall what it said about his returning
 to Pine Brook, if anything?
 A. I cannot recall the exact words, but she said in
 substance that she was not coming to Pine Brook until
 the baby was put into short clothes.
 Q. Do you remember his asking you at that time
 how old a baby had to be to be put in short clothes?
 A. I do, sir. He seemed to be in his mind doubtful
 about the letter and he asked me for advice. I told
 him I did not know about it, and I would have to ask
 my wife about it. 30

By Mr. Cook:

- Q. You did not feel competent to tell him about it?
 A. No sir.

ROLAND POLHEMUS a witness sworn for the petition-
 er, testifies as follows:

Direct Examination by Mr. Wilson: 40

- Q. Where do you live?

A. East Red Bank at present.

Q. You formerly lived at Pine Brook?

A. I lived there ever since I was seven years of age.

Q. Born and raised there?

A. Born and raised in the State of Connecticut and
10 brought there when I was about five years of age.

Q. You know this woman here, the defendant, don't you?

A. I see the lady, yes.

Q. Known her all her life pretty much?

A. I couldn't say that I knowed her by right. I know my son married her mother—that's all.

Q. The Polhemus that has just been upon the stand is your son?

A. I believe he is, sir.

Q. And he married this girl's mother?
20

A. Yes.

Q. Do you know whether the complainant here had a house furnished and equipped at Pine Brook to live in, about the time he married this woman?

A. Yes.

Q. How do you know that?

A. My horse and wagon carted the things there.

Q. By your carting the things there?

A. I carted the things there and helped him unload
30 them.

Q. Do you know why he prepared the house?

A. He prepared the house for a wife.

Q. Did he tell you so?

A. That is what he was telling me when I moved his piano for him.

Q. Were you in and at the house frequently?

A. I was in and out there. Me and his mother belonged to a society together.

Q. How was the house furnished and equipped as compared with other houses in that neighborhood?
40

A. It was furnished a little bit better than anybody else's.

Q. How long did Mr. Purnell continue to occupy that house there?

A. He occupied the house there, I should judge, between three and four years, or four or five years. He was living there when my wife died. She died in 1901, and I went over to Asbury Park in 1902 to see my son.

Q. Do you remember ever hearing this defendant say anything about whether she would live with her husband again or not? 10

A. No more than I heard her say—

Q. The first question is, did you hear her ever have any such talk?

A. I didn't hear her have a talk about it. I met her over to Asbury Park.

Q. When was that?

A. 1902. I went over to see my son.

Q. That was in 1902? A. Yes. 20

Q. What time in the summer was it, if you recall?

A. I went over there in August, to go to a picnic on a Thursday. I was there about on Tuesday.

Q. You went there on Tuesday to go to a picnic on Thursday?

A. Yes.

Q. Do you remember what picnic it was?

A. A picnic at Highlands from Pine Brook.

Q. And you stayed at your son's house?

A. Yes. Made a bed for me in the front room. 30

Q. Downstairs?

A. Yes.

Q. What happened, if anything, during the night?

A. I was lying on the bed and there was a rap given to the door about two o'clock in the morning—between two and half past three—and I got up and opened the door. Mrs. Purnell came to the door and I opened the door and she came in. And I says to her, "you ought to be home. John has provided a home for you." She says, "I am out for a good time and I am going." I didn't say no more to her, and she went on about her business. 40

By the Court:

Q. What was the date of this, Mr. Polhemus?

A. 1902.

Q. What month?

A. August.

Q. Did she have the child with her? A. yes.

10 Q. In her arms?

A. No, sir.

Q. Where was the child?

A. Upstairs with her mother.

Q. Was the child staying permanently there?

A. The child and the mother both was there.

Q. How long had they been there?

A. I couldn't tell you what time.

Q. When you got to the house were they there?

20 A. They was there. I come from Pine Brook down to visit my son. I went over there to go to the Highlands picnic with them.

Q. Where was this house where you say she came in and knocked on the door?

A. At her mother's house.

Q. At Pine Brook?

A. Asbury Park.

(Previous answer of the witness read to him as follows: "I was lying on the bed and there was a rap given to the door about two o'clock in the morning—
30 between two and half past three—and I got up and opened the door. Mrs. Purnell came to the door and I opened the door and she came in. And I says to her, "you ought to go home. John has provided a home for you." She says, "I am out for a good time and I am going. I didn't say no more to her, and she went on about her business.)

Q. Did you hear what he read to you?

A. She says she was out for a good time.

Q. What else?

40 A. You ought to know what she meant by a good time.

Q. What else did she say?

A. She said she was not agoing.

Q. Do you realize that the records as he read it here was the very reverse of that? Which way do you mean to have it?

A. She said I am not going.

Q. And that was in response to your statement that she ought to go up where John had a home?

A. Yes.

10

PETITIONER RESTS.

MAUDE DICKERSON PURNELL, sworn in her own behalf, testifies as follows:

Direct Examination by Mr. Cook:

Q. You are the defendant in this case?

A. Yes.

Q. Where do you live?

A. New York City.

20

Q. And you are the wife of John W. Purnell?

A. Yes.

Q. When were you married to him?

A. April 28th, 1901.

Q. Have you any children? A. One child.

Q. When was it born?

A. June 4th, 1901.

Q. Who is the father of that child?

A. John W. Purnell.

30

Q. How long were you ill after your confinement?

A. I was ill for nearly a year, but not seriously ill.

Q. And how long were you under the doctor's care?

A. Oh, not more than a month.

Q. At that time where were you living?

A. At 326 West 37th Street.

Q. With whom?

A. My mother.

Q. What arrangement, if any, was made between you and your husband at the time of your marriage as to your living together?

40

A. Well, I was to remain at home with my mother

until the fall.

Q. For what reason?

A. Well, he was employed at the Club and he didn't care to have me come home to his mother.

Q. That was his desire as well as yours?

A. Yes.

10 Q. And what was to be done in the fall?

A. I was to go to Pine Brook to live.

Q. With him? A. Yes.

Q. Did you ever do it?

A. Not in the fall.

Q. I mean, did you ever live with him?

A. No.

Q. Why not?

A. Well, because he gave me to understand that he didn't want me there.

20 Q. Now, did you receive any letters from him after your marriage?

A. O, yes.

Q. How often did he call during that summer?

A. During the summer until August he called about every three weeks. After August not at all.

Q. He never called upon you after August, 1901?

A. No, sir, he didn't.

Q. Did you ever see him between August, 1901, and October, 1902, when this interview occurred at Pine Brook?

30 A. I never saw him during that interval.

Q. Did he ever come to New York during that interval?

A. If he did he didn't come to see me.

Q. Did you ever see him in New York during that time?

A. No, I did not.

By the Court:

40 Q. Did he write you any letters?

A. One or two.

Q. Did you answer them?

A. Yes, I did.

By Mr. Cook:

Q. Are you familiar with your husband's handwriting?

A. O, yes.

Q. Seen him write his name many times? A. O, 10
yes, often.

Q. Look at this bunch of letters and tell me in whose handwriting they are?

A. John W. Purnell. They are all his handwriting.

Q. And are these letters which you have given me all the letters from your husband that you could find addressed to you?

A. Yes.

Mr. Wilson: (After examining letters) I think they 20
are all in his handwriting.

Mr. Cook: With your Honor's permission I will read them right through.

Q. You received these letters on or about the dates of them?

A. Yes, by mail.

Q. By mail? A. By mail.

(Mr. Cook reads the letters.)

Q. This memorandum, "March, 1902," is that the 30
time you received it?

A. The date is from the envelope that it was enclosed in.

Q. You took that date from the envelope?

A. Yes.

Q. Mrs. Purnell, I show you a letter dated July 31st, Monmouth Beach, and ask you what year that was received by you?

A. 1902.

Q. I show you a letter dated August 29th, Mon- 40
mouth Beach, and ask you what year you received that?

A. 1902.

Q. Those are all the letters that you received from your husband?

A. Those are all that I have.

Q. Now, how are you employed?

A. I work in 21st street as maid.

Q. For whom? A. Mrs. Reed.

10 Q. And how long have you been working in that capacity?

A. Since the 27th of last June.

By the Court:

Q. What wages do you get?

A. Sixteen dollars a month.

Q. And your board? A. Yes.

By Mr. Cook:

20 Q. You have testified that the last time you saw your husband was in August, 1901; now did you ever have any interview with him in New York after that time?

