

## New Jersey Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY.

*Between*

HELEN CLARKE MATHEWS,  
*Petitioner-Appellant,*

*vs.*

CLARENCE DUDLEY MATHEWS,  
*Defendant-Respondent.*

On Petition for  
Divorce.

On Appeal from  
Chancery.

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### BRIEF OF PETITIONER-APPELLANT.

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Petitioner and defendant were married in the City of New York on October 19, 1904, by Rev. Richard M. Sherman, an Episcopal Clergyman (Case pp. 34, 118, 143; Ex. P-1). Defendant has resided in the State of New Jersey practically ever since, with the exception of a few brief periods when he and petitioner lived together in Philadelphia (Case, pp. 35-37; 85; 136-138), and for more than two years next preceding the filing of the petition in this cause he was a *bona fide* resident of this State (Case, pp. 136-139; 144; Ex. P-2). At the time of the final separation of the parties, which occurred about March 1, 1913, they were living on Haddon Avenue, in Camden, New Jersey (Case, p. 38). Petitioner went from Camden to the City of New York, and from there to Cleveland, Ohio, and later returned to New York, where she resided at the time of the commencement of this suit, and where she still resides (Case, pp. 39-40; 98; 132-133).

Petitioner claims that she was obliged to separate from her husband several times before the final step was taken in 1913, owing to his cruel and brutish treatment of her. There was trouble apparently from the beginning of the marital relation (Case, pp. 87, 88, 93), and eventually it became necessary for an operation to be performed on petitioner because of a tearing of her person in intercourse, but which husband refused to have done for a long time, although continuing relations with his wife notwithstanding the condition she was in and the suffering that resulted (Case, pp. 93, 95, 119, 121, 122, 123, 130). Defendant indulged in frequent and periodical drunken excesses, at which times he insisted upon intercourse with his wife, although he was in a most offensive condition, and which was revolting and terrifying to her (Case, pp. 35, 36, 43, 44, 45, 53, 57-60, 133, 135), so much so, indeed, that on one occasion when she saw his condition coming on, during the course of a drunken spree with a boon companion with like tastes, she fled from their home in Philadelphia at midnight in order to escape from him, and traveled to her mother's home in New York, reaching there early the next morning in a highly nervous and terrified condition, remaining in a hysterical condition for some time (Case, pp. 36, 43). The reason she was so terrified, she says, was because on several previous like occasions he had intimidated her, and once forced her into unconsciousness when she protested against intercourse under such conditions, and then when she regained consciousness she found that he had had sexual intercourse with her (Case, pp. 36, 43, 92, 93). On another occasion, while visitors were at their house, he called petitioner a "G-d-s-o-a-b-," and habitually he indulged in foul language, directed to petitioner (Case, pp. 45, 55, 127). Several times he threw things at petitioner and he seems to have been perpetually grouchy (Case, pp. 67, 69, 86, 87, 89, 115, 120, 125, 126, 128-130, 135). Petitioner had no social

life, and her husband did not take her out socially over five or six times during their whole married life (Case, pp. 53, 54). He made things so unpleasant at home that petitioner lost all desire for the society of friends, and on the few occasions that her mother visited her he was so ugly that she finally said that she would never again go into his house, and she never did (Case, pp. 134, etc.). Petitioner's mother testified that on the occasions that she did visit her daughter, she was in bad health, and that her husband's demeanor was ugly and unsociable. 10

Her mother was present at the time of the operation for the tearing of the genital organs, and says that her daughter was in fear of her husband, and begged the nurse not to leave her alone with him (Case, p. 123, 124).

Later ovarian trouble developed, and petitioner's physical condition became precarious and acute. But notwithstanding this, her husband refused to permit her to have medical or surgical treatment, claiming that she would be no good to him as a woman after such treatment, and still insisted upon intercourse, in the face of and with complete knowledge of the suffering of the wife (Case pp. 47, 50, 61, 65-68, 94). 20

Matters drifted on from bad to worse, and then the husband's mother came into the family, with unpleasant results (Case, pp. 52, 58, 91). The husband seems to have favored his mother, as against his wife, and eventually a separation occurred, in which the husband frankly admitted the error of his position. Each time that the wife separated, the husband prevailed upon her to return, but she says that each return was a repetition of what had preceded (Case, pp. 44, 61). She exacted a promise from the husband that he should not touch her person while intoxicated, and this he seems to have kept, until an occasion in the fall of 1912, when he treated the wife with great brutality, choking her and tearing her night-clothing off her, and in the struggle which en- 30

sued she injured herself so severely that she suffered intense pain for a long time thereafter, resulting finally in her withdrawing in the early part of March, 1913, and going to New York, where the necessary operation was performed by Dr. Studdiford, and although ill a long time, she eventually recovered, and at the hearing testified that she was then well (Case, pp. 49, 63, 64, 65, 69, 96).

