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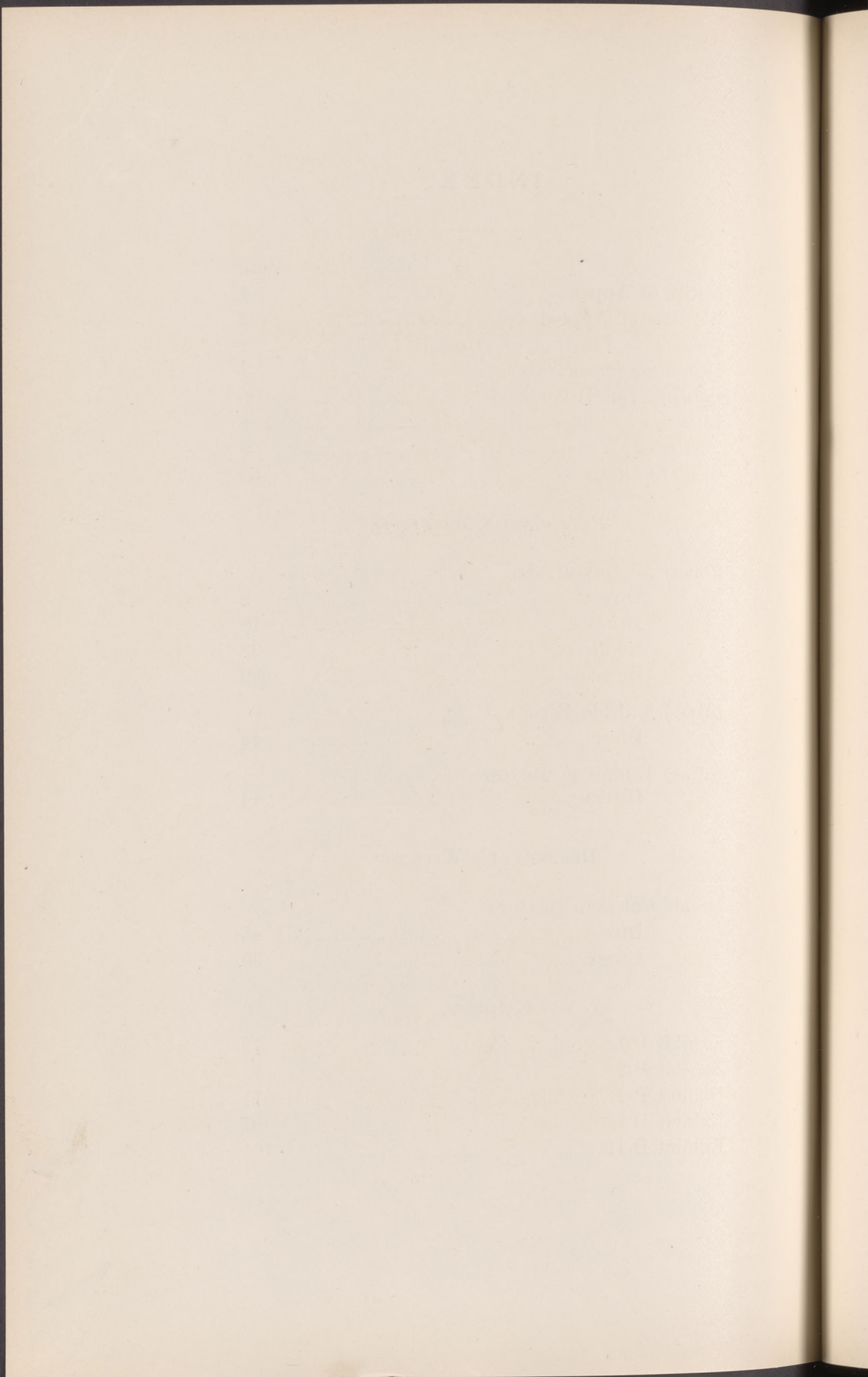
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Notice of Appeal.

(Filed May 12, 1926.)

In Chancery of New Jersey

10

Between

ROBERT M. BAXTER, JR.,
Petitioner,

and

MAUDE COLEMAN BAXTER,
Defendant.

Notice of Appeal
on Petition.

Robert M. Baxter, Jr., the above-named petitioner, hereby appeals from the decree of dismissal filed in this cause and dated April 12th, 1926, and from every part thereof to the Court of Errors and Appeals in the last Resort in all causes.

20

Dated April 19th, 1926.

LEWIS G. HANSEN,
Solicitor for and of Counsel
with Petitioner.

30

I conceive there is good cause for appeal in the above-stated cause.

LEWIS G. HANSEN,
of Counsel.

A True Copy.

THOMAS BARBER,
Clerk.

40

Petition of Appeal.

(Filed May 12, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

Between

ROBERT M. BAXTER, JR.,
Appellant,

and

MAUDE COLEMAN BAXTER,
Defendant.

On Appeal from
Chancery.
Petition of
Appeal.

20

*To the Honorable the Court of Errors and Appeals
in the last Resort in all Causes:*

30

The petition of Robert M. Baxter, Jr., appellant, respectfully shows that your petitioner finds himself aggrieved by a decree final made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 12th day of April, 1926, in that the said decree recites and adjusted that your petitioner has not sustained the allegations of his petition and is not entitled to the relief therein prayed and doth decree that petitioner's petition be dismissed. And your petitioner appeals from said decree and from every part thereof on the ground that the same is erroneous and that the Chancellor should have found and adjudged the several allegations of petitioner's petition to have been proved and the respondent, Maude Coleman Baxter, to have been guilty of wilfull, continued and obstinate de-

40

sertion by her of your petitioner for the time al-

Petition of Appeal.

leged in your petitioner's petition and should have ordered, adjudged and decreed that your petitioner be divorced from the bonds of matrimony with respondent for the cause aforesaid and that your petitioner should have the relief prayed for in his petition. 10

Your petitioner therefore prays that the said decree may be reversed, rescinded and your petitioner may have such further relief as shall be meet.

LEWIS G. HANSEN,
Solicitor for and of Counsel
with Appellant.

Answer to Petition of Appeal.

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(Filed September 23, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ROBERT M. BAXTER, JR.;
Petitioner-Appellant,

vs.

MAUDE COLEMAN BAXTER,
Defendant-Respondent.

On Appeal
from Court
of Chancery.

30

The answer of the respondent to the petition of appeal of the appellant.

The respondent admits it to be true that a certain decree was made and entered in the Court of Chancery as in the petition of appeal is stated; 40

Answer to Petition of Appeal.

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 said decree is agreeable to law
 10 and equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

HUCKIN & HUCKIN,
 Solicitors for and of Counsel
 with Respondent.

It is consented that the within Answer be filed as within time.

20 LEWIS G. HANSEN,
 Solicitor for and of Counsel
 with Petitioner-Appellant.

Decree of Dismissal.

(Filed April 12, 1926.)

IN CHANCERY OF NEW JERSEY.

30	Between ROBERT M. BAXTER, JR., Petitioner, <i>and</i> MAUDE COLEMAN BAXTER, Defendant.	}	On Petition for Divorce Decree.
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40 This cause coming on to be heard in the presence of Lewis G. Hansen, of counsel with petitioner, and Thomas J. Huckin, of counsel with

Decree of Dismissal.

defendant, on petition and answer and oral proofs taken in open Court, and it appearing to the Court that the petitioner has not sustained the truth of the allegation of his petition and is not entitled to the relief prayed therein: It is, on this 12th day of April, 1926, ordered, adjudged and decreed that petitioner's petition be and the same is hereby dismissed. 10

And it is further ordered, adjudged and decreed that petitioner pay to defendant or her solicitor, the costs of this suit to be taxed and also a counsel fee of One Hundred and Fifty Dollars and that she have execution therefor according to the practise of this Court.

E. R. WALKER, 20
C.

Respectfully advised.

JOHN BENTLEY,
V. C.

Petition for Divorce.

(Filed June 4, 1925.)

30

IN CHANCERY OF NEW JERSEY.

To HIS HONOR EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey,

The petition of Robert M. Baxter, Jr., of the City of Jersey City, in the County of Hudson and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Maude Coleman Baxter, the defendant in this suit, in the 40

Petition for Divorce.

month of April, 1909, by Dr. Jefferson, a Minister of the Gospel in the City and State of New York.

10 2. The defendant deserted the petitioner on the 31st day of May, 1923; ever since which time and for more than two years last past said defendant has willfully, continuedly and obstinately deserted your petitioner.

20 3. Petitioner has been a bona fide resident of the State of New Jersey continuedly for ten years last past, residing at Englewood, in the County of Bergen and Jersey City, in the County of Hudson; defendant was a bona fide resident of New Jersey continuedly for ten years last past
until the time of the desertion aforesaid, having continuedly resided in Englewood, in Bergen County.

4. One child was born of said marriage, to wit: Dorothy, age ten years, who is now in the custody of the defendant, but is supported by the petitioner.

30 5. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid according to the statute in such case made and provided.

LEWIS G. HANSEN,
Solicitor of Petitioner.

Petition for Divorce.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss.:

Robert M. Baxter, Jr., being duly sworn, according to law, deposes and says:

That he is the petitioner named in the foregoing petition and that his petition is not made by any collusion between him and the defendant but in truth and good faith for the causes set forth in the petition.

10

ROBERT M. BAXTER, JR.

Sworn to and subscribed before me }
 this 4th day of June, 1925. }

ERIC H. JENTZ,

Master in Chancery of New Jersey.

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30

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Answer.

(Filed July 15, 1925.)

IN CHANCERY OF NEW JERSEY.

10	Between ROBERT M. BAXTER, JR., Petitioner, <i>and</i> MAUDE COLEMAN BAXTER, Defendant.	}	On Petition. Answer.
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20 The answer of the defendant, Maude Coleman Baxter. This defendant answering the petition, says that:

1. Paragraph 1 is admitted.

2. This defendant denies it to be true that on the 31st day of May, 1923, she deserted the petitioner and for more than two years last past has willfully, continuedly and obstinately deserted petitioner.

30 3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 3 concerning the petitioner's residence in Jersey City, in the County of Hudson.

4. Paragraph 4 is admitted except that this defendant denies that the said child is wholly supported by the petitioner.

This defendant prays to be hence dismissed with her just costs and charges in this behalf most wrongfully sustained.

40

HUCKIN & HUCKIN
 Solicitors for and of Counsel
 with Defendant.

A True Copy
 THOMAS BARBER,
 Clerk.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

ROBERT M. BAXTER, JR.,
Petitioner,

and

MAUDE COLEMAN BAXTER,
Defendant.

10

On Petition for
Divorce.

Transcript of the testimony taken in above-
stated cause, on final hearing, at the Chancery
Chambers in Jersey City, on Wednesday,
January 6, 1926, 11 o'clock in the forenoon,
before His Honor JOHN BENTLEY, Vice-Chan-
cellor.

20

APPEARANCES:

LEWIS G. HANSEN, Esq., Solicitor,
ERIC H. JENTZ, Esq., of Counsel, for the Peti-
tioner,
THOMAS J. HUCKIN, Esq., for the Defendant.

30

ROBERT M. BAXTER, Jr., the Petitioner, sworn in
his own behalf, testified as follows:

Direct examination by Mr. Hansen:

Q. Mr. Baxter, you are the petitioner in this
case? A. Yes, sir.

40

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. And reside where? A. 117 Corbin Avenue, Jersey City.

Q. You are the husband of Maude Coleman Baxter? A. Yes, sir.

10 Q. And when were you married to your wife?
A. April 12th, 1909.

Q. Have you got your marriage certificate with you? A. (Witness producing paper) That is an exemplified copy of the marriage certificate.

Judge Huckin: We are willing to admit the marriage.

20 The Court: There is no such thing as an admission of that kind in these cases, because there is a third party that is supposed to be represented by the Court, the State of New Jersey.

Q. That is an exemplified copy of your marriage certificate? A. Yes, sir.

Q. You were married in New York City? A. Yes, sir.

Q. Where were you married? A. Broadway Tabernacle.

30 Q. Where did you get that certified copy, from the Clerk of New York County? A. Yes, sir.

Mr. Hansen: I offer it in evidence.
(Admitted and marked Exhibit P-1).

Q. After you got married did you take up house-keeping with your wife? A. Yes.

Q. Where? A. Morris Avenue.

Q. Where? A. The Bronx.

Q. How long did you live at Morris Avenue? A. About a year.

40 Q. Where did you live then? A. We moved practically across the street.

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. How long did you continue to reside there?

A. A little over a year.

Q. And where did you go then? A. Audubon Avenue, New York City.

Q. How long did you live there? A. About a 10
year.

Q. Where did you go then? A. To Englewood, New Jersey.

Q. That would get you to Englewood, N. J., in about 1912; is that right? A. Yes.

Q. Where did you go to live in Englewood, N. J.? A. On Morris Avenue.

Q. Another Morris Avenue? A. Pardon me, the first Avenue was Harrison Avenue in the Bronx. 20

Q. So you went to Morris Avenue, Englewood, about 1912 with your wife? A. Yes.

Q. Did you have a house there and set up house-keeping? A. Yes, sir.

Q. What was the number Morris Avenue; do you recall? A. There were only four houses on the block and they weren't numbered.

Q. How long did you continue to reside there? A. Until 1919.

Q. And where did you go then? A. Ivy Ave- 30
nue, Englewood.

Q. And what number Ivy Avenue? A. Those houses were not numbered either.

Q. And what kind of a house is that? A. Hol-
low tile.

Q. One-family house? A. One-family house,
eight rooms.

Q. You and your wife lived there? A. Yes,
sir.

Q. Have any children? A. One little girl. 40

Q. When was your little girl born? A. In 1915.

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. Her name is Dorothy? A. Dorothy M., yes, sir.

Q. And she was born, then, in Englewood while you were there? A. While were living in Englewood.

10

Q. How long did you continue to live in Ivy Avenue, Englewood? A. Until 1923.

Q. When? A. I vacated about June 19th.

Q. You lived there, then, up to the time you were in Englewood during your married life? A. Yes, sir.

Q. While you and your wife lived there together? A. Yes, sir.

Q. Did anything happen in or about June, 1923?

20 A. We sold our house in May, 1923.

Q. Sold your house in June, 1923? A. In May.

Q. You mean you contracted to sell it? A. Yes, sir.

Judge Huckin: I object. He says he sold it in May.

Mr. Hansen: I will withdraw it.

Q. When did you contract to sell your house?

30 A. The contract was probably drawn in April, 1923; the title was passed in May.

Q. And whom did you agree to sell it to? A. A party by the name of McCool.

Q. Did the title eventually pass? A. Yes, on the 31st of May, 1923.

Q. In Judge Huckin's office in Englewood? A. Yes, sir.

Q. Was your wife present at that time? A. Yes, sir.

40 Q. What happened after you passed title? A. Why, when Mrs. Baxter received the final checks

Robert M. Baxter, Jr., for Petitioner—Direct.

in payment she left the office. I fixed up payment of some dollars and cents, such as paying the broker and also paying a month's rent in advance to Mr. McCool, as agreed.

Q. What do you mean by "as agreed"? A. I sold the house with the understanding that I was to stay there a month until I had located a place. 10

Q. Did you make the necessary arrangements to stay there that month? A. Yes, sir.

Q. You made that with the purchaser? A. Yes, sir.

Q. Did you pay the month's rent? A. Yes, I did.

Q. Have you anything to show that? A. Yes, sir, the check that I gave him. 20

Q. All right; let's see the check. A. (Witness produces paper.)

Q. You produce your returned voucher check of May 31, 1923 for \$75. You say that was in payment for the rent for the month of June? A. Yes, sir, 1923.

Mr. Hansen: I offer it in evidence.

(Admitted and marked Exhibit P-2.)

Q. You gave this check of \$75 to the purchaser; did you and your wife go home together then? A. No, sir. 30

Q. What happened? A. My wife left previous to my leaving.

Q. Did she say anything to you when she left? A. No, sir.

Q. Did you subsequently go home? A. I did, directly.

Q. What condition prevailed when you arrived home? A. I found the house empty. 40

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. What do you mean by empty? The furniture gone? A. The furniture had been removed; yes, sir.

10 Q. Was that done without your consent? A. I knew nothing about it.

Q. It was news to you when you got home and found the house empty? A. Yes.

Q. Was there anything left at all? A. Only some furniture that we had sold to Mr. McCool that was supposed to stay there.

Q. Was your bed there or anything? A. No, sir.

Q. Everything else was out? A. Yes, sir.

20 Q. What did you do then? A. I didn't know what to do. I went down to Englewood post-office and asked if Mrs. Baxter had left a forwarding address, and they told me she had, to 552 West 172d Street, New York, and I went over there, and I got no response after ringing the door-bell.

Q. When did you go there, Mr. Baxter, the same day? A. The same afternoon; yes, sir.

Q. Whose house was that that you visited? A. The house of her sister.

Q. You didn't get any reponse? A. No, sir.

30 Q. What did you do then? A. Went back to Englewood and tried to locate my wife, and then I went over to see a lawyer in Hackensack.

Q. And what lawyer did you go to see in Hackensack? A. Robert W. Thompson, Jr.

Q. Did you find out where your furniture was? A. No, sir.

40 Q. Did you ever find out where your furniture was? A. I 'phoned to several warehouses in Englewood three or four days afterwards. It took some time, but I eventually succeeded in having one party admit that they had some of my furniture.

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. Now, after you went—was it Morningside Avenue you went to in New York? A. 172d Street.

Q. After you went there you came back to Englewood and consulted counsel? A. Yes, sir.

Q. Did you write your wife a letter that day? 10
A. That evening.

Q. Have you got that letter? (Witness produces papers.)

Mr. Hansen: Now, what are we going to do with the correspondence? I have type-written copies of all the correspondence that took place. I understand that Judge Huckin admits that the transcript is practically all right with one or two exceptions. What is your Honor's idea about that? 20

Judge Huckin: I think they are substantially correct. I see some slight variations, but they are not material. I am willing that they go in evidence, subject to our checking up. We have the original letters here.

The Court: There seems to be no material difference between you and Judge Huckin.

Mr. Hansen: Are we going to read these letters? 30

Judge Huckin: I think they ought to be read in evidence.

The Court: Suppose you have them marked and let me look them over.

Mr. Hansen: Then I offer in evidence a transcript of all the correspondence that took place between the petitioner and his wife after June 1, 1923.

(Admitted and marked Exhibit P-3). 40

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. Now, Mr. Baxter, the letters that His Honor has you wrote to your wife and you received the letters that we have here from your wife in response? A. Yes, sir.

10 Q. And you were always ready and willing—

Judge Huckin: I object.

Mr. Hansen: All right, I will withdraw that.