A. Yes.

Q. In March, 1902, or at any other time?

A. No, sir, I did not.

Q. When next did you see your husband?

A. On October 30th, 1902.

Q. Where? A. At Pine Brook.

30 Q. Now tell us where you were living at that time?

A. In Asbury Park.

Q. And how did you get to Pine Brook?

A. We drove up there from Asbury Park.

Q. Who drove you over? A. Mr. Oby.

Q. This gentleman sitting in Court? A. Yes.

Q. You drove over—and did you see your husband there?

A. Yes.

Q. Where was he?

40 A. He was at home.

Q. And did you get out of the carriage? A. Yes.

Q. Did you have the baby with you? A. I did.

- Q. What did you do with the baby?
 A. I took her in the house after I was admitted.
 Q. And what did you have in the way of baggage?
 A. I had a large satchel and a suit case.
 Q. Containing what?
 A. My clothing and the baby's.
 Q. What was your purpose in going there? 10
 A. I went there to remain, as he told me that he would not support me anywhere else.
 Q. And you decided to accept that offer?
 A. Yes.
 Q. Well, you went in the house?
 A. I did.
 Q. And whom did you see there?
 A. I saw my husband there.
 Q. What conversation took place between you?
 A. The conversation was that he asked me what I 20
 meant by coming there. He told me he thought I had a colossal nerve to come there. I told him I had come to remain, that he didn't provide for me and my mother didn't care to take care of me. He said I couldn't stay there.
 Q. Did he say anything about the child?
 A. He said he would pay her board but he didn't care how I got along.
 Q. Where was Mr. Oby?
 A. Mr. Oby was just outside of the door. 30
 Q. Where did you go then?
 A. I returned to the carriage and went back to Asbury Park.
 Q. Have you ever seen your husband since until the trial today?
 A. Not since.
 Q. Have you ever received any letters from him since, other than those I have read?
 A. No, not any.
 Q. Where is the baby now? 40
 A. At Pine Brook, New Jersey.
 Q. With whom is she living?

A. With my aunt, Mrs. Charlotte Rock.

Q. And your husband pays its board?

A. No, he does not.

Q. How long did he pay its board?

A. During this time the child has been there, he has not paid any.

10 Q. Who pays it?

A. I pay her board.

Q. How much do you pay?

A. I pay \$8.00 a month.

Q. Out of your earnings? A. I do.

Q. Outside of the sum which your husband has been giving you from time to time since this suit began, by agreement between counsel,—outside of that money how much money have you received from him all together?

20 A. Not any. I have not received any since October.

Q. I mean what year? A. 1902.

Q. How much money has he paid you on account of that \$4.50 a week arrangement which was made after this suit began?

A. \$50.00.

Q. Now it has been testified, as you have heard, that along in the summer I think it was of 1902 your husband had a letter from you refusing to come to Pine Brook. Did you ever write any such letter?

30 A. No, never.

Mr. Wilson: I submit that counsel has not described the contents of this letter.

The Court: That hardly describes the letter that you refer to.

Mr. Cook: Strike the question out.

40 Q. Did you ever write any letter to your husband, refusing definitely to come to Pine Brook?

A. Not any.

Q. Was there any letter written by you in which you

mentioned waiting until the day you put on short clothes?

A. Yes, I did write such a letter.

Q. Did you, however, when you wrote that letter have any idea or wish to convey any idea that you definitely refused to go down there?

A. I have never refused to go there. 10

Q. On the other hand, has he on any occasion other than the time you drove with Mr. Oby, refused to have you come, or postpone your coming?

A. O, yes, that card is a reply to a letter that I wrote him, asking him to meet me in Eatontown.

By the Court:

Q. Did you notify your husband that you were coming with the baby at the time you drove over with Mr. Oby? 20

A. O, no.

Q. How far did you drive that day to go to this house?

A. I think it is about twelve or fourteen miles—I am not sure.

Q. And you went over there not knowing whether your husband would be home or not?

A. I know if I notified him he would not be at home and so I didn't tell him.

Q. And you took your valise, you say—a suit case? 30

A. Yes.

Q. What day of the week was it?

A. It was on a Thursday.

Q. What time was it when you got to this house?

A. It was after three o'clock.

Q. Did you know what his school hours were?

A. Yes.

By Mr. Cook:

Q. Your mother was along that day, was she not? 40

A. Yes, she was.

Q. Is she living now? A. No, she is dead.

Q. When did she die?

A. She died in 1903.

Q. Was there any other person, excepting your husband, you and Mr. Oby standing outside?

A. No, sir.

Q. Do you know the older Mr. Polhemus who has testified here today?

10 A. Yes, I do.

Q. Did you ever call at his house at two o'clock in the morning, or any time late at night?

A. No.

Mr. Wilson: No, you have got that wrong. It was not at his house. She came to her mother's house where she was living and he happened to be there that night.

Q. Did you ever call at your mother's house at two o'clock in the morning, and were you late on any night received by Mr. Polhemus?

20 A. No, not any time.

Q. Did you ever, in response to a question from him or a remark from him that you should go up to your husband's home, say that you were out for a good time and that you were not going?

A. Never had any conversation on that subject whatever at all.

By the Court:

30 Q. Do you recollect ever going back to the house where you were staying, at two o'clock in the morning or thereabouts, when Mr. Polhemus opened the door to let you in?

A. No, sir. Our door was never locked, so that he would never have opened it if I had been out.

Cross-Examination by Mr. Wilson:

• Q. Mrs. Purnell, you were married in April, 1901?

A. Yes.

40 Q. And it was not until October, 1902, that you ever visited or saw the house at Pine Brook where your hus-

band lived and which he had provided for your occupation?

A. Yes, that is so.

Q. What explanation have you to give of the fact that you were married in April, 1901, and never even went to see your prospective home until October, 1902?

A. Well, on two or three different occasions I had written my husband that I was ready to come and asked him if he would come for me, but he made various excuses and didn't come. 10

Q. You have not those letters in which he made these various excuses?

A. I don't know that I have.

Q. And you have kept all the letters that you thought were valuable in this Court, have you not?

A. No, I have not.

Q. Going back to the letters that were written to you before you were married? 20

A. Yes, I have some of them.

Q. At any rate, you have no letters in which he made any excuses about your not coming to live at the house?

A. I think Mr. Cook read one in which he didn't come after me.

Q. I say, you have no letters that relate to that matter?

A. I don't think I have, other than what have been read here. 30

Q. None of them relates to your trouble, except this postal-card to which you refer in which he says "won't be at home on Saturday"? A. Yes.

Q. I understand you to say that you had written him previously that you wanted him to meet you at Eatontown on Saturday, and that in response to your letter, that you received this postal card?

A. I had written him before that, too.

Q. You said that you had written him that you wanted him to meet you on Saturday and it was in response to that letter that you got this postal-card? 40

A. (Question not answered.)

Mr. Cook: I would like to make a formal offer of the letters now.

The Court: They were read and that puts them in evidence.

Q. When did you go to Asbury Park in the summer of 1902?

10 A. In June—early part of June.

Q. Then you had been in Asbury Park since the early part of June, all through August, and September, and down to the 30th day of October, only ten miles away from your house, or the house that your husband had provided for your occupation, but had not gone there?

A. No, I did not.

By The Court:

Q. During that period had you visited your aunt in Pine Brook?

20 A. No, sir, I had not.

Q. Do you say that you did not receive letters from him in which he asked you, after your marriage, when you were over in New York to come down to Pine Brook and live with him?

A. I didn't say that.

Q. Did you receive such letters?

A. I received one.

Q. Only one?

30 A. That is the only one I remember receiving.

Q. You say one is all you did receive?

A. That is the only one I remember receiving on that subject.

By Mr. Wilson:

Q. Where is that letter?

A. I don't think I have it. I have destroyed some, and I think it must be among those I have destroyed.

Q. Why did you destroy that letter?

40 A. I destroyed some at the time I received them.

Q. Why didn't you destroy these letters?

A. I received them long afterwards.

Q. Some of these you received long before and some long after. Why didn't you destroy them?

A. I don't know, I'm sure. I had no object, I am sure.

Q. Well, there was a second letter in which he asked you to come down to Pine Brook? There is one you say you destroyed and there is one here?

A. I don't think so. That is a reply to my letter, asking him to come after me. 10

Q. You had asked him to come after you?

A. I did.

Q. And he wrote this letter then of February 4th, 1902: "It will be impossible for me to come up after you, but can you not get some one to seat you on the train and I will meet you at this end. There is no change of cars, so no inconvenience to you whatever at each end." What did you do in response to this letter that you got on or about the 4th of February, 1902? 20

A. I replied to it.

Q. You didn't go down, did you?

A. No, sir, I did not.

Q. Why didn't you go down?

A. Because I used the money for other purposes.

Q. What other purposes?

A. I used it to go to see a doctor. I needed medical attention and I used it for that purpose.

Q. Did you write your letter of explanation to your husband? 30

A. I did, indeed.

Q. Did you ask him for more money?

A. I asked him to come after me.

Q. You didn't think that his request that you should get upon the car, in view of his explanation here, was an unreasonable one?

