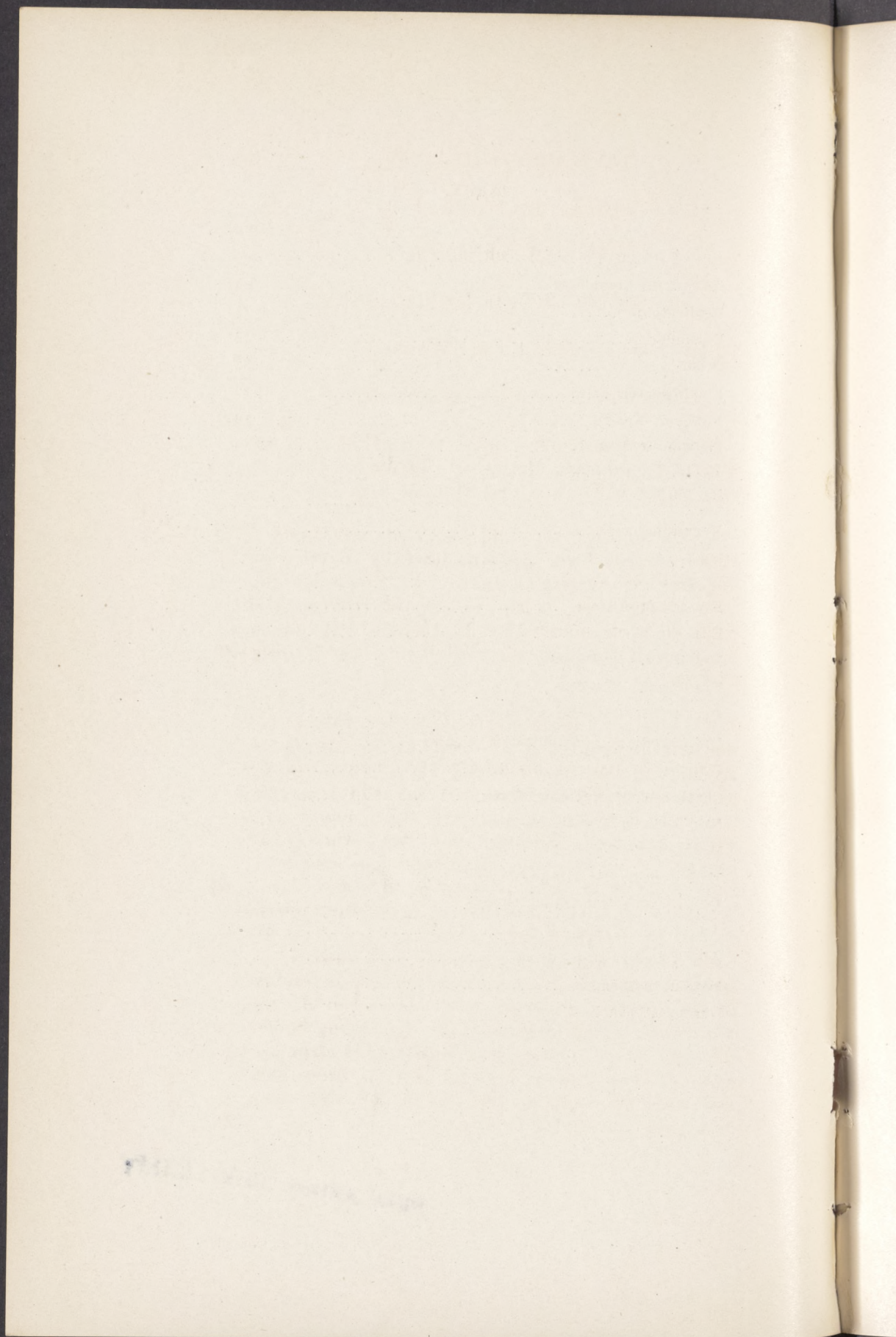


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BILL OF COMPLAINT. 1

BILL OF COMPLAINT.

Filed March 26, 1917.

IN CHANCERY OF NEW JERSEY.

To His Honor Edwin Robert Walker,

Chancellor of the State of New Jersey:

10

Complaining shows unto your Honor, your oratrix Eva Finch, of the City of Jersey City, in the County of Hudson and State of New Jersey:

1—On the Eighteenth day of December, Nineteen Hundred and Two, she was lawfully married to her present husband, Harvey V. Finch, at the City of Hoboken, in the County of Hudson and State of New Jersey, by J. Clayton Mitchell, a minister of the Gospel and Rector of Trinity 20 Church.

2—After her said marriage your oratrix and her said husband went to reside at No. 120 Ogden Avenue, in the City of Jersey City, in the County of Hudson and State of New Jersey; that they continued to reside at said address up to about July Fifth, Nineteen Hundred and Ten, when they moved to No. 805 Summit Avenue, in said City, they resided at said address until about April, 30 Nineteen Hundred and Eleven, when they moved to No. 352 Summit Avenue in said City of Jersey City where your oratrix and her said husband cohabited until the abandonment by the defendant of your oratrix as hereinafter complained of; that your oratrix now resides at No. 51 Irving Street, in said City of Jersey City, County of Hudson and State of New Jersey, and has resided there continuously since about the month of December, Nineteen Hundred and Fourteen. 40

3—Your oratrix and defendant were very happy after their said marriage until about the month of November, Nineteen Hundred and Thirteen.

4—That on Thanksgiving Eve, of the year Nineteen Hundred and Thirteen, while your oratrix and defendant were sitting at the dinner table, defendant informed your oratrix that he was going to visit his mother, who was stopping with  
10 defendant's brother, Charles Finch; that upon being so informed, your oratrix requested defendant not to make any arrangements for Thanksgiving Day as your oratrix and defendant had been invited to dinner by your oratrix's sister, Octavia Wyzanski; defendant replied that he would not go as he was going to have dinner with his mother, but that your oratrix could go if she so desired. Your oratrix then said to defendant, it would be  
20 strange for one to go to one house and the other to another, being that we have always gone out together, and it was very strange that at this time I could not go out with him.

5—That at said time, defendant also informed your oratrix that his mother, who was an invalid, was going to come and stay with them; that your oratrix asked defendant who was going to take care of her, and defendant replied if the worst  
30 came to worst, he would; your oratrix then informed defendant that she could not take care of his mother, because she was not feeling well herself, and defendant stated that with him, his mother came first; he then left the house and returned about two A. M. the following morning.

6—Your oratrix requested defendant to take her to his mother's, so that she could see that your oratrix was unable to take care of her, but defendant refused and became very cross and angry,  
40 and found fault with everything.

7—That defendant's mother returned to her home in Woodstock, in the State of New York, about December Fifteenth, Nineteen Hundred and Thirteen; that defendant visited his said mother frequently and finally on November Twelfth, Nineteen Hundred and Fourteen, he packed up his things and left their home and abandoned your oratrix and separated himself from her, saying that he was going up to his mother's until his health was better, and told your oratrix that she could do as she pleased with the furniture. 10

8—That your oratrix remained at No. 352 Summit Avenue in said City of Jersey City until December Eighteenth or Twentieth, Nineteen Hundred and Fourteen, and up to that time defendant failed to return and your oratrix did not receive any word from him; that she then placed the furniture in storage, and went to live with her sister, Mrs. Octavia Wyzanski, at No. 51 Irving Street, in said City of Jersey City; that subsequently defendant returned to Jersey City, but he has made no effort to support or maintain your oratrix although she has often requested him so to do; that your oratrix has resided with her said sister from said December Eighteenth or Twentieth, Nineteen Hundred and Fourteen, up to the present time. 20

9—That your oratrix is now wholly dependent 30 upon herself for support, that she is of a highly nervous temperament and is unable to undertake employment.

10—That defendant is employed and is earning Fifteen Dollars a week and upward.

Your oratrix is without adequate remedy in the courts of law, and therefore prays:

11—That said Harvey V. Finch may answer this 40

Bill of Complaint without oath.

12—That he may be ordered and decreed to provide such suitable support and maintenance, to be paid and provided by him, or made out of his property, for your oratrix, and for such time as the nature of the case and the circumstances of the parties render suitable and proper.

10 13—That the defendant be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory order of this honorable court as provided by the statute.

14—That in case the defendant cannot be found in this state, to be served with the process, that his estate, property and effects in this state may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor.

20 15—That he be required to pay to your oratrix a proper amount for counsel fees, and that she may have such further relief as to your Honor shall seem meet.

16—That a writ of subpoena may issue commanding said defendant to answer this Bill of  
30 Complaint and to abide by such decree as this Court may make in the premises.

ALBERT LEULY,

Solicitor of Complaint.

LOUIS J. MESSANO,

Of Counsel with Complainant.

ANSWER TO COMPLAINANT.

5

ANSWER.

Filed April 14, 1917.

IN CHANCERY OF NEW JERSEY.

_____	)		
	)		
Between	)		
	)		
EVA FINCH,	)		10
	)	On Bill for Separate	
Complainant,	)	Maintenance and	
	)	Support, &c.	
—and—	)	ANSWER.	
	)		
HARVEY V. FINCH,	)		
	)		
Defendant.	)		
	)		
_____	)		20

The defendant, who resides in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1—He admits the first paragraph.

2—He admits the second paragraph, except the allegation therein that the defendant abandoned the complainant, which defendant denies. 30

3—Defendant denies the allegations contained in the third paragraph of the complaint.

4—Defendant has no knowledge or information sufficient to form a belief as to the allegations contained in the fourth paragraph of the complaint.

40

5—Defendant has no knowledge or information sufficient to form a belief as to the allegations contained in the fifth paragraph of the complaint.

6—Defendant denies that he at any time told the complainant that complainant could not see his mother.

7—Defendant admits that he frequently visited  
10 his mother, who resided at Woodstock, in the State of New York, as alleged in the seventh paragraph of the complaint, but denies that he at any time abandoned the complainant, but states the truth to be that on November 12th, 1914, after an illness, it became necessary for defendant to seek a change of climate, and at the invitation of his mother, defendant arranged to go to the home of his mother at Woodstock, New York, and at the same time invited the complainant to accompany  
20 him to Woodstock and remain with him during his illness, but the complainant refused to accompany defendant or to visit Woodstock while defendant was there; that complainant refused absolutely to go to Woodstock with defendant, although defendant was ill at the time, but when the complainant refused to accompany defendant she shortly afterwards removed all the household furnishings from the premises, 352 Summit Avenue, West Hoboken, and put the said household  
30 furnishings in storage; that in the month of January, 1915, defendant returned to West Hoboken and discovered that all the household furnishings had been removed, and found that the complainant had taken up a residence with her sister, Mrs. Octavia Wyzanski, and that she refused to inform defendant where the household goods were stored, and what moneys were in bank to the credit of complainant and defendant; the complainant had notified the bank not to pay over to  
40 defendant; that while defendant was at Wood-

stock and while he was ill the said complainant never visited defendant, nor appeared to take any interest in defendant's welfare or his health.

8. Defendant denies the allegations contained in the eighth paragraph of the complaint, and denies that he at any time failed to return to the complainant, but admits that she received no word from him while he was ill at Woodstock, the reason being that defendant was too ill to write to complainant, and defendant omitted to write believing from day to day that the said complainant would visit him and would display an interest in defendant and his health while he was ill; that complainant in placing the household furnishings in storage did so unnecessarily; defendant denies that he made no effort to support or maintain complainant, and denies that the complainant ever requested the defendant to support her. 10 20

9—Defendant has no knowledge or information sufficient to form a belief regarding the allegation contained in the ninth paragraph of the complaint.

10—Defendant admits the tenth paragraph of the complaint.

11—Defendant further answering said complaint states and alleges that he has always been ready, able and willing to have the said complainant return to him, but the complainant insists upon keeping the household furniture in storage, insists upon retaining the moneys which have been accumulated by defendant and standing in the name of the complainant in the several banks in Hudson County, and insists that she will not return to defendant. 30 40

8 ANSWER TO COMPLAINANT.

12—Defendant further answering denies that he at any time abandoned complainant and denies that he neglected to contribute to her support, and alleges that the complainant had sufficient moneys in bank, upon which she could draw for any support which might have been necessary.

Wherefore defendant prays that the said Bill of Complaint may be dismissed.

10

CHAS. E. S. SIMPSON,  
Solicitor for Defendant.

20

30

40

REPLICATION. 9

REPLICATION.

Filed April 24, 1917.

IN CHANCERY OF NEW JERSEY.

\_\_\_\_\_)  
)  
Between )  
)  
EVA FINCH, ) 10  
)  
Complainant, ) On Bill for Separate  
) Maintenance and  
—and— ) Support.  
) REPLICATION.  
HARVEY V. FINCH, )  
)  
Defendant. )  
) 20  
\_\_\_\_\_)

In reply to the defense stated in paragraphs 7, 8, 11 and 12 and not anticipated in the Bill of Complaint, complainant by leave of the court says that:

As to paragraph 7 complainant says that defendant did not invite her to accompany him to Woodstock and remain with him during his illness, and that she did not refuse to accompany defendant to, or to visit Woodstock while he was there. That the true fact of the matter is that she was not invited to accompany defendant to Woodstock and was not asked to visit him while there, and on the contrary, because of the cross conduct and disposition of the defendant, she fully felt that she was not wanted as a companion or as a visitor; that complainant remained at No. 352 Summit Avenue, West Hoboken, N. J., for over a month after defendant had left her, 40

although he said before leaving that she should break up housekeeping, and that she could have all the furniture as well as the bank accounts and do with them as she pleased, and that she would have enough to keep her for two years.

She admits that she took charge of the furniture and placed same in various homes for safe keeping, having sold the parlor suite and Morris chair. She says she did not know of or hear from  
10 defendant upon his return in January, 1915, and does not know now that he returned at that time excepting through the answer filed by him in this cause.

Complainant did not refuse to inform her husband where the household goods were stored, nor what moneys were in the bank, and in fact says that she has not received a visit nor a written communication from her husband since his alleged return to West Hoboken in January, 1915, nor has  
20 she seen him since that time.

As to the eighth paragraph of defendant's answer, complainant says:

That she on several occasions, through her solicitor, requested defendant to live with her and that he refused to do so, and that when she requested him to at least support her, he offered her \$3.00 a week, saying further that he did not even wish to see her, but would sign an agreement of separation, providing for the payment of \$3.00 a week  
30 for her support.

As to the eleventh paragraph of defendant's answer complainant says:

That the defendant has never informed her at any time since he left her in November, 1914, that he was ready or willing to have complainant return to him; that she at no time insisted upon keeping the household furniture in storage or refused to deal fairly with her husband, as to their several bank accounts, books for two of which  
40 were and are now held by defendant, and books

for the other two of which, were and are now held by complainant, and complainant denies that she ever said or even imputed or inferred that she would not return to him again; and complainant again reiterates the fact and allegation that she has not seen, spoken to or received any written communication from defendant or any communication whatsoever, excepting through her counsel, since he left her in November, 1914.

As to paragraph 12 of defendant's answer, 10  
complainant says that:

She understood her husband to say when he left in November, 1914, that she could have all of the household furniture and furnishings, and also the bank accounts, and that he handed her at that time the bank books for the accounts in the Hudson Trust Company, numbers respectively, 38,322 and 64,124.

Complainant further says that she is now ready and willing to resume and take up housekeeping 20  
with her husband and that it has been her most ardent wish and desire that he would sincerely request her to take up housekeeping with him again. As an inducement on her part she will gather up all the furniture, including the piano which was used by them at the time defendant left her, with the exception, however, of the parlor suite and Morris chair, which she sold sometime ago. The money from which however, she used  
for her necessary support and maintenance. 30

REJOINDER.

Filed May 16, 1917.

IN CHANCERY OF NEW JERSEY.

	_____ )	
	)	
	Between )	
10	EVA FINCH, )	
	)	
	Complainant, )	On Bill for Separate
	)	Maintenance and
	—and— )	Support.
	)	REJOINDER.
	HARVEY V. FINCH, )	
	)	
	Defendant. )	
20	_____ )	

The defendant denies the allegations contained in the Replication filed by complainant in the above stated cause, and joins issue thereon.

CHAS. E. SIMPSON,  
Solicitor for Defendant.

TESTIMONY. EVA FINCH—Direct. 13

IN CHANCERY OF NEW JERSEY.

\_\_\_\_\_)  
Between )  
EVA FINCH, )  
Complainant, ) On Bill, etc.  
—and— ) MINUTES OF 10  
HARVEY V. FINCH, ) FINAL READING.  
Defendant. )  
\_\_\_\_\_)

Appearances:—

ALBERT LEULY, Esq., for Complainant. 20

CHAS. E. S. SIMPSON, Esq., for the Defendant.

Before Hon. JOHN GRIFFIN, Vice-Chancellor.

Chancery Chambers, Jersey City, N. J., December  
12, 1917.

THE CASE FOR THE COMPLAINANT. 30

EVA FINCH, sworn.