Q. Were you always ready and willing to take your wife back?

Judge Huckin: That is also leading.

20 The Court: Yes, it is objectionable, but I suppose you are anticipating cross-examination. I will let it stand.

Q. Were you always ready and willing to ask your wife back? A. Yes, sir.

Q. Did you so indicate by your letters? A. Yes, sir.

Q. And did she agree to come back to you? A. No, sir.

Q. As a matter of fact, did she ever come back to you? A. No, sir.

30 Q. Where did she live all the time; do you know? A. I didn't know until about the 17th of September.

Q. You found out where she was on the 17th of September? A. Yes, sir.

Q. Where was she at that time? A. Stopping with Mrs. Smith on Ivy Avenue, Englewood.

Q. How far away was that from where you resided? A. That was probably two doors down—the second house from the house we had.

40

Robert M. Baxter, Jr., for Petitioner—Direct.

Q. Well, let me ask you this, Mr. Baxter: How long did you stay in the Ivy Avenue house after the first of June, 1923? A. Until about the 19th of June.

Q. Where did you go then? A. To Demarest Avenue, Englewood. 10

Q. How long did you stay there? A. Just one month. I had a room.

Q. That brought you down to July 23d, did it? A. Yes, sir.

Q. Where did you go after that? A. 17 Van Reyepen Street, Jersey City.

Q. Whom did you live with at that address? A. No one.

Q. Well, did you board there? A. I had an apartment which I furnished for the return of my wife and child. 20

Q. You furnished an apartment at 17 Van Reyepen Street, Jersey City—or avenue? A. Street.

Q. How long did you continue to reside there? A. Until September 25th.

Q. And where did you go then? A. To Gordon Avenue. My lease was up on the first of October and I did not renew it.

Q. And you are at Gordon Avenue now? A. Yes, sir. 30

Q. When you went to Van Reyepen Avenue to live did you notify your wife that you went there?

A. Yes; I wrote to her and asked her to come back, and told her I had furnished a house with the necessary furniture; that the location was what I thought was adapted to our circumstances, near a school.

Q. Did you ever make any appointment to meet your wife? A. Yes, sir. 40

Robert M. Baxter, Jr., for Petitioner—Cross.

10 Q. Where and when? A. New York City. She eventually wrote and asked for an appointment, and I wrote and gave her the choice of two evenings, to meet me at my office and go to dinner and the theatre and talk things over if she cared to, and I waited and she didn't show up.

Q. You waited on both occasions? A. Yes, sir.

Q. And she had indicated in her letter that she would agree to meet you?

Judge Huckin: I object to that.

Mr. Hansen: All right; I will withdraw that.

20 Q. As a matter of fact, you never saw her after she left your house on June 1st; is that the idea?
A. After she left Judge Huckin's office.

Cross-examination by Judge Huckin:

Q. Mr. Baxter, were you devoted to your wife on May 31st, 1923? A. Yes, sir; very much devoted to her.

Q. Thought a great deal of her? A. Yes, sir.

30 Q. And that devotion continued how long after May 21, 1923? A. Until probably a year after I became convinced that she was not going to come back.

Q. And you weren't convinced until about a year after that she was not coming back? A. I say, about.

40 Q. But you stopped your correspondence three months after the home was broken up, didn't you?
A. I didn't correspond after I received a letter that I thought was apparently written to create a record, and it was useless to continue and I discontinued them.

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. Even after you received that letter were you devoted to your wife? You didn't think that that letter meant that, did you? A. I was in hopes it didn't.

Q. Being in hopes that it didn't, what did you do to find out whether it did or did not? A. I just let matters go. 10

Q. This removal of the furniture on May 31st came to you as a bolt out of a clear sky? A. Right.

Q. You so stated in an affidavit filed on the application of your wife for alimony? A. Yes.

Q. In Mr. Thompson's letter of June 30, the very day after the home was broken up, he says, "Mr. Baxter has consulted me with reference to his marital differences;" what were the marital differences? A. Mr. Thompson probably at the time inferred that there was some marital difference or the furniture wouldn't have been moved. 20

Q. Wasn't there marital difference? A. We had disagreements, naturally.

Q. Didn't you state in your affidavit in the alimony proceeding that the marital differences came about by your wife teaching school against your wishes? A. That part of it, yes, but that wouldn't be a cause for removing all the furniture, because it was in her behalf that I was objecting. 30

Q. You were devoted to your wife on May 31; you didn't want to give her the benefit of any doubt about doing the right thing, did you? A. In what respect?

Q. Well, for instance, the very next day you consulted a lawyer, didn't you? A. Seeking advice; yes, sir. I didn't know what to do. 40

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. Being devoted to your wife, didn't you think that there must be some misunderstanding or mistake that you could find out by seeking her personally? A. Yes, sir; which I endeavored to do
10 that day.

Q. Didn't you know that your wife was teaching school, and continued to teach, within a mile of where you were? A. Yes, sir.

Q. Did you go to the school to find out anything about her? A. Yes, sir.

Q. When? A. Sometime the first week in June.

Q. What day? A. I don't recall.

Q. Did you see her? A. No, sir.

Q. Why not? A. The superintendent told me
20 she had left for the week-end.

Q. Was she teaching regularly in the Tenafly public school, which is only a mile from your house? A. Yes.

Q. And she is teaching there today, isn't she?

A. I presume so. I have no evidence of the fact.

Q. Don't you know that she had been teaching several years before that? A. No, sir.

Q. Didn't you state in your affidavit filed in this case that she taught practically her whole life?

A. She had off and on, but I didn't know it was
30 the Tenafly school.

Q. Will you say that she didn't teach in the Tenafly school regularly from September, 1922?

A. She had been, yes.

Q. You knew all that; you put it in your affidavit in the case for alimony? A. Yes, she always did, every opportunity she could get, since we were married.

Q. You knew her hours for going to school and her hours for returning? A. I left the house in
40 the morning and she was there when I came back.

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. You knew your little girl was going to school? A. In Englewood; yes, sir.

Q. Did you at any time, except this one time that you speak of, go to this Tenaflly school to see your wife? A. No.

10

Q. And you were making inquiries about her disappearance? A. Yes, sir.

Q. Of whom did you inquire? A. On June the 7th I located my little girl at the house of my wife's aunt at Grant Place, the Bronx, and I inquired there and the door was closed in my face, and I wasn't permitted to see the little girl.

Q. You knew the next day that the little girl was with your aunt; didn't you call up your aunt's house? A. I didn't call up; I went there.

20

Q. You found the little girl was there? A. Yes, sir.

Q. And found her mother was there, didn't you? A. No, sir.

Q. Now, there is no question about your devotion to your wife; there is no question about there having been any marital trouble before that, was there, in your mind? A. Depends upon what you call marital trouble. I objected to her teaching school because she complained about it being too much for her.

30

Q. Is that the only serious matter between you and your wife? A. That was the cause of the most of the trouble.

Q. Don't you know that you ordered your wife out of the house, and ordered her out for months before that time? A. No, sir; I don't know it, because I never did.

Q. Will you say you didn't? A. No, sir; I did not.

40

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. Will you say there was no discussion in the presence of your wife's sister and your wife's aunt, in reference to this contemplated separation? A. No, sir; there never was any contemplated separation.

10 Q. You got a letter, didn't you, May 21st, 1923, from your sister-in-law? A. Not that I remember.

Q. Didn't you get the letter written under date of May 21, 1923?

Mr. Hansen: I don't want to object, but I don't think it is quite proper to refer to some letter from somebody else.

20 Judge Huckin: The witness has testified that there was no marital difference and he now says there was no talk of any abandonment or separation prior to that time. The purpose of my cross-examination is to show or to call to his attention the fact that he stated, in the presence of his wife's family that he intended to abandon his wife at this time.

30 The Court: You want the petitioner to be bound by some statement when that person wasn't under oath. You could prove almost anything in that way.

Judge Huckin: This is a letter written to the person I refer to.

The Court: Then it is hearsay. It is a vicious violation of the hearsay rule. How is he bound by what somebody else said?

Judge Huckin: He is bound in that he had knowledge and by subsequent conduct in sending this letter.

40 The Court: Suppose you produce the witness who wrote the letter and swear to

Robert M. Baxter, Jr., for Petitioner—Cross.

the facts, so that Mr. Hansen may cross-examine her. That is the way to prove that, not by what she wrote in a letter.

Judge Huckin: This is cross-examination and I want merely to bring it to the witness' attention. 10

The Court: If you want him to look at it to refresh his recollection, that is another matter.

Q. Then you did get a letter from your sister-in-law, Ida Coleman under date of May 21, 1923, did you not? A. I don't just recall.

Q. Well, look at this letter from her to you, dated May 21, 1923, and refresh your recollection. 20
A. Yes, sir; I did.

Q. Then, as I understand it, Mr. Baxter, there has been a time since May 31, 1923, when you had a personal interview with your wife? A. No, sir; I requested it but never obtained it.

Q. Have you supported your wife at all since May 21, 1923? A. Yes, sir.

Q. How? A. Since about June the 7th, under an order. I have contributed the amount specified in the court order.

Q. June 7th of this year? A. Yes, sir. 30

Q. Then from May 31, 1923, to June 7th of this year you didn't contribute anything to your wife's support? A. No, sir.

Q. And you had no interview with her at all? A. I never obtained it; no, sir.

Q. And you were surprised that she left you when she did, were you not? A. Yes, sir.

Q. Did you ever write her any letter asking her why? A. Well, the letters will show; I don't recall. 40

Robert M. Baxter, Jr., for Petitioner—Cross.

10 Q. Well, you are familiar with the contents of the letters which you wrote; is there, so far as you can recall, any request in any letter that you wrote to your wife, telling you why she left the home and went away? A. I don't know of any reason why she should; I did all I could for her to make her comfortable.

Q. But you never asked her why, from that time to this, did you? A. Unless it is one of the letters which you have now.

20 Q. You never told her personally or tried to see her? A. I did try to see her; I asked for interviews. She left the state directly after leaving and I could not get in touch with her. She went to Patchogue, in violation of the court order.

Q. In violation of the court order? A. Yes, sir, and took the children, before the court order was signed.

Q. Didn't you know that that was in accordance with the agreement between Mr. Thompson and myself before the Vice-Chancellor had signed the order? A. He had not signed it; no, sir.

Q. Didn't the Vice-Chancellor order that \$10 a week be paid? A. I volunteered that.

30 Q. You volunteered? A. Yes, sir.

Q. You didn't agree and consent to the support of the child until the court's order was made?

Mr. Hansen: I object to that statement.

40 The Court: I don't understand the ground of the objection. I think it of the utmost importance to know his state of mind and her state of mind. Those are the facts upon which I have got to determine this case. The question is, Mr. Baxter, whether or not you paid anything for the support of the child.

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A. I spoke to Mr. Thompson about seeing the little girl.

Judge Huckin: The question is, did he or did he not contribute anything for the support of the child. 10

The Court: Yes, that calls for a categorical answer. Either you did or didn't.

A. Will you take the date of the court order—

Q. If the answer is "yes", the next question will be when did you make the first payment? Did you pay anything toward the support of your child until the court ordered it? A. August 27th.

Q. I mean on the writ of habeas corpus that you sued out to get the custody of the child which was July 2d. A. Yes, sir, and put over until September which postponement was on your part. 20

Q. The original return date of the habeas corpus proceeding was July 2d, was it not? A. Yes, but it hadn't been settled, as I understood it. I am not familiar with the technicalities of the law.

Q. Now, from your previous statement I take it that you were devoted to your wife at that time? A. Yes, sir; and I was then.

Q. And you knew when she came to court with the child that it would be a good opportunity to talk to her? A. Yes, sir. 30

Q. Didn't you, as soon as she came in the lobby with her sister and her child, in an insolent manner rush up to that child and grab it and never look at your wife or sister and make the child cry? A. No, sir. That was the first time I had seen her.

Q. Will you say the child didn't cry? A. I don't say that she didn't cry, but I didn't intend to 40

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make her cry. I was so delighted to see her that I probably did grab her.

10 Q. At that time did you feel that that was an exhibition of devotion toward your wife? A. My wife had refused up to that time to let me see the child or even let me know where she was living. I did not know where she was living.

Q. Wasn't she teaching school and wasn't she within a mile of where you lived? A. I had no evidence of it.

Q. Didn't you know that the child was going to school regularly? A. I called up the school where I thought the child was attending and the principal said the child was not there.

20 Q. Did you call up more than once? A. No, sir.

Q. What principal did you call? A. The Cleveland School in Englewood.

Q. You knew your wife was teaching in Tenaflly, didn't you? A. My wife, yes; but my child was in the Cleveland school.

Q. You seem to have been devoted to your wife until the closing and transfer of your property. A. Yes, sir; I was contemplating getting a smaller house for her.

30 Q. Isn't it a fact, that when you came in to close the title you never looked at your wife? A. No, sir.

Q. You say you did speak to your wife? A. Yes, sir.

Q. What did you say to her? A. I said, "Good afternoon; how are you".

Q. And what did she say? A. She just nodded and smiled.

40 Q. And you were sitting directly in front of her; and you say you spoke to your wife? A. Yes, sir; I did.

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Q. Now, in one of your affidavits you say that you tried to give your wife support before the court order; is that true? A. When I considered the court order as being the date it was signed, yes.

10

Q. So that from May 31, 1923, to June 7, 1925, a period of two years, you didn't give your wife a cent toward her support? A. Not to her; no, sir.

Q. And didn't you say in an affidavit in that proceeding that you had tried to give your wife support and she wouldn't receive it? A. I don't recall.

Q. Well, let me refresh your recollection by reading a part of your affidavit in the proceeding for alimony: "It is true that I have not supported her since that time, because of the fact that she has refused support from me and said that she did not want my support." Was that the truth? A. I probably did say something to that effect, yes.

20

Q. You say you had no personal interviews with your wife? A. Only on the telephone.

Q. And there's nothing in your letters that indicated that you wanted to support her, is there? A. I consulted Mr. Thompson about the support, and he said to let it rest and see what happened.

30

Q. Then you didn't give her any support that she refused? A. You mean financial support? I tried to get her back to me.

Q. I mean primarily financial support, yes. Did you give her any financial support? A. Contribute to her? No.

Q. Then that wasn't the truth that you stated in that affidavit, that you tried and she refused? A. She refused to have anything to do with me.

40

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10 Q. The question I asked you was— A. I have not supported her since that time, because of the fact that she has refused support from me—said she did not want my support. That is what she told me over the telephone. I wanted to meet her and make arrangements for her to come back. I did not offer her any financial support, no.

Q. You never sent her a check or present of any kind? A. No, sir.

20 Q. What did you mean in that same affidavit, Mr. Baxter, when you said: "I admit that some time prior to May 31, 1923, my wife and I had marital differences"— A. That has reference to my wife teaching school. I explained about it being too much for her and I objected; it wasn't necessary for her to do it and I requested her to discontinue it.

Q. Don't you know positively that she taught school in order to help out in the home? A. No, sir; because it was not necessary.

Q. Isn't it true that between January 21, 1923, and May 31, 1923, the day that you left, that you only contributed \$280 support toward the house? A. No, sir.

30 Q. Have you a record of the amount you did give during that period? A. I didn't keep a record; I paid the bills in cash and that was probably her own personal allowance.

Q. Now, at this time on July the 2d when you met your wife in the Court of Chancery here did you endeavor to speak to her at all? A. No, sir.

Q. You had been writing letters for an interview, hadn't you? A. Yes, sir.

40 Q. And you and her attorney were present, and your attorney Mr. Thompson was present? A. Yes, sir.

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Q. And you had a very good opportunity to see her? A. Yes, sir; she said she would see me in court, and he said there was no evidence of an interview and I went back to New York with Mr. Thompson.

10

Q. What did you do then to have an interview with your wife? A. Nothing; I returned to New York.

Q. In other words, right from the very day that your wife left you you sought legal advice? A. Yes, sir; because I was in a position that I never expected to be. I didn't know what to do. My furniture was gone—

Q. Mr. Baxter, you have had a loving and dutiful wife, you say, during all the time she was married to you? A. Yes, sir.

20

Q. You never had anything to complain about her? A. Except her complaining.

Q. Your only complaint was that she was trying to help out by teaching school? A. It wasn't helping out, in my opinion; it wasn't necessary.

Q. You say that the money that she earned teaching school didn't go into the house? A. Not that I know of. It wasn't necessary.

Q. Were you continually complaining about her teaching? A. I wasn't complaining; I was requesting her to discontinue it and discontinue complaining, or continuing something about which she could complain.

30

Q. As I recall it, you hired this place in Van Reyepen Avenue in Jersey City on July the 7th? A. Yes, sir.

Q. You had found Englewood a pretty good place to live in during all of your life up to that time? A. Yes, sir.

40

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Q. You bought one small house on Morris Avenue and sold it at a profit? A. Well, I made no profit; I broke even on that proposition.

10 Q. You bought this place that you sold to McCool? A. Yes.

Q. And what plan did you make for the future on May 31st? A. The understanding was that I was to rent the house that we were living in after I sold it, for the month of June, which was ample time to procure another home and select a location.

Q. Well, when you sold the Morris Avenue house you made provision for another place to go in it, didn't you? A. No, sir.

20 Q. Where did you move to from Morris Avenue? A. I think we stopped two weeks in New York City until we got this other house and our furniture was put into storage for two weeks, so that we were not living in the house at that time.

Q. You signed the contract of this McCool house a month or so before this house was sold, didn't you? A. You mean my house that you mention now, the McCool house?

30 Q. This house up on Ivy Avenue. A. Yes, about April. It was about six weeks from the date of the contract to the time of closing.

Q. And you knew that the McCools were going to occupy that house; they bought it for a home for themselves? A. I presumed so; they go it as such.

Q. What did you do between April and the middle of March? I think the contract was in March? A. About the end of March or toward the end of April.

40 Q. So that you had practically two months in which to prepare; what did you do towards get-

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ting a home? A. The title had not passed yet and I did not intend to do anything until it had passed, because the understanding was that I would have the house to rent for a month, which I considered ample time to decide upon a place and location. 10

Q. Had you looked around in Englewood between the time of signing the contract and the time set for closing on May 31, 1923, for another home?

A. No, I didn't think it was necessary. You can always buy a house.

Q. So that all you did was to make temporary provision for the Ivy Avenue home for the month of June? A. Yes; right.

Q. And you were living in the house right up to the closing of title? A. Until about the 19th of June. 20

Q. You withdrew from your wife's room and bed before she left, didn't you? A. We had a house of 8 rooms and 4 bed-rooms, and at times we did.

Q. The question is, didn't you withdraw from your wife's room and refuse to sleep with her for some time before you left the house? A. I did not.