A. Yes, I did. I had a little baby and I couldn't travel alone and he knew that.

Q. Why couldn't you travel alone? 40

A. My health was poor and I couldn't travel with

the baby alone and it was impossible for my mother to leave her work at that time and go with me.

Q. You were up and around? A. Yes, I was.

Q. You were doing work in the household?

A. No, sir, I didn't do any work at that time.

Q. And you were so ill that you could not have taken the child and gotten on a train without changing and gotten off at Eatontown—is that so?

A. That is so.

Q. Isn't the real reason why you didn't go because you had said always that Pine Brook was too slow for you and you would not go there to live? Isn't that the real reason?

A. No, that is not the reason.

By the Court:

Q. Did you ever say that?

20 A. No, I have never said that.

Q. Are you quite sure about that?

A. I am positive.

By Mr. Wilson:

Q. Have you any explanation other than the one which you have given as to why it was that you never visited your husband's home in Pine Brook, from the 28th of April, 1901, until the 30th of October, 1902—have you any other explanation than the one you have given that you think of?

30 A. Well, the only explanation I have is that I had written him to come after me and he didn't come and for long intervals he didn't write to me at all, and so I supposed from this he didn't want me.

Q. Yet, he was writing to you constantly during that interval.

A. I beg your pardon.

Q. These letters show it.

A. From the 9th of September until the 9th of December is rather a long interval.

40 Q. Hadn't he written to you during that interval?

A. No, he didn't.

Q. When is the last letter previous to that you received?

A. Previous to which?

Q. Previous to that visit of October 30, 1902?

A. I think the card was the very last letter I received.

Q. Had he ever told you that he wouldn't support you except where he provided a home for you? 10

A. He did.

Q. When did he tell you that?

A. When I was in Asbury Park. He wrote that to me.

Q. That summer? A. That summer.

Q. Had you seen him during that summer?

A. No, he wrote me that.

Q. Was that in response to something that you had written him? 20

A. Yes, it was.

Q. You undertook to have him arrested that summer for non-support?

A. I did not. I told him I was going to, but I didn't.

Q. You had threatened to have him arrested for non-support?

A. I told him I was going to see if I couldn't make him support the baby, but I didn't do anything along that line. 30

By the Court:

Q. When did you tell him that?

A. That was in the summer of 1902. He refused to give me money for the child.

By Mr. Wilson:

Q. And then it was about that time that he wrote you that he was "willing to support you only at the home I have provided." You knew he had provided a home? 40

A. I knew that he already had one before he was married. I didn't know that was especially for me.

Q. Do you mean to say that he rented the Cronmer home for any other purpose except for your marriage?

A. I mean to say that he kept house in Pine Brook, but in another house, with the same furniture.

Q. Did he move into the Cranmer house and have the addition put on and prepare it for occupancy about the time of your marriage?

10 A. I don't remember whether he did or not.

Q. Didn't you pass yourself off during a portion of this time as an unmarried woman and deny that you had any relationship with him whatever?

A. How could I with a baby.

Q. I ask you whether you didn't do it or not?

A. I say I did not.

Q. Didn't you adopt your maiden name as Dickerson?

20 A. I have always used that as a middle name, but not as the last name.

Q. Didn't you adopt that name and use it in your correspondence?

A. No, I did not.

Q. Isn't that your signature upon that card?

A. Yes, it is.

Q. What is the signature?

A. I probably forgot to put it in.

Q. What is the signature?

30 A. "M. Dickerson."

Q. Didn't you write him frequently, or more than once, using the name "M. Dickerson?" A. No, I did not.

Q. Didn't you hire out under the name of Dickerson?

A. I don't understand your question.

Q. You don't know what I mean by hiring out?

A. I do.

Q. What is it you don't understand?

40 A. The people now where I am employed know me as Mrs. Purnell, and all other places that I have worked since my marriage.

Q. My question was whether you hired out under the name of Dickerson?

A. No, I have not, and if you wish to make inquiries you can find out.

Q. I believe you said that you did write your husband in August following your marriage a letter in which you said that you could not come to Pine Brook until the child was in short clothes?

A. Yes, I did, and I told him it would be as soon as I could possibly make them. 10

Q. When you got the child in short clothes did you come to Pine Brook?

A. I waited to hear from him and I didn't hear from him.

Q. What did you want to hear from him?

A. He didn't send me any money to come with.

Q. He had sent you money?

A. Not until February.

Q. Didn't send you any money from this time until February? 20

A. In December he send me \$5.00.

Q. Didn't he send you \$5.00 in September?

A. September, yes, and in December.

Q. What did you do with the \$5.00 that you got in September? That was more than enough to take you to Pine Brook.

A. I used it to buy my baby's clothes with. I didn't understand that was carfare.

Q. You received money from him in August, too, didn't you? 30

A. I am not sure whether I did or not.

Q. Look at that of August 8th; isn't that your handwriting?

A. Yes, it is.

Q. The receipt says you received that \$5.00—1902—didn't you?

A. Yes.

Q. Wasn't that enough to take you to Pine Brook?

A. Yes, in 1902 I was in Asbury Park.

Q. How much did it cost to get from Asbury Park to Pine Brook? 40

A. I don't know the fare.

(The paper just referred to by counsel and witness is offered and marked C-1 for identification.)

Q. I am asking you about the carfare?

A. I don't know.

10 Q. At any rate, the \$5 was enough to take you there?

A. Yes, I suppose it was.

(Postal card, signed "M. Dickerson," to which witness referred, is marked C-2 for identification.)

Q. When did you receive the last money from Mr. Purnell?

A. October 30th, 1902.

20 Q. You received an additional \$5 from Mr. Purnell on the 29th of August, 1902, didn't you? Just look at that (showing witness paper).

A. Yes, I think so.

Q. Why didn't you go over to Pine Brook after he sent you that \$5.00?

A. Because he wasn't home.

(The same is marked Exhibit C-3 for identification.)

Q. It wasn't true that you didn't have the money to get home with that time, was it? A. Why not?

30 Q. Your husband did everything he could by way of caring for your wants and necessities up to the time of your marriage and after your marriage down to the birth of your child and after the birth of your child, didn't he?

40 *Mr. Cook:* I object to that. I don't think it is the right way to get at it. I don't care to have it injected into the case as coming from the mouth of the witness. It is perfectly competent for her to testify as to what he did, but as to whether it was everything he could do and as to whether he carried out his duties—that is a question for the Court.

The Court: I think the question is proper. The witness may answer it.

(Question read to the witness.)

The Witness: He did, down until September, 1901. I considered that he did his duty by me until then, but since then, not anything at all that amounts to anything. 10

Q. Until September, 1902, you mean?

A. 1901.

Q. What did he do to you in September, 1901, that he ought not to have done?

A. He didn't send me any more money—that is, not enough to keep me.

By the Court:

Q. Why didn't you go to him in September, 1901? 20

A. I was making the baby short clothes, and then small-pox developed down there and he didn't write to me and I thought he didn't want me to come for that reason, and I finally wrote to him to tell him I was ready to come.

Q. Then you were ready to come to him in September, 1901?

A. Yes, about the middle of September I was all ready to go. I had got my baby in short clothes.

Q. Prior to that you had written to him that you wanted to stay until you got the baby's clothes ready? 30

A. Yes, I did.

Q. And then you got them ready? A. I did.

Q. Do I understand you wrote him then to say that you would come to him?

A. I wrote him after I received his next letter.

Q. No, but when you got the baby's clothes made the middle of September, why didn't you come to him then?

A. Because I didn't get any reply to my last letter. 40

Q. Did you write to him to say that you had finished the baby's clothes and was ready to come?

- A. No, I did not.
- Q. Why didn't you?
- A. I was waiting to hear from him.
- Q. Why didn't you write to him and tell him that the baby's clothes were finished?
- A. I didn't write then, but I wrote later.
- 10 Q. I am asking you why you didn't write to him then?
- A. I was waiting to hear from him.
- Q. Why didn't you write to him and tell him that the baby's clothes were finished?
- A. I didn't write then, but I wrote later.
- Q. I am asking you why you did not write to him then?
- A. I was waiting to hear from him.
- Q. Didn't you think that as you had told him that you would wait until you had finished the baby clothes, that when you did get those baby clothes finished so that you were all ready to come, that you ought to have written to him to tell him?
- 20 A. Yes, I would if I had received a reply from him.
- Q. You knew that he had a house all ready for you?
- A. I knew he had a home there for his mother, but I didn't know whether it was for me or not. He has kept house in Pine Brook for a number of years before he was married.
- Q. With his mother?
- 30 A. Yes.
- Q. Did you know that his mother did not expect to stay there after you got there?
- A. No, I understood his mother was to remain there.
- Q. From whom did you understand that?
- A. He told me his mother was going to stay.
- Q. When did he tell you that?
- A. When he was up to see me in the summer.
- 40 Q. Then your idea was that this home which he was maintaining with his mother was open to you when you got ready to go there?