10 Aside from some small and irregular contributions of money made by her husband following threats of a prosecution to compel support, shortly after the separation in 1913, petitioner supported herself by her own efforts down to the time of the hearing. Nothing was paid after January, 1915, and regular contributions ceased in January, 1914, (Case, pp. 40, 72, 73, 74, 97, 98, 103, 130-133).

20 Petitioner seems to have been amenable to proper treatment right down to the last, and even after her husband suddenly instituted a suit for divorce against her while apparently in the midst of negotiations that might have again led to her returning to him (Case, pp. 79, 103), she met her husband in Broad Street Station, Philadelphia, on the eve of the hearing, and signified her willingness to return to him if he would assure her that it would not again be futile (Case, pp. 76, 77, 100, 102). At that time he was complicated with a single girl, to whom he had given a diamond ring, and the wife felt that he ought not to wreck that girl's life as he had wrecked his wife's, but said she would receive him at her mother's home in New York if he would go over, and would consider that whole matter with him. She understood that he would go to New York, and awaited his coming, but he never went, and put her off with one pretense or another, and finally got her to agree to discontinue the pending divorce action, which was done (Case, pp. 70, 79, 80, 104, 115, 117, 129-130). He then voluntarily sent his wife \$50, and continued to send it to her each month thereafter until she commenced the present proceeding, when, up-

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on application for alimony being made, the amount was fixed by agreement at \$60 per month, which has been paid regularly during the pendency of the proceedings (Case, p. 83).

Petitioner testified that she finally lost faith entirely in her husband, and while she was corresponding and telephoning to him regarding his contemplated, but delayed, visit to New York, she received word that he was in the Cooper Hospital, at Camden, as the result of an automobile accident, and upon going there to see him learned that he and a Mrs. Mann, a married woman living at Collingswood, had both been injured in the same accident, while riding in her husband's car, at about three o'clock in the morning, returning from a joy ride, and shortly thereafter, this suit was instituted by the wife against the husband (Case, pp. 80, 81, 83, 108, 109, 113, 139-141). 10

The defendant, although present in Court at the conclusion of the petitioner's case, interposed no defense and did not go on the stand to refute any of the wife's statements. The motion was to dismiss the petition, the facts adduced being taken to be true (Case, p. 19, 142). During the course of the hearing the Vice-Chancellor remarked that he was satisfied that the petitioner's story was absolutely true. The corroboration, while not of the most direct character, is clear and sufficiently sustains petitioner to establish the truth and credibility of her story. The Vice-Chancellor, however, advised a dismissal of the petition (Case, p. 16), and from the decree thus advised, this appeal is taken (Case, p. 2). 20 30

#### I.

*McVickar v. McVickar*, 46 N. J. Eq. 490, is a case very similar to the case at bar, in which Vice-Chancellor Pitney reviewed the authorities and held that the facts warranted the granting of a divorce *a vinculo* to the wife, who had separated herself from the

husband because of his cruel treatment of her. Quoting from *Weigand v. Weigand*, 41 N. J. Eq. 202, he said:

10                   “ ‘A husband is guilty of abandonment when he compels his wife, by cruel and abusive treatment, to leave him. *If, in consequence of his conduct, she is compelled to leave his house, either to preserve her honor and self-respect, or to secure safety, he is the cause of the separation, and must be adjudged to be the wrong-doer.*’ ”

And further, the Vice-Chancellor said:

                  “ ‘It is not, in my judgment, a necessary ingredient in this canon that the husband should entertain, in connection with his acts of cruelty, any settled purpose to drive his wife from him. It is enough if such is the natural consequence of his acts.’ ”

20                   In *Taylor v. Taylor*, 73 N. J. Eq. 745, this Court unanimously affirmed the views of Vice-Chancellor Leaming, who says at page 748 of the report that,

30                   “ ‘The rule in this state may be considered settled as follows: That to justify a wife in separating herself from her husband, physical violence need not be proved, but such conduct of the husband must be shown as will reasonably convince the court that her life or health was in danger, or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions.’ ”