DIRECT EXAMINATION by Mr. Leuly:

Q. You are the complainant in this cause, Mrs. Finch? A. Yes, sir.

Q. Where do you live? A. 51 Irving Street, Jersey City.

Q. How long have you lived there? Since you 40

broke up housekeeping? A. Yes, sir.

Q. And that was when? A. That was December 18th, or 20th, that I broke up.

Q. What year A. 1914.

Q. How did you come to break up your home on the 18th or 20th of December, 1914? A. Why, I waited—Mr. Finch went away.

Q. When did he go away? A. The 12th of November, 1914.

10 Q. A month and practically six to seven days before you broke up housekeeping? A. Yes, and he promised me faithfully—oh, he said he was going up home with his mother, and that he was ill, and I had been in bed for three or four days, and I got up.

Q. You got up before he left? A. Before he left—a couple of days before.

Q. Where did he go—to what place? A. He said he was going away, up to his mother's.

20 Q. At what place? A. At Woodstock.

Q. At Woodstock, New York State? A. Woodstock, New York.

Q. Now, tell your story? A. So when he went away—

BY THE VICE CHANCELLOR:

Q. Before going into that: Were you sick at the time he left? A. I was sick, and I had got  
30 up a few days before.

Q. Well, your husband knew you were sick? A. He knew I was sick.

Q. Just go right on and tell your story, Madam; don't be afraid of anything.

MR. LEULY: If your heart beats rapidly, just wait a few moments; the Court will wait for you.

40 A. So he told me on the 11th, the night before,

on Thursday night, that the next day he was going up to Woodstock to his mother's until he was feeling better; he said he was feeling miserable, and I had worked and worked, and tried to do all I could do for him, and I kept up, and he told me he was going up to Woodstock to his mother's, and when he got better he would come home. So he asked me to wake him up in the morning, that he wanted to take an early train; and all that night, the night before, he could not sleep; and he says: "Eva, I can't sleep," and I knew he could not sleep, because I didn't sleep for nights; and I said to him, "Here, Harvey, take some of these tablets," I said, "the Doctor gave me." He said, "Nothing will help me, Eva." I said, "They relieve me, they quiet me down, maybe they will quiet you." He says, "I will take anything you give me." So I did give him two or three of the tablets, and about four or five o'clock, I don't know which now, he dropped off to sleep. So he asked me to call him at six, and I did so, and when I called him he got up, and he partly dressed, and he threw himself back again; he says, "I can't go; I am all in"; so he says, "I will go and have a rest, and call me for a later train." I said, "All right." So he said, "What is tomorrow?" and I says, "Friday," and he said, "What date?" I said, "The 13th"; so he says, "I had better go today" (he was going to wait, you know, put it off a day); he says, "I had better go today," and he says, "Will you call me?" and I said, "Yes." So I called him, and I didn't call him until I had dinner ready; and then I had dinner all ready and everything was all right, as I thought, and I said to him, "If you do wait I will be able to make a favorite cake of yours, and you can take it up to your mother's and for yourself"; so he says, "I had better go today, because tomorrow, being Friday and the 13th." So, everything was all ready, and he told me his brother was going to

call for his trunk; and I asked him what time, and he stayed and waited for the expressman, or the man that came for it, rather—his brother's man—and the trunk went off, and he went off just before. So, when he went away he kissed me good-bye—oh, I said, "What will I do with the things, Harvey?" He says, "Do anything you like"; he says, "you can get a smaller place," he said, "with less rent than what we have been paying," and he said, "when I am better I will come back." So I thought everything was all right, so I waited until I got straightened up a little bit, and I went house-hunting—oh, I am ahead of my story—before he went away, as I say, I wanted to know what to do with the things; he said, "Anything I liked," and he kissed me good-bye when he went away, and he cried and went on, and went through back and forth, you know; so I thought it was funny, and I thought maybe he hated to part with the place, because it was a nice flat there; so, as I say, when he went away he says, "Eva, don't let anybody persuade you—oh, I said, "When you go away, write"; he said, "Will you write me?" I said, "Certainly I will, but," I said, "Will you please write me first, if it is only a card?" He says, "Where will I send it?" I says, "Here, because I really don't know where I will be," you know I didn't know whether I would have a new place, or not, and I thought the folks could forward it on to me. So he said, "Don't let anybody persuade you to turn against me." I said, "Harvey, nobody will ever persuade me." I said, "I love you, and I always will, until you tell me different, that you have no more use for me."

BY MR. LEULY:

Q. Well, then he left? A. And he left, and went downstairs crying.

Q. Did you receive a letter from him? A. I have received no word at all; and I waited and waited, and I had been sick, and, as I say, I went out house-hunting, and I had got a place, and the lady wanted me to decide right there and then, and I said I could not, I would have to send up to Mr. Finch first and let him know, that he was up in the country sick. Oh, when he went away I asked him to take me, and he said he didn't want to bother with me up there—you know, his folks 10 I didn't really want me; and it worried me because I didn't hear from him, you know.

Q. Did he ask you to go along with him? A. No, I asked him whether he would take me, and he said when he got better he would come back to me.

Q. Now, did you write to him? A. I waited and waited for a letter—

Q. Just answer my question; we will get along a little bit quicker; then if I overlook anything 20 you may state it latter. A. I didn't write him until the 31st of December.

Q. 1914? A. 1914.

Q. And when you wrote, you hadn't, up to that time, received any letter from him? A. No.

Q. Did you register that letter to him? A. Yes, I believe I registered that one.

MR. LEULY: Mr. Simpson, do you admit receiving the letter? 30

MR. SIMPSON: I don't believe she registered that letter. I have got two, but I haven't got the dates—January 10, and April.

MR. LEULY: The first you have is what?

MR. SIMPSON: January 10.

THE WITNESS: I registered the first one, Mr. Leuly, but got no reply.

Q. Did you give me the registry card? A. I only the one card, Mr. Leuly; I didn't get the first one.

Q. Then you registered the first letter, which you sent on December 31, 1914? A. Yes, it was registered, but I got no reply.

10 Q. You got a card? A. I got no card, and no reply; and I went to the Post Office and they told me they had wrote up. I said it was strange, I got no card nor my letter back, and I wrote—

MR. SIMPSON: I object to that.

BY THE COURT:

Q. One moment: Did you get a return receipt?

20 A. No, sir.

Q. Did you put on the envelope "Return receipt desired," or anything of that kind?

MR. SIMPSON: I do not think that rule was in force at that time, your Honor.

A. Well, I heard from the Post Office that the mother had opened the letter, it was to—

30 MR. SIMPSON: Just a moment.

Q. Well, you wrote him on December 31st? A. Yes.

Q. And you received no reply? A. No, sir.

Q. You say it was registered letter? A. A registered letter.

Q. And you deposited it in the Post Office? Did you get any receipt when you deposited it.

A. I got a receipt.

40 Q. Produce the receipt, then? A. I told you

I was sick, and my sister went and registered it.

THE VICE CHANCELLOR: One moment (To Mr. Leuly): Have you got the registry receipt?

MR. LEULY: I haven't got the receipt for that; no sir. I have the card for the next letter. She stated she got the receipt, but she was sick, and she lost it. 10

THE WITNESS: No, it was this way, Mr. Leuly: Tavvy went and registered the letter, and she asked for a receipt, I believe, or didn't ask for it, but it was—

MR. LEULY: Well, we will ask your sister afterward.

BY MR. LEULY: 20

Q. Now, then, you got no reply to the letter which you sent on December 31st?

MR. SIMPSON: I object to that. That is a substantive fact. The question is whether the letter was written and received. Now, we deny all knowledge of it.

THE VICE CHANCELLOR: Well, the 30 presumption is that you received it, if it was regularly registered in the Post Office.

MR. SIMPSON: Well, this lady says it was not she who mailed the letter, it was her sister.

MR. LEULY: Her sister is here.

THE VICE CHANCELLOR: Well, that 40

is far enough just to be explanatory. I assume the sister will testify that she mailed it, but this lady just states now that she wrote the letter and handed it to her sister to mail.

BY THE VICE CHANCELLOR:

Q. And you received no reply to that letter?  
10 A. No reply to that letter.

BY MR. LEULY:

Q. Now, on January 10, 1915, did you send the defendant a letter? A. Yes, sir.

MR. LEULY (To Mr. Simpson): Have you got that letter?

20 MR. SIMPSON: Yes, here it is (handing a letter to examining counsel).

Q. (Showing the witness the letter just produced upon call). Is this the letter? A. Yes, sir.

MR. LEULY: I offer it in evidence.

MR. SIMPSON: No objection.

30 (The letter is admitted, and marked Exhibit C, 1, and is read by Mr. Luely as follows: "Jersey City Heights, January 10, 1915. Dear Harvey: I sent you a registered letter December 31st. Did you receive it? Your wife, Eva Finch.").

Q. Did you receive a reply to that letter? A. No, sir.

Q. Now, you wrote to your husband again on  
40 April 19, 1915, didn't you (showing the witness

another letter)? A. Yes, sir.

Q. Is that the letter? A. That is the letter.

MR. LEULY: I offer this letter in evidence.

(The letter is admitted, without objection, and is marked Exhibit C, 2, and is read by Mr. Leuly, as follows: "Jersey City, April 19, 1915. Dear Harvey, I have written you twice up to Woodstock, and not receiving any reply I thought very strange after the way we parted, and being told that you are now with the Cafe Freres I feel that I should drop you a line to ask you if there is any way we might come together to have an understanding with one another. Your wife, Eva H. Finch.").

Q. Did you receive any reply to that letter? 20  
A. A card, I think, Mr. Leuly.

Q. Did you get any answer to that letter? A.  
No, I received no answer.

BY THE VICE CHANCELLOR:

Q. From the time that your husband left in November, down to the time you wrote this letter in April, did you meet your husband? A. The other day was the first— 30

Q. No, no. A. No, sir..

Q. During that time, did anyone on his behalf talk to you about these moneys and your furniture? A. Did anybody—

Q. That is, did anyone come to see you from him to talk about the money, or furniture? A. No, sir.

Q. Then neither he, nor anyone on his part, from November 1914, down to April, 1915, came to see you to discuss anything? A. Nothing 40

whatever. .

BY MR. LEULY:

Q. Now, on May 27th, 1915, did you send your husband a letter? A. Yes, sir. .

Q. (Showing the witness a letter). Is this the letter? A. That is the letter. .

10 MR. LEULY: I offer this letter in evidence.

(The letter is admitted without objection, and is marked Exhibit C, 3).

MR. LEULY: I don't think it is necessary to read this letter at this time; it rehashes everything; although of course it might throw some light on the subject.

20 THE VICE CHANCELLOR: Let me see it. You can go right on. I can read it while you are examining the witness.

Q. Did you get any reply to this last letter, May 27, 1915? A. No, no reply.

MR. LEULY: Have you any more letters, Mr. Simpson?

30 MR. SIMPSON: No, that is the last one.

Q. Did you send a letter on or about December 17, 1915, to your husband? A. December 17th?

Q. (Showing the witness a letter). A. Yes.

Q. Did you address it to him? A. I addressed it to him.

Q. Where did you address it to? A. Now, let me just look at this again.

40

(The letter was again handed to the witness).

A. I believe I addressed that to my sister's.

Q. To your sister's? A. Yes, for the reply to come to my sister's.

Q. Yes, but where did you address it to him, to reach him? You mailed this letter, didn't you? A. I mailed it to him, yes.

Q. What address did you put on it? How did you address it? Did you address it to your husband? A. I addressed it to my husband. 10

Q. Just tell the Court how you addressed it? Name the address. At what address did you address it? A. Did I give for it to come back?

Q. No, not to come back to you—to the recipient of the letter—the person to whom you sent it? A. December? what is it, Mr. Leuly?

Q. December 17th, 1917. A. Why, 373 Ogden Avenue. 20

Q. In care of whom—anybody? A. No.

Q. Did you address it to your husband? A. I addressed it to my husband.

Q. Ogden Avenue, where? A. Jersey City.

Q. And this is a copy of the letter that you sent (showing the witness a paper)? A. That is a copy.

Q. Did you mail it yourself? A. Yes, I mailed it myself.

Q. Where did you mail it, if you remember— 30 at the Post Office, or in a box? A. No, just at Summit Avenue.

Q. You dropped it into a letter box? A. In a letter box, yes.

Q. Did you receive a reply? A. No.

(The paper referred to by the witness was handed to Mr. Simpson for his inspection).

MR. SIMPSON: We never saw a letter of that kind.

MR. LEULY: Well, the witness testifies that that is a copy of a letter that she sent, so I offer it in evidence—the contents of it.

(The latter was admitted and marked Exhibit C, 4).

10

The WITNESS: I sent him that to get it on our anniversary; the next day was our wedding day, and it was the 17th I sent to for him to get it on the 18th.

BY THE VICE CHANCELLOR:

Q. What year? A. 1915.

20

MR. LEULY: This letter, (Exhibit C, 4) is "Friday, 17th, 1915" (the month was left out) "Dear Harvey: I felt as though I would have to write a few lines to you, thinking how happy you and I was thirteen years ago, when you and I were made man and wife, and we thought we could not do without one another, and now to think we haven't seen one another for a year or past, and you know how I always felt toward you, Harvey, and I always will, and always thought you would feel the same for me. My one desire is to see you. Is there no way that we could see one another and have a little talk with one another, and it might make us both feel better. Harvey, you certainly won't refuse me this. I won't be able to write any more as my strength will not allow me. Hoping you will consider this, and that this will find you well, I remain your wife, as ever, Eva."

30

40

BY MR. LEULY:

Q. Now, did you receive a reply to either of these letters? A. No, nothing whatever.

Q. Did you try to see your husband personally? A. I tried; my brother tried to have him—

Q. No, just what you did, yourself? You tried? A. Yes.

Q. Did you finally consult a lawyer? A. I found out I couldn't find anybody to see him; I wanted to see him, and I went up to Mr. Leuly, thinking as he was friends to both of us, you know, to see what he could do. 10

Q. Did your lawyer succeed in bringing you together for an interview?

MR. SIMPSON: I object to the form of that question.

MR. LEULY: I withdraw the form of 20 it.

Q. Did you and your husband meet after you consulted counsel? A. No.

Q. Have you met your husband since? A. No.

Q. Has he written to you since? A. No.

Q. Has he sent any message to you since? A. None, whatsoever.

Q. Now, you took your furniture out of the apartment where you lived when your husband went to the country on or about the 18th or 20th of December? A. Yes, sir. 30

Q. What did you do with it? A. Why, I stored it, put it in storage.

Q. Did you sell any part of it? A. I sold the parlor furniture and the Morris chair.

Q. What did you do with the money? A. I made use of it.

Q. What did you do with it right away? A. I saved it. 40

Q. Did you do anything with it—did you put it in any safe place? A. I put it in a safe place.

Q. Did you put it in a bank? A. No, I haven't been able to put anything in the bank.

Q. How soon after you disposed of your furniture did you go to your sister's to live? A. Right then.

Q. And you have been with her ever since? A. Ever since.

10 Q. Your husband used to visit your sister at the same address where you and she are now?

Q. Before his leaving? A. Yes.

Q. So he knew where your sister lived? A. Yes.

Q. And you were all on friendly terms, were you? A. We were.

Q. Now, Mrs. Finch, for how long a time after your marriage did you live happily, without any serious trouble? A. Why, I thought we lived  
20 happy until the night before Thanksgiving.

Q. What year? A. In 1913.

Q. About a year prior to his going to Woodstock? A. Yes.

Q. Well, now, starting with Thanksgiving Eve, 1913, did anything unusual take place? A. Why, yes.

Q. Just tell the Court? A. We had been out in the afternoon riding; I had been miserable, and my brother-in-law came up and took us out  
30 automobile riding, and when we came home that evening, why, at the dinner table had said in the afternoon—

Q. Do you mean your husband? A. Yes—my husband said, in the afternoon, he expected his mother down and to spend Thanksgiving with him; so now, at the dinner table, as I say, we had dinner, and I said to him, "Ah, don't be in a hurry, wait until I finish." And he said, "I don't know whether she has come down  
40 this afternoon, I don't know, and I want to

be there," so then I thought that was all right, that was natural, it was his mother; so I said to him, going out of the door, I said, "Harvey don't make any arrangements," I says, "for tomorrow," (because every Thanksgiving we are invited to my sister's, where I am now, the sister whom we have Thanksgiving dinner with) and I said, "Don't make any arrangements for tomorrow." He says, "How is that?" I says, "You know May came down and told us we were invited to our sister's." 10

Q. Mention your sister's name? A. Octavia—Mrs. Wyzanski. So he says to me, "I am not going down there," he says, "Mother is coming down, and I am going to have Thanksgiving dinner with her." So I says to him, "This is too bad!" I said, "What will that look like—oh," I said, "What will that look like?" He told me I could go to my sister's. I said, "Now, you know we have always went," and so I says, "You can go to see your mother after." So he says, "Now, that is what Mother came down for." "Well," I said, "Harvey, this seems too bad," I said, "You and I has always went together to dinner," and I says, "This is where one is invited and the other is not," I said, "to your mother's (or to the brother's, rather—she had come; his mother had come down to be with the brother); so I said, "To Tavvy's, Mrs. Wyzanski's, we are both invited," and I said, "We both are going"; 30 and he said, "I wouldn't task you to go to any place you didn't want to go." Well, we had never visited there. And then he came back afterwards, and said, "I want to give you to understand that Mother is coming down here."