A. Yes, I understand that.

Q. And then when you got ready to go, you didn't tell him so because you wanted him to write first?

A. Well, I did tell him so afterwards.

Q. When?

A. I think in January—no, December of that year, after I received the letter from him.

Q. What I want you to explain is why you waited from September until December? 10

A. Because I had no reply from him.

Q. Reply from what?

A. From my last letter, telling him I would get the baby in short clothes as soon as possible, because I wanted to come before the weather got cold.

Q. Then you were waiting for a reply to this letter that he has told us about, that he showed to his friends?

A. Yes. 20

Q. Now, Mrs. Purnell, I call your attention to this letter of July 15, 1902, and it is addressed "Maude Purnell" and it is signed "J. W. Purnell." At that time your relations with your husband were friendly or unfriendly?

A. They were not very friendly.

Q. No, that would seem to be the inference from this letter. What was the trouble between you?

A. Well, the only trouble was that he did not provide for me. He didn't provide for me and my child in Asbury Park, or any in New York, and at the same time he gave me to understand that he didn't want me to come to his' home. 30

Q. How did he give you to understand that?

A. Well, he made various excuses and you can see the card that he wrote.

Q. I call your attention to the condition of affairs between you and your husband in July, 1902, when you got this letter. A. Yes.

Q. There was a quarrel between you then, was there not? 40

A. Yes.

Q. What was it about?

A. All about support, because he didn't provide for me.

Q. What was his claim?

A. I don't know. He never wrote me any explanation.

10 Q. What does this mean? "I am willing to support you only at the home I have provided"?

A. That was in response to a letter that I had written him, telling him I was coming to see if I couldn't make him support the baby. I didn't ask him for anything for myself.

Q. You had said nothing to him or written nothing to him about his supporting you at that time?

A. No, only for the baby.

Q. Can you tell us how he came to write this—what preceded this?

20 A. I suppose I knew what his letter was, since it came rather in an official envelope.

Q. All he says in this whole letter is, "I am willing to support you only at the home I have provided." Do I understand you to say that there was no quarrel between you in which he insisted that you should come home to his home and you insisted that he should support you somewhere else?

30 A. He has never given me any explanation whatever as to why he would not support me, only that in reply to that I told him very well when he left the Club that I would come to his home.

Q. I am dealing with exactly what your relations were at this time, July 15, 1902, and do I understand you to say that at that time there was no dispute between your husband and yourself in which you insisted that he should support you somewhere else and he insisted that he should support you at his home in Pine Brook?

40 A. No, sir.

Q. No such quarrel? A. No, sir.

Q. No such dispute?

A. No, sir.

Q. Then this letter, which begins "Maude Purnell" and is signed "J. W. Purnell" and simply says "I am willing to support you only at the home I have provided"—that letter had no relation to any dispute between you at the time?

A. Not about the support for myself, only the child. 10

Q. When you got this letter didn't it strike you it was a very strange thing for your husband to write that way?

A. I had received little slips of paper like that previously and I replied to them.

Q. Didn't it strike you as very strange when there was no dispute between you and your husband about the place where he was to provide for you a home, that he should write you that letter, saying "I am willing to support you only at the home I have provided"? 20

A. Well, I knew it was just simply a question of his getting out of supporting me. He had told me that he didn't want me up there, or practically told me that. I had asked him for support for my baby.

By Mr. Wilson:

Q. You have said that Mr. Purnell has done nothing for the baby since the commencement of this suit?

A. Not that I know of.

Q. I ask you has he done anything for the support of the child since the beginning of this suit? 30

A. He has not, to my knowledge.

Q. He has paid his alimony, has he not?

A. Yes.

Q. And that alimony was paid upon the theory that it was for the maintenance of yourself and the child, wasn't it?

A. I suppose so.

Q. And since the commencement of the suit, and all the time since the commencement of the suit, the child has been at Pine Brook with your aunt, Mrs. Rock? 40

A. Yes.

Q. Have you paid its board there from the money that Mr. Purnell sent you?

A. I paid it, but I received it from him.

Q. How much has he paid from week to week?

A. He has not paid it regularly from week to week. I have received it in various sums.

10 *By Mr. Cook:*

Q. How much has he paid all together?

A. Fifty dollars all together.

By Mr. Wilson:

Q. Do you know Morgan M. F. Dickerson?

A. I know a Morgan W. F. Dickerson.

Q. Is he related to you in any way?

A. He is my cousin.

20 Q. Do you know his handwriting when you see it?

A. I think so.

Q. Is that letter in his handwriting (showing witness paper)?

A. I think so.

Q. Is that letter in his handwriting?

A. Yes, I think it is.

(The same is marked Exhibit C-4 for identification.)

30 Q. Did you ever tell him that you had not done the fair thing by Mr. Purnell?

A. No, I did not.

Q. The right thing by Mr. Purnell and that you hoped some day you would profit by your folly?

A. I don't remember ever having told him that.

Q. Do you deny that you did tell him that?

A. No, I won't.

Q. Read that and refresh your memory and let me ask you again whether you didn't say that to him?

A. I don't know what he means. That is something he took upon himself.

40 Q. I ask you whether you did not say that to him, that you did not do the right thing to Mr. Purnell?

A. No, I did not.

WILLIAM H. DICKERSON, sworn for the defendant, testifies as follows:

Direct Examination by Mr. Cook:

Q. Where do you live? 10

A. Present time I am living at 63 West 143rd Street, Manhattan, New York.

Q. Are you related in any way to Mrs. Purnell?

A. She is my niece.

Q. Do you remember when she was married to the petitioner, John W. Purnell?

A. I remember hearing about it. I was not present at the time.

Q. About when was it?

A. Well, I think it was in 1901—somewhere around there. 20

Q. Do you remember the time of the year?

A. Some time in the spring, I think—to the best of my knowledge.

Q. Where was she living at that time?

A. My sister was living in 37th street.

Q. And your sister was her mother? A. Yes.

Q. After the marriage did this lady and her husband live together?

A. Not to my knowledge. 30

Q. Where did he live?

A. Pine Brook most of the time, I think. I have seen him down there frequently.

Q. She continued her residence with her mother?

A. Yes.

Q. How often did he come up to see her?

A. I never saw him in New York at all.

Q. Have you heard of his being there recently?

A. I have not.

Q. Do you know whether after the summer of 1901 he has been there or not? 40

A. Not that I know of. I couldn't say.

Q. You saw her frequently? A. O, yes.

Q. How often?

A. I used to visit my sister quite frequently.

Q. When did she die?

A. About three years ago, I believe it is now.

Q. You have never heard of his being up there since the summer of 1901?

10 A. No, I have not.

Q. Do you know whether he provides for her in any way now, or has lately?

A. Well, I don't know. I couldn't say whether he had or not. I know that after my sister died I provided a home and took her and the child there, and they kept house for me for about a year and a half.

Q. What year was it?

A. That was the year before last, 1905, I think it was.

20 Q. And what provision, if any, did he make for her at that time?

A. None that I know of.

Q. She was living with you that year and a half?

A. Yes.

Q. Where is she now living?

A. No. 6 West 21st Street.

Q. Employed there? A. Yes.

Q. In what capacity? A. As a maid.

Q. How long has she been working?

30 A. I think she went there in June. I would not be positive as to the date.

Mr. Wilson: No questions.

WILLIAM OBY, sworn for the defendant, testifies as follows:

Direct Examination by Mr. Cook:

Q. Where do you live? A. Asbury Park.

Q. Do you know Mrs. Purnell here? A. Yes.

40 Q. When did you meet her?

A. I used to go to school with her years ago.

Q. Do you remember going over to Pine Brook with

her in October, 1902? A. Yes.

