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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:*

The complainant, Irene M. Pierson, residing in 10
the City of Plainfield, County of Union and State
of New Jersey, shows unto your Honor, that:

1. On the 12th day of October, 1916, she was law-
fully married to her present husband, Howard W.
Pierson, in the City of Bridgeton, County of Cum-
berland and State of New Jersey, by the Reverend
H. H. Beadle, Minister of the Gospel of that city.

2. After her said marriage, the complainant and 20
her said husband continued to reside in the City
of Bridgeton, County of Cumberland, this State,
and there lived together for about two years, after
which time they removed to the City of Plainfield,
County of Union and State of New Jersey, where
they lived together as man and wife until the fourth
day of May, 1931, when the defendant left the home
where he was residing with the complainant, and
after staying for a few days in the City of Plain-
field, moved to the Borough of Manhattan, City and 30
County and State of New York.

3. There has been born to your complainant and
her said husband as the fruit of their marriage the
following children:

Bill of Complaint

Ellen, aged fourteen years,
Howard W., Jr., aged twelve years,
the said children being now in the custody and
residing with your complainant at her residence in
the City of Plainfield, County of Union and State
of New Jersey.

10 4. The defendant, from the time of his marriage
to the complainant until the fourth day of May,
1931, gave a meagre support to the complainant
and their children; and that during the past two
years, he became capricious, sullen and quarrel-
some, ill treating the complainant, frequently de-
priving her and their children of the necessities of
life, refusing to pay bills contracted for clothing
and other necessities for the complainant and their
20 children, frequently calling her vile and vulgar
names in the presence of their children and wrong-
fully and falsely accusing her of misconduct; and
that for more than six months prior to her hus-
band's leaving their home, her brother, Albert Mc-
Allister, and her attorney, Judge Walter L. Hetfield,
Jr., in a friendly way, have pleaded and remon-
strated with him in an endeavor to cause him to
change his conduct and treatment of your complain-
ant, without any result; and from January 1st,
30 1931, until the day of his final abandonment, as here-
after charged, he treated your complainant without
any affection or consideration.

5. Your complainant further shows that there was
no justification on the part of her husband to treat
her in the manner aforesaid by reason of any con-

Bill of Complaint

duct on her part. She cannot account for the same, unless it be true as she has been advised and informed, that he was running around with a married woman residing in Brooklyn, New York, with whom he was infatuated.

6. Your complainant further shows and charges that on the fourth day of May, 1931, the defendant 10 left their home and abandoned your complainant and their children and separated himself from her, saying to the complainant that he was done with her, and that she would have to get along the best she could and not look to him, and that he would send her, from time to time, such money as he could spare; that your complainant gave her husband no cause for such action, but has ever been a true and faithful wife.

20

7. Complainant further shows and charges that when her husband abandoned her, he went to a rooming house in the City of Plainfield, where he stayed for a few days, after which he removed to the City of New York, and has since that time, continued to reside in the said city, county and State; and that, notwithstanding that the complainant has endeavored to effect a reconciliation, he has spurned all her efforts in that respect and refuses to properly maintain and support your complainant and their 30 said children.

8. Complainant further shows and charges that since the fourth day of May, 1931, aforesaid, defendant has abandoned your complainant without jus-

Bill of Complaint

tifiable cause and separated himself from her and has refused and neglected and still does refuse and neglect to properly maintain her and their said children, although since said abandonment, he has been forwarding to your complainant remittances averaging between fifteen and twenty dollars per week.

10

9. Your complainant further shows that she is now dependent for the support of herself and their children, upon her own exertions.

20

10. Your complainant charges that the defendant is possessed of real and personal property; that he is a part owner of the house and lot that the complainant and defendant occupied while living together as man and wife; and that the value of the said dwelling-house is about ten thousand dollars (\$10,000.00), and upon which there is a mortgage of fifty-nine hundred six dollars and twenty-five cents; that he has money deposited in the bank standing to his credit; that he is employed by the Fairmont Glass Company of Indianapolis, Indiana, as its New York representative, having sales district of New York and vicinity, at a salary of six thousand dollars (\$6,000.00) per annum; and that the defendant is abundantly able to maintain and support her and their children in a manner suitable to their position.

30

In tender consideration whereof, and for as much as your complainant can be relieved only in this court, your complainant prays:

Bill of Complaint

1. That Howard W. Pierson, who is the defendant in this suit, may answer this bill of complaint without oath in each statement therein made.

2. 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 complainant and the children of the said marriage and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court as provided by the statutes; and in case the defendant cannot be found in this State, to be served with 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, and that the defendant may be required to pay to your complainant a proper amount of counsel fees, and that she may have such further equity as to your Honor shall seem suitable and just.