Q. Do you mean that same evening? A. That same evening.

Q. What time was that—at supper time? A. Yes. So he says, "I want to give you to understand that Mother is coming down, and she is 40

coming down to stay, and she is going to come here." Well, his mother has been very sick, she has been paralyzed, and had to go around in a wheel chair; and, as I say, I had been sick, and I couldn't take care of her; and I was one that always sticks to one and do for them if I drop; and he knows I always done for him. So I said to him, "Harvey, who will take care of Mother?" So I says, "I am not able to take care of her,"  
 10 and I said to him I couldn't take care of her, and I says, "I have got you home, sick, and here I am sick," and I says, "Here we are that we can hardly get around ourselves"; so he said, "If the worst comes to the worst, I will take care of her." I said, "You can't take care of yourself"; I said, "Look at me, I am hardly able to crawl, and I keep up." So he went out, and he stayed out, it must have been about one or two o'clock when he came home; so then, the next morning I got up—

20

BY THE VICE CHANCELLOR:

Q. Two o'clock in the afternoon? A. No, in the morning.

BY MR. LEULY:

Q. Was that the second time that he went out that day—first, after dinner, that he saw his  
 30 mother, and then he came back after having seen his mother; then he went out again? A. He went out that night, yes, that night; and he came home at one or two o'clock in the morning, as I say. Then the next morning we got up, and I got ready and went to my sister's, and they were surprised—"Where is Harvey?" they said; and so I said—

Q. Never mind that. The next morning did you have any talk with your husband? A. None  
 40 whatever, only I told him when I woke him up,

I said I was going to Tavvy's for dinner, because he told me he was going—

Q. (Interrupting). All right; did you then return from your sister's on Thanksgiving Day, or night? A. Yes, Thanksgiving night.

Q. What time? A. I guess about nine o'clock.

Q. Was he at home? A. No.

Q. When did you see him again? A. Why, he didn't get home until all hours.

Q. Well, when did you see him—the next day? 10

A. That morning, when he came home.

Q. Now, continue with the story, as to the difference that your husband's mother caused in your relations, if any? A. Oh, that very night, as I say, when he went away—that was Thanksgiving Eve, you know—I said to him, when I told him that neither one of us could take care of her, when he said she was coming, you know, I said, "She wouldn't really visit us when she was well and I was well," so that I could take care of her, 20 you know, "but when she was sick"; and I said that if I was able to care of her I certainly would, because I loved him, and I knew he loved his mother, and I would do anything to please him, but I wasn't able; so I said to him, when he said she was coming, "This is a case of the mother walking in, and of the wife walking out." He said, "You can suit yourself." Well, with that, it was just like putting a knife to me; and then I had asked him to please pull it out, or do something to help me, you know, and afterwards I 30 apologized and told him I was sorry that I refused his mother, and to take me down to his mother, to see her, and for her to see me.

Q. About how long after Thanksgiving Day was that? A. Why, I guess just a day or so after; and he told me it was too late now.

Q. Well, now, go on; did that feeling, or that disappointment on your husband's part, ever subside—ever die out? A. Why, no; sometimes I 40

would think things was all right, and then—

Q. (Interrupting). Was it always on edge?

A. Yes, on edge.

Q. About that? A. Yes.

Q. And after that did you have any talk with your husband about the bank books? Yes, or no.

A. Yes.

Q. Now, how many bank books were there?

A. There was four.

10 Q. Four—and two of those were in the Hudson Trust Company? A. Yes.

Q. Those in the Hudson Trust Company were in your mother's name? A. Yes, and my name.

Q. And your name? A. And my name.

Q. In other words, "Deborah Hartemann and Eva H. Finch, as joint tenants, and not as tenants in common, and to the survivor?" A. Yes.

Q. Whose money was that? A. Ma put in, I believe it was \$60, in that first bank, and when she  
20 put it in she called me to one side, and she says, "Eva, this is for you and Harvey," and off and on she had been giving me some, and when I would get presents, why I would put in that, too; and Harvey had been giving me money, and, as I say, I would put it in the bank; and I have been at him all the while about having his name signed—

Q. Just a minute, do not go on too fast, because we will get confused; I want to take each  
30 one independently. Now, the moneys that are in this book are moneys which you got from your mother, to begin with? A. Yes.

Q. And gifts made to you by your husband and others? A. Yes.

Q. And also moneys saved by you? A. Yes.

Q. And why was that in the name of your mother and yourself, and why wasn't your husband's name added? A. Why, he would never have his name signed to any of them.

40 Q. Did you ask him? A. I asked him.

(The book that the witness has been referring to is now marked in evidence, without objection, Exhibit C, 5).

MR. LEULY: The book, Exhibit C, 5, is on the Hudson Trust Company, No. 38322.

Q. Do I understand you to say that you asked your husband several times to go to the bank with you and have his name added to this book? 10

A. To all of the books. I didn't have the chance, but to all of the books, Mr. Leuly.

Q. And when you say "all of the books," you mean the four? A. I mean the four.

Q. Including this one just marked in evidence? A. Yes.

Q. I show you a pass book of the Hudson Trust Company, No. 64124, which is in your name—did you open that account? A. In my name. This was the first one in the Hudson Trust, Mr. Leuly? 20

Q. Yes. A. Why, that was opened when I was a girl, and they put "Eva Finch"—that is a new book.

Q. This is a continuation of the account in a new book? A. In a new book.

Q. That was formerly opened in your maiden name? A. In my maiden name.

Q. "Eva Hartemann?" A. "Eva Hartemann." That is in the Hudson Trust, yes.

Q. And the funds in this book belong to whom? A. They belonged to both of us, but it was all put in by me. 30

Q. But it was money that you received in the household? A. Yes.

Q. And from any other source? A. Presents; you see, I thought what was mine was his.

MR. SIMPSON: I object to what the witness thought.

THE VICE CHANCELLOR: The objection will be sustained.

Q. Now, then, that applies to both of these books—the moneys which you deposited in both of these accounts were mainly moneys which you saved in the household? A. Presents, and household, yes, and what was mine, and everything as I say. I never thought there would be any money  
10 matters with me.

BY THE VICE CHANCELLOR:

Q. Well, this first item of \$922.36—

MR. LEULY: The witness testified that that was a continuation of an old account. That is a new book. It was taken out in her maiden name first, and after she became married she continued it, but they changed the name without closing the account.  
20

BY MR. LEULY:

Q. I show you a pass book of the People's Safe Deposit and Trust Company, corner of Central Avenue and Hutton Street, in the name of "Eva H. Finch and Harvey V. Finch,"—can you  
30 tell us to whom that money belonged? A. Well, every dollar of that was mine, Mr. Leuly, that I had before I was to be married; I had that when I was single, and I put it in to get things when I was to be married, and my father died, and I did get a lot of clothes, and I saved that money—never put it in the bank, and saved it, and tried to surprise my husband in every way, and at last I put it in the bank.

Q. Is this money all yours? A. And that  
40 money is all mine; and I went and asked them

down at the Bank, I said, "This is—

MR. SIMPSON: I object to what she asked at the bank.

BY THE VICE CHANCELLOR:

Q. Asked who, at the bank—the people at the bank? A. The people at the bank, if my husband could have his name signed to it. 10

THE VICE CHANCELLOR: No, that is enough.

MR. LEULY: I offer the book in evidence.

MR. SIMPSON: What is the number?

MR. LEULY: Pass Book 94397. 20

(The book is admitted without objection, and is marked Exhibit C, 7). (The Pass Book to which the witness made prior reference is No. 64124, in the Hudson Trust Company, and is now marked in evidence Exhibit C, 6).

Q. How did you come to have your husband's name added to the Pass Book in the People's Safe Deposit Company, known as Exhibit C, 7? A. Why I had been for fifteen years, almost fifteen years, asking him to have his name signed to all the books, and this one I never showed him, and I said to him about the surprise I had for him, and he said, "Where is it?" and I went and got it; and after the trouble, why, he had his name signed to two of the books, and he never would have his name signed before; and I said "Harvey, suppose something should happen? I know my 40

folks would never want it, but” I said, “it would avoid a whole lot of trouble.” He said, “It is all right; don’t worry,” and that always worried me.

Q. Was his name added after Thanksgiving, 1913? A. Yes.

Q. About how long after? A. Why, I guess in July, I believe one was—I don’t know; I guess shortly after.

Q. Shortly after? A. Yes.

10

BY THE VICE CHANCELLOR:

Q. Didn’t you have possession of the book?  
A. I kept that one. I put all my books together, with the insurance papers and different things, and that last one I kept it one side, and I handed him over that, too, and told him the surprise I had.

Q. In July of what year? A. In 1914.

20

Q. That was before he left? A. Before he left.

BY MR. LEULY:

Q. Now, I show you a pass book of the Merchants National Bank of Jersey City, 356 Central Avenue, No. 3105, in the name of “Eva H. Finch, Harvey V. Finch, either to draw,” (which I offer in evidence, and which is now marked Exhibit C,  
30 8), and I ask you to whom the moneys belonged that are represented or deposited in the bank as per that book? A. I don’t quite understand you, Mr. Leuly.

Q. To whom did that money belong, or where did you get it from?

THE VICE CHANCELLOR: Where did you get the money from, Mrs. Finch, that was put in that bank account?

40

A. In the Merchants National Bank?

Q. Yes.

THE VICE CHANCELLOR: Where did you get the money that you deposited in that account?

A. Why this is the money that I saved when I was a girl, that I worked for.

10

BY THE VICE CHANCELLOR:

Q. Is any part of his money in that account?

A. No, sir; that is mine: That was the surprise I had for him.

Q. I thought that one in the People's Safe Deposit was the surprise? A. Now, wait which is the People's?

Q. This is the People's (referring to the previous account). A. And where is the People's— 20 at Bowers Street?

MR. LEULY: At Bowers Street.

A. Well, then, I made a mistake.

BY MR. LEULY:

Q. You desire, then, to correct that testimony?

A. Yes.

30

Q. And state that your answers given respecting Exhibit C, 7, in the People's Safe Deposit Company, apply to the Exhibit C, 8, in the Merchants National Bank, on Central Avenue—that is so, is it not? A. Yes.

Q. Now, this account appears to have been opened on January 10 (Exhibit C, 8), 1913? A. Yes.

Q. Now, do you say that those moneys were transferred from any other book? A. No, I 40

never had it in the bank; I had that money and kept it one side.

Q. Kept it home? A. Kept it home, yes.

Q. For thirteen years? A. Yes, thinking every little while about it, and I would coax and coax him to have his name signed, and he didn't do it.

Q. Then, in July, you say, 1914, he went down with you and put his name on this book? A.  
10 Yes.

THE VICE CHANCELLOR: Now, take up the other book, Exhibit C, 7.

Q. Now, as to the account represented by Exhibit C, 7, being the People's Safe Deposit and Trust Company, corner of Central Avenue and Hutton Street, now Bowers Street—where did you get that money from that you deposited there?

20 A. That is from Harvey.

Q. In what way? A. Why, what I would save.

Q. Money which he gave to you? A. Yes.

Q. And which he earned, and which you saved for both of you. A. Yes. That was the first. When I went and put that in the first time, in 1903, I wanted him to have his name signed to it, and I had been at him all the while.

30 BY THE VICE CHANCELLOR:

Q. Let me understand: The moneys deposited in the People's Safe Deposit and Trust Company came from moneys you saved out of his earnings? A. Yes, sir.

Q. He knew you were saving them? A. He knew I was saving them; and I was so proud of what I was saving.

Q. Did you show him the book from time to  
40 time—what you were saving? A. I don't know

as I showed him from time to time, but he saw the books.

BY MR. LEULY:

Q. Well, did you ever show him the book?  
A. Yes.

Q. And did you tell him where the books were kept? A. Why, I guess he knew; it was right there in the drawer. 10

MR. SIMPSON: I object to these guesses.

BY THE VICE CHANCELLOR:

Q. Where was the book? A. In the drawer.

Q. Of what? A. Of the chiffonier—with the fire insurance.

BY MR. LEULY: 20

Q. What else was in there?

THE VICE CHANCELLOR: Oh, well, if the husband opened the drawer he could see it; the drawer was not locked, was it?

A. No, no; never was put under lock and key; I never mistrusted him, or he never did me, I thought. 30

Q. Did your husband, at any time, ask you to have his name added to either of these books?

A. Not until 1913.

Q. Not until 1913? A. 1913.

Q. Did you ask him to have his name added before that time? A. I asked him all the time.

BY THE VICE CHANCELLOR:

Q. Now, July, 1913, or July, 1914—which is it?  
A. I had asked him ever since we were married. 40

BY MR. LEULY:

Q. No, when did he have his name added? A. Not till after the trouble, 1913, after November.

BY THE VICE CHANCELLOR:

Q. 1913? A. 1913.

Q. Well, then, that would be July, 1914? A. 10 I couldn't really tell you when he had it put on, but I know it was after the trouble.

Q. Did you hand him the books to put his name on? A. I handed him the books and wanted to go with him; and when I did ask him—shall I go on?

THE VICE CHANCELLOR: No.

BY MR. LEULY:

20

Q. I show you a promissory note, dated January 3d, 1912, for \$475, and signed Charles V. Finch, made payable to Harvey V. Finch—do you know where that money came from? A. That came out of the People's Bank.

BY THE VICE CHANCELLOR:

Q. That is, the note was made by whom? A. 30 The note was given to me.

BY MR. LEULY:

Q. Charles Finch—is that a brother of your husband? A. That is a brother of my husband.

MR. SIMPSON: I fail to see the relevancy of this testimony.

40

MR. LEULY: Why, it is to show the as-

sets that exist between the parties, which will determine, or aid the Court to determine what the maintenance shall be, if it comes to that point.

Q. The note is dated January 3d, 1912? A. Yes, but it was drawn for \$500.

BY THE VICE CHANCELLOR:

10

Q. January 3d, 1912, is it? A. Yes.

THE VICE CHANCELLOR: They have got it 1911.

THE WITNESS: Yes, 1911, but that was 1912, when he had paid down on it \$25.00.

THE VICE CHANCELLOR: Oh, this 20 was a renewal note?

THE WITNESS: Yes; it was \$500 when it was drawn.

THE VICE CHANCELLOR: The note was originally \$500.

THE WITNESS: \$500.

30

MR. LEULY: This is for thirty days, from January 23, 1912; I suppose that was the not given after this came due.

THE WITNESS: I happened to get this amongst the papers that was with my insurance at that time.

BY THE VICE CHANCELLOR:

40

Q. That was drawn, then, from the pass book of moneys saved from your husband's earnings?

A. Yes; and my husband came to me to draw it for him.

MR. LEULY: I ask to have the note marked in evidence.

10 (The note was admitted without objection and marked Exhibit C, 9).

MR. SIMPSON: To save time, and cross examination, ask whether it has been paid, or not?

BY THE VICE CHANCELLOR:

20 Q. Has the note been paid? A. Not as I know. That is what brought up the trouble.

BY MR. LEULY:

Q. Were you ready and willing, during all of this time, up to the beginning of this suit, to live with your husband?

MR. SIMPSON: I object to that, as calling for a conclusion.

30 THE VICE CHANCELLOR: Oh, no, that is not a conclusion.

MR. LEULY: That is pleaded.

THE VICE CHANCELLOR: It is a statement of fact.

A. I was.

BY THE VICE CHANCELLOR:

40 Q. Are you still ready and willing to live with

your husband? A. I am willing, if he is willing.

Q. Is it your desire that you resume cohabitation—living together? A. Providing he treats me as a wife ought to be treated.

BY MR. LEULY:

Q. What is the condition of your health, if you know?

10

MR. SIMPSON: I object to that. It seems to me a doctor is the only one that can testify to that.

THE VICE CHANCELLOR: Oh, well, a doctor cannot testify as to what pains she has, or how she is affected.

MR. SIMPSON: Of course not, but counsel asks for her condition.

20

MR. LEULY: If she now suffers, or not.

THE VICE CHANCELLOR: I will let the witness tell what her condition is from the standpoint of what a layman would say what his condition was—not the medical character of the trouble.

MR. LEULY: We have asked the Doc- 30  
tor down; he has not arrived yet. We are just preparing the way.

(Question repeated).

A. Why, I have been doctoring for my kidneys and insomnia, and at one time I was doctoring for my lungs. I had been taking care of Mr. Finch.

Q. Well, now, as to your condition, how long have you been doctoring? A. Why, I have been 40

doctoring for years; I was in delicate health when I married Mr. Finch, and I told him; and he said, "It is all right," that I was all right, that he thought probably I would be all right; but I was troubled with insomnia, and that always worried me, to think that I couldn't be like anybody else.