Q. You drove her over that day? A. Yes.

Q. Whom did you see there?

A. I went to see that gentleman there, Mr. Purnell.

Q. How did you happen to take her there?

A. She hired me.

Q. Where did she say she wanted to go?

10

A. Pine Brook.

Q. Did she say what she was going there for?

A. I don't think so.

Mr. Wilson: I object.

The Court: Yes, how is that competent?

Mr. Cook: I will withdraw the question.

Q. What did she take with her in the way of baggage?

A. She had a large bag and a small bag with her.

Q. Have the baby along. A. Yes.

20

Q. Where did you take her in Pine Brook?

A. Took her to this house where he was. He was there at the house the time we arrived.

Q. Did you know where he lived? A. No, sir.

Q. And was he at that time home? A. Yes.

Q. And did he come out to meet you?

A. She went to the door first.

Q. Now, tell us what you remember of the conversation which took place between them?

A. She went to the door and stood there a few moments and finally she went in. I stays outside and I heard him say, "What did you come for?" She said she came to see what he was going to do for her. He says, "I cannot do anything." She says, "What am I going to do?" He says, "I don't care what you do."

30

Q. Was there anything said about the child?

A. That time, why Mrs. Purnell's mother got out of the carriage and went to the door and they all commenced talking and I didn't bother any more at all.

Q. How long did she stay?

A. I judge they were there pretty near an hour.

40

Q. And then you went back to Asbury Park?

A. Yes.

Q. Left her at her residence? A. Yes.

Q. He has testified that he gave you some money for her. How much did he give you that day?

A. I think it was \$5.00.

Cross-Examination by Mr. Wilson:

10

Q. He says he thinks it was \$10.00?

A. I think it was five.

Q. You are not positive. A. No, sir.

Q. And he says that he told you that that money was to pay for the rig and whatever was left to give it to her and if she wouldn't take it, to give it to her mother. You recall that?

A. I remember his giving the money. I charged them \$2.50.

20

Q. What did you do with the balance?

A. I don't know whether I gave it to her or the mother. I gave it to one of them.

Q. Did you ever see her since?

A. I have seen her since.

Q. You knew her before? A. Yes.

Q. She was a good friend of yours that same summer?

A. No, sir.

Q. You knew her that summer? A. Yes.

30

Q. And had been around with her that summer?

A. I had not.

Q. Never had been in her company that summer?

A. Once.

Q. Where had you gone that once?

A. Never gone anywheres.

Q. Where were you when you were in her company?

A. On Springwood avenue.

Q. Do you mean to say that you were only once in her company prior to that time?

40

A. No.

Q. You knew her all that summer?

A. I have known her twenty years, pretty near.

By the Court:

Q. What month was it when you drove there with her mother?

A. I think it was October, 1902.

Q. You stopped with the horse, with the vehicle, while they went in?

A. I was right in the yard. It was no distance at all from the door. 10

Q. You remained seated in the carriage?

A. I got out of the carriage and blanketed my horse.

Q. How far was the house from the street?

A. Not very far. About as far as from here to that window there (indicating distance across court room).

Q. The house was thirty or forty feet off from the street?

A. I should judge that, yes.

Q. And Mrs. Purnell went first, did she? A. Yes. 20

Q. What did she have with her when she went?

A. Had the baby with her.

Q. Carrying the baby? A. Yes.

Q. And the luggage was left in the vehicle?

A. Yes.

Q. Was it ever taken out of the vehicle?

A. No, sir.

Q. How long after she went up to the door did her mother follow her?

A. A few minutes afterwards. 30

Q. Had Mrs. Purnell got in before the mother followed her?

A. Yes, she had got inside.

Q. Did you see Mrs. Purnell go in the door?

A. Yes.

Q. Did you see who opened the door?

A. She opened the door. I think she was close to the door.

Q. And then she shut the door?

A. The door was on the jar, and after the conversation began Mrs. Purnell's mother went in. 40

Q. Did you hear anything said about the baby?

A. After they got talking loud I didn't pay any attention to it.

Q. How did you hear this talk that you described to us, from where you were?

A. I was standing close to the door.

Q. How near?

10 A. As close as that window (indicating window in court room).

Q. You left your horse in the street?

A. Drove in the yard.

Q. How near to the door did you get?

A. As near as that wall is over there (indicating wall in court room).

Q. That would be twenty feet?

A. Yes, probably. The horse stopped right there all the time they were talking.

20 *By Mr. Wilson:*

Q. And you didn't get out of the wagon?

A. Yes, I did get out and blanketed my horse.

Q. Were you out of the wagon when you heard this conversation?

A. I was, yes.

Q. But you were at your horse, attending it?

A. Yes, I went no further than the horse.

30 Q. And this conversation that you heard was between Mr. and Mrs. Purnell as they met at the door?

A. As the door opened I heard these words.

Q. And before they went in the house or was it after she got in the house?

A. After she got in the house.

Q. Then you did hear a part of the conversation after she got in the house?

A. After they all got in I didn't pay any attention to it.

40 Q. But you heard the conversation between the husband and wife, after they got in the house?

A. Yes, the door stood ajar.

By the Court:

Q. State again what you heard.

A. He asked her "What did you come for?" She says, "I came to see what you are going to do for me." He says, "I can't do anything." She says, "What am I going to do?" He says, "I don't care what you do." After that Mrs. Purnell's mother came 10 into the house and they all commenced to talk loud.

By Mr. Wilson:

Q. They stayed there about an hour?

A. Yes, about that, I should say.

Q. Were they talking loud all that hour?

A. Pretty loud.

Q. And yet you have told us every word that you can recall, that you overheard?

A. I will tell you what, after they all got talking loud, I won't say anything further. 20

Q. You never heard anything about the baby?

A. Not particularly, no sir.

Q. Did you hear any talk about the baby?

A. I won't say that.

Q. Why won't you say that?

A. There is a lot of things that I won't say.

Q. How did you happen to recall those very words?

A. I noticed that.

Q. Were you asked to notice it at the time?

A. I did not. 30

Q. When did you know you were going to be a witness?

A. I got a subpoena the other day.

Q. Some man came to subpoena you?

A. Yes, on Springwood avenue.

Q. Did you know in advance that you were going to be served?

A. No sir.

Q. Nobody had ever talked with you about it from the time it happened until you received that subpoena? 40

A. Never.

Q. But some stranger came there to serve a subpoena on you?

A. Yes.

DEFENDANT RESTS.

10

JOHN W. PURNELL recalled in rebuttal testifies as follows:

Direct Examination by Mr. Wilson:

Q. Your wife has testified that it was you who wrote her at the time she was willing to come, giving various pretences why you did not want her to come, and that she on more than one occasion asked you to come and get her and that you refused to come and get her. Is that true?

20

A. It is not.

Q. She has said in explanation of the fact that she never went to look at that home between the time of her marriage in April, 1901, and October, 1902, that you had given her to understand that you did not want to come there. Is that true?

A. No sir.

Q. She has given her version of what happened at the house when she came to visit you in October, 1902.

30

You have already given your version. I ask whether you wish to correct your statement in any way, in view of what you heard her testify to, or do you still stand upon your version as to what happened? Do you understand my question?

A. Not wholly.

Q. You heard what she said? A. Yes.

Q. Is that true or false?

A. It is not true.

40

Q. You have heard the witness upon the stand who said that you met the woman at the door and you asked her what she had come for, and she said she had come to find out what you were going to do for

her, to which you replied "nothing," and then she said, "What am I to do?" and then you replied, "Do what you please" or language to that effect. Did any such conversation occur at the threshold of that house, or in that room, or anywhere that day, with that woman?

A. No, sir.

Q. Was anything said by her to you about her coming to you that day? 10

A. No, other than she says, "John, I have brought the baby. Now I am going to New York."

Q. Have you detailed in your examination in chief all the conversation that occurred between you in respect to this matter, so far as you can recall it? This morning when you were upon the stand and told the story, did you tell all the conversation between you that you recall, in respect to the child or in respect to your wife's coming back? 20

A. I forgot just whether I said this morning or not as to—I think I did—as to my being willing to provide a place for the child and in offering this money—I told that.

By the Court:

Q. Since you were on the stand, this morning, have you produced here at the table a bundle of letters that you received from your wife? 30

A. No sir.

Q. How many have you found?

A. I have found about three or four of them.

Q. And you have those here? A. Yes.

Q. Were those letters received by you after your marriage?

A. I think one was before.

Q. And the other is after? A. Yes.

Mr. Wilson: I would gladly hand them to the Court, if the Court wishes to inspect them. My friend might use them if he wishes to. They seem to me to be absolutely unimportant. 40

The Court: The letters referred to by the witness which he says he has with him, received by him from his wife, are now delivered to counsel for the defendant for inspection, counsel for the petitioner stating that he is willing to have them put in evidence.