Q. Did you sleep with her? A. Partly and partly not. 30

Q. At whose request did you withdraw from that room? A. Mutual request.

Q. Don't you know that it was against her wishes? A. No, sir; quite to the contrary.

Q. Don't you know that for years and years you had roomed together and occupied the same bed? A. Yes.

Q. And it was not until just a short time before the breaking up of the home that you withdrew from her room? Isn't that a fact? A. Until possibly around February before the breaking up of 40

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the home when he had a condition regarding her teaching school and complaining about the house and the work and teaching being too much for her, and her refusal to perform her wifely duties based upon that condition.

10

Q. You had made some arrangement before you left the house to sell some of the furniture to Mr. McCool? A. Because we were going into a smaller house; that was the object of selling the house I had, it was too large.

Q. You had a small house before you bought that big one? A. Yes.

Q. Isn't it a fact that the dining-room furniture was sold with your consent and knowledge? A.

20

No, sir; I don't even know now that it was sold.

Q. Do you say that you were not in the house at the time the furniture was being packed and that you didn't know that the furniture was being packed up or being removed? A. I knew that we were going to remove it about the first of July, and nothing else; and some of the furniture that we were going to take up to this man's house that purchased it, and I helped to pack it, but that was not the furniture that she took.

30

Q. You don't think that your wife tried to sell the wardrobe, do you? A. Yes, sir.

Q. Didn't you leave a card on your desk saying that it was in a storage warehouse in Englewood? A. No, sir.

Q. After you left the house you started proceedings for its recovery? A. I consulted with Mr. Thompson about it.

Q. And at that time you were devoted to your wife and felt that she cared for you? A. I had my doubts then whether she cared for me.

40

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. I understood you to say at the beginning of this examination that you were devoted to your wife and cared for her? A. I did then.

Q. And did it seem to you at that time that that was evidence of devotion to bring suit for the recovery of the furniture? A. I had consulted Mr. Thompson and I abided by his suggestion. 10

Q. Then your devotion was of the sort that whatever a lawyer told you was the thing to do between you and your wife, you adopted irrespective of your devotion to her? A. I felt that she had robbed me when she took the furniture away and it was secreted in some place where I didn't know where it was.

Q. Don't you know your wife well enough to know that she is a thoroughly honest woman? Have you in all your married life been able to point to one instance where she has done a dishonest thing? A. Not up to May 31st, and I don't consider that honest. 20

Q. And May 31st you think she suddenly became dishonest? A. It was probably because of undue influence, yes.

Q. And during this period when you were devoted to her in your letters you charged her with being dishonest? A. I thought she was conspiring with others to defraud me out of that which belonged to me. 30

Q. What caused you to think that she was trying to defraud you? A. By taking the furniture and hiding it and also hiding our child, and hiding herself.

Q. Hiding herself? A public school teacher going every day to school one mile from where you lived; you call that hiding herself? A. She wasn't hiding at that time. 40

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Q. She continued teaching from May 31 up to the day school closed, didn't she? A. I don't know.

Q. Did you try to find out? A. Yes, sir.

10 Q. How? A. I went up there.

Q. Once? A. I couldn't go up every day; and I had been writing to her in the meantime, requesting an interview.

Q. You were writing to your wife for the purpose of keeping a record of things, didn't you?

A. That is what she said in a letter.

Q. Isn't that the fact? A. No, sir.

20 Q. You mean to say that the sentiments expressed in your letter squared with your treatment of your wife when you met her in the Court of Chancery on July 2d? A. I gave her no treatment one way or the other then.

Q. Didn't you push her sister aside then?

Mr. Hansen: Ask her what he did to her sister.

Q. Didn't you push her? A. She apparently tried to keep my child from me when I pulled her over to me, and I picked my child up.

30 Q. Didn't you know that that child was being brought into court in response to a court order and that a proper disposition of the child would be done under the supervision of the court? A. I couldn't control my emotions; I hadn't seen her for some time. I would probably do it again under the same circumstances.

Q. You were emotional? A. I was then.

40 Q. You are naturally, aren't you, very quick tempered and emotional? A. I don't call it "quick tempered".

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Q. Didn't you make an insolent remark to me when I spoke to you pleasantly, and didn't you say, "Don't you dare speak to me"? A. I don't recall speaking to you.

Q. Didn't you say that to me? A. I don't recall it; no, sir. 10

Q. Now, you were still devoted to your wife about the middle of July, 1923, about a month and a half after she left the house, and you then published in the Englewood Press, in Englewood, a notice to the effect that you would not be responsible for her debts, didn't you? A. Yes, sir.

Q. And you put that in three issues of the Englewood Press? A. That I believe is required by law to relieve me of any responsibility for anything that she might do. 20

Q. Did you ever know your wife to pledge your credit for anything improperly? A. She did buy lots of things that I paid for.

Q. Who told you to put that notice in the Press? A. No one told me to. I was told that it would save me from any obligation she might create.

Q. And just about that same time when you were publicly embarrassing your wife weren't your letters about that time full of devotion and desire to have her come back and select a place to live in? A. I wanted her back, yes; always did. 30

Q. It was in July, 1923, just about the time you were inserting those notices in the paper, when you wanted your wife to come back to Van Reyppen Ave., Jersey City? A. Yes, sir; I was doing that to protect myself financially.

Q. You didn't need any protection against her. A. I had always been able to pay the bills contracted by her. 40

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. And you haven't played fairly with her people, have you? A. Yes, sir.

Q. Didn't her folks help you out? A. No, sir.

10 Q. Didn't your wife's aunt own the mortgage for \$2,000? A. She got 6% on it.

Q. Didn't her sister sitting there, lend you money to build the garage on your place? A. No money.

Q. Didn't she loan you Liberty Bonds? A. Those were improvements I wanted on the place, and I could obtain the funds elsewhere at 6%.

Q. But you went to them? A. I was requested to give them the benefit of the 6%; they were getting only 4% in the Savings Bank.

20 Q. You wanted merely to help them out? A. To help both of us.

Q. The title was in your wife's name? A. As a convenience; yes, sir.

Q. When you got this \$2300 payment on account in March your wife asked you for some, didn't she? A. No, sir.

Q. You didn't give her any? A. She endorsed the check over to me and we put it in our community account.

30 Q. Did she get any of it? A. No, sir.

Q. You kept pretty close tabs on the time required for divorce on the ground of desertion, didn't you? A. What do you mean by that?

The Court: What are you going to do, to show that the petition was filed almost as soon as the time was up?

Judge Huckin: Yes.

The Court: You can find that out by the filing mark.

Robert M. Baxter, Jr., for Petitioner—Cross.

Q. You went to your lawyer and brought this action as soon as the time expired? A. Yes.

Q. And you swore to the petition in this case? A. Yes, sir.

The Court: That is a matter that is well established. Wouldn't the record be better evidence when he swore to his affidavit of non-collusion than his word? What I want to do is to avoid putting things in the case that are already in. 10

Q. There had been no talk, as I understand it from your testimony, about a separation between you and your wife prior to May 31st? A. No, sir.

Q. You are quite sure of that? A. Yes, sir. 20

Q. But in your affidavit filed in the motion for alimony you said that the money which she earned teaching school was always used by herself and that she told you in February, 1923 that she was giving it to her sister, Ida M. Coleman in New York City to be used later when she had won her freedom from you; isn't that so? A. No.

Q. When did Mrs. Baxter tell you that she wanted her freedom from you? A. There was no conversation; that was just a statement. 30

Q. You say there were no marital difficulties; what did you mean by that statement? A. When I requested her in February to give up teaching she was complaining about being overworked and tired; the house was too much with the teaching, and I requested her to discontinue teaching in February, and I then asked her what she was doing with her money; I didn't see it and she didn't give it to me and she wasn't putting it into the house, and she told me she was giving it to her sister. 40

Robert M. Baxter, Jr., for Petitioner—Re-direct.

Q. What about that part where you say she spoke of wanting her freedom from you. A. That is what she told me then.

10 Q. Well, hadn't you found out before you sold the house that your wife wanted her freedom? A. I didn't pay any attention to that one statement. We had gone along nicely after that.

Re-direct examination by Mr. Hansen:

Q. You say "several telephone calls"; that is, you called your wife up several times, did you? A. Once or twice.

Q. Where? A. May I refer to a memorandum?

Q. Yes. A. September 7th.

20 Q. Called her up where? A. At Mrs. Smith's house, Englewood.

Q. Did you talk to her? A. Yes, sir.

Q. And what did you say and what did she say? A. I asked her at that time to return home; I had done what I could for her and was willing to continue it.

Q. What did she say in answer? A. (Addressing the Court.) May I ask your permission about something she said in reply?

30 The Court: Oh, yes; you may tell what she said.

A. She replied, "You are a liar" and hung up the telephone.

Q. Did you call her up again? A. The next day I went up to Mrs. Smith's house in Englewood.

Q. Where your wife was living? A. Yes, sir.

40 Q. What happened then, anything? A. I learned she wasn't there; she had gone to New York for the day.

Robert M. Baxter, Jr., for Petitioner—Re-cross.

Q. Did you telephone to her again? A. Yes, on the 11th of September I called up the Tenafly school then.

Q. What was the conversation? A. I asked her then would she come back to me.

10

Q. What did she say? A. She said she didn't care to talk to me; she would see me in court Monday.

Q. Now, during all the time that you were living with your wife you were employed in New York? A. Yes, sir.

Q. In a bank? A. Yes, sir.

Q. And you had sufficient income to take care of the wants of yourself and your wife, did you? A. Yes, sir.

20

Q. Did she ever tell you what she was doing with the money that she got teaching school? A. No, and I never asked her.

Q. Do you know what she did with it? A. No, sir, except she told me that she was giving it to her sister when I asked her in February. That was the first time I asked her.

Re-cross-examination by Judge Huckin:

Q. What was the date of the telephone call in which she said you were a liar? A. September 7th.

30

Q. What are you referring to? A. My memorandum book.

Q. So that each time you had a telephone call with you wife you wrote it down? A. I did this because I was shocked at the reply I received.

Q. You kept pretty close record of things that happened from May 31st, 1923? A. This is the first time that I found out where she was living

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Robert M. Baxter, Jr., for Petitioner—Re-cross.

and I called her up, and I only obtained that information through the endorsements of checks that I sent her.

10 Q. So that September was the first time you found out where she was living? A. Yes, sir.
By the Court:

Q. After you and your wife had separated at Mr. Huckin's office I understood you to say the title of your house passed; when was the next time you actually saw your wife to talk to her? A. I have never spoken to her except upon the telephone. That was the first interview I could get; and at that interview she denied that she was Mrs. Baxter, although I knew I was talking to her.

20 Q. You say that was where she lived? A. Yes. She had evidently come back to Jersey.

Q. Had the atmosphere of your home been at all unpleasant? Has the relations between you and your wife been at all strained prior to May 31? A. Since in February—since that quarrel in February.

30 Q. That was really the beginning, was it? A. She then complained and I decided to sell the house and get more comfortable quarters. I had a lady come in once a week and I did all I could to make it easy, although it was a large house.

Q. I mean, although you were astonished to find what you wife had done you knew, of course, that her conduct for the past few months and things weren't between you as they should be between a man and his wife? A. No, not after that February.

40 Q. Now, I suppose as a reasonable being you also appreciate the fact that your wife having left you and taken everything that she could take with her, it required some effort on your part to change

Robert M. Baxter, Jr., for Petitioner—Re-cross.

her mind so as to get her back, didn't you? A. Well, yes, sir; that is, reasonable; I appreciated that, and I thought the thing to do was to talk the matter over if we could get together.

Q. Did you ever invite her to go to the theatre with you? A. I invited her to come in to New York and have dinner with me and go to the theatre afterwards if she desired. I was willing to do anything. 10

Q. Did you say anything about the theatre in that letter? A. I think I wrote her about the dinner engagement, yes.

Q. Yes, you suggested that she come in late after you duties were over at the bank and then to have dinner together and talk things over. A. Yes, sir. I had requested it just previous to that. That letter was in answer to hers requesting her, and told her I would be delighted to have the opportunity to talk things over. 20

Q. On June 1st, when you wrote the letter of that date of course you were rather upset and at sea, and mystified and shocked; but the next letter to her appears to have been on June 11th when you had time to recover somewhat, and you acknowledge receipt of her letter and demand to know where your daughter is, and say that you don't know where either of them are, either she or your wife, and you say, "At a very early date I would like you to select a place so that" you can make arrangements to see Dorothy. You didn't say anything to her in that letter about her coming home. The next letter appears to have been written from Van Reypen Street, Jersey City. In that you tell her that you have found a very nice apartment at the above address, which is located in a good neighborhood near a public school, also fine 30 40

Robert M. Baxter, Jr., for Petitioner—Re-cross.

10 for you to come and go to business in 30 minutes without change of cars. Then you ask her to return home and perform her wifely duties and also to bring home "our daughter Dorothy. As you well know, I have always supported you and Dorothy to the best of my ability and am still willing to do so"; and then you ask for an interview. Now, that is practically the second time that you asked your wife to come back; do you think that that was the sort of a letter that would allure a woman back to her husband's home? A. Well, I probably didn't consider it from that angle. I was actually smarting at what I had gone through.

20 Q. That wasn't the sort of letter you wrote when you were courting her before you were married, was it? A. No.

30 Q. And in the next letter of August 1st, your invitation was: "I again ask you to return home and assume your wifely duties and bring home our daughter Dorothy"; and then in your letter of the 9th of August you say: "I will now ask you once more to return home and perform your wifely duties and bring home our daughter Dorothy". I think that was the third and only request. Why didn't you try to revive the affection that she had had for you? A. I couldn't obtain an interview with her. She went to Long Island, which was inconvenient and out of the way, and went to relatives that had previously shut the door in my face.

40 Q. But you knew she was getting your letters, and she was replying to parts of your letters, which showed that she had read them; why, if you couldn't get access to her personally,—why did you not try in your letters to re-arouse the

(Mrs.) Matilda Biroc, for Petitioner—Direct.

love that she must have had for you at one time in her life? A. It may be due to the fact that what I had gone through made me feel a little different. It didn't make me feel like writing a letter at that time. I thought it necessary to have a talk, because you can't say in a letter what you can in a conversation. 10

Q. Will you look at these six postal-cards and see if you sent them to your daughter? A. Yes, sir; I sent those.

Judge Huckin: May I ask them to be marked as one exhibit, and if there is no objection I will put them in now.

(The same are admitted and marked Exhibit D-1). 20

Q. Your letter to your wife, under date of June 1st, was sent in this envelope? A. I presume so, yes. She got it.

Judge Huckin: I ask that that also be marked.

(The same is marked Exhibit D-2).

Q. You registered every letter that you sent to your wife and requested that she answer? A. She never replied to any letter that was not registered. 30

(MRS.) MATILDA BIROC sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Hansen:

Q. Where do you live? A. 17 and 19 Van Reyepen Street. 40

(Miss) Lillian E. Baxter, for Defendant—Direct.

Q. How long have you been living there? A. I will be there 4 years this coming August.

Q. Do you know Mr. Baxter who was just on the stand? A. Yes, sir.

10 Q. And do you know whether or not he resided at that address? A. He did; he moved there in July, 1923 and moved out September 19, 1925.

Q. And he was residing there continuously, was he? A. Yes.

Q. Did he have an apartment there? A. Yes.

No cross-examination.

20 (Miss) LILLIAN E. BAXTER sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Hansen:

Q. Miss Baxter, where do you live? A. 13 W. 102d Street, New York City.

Q. You are a sister of the petitioner, are you? A. Yes.

Q. Did you have occasion to meet Mr. and Mrs. Baxter in Englewood while they resided there? A. Yes.

Q. And you know that they lived in Ivy Avenue? A. Yes.

Q. And do you know where your brother moved to after he left Ivy Avenue? A. To Demarest Avenue.

Q. Englewood? A. Yes.

Q. Do you know how long he lived there? A. He was there about a month.

Q. Do you know where he moved to from there? A. From Demarest Ave. he went to Van Reypen Street, Jersey City.

Maude Coleman Baxter, for Defendant—Direct.

Q. That's all.

No cross-examination.

Mr. Hansen: That is the petitioner's case,
Your Honor.

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PETITIONER RESTS.

THE DEFENSE.

MAUDE COLEMAN BAXTER, the defendant, sworn
in her own behalf, testified as follows:

Direct examination by Judge Huckin:

20

Q. Mrs. Baxter, you are the defendant in this
case; you are the wife of Robert M. Baxter? A.
Yes, sir.

Q. How long had you been living with him as
his wife in the home in Englewood? A. Four
years, from 1919 to 1923.

Q. You were present on the occasion of the
sale of the Ivy Avenue property to the McCools
at my office, were you not? A. I was.

Q. Your husband was present then? A. He
was.

30

Q. Did he come to the office with you that day?
A. He did not.

Q. Did he speak to you at all while you were at
the office? A. He did not.

Q. Now, had there been any trouble of any
kind between you and your husband prior to May
31st? A. Yes, there was.

Q. Can you tell us about when that trouble be-
gan? A. Our trouble began as far back as 1919

40

Maude Coleman Baxter, for Defendant—Direct.

when we first bought the house and it reached a culmination in about February, 1923.

10 Q. Do you remember what occurred in February, 1923? A. Mr. Baxter had been very morose and quiet, and when I asked him what was the cause of it he said he no longer cared for me; I was a millstone around his neck and I kept him back, and he thought the best thing to do was to sell the house and when the house was sold we would separate.

Q. Did you care for your husband then? A. I did. I pleaded with him not to do that, because I loved him and because of the child.

20 Q. You have always been devoted to him? A. Always been devoted.

Q. And had you worked together during all of your married life? A. All of our married life. On May 25th he ordered my daughter to sleep with me; he wished to sleep alone.

Q. Did he give any reason for ordering the little girl to do that? A. He was just tired of me and didn't want to have anything more to do with me.

30 Q. Was there any time before May 31, when any relative of yours was at the home when there was any discussion about a separation? A. My aunt and sister had been at the home several times.

Q. Now, did you remove the furniture from the home on May 31st or have it removed? A. It was removed.

40 Q. Prior to that time was anything said about the disposition of the furniture between you and Mr. Baxter? A. When the house was sold Mr. Baxter said I could dispose of the furniture as I wished, just to keep enough for Dorothy and myself. He didn't care where we went as long as

Maude Coleman Baxter, for Defendant—Direct.

he could see the daughter; and I sold some of the furniture, with his knowledge, and some was left in the house for the people who were to enter, and he received the money for that, \$120.

Q. Did you want a separation between you and your husband? A. No; I felt that Mr. Baxter would change his ideas, because I still cared for him. 10

Q. From May 31st, when you left the home, up to the present time has he ever sought a personal interview with you that you have refused? A. No, he has not.