Q. Well, how are you affected? A. Why, nervousness—very nervous; there is nights that  
10 I don't have any rest whatever, and my husband was on my mind continually, because he would say he was miserable, and I felt as though I should do for him, and I kept up, and I wouldn't let him lift things; I lifted them myself, and I wasn't able; because he would say to me—

THE VICE CHANCELLOR: That is enough. The Doctor can tell the rest from a medical standpoint.

20 Q. Do you expect to have the doctor here? A. I do.

Q. What is his name? A. Dr. Mersheimer.

Q. How long has he been your physician—since before your marriage? A. No.

Q. Since your marriage? A. We changed doctors. I had Dr. Duckett.

Q. How long has Dr. Mersheimer been your physician? A. Why, since 1911, just before Mr.  
30 Finch went away.

Q. Have you any estate, real or personal, other than the moneys on deposit in the banks? A. None whatsoever—nothing.

Q. You have nothing beside what is in the banks? A. Nothing; I have got nothing, more.

Q. So that you are wholly dependent? A. Yes.

Q. Do you go out to work? A. No, I haven't been able.

40 Q. Have you tried to work? A. I haven't

since.

Q. Have you tried to work in your home? A. I got around and tried to do things, yes.

Q. How did you succeed—has it any effect upon you when you do housework? A. Well, when I do housework I keep up, I work on my nerves, and find out I am completely exhausted; and of course my folks wouldn't really let me do things.

Q. You have not taken employment since? 10  
A. I have not, no.

Q. Did you work before your marriage? A. I had worked for a short while, yes.

Q. What did you work at? A. I had been dressmaking; and with my nerves now I couldn't.

Q. You couldn't do dressmaking now? A. I couldn't, Mr. Leuly.

Q. What have you been living on, or by what means have you been living since you and your husband separated? A. Why, from what I have 20  
been drawing out of the bank.

Q. You have been drawing out of these two Hudson Trust Company accounts? A. Yes.

Q. You never had any children by your husband? A. No.

Q. Did you have a piano? A. Yes.

Q. What did you do with that? A. Why, I kept that until the 1st of December.

Q. When? A. This December.

Q. Nineteen hundred and what? A. 1917; 30  
and now they have it in the little chapel; at any time it can be got. I was paying storage for it down to the place where I bought it.

Q. You did not dispose of it, did not sell it? A. Yes I did just here the 1st of December.

Q. Oh, you sold it the 1st of December? A. Yes.

Q. And what did you do with the money? A. I haven't got any money for it.

Q. Are you going to get any? A. I felt the 40

folks there in the church could have it, you know.

Q. Well, did you loan it to the people in the church? A. Well, my brother will attend to that, Mr. Leuly.

Q. But you don't know? A. I don't really know, no. It worried me and worried me—the piano.

Q. Did you, at any time, meet your husband's mother? A. No, I did not.

10 Q. Never in your lifetime? A. Oh, yes. Not since her illness. The last time I met her—

Q. Well, just a minute: Did you meet her before you were married? A. Yes; oh, yes.

Q. And did anything happen between your mother-in-law and yourself. A. No.

MR. SIMPSON: It seems to me that is objectionable.

20 THE VICE CHANCELLOR: What is the difference; this lady says she is anxious and willing to live with her husband. It is a suit for maintenance.

MR. LEULY: I withdraw the question.

Q. Has your husband ever contributed anything towards your support since the separation? A. Nothing whatsoever.

30 CROSS EXAMINATION by Mr. Simpson:

Q. In the month of November, 1914, Mrs. Finch, when your husband left for his mother's place, what was he suffering from? A. Why, I don't really know.

Q. How long had he been sick before he took that trip? A. He had been sick off and on.

40 Q. For how long? A. Why, since we had been married, and before we were married.

Q. Well, he was able to go to work, wasn't he?  
A. Yes, he was able to work.

Q. Do you remember when he suffered a severe nervous break-down? A. Well, I think it was a nervous break-down here in 1913, when it was with me, the same way—what was on his mind.

Q. No, let us take you apart for a minute—do you remember when he had the nervous break-down? A. Not unless it is the one in 1911. 10

Q. 1911—that is when his firm failed in business, wasn't it? A. Oh, no; that was in 1913.

Q. 1913? A. Yes.

Q. Well, he was in pretty bad shape then, wasn't he? A. Yes, both of us.

Q. Do you know what month it was in 1913, when he came home so ill that he couldn't return to business? A. That the business had failed?

Q. Yes. A. Yes, that was in October. I put my arms around his neck. 20

Q. Never mind that—it was in October, that is what we are after. A. Yes.

Q. From October, 1913, until the following November, 1914, was he able to follow any employment?

MR. LEULY: I object to the question.

THE VICE CHANCELLOR: I overrule the objection. 30

A. Well, can I ask you a question?

THE VICE CHANCELLOR: Do you understand the question?

MR. LEULY: I desire to object, on the ground that this witness cannot answer whether he was able, but whether he did follow any. 40

MR. SIMPSON: All right; I will change it to that form.

Q. Did he follow any employment from October, 1913, until November, 1914? A. No, he did not.

Q. Now, do you know why? A. Well, I asked you if I could ask you a question?

10 THE VICE CHANCELLOR: No, what was his condition of health during that period?

A. Well, he went out nights; he was able to be out at night; and I said to him, if he was able to be out at night, he was able to go to business.

Q. So you believed he was lazy and wouldn't work? A. No, I wouldn't say he was lazy; as I say, I wouldn't say anything against him; I really didn't know; but I would ask him about going to business.

20

Q. Where would he go at night, do you know?

A. Why, I couldn't tell that; I knew at first he went down to his brother's.

Q. And wasn't he troubled with the same affection that you had,—insomnia and nervousness?

A. He was troubled with nervousness, I know.

Q. Now, up to this month of November, 1914, he had been an affectionate husband, hadn't he?

30 A. He had.

Q. And did you have any cause for complaint against him up until November, 1914? A. None whatsoever, until 1913—November, 1914.

Q. Well, I am asking you about November, 1914—don't get the years mixed, because it is very important—up to November, 1914, he had been an affectionate husband to you? A. No, until 1913.

Q. All right—1913—what month in 1913? A. 40 Here right after Thanksgiving.

Q. That was two months after he came home, sick, from his business? A. Yes.

Q. Or one month after? A. One month.

Q. Now, the trouble then was because he had asked his mother down to take Thanksgiving dinner with you—was that the trouble? A. I suppose that is what it was.

Q. Now, Mrs. Finch, you know what the trouble was about—what was it? A. Why, when he said the mother was coming down, I said who would take care of her, and I said I wasn't able, and he wasn't able. 10

Q. Yes. A. He said, "If the worst comes to the worst, he would take care of her."

Q. Wasn't that satisfactory to you? A. Why, he wasn't able, when I was waiting on him, and I wasn't able to stand any more than what I was doing.

Q. Well, you knew that she was merely coming down for Thanksgiving dinner, didn't you? 20  
A. Not for dinner—to stay.

Q. To stay? A. Yes.

Q. You are sure of that? A. To stay. He pressed that.

Q. Now, tell me this, Mrs. Finch,—on Thanksgiving morning, 1913, you say you woke him up in the morning, did you? A. Yes.

Q. Now, how soon afterwards did you leave the house? A. Shortly after.

Q. Well, how shortly—ten minutes or half an hour or a day? A. Well, as soon as I really got ready. I didn't have my hat and coat on yet. 30

Q. Then you were dressed, with the exception of your hat and coat, when you woke him up? A. Yes; I believe he was awake, but I just told him that I was going.

Q. But you woke him up and told him you were going? A. I told him I was going to go. He knew it was late.

Q. I am merely asking you what took place— 40

not what he knew, but what took place; as soon as you woke him up, then you left the house? A. Shortly after, yes.

Q. Was he up when you left the house? A. He got up, yes—just got up.

Q. And you then went over to your sister's house? A. I went to my sister's.

Q. And didn't he ask you the day before, to accompany him to his brother's, where his mother was, to take Thanksgiving dinner? A. No.

Q. Well, then, what was it that made him say to you, he wouldn't ask you then to go where you didn't want to go? A. Because I never went to his brother's house.

Q. Well, we are talking about this Thanksgiving day—keep that in mind, please? A. Yes.

Q. You testified that he said to you, "I wouldn't ask you to go anywhere you didn't want to go." A. Yes.

20 Q. Now, what was it that brought out that statement? A. Because I said to him, "You are invited to your brother's, and I am not," and he would go to one house and I would go to another; and the invitation to my sister's was extended to both of us—at my sister's, Mrs. Wyzanski's.

Q. Didn't he tell you that he wanted you to go up to his brother's house? A. No.

Q. You are sure of it? A. I am sure of it, yes.

30 Q. Now, when he left to go to Woodstock in November, 1914, was that before or after Thanksgiving? A. That was November 12th.

Q. Now, how soon after did you write to him at Woodstock? Q. I wrote him the 31st of December.

BY MR. LEULY:

Q. What year? A. 1914.

40 BY MR. SIMPSON:

Q. In the meantime what had you done with the household furniture? A. Why, I had put it into storage the 18th or 20th of December, 1914.

Q. Now, in those letters that you wrote to your husband, particularly this one of January 10, 1915, Exhibit C, 1, why didn't you tell your husband where your address was? A. It was on the back of the letter.

Q. Oh, was it? A. Yes.

Q. Well, I show you this letter, bearing post- 10  
mark January 11, 1915, and ask you if that is the envelope in which that letter was mailed? A. Yes.

Q. Now, look at the back of it and see if the address is on it? A. Well, no, it is not. That is one mistake I made, yes.

Q. Now, what was the next letter you wrote to him? A. January 10th.

Q. January 10th—well, that is that letter, is it not (referring to the letter just shown the wit- 20  
ness)? A. Yes, that is that letter.

Q. Now, in that letter why didn't you say something about having stored the household furniture and changed your address? A. Well, I thought, as long as I had wrote what I had, I didn't think of such a thing. He knew where I was.

Q. Well, you and he had been most effec-  
tionate— A. (Interrupting) And I had not one  
word from him. 30

Q. You knew where he had gone, didn't you?  
A. I did and I asked him to take me with him.

Q. Yes, and what did he say? A. He said,  
no, he was going up until he felt better and for  
me to get a smaller apartment; and I went house-  
keeping as soon as I was able.

Q. Well, when you wrote that letter you had  
found other apartments, hadn't you? A. This  
one?

Q. Yes. A. Yes. I had wrote a letter before 40

this but never sent it; I was sick; and I tell you why I didn't send it—I had the letter all wrote and told him the place I had found, and what was what, and wanted a reply at once to let the landlady know, and I got word through somebody, I don't know who (they signed no name) and it said, "Mrs. Finch: Your husband's trunk is in Ogden Avenue." That upset me, and I was sick in bed; and that was the reason I didn't send the  
 10 letter. I believe, Mr. Leuly, I have a copy of the letter there.

BY THE VICE CHANCELLOR:

Q. Well, didn't you write that letter on December 31st? A. I just wrote and told him that I was still waiting.

Q. On December 31st? A. December 31st.

Q. Did you put in that letter what your address was? A. Yes, I did.  
 20

BY MR. SIMPSON:

Q. And what was the date of this letter you omitted to send? A. What—up to Woodstock, about finding the place? On the 17th?

Q. Where it was headed off by you hearing from somebody that his trunk was in Ogden Avenue—what was the date of that letter? A. Why,  
 30 it was sent the very day I wrote this letter, it was the 17th of November, 1913, and the letter was all wrote, all but addressing the envelope.

Q. But you didn't send it? A. Didn't send it, no. I was sick and I didn't bother no more.

Q. And merely because you learned from somebody that the trunk was in Ogden Avenue you didn't send it—is that right? A. I wasn't able, and the letter didn't bother me no more.

Q. Well, you testified a moment ago that when  
 40 you learned from some source that the trunk was

in Ogden Avenue ——— A. Yes.

Q. ——— you did not mail the letter? A. He told me he was going to the country with his trunk.

BY THE VICE CHANCELLOR:

Q. Now, Madam, the question was this: Did you omit to mail the letter because someone told you his trunk was in Ogden Avenue? A. It would have went ——— 10

Q. No, no. A. Yes, but I mean, I would have sent it only I was taken sick.

Q. Just contain yourself. The question is, did you omit to mail the letter because you learned that his trunk was there—was that the reason?

A. No, that was not the reason, no.

BY MR. SIMPSON:

Q. What became of the original letter? A. What original? 20

THE VICE CHANCELLOR: The one you wrote and didn't mail?

THE WITNESS: Mr. Leuly, have you got it?

MR. LEULY: Well, just a moment: I am looking for it now. Do you want the original, or a copy? 30

MR. SIMPSON: The witness testified she had the copy; I want to know what became of the original.

THE VICE CHANCELLOR: No, she said, she thought she had a copy of this anonymous letter which advised her that 40

her husband's trunk was at Ogden Avenue, as I recollect.

MR. SIMPSON: I didn't understand so. I would like to get that straightened out.

Q. How did you receive word about your husband's trunk being in Ogden Avenue? A. By letter.

10 Q. Do you know what you did with that letter? A. I put it in the stove because I wouldn't let anybody know that my husband had went back on me.

Q. Then it was destroyed? A. It was destroyed.

Q. Now, what did you do with the letter which you had written but which you did not send, because you received this anonymous letter? A. It wasn't sent at all, no—

20

THE VICE CHANCELLOR: She didn't say that; that is not so. She says that was not the reason she did not mail it; she said she didn't mail it because she was too ill at the time.

Q. Did you send it at any time afterwards, or when you recovered your strength? A. No.

30 Q. What became of it? A. I have it here,—at least I think I have.

Q. Now, do you remember going to the Merchants Bank early in December, 1914? A. Early in December?

Q. Yes. A. No, it was not early in December, because it was around Christmas time.

40 Q. Do you remember what particular reason you had for going to the Merchants Bank at that time? A. Why, I hadn't heard from Mr. Finch, and I went down to find out—Oh, Mr. Finch, whenever he would draw money, he would say,

“How much will I draw,—will so-and-so be enough?” and this las trip—

Q. Now, Mrs. Finch, do you know what particular purpose you had in going to the Merchants Bank about Christmas time, 1914? A. Yes, I went down to see if he had drawn any money.

Q. What did you do when you went down there? A. Why? I went down and asked how much money was in the bank, and they told me. 10

Q. What else did you do? A. And I said about my husband, that I hadn't seen my husband, or something—Oh, he wanted to know where my book was, that was it, and I said, I didn't have it, that my husband had it.

Q. Well, you put a stop on the money then, didn't you? A. Yes.

Q. Now, tell me why you did that? You notified the bank to pay out no money? A. I was told to, and I felt bad about it, but they said it would be all right, if he didn't come to draw he wouldn't know, and if I was with him, it would be all right.

Q. As a fact, the money was tied up in the Merchants Bank on your request? A. Yes, but it was hard work—

THE VICE CHANCELLOR: Oh, no.

Q. All right. Now, hasn't the subject of the stopping of that money been brought to your knowledge since that time, when there was talk of reconciliation? A. Talking with him? 30

Q. Was any information brought to you that the amount in the Merchants Bank was to be relieved of that stop that you put on it—was that ever brought to your attention?

MR. LEULY: There is nothing in the pleadings about that.

MR. SIMPSON: All right. This is cross examination. She touched on that amount in the Merchants Bank.

Q. Now, why didn't you, Mrs. Finch, if the relations between your husband and yourself were so affectionate and so friendly, release those moneys from that stop which you had put upon them?

10

MR. LEULY: I object to that question. I don't think it is a fair one, if your Honor please.

THE VICE CHANCELLOR: I will let the question go. I will overrule the objection.

A. I was waiting to see him, to have a talk  
20 with him.

Q. As a fact, the difficulty between you seemed to be the idea that his mother was coming to your house for a short visit, wasn't it, Mrs. Finch?

A. I apologized to Mr. Finch afterwards.

Q. Now tell me, wasn't that the bone of contention between you? A. As I said, if we were both able to take care of her—

THE VICE CHANCELLOR: You do not  
30 seem to comprehend the question; the question is wasn't the difficulty between your husband and yourself occasioned by the proposed visit of his mother to your house?

A. That seemed to be the whole thing, yes.

Q. Now, what did you mean by telling your husband that it was "a case of a mother walking in and a wife walking out?" A. Because I saw she had drawn all his affections from me—when  
40 he would go and leave me sick and go to his

mother's.

Q. When did you discover that, I am asking you—was it in 1913 or 1914, of when? A. Well, in 1914.

Q. That was all after that Thanksgiving incident and the contemplated visit of his mother, too, wasn't it? A. Yes.

Q. How have you supported yourself since 1913? A. Why, I have been living off of what money I had in bank. 10

Q. How much money have you drawn from the bank? A. Oh, I couldn't tell you.

Q. Have you ever figured that up? A. I have never figured it up, never did it before and never bothered about the books. I would put in and draw out, and never bothered about it.