Mr. Cook: I cannot see anything that has any relevancy to this suit. They are mere gossippy letters.

The Court: The inference is that they are entirely irrelevant and that they have no bearing on anything in this case.

Mr. Cook: I cannot see that they are relevant.

Mr. Wilson: I would like to ask the petitioner whether the stepfather Polhemus here told him about what the woman had said to them, and if so, when they told it to him.

Mr. Cook: I don't want to keep anything out of the case.

JOHN W. PURNELL called for further examination testifies as follows:

Direct Examination by Mr. Wilson:

Q. You heard what Polhemus, the stepfather of this defendant, said—that is, what she said to him—about not coming to Pine Brook to live?

30 A. Yes.

Q. You heard him say that on the stand this morning?

A. Yes.

Q. Did he ever tell you that he had heard her make that statement?

A. No, not as I heard it this morning. He had had some talk with her, but I don't just know the nature of the talk.

Q. You don't understand my question yet. The question is, did he tell you?

40 *Mr. Cook:* I don't care to have the witness suggest-

ed the answer in any way. I object as to whether or not he told him certain things.

The Court: I think you can get it without leading the witness.

Q. The stepfather has said that your wife told him on two or three occasions?

10

The Court: That is not the way to get at it. That is the very objectionable element we have just been dealing with.

Q. Did the stepfather ever tell you out of the presence of this woman that he had some talk with her about her living at Pine Brook? Did the stepfather tell you that?

A. Yes.

20

By the Court:

Q. What did he say?

A. Why he said, "Maude, has refused to live at Pine Brook, and my wife and I have thought this: That as long as you do for the child, why, of course I don't like for you to do anything for her." Something of that nature.

Q. Where was that?

A. Well, that was after the visit that time in 1902 and I have receipts from his wife, or her mother, in my pocket now, as to where I sent money to her mother for the support of the child and it is in answer to the postal-card that she signs her name as "Maude Dickinson" that she writes to a letter that I had sent her money.

30

By Mr. Wilson:

Q. You say that was after October?

A. That was after October. This was in 1903; that is why I would like to speak that after that time I had done something for their support. That was the time following the time in October, 1902.

40

Q. Now Polhemus, the stepfather, told you that?

A. Yes.

Q. The other Polheums, did he ever say anything to you about what this woman had said about living at Pine Brook?

A. Yes.

10 Q. What did he tell you?

A. I don't know the exact words. He spoke to me about the late hour that she came in and had been to some ball or something.

Mr. Cook: I object to his going into any collateral conversation. His attention is directed to one statement and it is for that purpose alone that this case was reopened.

20 *Mr. Wilson:* But Polhemus, you know, did describe the woman coming in at night?

Q. What did he say to you about that incident, if anything?

A. (Question not answered).

By the Court:

Q. Did he tell you anything about what your wife said on that occasion? A. Yes.

Q. What did he tell you that your wife said?

30 A. She says that she was not going to Pine Brook. It was too slow and it was the very kind of a time that she had that night that she longed for.

By Mr. Wilson:

Q. How long after he said he had that conversation was it that he told you?

A. That was after I returned to school the following fall.

By Mr. Cook:

40 Q. What year?

A. 1902.

Mr. Cook: No questions.

SAMUEL POLHEMUS, recalled for further examination, testifies as follows:

Direct Examination by Mr. Wilson:

Q. When you were on the stand this morning you said you told of a conversation that you had with this defendant about her coming to Pine Brook to live. Do you recall what you said about that? 10

A. Yes.

Q. Did you ever tell Mr. Purnell of that conversation?

A. I did, yes.

Q. And about how long after it occurred was it that you told him?

A. Well, I don't know exactly how long it was.

Q. Was it while your wife was still living? 20

A. Yes, it was while she was living.

ROLAND POLHEMUS, recalled for further examination, testifies as follows:

Direct Examination by Mr. Wilson:

Q. You remember having testified this morning about a conversation you had with Mrs. Purnell one night in August, 1902, when she came into the house where you were sleeping. Did you ever tell Mr. Purnell of that conversation? 30

A. Yes.

Q. When did you tell it to him?

A. I told him in the fall of that year, 1902.

By the Court:

Q. Did you tell him what she said?

A. Yes, I told him what she said, that she was out for a good time.

By Mr. Cook:

Q. Is that all you told him? 40

A. She was out for a good time and she was not going—something like that.

By Mr. Wilson:

Q. Did you tell him at that time what you said to her and what she said to you?

10 A. I said she ought to go home—

Q. Did you tell him that?

A. Yes, up at Pine Brook. She says, "I am not going. I am out for a good time."

Mr. Wilson: I haven't anything further to offer or anything further to suggest.

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DEFENDANT'S EXHIBITS

D 1.

Box 136.

Eatontown, N. J., April 22nd, 1901.

My dear Maude:—

Yours of the 18th was received and contents carefully noted. You need not be surprised to know the degree of pleasure given is unexpressable. 10

Prior to that letter, I had thought it would be useless to make you my wife as you would be unhappy and that naturally would make me so.

I think far more of what you said in those few simple words, than had you made a thousand promises. I have often thought that a great many failures are due to the fact that the parties concerned do not feel that their interests are common. In other words they are narrow or selfish. 20

There is nothing more apt to put stamina in a man than to know *his* happiness receives some consideration.

Should nothing prevent, I'll be up on Friday evening and on Saturday I'll be ready to make you my wife.

Has your physician called lately, if so what does he say of your condition?

I'll put a note in for your mother, although I suppose you have told her what you have decided upon.

As I want to mail this, this afternoon I must close— 30
with much love. I am, yours,

JOHN.

D 2.

Eatontown, N. J., April 22nd, 1901.

Dear Mrs. Polhemus:—

Well, Maude and I have at last decided that we'll get married and I have thought the earlier the better—so should nothing prevent, I think the 27th will suit me best.

I should like to have given you an option, but as it is 40

I'm quite sure you'll agree. I trust that we both will be a credit to you, and what seemed about to rob your life of its sunshine, will prove a blessing.

With best wishes for your health, I am,

Yours with reverence,

J. W. PURNELL.

D 3.

10

North Long Branch, June 30th, 1901.

My dear Maude:—

Your letter reached me yesterday morning—you may know I had been looking each day to hear from you and did not allow for hindrances, but weather, etc.

During the day we, too, have cause to wish for a cooler climate, but usually a sea-breeze comes to our relief in the evening.

20 Although this is my day on I closed this building and pumped the organ at the Episcopal Church here. The Secretary is organist and he gave me special permission to do so. There was a white fellow though in one part of the building. He wants us to agree to do so each Sunday we are on duty—that strikes us better, but the Sundays we are off we bitterly objected, of course in a mild way, to do so.

30 So your friend has heard many tales, Eh? So have I. It reminds me something of a play—"Michael Strogoff"—I am not certain about the spelling of that last word, however, evil disposed persons wanted to rob him of a message which he had for the Czar. *His* identity was unknown, but his mother was known so in the presence of a number of "*suspects*" his mother was subjected to all sorts of cruelties; of course this was done to call forth a resentment from Michael if he was there.

Certain evil disposed persons have so circulated things about you that they would reach me with the hopes of getting me to express myself on the subject. I have said nothing neither pro nor con.

40 Experience has taught me to treat people as I find them. The point at issue with me wasn't what you had done prior to our meeting.

Doubtless the same people will paint a picture (?), of the darkest hue of me.

You need not fear that I'll be governed by what any one says to me—if I am not able to carry out your plans at any time, it won't be because I'm indifferent from rumors.

Enclosed, or at any rate, I'll express to-morrow Sixteen Dollars. I regret to say the doctor will have to be paid in part payments. I'm trying to get the house fixed up some, so together with other demands, I'm kept embarrassed financially. 10

So the baby is getting along nicely and looks more like me, Eh? I'm very glad to hear both.

I can't say at this writing as to when I'll be up, but I want to do so just as soon as I can.

Please drop me a line at once, so that I may know if you received the money. 20

Trusting you are all well, I am,
Your loving husband,

JOHN.

P. S.—Julius was over this afternoon and said he had written you concerning his cane and umbrella.

D 4.

Eatontown, N. J., Sept. 9th, 1901.

Dear Maude:

Your letter was received some time ago. Doubtless you have wondered what caused my tardiness. 30

Well, my mother is in Philadelphia and last week I had to come home every night—sometimes it would be 2 o'clock in the morning when I got here. You may know that alone is capable of putting one out of business since the ride is to be reckoned too.