Q. Do you recall the time in the Court of Chancery on July the 2d, 1923, when you were ordered to bring your child there? A. Yes. 20

Q. Will you just tell what happened in the corridor in the Court of Chancery? A. We were waiting for the elevator to take us upstairs. My daughter had my sister's hand and Mr. Baxter rushed in and pulled Dorothy from my sister's hand and pushed my sister away. He didn't look at me.

Q. Did Mr. Baxter speak to you then? A. No, he didn't.

Q. You were teaching school about a mile away from your home? A. In Tenaflly, N. J. 30

Q. You had been teaching continuously? A. With his consent I signed a contract to teach from September, 1922, to September, 1923.

Q. Are you still teaching? A. I am still in that same school.

Q. Did Mr. Baxter come to the school at any time that you know of after May 31st to see you? A. Not to my knowledge.

Q. After the court made the order whereby Mr. Baxter was to have the custody of the child every 40

Maude Coleman Baxter, for Defendant—Direct.

other week—I think it was—did he come to the home where you were with the child? A. Yes, he came in his car. Sometimes he would not get out.

10 Q. Were you there at the time? A. I would always bring Dorothy to the door.

Q. How did he act on those occasions? A. He would pay no attention to me.

Q. Was he contributing anything to your support? A. Only since the case has been brought up this past July.

20 Q. Has he told you at any time that he wanted to give you anything for support? A. Before we separated he said he would support me, and I felt that he would support my daughter and myself, but he never did until we brought it to court.

Q. Now these letters that Mr. Baxter wrote to you,—did you answer each letter that he sent? A. Yes.

Q. You went away, I believe, at the close of school? A. I did, as I had no place to live. My aunt purchased a home for the children on Long Island and they promised to keep me there without any expense on my part.

30 Q. Did you make it known to Mr. Baxter that you were going to Patchogue, Long Island, at your aunt's house? A. He knew we were going on July 3d when he applied for the custody of my daughter.

Q. You were there how long? A. I was at Patchogue from June 22d until some time the latter part of August.

Q. And then you came back where? A. I visited a friend in Englewood a little while, in Ivy Lane.

40 Q. And then where did you go? A. I took a small apartment in Tenafly, where I still reside.

Maude Coleman Baxter, for Defendant—Direct.

Q. Mr. Baxter said he called you up— A. Whenever Mr. Baxter called me on the 'phone he always abused me and said disagreeable things to me and I wouldn't listen to them.

Q. Has there been a time, Mrs. Baxter, during the last three or four years, when Mr. Baxter has shown any real devotion or affection for you? A. At times, up until that February when things became so strained. 10

Q. What seemed to cause the trouble? What was it between you and Mr. Baxter that caused this estrangement on his part? A. It was his constant desire to have things which I felt his money did not warrant, and his constant desire to get those things, and I would try to persuade him against them, and I would finally give in to his better judgment. We could never discuss things because of his quick temper, and he would generally overpower me. 20

Q. Had he at any time said that you had done anything to cause any feelings between you and him? A. No, he acknowledged that I had done nothing, only that he had grown tired of me and wanted his freedom.

Q. Did he say more than once that he wanted to get you out of the house? A. Often, and I got up and attempted to go out of the house, fearing that he would strike me, but I didn't go. 30

Q. From February, 1923, to May 31, what was his treatment of you? A. He would hardly notice me except to find fault with me. I never knew when he was coming home; I never knew when to expect him, and he would never leave in the morning without my fearing him. I was in constant fear of him. 40

Maude Coleman Baxter, for Defendant—Cross.

10 Q. Did you know that Mr. Baxter, by saying anything to you prior to this notice appearing in the Englewood paper on July 28th about giving you credit that he had any intention of putting such a notice in the paper? A. No, sir, because I never had any debts.

Judge Huckin: I think that notice from the paper is in evidence in the proceeding on the application for alimony in this case.

Q. Have you ever refused at any time to live with Mr. Baxter? A. No, I have not. It wasn't my desire to separate at all, because I loved him.

20 *Cross-examination by Mr. Hansen:*

Q. Did you ever make any effort to go back to your husband? A. I did not, because I feared him on account of his actions.

Q. You were unwilling to go back to him? A. I was never asked by him to come back.

Q. Did you ever signify a willingness to come back to him? A. You mean after May 31st?

30 Q. After you left him? A. There was no time, on his part, when he ever came to me or asked me in a way that I thought he was sincere about it.

Q. You didn't think he was sincere? A. I did not think he was sincere.

Q. You know that you wrote to him and suggested that it would be a good thing to talk things over? A. Yes.

Q. And after you wrote that to him he complied with your request and arranged for two separate interviews, didn't he? A. Yes.

40 Q. Did you meet him? A. I did not meet him, because I did not want to meet him alone, because

Maude Coleman Baxter, for Defendant—Cross.

I feared him; but I did think we could meet and become reconciled.

Q. I think you said something on your direct examination about being in fear of him; what did he ever do to you to make you feel fearful? A. 10
Well, he has a temper, and in his temper he has attempted to throw things at me, and he had grabbed me, and he had a loaded revolver in the house and I didn't know where it was three or four weeks.

Q. Did he ever threaten you with a revolver? A. No.

Q. Did he ever threaten you in any way? A. Yes, at one time.

Q. You knew that he had rented this house on Ivy Avenue for the month of June, didn't you? 20
A. I knew that he had planned it, but when he told me to get out and the sooner the better I said that I would go as soon as the house was sold.

Q. You were in Judge Huckin's office at the time the title was closed? A. I was.

Q. You knew then that the arrangement was that you were to stay another month? A. I left before these matters were closed out.

Q. Didn't you know that that was the arrangement? A. Yes. 30

Q. What did you do when you left Judge Huckin's office? A. I took the check.

Q. What did you do, go home? A. I went directly to my aunt's in New York.

Q. When did you clear out the house? A. May 31st.

Q. Was that the day you passed title? A. Yes, the very day.

Q. Mr. Baxter left that morning, I presume, for his employment? A. Yes. 40

Maude Coleman Baxter, for Defendant—Cross.

Q. And when you cleaned out the house? A. I left some things there.

Q. You left the things you had agreed to sell the purchaser? A. Besides that all his belongings and a couch bed for him to sleep on.

Q. Did you tell Mr. Baxter that morning that you were going to clean out the house? A. Mr. Baxter was not talking to me.

Q. You didn't say anything to him at the time you met him at Judge Huckin's office? A. I did not talk with him, no. He told me to do anything I pleased.

Q. But you didn't see fit to tell him that afternoon? A. There wasn't any opportunity.

Q. Why, weren't you all together in the office? A. But he wasn't talking to me.

Q. There was nothing to stop you from telling him that, was there? You left there before he did, didn't you? A. Yes.

Q. And you immediately went over to New York? A. Yes.

Q. And do you know whether he came over to see you that afternoon or not? A. He said he came over to 172d Street, but I wasn't there at the aunt's house.

Q. Who lives there? A. My sister.

Q. Did you leave your sister's address at the post-office in Englewood? A. I think I must have.

Q. And that was 172d Street? A. Yes.

Q. Mr. Baxter instituted habeas corpus proceedings to get possession of his daughter, and to see his daughter, didn't he? A. Yes.

Q. And up to that time you had refused to allow him to see his daughter? A. No, I hadn't refused. My daughter for a few days was at my aunt's house, and he called up and said he would

Maude Coleman Baxter, for Defendant—Cross.

call to see her, and he came up to my aunt's door yelling out aloud in the hall "Let me see my daughter," and my daughter saw him and was so frightened that she ran away, and my aunt said she wouldn't let her go.

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Q. (By the Court) Were you there? A. No.

Q. And you only know what was told you? A. Yes.

Q. In the first letter you wrote to Mr. Baxter on June 8th you said that when the house was sold you felt it was time you had a rest for yourself and your daughter? Is that right? A. I had been so unstrung by teaching school and having Mr. Baxter in that condition, and trying to pack my furniture and selling some of it I felt I needed a rest, and I felt if I rested a short time I would feel better like discussing it.

20

Q. That was the real reason for separating, because you needed a rest? A. No, because I was repeatedly ordered out.

Q. But the fact is that you needed a rest and you felt that way? A. Well, Mr. Baxter had been so mean to me and my life had been so unhappy in the house that when he said we would separate I went.

30

Q. You were married since 1909, weren't you? A. Yes.

Q. And, as I understand it, the sum total of Mr. Baxter's meanness to you was from a period beginning with February, 1923, up to May 31? A. Things culminated at that time, but we had quarrels between that time, always about financial matters.

Q. He was always employed in New York during his married life? A. Yes.

40

Maude Coleman Baxter, for Defendant—Cross.

Q. He wasn't out of work? A. He was out of a position, but he got another one.

10 Q. You had a very comfortable and nice home in Englewood, didn't you? A. Yes, Mr. Baxter always liked to have things beyond his means and our home was comfortable; but, you see, he borrowed money to have some of these comforts, which I objected to.

Q. He did have a nice home? A. Yes.

Q. One-family house on Ivy Avenue? A. Yes.

20 Q. There was no cause to complain about that? A. The home was all right, but the happiness wasn't there, because I loved my husband and he no longer loved me and he told me that in 1921, and I tried in 1921 to get back his love and tried to help him in every way. I thought it was his financial relations and that was the reason I taught.

Q. Now, on June 21st, which was 21 days after you left, you wrote him and also acknowledged receipt of his letter, and in that letter you said just as soon as you had the needed rest that you should have you would talk things over in a friendly way? A. Yes.

30 Q. You rested up for a month at Patchogue, Long Island? A. Yes.

Q. When you came back from Patchogue were you rested up? A. Yes.

Q. And he agreed to meet you at his place of business, didn't he, and take you to dinner? A. Yes.

Q. That's right? A. Yes.

40 Q. And he made two separate appointments, didn't he? A. Yes; but, as I told you before, I feared to meet him alone, because of his actions; and we had this court proceeding. That was pend-

Maude Coleman Baxter, for Defendant—Cross.

ing for the custody of my daughter, which took place in September, and I thought I couldn't talk to him any more. I had the opportunity there in court, but Mr. Baxter wouldn't notice me. He sat down at the end of the bench and he didn't pay any attention to me. 10

Q. Between June and September you didn't want to see him? A. On the contrary, Mr. Baxter made no effort to come down to see the child. I saw him and he knew where we were.

Q. You knew he was employed in the bank? A. Yes, but week ends I expected him to come down.

Q. Did you indicate that in any of your letters? A. No.

Q. You never asked him down? A. No, but I thought he would care to see his daughter, because that was the main thing when he agreed to separate and sell the house. He said he didn't care what became of me as long as he could see his daughter, and I felt that he would try to make an effort to come down there, which he didn't. 20

Q. He has been seeing his daughter for some-time past, hasn't he? A. Yes.

Q. And where would he meet her? A. He would come to the house. The Court ordered that he come and call for her. 30

Q. And it was your custom, wasn't it, to have the child out on the porch, or out in the yard, waiting for your husband when he came along? A. As I said, on some occasions when he would come to the home he would wait in the car and other times I have opened the door and brought Dorothy to the door. I was sitting on the porch at one time; and at another time his car drove up and I was coming along in the street, but at no time did he come to me in sincerity and ask me to come back. 40

Maude Coleman Baxter, for Defendant—Cross.

10 Q. You wrote to him on August 8th and I gather from that letter that you were anxious to have a talk with him? A. Yes; I thought perhaps after he was away from me for awhile he would feel differently toward me and we would be reconciled and live together again.

Q. It was after that that he suggested this talk with you and you didn't take advantage of it. A. I told you before that I expected to talk to him in Court in September.

Q. What right did you have to expect to see him in court in September? A. I think we were there three times, July 3d, August 13, and then September 17th.

20 Q. You received a letter from your husband on August 25th wherein he said, among other things, that he was disappointed that you did not meet him because he thought you had expressed an honest desire to do so; that you had asked for the opportunity, and he suggested that you name the time and place for such meeting. And then he continues: "You have shown no intention of meeting me". You received that letter? A. Yes.

30 Q. And did you, after receiving that letter, make any effort to see him? A. I did; I wanted to see him alone. He always intimidated me and got the better of me in any argument.

Q. In any argument, you say? A. In any argument or anything else.

Q. Did you ever suggest that you would meet him with your people at your home or any other place? A. I think he mentioned in his letters that he sent to Patchogue that he didn't want my people around.

40 Q. Well, did you ever suggest that he meet you under any circumstances which might seem proper

Maude Coleman Baxter, for Defendant—Cross.

to you? A. Only that one time in court, because I was away all summer. My aunt bought this house purposely so that we would have a home to live in during the summer, and I thought at that time that things would be straightened out. 10

Q. You wrote to your husband in that letter you last sent him the suggestion that he not write you any more because it looked to you as though he was trying to make a record? A. Yes, because he didn't seem sincere. His letters and his actions never jibed. He wrote one thing and he did other things.

Q. What were his actions that didn't seem to be consistent? A. When he had my daughter week ends he made very disparaging remarks about me to my daughter. 20

Q. Your daughter told you that, I suppose? A. Yes.

Q. Is your daughter here? A. No.

Q. What did he say to your daughter about you? A. Well, he told me I was a thief and I ought to be in jail, and I was no good; and he also said that she didn't have to obey me, and various other things.

Q. Don't you know as a matter of fact that he always spoke well of you to your daughter and told your daughter to do everything you told her? A. Yes, he wrote that in his letter, but he told her just the opposite. 30

Q. Isn't it a fact that he told her to be guided by you? A. He wrote that in his letters.

Q. What did you do with the money that you made teaching school? A. A great deal of it went into the house.

Q. Where did the rest of it go? A. And with my husband's knowledge I had been giving just 40

Maude Coleman Baxter, for Defendant—Cross.

a little bit of it to my sister, which is all gone because she has been paying \$5 building and loan shares for my daughter, which my husband refused to do.

10 Q. You knew that you weren't going back to Ivy Avenue? A. Yes.

Q. But you didn't see fit to tell him that? A. No, because we were not talking.

Q. Did you give him any idea? A. Only the day before, he was sitting on the porch and he said he would be happy when he could walk over my dead body. That was on Decoration Day.

Q. You say some furniture went out of your house? A. Yes.

20 Q. Where did that go? A. That went to some place in Bergenfield, some large pieces, and some things I had sold to people.

Q. And the next day was when you sent the rest of the stuff out? A. Yes. Well, some had gone prior to that time. I met some people prior to that time that I knew and admitted some people to see the dining-room furniture, and he had given me permission to sell those things.

30 Q. You say he had given you permission? A. Yes.

Q. You didn't tell him anything about it, did you? A. Yes, but I thought when he was so disagreeable I had better not tell him. But then he got \$120 worth of it. I asked the people to make out a check and he received that much for the furniture.

40 Q. You were pretty excited at the time you left and you were under a great strain? A. Yes, I was a nervous wreck. I was teaching school and, as I said, Mr. Baxter was so mean to me I was very unhappy.

Q. Did he at any time request you not to teach school? A. In September, 1921, he told me he no longer cared for me, and I thought he would let me teach so that I could get on my feet, and so I tried to go back as a substitute for awhile, and I did substitute a year, and the next year the principal in Tenaflly asked me if I would take a permanent position, and I said I would and took it. 10

Q. Did he object to your teaching school? A. He didn't like the idea; sometimes he would say "I wish you wouldn't teach school", but I had to go because I didn't have all the things I wanted. I was only receiving at that time about \$60 a month, and in the last five months I received only \$280 from him.

Q. From whom? A. Mr. Baxter. He only paid the rent and gas and I had all the other expenses and had to buy clothing out of that money. 20

Q. How much did you say he gave you? A. \$280 that last year.

Q. For the whole year? A. No, from January 1st, and at the end it came in drips and draps and I had to ask him for it, and so I was in the meantime using up my own money.

Q. When your husband wrote you on July 7th and told you that he had rented an apartment in Van Reyepen Avenue, Jersey City, and that he had found a very nice place at that address, what did you think about that? A. I was quite surprised because he hadn't let me know about it. 30

Q. What did you do? A. I was up a tree at the time I received that letter. He knew I had signed a contract to teach another year and I wondered why he had taken an apartment in Jersey City.

Q. You were more interested in teaching and keeping your contract for teaching in Tenaflly than going back? A. No, I wasn't. If my husband 40

Maude Coleman Baxter, for Defendant—Cross.

had at any time come to me in the right way I would have felt different about it.

10 Q. Did you ever give him an opportunity? A. He exhibited considerable feeling about it but never asked me to come back. He telephoned me several times, but never asked me to come back in those telephone conversations.

Q. What did he telephone you for? Did he just curse and swear and call you a thief over the telephone? A. Yes.

20 Q. That was all he did was just to call you up? A. Yes, and to say he would have me in court and in jail, and I feared him, because up to the time of our separation I never had had anything to do with courts.

Q. Did you ever come to Jersey City to look at the apartment? A. No.

Q. You didn't? A. No.

Q. You didn't want to live in Jersey City? A. No.

30 Q. You weren't satisfied to live in Jersey City? A. Why, it would make no difference where we lived if my husband wanted to live with me and cared for me, but I thought he should have consulted me about where we should live before making any arrangements.

Q. Why didn't you go over and look at the apartment? A. I was down at Patchogue, Long Island, and I had no opportunity.

40 Q. Why didn't you when you got back from Patchogue go over and see the apartment and see if you would like it? A. Because, as I said before, Mr. Baxter's actions were so much at variance with his letters that I didn't feel that I should do it without someone with me. I thought I would have someone else with me.

Maude Coleman Baxter, for Defendant—Cross.

Q. Did you make any effort to meet him with somebody else, outside of the time when you say you hoped to meet him in court? A. No, I did not, because his action in court was such and he showed such anger that I didn't think anything could change him. 10

Q. That was in September? A. In July.

Q. When were you in court in July? A. In the Chancery Court; he brought habeas corpus proceedings against me for the custody of my daughter.

Q. Right away? A. Right away.

Q. That was so that he might see his children. A. He knew he could see his child if he came to me. 20

Q. How could he come to you? He said he made one visit at the school, and the very first time he went up to see your sister to find you he wasn't able to learn your whereabouts. A. Yes, and she wasn't at home.

Q. Did you ever indicate by anything in your letters that you wanted to see him? A. No, I did not, because I didn't think he wanted to see me.

Q. As a matter of fact, you didn't want to see him; you were tired of him? A. I was not tired of him. I remember getting on my knees and begging him not to separate. 30

Q. You had a lot of trouble with him? A. Yes, and the queer thing is that sometimes a woman's love makes one forget all those things, and I did everything for our daughter's sake.

Q. What did you do in that respect? A. All I did was to beg him not to consider separating.

Q. That was before you separated? A. No, after. 40

Maude Coleman Baxter, for Defendant—Cross.