Q. I am speaking now of since Mr. Finch and you separated? A. Yes.

Q. Can't you tell us how much you have drawn from the bank? A. I haven't kept track, no. 20 Mr. Leuly has.

Q. How much have you put in during that time? A. I haven't put in any.

Q. And haven't you followed any employment? A. I have not.

Q. You have done nothing but pay your board out of the moneys that you have drawn from these four banks? A. Four? No.

Q. Which ones did you draw from? A. Two. 30

Q. Which ones were those? A. Up here at the Hudson Trust.

(At this point Mr. Leuly produced and handed to Mr. Simpson the two bank pass books referred to by the witness).

Q. Do you mean that, Mrs. Finch—what you have just testified to? A. What is that?

Q. That you have lived on the moneys which 40

you have drawn out of these two banks? A. Yes.

Q. Why, will you tell me the date in that book, Exhibit C, 6, when you drew any moneys out of that account?

10 THE VICE CHANCELLOR: The book speaks for itself. On August, 9, 1915, she drew \$100; on February 8, 1916, she drew \$100; on April 13, 1916, she drew \$100, and on October 16, 1916, she drew \$100.

Q. Those are the moneys that you have lived on? A. Yes.

MR. LEULY: Was there any drawn out of the other book, Mr. Simpson?

MR. SIMPSON: Yes, but there is not as much as the other.

20 MR. LEULY: Will you mind giving the full amount?

THE VICE CHANCELLOR: Oh, what difference does that make?

30 Q. In one of those accounts you say you deposited the moneys which you had saved from the time you were a girl? A. No—Oh, yes, in the Hudson Trust, one of them; and I had put in what Mr. Finch had given me, and presents,—that is in the Hudson Trust.

Q. Presents from Mr. Finch? A. Yes; that he has given me, and my folks has given me, and money that I saved in the household, you know.

BY THE VICE CHANCELLOR:

40 Q. He is speaking now of the money you saved before you were married? A. Well, that was in

the Merchants.

Q. That is what I thought. A. Yes, there was very little in that.

BY MR. SIMPSON:

Q. You opened that account in 1913? A. 1913.

Q. And from 1902, when you first married Mr. Finch, you kept this money intact? A. Yes.

Q. Where did you keep it? A. I had kept it 10  
at home. At one time I had given the box to my little brother to put away, and he never knew what it was and then I kept it home. I was always telling him I would surprise him, and I wanted him to go to the bank and put it in.

Q. You were perfectly willing he should have access to this book? A. Yes, all of them.

Q. And have control of these books? A. Yes; I handed them over to him.

Q. Do you remember, in 1913, when you were 20  
going to the country, handing all of these bank books and other papers to your brother? A. Yes.

Q. What did you tell him to do with them?  
A. I asked him to put them in the safe.

Q. In New York, where he was employed? A. Yes.

Q. Why did you do that? A. He was putting his wife's away, and I said to him, "Well, you may as well take mine, then." Mr. Finch had no great objection; I paid all the bills and attended 30  
to every thing, and I was saving him from all the cares of the household.

Q. Why didn't you ask your husband if he wanted to hold them at the time? A. Well, I told him I was sorry for what I had done, but I didn't think anything of it.

Q. Tell me, why didn't you, at that time? A. Well, I tell you, I didn't think for the minute.

Q. Why not? A. Because my sister-in-law was handing hers over, and I says, "You may as 40

well take mine." We were going away together.

Q. That is the only reason why you gave them to your brother? A. Yes; I didn't think anything of it.

Q. And your husband was right there, wasn't he? A. He was right there; he would take no care of anything; he said, "What you do, Sis, is all right."

10 Q. Did he say that at that time? A. He didn't then, no; he told me afterwards. And I said, "I am awful sorry, I didn't think to hurt your feelings; I wouldn't have done it for anything," and he knew that.

RE-DIRECT by Mr. Leuly:

Q. Are you in possession of an insurance policy in the New York Life Insurance Company on your husband's life, of \$1,000? A. I am, yes.

20 Q. Is this the policy (showing the witness a paper)? A. Yes, that is it.

MR. SIMPSON: I ask to have it marked.

THE VICE CHANCELLOR: It is not necessary to have it marked; just take the number.

MR. LEULY: No. 2134832.

30 Q. Have you paid the premiums on this policy up to date? A. I have paid it all along, to date; yes, sir.

Q. And you got the moneys out of the bank to pay the premiums? A. Yes.

Q. Did your husband say anything to you about the bank accounts and the furniture, when he went away, and some time prior to his going away to Woodstock, in 1914? A. He told me I  
40 could do anything I wanted with the household

furniture.

Q. And about the books—did you ever have a talk with him when the books were present? A. I had a talk with him with the books, and I took the four books and gave him four books, and he went through everything—the books—and then he handed me two and he kept two.

Q. Which two did he hand you? A. In the Hudson Trust.

Q. The Hudson Trust Company books he handed you? A. Handed to me. 10

BY THE VICE CHANCELLOR:

Q. What other books did he give you? A. The two in the Hudson Trust.

Q. And what about the other two? A. The other two he kept.

Q. How about the Merchants National? A. He had that. His name was signed to it. 20

Q. And he kept that? A. He kept that, yes.

BY MR. LEULY:

Q. Did he say anything to you? A. He said, "That is enough to last you for two years."

Q. When did he say that? A. Why, he said that a few weeks before.

Q. Before going to Woodstock? A. Before going to Woodstock. 30

Q. Do you have a doctor? A. I have.

Q. Do you have him regularly? A. Well, I haven't been having him regularly, no.

Q. When did he pay you a professional call the last time, or when did he visit you last? A. Here, last week.

Q. What do you pay him, a visit? A. One dollar.

Q. During the past year how often have you had a physician, about? A. Well, I know 40

at first I had to have him quite often.

Q. Do you pay board where you are? A. Pay board, yes.

Q. What do you pay? A. I only pay ten dollars a month.

Q. To your sister? A. To my sister.

Q. Did you buy clothing out of the money that you have in the bank? A. Yes.

10 RE-CROSS EXAMINATION by Mr. Simpson:

Q. When was it Mr. Finch said to you, "That is enough to keep you for two years?" A. Why, that was a few weeks before he left.

Q. And the subject of making provision for you was discussed at that time, was it? Is that how he came to take these two bank books that he took? A. He took those two bank books here. The last he drew from was November  
20 5th or 6th. I asked him to draw. I never had asked him for any money; he was always willing about the money; and he said, "I am run out of money now," and "the rent is due"; he said, "Can you wait, Eva, until after Election Day?" I said, "Yes." Now, Election must have been about the 5th or 6th; and after that he went to draw some money, and he always asked me how shall he draw it, or how much he would draw—  
30 he would ask me—and I asked him this trip, and he told me it was "none of my damn business," then, that is what upset me—oh, he said, "You have got enough to live on, to pay your rent"; he gave me \$45.00; he said, "You have got enough to pay your rent and to live for a while"; and then he took possession of the bank books, that he had never done before, he put them back in the drawer; and this trip he didn't; and I never saw the bank books from that day to this, since the 5th or 6th of November, 1914.

40 Q. So he didn't say then that "was enough to

keep you for two years?" A. No, afterwards.

Q. Then if he did not, why did you just testify to that. A. This was after. Then, later on, as I say, words would come up—first one thing and then another—and then one day I got out all of the books—my other two books that I had, I got out—and he then had them all together, and I said to him, I said, "Well, Harvey" (there was something that was brought up) and I said, "Well, here—here is every dollar that I have saved"; I says, "It is yours." I said, "I wanted to surprise you, but I see I have got the surprise"; "now," I says, "here is all." I didn't think I would live through it; and then he went and took the two books and handed me the two, and he kept the other two. 10

Q. Well, how long a time was that before he left to go to his mother's? A. That was quite a while before.

Q. Well, how long? A. Oh, I cannot tell 20 you; I couldn't just tell you.

Q. Six months? A. I couldn't tell you.

Q. A few days? A. No, it was more than a few days.

Q. Well, it was at Election time? A. Just after that.

Q. When he drew the \$45.00, wasn't it? A. Yes.

Q. And then it was after that that you had this talk, when he took the two books again? A. 30 That I brought my two books, and I knew he had the other two.

Q. So it was between the Election of 1914 and his going away in the same month, in 1914, wasn't it—between those two dates? A. It was between. I couldn't tell you what date.

THE VICE CHANCELLOR: Just collect yourself, Madam. Don't be excited. Just be calm, and think. 40

DR. CHRISTIAN H. MERSHEIMER—Direct.

A. As I say, there was so much, up and down, during the months of 1913 and 1914, that I can't remember all of that.

Q. Well, now, did he hand the two books over to you, after he drew the forty-five dollars from bank? In other words, where did he get the bank books from to draw the money? A. Why, I had kept them in a drawer.

Q. I know. A. And he had them in his  
10 drawer.

Q. Now, did you hand the bank book to him to draw the forty-five dollars? A. No; he went and took it out of the drawer.

Q. Then, was it after that that he told you that you could take the two bank books, and he would take two, and that there was enough in them for you to live two years on? A. It seems to me that that must have been before, and all the books was gathered up again, and he didn't  
20 bother; and then, after, this happened; I can't really tell you how that was; I cannot.

Q. But you remember that two such incidents occurred—one, that he drew the forty-five dollars, and afterwards that he said to you, "There is enough to keep you there for two years"—you remember him saying that? A. I remember him saying that, but whether it was before or after, I couldn't really tell.

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30 DR. CHRISTIAN H. MERSHEIMER, sworn.

DIRECT EXAMINATION by Mr. Leuly:

Q. You are a licensed practising physician in New Jersey? A. Yes.

Q. How long have you been practising here?

A. Since 1902.

Q. Do you know the complainant in this cause?

A. Yes.

40 Q. How long have you attended her? A.

—Direct & Cross.

Since about 1910, or '11—'11, I think is correct.

Q. What is her present physical condition?

A. Anaemic, extremely nervous, and inability to do any labor, or any hard work; even housework is difficult for her to perform.

Q. How long has she been in that condition?

A. She has been in that condition more or less since 1911-12.

CROSS EXAMINATION by Mr. Simpson: 10

Q. Mostly it is her nervousness, Doctor, that she complains of? A. I wouldn't say mostly, because this lady has always been anaemic; and previous to the time I attended her (if this testimony is allowable), it was presumed by her former physician that she had kidney and lung trouble.

CHARLES W. HARTEMANN, sworn. 20

DIRECT EXAMINATION by Mr. Leuly:

Q. Where do you live? A. 130 Grace Street, Jersey City.

Q. You are a brother of the complainant in this cause? A. Yes.

Q. Do you recall the month of November, 1914, when Mr. Finch, the defendant in this cause, went to Woodstock? A. Yes, sir. 30

Q. Did he speak to you at the time? A. No, sir.

Q. Did you see him since that time to speak to? A. Yes, sir.

Q. When? A. I believe it was the following summer or fall, I wrote to him, and asked him to—

Q. Well, get right down to the visit. You met him? A. I met him—made an appointment with him and met him at the Duke's House, and told 40

him I had come to see him to have a talk, that I thought it was a brother's place to have a conversation with him in reference to my sister and him meeting, as she had written letters and he had not acknowledged the receipt of them, and I thought it was up to me to see him personally, and I thanked him for meeting me; and he said he was glad to see me, and I talked with him and I asked him what was to be done to bring him and  
 10 Eva together; I also offered him my home as a meeting place; and I said, if he wanted, that the wife and I would vacate so they could meet together; and I asked him what he wanted Eva to do; and the only answer I got was for her to keep on doing as she was doing. I says, "Harvey, I don't think there is much satisfaction in that," I says, "What will I tell Eva?" "Why," he says, "tell her to do just as she is doing." So I  
 20 didn't see him again for quite a while, and one Sunday morning the little lad and I was out, and went down to where we found he was living in Ogden Avenue just before the Presidential Election here, 1916, is it not? and I went to his boarding house and he wasn't up—

THE VICE CHANCELLOR: 1917?

THE WITNESS: No, 1916; he was then  
 30 campaigning for Roosevelt, I believe it was, or Hughes—well, anyway, I spoke to him, and he got up and met me, and received me very pleasantly, and I asked him if there wasn't anything to be done about bringing them together, and he just walked up and down the floor, and continually told me for Eva to do just as she was doing. "Well," I says, "Harvey, there isn't any satisfactory there"; I says "ain't there any way to  
 40 bring you two together where you can talk?" "Absolutely nothing, only for her

to continue as she is doing." Now, in reference to what I heard Mr. Simpson bring up in this case in 1913, in reference to the papers that were turned over to the brother, I am the brother, and if I could testify I would like to testify on that part of it.

Q. You may. A. Those papers were handed to me the morning my sister Eva and my wife and child was going up to Pennsylvania. Harvey 10  
Finch and I had always been the best of friends; and I bought home candy for them to take away, which Eva asked me to do so as not to bother Harvey. So these papers were handed me in front of Harvey. Eva also stated at the same time that there was fire insurance to be paid, and Harvey said to me he would pay it; and my family left with his wife, and went up the country, and the following day Mr. Finch seen me and he says, "Take this bill for the fire insurance and pay that 20  
bill for me." I paid the bill for him, and also held the receipt and put it in with the papers. There was no remark made in reference to my taking these papers over to the office, because I only took them over to put them in the safe with the rest of my private papers so they would not be in an empty house; and not only that, but right after that Mr. Finch joined me up in the country where his wife was with my wife and child, and there was nothing brought up at that time about 30  
these papers, that I know of.

Q. Was there any criticism about your having had these papers before the suit was started? A. Absolutely none. Harvey Finch and I have been the best of friends all the time I have known him.

Q. You have not spoken to him again after the last occasion that you testified about? A. I haven't seen him, sir.

CROSS EXAMINATION by Mr. Simpson: 40

Q. What was the first thing you said to Finch when you met him at the Duke's House? A. I said, "Hello, Harvey, I am glad to see you!" or "Uncle Dudley" I probably called him, because that was a more familiar name with me.

Q. And what did he say to you? A. He said he was glad to see me.

Q. Now, what followed that? A. A conversation, where we argued for about an hour.

10 Q. Well, don't give me your conclusions, tell me what was said? A. I told him I had come down as a brother to intercede for my sister and try to bring them together; I said I thought it was my duty; and he said, "I don't blame you, it is your duty"; and I said, "What will I tell Eva, or what can I do?" He said, "Just you tell her to continue doing as she was doing."

Q. Did it stop right there? A. I talked on different subjects.

20 Q. Oh, then you went off to different subjects, did you? A. No.

Q. Well, tell me what was said regarding your sister and Finch? That is what I want to know.

THE VICE CHANCELLOR: Give him the whole story—your conversation, as nearly as you can.

A. I asked him why he hadn't written.

30 Q. What did he say? A. He didn't give any reason. I asked him if he had received any letters from Eva; he said, "Yes," and he said the tone of them did not suit him.

Q. Yes, and what else was said? A. And he claimed that the trouble was—now, wait a minute—he said if I had received letters like he had I would have done the same as he was doing; and I said I did not know what was in the letters he received, but I know she had not received any,  
40 and it was only a brother's interest that I wanted

to bring them together.

Q. And was there anything further said? A. When I left I asked him, I said, "What will I tell Eva?" and he said, "To continue"; and I said, "Well, suppose there is some way to bring an arrangement about." And then I wrote him a second note—

Q. Never mind the note, I want to know what took place at the Duke's House, that is what I am after. 10

THE VICE CHANCELLOR: Do you recall anything else that was said?

A. I cannot really recollect anything of just what the conversation was then, the only thing I recollect plainly was that after my meeting him the answer I had to take back to my sister about that meeting was just as far off as it was when I started down to see him. 20

Q. That is what you carried in your mind; now, what did you say to him when you met him at Ogden Avenue in 1916—what did you say to him then? A. I said I came down for the same cause, and that I would like to make an arrangement for them to come up to my home, or make some arrangement where I could bring Eva to meet him, and he just politely turned around and gave me the same answer that he had previously—for her to continue as she was doing. 30

Q. Did you then leave? A. I believe it drifted off, and something was said about running of the election.

Q. Perfectly friendly? A. Perfectly friendly.

Q. Good-natured? A. Yes, I walked from there to South Street and Palisade Avenue, where he left me to go to dinner.

Q. And you had no reason to complain of his reception of you? A. Absolutely not.

Q. The same as at the Duke's House? A. The 40

same as at the Duke's House.

Q. Now, in either one of these conversations was not the subject of these bank accounts brought up? A. The bank accounts I knew nothing about.

Q. Was the subject brought up? A. Oh, he said there was one thing my sister had done he didn't like, that was the stopping of the payment of the bank account—that was it.