By this you see I'm home. I got through One o'clock yesterday, and commenced work again this morning.

Enclosed please find an order for Five Dollars. I send this way because I think you'll get it sooner.

As I want to get this in to-day, I must hasten. 40

With much love etc.,

Your devoted husband,

JOHN.

D 5.

Box 136.

Eatontown, N. J., Sept. 27th, 1901.

Dear Maude:

Your letter bearing the post-mark of the 20th was received.

10 I am sorry you had so much trouble getting the order cashed.

At this writing it is impossible for me to say when I can get up. Some time after next Friday I'll send you some money, and I'll try to send it so you will not have so much trouble.

Trusting you are all well,

Your husband,

JOHN.

D 6.

20

Box 136.

Eatontown, December 9th, 1901.

I do believe that I am or have been a trifle longer answering *your* letter than you were answering mine.

I suppose you have heard all about the development of small-pox and that school was closed for nearly three weeks. I think the scare is over now, yet too precaution is not to be disregarded.

30 Teacher's Institute was held at Asbury Park again this year, and there were some fine lectures delivered.

Enclosed please find Five dollars \$5.00.

Trusting you are all well, I am,

Your husband,

JOHN.

D 7.

Box 136.

Eatontown, N. J., Jan. 1902.

Dear Maude: Yours of the 6th was received.

40 It is impossible for me to come up until the last of the month, or rather the first day of Feb., which is on Saturday.

As it is impossible to leave home for any length of time, I will have to return that night.

Trusting you are all well,

JOHN.

D 8.

Box 136.

Eatontown, N. J., Feb. 4th, 1902. 10

Dear Maude:

One reason for not having gotten up on Saturday is self-evident, but the other I'll relate.

Some days previous to the first, my horse ran away and smashed up things generally; after having gotten things that could be repaired put in shape, the bill was stunning.

It will be impossible for me to come up after you, but can you not get some one to see you on the train and I will meet you at this end. There is no changing of cars, so inconvenience to you would be at each end. 20

The weather here has been something fierce for the last few days—I didn't go to town yesterday, but am going to-day in a sleigh should nothing prevent.

As I want to get down and back before dark I must hasten.

Enclosed please find Three dollars.

Trusting you are all well,

JOHN. 30

D 9.

Enclose please find Five Dollars.

(March 25-02)

J. W. PURNELL.

D 10.

July 15, 1902.

Maude Purnell:—

I am willing to support you only at the home I have provided.

J. W. PURNELL. 40

84

D 11.

Monmouth Beach, July 31st.

Maude Purnell:—

Enclosed please find Five dollars.

J. W. PURNELL.

D 12.

10

Care M. B. C. C.

Monmouth Beach, Aug. 29th.

Maude:—

Enclosed please find Five dollars.

J. W. PURNELL.

D13.

Box 136.

Eatontown, N. J., Oct. 7th, 1902.

Maude:—

20 Enclosed please find an order for Five Dollars
(\$5.00 100).

J. W. PURNELL.

14.

Eatontown, N. J., Dec. 14th, 1903.

Maude:—

Yours of some days ago was received, and contents noted.

This makes the third or fourth attempt at answering; so I hope to be able to finish this note.

30 It the baby's board is within my reach (?) I'll do all I can in that direction.

At this writing it is impossible to make a remittance, but will do so about the holidays, on being more fully instructed.

Yours etc.,

J. W. P.

D 15.

Eatontown, N. J., March 27, 1905.

Dear Madam:—

40 Yours of some days ago was received. I'll assure my tardiness in answering is not due to vindictiveness, yet

too the mood employed but seldom, if ever, gives pleasure.

I had hoped to be able to remit the Ten dollars at this writing, but I can not. I could send half now and the other later, but fearing of giving a lady of your type too much trouble, I'll defer the remittance until I can get the required amount.

J. W. PURNELL.

10

CONCLUSIONS.

STEVENSON, V. C., (*orally*):

In this case, as I indicated at the close of the argument, the testimony satisfied my mind that in the summer of 1902, this man and wife were living in a state of separation, wholly on account of the fault of the wife. She had, as I think the testimony clearly showed, wilfully and obstinately remained away from the home which her husband provided for her. It was a good home, the providing of which was a full discharge of his duty to her. It was the home where he had lived and where his work lay. The young wife preferred to live in New York. She declined to go down to this place, Pine Brook I think it was called, and share the life that her husband there lived. 20

These are colored people but unusually intelligent. The man was well educated. He is a teacher. He was earning a good, fair living and he had a nice little home in this country place, and my mind rested very firmly upon the conclusion that this wife was guilty of gross misconduct—an entirely inexcusable violation of her duty to her husband—in remaining away from him. She undertook to dictate their mode of life, to say where they should live, and to compel him to come to her, when it was her duty to go to him. 30

The testimony indicates that it would have been difficult for him to live elsewhere. There might be great risk in his going elsewhere. The absence of the wife 40

without justification naturally had brought about an estrangement between them. Their relations were not friendly and this unfriendly state of mind, as I have said, was wholly due, in my judgment, to the misconduct of the wife. What they were quarrelling about is indicated beyond any doubt by this brief note, produced here by the wife in the handwriting of the husband, which she received by mail July 15, 1902, to "Maude Purnell—I am willing to support you only at the home I have provided. J. W. Purnell." It does not indicate a very affectionate feeling in this husband towards his wife, but the wife was to blame for that. This note unmistakably shows what the position of this man was. "You come to me and live in the home that I have provided and I will receive you. I will not support you elsewhere." The note strongly indicates that she was seeking to compel her husband to support her where she wanted to live, apart from him. Now then, that being the situation of affairs, we have to deal with the single interview that is proved to have taken place between this couple after this note was written.

In August, 1902, about two months after the note was written, the husband was maintaining this little home, a furnished house, entirely comfortable, and the wife appeared on the scene without giving him any warning. She says she came to stay. She brought with her a suit case and a valise and she brought with her the infant child of the couple. She came with her mother. She drove some ten or twelve miles and suddenly appeared at the house and then the wife went in, was followed by her mother, and the driver, the witness William Oby, was near enough to hear what was first said or what was said at the early part of the interview.

Now, the wife desires the Court to believe that she went there in good faith, accepting the reasonable demand of the husband indicated by this letter, that she should return to him, that she proffered herself ready to return and the husband repelled her and practically

told her that he did not care where she went. The wife's mother is not produced, because she is dead. The husband gives an entirely different account of this interview. He says that the wife appeared suddenly with the child and demanded that he should make arrangements for the support of the child. It is conceded that the wife went back to the carriage, got in, and the husband gave the driver five dollars with which to pay the fare which was due from these passengers and the balance was to be given to the wife, and the driver says that he did give the balance to the wife later. 10

Now, if the wife's story is true, no doubt the husband's action for divorce entirely fails. If the wife's story is true of what occurred in August, although she had been wholly to blame up to that time, although she was obstinately refusing without any justification whatever to accept the home which her husband provided, yet if in August she went there and tendered herself ready and willing to accept his proposal and live with him, that is the end of this man's case. After a very careful consideration of the testimony, however, I am satisfied that the wife's story is entirely false, that the husband's story is substantially true that the wife went to this place in August, not to make a bona fide effort to have a reconciliation and to accept the home which her husband had provided but that she went there to demand that the husband should do something for her and her child. 20 30

Now, in the first place, all the probabilities favor that view. I now treat the story of the wife and the story of the husband as flatly contradictory on this crucial point, and we have to discover where the truth lies. In my judgment, the true conclusion from the evidence is that the husband is telling the truth. The wife being in the wrong, it seems to me that the burden of proof is upon her to show that she changed her attitude and notified her husband of her willingness to return. I do not think that she shifts the burden by merely showing that, without any notification to her husband, she drove in a carriage with her child and a suit case and 40

a bag to his residence and had an interview with him, and then drove back in the carriage which remained waiting for her during the call. The important question is what took place between this couple upon this occasion. The story that the wife tells seems to be a somewhat unnatural one. This note of July 15th, 1902, shows precisely what the position of the husband was:

10 "I am willing to support you," he says—"I am willing to support you"—"but," he adds, "only at the home I have provided," and that was within his right. This woman had this letter in her possession. Why should she secretly, without notice to the husband, pack her things in a valise and the child's clothing in a suit case, and drive with her mother ten miles and drop in upon the husband at this time? She had this note in her possession and knew perfectly well what his position was, that he was ready to take her back and keep

20 her in this home which he had provided. She undertakes to make us believe that she went back secretly, without giving her husband notice, for fear that he would avoid her. In my judgment, that is highly improbable. The wife produced here as a witness to corroborate her, another colored man, the hack driver, apparently an intelligent young man who is friendly to her beyond all doubt. He knew her and was a playmate of hers at school when they were children, he says, and he did not know the husband. He drove this woman

30 and her mother these ten miles for the accomplishment of this purpose, whatever it was, and he stopped very near the door and he heard, as he tells us, what occurred at the early part of the conversation between the wife and the husband when she went in the door. While I cannot now from memory repeat what was said then, and I have no notes of the testimony, the substance of it is this: That he heard the wife make the bold demand, "What are you going to do for me or for the child?"