Q. What did you do along that line, to indicate that you wanted to go back to live with him? A. As I said before, after he acted the way he did on July 2d I was waiting for him to come in a decent way and speak to me.

10 Q. He kept suggesting in his letters that he wanted to meet you, didn't he? A. Yes; I was willing to talk things over with him.

Q. You didn't intimate in any of your letters that it was his fault that you left; you said, on the contrary, that the future could only determine where the blame was; isn't that what you said in your letters? A. No, not exactly that way. I said that I needed rest—I don't remember the exact words that I used.

20 Q. Something about fixing the blame? A. Did I say that?

Q. And talking things over. A. I don't remember putting it in just that way.

Q. Well now, what did you expect your husband to do that he didn't do to induce you to come back to him, and what did you want him to do? A. I expected he would come back in good faith after a short time, after we had talked things over and after I had gotten rested and wasn't so unnerved, and we would talk things over and perhaps become reconciled.

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The Court: It is now one o'clock and we will take our recess until 2 o'clock.

AFTERNOON SESSION.

40 The Court: Had you concluded your cross-examination?

Maude Coleman Baxter, for Defendant—Cross.

Mr. Hansen: Yes, sir.

The Court: Mr. Hansen, I don't see how I can possibly advise a decree in favor of the petitioner in this case, under the rationale of the Hill case and all those other cases which hold, as I understand it, that when a woman leaves him, not as the result of any matrimonial offense upon his part but where some of the blame is not entirely her own, he must make an honest and sincere and bonafide effort to get her to come back if he felt it might be possible to get her to come back. So that it wouldn't come under the exception of the Hill case. It is shown that he did write and ask her to come back in his home, but that wasn't enough. Now, that impression is in my mind, subject of course to anything you can say or show to change it. But it seems to me a waste of time to put the defendant to any more proof or to listen to any more proof on the part of the defense. 10 20

Mr. Hansen: I am going to let Mr. Jentz say a word.

The Court: I don't want to foreclose you from putting in any more proofs that you may have to offer in that respect, but I will say to you now that I am convinced that Mrs. Baxter left the petitioner, and that, whatever her state of mind was, I feel satisfied that she was not going to come back unless he asked her to do so; and I am also satisfied that she left him under such circumstances that if he had made sincere efforts to effect her return and she then refused to come back in the face of 30 40

Maude Coleman Baxter, for Defendant—Cross.

10 those bonafide efforts, she would be guilty of desertion under our statute. While I am not foreclosing any further proofs, still I want to say that you needn't waste any more time on the question that she left him and intended to stay away.

Mr. Jentz: May I discuss the matter now and tell you what my views are on the question whether he made a reasonable effort to get her to return? As I understand it, the only question which your Honor says we need to discuss now is whether the efforts that Mr. Baxter made to get his wife back were sufficient.

20 The Court: If you can convince me that I am wrong in that, then I will go further into the evidence.

(Mr. Jentz then argues the matter at some length, after which the Court gave the following oral decision):

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Oral Opinion.

(Filed January 6, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

ROBERT M. BAXTER, JR.,
Petitioner,
and

MAUDE COLEMAN BAXTER,
Defendant.

Final Hearing on
Pet. for Divorce.
Oral Opinion.

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Transcript of the oral opinion given in the
above-stated cause, on final hearing, at the
Chancery Chambers in Jersey City, on
Wednesday, January 6, 1926, at 11 o'clock in
the forenoon, before his Honor

JOHN BENTLEY,
Vice-Chancellor.

Appearances:

30

LEWIS G. HANSEN, Esq., Solicitor.

ERIC H. JENTZ, Esq., of counsel, for the Petitioner.

THOMAS J. HUCKIN, Esq., for the Defendant.

BENTLEY (orally):

This is a suit for divorce initiated by the husband on the ground of desertion, with a simple

40

Oral Opinion.

answer filed by the defendant denying the desertion.

10 They were married in 1909, about which I have no doubt, and it has been sufficiently proved that they have been residents of this state for the requisite period. They have one little girl who is now 12 years of age, judging from the age given in the petition. He holds a responsible position in one of the large banks in New York City, and they are unquestionably people of refinement, education, and intelligence. They appear to have lived together in all reasonable accord until the fall of 1922.

20 In February of the following year conditions between them became very strained by reason of his having told his wife that he had lost all love and affection for her. In that she is strongly corroborated by the fact, which he does not deny, that he left her bed and they never again cohabited as man and wife. There could hardly be stronger corroboration.

30 In the following May, namely, May 31, 1923, the parties attended at the office of an attorney for the purpose of passing title to the property which then constituted their home, and at that time the petitioner rented the house from the man to whom he conveyed it, according to a pre-arranged scheme, for the month of June, for which he paid his rent, so that he might have a chance to look around and find another home before getting out. After the necessary formalities had been attended to by the defendant, which I assume was the execution of the deed, she left, the petitioner remaining there for sometime longer. When he returned
40 to his home after the consummation of the con-

Oral Opinion.

veyance he says that, to his great surprise, he found the house deserted, excepting for a very few pieces of furniture which had previously been sold to the purchaser of the home. Everything else constituting, I understand, the great bulk of their household belongings had been moved away; that he learned from the postal authorities that his wife had left a forwarding address to 172nd Street, New York City, which was the home of one of her relatives. 10

He also found after some search that she had stored a great deal of the furniture that she had moved out of the house in a storage house in Englewood, where they had lived. I think on that 31st of May he went to that address on 172d Street and was unable to gain admission. On the following day, June 1st, he called upon a member of the bar having offices in Hackensack and New York City, and on the same day wrote his wife the first of a long series of letters. In it he informs her that he was unable to locate her and their little girl the night before; that her home and Dorothy's was still at the place where they had lived, and he says "I would like to have you return to the home and fulfill your duties as wife; I shall remain there to receive you". Twice after that in his many letters, as I recall it, he had made a similar invitation for her to return. 20 30

On July 27th he wrote her that he had moved his home from Englewood to Jersey City, and again says: "I again ask you to return home and perform your wifely duties and also bring home our daughter Dorothy"; and then he reminds her that he has always properly provided for her and asks her to grant an interview. 40

Oral Opinion.

And in another letter, under date of August 1st, he says: "I again ask you to return home and perform your wifely duties and bring home our daughter Dorothy".

- 10 In these letters it will be found that he at the same time wrote matters that he must have known would have had no influence upon her returning to him. A man of his intelligence would have done the reverse in trying to cause her to return to him. For instance, in the last letter that I have referred to he says, "You well know that I always provided and given you a much better home than you ever had before you were married". Now, of course, it requires no extended knowledge of
- 20 the world to understand that there is nothing that will stir up trouble in a household faster than to have one of the spouses cast reflections upon the family relations of the other. In this letter he also reproaches her with taking away his daughter. In none of these letters is there one sincere, ardent wish expressed to have her come back. He said himself on the stand in reply to a question of mine that these letters do not resemble at all the letters that he wrote to his wife while he was
- 30 courting her before he married her. From them I draw the conclusion that they were "lawyer's letters". I don't mean to be understood as adversely criticising him for seeking counsel, and even seeking counsel on the very day after his wife left. I think it was a sensible thing to do. A very great change had taken place in his life and, of course, he naturally would go to some lawyer and take his advice.

- 40 But I am convinced that he had no purpose in the world except as his wife charges, namely, to

Oral Opinion.

make a record which would put her in the wrong and help in securing a divorce from her.

Now, I should have said that apparently the breaking up of this home over a statement made by him,—well, I did cover that; I did say that he had said that his love for her had disappeared—
 10
 vanished—dissolved. Under those circumstances no woman with any spirit, no woman with any self-respect, would continue to live with a man, and when she left him I am absolutely and thoroughly convinced that she left him intending to stay away because she had been told he had no love for her. I think that was what drove them apart.

That being my finding of fact, the application
 20
 of the law is, that when a woman leaves her husband and he is not entirely blameless in the affair, it becomes his duty to make a sincere, *bona fide* effort to have her return, as pointed out by the Chief Justice in *Hall v. Hall* (60 N. J. Eq., 469). (Our statute says that the desertion must be obstinate, must be against his will, before he can secure relief.) If he doesn't do it, the presumption is and always has been in this court that he
 30
 didn't want his wife back, and, consequently, the desertion is not obstinate or against his wishes. The only exception to that, so far as I know, is where it is apparent that no efforts, however sincere on his part, would effect her return anyway. Then he isn't expected to do the ridiculous, as was said in *Hall v. Hall*. But I don't think that was so in this case. I think this woman is truthful when she says that her heart had been touched by the actions of her husband and all affection for
 40
 him had *not* disappeared, notwithstanding what he

Oral Opinion.

10 told her; and if he had really tried to rekindle the spark which still existed and which still glowed he could have done it. She says that if he had asked her sincerely to return she would have returned, and I believe that she is telling the truth. This case is nothing at all like *Purnell v. Purnell*, 70 Atl. 187, and affirmed on Vice-Chancellor Stevenson's opinion. There, the cold invitations of the husband were addressed to a wife who was entirely to blame by a spouse who was blameless.

20 Counsel in his very powerful argument has said that this woman hasn't said what advances she wanted her husband to make. She doesn't have to say so. She has a right, after such a repulse, to wait until he convinces her that he *sincerely* wants her back and calls her as his wife to live with him. But these cold expressions—which is about all that they amount to—"I would like to have you return home and fulfill your duties as a wife"—that is no way for a man to get his wife back! Counsel know that in these cases, where the effort is sincere, the husband comes in and brings letters or testifies to the contents of letters breathing a passionate desire for the resumption of cohabitation,—those are the kind of efforts that I think a
30 man has got to make after he has driven his wife away by his own conduct.

Now, counsel has also made a passionate and appealing argument that this man's position is impossible; that he is married without any of the benefits and advantages of marriage. I regret that and insist that it is his own fault that he is in the position in which he finds himself. I regret that, but counsel does not need me to tell him that
40 I don't sit here to hand out decrees of divorce

Oral Opinion.

as largess is scattered abroad. But my view of the policy of divorce is of no moment. The legislature is the one that fixes that, and the only one that has power to fix it. The legislature has said that unless a desertion is not only for the period of two years, and continued, but is also obstinate, no divorce may be granted. Now, society has a very strong interest in these cases, so strong, as the law writers say, that the state always appears as a third party in a suit for divorce. The state has an interest in every divorce that is granted. While I feel that the position of the petitioner is a very unfortunate one I have also to consider that third party that is represented by the court, and I am obliged to consider that. The defendant doesn't want a divorce; she doesn't want to have the stigma of divorce, and I must consider her rights as well as his misfortune.

This whole thing is pitiful. As counsel has said, these are fine people, the best type that we have, and it is a shame that the child they have brought into the world is to be brought up as the daughter of divorced or separated parents. It is a shameful thing that they could not have been able to have kept their home together for her sake. But, of course, with that I have nothing to do.

I will refuse any decree.

What I said at the close of the final hearing regarding the application of *Hall v. Hall* may appear, at first blush, to be inconsistent with my finding in *Symon v. Symon* (94 N. J. Eq., 353), based upon the case of *Purnell v. Purnell* (70 Atl., 187), and which Mr. Biddle in his work on Divorce Practice, at page 83, says was "unfortunately omitted from our official reports". In the last-

Oral Opinion.

mentioned case, the husband decided to move from New York City to a suburban home in this state, and his wife, for no sufficient reason, refused to accompany him. He wrote to her a single letter, after he had established his new home, in these exact words:

Maud Purnell:

I am willing to support you only at the home I have provided.

J. W. PURNELL.

This was the only effort the husband ever made to secure his wife's return to him. It may be said that in the case *sub judice* more effort was made by the petitioner, because it was repeated at least twice. The difference, of course, however, is simple. In the Purnell case the fault lay entirely at the door of the defendant wife and, consequently, the rationale in the Hall case did not apply, because in the case at bar, "the husband has, by his conduct toward his wife, contributed" not only in any degree but very materially, if not entirely, to the cause that drove these people asunder. Had she left him for no good reason for which he was at fault, then the positions of the parties would be reversed and slight, if any, effort would be required upon his part to effect a reconciliation, depending upon the conditions surrounding the separation.

Exhibit P-1.

N. B.—Do not accept this transcript unless the raised seal of the Department of Health is affixed thereon.

New York, Dec. 30, 1925. 10

A transcript of a record on file with the Department of Health of the City of New York.

The City of New York No. of Certificate,
Department of Health. 7136

State of New York.

CERTIFICATE AND RECORD OF MARRIAGE

20

OF

Robert M. Baxter, Jr.

and

Maude M. Coleman

Groom's Residence—13 West 102d St.

Age—25 Years.

Color—White.

Single, Widowed or Divorced—Single. 30

Occupation—Clerk.

Birthplace—Brooklyn, N. Y.

Father's Name—Robert M. Baxter.

Mother's Maiden Name—Jannie Campbell.

Number of Groom's Marriage—First.

Bride's Residence—558 W. 184th St.

Age—23 Years.

Color—White.

Single, Widowed or Divorced—Single.

Maiden Name, if a Widow—..... 40

Exhibit P-1.

Birthplace—New York City.

Father's Name—Richard C. Coleman.

Mother's Maiden Name—Louisa Zimmerman.

Number of Bride's Marriage—First.

- 10 I hereby certify that the above-named groom and bride were joined in Marriage by me, in accordance with the Laws of the State of New York, at Broadway Tabernacle (Street, Church), in the Borough of Manhattan, City of New York, this 12 of April 1909

Signature of person performing the Ceremony

Charles E. Jefferson

Official Station—Clergyman.

- 20 Residence—121 W. 85th St Manhattan

Witnesses to the Marriage—

Ida L. Coleman

Fred H. Montgomery

(Seal)

This is to certify that the foregoing is a true copy (photographic) of a record on file in the Bureau of Records, Department of Health, City of New York.

- 30 John T. Walsh, M. D.

John T. Walsh, M. D.

Assistant Registrar of Records.

Notice.—In issuing this transcript of Record, the Department of Health of the City of New York does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided for by law.

Exhibit P-1.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.:

No. 4546.

I, James A. Donegan, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, being a Court of Record, Do Hereby Certify, That John T. Walsh, M. D., before or by whom the annexed document was signed, was at the date thereof Asst. Registrar of Records in and for the County of New York, dwelling in said County, duly appointed and sworn, and that full faith and credit are due to all of his official acts as such Asst. Reg. And further, that I am well acquainted with the handwriting of such Asst. Registrar and verily believe that the signature to the annexed document is genuine. 10 20

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County the 30 day of Dec. 1925.

JAMES A. DONEGAN,
 Clerk. 30

I, J. T. Mahoney, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that James A. Donegan, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplifica- 40

Exhibit P-1.

tion is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Dec. 30, 1925.

10

J. T. MAHONEY,
Justice of the Supreme Court of
the State of New York.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

20

I, James A. Donegan, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. J. T. Mahoney whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

30

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court this 30 day of December, 1925.

JAMES A. DONEGAN,
Clerk.

(Seal)

40

Exhibit P-2.

No. 3.

New York, May 31, 1923.

THE CORN EXCHANGE BANK

Terminal Branch

Dey & Church Streets

10

Pay to Neil Mac Coull.....or order

Seventy five & 00/100.....Dollars

\$75.#

ROBERT M. BAXTER, JR.

Special Account.

Payable Through New York Clearing House.

(On back of check)

Neil Mac Coull

Pay to the Order of

20

The Corn Exchange Bank, Branch

51 Collecting this item 51

Jun 5 1923

Rector St. Branch

The Corn Exchange Bank

Jun 6 1923

Terminal Branch

Paid

30

Exhibit P-3.

June 1, 1923.

I endeavored to locate you and Dorothy last night and this morning. My intention was to tell you, if I found you, that your home and Dorothy's home is still Ivy Ave., Englewood. I have paid the rent in advance for June as you know and I

40

Exhibit P-3.

would like to have you return to the home and fulfill your duties as a wife. I shall remain there to receive you.

10 As you know, I have always provided for you to the best of my ability and I am still willing to do so.

I should like to hear from you, especially to know whether Dorothy is and who is taking care of her.

Lovingly,

ROB.

June 1, 1923.

20 Mrs. Maude C. Baxter,
c/o Ida L. Coleman,
650 West 172nd St., City.

Dear Mrs. Baxter:

Mr. Baxter has consulted me relative to your recent marital differences and at his request I am writing to inquire what you now propose to do.

30 As I understand the situation, the house on Ivy Lane, Englewood, was sold to Neil MacCoull and the title was transferred yesterday, when you received checks for \$3850.00 and \$100.00 of the Corn Exchange Bank in Judge Huckins office. Although the title to the property stood in your name, I believe it was originally bought by your husband and paid for out of his earnings.

40 Mr. Baxter, as you know, paid the June rent of \$75.00 to the new owner and supposed that you would continue to occupy the house with him, but when he returned he was surprised to find all the furnishings and family effects removed. He is at

Exhibit P-3.

a loss to understand your attitude and in view of the course you are pursuing, I scarcely know how to advise him to proceed until you offer some explanation as to your plans.

Will you kindly let me hear from you as to your intentions. 10

As you know Mr. Baxter has always provided for you according to his ability and station in life and he is still willing to support both you and the child, Dorothy, if you give him the opportunity to do so and as you can appreciate Justice requires that you indicate your wishes and deal frankly with him in disclosing your plans for the future. Mr. Baxter cannot keep house alone very well but as you have seen fit to leave the house, 20 he will remain there for the present at least until we hear from you.

Very truly yours,

ROBERT W. THOMPSON.

June 8, 1923.

Dear Robert,

I have received your letter dated June 1st, sent to me by registered mail with the name, "A. Chambers, 692-10th St., Bklyn," on the upper left hand corner of the envelope. I was quite surprised that you should resort to such means in order to write me. All letters addressed to me will be received. It is quite unnecessary to register them and also to resort to such deception. 30

I have also received a letter, dated June 1st, from R. W. Thompson, your attorney. I am quite surprised that you found it necessary so quickly 40

Exhibit P-3.

10 to go to an attorney for advise. In view of the fact that you have so often told me to get out of the house and that you wanted nothing further to do with me, I am very much surprised at the tone, not only of your letter, but also that from your lawyer.

20 I think you know, without my telling you, that because of your treatment of me for some time, I have been under a great strain. When the house was sold I felt that it was time that I had a rest and also that I take time to consider what was best for you, D. and myself. It was because of that, I told you that you need not rent the house for the month of June. As you know, I have been teaching school for some time, not because I desired to teach, but in order to help you in bringing into the home money sufficient for our needs. It would seem, that in view of all that has transpired, that my efforts to help you have not been appreciated.