10 Q. Did you convey that news to your sister when you returned to her? A. I believe I said that in a casual way.

Q. What did she say to you when you brought that word to her? A. Well, I believe, at that time, that I told her—Mr. Leuly was then taking care of the case, and I told her what he had said; but I said, as far as making a meeting there was nothing that I could have done.

20 Q. Well, you told her that her husband had said that it had hurt him for her to go and stop the payment of the money in the bank? A. Yes.

Q. What did she say to you when you told her that? A. Well, I don't recollect just what she said then, because I believe that news had been conveyed before.

MR. SIMPSON: I move to strike that out as not being responsive.

30 THE VICE CHANCELLOR: It may be stricken out.

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MRS. OCTAVIA WYZANSKI, sworn.

DIRECT EXAMINATION by Mr. Leuly:

Q. You are a sister of the complainant? A. Yes.

Q. How long has she been living with you?  
40 A. Since November, or December, the latter part

—Direct & Cross.

of December, I believe, in 1914.

Q. She has lived there continuously? A. Continuously.

Q. Does she pay you board? A. Ten dollars a month.

Q. Have you seen the defendant in this cause since that time? A. I have not—not until last week, down here in the Chambers.

Q. That was the first time? A. The first time. 10

Q. He never visited the house and inquired for his wife? A. Never visited the house, never.

CROSS EXAMINATION by Mr. SIMPSON:

Q. You have had some trouble with your brother-in-law, haven't you? A. Previous to when he left the home, do you have reference to?

Q. Yes. A. Yes, a few mornings before he left. 20

Q. You haven't got a very friendly feeling towards him, have you? A. I have no hard feeling towards him, because he was in a passion when he spoke to me.

Q. I did not ask you that —

THE VICE CHANCELLOR: Counsel is making her his own witness if he wants to go into that line of examination. This witness was not asked anything on that score at all, so if you pursue that inquiry you will have to be bound by what she says; the witness was brought here for just a simple purpose of showing that she is boarding with her and is paying board. She has not gone into the merits of the controversy at all. 30

MR. SIMPSON: I guess that is all.

## DIRECT EXAMINATION by Mr. Leuly:

- Q. Where do you live? A. 352 Summit Avenue, West Hoboken.
- Q. Do you know Mr. Finch? A. Yes.
- Q. Do you know Mrs. Finch, the complainant in this cause? A. Yes.
- 10 Q. Did you know them in November, 1914? A. Oh, yes.
- Q. Where were they living? A. 352 Summit Avenue.
- Q. Whose house is that? A. My house.
- Q. Your house? A. Yes.
- Q. You were the landlady, then? A. Yes, sir.
- Q. You are now? A. Yes, sir.
- Q. Do you remember when Mrs. Finch gave up the floor? A. Yes, sir.
- 20 Q. About when was that? A. It was the 20th of December she moved all her furniture out.
- Q. What year? A. 1914.
- Q. After Mrs. Finch moved out did Mr. Finch ever come there to inquire for his wife, to you? A. No, sir.
- Q. Did anybody ever come there to inquire for Mrs. Finch? A. No, sir.

## CROSS EXAMINATION by Mr. Simpson:

- 30 Q. You were home there all the time, Mrs. Marriazano? A. Yes, sir.
- Q. Are you married? A. Yes, sir.
- Q. Is your husband home sometimes? A. He is home all the time.
- Q. Have you children? A. Yes, sir.
- Q. How many families live in that house? A. Three families.
- 40 Q. On what floor did the Finches live? A. Third floor.

Q. What floor did you live on? A. First floor.

Q. And you don't know whether Mr. Finch ever came there, or not, do you? A. No, sir.

ALBERT LEULY, Esq., sworn.

THE WITNESS: The complainant in this cause consulted me first as a friend of the family, and finally to get legal advice 10 concerning the difference between herself and her husband. On May 8th, 1915, I wrote a letter to Mr. Finch, as follows: "Dear Mr. Finch: Your wife called here a few days ago and told me about having written you a letter asking you if there was any way that you and she might come together to have an understanding with one another as to your reason for living apart from her. I might say she feels very badly 20 and cannot reconcile your actions, because, as she told me, when you left she had no reason to believe that you would not return to her. Will you kindly make an appointment with me to call at my office and talk the entire matter over, with a view, first of any misunderstanding and living together again; and, secondly, what reasonable adjustment might be made should you insist on living separate and 30 apart from each other. Hoping that you are well, I remain, Yours very truly, Albert Leuly." This letter was received by Mr. Finch, and admitted by his solicitor. (The letter is now offered in evidence by Mr. Leuly, admitted without objection, and marked Exhibit C, 10). I do not know now whether Mr. Finch called after he received that letter, but I believe he did. On October 40 26th, 1916, I wrote him another letter,

which he admits having received, as follows: "Dear Mr. Finch: Mrs. Finch was here yesterday and most earnestly requested me to ask you to kindly meet her here at my office, at a suitable time to be appointed by you, preferably at five o'clock in the afternoon, in order to talk over the matter of your living apart. She says she is willing to do anything that is within the range of a woman's duty under the circumstances, and hopes that you will do your part. Therefore, kindly make an appointment with me so that you, she and I may meet and talk the entire matter over; and if then you feel that you do not care to again take up housekeeping with her, the next question to be solved will be the matter of a separation and terms thereof. I personally feel that something should be done definitely so that the matter will be disposed of, as, under the circumstances, matters are very unsatisfactory. Trusting that you will call or write, I remain, Yours very truly, Albert Leuly." (The letter just read by the witness is offered in evidence by Mr. Leuly, admitted without objection, and marked Exhibit C, 11). I got no answer to that letter; so on November 10th, 1916, I wrote him another letter, as follows: "On October 26th last I wrote you a letter in reference to the differences existing between Mrs. Finch and you, and hoped to have received a reply before this. Perhaps the Election has kept you busy, but may I ask you now to kindly give this matter your immediate attention, and oblige, Yours very truly, Albert Leuly." Mr. Simpson admits that his client received this letter. I offer that in evidence. (The letter is admitted, without objection, and is marked

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Exhibit C, 12). Now, Mr. Finch and his brother and myself had a talk about this matter—Charles, I believe, his name is—

THE VICE CHANCELLOR: I believe that Mr. Finch, the defendant, called to see you once?

THE WITNESS: Yes, I am getting up to that: They called at my office, and we had a talk, and I told Mr. Finch, among other things, that his wife was desirous of meeting him to talk over their differences, and that she hoped that he would grant her that privilege; and I told him that he could meet her at my office; and then he spoke about the furniture, about Mrs. Finch having moved, and about the bank accounts; but he said he did not wish to meet his wife. So I tried to get the matter in some shape subsequently so that I could put the matter of the bank accounts and the furniture in shape so that the parties could deal as to the disposition of them, but I did not succeed. Then Mr. Finch called—the defendant, alone—and I told him that if they could not get together that he would have to support his wife, at least; and then he said that the books, the deposits, were arranged that he would give her three dollars a week, but he would not see her to talk matters over. My efforts in this regard were in behalf of Mrs. Finch, and I was authorized to make the statements which I made. That is all.

CROSS EXAMINATION by Mr. Simpson:

Q. How many times did Mr. Finch call upon you, Mr. Leuly? A. Why, I believe several times, Mr. Simpson,—I was more or less busy—

and perhaps three times; but I remember Charles Finch coming the first time. I have known Mr. Charles Finch for a number of years.

Q. And the subject of these moneys in bank was always discussed, was it? A. Mr. Finch was aggrieved, as I took it, at the fact of that one Bank, the Merchants Bank, having put a stop on the payment of the moneys; and I told Mr. Finch that his wife told me that that was not her doing,  
10 that she went down there and told a few facts, which, of course, she had to admit to, and that she was told to do that—not knowing banking, or not considering Mr. Finch's feeling at the time when the thing occurred; but she wanted to be (and I told Mr. Finch so) excused because of the situation, as it was not done by her for any purpose of making him feel badly.

Q. Well, didn't he say that he would be perfectly willing to take up the discussion of a reconciliation, or support, provided Mrs. Finch would go to the Merchants Bank and remove that stop notice which she had put there, because all of his friends knew that it had been done? A. Why, that was just spoken about together with the other matters. It did not impress itself upon me that that was the condition. As I say, we passed that point, and Mr. Finch and I got a little provoked at each other when he offered her three dollars a week. That was what I considered  
20 the last straw in the case; and then, from that time on, we did not endeavor to have any more dealings, because I told him that I thought that was entirely too cheap, to expect his wife, who had always been used to living pleasantly and comfortably and having friends come to see her, and having a nice, tidy home, living at the rate of three dollars a week, and, perhaps, in a poor boarding house.  
30

MR. SIMPSON: Have you figured up, Mr. Leuly, how much is on deposit in these four banks?

THE VICE CHANCELLOR: That can readily be done. It is about twenty-eight or twenty-nine hundred dollars. You may proceed, Mr. Simpson.

MR. SIMPSON: If that is the concession, that there is twenty-nine hundred dollars in bank at the present time, I will close the case on what has been produced. 10

THE VICE CHANCELLOR: Without showing the earning capacity of your client?

MR. SIMPSON: Yes, sir.

THE VICE CHANCELLOR: Well, you know what that means? 20

MR. SIMPSON: Yes, sir. Now, I ask your Honor to dismiss this bill, on the ground that sufficient facts have not been shown to justify this court in making any decree in this matter. The reason for that is this—that this remedy is clearly statutory, and if I remember the statute, the wording of it is that where a man “deserts and wilfully refuses to contribute to the support of his wife, she shall then be in a position to come in and maintain a suit in order that she shall obtain support from him.” The Act is not designed to bring the parties together, but it is an act in the nature of a penal act, imposing a penalty on a man who deserts his wife and refuses to support her. Now, when we speak of 30 40

“support” we must immediately infer that the person claiming the benefits of the Act is in such condition, financially, that she is unable to support herself. In this case we find that she has subject to her control, for her support, \$2,900, which she can draw at any time.

10 THE VICE CHANCELLOR: Is it his money?

MR. SIMPSON: Whether it is his, or her money, it is in her control, and she can use it for her support.

20 THE VICE CHANCELLOR: Oh, no; the statute says, “In case the husband without justifiable cause” (and that I find absolute—here) “shall abandon his wife, or separate himself from her” (and that I find is here) “and refuse or neglect to maintain and provide for her, it shall be lawful for the court,” etc.

30 MR. SIMPSON: That is it—“and shall refuse to maintain and provide for her.” Now, this lady’s testimony is that she was handed these books, and he said to her, “There is enough in there to keep you for two years.” Now, he gave her the power to draw this money.

THE VICE CHANCELLOR: True, but is it his money, or her money?

40 MR. SIMPSON: She took the books, and it was the largest amount, as I remember, of the four separate accounts, and she took the books and she has been using the money to support herself.

THE VICE CHANCELLOR: Very true; but the thing I want to know is, where you can show in this case that one dollar contained in any of these books was his money; and if there is no money in these accounts belonging to him, where does this husband escape the duty of supporting his wife, simply because the wife has means? I do not understand there is any such rule.

10

MR. SIMPSON: Why, she readily admits that some of these moneys were hers, and some was the result of presents which she received from him, and moneys which she would save from the housekeeping expenses, and the savings.

THE VICE CHANCELLOR: Now, whose money is all of that? When a husband turns over money to his wife to run the house on, and she saves money out of it and puts it in her own account, doesn't that become hers?

MR. SIMPSON: I don't know, under that recent case where the Court divided the moneys. Now, it seems to me that the purpose of the Act is to give a woman protection who has no support and no means of support.

30

THE VICE CHANCELLOR: Oh, no; the purpose of the Act is to compel a husband to support his wife.

MR. SIMPSON: Well, assuming that a woman is worth \$100,000, and her husband is a boot-black, or an elevator operator, the Court would not say, "You have got to contribute to this woman merely because the

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marriage relation existed.”

10 THE VICE CHANCELLOR: That may be all true, but, Mr. Simpson, I do not propose to compel this sick lady to spend one dollar of the moneys she has got in bank for her protection, or for her own support, under the circumstances of this case, unless the law is so clearly against it that I cannot find any way out of it. Now, if you can show me authority which holds that I cannot exercise that equitable discretion, I will be compelled to follow it; otherwise, I will not.

MR. SIMPSON: Well, if your Honor will give me a little time I think I can furnish you with those authorities.

20 THE VICE CHANCELLOR: Well, you may do so. You may submit them next Monday. In the meantime, in the absence of any testimony to the contrary—

30 MR. LEULY: Excuse me, your Honor: I discover in my case that we allege that Mr. Finch is earning fifteen dollars a week; now I would like to have the right to call Mr. Finch to show what he is actually earning.

THE VICE CHANCELLOR: You may do so.

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HARVEY V. FINCH, sworn.

DIRECT EXAMINATION by Mr. Leuly:

Q. Are you employed? A. I am.  
 40 Q. Are you paid by the week? A. Yes, sir.

Q. A stated salary? A. Yes, sir.

Q. How much did you earn last week? A. \$28.00.

Q. Have you been earning \$28.00 for any length of time? A. For about three months.

BY THE VICE CHANCELLOR:

Q. What were you receiving before? A. Fifteen dollars.

10

BY MR. LEULY:

Q. You were receiving fifteen dollars at the time you came in my office? A. Yes.

Q. How is your health now? A. Fairly good, thank you.

Q. How much do you require, per week, for living expenses—how much do you use, I mean, for your regular living expenses, board and washing?

THE VICE CHANCELLOR: Well, what expenses have you got, outside of your board, lodging and clothes?

THE WITNESS: Travelling expenses.

THE VICE CHANCELLOR: What does that amount to a week?

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THE WITNESS: About three dollars.

THE VICE CHANCELLOR: And your net income is twenty-five dollars a week, about?

THE WITNESS: Yes—that is, not outside of my living expenses.

40

THE VICE CHANCELLOR: No, but your net income is twenty-five dollars a week, outside of the expenses contingent on your business?

THE WITNESS: Yes.

Q. Now, Mr. Finch, as to the accounts—do you contend that any part of this money in the bank  
10 belongs to you? A. I contend that the moneys that are in the bank, outside of the sixty dollars that was placed in the bank by my wife's mother is moneys that was made by me.

Q. And turned over to your wife? A. And turned over to her.

Q. Which she deposited? A. Which she deposited.

Q. That is your contention now? A. Yes, sir.

Q. And always has been? A. Always has  
20 been.

Q. You never looked upon those accounts as your wife's money? A. No, sir; I never did. (No cross examination).

THE VICE CHANCELLOR: Well, subject to being convinced that the Court is without jurisdiction to award alimony, the sum I will fix, if possible, is ten dollars a week. What counsel fee do you ask?

30

MR. LEULY: Well, we made a preliminary application for alimony and counsel fee, which your Honor declined in this case, some time ago. So I think that a reasonable fee would be a hundred dollars for all.

THE VICE CHANCELLOR (to Mr. Simpson): What have you to say to that?

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MR. SIMPSON: I think that is reason-

able.

THE VICE CHANCELLOR: The counsel fee will be one hundred dollars. Now, you may submit to Mr. Leuly a memorandum on the law of the subject of the property in these accounts; and he may reply; and of course, your brief then will deal with this statute, Section 26.

10

MR. LEULY: I suppose the order will carry a bond, if your Honor please?

MR. SIMPSON: Before talking about the order—on the question of the evidence, can there be any doubt about the ownership of those funds now? Mr. Leuly has called the husband as his witness, and he has testified that those moneys were his, with the exception of the sixty dollars belonging to the mother. 20

THE VICE CHANCELLOR: That is what he claims. The testimony of the wife was different. I did not see any reason for Mr. Leuly going into that situation at all, but he has done it, and it is to his detriment; but I do not think it is sufficiently to his detriment to overcome the testimony of the wife, which was given spontaneously, and, I am satisfied, truthfully. 30

MR. LEULY: Will your Honor fix the bond in this case? When the order is made for ten dollars a week I think a bond of \$500 should be given to cover a year's payments.

THE VICE CHANCELLOR (To the 40

stenographer): You may make a note, Mr. Black, that counsel for the complainant also suggests that a bond to secure the performance of this decree in the sum of \$500 be given. I will consider that with the other feature of the case. In the meantime those bank books will be impounded in some manner.

10           MR. LEULY: Will Mr. Simpson hold two and I hold two?

              MR. SIMPSON: I am perfectly willing to impound them with Mr. Black.

              MR. LEULY: I am perfectly willing that he (Mr. Simpson) shall keep two and I keep two.

20           THE VICE CHANCELLOR: Well, if that is satisfactory, you may do that. Then Mr. Simpson will be treated as custodian of those two books, not to be delivered to his client, and you, Mr. Leuly, of the other two, in the same way.

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FINAL DECREE.

Filed March 11, 1918.

IN CHANCERY OF NEW JERSEY.