3. That a writ of subpoena may issue out of this Honorable Court commanding said defendant to answer this bill of complaint and to abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

4. That such other relief be given as is consonant with equity and justice.

Bill of Complaint

And your complainant will ever pray, etc.

WILLIAM NEWCORN,
*Solicitor for and of Counsel
with Complainant.*

10

State of New Jersey, }
County of Union, } ss.

IRENE M. PIERSON, the within named complainant,
being duly sworn under oath, deposes and says:

I am the complainant herein and I have read the
within bill of complaint and knew the contents there-
of, and the same is true of my own knowledge, ex-
cept as to the matters that are herein stated beyond
my information or belief, and as to those matters, I
believe them to be true.

IRENE M. PIERSON.

Sworn and subscribed to before me this 16th day
of November, A. D. 1931.

MARTIN STUKMAN,
Master in Chancery of N. J.

30

ANSWER.

IN CHANCERY OF NEW JERSEY.

87-266

10

Between

IRENE M. PIERSON,

Complainant,

and

HOWARD W. PIERSON,

Defendant.

On Bill.

Answer.

20

The defendant, Howard W. Pierson, answering the bill of complaint exhibited against him in this cause, says that:

1. He admits the allegations of paragraph 1.

2. He admits the allegations of paragraph 2, except that he says that he left the home where he and the complainant were residing in the City of Plainfield, Union County, New Jersey, on May 4, 1931, because the complainant for sometime prior thereto had treated the defendant in a cruel and indifferent manner, and had repeatedly demanded that he leave the house without further delay and finally after one of these demands on the part of the complainant, defendant did leave on May 4, 1931.

30

3. He admits the allegations of paragraph 3.

4. Defendant denies the allegations of paragraph 4 and says that from the very beginning of his married life until the separation of the parties, at the insistence of the complainant, he supported the complainant and the two children of the marriage to the best of his ability. He denies that he became, during the last two years before the separation, capricious, sullen and quarrelsome, or that he ill-treated the complainant, depriving her and the children of the necessities of life, or that he refused to pay the bills contracted for clothing and other necessities for the complainant and the children, but says that he always provided for his family to the best of his ability; that they were always well taken care of and that he spent more money in the support of his family than he actually earned, thereby running into debt from which he has not yet recovered. He denies that he called the complainant vile and vulgar names on frequent occasions in the presence of the children, or that he wrongfully or falsely accused her of misconduct, and says that he never accused her of misconduct on any occasion, nor did he ever use vile language to her in the presence of the children. He denies that the brother of the complainant and her attorney pleaded and remonstrated with him in an endeavor to cause him to change his conduct, and says that the conferences between the complainant and her attorney and her brother were held for the purpose of attempting to smooth over the marital difficulties, and that the defendant did everything in his power to follow

Answer

the advice of the representatives of the complainant, but that the complainant would not change her mode of living or in any way co-operate with the defendant to try and eliminate the causes of friction between the parties. He further denies that from January 1, 1931, until the separation of the parties at the demand of the complainant he treated the complainant without affection or consideration, but 10 says, on the contrary, that he always treated the complainant with affection and consideration, but that complainant has for the past two years or more refused to have any consideration for the desires or wishes of the defendant and has not exhibited any affection toward him and since January, 1931, has refused to have marital relations with the defendant.

5. Defendant denies the allegations of paragraph 20 5 and says, on the contrary, that he has always treated the complainant kindly and has exhibited affection and consideration toward her, but that the complainant has failed and refused to co-operate with the defendant in attempting to adjust his financial situation, and has refused to accord the complainant his marital rights and has ignored his attempts to adjust the difficulties between them. Defendant denies that he has been running around 30 with a married woman residing in Brooklyn, New York, or that he has in any way been intimate with the said woman, and has only casually visited her and her husband.

6. Defendant denies that on May 4, 1931, he

abandoned the complainant, saying that he was done with her, but says, on the contrary, that he left the house occupied by the parties on that day upon the demand of the complainant, and that complainant had frequently insisted prior to that time that he leave the house, and stated to the complainant in the presence of friends that she wanted him to leave
10 and demanded that he do so. Complainant refused to get meals for the defendant and told him that he could look out for himself. Defendant denies that he told the complainant that she would have to get along as best she could and not look to him for support, and says that he has always supported the complainant and his children in a manner in keeping with his earnings, and that he has ever since the separation of the parties, sent the complainant a regular allowance beside paying various bills in
20 connection with the house which the complainant occupies and which is owned jointly by the complainant and the defendant. He denies the balance of paragraph 6 which says that the complainant gave the defendant no cause for leaving, and repeats that it was at the demand of the complainant that he did leave the home.