30 I have also received a letter from F. A. Gorecke, Inc., in which they state that they received a letter from R. W. Thompson, attorney for R. M. B., in which he claims the furniture which was moved to the storage belonged to you. There has been no disposition on my part to conceal the whereabouts of anything. As to the ownership of the furniture, it seems that that need not be determined now. After I have had a chance to collect my thoughts and rest a bit, I shall be glad to talk with you concerning what should be done for the best interest of us all. It seems hardly necessary to have lawyers involved in our differences. If, however, you feel that you do not care to talk with me concerning future plans, without having an attorney present, it is probably that I will also, 40 at that time, want to be represented by an attorney.

Exhibit P-3.

I think that you need not be troubled for the present concerning the welfare of Dorothy. You know perfectly well that she will be cared for as she always has been cared for and you know also, or ought to know, that I am ready and willing and always have been, to do that which is for the best interest of all of us. 10

Lovingly, your wife,

MAUDE.

Ivy Avenue,
Englewood, N. J.

June 11, 1923. 20

Dear Maude:

I received your letter of June 8th, which did not give any address.

As your husband and the father of Dorothy, I want to know where you and Dorothy are living. Up to the present time I do not know where either of you are living.

At a very early date, I would like you to select a place and name the time when it will be convenient for me to see you so as to make arrangements for me to see Dorothy. 30

New York,

June 21, 1923.

Dear Robert,

Your letter of June 11th in a registered envelope received. I am somewhat surprised that you 40

Exhibit P-3.

find it necessary to register each letter you send me.

10 As I have previously written you, I want an opportunity to collect my thoughts. You know better than anybody else the strain to which I have been subjected during the last six months, and you also know the cause of it.

You know perfectly well that Dorothy will be well cared for and as far as I am concerned what I need more than anything else is rest and quiet. Just as soon as I have the rest I fell I should have, we can talk over things and arrange to do that which is best for all three.

20 Dorothy is very well and sends her love.

As ever,

Your wife,

MAUDE.

P. S.—I am surprised you do not know that any mail sent to 650 West 172nd Street will reach me.

M.

30

17 Van Reypen Street,
Jersey City, N. J.,

July 27, 1923.

My Dear Maude:

40 I vacated our home on Ivy Avenue, Englewood, on June 24th, 1923, as it was impossible for me to continue to live there longer under the conditions which you left me and the home on May 31st, last. Until I could find a suitable place for a home, I boarded in Englewood. I have found a

Exhibit P-3.

very nice apartment at the above address which is located in a good neighborhood and is near a Public School. It is also very convenient for me to go and come from business, as I can reach the office in less than thirty minutes without changing cars. 10

As I have leased this apartment and furnished it with the necessary articles to make living there comfortable I again ask you to return home and perform your wifely duties, also to bring home our daughter, Dorothy. As you well know, I have always provided and supported you and Dorothy to the best of my ability and am still willing to do so.

I also ask you once more for an interview, so that we can talk things over. You can call, if convenient, at my office at 26 Rector Street, N. Y. C., any time between 9 A. M. and 5:30 P. M., on week days, except Saturdays. If not, I'll meet you at a convenient time and place, other than a place where your relatives would be. Hoping to hear from you soon, I am, as ever, 20

Your husband,

ROBERT. 30

Patchogue, Long Is.

July 30, 1923.

My dear Robert,

Your letter of July 27th, sent by registered mail c/o both my aunts at Patchogue, has been received. It surprises me that you find it necessary to register every letter you mail me and require a receipt. You know that I am with my Aunt and 40

Exhibit P-3.

any communication which you desire to send me at that address will be received and acknowledged, without the necessity of registering it and requesting a receipt.

10 It seems difficult to make you understand that I have at no time had any desire to break up the home. However, in view of the conditions of which you are familiar, I found it necessary to rest. Since my aunt offered a place where I could spend my vacation, without charge to me, and which is also a very suitable place for Dorothy, to spend the summer months, I accepted it.

20 You seem determined to embarrass me in every way conceivable. The July 28th issue of Press contains a notice to the effect that I have left your bed and board and that you will not be responsible for my debts. I am surprised, in view of what I have written you, that you deemed it necessary to give publicity to a matter which concerns just you, Dorothy and myself. It seems to be, family affairs are too sacred to be made public. I think you will realize, if you stop to think, that by making know to outsiders things which are of no concern to them, it is only making it harder for
30 us to do what we should both be willing to do in view of our duty to Dorothy.

Without even asking me to visit the place, you have leased an apartment at 17 Van Reypen Street, Jersey City, in such great haste. Of course, you know that for sometime prior to the sale of our house, I taught school in Tenafly for the purpose of bringing in additional revenue which was used in the home so that we could have comforts that we were unable to have without it.
40 It was owing to this teaching, and running of the

Exhibit P-3.

house without help and other things best known to you, that caused me to get in this rundown condition. I was perfectly willing to help out and so have signed to teach in Tenafly for another year. That being so, you can readily see that you were a bit hasty in leasing an apartment in Jersey City. I doubt, very much, if it as good a place, considering Dorothy's welfare and health, as Englewood or vicinity. Until quite recently and for a period covering nine years we have found it convenient to live in Englewood. 10

You have shown no great desire to see Dorothy and also have not contributed one cent toward her support since we sold our home. No matter, whether you or I are at fault, the poor child should not be compelled to suffer as a result of it. I have, at no time, done anything to cause Dorothy to feel otherwise toward you than a child should feel toward her father. If you are sincere in your desire to discharge your duties towards Dorothy, at least, it would seem that you would send something towards her support and maintenance. I understood, when the matter came up before Vice Chancellor in Jersey City, it was agreed that \$10.00 or \$12.00 was to be paid by you towards her support. I have not received anything and am wondering just why in view of the agreement then made. 20 30

I understand you have written a very unpleasant letter to Mr. Aery and have also been in communication without the Storage Warehouse men concerning the furniture that is stored there. I wish you would not give further publicity to what has happened and realize that all this just makes it harder for us all. I hope you will be able to 40

Exhibit P-3.

10 see things in this fashion until have finished my vacation at Patchogue; when I hope to be in such an improved condition as to be able to discuss with you what is best for all of us and to carry out a program which I hope we will be able to agree upon.

Your wife,

MAUDE.

17 Van Reypen St.,
Jersey City, N. J.

August 1, 1923.

20

My dear Maude,

I received your letter of July 30th, when I arrived home this evening. It was the first letter from you since you left me which gave an address of abode.

30

One of the reasons for my leasing this apartment was to have a home convenient to my business. I always had a home until you broke up our home on May 31st, last, and without my knowledge or consent removed my furniture to place still unknown to me and took away our daughter.

You well know that I always provided and gave you a much better home than you ever had before you were married. You also know that I did all that I could to make you happy and comfortable and I know of no conditions which would cause you to do what you did as far as I am concerned.

40

Exhibit P-3.

I again ask you to return home and assume your wifely duties and bring home our daughter, Dorothy.

Without cause you took Dorothy away from me and have kept her away and your are still keeping her away from me. As to her support, I will abide by the Courts' decision when rendered. 10

I wish to remind you of my requests for an early interview.

As ever,

Your husband,

ROBERT.

20

17 Van Reypen St.,
Jersey City, N. J.

Aug. 7, 1923.

My dear Maude:

I am enclosing my check for ten dollars (\$10.00) on account of Dorothy's maintenance.

Trusting that this matter will soon be settled, I am, as ever, 30

Your husband,

ROBERT.

40

Exhibit P-3.

Patchogue, Long Is.

Aug. 8, 1923.

My Dear Robert,

10 I have your letter of August 1st. I have delayed answering on account of Dorothy. She has had to be taken to an eye specialist for treatment. Some trouble with her tear duct.

Just why do you find it necessary to send every letter by registered mail and require a receipt? I have told you before that I would answer you letters and that I have no intention of keeping my whereabouts unknown to you.

20 I am surprised that you keep repeating in your letters that I broke up the home, and that you have always done your part. I think nothing can be gained by constant repetition as to who is to blame in our present trouble. It seems to me, if we do not attempt to fix the blame, but arrange to talk things over as I have suggested, it will be easier for us both.

30 I had hoped you would see your way clear towards sending something for Dorothy's support and maintenance and also that you would come to see her. I don't think we should allow anything to happen which would tend to overcome her proper feeling for you. It is a surprise to me that you require that the matter of her support be left to the decision of the court. As I have said before, it does not help matters to make known our troubles in court or elsewhere. The more publicity given to it the more difficult it will make it for us to do, what we should do in view of our obligations to Dorothy. I am

40

Your wife,

MAUDE.

Exhibit P-3.

17 Van Reypen St.,
Jersey City, N. J.

August 9, 1923.

My dear Maude,

I was sorry to hear about Dorothy's condition and hope that she is better now. Had she been *home* she probably would not have had any trouble.

Having asked you in all of my previous letters, I will now ask you once more to return home and perform your wifely duties and bring home our daughter, Dorothy.

I refer you to the last paragraph in my letter to you of July 27th, 1923.

Trusting that Monday's hearing in Court will settle matters which you have refused to discuss by your evasion of my requests for an interview for that purpose, I am, as ever,

Your husband,

ROBERT.

17 Van Reypen Street,
Jersey City, N. J.

August 13, 1923.

My dear Maude:

Enclosed you will find my check for \$10.00 being for Dorothy's maintenance for the current week.

I expected to see you in court, this morning. Mr. Thompson and I appeared there this morning at the request of Mr. Huckin.

Exhibit P-3.

Will it be convenient for you to bring Dorothy to my office on the afternoon of the coming Friday (on August 17,) as I would like very much to see her, as ever,

10

Your husband,

ROBERT.

17 Van Reyepen Street,
Jersey City, N. J.

August 20, 1923.

Dear Maude:—

20

As the invitation to talk things over which you extended in the last letter I received from you is in harmony with my several requests for an interview I accept your offer.

Why not meet me at my office say Thursday August 23rd or Friday August 24th, at five thirty (5:30) o'clock, P. M., then we can go and have dinner together and talk things over. As ever,

Your husband,

30

ROBERT M. BAXTER, JR.

Aug. 23, '23 waited until 6:05 P. M.

Aug. 24, '23 waited until 6:10 P. M.

40

Exhibit P-3.

17 Van Reyepen Street,
Jersey City, N. J.

August 25, 1923.

Dear Maude,

Being conscious of my obligations to our daughter Dorthy, irrespective of your attitude, I am enclosing my check for ten dollars on account of her maintenance, which I expect to hand to you last Thursday or Friday night.

I was disappointed that you did not meet me, as I thought that you had expressed an honest desire to do so and talk things over.

Harmonizing with my requests for an interview, you have asked for an opportunity to talk things over in private and I have on several occasions suggested that you name the time and place for such a meeting, and on other occasions I have named a time and place but you have shown no real intention of meeting me.

However, when you return to within the jurisdiction of the State of New Jersey, I will again have to take legal action to obtain my rights.

Any time that you honestly want to talk things over with me, I will be very glad to consider an appointment for that purpose. As ever,

Your husband,

ROBERT M. BAXTER, JR.

10

20

30

40

Exhibit P-3.

17 Van Reyppen Street,
Jersey City, N. J.

August 27, 1923.

My Dear Maude,

10

I would like to have my pass-book represent my savings account with the Palisades Trust & Guaranty Co., Englewood, N. J., which was carried in our joint names as a convenience should anything happen to me. I believe you took this book with you when you deserted me and broke up our home on May 31, 1923.

20

I would also like to know what you did with my furniture which you removed from the house without my knowledge or consent on the same day:

As I said before, any time that you honestly desire to talk things over with me, I will be very glad to consider an appointment for that purpose.

Trusting that Dorothy and you are well, I am as ever,

Your husband,

ROBERT.

Stamped envelope enclosed.

30

17 Van Reyppen Street,
Jersey City, N. J.

August 31, 1923.

My dear Maude:—

I am enclosing my check for (\$10.00) ten dollars for Dorothy's maintenance for this week.

40

I understand that you are not living at Pat-chogue. I wish to call to your attention that you stated in your letters that you would keep me in-

Exhibit P-3.

formed as to where you were living also that you would acknowledge receipt of my letters. Apparently, your written words are as dishonest as have been your actions.

Any time that you wish to talk to me about making restitution, I will be very glad to consider your proposition. 10

Please furnish me with an accounting of that part of my furniture which you sold, otherwise, I will take the matter to court when you return to New Jersey.

Your husband,

ROBERT M. BAXTER.

20

26 Rector Street,

New York, Sept. 2, 1924.

My dear Maude:

As I am going away for a few weeks, I will not call for Dorothy on Saturday.

When I return I will advise you of the date when I will call for Dorothy.

Should it be necessary to communicate with me, you can do so through the Corn Exchange Bank, Rector Street Branch, New York City. 30

As ever,

R. M. BAXTER, JR.

Englewood, Sept. 3, 1923.

My dear Robert:

Owing to my being absent on a short visit from Patchogue, your letters of the 20th, 25th, 27th and 31st, did not reach me until my return. 40

Exhibit P-3.

I had hoped to be able to see you at the time when I went to Court in Jersey City. Mr. Huckin had told me he had requested your attorney to have your present at the time. I was disappointed
10 that you left before we reached there. I had Dorothy with me and had told her she would see you that morning. She naturally was disappointed when she found you were not there.

I wish you would please enclose the post cards you send to Dorothy in an envelope, particularly when they contain information that others ought not to know.

I am surprised that you have been so thoughtless as to write some of the things that appeared
20 on them.

I wish you would try to change the tone of your letters. It does seem as though you were writing letters for the purpose of making a record. You still persist in send all letters registered, which is unnecessary, because I always have and will answer any letters which you write.

Since there was a dispute concerning Dorothy's maintenance, I understand from Mr. Huckin that the Judge will be asked that such payment begin
30 from the time you ceased supporting her. I will get in touch with Mr. Huckin within the next few days and find out from him just when we are to meet to have the matter settled and will let you know.

As to the bank book and furniture, those matters can be discussed when we talk over other things.

I have left Patchogue and am back in Englewood, preparatory to resuming my work at teaching. For the time being you can address me Ivy
40 Lane, Englewood. It is probable by the time we

Exhibit P-3.

meet to talk things over, I will be definitely located and will then be able to let you know where you can see both Dorothy and myself.

I am,

Your wife,

10

MAUDE.

26 Rector Street,

New York, Aug. 25, 1924.

Dear Maude,

Dorothy has stated that you expected to go away for a week or two. If you do, please advise me of the address so that I may know where you and Dorothy are should anything happen. 20

Enclosed is the ten dollar check.

As ever,

ROBERT M. BAXTER, JR.

(Y)

30

HOTEL CHARLES,
Seventh Avenue,
Asbury Park, New Jersey.
J. Young.

August 25, 1924.

Mr. Robert M. Baxter, Jr.

This is to inform you that Mrs. Maude C. Baxter and her daughter, Dorothy M. Baxter, are here for a week. 40

Exhibit P-3.

(Telegram)

Jan. 23, 1925.
Englewood, N. J.

10 Robert M. Baxter,
care Corn Exchange Bank, 26 Rector St.,
New York, N. Y.

DO NOT CALL THIS WEEK DOROTHY
HAS COLD LETTER WILL FOLLOW

MAUDE C. BAXTER.

19 Hillside Ave.,
Tenafly, N. J.

20 Robert:

This is just a note to affirm what my telegram told you this morning.

I kept Dorothy from school Thursday on account of sore throat and fever. When she was no better yesterday I called the Doctor who said she must remain indoors a few days longer. He prescribed for hoarseness and cold.

Let me know if you wish to see Dorothy on January 31st, instead of the following week.

30

Yours truly,

MAUDE C. BAXTER.

January 24, 1925.

1406 M. Street, N. W.,
Washington, D. C.

April 12, 1925.

Robert:

40 This is to inform you that your daughter, Dorothy, is down here for a few days. If nothing unforeseen happens she will be back in time to see you on Saturday, April 18th, 1925.

MAUDE C. BAXTER.

Exhibit D-1.

POST CARD

(Stamp—Hud. Term. Sta., N. Y., Aug. 13, 7 P. M., 1923.)

This Space for Writing

This Side is for the Address

10

Aug. 13/23

Dear Dorothy,

I hope that you are well.
Ask mother to bring you to
see your,

Daddy.

Miss Dorothy Baxter
c/o Schuralback
Patchogue,
L. I.

(Reverse Side)

20

Have you any toys to play with?

POST CARD

(Stamp—Hud. Term. Sta., N. Y., Aug. 7, 5.30 P. M., 1923.)

For Correspondence

For Address Only

17 Van Reypen St.,
Jersey City, N. J.

30

Dear daughter,

Ask mother to bring you
home. It is over two months
since I have seen my little
girl.

Daddy.

Aug. 7/23.

Miss Dorothy Baxter,
c/o Schuralback,
Patchogue,
L. I.

(Reverse Side)

40

I hope that you are well. Do not forget your,
Daddy.

Exhibit D-1.

POST CARD

(Stamp—Trinity Sta., N. Y., Sep. 12, 1 P. M., 1923.)

10

Sept. 12/23

For Address Only

Dear Maude,

I may call at the school
Thursday or Friday to talk
to you as I do not know
where you and Dorothy are
living.

Mrs. Robert M. Baxter, Jr.,
Public School,
Tenaflly,
New Jersey.

Lovingly

Robert.

20

POST CARD

(Stamp—Tenaflly, Sep. 8, 1 P. M., N. J.)

Sept. 10, 1923.

Dear Maude,

30

To greet you on your
Birthday and ask you again
to return home and bring
our daughter Dorothy with
you. I would like very much
to see you both.

Your loving husband,

Robert.

Mrs. Robert M. Baxter, Jr.,
Public School,
Tenaflly,
New Jersey.

(Reverse Side)

40

This is near your home and Dorothy's home which I
am maintaining in the hopes that you will return soon.

R.

Exhibit D-1.

POST CARD

(Stamp—Jersey City, Sep. 6, 9.30 P. M., 1923, N. J.)

This Space for Writing

17 Van Reypen St.,
Jersey City, N. J.

Dear Daughter,

Ask mother to come home
and bring you with her. It
is over three months since I
have seen my little girl.

Would you like daddy to
send you some toys for the
ones which were given away
or sold?

Your loving,

Daddy.

This Side is for the Address

10

Miss Dorothy Baxter,
Ivy Lane
Englewood,
N. J.

(Postmaster:

20

Please try to locate house
unknown.)

(Reverse Side)

Your home is near here. Ask mother to bring you to it.

Daddy.

30

Exhibit D-1.

POST CARD

(Stamp—Trinity Sta., N. Y., Aug. 24, 12.30 P. M., 1923.)