                  In *Wilson v. Wilson*, 66 N. J. Eq. 237, Vice-Chancellor Stevenson, after discussing the difference be-

tween the duty of the wife and the husband in undertaking to bring about a reconciliation, and setting forth the reasons given by the wife in that case for not attempting reconciliation with her husband, said, at page 242 of the report:

“It is plain that her reasons were sound and sufficient. She saw, in brief, no hope of any reformation on the part of her husband, so that to bring him back to her home would only replace a burden of labor and misery upon her life.” 10

In *Lister v. Lister*, 65 N. J. Eq. 109, where again the facts are strikingly similar in some respects to those in the present case, Vice-Chancellor Emery, in commenting upon the question of good faith of the husband in inviting the wife to return to him, said, at page 115 of the report:

“Petitioner was informed by her counsel that defendant was at this place, and when he spoke to his wife, in the summer of 1900, about coming back to live with her, she said to him, ‘I don’t see how you can ask me to do that when you have got this woman in New York.’ Defendant had previously denied having a woman there, but on this occasion he said, ‘Well, she is a Jewess, but she has a white heart.’ The husband denies any improper relations with these women, but does not deny this conversation, and, if it occurred, the husband was not unwilling that the wife’s impression as to his unfaithfulness should continue. She was not bound, in my judgment, to consider this request to return as made in good faith.” 20 30

“Whether the husband’s habits as to drinking have been reformed has not been shown, and, under all the evidence in the

10 case, I reach the conclusion that the husband has not shown in this case any such change in his habits, or such a mode of living after the separation, as was calculated to give to his wife the reasonable assurance of his reformation, and of her probable safety in resuming martial relations, to which she was entitled. The continuance of the separation, therefore, must be held to be due to his continued, wilful and obstinate conduct, and the wife is entitled to a divorce for desertion.”

In *Crickler v. Crickler*, 58 N. J. Eq. 427, at 435, Vice-Chancellor Grey said:

20 “But if the offences of the husband had been such as to drive the wife away for some reason which gave her a cause of action for divorce against him, he could not by mere invitation to her to return, put her in the position of a wife who wilfully and obstinately deserted her husband, even if she refused to come back. The separation in such case is justified, and in the contemplation of the court is the husband’s own desertion and not the wife’s.”

In *Close v. Close*, 25 N. J. Eq. 526, Mr. Justice VanSyckel, speaking for this Court, said, at page 529 of the report:

30 “Where the husband has been guilty, or there is reasonable ground to apprehend that he will be guilty of any actual violence which will endanger the safety or health of the wife, or where he has inflicted upon her any physical injury accompanied by such persistent exhibition of ill-feeling and opprobrious epithets as will endanger her health, or render her life one of such extreme discomfort

and wretchedness as to incapacitate her to discharge the duties of a wife, the decree of separation should be pronounced."

"A single act of causeless violence may be overlooked if its consequences are evanescent, and leave the relations of the parties substantially undisturbed; but a long-continued course of conduct, which, without fault of the wife, results in making the marriage relation unendurable, and in driving her from her husband's house, is clearly, we think, a case of extreme cruelty, within the meaning of the statute. In its effect upon the marriage relation, cruel conduct which has effectually destroyed it, cannot be regarded as other than extreme." 10

*Briggs v. Briggs*, 20 Mich. 34.

"Indignities to the person \* \* \* \* need not consist of personal violence. \* \* \* \* It is the most refined of all cruelties to hold a woman for life subject to the subtle tortures which the martial state gives as opportunity of practicing in private, which may be concealed from the world by the false guise of courtesy and respect in the presence of others, and which may still produce a condition of heart misery to which death would often be preferable." 20

*Haley v. Haley*, 44 Ark. 429.

See also:

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*Smith v. Smith*, 40 N. J. Eq. 566.

*English v. English*, 27 N. J. Eq. 579.

*Black v. Black*, 30 N. J. Eq. 215.

*Starkey v. Starkey*, 21 N. J. Eq. 135.

*Thomas v. Thomas*, 20 N. J. Eq. 97.

*Cook v. Cook*, 11 N. J. Eq. 195.  
*Graecen v. Graecen*, 2 N. J. Eq. 459.  
*Grant v. Grant*, 36 N. J. Eq. 502.  
*Fraser v. Fraser*, 87 N. J. Eq. 633.  
*McCauley v. McCauley*, 88 N. J. Eq. 392.

## II.

There is sufficient corroboration.