_____	)	
	)	
Between	)	
	)	
EVA FINCH,	)	10
	)	
Complainant,	)	On Bill, Etc.
	)	FINAL DECREE OF
—and—	)	MAINTENANCE.
	)	
HARVEY V. FINCH,	)	
	)	
Defendant.	)	
	)	
_____	)	20

This cause coming on to be heard in the presence of Albert Leuly, solicitor for and of counsel with the complainant, and Charles E. S. Simpson, solicitor and of counsel with the defendant upon bill and answer and upon proofs taken in open court; and the court having heard, read and considered the pleadings and proofs in the cause, and the arguments of counsel; and it appearing to the satisfaction of the Chancellor therefrom that the complainant Eva Finch and the defendant Harvey V. Finch, were lawfully married on or about the 18th day of December, 1902, and that the defendant, without any justifiable cause abandoned the complainant and separated himself from her, and refused and neglected to maintain and provide for her; and that the parties have their domicile in this state, and the defendant was personally served with process in this state;

IT IS THEREUPON, on this 11th day of March, 1918, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the defendant Harvey V. Finch, do pay to the complainant, Eva Finch, or to her solicitor, the sum of \$130.00 forthwith, being as and for arrears of alimony from the 12th day of December, 1917, the date of the hearing of the above entitled cause, up to March 13th, 10 1918, at the rate fixed by this decree, and that weekly hereafter, beginning with the 6th day of March, 1918, said defendant pay to the complainant the sum of \$10.00 per week, for her support and maintenance, until the further order of this court to the contrary.

AND it is further ORDERED, ADJUDGED and DECREED, that a copy of this decree be served forthwith upon the defendant, or his solicitor, and that within 10 days after said service, the defendant do give bond to the said complainant in the sum of \$500.00, with sufficient surety or sureties to be approved as to form and security by one of the Special Masters of this court, for the punctual payments of the alimony and maintenance by this decree awarded to be paid at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond within the time so specified or upon his default or that of his surety 20 or sureties to pay the said sum or sums when the same shall fall due, according to this decree, that the complainant be at liberty to apply to this court to award and issue process of sequestration, or for such other process or order as this court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this court.

AND it is further ORDERED, ADJUDGED and DECREED, that the said defendant to further 40 pay to the complainant, or her solicitor, the costs

of this suit to be taxed and also the sum of \$100.00 which is hereby adjudged and decreed to be a reasonable counsel fee, for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee, according to the practice of this court.

AND it is further ORDERED, ADJUDGED and DECREED that this decree from the date hereof, shall be a lien upon the real and personal estate of the defendant within this state. 10

AND it is further ORDERED, ADJUDGED and DECREED that either party be at liberty to apply, upon a future change of circumstances of the parties for a variance, or modification of this decree touching said alimony and maintenance as shall be just and equitable.

Respectfully advised,

E. R. WALKER, C. 20

JOHN GRIFFIN, V. C.

A True Copy—  
Robert H. McAdams,  
Clerk.

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IN CHANCERY OF NEW JERSEY.

	_____ )	
	Between )	
	EVA FINCH, )	
	Complainant, )	
10	—and— )	Notice of Appeal.
	HARVEY V. FINCH, )	On Bill, Etc.
	Defendant. )	
	_____ )	

20 The defendant, Harvey V. Finch, herein appeals from the decree made in the above-entitled matter dated March eleventh, 1918, and from the whole and every part thereof to the New Jersey Court of Errors and Appeals in the last resort in all causes.

CHAS. E. S. SIMPSON,  
Solicitor for Defendant.

30 CHAS. E. S. SIMPSON,  
Of Counsel with Defendant.

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

CHAS. E. S. SIMPSON,  
Of Counsel with Defendant.

PETITION OF APPEAL.

Service Acknowledged March 22nd, 1918.  
Filed March 27th, 1918.

NEW JERSEY COURT OF ERRORS AND APPEALS.

_____ )		
Between )		10
EVA FINCH, )		
Complainant-Respondent, )	On Appeal.	
—and— )	Petition of	
HARVEY V. FINCH, )	Appeal.	
Defendant-Appellant. )		20
_____ )		

The petition of the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eleventh day of March, Nineteen Hundred and Eighteen, wherein the said Eva Finch was complainant, and the said Harvey V. Finch as defendant, in this respect, to wit, that the said decree adjudges that without any justifiable cause appellant abandoned the complainant and separated himself from her, and refused and neglected to maintain and provide for her; and that the parties have their domicile in this state, and the defendant was personally served with process in this state; that the de- 40

defendant Harvey V. Finch, do pay to the complainant, Eva Finch, or to her solicitor, the sum of \$130.00 forthwith, being as and for arrears of alimony from the 12th day of December, 1917, the date of the hearing of the above entitled cause, up to March 13th, 1918, at the rate fixed by this decree, and that weekly hereafter, beginning with the 6th day of March, 1918, said defendant pay to the complainant the sum of \$10.00 per week, for  
10 her support and maintenance, until the further order of said court to the contrary, that a copy of the said decree be served forthwith upon the defendant, or his solicitor, and that within ten days after said service, the defendant do give bond to the said complainant in the sum of \$500.00, with sufficient surety or sureties to be approved as to form and security by one of the Special Masters of this court, for the punctual payments of the alimony and maintenance by said  
20 decree awarded to be paid at the time and in the manner in said decree directed; and upon neglect or refusal of said defendant to give said bond within the time so specified or upon his default or that of his surety or sureties to pay the said sum or sums when the same shall fall due, according to said decree, that the complainant be at liberty to apply to said court to award and issue process of sequestration, or for such other process or order as said court may, under the cir-  
30 cumstances, deem equitable and just, and as may be consistent with the power and authority of said court, that the said defendant do further pay to the complainant, or her solicitor, the costs of said suit to be taxed and also the sum of \$100.00 which was thereby adjudged and decreed to be a reasonable counsel fee, for the counsel of said complainant; and that the said complainant have execution for said costs and counsel fee, according to the practice of said court.  
40 And your petitioner humbly appeals from the

said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, that the said Chancellor should have ordered and adjudged and decreed that the said defendant did not abandon the complainant and did not refuse to support the said complainant, and should have decreed that the said bill of complaint of the said complainant should have been dismissed, and because the said decree is otherwise erroneous and prejudicial to the rights and interests of this appellant. 10

Your petitioner therefore prays that said decree of said Chancellor may be reversed, set aside and for nothing holden.

And that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem equitable and just.

CHAS. E. S. SIMPSON,  
Solicitor for and of Counsel with 20  
Appellant.

90 ANSWER TO PETITION OF APPEAL.  
ANSWER TO PETITION OF APPEAL.

Filed April 17, 1918.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10 Between )  
EVA FINCH, )  
Complainant-Respondent, )  
—and— ) On Appeal.  
HARVEY V. FINCH, ) ANSWER.  
20 Defendant-Appellant. )  
\_\_\_\_\_ )

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

30 This respondent, not acknowledging all, or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 11th day of March, 1918, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and she prays that  
40 the same may be affirmed. with costs to be ad-

judged to this respondent.

WILLIAM C. ASPER,  
Of Counsel.

ALBERT LEULY,  
Solicitor.

(Ex. C. 1).

Jersey City Hts., 10  
Jan. 10th, 1915.

Dear Harvey:—

I sent you a registered letter Dec. 31st, did you receive it?

Your Wife,  
EVA FINCH.

(Ex. C. 2).

Jersey City,  
April 19th, '15. 20

Dear Harvey:—

I have written to you twice up to Woodstock and not receiving any reply I thought very strange after the way we parted. And being told you was now with the Pathe Freres I feel that I should drop you a line to ask you if there is any way we might come together to have an understanding with one another.

Your Wife,  
EVA FINCH. 30

(Ex. C. 3).

Jersey City Hts.  
May 27th, 1915.

Dear Harvey:—

I called on Mr. Leuly last Monday at his request and he informed me he had seen you and as to what you had to say in regards to a reconciliation and also what you desired me to do in regards to the business end of it and still through 40

it all you did not care to see me. Now Harvey I assure you I can truthfully say I have always tried to do right by you and I always thought you thought the same. If you thought for one minute I had not been worthy of your trust why did you give me the money? I did not even ask you for it you gave it to me and I accepted it in the same way, I thought you gave it to me. My whole desire was to save it and surprise you, and

10 if you remember the night you came home that the Firm had failed and you were all in I put my arms around your neck and said don't worry I have got a dollar saved and we will not want yet, brace up and if the worst comes to the worst I can work for you, then I said perhaps if you went away it would do you good. Your answer was you did not want to take the money out of the bank as you did not know how long you would be out. Then I thought when I seen your brother

20 Charley I would ask him to let us have some of the money he had borrowed, I seen him and did ask him. His answer at the time was I have not got it but I will get it for you and had also said he had spoken to you about it and that you had said it was no hurry as you know he was up against it, and he also said for me not to tell you as he would get it and surprise you. That was the reason I did not mention it to you. Then Thanksgiving eve you informed me Mother

30 was coming down and was coming to the house to stay, I was not able to care for her as she ought to be cared for and I thought you ought to of seen it and if you remember at the time you were under the doctor's care and I was trying my best to take care of you, the one I promised to stick by until death did us part. At my refusal to take care of your mother at the time you informed me she was coming, seemed to turn what love you even had for me to hate and there

40 was nothing I done after that, that seemed to

suit you, and when I did plead with you and ask you what you did want me to do, you would say suit yourself, and all the time I was wanting to suit you. Then all at once there came a turn, a turn in all directions, you turned on me and pointed me out a thief saying what kind of a wife was I when I had all the money in my name and all the time you knew I had asked you time and time again to come have your name put on the books, but no, you would not go. At last I came 10  
to the conclusion, you had a reason and if you remember right you told me what your reason was, and by the way do you remember the day you said you thought you had a good chance to go in business and asked me if I could let you have a \$1,000 and I told you yes and I could even make it \$2,000 if you needed it and still had some to live on. Harvey do you remember the time when we were planning to get our little home together how pleased you were to bring me the money from 20  
time to time to put away and save, did I break your trust then any more than the day we parted? Do you remember the day you left home you said you were sick and you were going home to Mother and that I could do any thing I wished in regards to the home, that it would suit you and you also asked me to write to you? I told you I would if you wrote to me if only a card, and when you put your arms around me and kissed me good 30  
bye you said you would write and if you remember you asked me where to address it and I said here, for at the time I did not know what I was going to do. You also had me promise to let no one persuade me against you and I promised you I would not and when you went away I thought every thing was all right. Then each day I looked for a letter or card but none came, at last I got upset and it put me back to where I had been still trusting you but not wanting you to think I was going to force myself on you for you remem- 40

ber I had asked you the question and told you to answer me if you had no more love for me and was tired of me to tell me, but you would never answer me direct you would say I was tired of you. Then as I said I wrote you the short note I received no reply. I wrote another and still no answer. Then I hear you was back here in town. Now I ask you how you would feel under the same conditions when I located you I wrote you  
10 again and still no reply, then I thought it time to straighten things out with the help of one that knows more than I do and I went to see Mr. Leuly, for I am your wife and I have now come to the conclusion that I deserve a wife's rights and I am going to demand them. When I married you it was for love and not for money. Then I was not ashamed for the world to know it, and now if we must part I shall not be ashamed for the world to know either, for my conscience is  
20 clear, but if I have some strange ways that did not please, I am not the only one in the world with the same fault but why did you not tell me? That I may try to mend them not answer me as you did, suit yourself, when all the time I was trying to suit you. Now Harvey there is one thing I have quite decided on, and that is we must come face to face to have an understanding and I will set the place of meeting at Mr. Leuly's  
30 office any time it is convenient to you and Mr. Leuly. Harvey I have three letters from the lodge, do you want me to send them to you?

Your Wife,

EVA FINCH.

I am at Tavier,  
No. 51 Irving St.

(Ex. C. 10)

May 8th, 1915.

Mr. Harvey Finch,  
 c/o Pathe Freres,  
 1 Congress St.,  
 Jersey City, N. J.

Dear Mr. Finch:—

Your wife called here a few days ago and told me about having written you a letter asking you if there was any way that you and she might come together to have an understanding with one another as to your reason for living apart from her. 10

I might say she feels very badly and cannot reconcile your actions because, as she told me when you left she had no reason to believe that you would not return to her.

Will you kindly make an appointment with me and call at my office and talk the entire matter over with a view first of patching up any misunderstanding and living together again, and secondly what reasonable adjustment might be made should you insist to live separate and apart from each other? 20

Hoping that you are well, I remain,

Yours very truly,

ALBERT LEULY. 30

AL/G.  
 (EX. C. 11).

October 26th, 1916.

Mr. Harvey Finch,  
 373 Ogden Ave.,  
 Jersey City, N. J.

Dear Mr. Finch:—

Mrs. Finch was here yesterday, and most earnestly requested me to ask you to kindly meet her here at my office at a suitable time to be ap- 40

pointed by you, preferably at five o'clock in the afternoon, in order to talk over the matter of your living apart. She says she is willing to do anything that is within the range of a woman's duty under the circumstances, and hopes that you will do your part.

Therefore, kindly make an appointment with me, so that you, she and I may meet and talk the entire matter over, and if then you feel that you  
 10 don't care to again take up housekeeping with her, the next question to be solved will be the matter of a separation and terms thereof. I personally feel that something ought to be done definitely so that the matter will be disposed of, as under the circumstances, matters are very unsatisfactory.

Trusting that you will call or write, I remain,  
 Yours very truly,

ALBERT LEULY,

20 AL/G.

(Ex. C. 12).

November 10th, 1916.

Mr. Harvey Finch,  
 373 Ogden Ave.,  
 Jersey City, N. J.

Dear Sir:—

On October 26th last I wrote you a letter in reference to the differences existing between Mrs.  
 30 Finch and you, and hoped to have received a reply before this. Perhaps the election has kept you busy, but may I ask you now to kindly give this matter your immediate attention and oblige,

Yours very truly,

ALBERT LEULY,

AL/G.

Court of Chancery of New Jersey  
Chambers of  
Vice-Chancellor Griffin

Jersey City, N. J.,  
February 28th, 1918.

FINCH vs. FINCH.

Albert Leuly, Esq., Hudson Trust Building, West  
Hoboken, N. J.

Charles E. S. Simpson, Esq., 662 Newark Avenue,  
Jersey City, N. J.

10

Gentlemen:—

The defendant in this cause did not testify in his own behalf. The testimony of the complainant is overwhelming, and clearly proves that the husband abandoned and separated himself from his wife without justifiable cause. The only question left to be determined is whether he has refused or neglected to support her. Counsel for defendant says he has not, because there were four bank books, and prior to the separation he took two and she took two; and he insists that the two which the wife took contained his moneys. These moneys were either the wife's moneys, or the savings from the earnings of the husband, and gifts from other sources. The moneys, until shortly prior to the separation, stood in the name of the wife alone. Such a situation, as I see it, if now existing, would bring it within the rule of BECK vs. BECK, 78 N. J. Eq., 544, and the money would be treated as a gift from the husband to the wife, and be her property. But she never desired this situation. For a great many years she besought him to go down to the bank and have his name put on the books, with the idea that if she died, he would have it. This he neglected to do down to a short time prior to the separation; and, after it was done, in brief, he gave her two of the books, which I understand contain the larger sums (but as Mr. Leuly has not sent them to me, I do not know the amount) and the husband retained the

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other two books.

It is now argued that the wife should spend the money from the two books which she holds (which originally in the eye of the law were her property) for her support, and that the husband is not bound, under the statute, to make any contribution to her support, at least until the funds in these two books are exhausted. I cannot accede to these views. As I see it, the books were  
 10 not given to the wife after he had abandoned her, but the books were divided between the parties, and thus, by their agreement and understanding, these two books became her property; and she is not bound, when he subsequently abandons her, to resort to these funds in exoneration of her husband's liability to support her.

At the close of the hearing it was stated what the allowance would be for support and counsel fees, and the sums then fixed were \$10.00 a week  
 20 for the wife, and \$100 counsel fee.

Counsel may come before me on Monday, March 11th with a form of decree. In the meantime Mr. Leuly might send me his exhibits, so that I may make a memorandum of them, in case an appeal is taken and it will be necessary for me to prepare a formal opinion. I do not regard the bank books, however, as so material; but, in the interest of certainty as to the amounts, if a formal opinion is to be filed, I should have them.

30 The cases of Margerum and Westerfield are not dispositive of this case. In the Margerum Case the Court merely stated the rule, but found that the complainant did not bring herself within it. In the Westerfield case the Court dealt only with temporary alimony, and not with alimony on final decree.

Yours very truly,

Court of Chancery of New Jersey  
Chambers of  
Vice-Chancellor Griffin

Jersey City, N. J.,  
March 1, 1918.

FINCH vs. FINCH.

Albert Leuly, Esq., Hudson Trust Building, West  
Hoboken, N. J.

Charles E. S. Simpson, Esq., 662 Newark Avenue,  
Jersey City, N. J.