10

For Correspondence

17 Van Reypen St.
 Jersey City, N. J.
 Aug. 24/23

Dear Dorothy,

Ask mother to take you
 home to see daddy. It is
 almost three months since I
 have seen my little daughter.

Daddy.

20

For Address Only

Miss Dorothy Baxter
 c/o Schuralback
 Patchogue
 L. I.

(Reverse Side)

I hope that my little girl is well and having a good
 time.

30

40

Exhibit D-2.

ENVELOPE.

A. Chambers
692—10th St.,
Brooklyn, N. Y. 10

Return Receipt Requested

Registered
521188

Mrs. Maude C. Baxter,
e/o ~~Miss Ida Coleman,~~
~~650 West 172 St.,~~
~~New York City.~~ 20

Tenafly
New Jersey.

Jun 4 1923
First Notice

30

40

11 OCT. 1. 1926

New Jersey Court of Errors and Appeals.

Between

ROBERT M. BAXTER, JR.,
Petitioner-Appellant,

and

MAUDE COLEMAN BAXTER,
Defendant-Respondent.

ON APPEAL
FROM
COURT OF
CHANCERY.

BRIEF OF PETITIONER-APPELLANT.

Facts.

This is an appeal from a decree of the Court of Chancery, dismissing a petition for divorce brought by Robert M. Baxter, Jr., against his wife, on the ground of desertion (S. C., p. 5, l. 30). The defendant filed an answer denying the desertion (S. C., p. 8). The case came on for a hearing before Hon. John Bentley, one of the Vice Chancellors, who, after hearing the evidence, decided that the wife was justified in leaving her husband (Opinion, S. C., p. 69, l. 10) and that his efforts to have her return were not vigorous enough.

The facts of the petitioner's case were in brief, as follows:—The petitioner and the defendant were married in 1909 (S. C., p. 10, l. 10) and had one child. Marriage and residence were proven. Petitioner stated that he and his wife got along very well except for the fact that his wife insisted on teaching school which he objected to on several occasions. There was no need for her to teach

school but she insisted on teaching and then complained to her husband that the work was too hard for her (S. C., p. 29, l. 30). Nevertheless, she refused to comply with his request and continued to teach.

They agreed to sell the property they owned and buy a smaller place so that the wife would have it easier (S. C., p. 32, l. 10). On May 31st, 1923, petitioner and his wife went to a lawyer's office to close the title to the house they were selling and his wife left before the transaction was completed. It was agreed between the petitioner and the new owner that petitioner and defendant were to remain in the property as tenants for one month and petitioner paid the new owner \$75.00 rent for the month of June, 1923 (S. C., p. 13, l. 20). When he arrived home he found that his wife had stripped the house of all furniture, etc., and that she and the child had disappeared without leaving any word as to their whereabouts (S. C., p. 13, l. 40). He immediately inquired at the post-office and found that they had gone to a place in New York City. He immediately went to the address given but could not gain admission. He then wrote his wife a letter (S. C., p. 15, l. 10), in which he asked her to return. The next day he consulted counsel who also wrote a letter of inquiry (S. C., p. 78, l. 29). He continued to remain in the property until June 19th, 1923, when he took a furnished room in Englewood. After a month there he furnished an apartment in Jersey City and notified his wife to come and live with him (S. C., p. 82, l. 30). He endeavored to see his wife, called her on the phone twice and was met with rebuffs on both occasions (S. C., p. 38, l. 29). He entered into correspondence with his wife, his letters to her and her letters to him being Exhibit p. 3 in the case (S. C., p. 77, l. 30). After several

letters in which he asked her to return and in which she neither said that she would return or that she would not return, but kept putting him off, she finally wrote him on September 3rd, that she thought he was making a record. After that letter he did not ask her to return.

The defendant wife admitted that she left the home and removed the furniture. She did not inform the petitioner of this fact beforehand (S. C., p. 52, l. 10). In response to his efforts to have her return she complained that she would talk things over later as she needed a rest (S. C., p. 53, l. 20). She admitted that her husband objected to her teaching and that they quarreled about this. Her husband never struck her or treated her cruelly. She says he was mean to her. In response to his letters she kept delaying and delaying and never gave him a definite answer to his requests for her return. In response to her requests for an interview, the petitioner made appointments for her to meet him which she did not keep. The reason she gave for not keeping the appointments was that she feared him (S. C., p. 50, l. 40) although she herself requested them at that time. In response to his letter that she visit the new apartment, she says that she did not want to live in Jersey City as it would interfere with her teaching (S. C., p. 84, l. 50). She never tried to see her husband. She did not think her husband's efforts were sincere, although she made no effort to find out whether they were or not.

Argument of Law.

This appeal is based on two grounds:

First: That the court erred in finding that Mrs. Baxter was justified in leaving her husband.

Second: That the court erred in finding that Baxter had not made sufficient effort to induce his wife to return.

DEFENDANT WAS NOT JUSTIFIED IN LEAVING PETITIONER.

Under the decisions of the State of New Jersey, desertion is only justified where the other party has been guilty of some matrimonial offense or where the one party has been guilty of such extreme cruelty that it endangered the health or life of the other party. *Suydam v. Suydam*, 79 N. J. E. 144.

Baxter did not commit adultery, he did not desert his wife. He was not guilty of such cruelty as has been defined by our Courts to justify his wife in leaving as she did. She had no legal reason to leave him. She may have had some whimsical or capricious reason but no reason justified by law.

She says Baxter was mean; that he was hot-tempered; that he was morose, etc. Yet, she cannot, in her testimony point to one single instance of cruelty of any kind; or any act which would really justify her in leaving him or in being afraid to return to him. Her desertion being wilful and deliberate and totally unjustified by the facts, we next come to the question of whether or not it was obstinate and continuous. In other words, when she left him without just cause she actually intended to desert him. Did that intent to desert continue for two years and did it remain as it started on May 31st, 1923? We think from the evidence that the intent to desert remained throughout the statutory period and that never once did she deviate from the idea of remaining away either by any word or action on her part.

PETITIONER DID EVERYTHING THAT A REASONABLE MAN WOULD BE EXPECTED TO DO UNDER THE CIRCUMSTANCES TO INDUCE HIS WIFE TO RETURN.

Having shown that the desertion was unjustified we now come to the more important question, did Baxter make the necessary just advances to induce his wife to return?

In considering this point we must take all the surrounding circumstances into consideration.

Baxter was a banker in New York (S. C., p. 54, l. 10) earning sufficient money to support his wife and child in comfort, and he did so. Yet, his wife insisted on being a school teacher against the will of her husband. This was the cause of their differences. This is what they quarrelled about (S. C., p. 29, l. 30). If she had stopped teaching all would have been well. But, for some unknown reason of female mentality, she insisted on teaching despite her husband's desires. If Mrs. Baxter wanted to do the right thing, she should have complied with her husband's request and devoted herself to him, their child and their home. Then there would have been no trouble. Then there would have been harmony and love. Finally came the straw that broke the camel's back. Her leaving him on May 31st, 1923, without warning (S. C., p. 52, l. 10), cleaning out the house and leaving him ignorant of her whereabouts and that of their child. What did Baxter do under the circumstances? Her leaving was certainly a surprise to him, for only a few moments before he had paid the rent of \$75.00 for the coming month for the house (S. C., p. 13, l. 20). If the separation were mutual or agreed on, would he have done that? He immediately set out to find her. Not next week, or next month, not next day, but he set out that very moment to locate her; to find out why

she had left; where she was and to induce her to return. He went to the Post Office and found that she had left a forwarding address. He immediately went to New York to said address and sought his wife but he could not see her. He then came home and wrote the following letter to her (S. C., p. 77, l. 35):

"I endeavored to locate you and Dorothy last night and this morning. My intention was to tell you if I found you that your home and Dorothy's home is still Ivy Avenue, Englewood. I have paid the rent in advance for June, as you know, and I would like to have you return to the home and fulfill your duties as a wife. I shall remain there to receive you.

As you know, I have always provided for you to the best of my ability and am still willing to do so. I should like to hear from you, especially to know where Dorothy is and who is taking care of her.

Lovingly,

ROB."

He has been criticized by counsel for the defense for at once seeking legal advice, but is that so strange where a man has been deserted and his wife, home and child have disappeared?

His lawyer also wrote a letter to her (S. C., p. 78). His wife's reply to both of the above letters (S. C., p. 79) says among other things:

"As to the ownership of the furniture, it seems that that need not be determined now. After I have had a chance to collect my thoughts and rest a bit, I shall be glad to talk with you concerning what should be done for the best interest of us all."

In this letter she makes no reply to his request to return home.

On June 11th, 1923, he writes to her again, as follows (S. C., p. 81):

“As your husband and the father of Dorothy, I want to know where you and Dorothy are living. Up to the present time I do not know where either of you are living. At a very early date I would like to select a place and name the time for me to see you so as to make arrangements for me to see Dorothy.”

To this letter his wife replied ten days after, on June 21st:

“Dear Robert: As I have previously written you, I want an opportunity to collect my thoughts. You know better than anybody else the strain to which I have been subjected during the last six months and you also know the cause of it.

You know perfectly well that Dorothy will be well cared for and as far as I am concerned, what I need more than anything else is rest and quiet.”

It will be noted that this letter gives no answer to his request for a meeting or that he can see his child but although it is written nearly a month after, his wife is still too tired to meet him.

Again on July 27th, he writes (S. C., p. 82):

“After telling that he vacated the Englewood home * * * I have found a very nice apartment at the above address which is in a good neighborhood and near a public school. It is convenient for me to go and come from business as I can reach the office in less than thirty minutes without changing cars. As I have leased this apartment and furnished it with the necessary articles to make living there comfortable, I again ask you to return home and perform your wifely duties, also bring home our daughter Dorothy. * * *

I also ask you for an interview so that we

can talk things over. You can call, if convenient, at my office at 26 Rector Street, N. Y., at any time between 9 A. M. and 5:30 P. M., on week days except Saturdays. If not, I'll meet you at a convenient time and place other than a place where your relatives would be. * * *."

In reply to this letter she writes him a long letter (S. C., p. 83) berating him for putting an ad in the paper; about debts, criticizing him for hiring a home in Jersey City which would interfere with her teaching in Tenafly; charging him with neglect of his daughter and telling him that she will discuss matters with him at the end of the summer.

No answer to his request that she come to live with him, no definite answer to his request to see his child, nothing definite in reply to his request for an interview. We must, therefore, conclude that the desertion which commenced on May 31st, and which was unjustified, has continued to July 30th, 1923, with the wife still unrelenting.

On August 1st, he again writes her his reasons for making his home in Jersey City and again asks for an interview (S. C., p. 87). It must be borne in mind that during this time it has become necessary for Baxter to resort to *Habeas Corpus* proceedings in the Court of Chancery to get permission to see his child.

On August 8th, his wife replies to this letter again criticizing him and complaining and berating Baxter for giving the matter publicity but arranging to talk things over but not saying when.

He immediately writes the next day expressing sorrow for his daughter's illness. He again asks his wife to return and again asks for an interview. Again on August 13th, 1923, he writes her asking her to meet him on August 17th at his office and

bring Dorothy along (S. C., p. 90). She did not appear or reply to this letter and on August 20th, he writes again:

“* * * suggesting that you talk things over is in harmony with my requests for an interview. I accept your offer. Why not meet me at my office, say Thursday August 23rd or Friday August 24th, at 5:30 P. M., then we can go and have dinner and talk things over.”

According to his testimony, Baxter waited on both evenings and his wife did not keep the appointments (S. C., p. 18, l. 10). She says in her testimony (S. C., p. 50, l. 35) that she was afraid to meet him although she admitted that she wrote that she was willing to talk things over.

Again on August 25th, he writes her as follows (S. C., p. 91, l. 10):

He expressed his disappointment at not meeting her and again asked for an appointment. The tone of his letter may seem a little harsh or constrained but it must be remembered that he has made three appointments with his wife which were not kept by her and was also compelled to take legal proceedings against her to see his child, which were contested by her.

On August 27th he wrote for a bank book which she took at the time of the desertion and also suggested that he would like to make an appointment to talk things over.

On August 31st, he writes a short note chiding his wife for not letting him hear from her and asking that she account for the furniture which she took with her belonging to him.

It might seem at first glance that this letter is a little too harsh, but then we must consider that he had asked for appointments, he had furnished an apartment, invited her to return, was forced to litigate the custody of his child, all without any

definite result. Also that he had written four letters to his wife without receiving an answer.

On September 3rd, the wife writes to petitioner that she was away and that his letters of the 20th, 25th, 27th and 31st did not reach her until her return (S. C., p. 93, l. 40). In this letter she chides him for sending post cards to his daughter and says he is thoughtless for writing things on postal cards (see cards, S. C., p. 97, l. 10).

A perusal of these cards reveals that they are from a loving father to his daughter and we certainly can see nothing in them which would keep his wife from coming back to him if she wanted to.

On September 10th, 1923, he sent his wife a birthday card (S. C., p. 98, l. 20), in which he sends his greetings and asks his wife to return to him and states that he would like to see them both. He received no response to this card.

To sum up this situation: Here we have a man who has done everything reasonably possible to get his wife back, even to furnishing a home for her and inviting her to return. To all his requests she has turned a deaf ear, has broken appointments which she has made, and has even refused to come and visit the home which he has furnished for her.

We think the real reason why she did not want to return was two-fold:

SHE DID NOT WANT TO LIVE IN JERSEY CITY.

SHE WAS MORE INTERESTED IN TEACHING THAN SHE WAS IN GOING BACK TO HER HUSBAND.

This is borne out by her own testimony:

“Q. You didn’t want to live in Jersey City?
A. No” (S. C., p. 60, l. 20).

That is the whole case in a nutshell; her husband had provided a suitable home and she refused to go there.

On the other hand, she never gave him any definite reply to his requests. Her attitude was one of delay, postponement and indifference. He made definite requests asking certain things. She never, either by word of mouth or letter, ever gave him a definite answer, yes or no.

If she wanted to go back, she would have answered his requests in a friendly way and kept the appointments which she had made.

She herself says (S. C., p. 50, l. 20) :

“Q. You were unwilling to go back to him?

A. I was never asked by him to come back.”

This is clearly a grave untruth, as the letters show.

We think this case is in line with the cases of *Purnell vs. Purnell* (70 Atl. 187) and *Symon vs. Symon* (94 Equity 353). (This latter case was decided by Vice Chancellor Bentley, who heard the Baxter case.) Although the Vice Chancellor attempts to distinguish between this case and the Symon and Purnell cases, a slight comparison follows:

1. In the Purnell and Symon cases, the wife left the husband and home without just cause or would not live in the home established by the husband. The same situation is present in the Baxter case.

2. In the Symon case the trouble arose a few months before the separation, likewise in the Baxter case.

3. In the Symon case the wife testified that she was afraid to go with her husband because she feared him, likewise in the Baxter case.

4. The Vice Chancellor, in his opinion in the Symon case says: "True, she was afraid to go to him, but I brush this flimsy excuse aside, for the reason that there was not a scintilla of proof of any violence or attempted violence on his part." Likewise in the Baxter case, a careful reading of the testimony fails to disclose any reason, real or fanciful, why Mrs. Baxter should not return or why she should be in fear of her husband.

5. In both the Purnell case and the Symon case, one letter, not at all friendly or endearing, was held to be sufficient as an advance by the husband.

In our opinion, the Vice Chancellor put an additional burden on the husband, which is not required under the cases and that is this: "The Court held that Baxter should have written letters which contained more endearing terms than he wrote." In fact, the Court said that he at least should have written the same kind of letters to his wife to get her to return as he did before they were married. We do not think that this is the law, neither do we think that Baxter was required to go so far. Neither do we think that Mrs. Baxter was driven from the home by the conduct of her husband and we do not think that there was any testimony in the case upon which the Vice Chancellor could base such a conclusion. In the Purnell and Symon cases (*supra*), only one letter, a mere note, was written and held sufficient, but in the Baxter case, which is a similar case, the husband made a much greater and sincerer effort and the Court, without any testimony on which to base its findings, says that his efforts were insufficient and insincere.

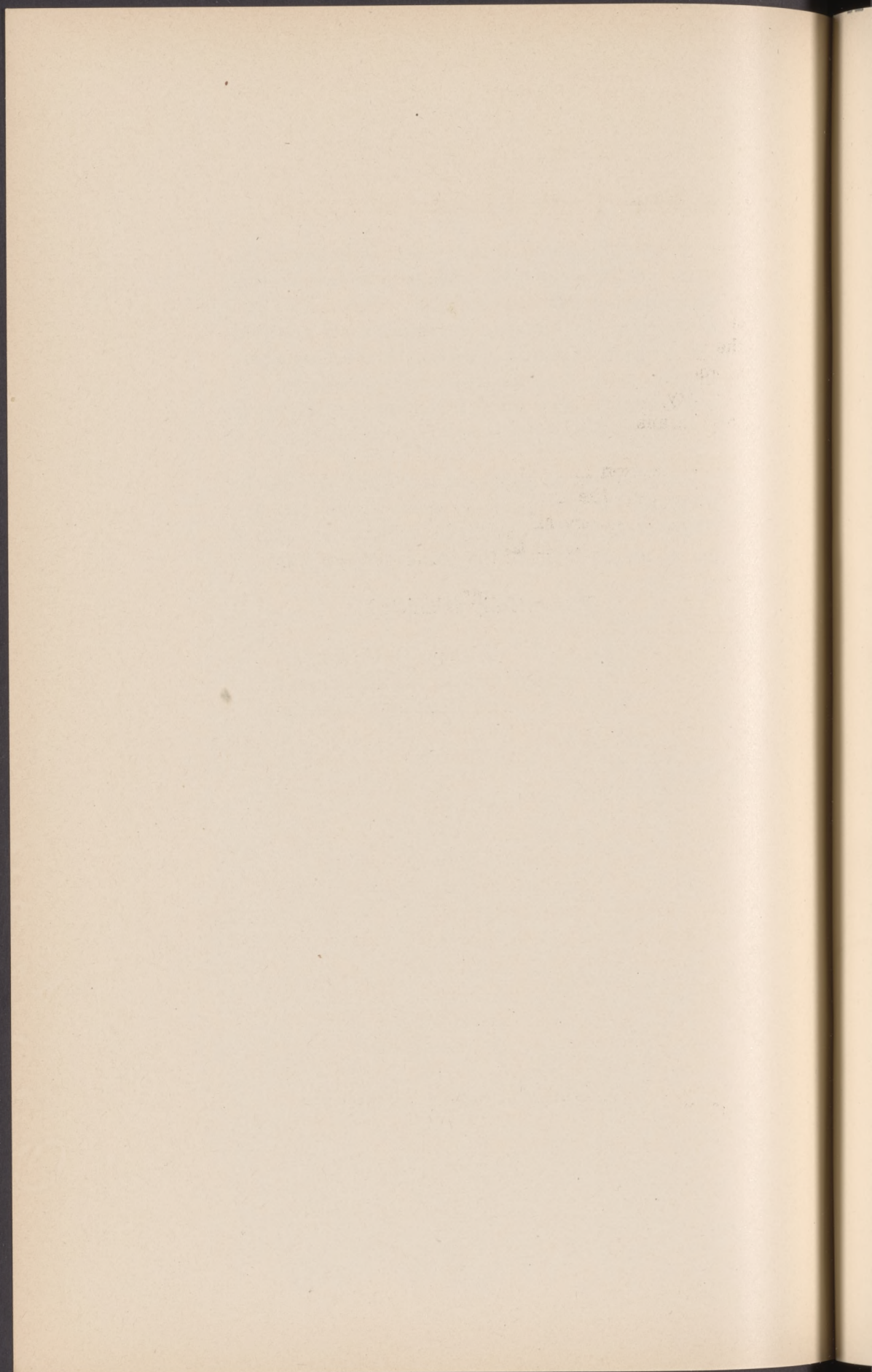
Résumé.