10 *Footte v. Footte*, 71 N. J. Eq. 273.  
*Rogers v. Rogers*, 104 Atl. Rep. 32.  
*Parmly v. Parmly*, 106 Atl. Rep. 456.

## III.

It is respectfully submitted that, under the authorities cited, the facts of this case establish a constructive desertion by the husband, entitling the wife, the present petitioner-appellant, to a divorce *a vinculo*, and that the decree of the Court of Chancery appealed from should be reversed.

20 VREDENBURGH, WALL & CAREY,  
*Of Counsel with Petitioner-Appellant.*

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**BRIEF.**

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The appeal in this case is from an order dismissing the petition of appellant for divorce by the Court of Chancery. The reasons for the dismissal of the bill are fully set forth in the opinion of Vice-Chancellor Backes (Case 17). The reasons given by the Vice-Chancellor are:

First. That the testimony of the petitioner is not verified by the testimony of any other witness.

Second. That the testimony of the petitioner, if supported by other witnesses is not sufficient to show desertion because of the alleged extreme cruelty.

The failure of the defendant to offer any defense or to testify is also considered by the Vice-Chancellor.

The history of the case is disposed of in the opinion of Vice-Chancellor and it fully appears from the testimony of the appellant that there was no desertion on the part of the respondent at the time alleged in the petition or at any other time.

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### ARGUMENT.

The testimony of Mrs. Mathews does not in any way bear out the allegation in the petition that the respondent deserted her in March, 1913. Her testimony (Case 65) indicates that she was thinking seriously of a surgical operation and had talked the matter over with her husband. On the following pages, she testifies that when the respondent's mother was not living with them, they had no difficulties whatever. The rest of her testimony in the case, that on account of her *mother-in-law* (Case 58-61) assuming charge of the household and her friendship for her son caused the appellant much worry and was the real reason for the appellant going away at that time. Shortly after Mrs. Mathews leaving in 1913, the mother-in-law died. (Case 75, line 25) and the defendant wrote to his wife and there were "letters backwards and forwards, pleasant and agreeable, his were affectionate." There was no break in their relationship from that time until the defendant filed a petition for divorce in July, 1917. During this time the defendant sent petitioner \$25.00 a month. At the time of filing a petition the defendant resided in Camden and the appellant in Cleveland, Ohio. Sometime later Mrs. Mathews came to New York and filed an answer in that suit and also another petition for divorce. Just before the hear-

ing in that case the defendant and petitioner met in Philadelphia and as a result of that meeting, they agreed to live together and abandon their proceedings for divorce (Exhibits P9 & D11, Case 152-153, 154-155), and it was not until after the appellant filed her petition for divorce in June, 1918, that the attitude of Mrs. Mathews was changed in any degree. According to Mrs. Mathews, her husband has always expressed a willingness to provide for her and have her live with him and has at all times, except when intoxicated, treated her with the best courtesy. The letters offered in the case between Mr. and Mrs. Mathews bear out this statement and it undoubtedly is true that Mrs. Mathews left her husband and has remained away from him solely because she wanted to and without any legal or equitable reason. They apparently are fond of each other and outside of the few instances recited by Mrs. Mathews, their married life has not been a failure.

Mrs. Clark, the mother of the appellant, in her testimony does not in any way verify the statement made by the appellant and from 1904 until 1913 visited her daughter and her husband only three times, during the summer of 1905 and Christmas of 1909 and Decoration Day, 1910, and at those times the defendant was quarrelsome but not cruel to his wife and it seems to have been more a matter of a family squabble (Case 127) than anything else.

The testimony of Mrs. Span, the other witness, refers to a display of temper in which both parties appear to have been equally guilty, so that even if it can be said that the petitioner's testimony could be verified, there is absolutely no testimony in the case from which it can be found that the defendant was guilty of cruel treatment so as to give the appellant a divorce.

It might be suggested that the failure of the defendant to testify before the Vice-Chancellor would indicate that the defendant would corroborate the petitioner's testimony if called. The fact is however that the defendant rested on the evidence then before the Court and we submit that the action of counsel for the defendant was the proper course to pursue where it appeared in the case at that time that there was not sufficient testimony to grant the relief prayed for in the petition.

It seems unnecessary to cite any other cases than those given in the opinion of the Vice-Chancellor in the court below and I believe these cases have been followed repeatedly by this Court.

OSCAR B. REDROW,  
*Solicitor of Defendant-  
Respondent.*

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THE UNIVERSITY OF CHICAGO