40 That exactly agrees with the husband's testimony, that this woman came there, dropped upon him, not in order to accept his offer and live with him, but to demand

what he would do about this child which she was very anxious to have cared for. There are other circumstances in the case which corroborate the story of the husband which I shall not detail.

I kept this case under advisement in order to consider whether the husband was guilty of a violation of duty in not subsequently, after this interview, inviting his wife to return. It was upon that point alone that I kept the case for consideration and now having considered it, I am thoroughly satisfied that the husband was relieved of any duty to again invite his wife. The rule in this class of cases is laid down in the case of *Hall v. Hall*, 60 N. J. Eq., 469, by the Court of Errors and Appeals. I read from the opinion of Mr. Justice Gummere, on page 470: "That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded is declared by our cases; and ordinarily, when the husband has by his conduct towards his wife contributed in any degree to her original desertion the law requires that he should evidence that willingness by making advances or concessions to his wife as might be reasonable to induce her to return to him." 10 20

It will be observed that the Chief Justice here is dealing with the case where the husband was in part responsible for the separation, whereas the case before this Court now is one where the conclusion of fact is reached beyond doubt that the husband was not responsible in any degree whatever for the separation. Chief Justice Gummere proceeds: "But the law does not impose this duty upon the husband in every case rigidly and without regard to the facts and circumstances by which it is surrounded. The husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife's desertion. Where it is manifest from the circumstances under which the desertion took place or from her temper and disposition, or from any other fact in the case that honest 30 40

effort on the husband's part to terminate the separation would be unavailing; or if successful in bringing the desertion to an end, would be so only temporarily, the duty of making it does not exist," citing cases.

That is the rule which I think disposes of this present case. In my judgment, under the circumstances, this husband had no reason to suppose that any bona fide invitation on his part to the wife would bring her back. She had persistently, during a long period of time, obstinately maintained the position that she would not come to him. She wanted him to provide for her somewhere else. She had his letter, which was a standing invitation to return.

The conclusion is that a decree for divorce will be advised.

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IN CHANCERY OF NEW JERSEY.

Between

JOHN W. PURNELL
Petitioner,

and

MAUDE DICKERSON PURNELL,
Defendant.On Petition, etc.
Final Decree.
Filed April 16, 1907. 10

This cause coming on to be heard at the present term of the Court of Chancery, held at the Chancery Chambers in the City of Jersey City, in the presence of Edmund Wilson of counsel with the petitioner, and in the presence of Pierre F. Cook, of counsel with the defendant, and the pleadings having been heard and the proofs taken, and the Court having duly considered the said pleadings and proofs; and it appearing to the Court that the marriage between the petitioner and defendant was solemnized and took place in the State of New York; and that the said petitioner was an actual resident of and inhabitant in this state at the time of the injury complained of, and at the time of exhibiting said petition; and that the said defendant has been guilty of wilful, continued and obstinate desertion of the petitioner during the term of two years next before the exhibiting of said petition. 20

It is thereupon, on this fifteenth day of April, A. D., nineteen hundred and seven, by his Honor, William J. Magie, Chancellor of the State of New Jersey, by virtue of the power and authority of this Court and of the acts of Legislature in such case made and provided, ordered, adjudged and decreed that the said petitioner, John W. Purnell, and the said defendant, Maude Dickerson Purnell, be divorced from the bond of matrimony for the cause aforesaid, and the marriage between them is hereby dissolved accordingly, and the said parties and 30 40

each of them are and is hereby freed and discharged from the obligation thereof.

Respectfully advised.

EUGENE STEVENSON,

V. C.

W. J. MAGIE,
C.

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IN CHANCERY OF NEW JERSEY.

Between

JOHN W. PURNELL,
Petitioner.

and

MAUDE DICKERSON PURNELL,
Defendant.

On Petition for
Divorce.
Notice of Appeal.
Filed May 7, 1907.

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The defendant hereby appeals from so much of the final decree made in the above stated cause as declares that the said defendant has been guilty of wilful, continued and obstinate desertion of the petitioner, during the term of two years next before the exhibiting of the said petition, and that the said petitioner and the said defendant are divorced from the bond of matrimony for the cause aforesaid, and that the marriage between them is dissolved and the said parties and each of them are and is freed and discharged from the obligations thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated April 23, 1907.

PIERRE F. COOK,
Solicitor for and of Counsel
with Defendant.

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I conceive that there is good cause for appeal in the

above stated cause on the ground that the proofs do not establish wilful, continued and obstinate desertion on the part of the defendant, and on the further ground that under said proofs the defendant is entitled to a decree dismissing the petition.

PIERRE F. COOK,
Of Counsel with the Defendant. 10

Service of a copy of the within notice is hereby acknowledged this 26th day of April, 1907.

EDMUND NELSON,
Solicitor of Petitioner.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

20

Between

MAUDE DICKERSON PURNELL,
Appellant,

and

JOHN W. PURNELL,
Respondent.

Petition of Ap-
peal.
Filed May 25,
1907.

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*To the Honorable the Court of Errors and Appeals in
the Last Resort in all Causes:*

The petition of Maude Dickerson Purnell, the appellant in the above stated cause, respectfully shows, that the petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the fifteenth day of April, in the year nineteen hundred and seven, wherein the said John W. Purnell was petitioner and the said Maude Dickerson was defendant in this respect, to wit, that the said de-

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10 cree adjudges that the said defendant has been guilty of wilful, continued and obstinate desertion of the petitioner during a term of two years next before the exhibiting of his petition, and that the said petitioner and the said defendant are divorced from the bond of matrimony for the cause aforesaid, and that the marriage between them is dissolved and the said parties, and each of them, are and is freed and discharged from the obligations thereof. And your petitioner humbly appeals from that part of the decree which decreed as aforesaid, upon the ground that the same is erroneous for the reason that the proofs do not establish wilful, continued and obstinate desertion on the part of your petitioner, and on the further ground that under said proofs your petitioner is entitled to a decree dismissing said petition.

20 Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court may seem meet.

PIERRE F. COOK.
Solicitor for and of Counsel
with the Appellant.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MAUDE DICKERSON PURNELL,
Appellant,

and

JOHN W. PURNELL,
Respondent.

The answer of the
above-named re-
spondent to the
petition of ap- 10
peal of the above-
named appellant.
Filed July 29,
1907.

This respondent, not acknowledging all of the mat-
ters which in the said petition of Appeal are contained
to be true, for answer thereto nevertheless says and
admits that a decree was on the fifteenth day of April, 20
nineteen hundred and seven, made and entered in the
Court of Chancery in the cause for that purpose men-
tioned in the said petition as is therein stated; but as
to the substance and form thereof this respondent prays
to refer thereto when the same shall be produced. And
this respondent is advised and believes that the said
decree is agreeable to equity and he prays that the same
may be affirmed with costs to be adjudged to this re-
spondent.

EDWIN WILSON, 30
Solicitor for and of Counsel
with Respondent.

THE STATE OF NEW YORK

IN SENATE

January 10, 1888

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

APRIL 18, 1887

ALBANY:

WHELAN & SON, PRINTERS, 1888.

THE STATE OF NEW YORK

IN SENATE

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IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

APRIL 18, 1887

Court of Errors and Appeals

1852

REPORT OF THE

COURT OF ERRORS AND APPEALS

FOR THE YEAR 1852

BY THE CLERK OF THE COURT

AND PUBLISHED BY ORDER

OF THE COURT

TABLE OF CONTENTS

The first part of this volume contains the reports of the Court of Errors and Appeals for the year 1852, and the second part contains the reports of the Court of Errors and Appeals for the year 1851. The reports are arranged in alphabetical order of the names of the parties to the cases. The reports are printed in full, and are accompanied by the opinions of the judges of the Court. The reports are printed in a small type, and are arranged in two columns. The reports are printed in a small type, and are arranged in two columns. The reports are printed in a small type, and are arranged in two columns.