A careful reading of the whole testimony in the case, including the letters, leads us to believe that Mrs. Baxter left her husband without any just cause; that she intended to remain away and that she refused to go back to her husband after he had, in good faith, established a suitable home in Jersey City, that she did not want to live in Jersey City because it would interfere with her teaching.

The decision in this case, we think, should be reversed for the reasons given above and the Court of Chancery should be directed to enter a decree nisi in favor of the petitioner-appellant.

Respectfully submitted,

LEWIS G. HANSEN,
Solicitor for and of Counsel
with Petitioner-Appellant.



New Jersey Court of Errors and Appeals

ROBERT M. BAXTER, <i>Petitioner-Appellant,</i>	}	<i>Appeal from</i>
<i>vs.</i>		<i>Decree of</i>
MAUDE COLEMAN BAXTER, <i>Defendant-Respondent.</i>		<i>Dismissal.</i>
		<i>Heard Below</i>
		<i>Before</i>
		BENTLEY,
		V.-C.

BRIEF FOR DEFENDANT-RESPONDENT.

Statement of the Case.

The petition was filed June 4, 1925 (p. 4). The parties were married April 12, 1909 (p. 9). They lived together in New York City for the first three years of their married life and then moved to Englewood, New Jersey (pp. 9-10), where they continued to live together until May 31, 1923. One child of the marriage, Dorothy, was born in 1915 (p. 10). The parties lived together on Morris avenue in Englewood, from 1912 to 1919, and on Ivy avenue until May 23, 1923. The wife taught school in Tenafly, about a mile from the home, and continued to teach there until after the separation and hearing (pp. 20, 47). The marital troubles began in 1919 and reached a culmination in February, 1923 (p. 45), when the husband told his wife that he no longer cared for her; that she was a millstone around his neck, and kept him back; that the best thing to do was to sell the house and separate (p. 45). The wife pleaded with him not to do that, because of her love for him and also because of their child (p. 45). A contract for the sale of the Ivy avenue house was made in April, 1923 (p. 12) and the transfer was closed on May 31, 1923 (p. 12).

The causes leading up to the separation and the circumstances under which the couple lived apart will be dealt with in the argument.

ARGUMENT.

The points raised by the petitioner-appellant in this appeal are two-fold (Brief, pp. 3, 4).

First: That the Court erred in finding that Mrs. Baxter was justified in leaving her husband.

Second: That the Court erred in finding that Mr. Baxter had not made sufficient effort to induce his wife to return.

POINT I.

The wife was justified in leaving her husband.

The couple lived happily together for a number of years. The husband admitted that his wife was a loving and dutiful wife all the time she was married to him (p. 29). The question that, at the outset, naturally suggests itself is, "What was it that caused the separation?" The only testimony given by the husband on this point is:

Page 21, lines 25-34:

"Q Now, there is no question about your devotion to your wife; there is no question about there having been marital trouble before that, was there, in your mind? A Depends upon what you call marital trouble. I objected to her teaching school because she complained about it being too much for her.

Q Is that the only serious matter between you and your wife? A That was the cause of the most of the trouble."

Page 28, lines 15-23:

"Q What did you mean in the same affidavit, Mr. Baxter, when you said: 'I admit

that some time prior to May 31, 1923, my wife and I had marital differences'— A That has reference to my wife teaching school. I explained about it being too much for her and I objected; it wasn't necessary for her to do it and I requested her to discontinue it."

Page 29, lines 19-34:

"Q Mr. Baxter, you have had a loving and dutiful wife, you say, during all the time she was married to you? A Yes, sir.

Q You never had anything to complain about her? A Except her complaining.

Q Your only complaint was that she was trying to help out by teaching school? A It wasn't helping out, in my opinion; it wasn't necessary.

Q You say that the money that she earned teaching school didn't go into the house? A Not that I know of. It wasn't necessary.

Q Were you continually complaining about her teaching? A I wasn't complaining; I was requesting her to discontinue it and discontinue complaining, or continuing something about which she could complain."

Page 37, lines 30-40:

"Q You say there were no marital difficulties; what did you mean by that statement? A When I requested her in February to give up teaching she was complaining about being overworked and tired; the house was too much with the teaching, and I requested her to discontinue teaching in February, and I then asked her what she was doing with her money; I didn't see it and she didn't give it to me and she wasn't putting it into the house, and she told me she was giving it to her sister."

Page 40, lines 22-31:

"Q Had the atmosphere of your home been at all unpleasant? Has the relations between you and your wife been at all

strained prior to May 31? A Since in February—since that quarrel in February.

Q That was really the beginning, was it? A She then complained and I decided to sell the house and get more comfortable quarters. I had a lady come in once a week and I did all I could to make it easy, although it was a large house."

It therefore appears from the husband's testimony that there were no martial troubles of a nature serious enough to bring about a separation. It will be observed that the husband admits that the relations between the two were strained "since in February—since that quarrel in February" (p. 40). It is significant that he gives no details of the quarrel in February. It becomes necessary, therefore, to search for other reasons for the separation than those given by the husband. They will be found in the wife's testimony. She says:

Pages 45-47:

"Q Now, had there been any trouble of any kind between you and your husband prior to May 31st? A Yes, there was.

Q Can you tell us about when that trouble began? A Our trouble began as far back as 1919 when we first bought the house and it reached a culmination in about February, 1923.

Q Do you remember what occurred in February, 1923? A Mr. Baxter had been very morose and quiet and when I asked him what was the cause of it he said he no longer cared for me; I was a millstone around his neck and I kept him back, and he thought the best thing to do was to sell the house and when the house was sold we would separate.

Q Did you care for your husband then? A I did. I pleaded with him not to do that, because I loved him, and because of the child.

Q You have always been devoted to him?
A Always been devoted.

Q And had you worked together during all of your married life? A All of our married life. On May 25th he ordered my daughter to sleep with me; he wished to sleep alone.

Q Did he give any reason for ordering the little girl to do that? A He was just tired of me and didn't want to have anything more to do with me.

Q Was there any time before May 31st when any relative of yours was at the home when there was any discussion about a separation? A My aunt and sister had been at the home several times.

Q Now, did you remove the furniture from the home on May 31st or have it removed? A It was removed.

Q Prior to that time was anything said about the disposition of the furniture between you and Mr. Baxter? A When the house was sold Mr. Baxter said I could dispose of the furniture as I wished, just to keep enough for Dorothy and myself. He didn't care where we went as long as he could see the daughter; and I sold some of the furniture, with his knowledge, and some was left in the house for the people who were to enter, and he received the money for that, \$120.

Q Did you want a separation between you and your husband? A No; I felt that Mr. Baxter would change his ideas, because I still cared for him."

Page 49, lines 10-40:

"Q Has there been a time, Mrs. Baxter, during the last three or four years, when Mr. Baxter has shown any real devotion or affection for you? A At times, up until that February when things became so strained.

Q What seemed to cause the trouble? What was it between you and Mr. Baxter that caused this estrangement on his part?

A It was his constant desire to have things which I felt his money did not warrant, and his constant desire to get those things, and I would try to persuade him against them, and I would finally give in to his better judgment. We could never discuss things because of his quick temper, and he would generally overpower me.

Q Had he at any time said that you had done anything to cause any feelings between you and him? A No; he acknowledged that I had done nothing, only that he had grown tired of me and wanted his freedom.

Q Did he say more than once that he wanted to get you out of the house? A Often, and I got up and attempted to go out of the house fearing that he would strike me, but I didn't go.

Q From February, 1923, to May 31, what was his treatment of you? A He would hardly notice me except to find fault with me. I never knew when he was coming home; I never knew when to expect him, and he would never leave in the morning without my fearing him. I was in constant fear of him."

Page 51, lines 8-26:

"Q I think you said something on your direct examination about being in fear of him. What did he ever do to you to make you feel fearful? A Well, he has a temper, and in his temper he has attempted to throw things at me, and he had grabbed me, and he had a loaded revolver in the house and I didn't know where it was three or four weeks.

Q Did he ever threaten you with a revolver? A No.

Q Did he ever threaten you in any way? A Yes, at one time.

Q You knew that he had rented this house on Ivy avenue for the month of June, didn't you? A I knew that he had planned it, but when he told me to get out and the

sooner the better I said that I would go as soon as the house was sold."

Page 53, lines 23-38:

"Q That was the real reason for separating, because you needed a rest? A No; because I was repeatedly ordered out.

Q But the fact is that you needed a rest and you felt that way? A Well, Mr. Baxter had been so mean to me and my life had been so unhappy in the house that when he said we would separate I went.

Q You were married since 1909, weren't you? A Yes.

Q And, as I understand it, the sum total of Mr. Baxter's meanness to you was from a period beginning with February, 1923, up to May 31st? A Things culminated at that time, but we had quarrels between that time, always about financial matters."

Page 54, lines 14-24:

"Q He did have a nice home? A Yes.

Q One-family house on Ivy avenue? A Yes.

Q There was no cause to complain about that? A The home was all right, but the happiness wasn't there, because I loved my husband and he no longer loved me, and he told me that in 1921, and I tried in 1921 to get back his love and tried to help him in every way. I thought it was his financial relations and that was the reason I taugt."

Page 61, lines 28-39:

"Q As a matter of fact, you didn't want to see him; you were tired of him? A I was not tired of him. I remember getting on my knees and begging him not to separate.

Q You had a lot of trouble with him? A Yes; and the queer thing is that sometimes a woman's love makes one forget all those things, and I did everything for our daughter's sake.

Q What did you do in that respect? A All I did was to beg him not to consider separating."

The foregoing excerpts of the testimony of the husband and the wife embrace, I think, all the evidence adduced at the hearing bearing upon the reasons for the separation. The only conclusion that could be reached from that testimony was that the husband no longer cared for his wife; that he thought she was a millstone around his neck and that the separation occurred and the house sold because he thought it was the best thing to do. She was justified in leaving him.

POINT II.

The efforts of the husband to induce his wife to return were insufficient and insincere.

The separation occurred on May 31, 1923. Between that date and September 2, 1923, the husband wrote his wife 11 letters (Ex. P. 3, pp. 77-93), all of which she answered (Ex. P. 3, pp. 77-93). In the first letter dated June 1, 1923 (Ex. P. 3, p. 77), he writes “ * * * I would like to have you return to the home and fulfill your duties as a wife * * * ”. This his wife answered under date of June 8th, and said (*inter alia*):

“Dear Robert: I have received your letter dated June 1st, sent to me by registered mail with the name ‘A. Chambers, 692-10th St., Brooklyn’ on the upper left-hand corner of the envelope. I was quite surprised that you should resort to such means in order to write me. All letters addressed to me will be received. It is quite unnecessary to register them and also to resort to such deception.

I have also received a letter, dated June 1st, from R. W. Thompson, your attorney. I am quite surprised that you found it necessary so quickly to go to an attorney for advise. In view of the fact that you have so often told me to get out of the house and

that you wanted nothing further to do with me, I am very much surprised at the tone, not only of your letter, but also that from your lawyer.

I think you know, without my telling you, that because of your treatment of me for some time, I have been under a great strain. When the house was sold I felt that it was time that I had a rest and also that I take time to consider what was best for you, D. and myself. It was because of that, I told you that you need not rent the house for the month of June. As you know, I have been teaching school for some time, not because I desired to teach, but in order to help you in bringing into the home money sufficient for our needs. It would seem, that in view of all that has transpired, that my efforts to help you have not been appreciated.

I have also received a letter from F. A. Gorecke, Inc. in which they state that they received a letter from R. W. Thompson, attorney for R. M. B., in which he claims the furniture which was moved to the storage belonged to you. There has been no disposition on my part to conceal the whereabouts of anything. As to the ownership of the furniture, it seems that that need not be determined now. After I have had a chance to collect my thoughts and rest a bit, I shall be glad to talk with you concerning what should be done for the best interest of us all."

(Ex. P. 3, pp. 79-80.)

Under date of June 11, 1923, he wrote as follows:

"Ivy Avenue,
Englewood, N. J.
June 11, 1923.

Dear Maude:

I received your letter of June 8th, which did not give any address.

As your husband and the father of Dorothy, I want to know where you and Dorothy are living. Up to the present time

I do not know where either of you are living.

At a very early date, I would like you to select a place and name the time when it will be convenient for me to see you so as to make arrangements for me to see Dorothy."

(Ex. P. 3, p. 81.)

It will be noted that in this letter he desired "To make arrangements for me to see *Dorothy*." There is no solicitude expressed for his wife, nor a request for her return.

On July 27, 1923, the husband wrote:

" * * * As I have leased this apartment and furnished it with the necessary articles to make living there comfortable I again ask you to return home and perform your wifely duties, also to bring home our daughter, Dorothy. As you well know, I have always provided and supported you and Dorothy to the best of my ability and am still willing to do so." (Ex. P. 3, p. 83.)

And to this the wife replied on July 30, 1923:

" * * * You seem determined to embarrass me in every way conceivable. The July 28th issue of Press contains a notice to the effect that I have left your bed and board and that you will not be responsible for my debts. I am surprised, in view of what I have written you, that you deemed it necessary to give publicity to a matter which concerns just you, Dorothy and myself. It seems to me, family affairs are too sacred to be made public. I think you will realize, if you stop to think, that by making known to outsiders things which are of no concern to them, it is only making it harder for us to do what we should both be willing to do in view of our duty to Dorothy.

Without even asking me to visit the place, you have leased an apartment at 17 Van Reypen Street, Jersey City, in such great haste. Of course, you know that for some-time prior to the sale of our house, I taught school in Tenafly for the purpose of bringing

in additional revenue which was used in the home so that we could have comforts that we were unable to have without it. It was owing to this teaching, and running of the house without help and other things best known to you, that caused me to get in this rundown condition. I was perfectly willing to help out and so have signed to teach in Tenaflly for another year. That being so, you can readily see that you were a bit hasty in leasing an apartment in Jersey City. I doubt, very much, if it is as good a place, considering Dorothy's welfare and health, as Englewood or vicinity. Until quite recently and for a period covering nine years, we have found it convenient to live in Englewood." (Ex. P. 3, pp. 84 and 85.)

The fact that he leased the Van Reypen street apartment without asking his wife to visit the place, and also about the same time published a notice in the "Englewood Press" to the effect that his wife had left his bed and board and that he would not be responsible for her debts—these have a very important bearing on the question of the sincerity of his desire to have his wife return to him.

Again, in his *letters* he asks for an interview ostensibly for the purpose of effecting a reconciliation and complains of his wife's failure to comply with his requests to meet him (Ex. P. 3). But a mere reading of these letters (noting the other things contained in them) at once discloses his lack of good faith and also justifies the expression used by the Vice-Chancellor in his oral opinion, that in writing them "he had no purpose in the world except as his wife charges, namely, to make a record which would put her in the wrong and help in securing a divorce from her" (pp. 68-69).

And as further evidence of the insincerity of the requests in his letters for interviews and also for her return, it will be remembered that the parties met in the Chancery Court in Jersey City on July 2, 1923, in a proceeding for the custody of the child. This was *before* his letter of July 27th, which contained the first notice to the wife of his having leased an apartment. He not only did not speak to his wife about coming back or leasing an apartment, *but did not speak to her at all* (p. 47). Here was an excellent opportunity for him to have interviewed his wife. Since both were represented by counsel the conditions for a friendly interview could not have been more favorable. The husband clearly evinced his lack of good faith when he failed to take advantage of this opportunity.

Again, the husband called repeatedly at the home of the wife on Ivy avenue in Englewood for the purpose of getting Dorothy. His wife was always there on those occasions (p. 48). At one time she was sitting on the front porch, at another came along the street with Dorothy and at other times would bring her to the front door. On none of these occasions did the husband attempt to interview his wife with a view toward a reconciliation (p. 55). At times he would not even get out of his auto. It does not appear that on any of these visits he even spoke to his wife.

Further, during the years 1922 and 1923, and continually to the time of the hearing in this cause, the wife taught school in Tenaflly about a mile from the Ivy avenue home (p. 20), and the daughter attended the Cleveland school in Englewood (p. 21). The husband called *once* at the Tenaflly school. His wife was not there then (p. 20). He did not call again (p. 21). Yet his testimony and his letters indicate that the where-

abouts of his wife and daughter was being concealed from him (Ex. P. 3).

Again, during the entire period of separation and up to the time of his instituting this action for divorce, he not only did not contribute one cent towards his wife's support (p. 27), but actually received in March, 1923, the \$2,300 on account of the purchase price of the Ivy avenue house and did not give his wife any of it (p. 36). In fact he failed to properly maintain his home from January 21, 1923, to the date of the separation on May 31, 1923, contributing during that period only \$280 for the support of the home (p. 59).

Lastly, the husband discontinued his efforts to have his wife return on September 2, 1923, about three months after the separation, notwithstanding that she more than once informed him by letter that she needed rest and quiet for a time and that after she had had a much needed rest, she would be glad to talk things over with him with a view to doing that which was best for them and Dorothy (Ex. P. 3).

The wife was justified in leaving the husband. Her separation was not obstinate because it was not persisted in by her against the effort of her husband to terminate it by making such advances and concessions as might reasonably be expected to bring about that result. *Hall v. Hall*, 60 N. J. Equity, 469.

In the case of *Haydock v. Haydock*, 34 N. J. Equity, 570, at page 576 Mr. Justice Magie says:

"The careful and deliberate judgment of the Vice-Chancellor, pronounced after an opportunity to see and hear the witnesses, has, and ought to have great weight. It ought not to be reversed unless clearly wrong."

The decree in this case is based essentially upon findings of questions of fact, and should be sustained.

Respectfully submitted,

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