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Gentlemen:—

Supplementing the memorandum I wrote you yesterday deciding the above cause, when I was under the impression that all four bank books were in the names of the husband and wife, I find now, (upon examining the bank books, Exhibits C, 5 and C, 6, which I have just received from Mr. Leuly, and which were said were turned over to the wife by Mr. Finch), that one account stands in the name of "Deborah Hartman and Eva H. Finch, "Mother and Daughter," and the other stands in the name of "Eva Finch" alone. Thus, clearly, Mr. Finch had no claim on these two books, and cannot be said to have given his wife a dollar for her support. This clearly brings the case within BECK vs. BECK; and I find no evidence in the case (the husband not having testified) that any moneys which were contained in the bank books of the Hudson Trust Company were his moneys; and even though some of the moneys contained in the books were part of his earnings, turned over to his wife for the support of the household, the amount of such moneys has not been shown.

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I thought it well, in view of my prior memorandum, to write counsel correcting the facts stated therein.

Mr. Leuly and Mr. Simpson may obtain the bank books by applying to Mr. Black at his office; but Mr. Simpson will continue to hold the bank

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books of the husband, impounded under the stipulation entered into at the trial, until the question of the giving of a bond for support is disposed of.

Yours truly,

JOHN GRIFFIN.

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New Jersey Court of Errors and Appeals.

Between  
EVA FINCH,

*Complainant-Appellee,*

*vs.*

HARVEY V. FINCH,

*Defendant-Appellant.*

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On Appeal  
from  
Court of  
Chancery.

**BRIEF OF COMPLAINANT-APPEL-  
LEE.**

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**The Facts.**

The complainant and defendant were lawfully married on December 18th, 1902 (par. 1 of Complaint, p. 4). This is admitted (par. 1 of Answer, p. 5). Defendant and complainant cohabited as man and wife up to November 12th, 1914 (p. 14, l. 8).

On the night of November 11th, 1914, defendant told complainant he was going up to Woodstock to his mother's and when he got better he would come home (p. 14, l. 36, and p. 15, ll. 5 and 6).

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On November 12, 1914, defendant's brother's man called at the house of defendant and complainant and took defendant's trunk, the defendant having left just before (p. 16, ll. 1 to 5). Defendant upon being asked by complainant what she was to do with the things, replied, "Do anything you like, you can get a smaller place, with

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less rent than what we have been paying". He further said, "*When I am better I will come back*" (p. 16, ll. 6 to 11). Defendant, upon leaving, promised to write complainant (p. 16, ll. 27, 28). When defendant went away, complainant asked him to take her with him, but defendant said he didn't want to bother with complainant up there (meaning Woodstock) (p. 17, ll. 8 to 12). Defendant failed to communicate with complainant while he was away although complainant wrote him several letters, as shown by Exhibits C-1, C-2, C-3 (pp. 91, 92), asking defendant if there was any way in which they might come together and have an understanding.

10 The testimony of Charles W. Hartemann, a brother of the complainant (pp. 15 and 16) shows that he met the defendant on two occasions after the abandonment complained of, once at the Duke's House, Hoboken, N. J., and the other  
20 time at his boarding house; that each time said Hartemann spoke to defendant with a view of bringing him and complainant together, but on each occasion defendant refused to arrange to meet or talk with his wife.

The testimony of Albert Leuly (pp. 71, 72) shows that he, as attorney of the complainant, wrote defendant several letters (Exhibits C-10, C-11 and C-12), requesting him to call at his office in an endeavor to effect a reconciliation between complainant and defendant. Finally de-  
30 fendant called with his brother to see Albert Leuly at his office (p. 73, l. 7), and while there had a talk. Mr. Leuly told defendant that his wife was desirous of meeting him to talk over their differences, and that she hoped he would grant her that privilege (p. 73, ll. 10 to 13). Defendant would not agree to this and Mr. Leuly told him he would have to support his wife at  
40 least, whereupon defendant agreed to pay his wife \$3.00 a week (p. 73, ll. 27 to 30).

This complainant has been ready and willing to live with her husband and resume cohabitation (p. 40, l. 28 and p. 41, ll. 1 to 4): but he on his part has refused so to do; defendant in the 11th paragraph of his answer on page 7 states that he has always been ready, willing and able to have complainant return to him and, though this offer was accepted by complainant (p. 11, ll. 19 to 30), defendant has refused and failed to carry same out.

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There are four bank accounts involved in this suit, two of which are in the Hudson Trust Company (p. 30, l. 10), one in the Peoples' Safe Deposit & Trust Company, (p. 32, ll. 25 to 27), and the other in the Merchants' National Bank of Jersey City (p. 34, ll. 23 to 26).

One account in the Hudson Trust Company, is in the name of Deborah Hartemann, complainant's mother, or Eva H. Finch, as joint tenants and not as tenants in common, and to the survivor, (exhibit C-5), the other account in the Hudson Trust Company is in the name of Eva Finch (exhibit C-6). The moneys deposited in these accounts were presents which complainant received from her mother and others, moneys which defendant gave her and moneys saved by complainant in the household (p. 30, ll. 18 to 36).

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The account in the Peoples' Safe Deposit & Trust Company, was in the name of Eva H. Finch and Harvey V. Finch (p. 32, l. 27); the account in the Merchants' National Bank was in the name of Eva H. Finch and Harvey Finch, either to draw. Before defendant left for Woodstock, defendant and complainant had a talk about the bank books. Complainant took the four books and gave them to defendant and he then handed complainant two bank books and he retained two (p. 59, ll. 2 to 7). He gave complainant the Hudson Trust Company books (p. 59 l. 14) and said,

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"that is enough to last you for two years" (p. 59, l. 24). This was all done prior to the time when defendant left complainant (p. 61, l. 35).

The defendant did not offer any proof or testimony in his own behalf (p. 75, l. 10).

#### THE LAW.

10 The Bill of Complaint in this case was filed in accordance with the provisions of the 26th Section of the Divorce Act of 1907, providing for the awarding of suitable support and maintenance to a wife, in case a husband without any justifiable cause shall abandon or separate himself from her, and refuse or neglect to maintain and provide for her.

20 In order that the wife may sustain her action against her husband, he must be guilty of two distinct violations of the matrimonial obligation, viz; he must (1) abandon or separate himself from his wife, and (2) he must refuse or neglect to support her.

#### POINT 1.

##### Abandonment.

30 The undisputed proof shows that defendant, without any justifiable cause abandoned and separated himself from her; that defendant left complainant on November 14, 1914, stating that, because of his illness, he was going up to Woodstock to his mother's and when he got better he would come back.

40 After the defendant got to Woodstock he failed to communicate with his wife, on the contrary, she wrote him several letters, asking him why he did not communicate and also return. To these he paid no attention. After he returned from Woodstock he did not make any effort to seek his wife, and failed to maintain and support complainant. Complainant's brother sought defendant and

tried to induce him to return to his wife, but he would not listen. Finally complainant sought the aid and assistance of Albert Leuly, an attorney, who was also a friend of both complainant and defendant, and requested him to communicate with the defendant, in an endeavor to bring the parties together, and, as a result of Mr. Leuly writing the defendant several letters, defendant finally called at the office of Mr. Leuly and, after discussing the matter, refused to return to his wife. 10

In answer to the allegation contained in the 11th paragraph of defendant's Answer, that he was ready, willing and able to have said complainant return to him, complainant replied that she was willing to go back, but defendant failed to carry out his offer.

As stated by the learned Vice-Chancellor below, the testimony of the complainant is overwhelming and clearly proves that the husband abandoned and separated himself from his wife without justifiable cause. 20

In the case of *Bradbury vs. Bradbury*, reported in 74 Atl. p. 150, it was held, "under our statute (Act of May 7, 1907), (P. L. p. 482, Sec. 26) the only 'justifiable cause' for abandoning or separating from a wife and refusing or neglecting to maintain and provide for her is a matrimonial offense, on her part, which would entitle the husband to a divorce." To be available, such cause must be pleaded as well as proved. 30

## POINT II.

### **Refusal and neglect of husband to maintain and provide for wife.**

The defendant contends that he did not refuse or neglect to support his wife because he handed her two bank books containing about \$2900.00 and told her that that was enough to last her for two years. 40

The evidence shows that one of these accounts was in the name of Deborah Hartemann, who was the mother of this complainant, or Eva Finch, as joint tenants and not as tenants in common and to the survivor, and the other account stands in the name of Eva Finch. Defendant's name does not appear on either of these books.

10 The testimony further shows that the moneys deposited in said accounts were moneys which complainant's mother had given her, moneys which complainant received as presents, moneys given her by her husband and moneys saved by her from the household. The amount of the moneys given complainant by defendant and the amount of moneys saved by her from the household were not shown.

20 The testimony further shows that the two bank books aforesaid were not given to complainant at the time of the abandonment or at any time thereafter. There were four books in all, the two books above mentioned and two other books, one in the People's Safe Deposit & Trust Company and the other in the Merchants' National Bank. A short time prior to the abandonment complained of, defendant handed the two Hudson Trust Company books to complainant, and retained the other two for himself. All of these books had theretofore been in the possession of complainant.

30 In *Beck vs. Beck*, 78 N. J. Eq., page 544, it is held that where husband and wife accumulate property by their joint efforts, and invest it in the name of one of them, there is no presumption arising from their station in life that they intended it to be a common hoard in which both should be equally interested.

*Bacon vs. Deviney*, 55 N. J. E., p. 449, is authority for the proposition that when a husband and wife both make payments to meet dues of 40 building association stock, standing in the name

of the wife, the presumption is that his payments were gifts to her, and a resulting trust in favor of the husband, because of his payments, will not arise until this presumption is rebutted by evidence sufficient to establish such a trust.

Depositing money in a bank in the wife's name will generally be sufficient, although the presumption of a gift arising therefrom is subject to rebuttal (21 Cyc., page 1296).

From an examination of the records of this case it will be noted that the Bill of Complaint was filed on March 17, 1917, which was more than two years after the abandonment complained of, so that if defendant turned over the aforesaid bank accounts to complainant with the understanding that same would be sufficient to maintain and support her for two years, that time was long since passed at the time of the filing of the Bill of Complaint herein. 10

In the case of *Westerfield vs. Westerfield*, 36 N. J. Eq., p. 195, there is contained the following dictum: 20

"There can be no doubt that it is the duty of a husband to support his wife. This duty flows out of the marriage contract, and does not at all depend on the wife's means or want of means. The husband's duty is the same in this respect, whether his wife has property or not, and it is equally clear that if the husband refuses to perform this duty, by abandoning his wife, or separating himself from her, and refusing or neglecting to maintain and provide for her, this court may compel him to furnish suitable support and maintenance for her." 30

It is respectfully submitted that the decree below in this matter should be affirmed.

WILLIAM C. ASPER,  
Of Counsel with Complainant-Appellee.

ALBERT LEULY,  
Solicitor of Complainant-Appellee. 40



## New Jersey Court of Errors and Appeals.

\_\_\_\_\_) )  
) )  
EVA FINCH, ) )  
Complainant-Appelle, ) )  
) ) On Appeal from  
vs. ) the Court of  
) Chancery.  
) )  
HARVEY V. FINCH, ) )  
Defendant-Appellant. ) )  
) )  
\_\_\_\_\_) )

### BRIEF FOR DEFENDANT-APPELLANT.

#### STATEMENT.

The bill in this cause was filed for the purpose of compelling maintenance and support for the complainant under the 26th Section of the Divorce Act of 1907 (1907, page 474). The statute is perfectly clear upon the question of the requirements to give the Court of Chancery jurisdiction under a bill of this character:

1st. There must be an abandonment of the complainant; or, a separation from her without justifiable cause; and

2nd. There must be a refusal or neglect on the part of the husband to support her.

The bill in this cause was filed March 26th, 1917. In paragraph seven of the complaint it is al-

leged the defendant's mother went to her home in Woodstock, in the State of New York, December 15th, 1913; that defendant visited his mother frequently and on November 12th, 1914, he packed up his things and left home and abandoned the complainant and separated himself from her, saying **that he was going up to his mother's until his health was better.** (P. 3, L. 9). The fact is not disputed that the cause of the separation of the parties was the defendant's illness and his desire to recover his health.

It is alleged in paragraph eight that the complainant remained at 352 Summit Avenue, in the City of Jersey City, until December 18th or 20th, 1914, and up to that time defendant failed to return to her and complainant did not receive any word from the defendant; that she then placed the furniture in storage and went to live with her sister, at 51 Irving Street, Jersey City; that subsequently the defendant returned to Jersey City, but had made no effort to support or maintain the complainant although she has often requested him to do so.

Outside of the allegations contained in the seventh and eighth paragraphs of the Bill of Complaint, there is no allegations whatever regarding abandonment of the complainant or a separation from her without justifiable cause. It will be noted the admission is made by the complainant in the Bill of Complaint (P. 3, L. 9) that the defendant stated that he was going up to his mother's **until his health was better.**

The proofs show (P. 44) under cross-examination, at line thirty-three:

Q. In the month of March, 1914, Mrs. Finch, when your husband left for his mother's place, what was he suffering from?

A. Why, I don't really know.

Q. How long had he been sick before he took that trip?

A. He had been sick off and on.

At Page 46, Line 25:

Q. And wasn't he troubled with the affection that you had—insomnia and nervousness?

A. He was troubled with nervousness, I know.

Q. Now up to this month of November, 1914, he had been an affectionate husband, hadn't he?

A. He had.

#### POINT.

The bill cannot be maintained without proof of an omission or neglect to support, as well as an abandonment or separation without justifiable cause.

In this case the testimony of the wife (P. 59, L. 25) is that just before the husband left to go to his mother's two bank books were delivered over to her by him, and as she states, her husband said to her "There is enough in those (undoubtedly meaning the banks) to last you for two years."

Assuming the testimony of the plaintiff to be true, by her own admission the case is deprived of one of the essential elements to confer jurisdiction upon this Court, namely, **a refusal to support**. The testimony further recites that since the separation (and this clearly was not an abandonment), the requirements of the wife for her support have been \$10.00 per month and incidental expenses, (P. 60, L. 2) and notwithstanding she has used some of the money for her support, several hundred dollars, if not thousands, still remain on deposit in the banks subject to her draft and control (P. 55, L. 8 to 30). Under these circumstances she is far from not being supported by

the husband. This section, which was formerly section 20 of the Divorce Act, has received attention by the Court of Chancery, on a similar state of facts, in the case of **Margarum vs. Margarum** (57 N. J. Eq., Page 249), where the Court held, that

“In order to vest this Court with jurisdiction it must be shown, first, that the husband abandoned or separated himself from the wife, and secondly, that **he refused or neglected to support her.**”

“Both of these conditions must exist under section 20 of the Divorce Act (which alone vests this Court with jurisdiction in cases of this character) to justify an application to compel the husband to pay an allowance for the support of the wife.”

According to Exhibit C-7 (the deposit in People's Safe Deposit and Trust Company), the balance remaining was \$93.25.

According to Exhibit C-8 (the deposits in Merchants National Bank) the balance was \$324.36. Both these small accounts were retained by the husband.

The two large accounts were turned over to the complainant by the defendant, and she has been drawing against the funds for her support, and there is still a large amount available for the purpose. The husband gave to the wife by far the largest part of the money, as it was conceded the total of all accounts was about \$2,900.00 (P. 75, L. 1 to 13).

As observed on the motion to dismiss the bill, the remedy is statutory and, under the authorities, the act must be strictly followed.

The attempt here is to compel the defendant to spend money, **not to compel support.**

Upon the same grounds temporary alimony was

refused. See *Westerfield v. Westerfield*, (36 N. J. Eq., P. 195). To summarize:

To give the Court jurisdiction to decree support, there must be an abandonment of the wife by the husband, a separation from her by his voluntary act or circumstances equivalent thereto, and also a neglect or refusal on his part to support her. **Both** these conditions must exist to give this court jurisdiction.

Upon the conceded facts and under the statute the Court had no jurisdiction, and it necessarily follows the bill should have been dismissed.

#### POINT.

**This was not a case to decide any property rights, but to ascertain whether there had been an abandonment and a refusal to support.**

Under the evidence the wife had money at her disposal to use for her support as she had been directed to do by her husband (P. 59, L. 25). These were all the moneys of the husband with the exception of \$60.00 (P. 80, L. 7 to 20). The wife had been using these moneys to support herself with, but the learned Court at once assumed to decide the ownership of the funds in addition to deciding the case for maintenance. Upon the motion to dismiss the bill (P. 75, L. 24) the motion should have been granted for the reason that there was no evidence of a refusal or neglect to support; but the Court went into the ownership of the funds, which the complainant herself established beyond question by calling the defendant (P. 80, L. 7 to 22).

As the complainant had ample means for her support at her disposal which were intended for her support by the husband when the bank books were handed to her, her suit was premature, and as both the elements required by the statute were not present in the suit, the Court erred in award-

ing the decree.

We submit there should be a reversal of the final decree.

CHAS. E. S. SIMPSON,

Of Counsel with Deferdant-Appellant.

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BOUND