7. He admits paragraph 7 in so far as it relates to his residence, but he denies that the complainant
30 has endeavored to effect a reconciliation and that he has spurned all efforts in respect thereto and denies that he has refused to properly maintain and support the complainant and their children, and says that he has supported them to the best of his ability; that he has paid the complainant \$20.00 per

week since the separation; that he has paid building and loan dues and interest on the mortgage on the premises owned by the parties in the sum of \$63.00 per month; that he has paid the taxes on the property, water rent, insurance premiums, insurance on his own life in which policies the children are named as beneficiaries, interest on the second mortgage and also principal and interest on certain obligations 10 which he was obliged to contract by reason of the extravagance of the complainant in her mode of living while the parties resided together. Defendant says that on May 8, 1931, he attempted to effect a reconciliation with the complainant and called at his home where the complainant was residing, but the complainant stated that she did not mean to take the defendant back to live with her and that she would never consent to living together 20 with him again as man and wife, and that she has refused any offers to effect a reconciliation and whenever the parties have met since the separation, she has treated the defendant coldly and without any evidence of affection or desire to smooth out their marital difficulties.

8. Defendant denies that ever since the 4th day of May, 1931, he has abandoned the complainant without justifiable cause, although he admits that since that date he has lived separate and apart from 30 her. He further denies that he has refused and neglected and still refuses and neglects to properly support the complainant and his said children, and admits that since the separation he has forwarded the complainant \$20.00 per week, and that in addi-

tion thereto he has paid numerous household bills and carrying charges on the property in which the complainant resides.

9. He denies the allegations of paragraph 9 and says that he is furnishing the complainant with support and maintenance to the best of his ability, and that any earnings which the complainant has
10 by reason of her own exertions are due to her desire to have better conditions than the defendant can give her upon his salary.

10. Defendant says that the only property possessed by him is the house and lot owned jointly by him and the complainant and in which property the complainant now resides, which was appraised at \$8500.00 and has thereon a first mortgage upon
20 which there is presently due \$5900.00 and a second mortgage upon which there is presently due \$400.00. He denies that said dwelling-house has a value of \$10,000.00. He admits that he has a checking account in which there is a small balance, and that he is employed by the Fairmount Glass Company at a salary of \$6000.00 per year, and he says that he has always supported the complainant and the children of the marriage in a manner suitable to his position and in keeping with his earnings. For quite a long
30 period of time the mode of living of the parties was beyond the money which the defendant was earning and by reason thereof he was forced to borrow to pay off debts incurred by living expenses and is at the present time indebted for money borrowed to pay off household expenses to the extent of approxi-

Stipulation

mately \$2685.00. Defendant further says that the complainant is in receipt of \$11.00 per week from the rental of two rooms in the house occupied by her, and that she receives in addition thereto \$35.00 per week from the State of New Jersey for her services as an investigator in the Department of Institution and Agencies, and that she has been in receipt of said salary since February 24, 1931. 10

Defendant, therefore, prays that the bill of complaint wrongfully exhibited against him in this cause, may be dismissed.

CHILD AND SHIPMAN,
Solicitors for Defendant.

STIPULATION. 20

IN CHANCERY OF NEW JERSEY.

Between

IRENE M. PIERSON,

Complainant,

and

HOWARD W. PIERSON,

Defendant.

} On Petition.
Stipulation.

30

Stipulation in the above-entitled cause taken on May 12th, 1932, before the Honorable James F.

Stipulation

Minturn, Advisory Master, at his office, 60 Park Place, Newark, New Jersey, attended by William Newcorn, Esquire, solicitor for and of counsel with complainant, and Francis Child, Esquire, for Child & Shipman, solicitors for and of counsel with defendant.

- 10 Mr. Child: The parties, as I understand it, have arrived at an adjustment of their difficulties. The defendant, whom I represent, is willing to pay the sum of two hundred dollars (\$200.00) per month for the support and maintenance of his wife and the children of the marriage and in full for all bills and expenses whatsoever incident to the upkeep of the house and this includes building and loan, taxes, water rents, repairs and anything that may be necessary in connection with the maintenance of the
- 20 home occupied by the complainant in this case. That the complainant is to have the use of the home, so long as she so desires, upon paying the upkeep charges out of the allowance of two hundred dollars (\$200.00).

- It is further my understanding, and I understand, agreed to by the parties, that for the time being, and until the further order of this Court, the defendant is to have the right to the exclusive custody of these children for one day a week and during the
- 30 time of such exclusive custody, he is to have the sole custody and is to have the right to take the children to any convenient place, irrespective of whether that be in New Jersey or in New York or other part of the metropolitan district. This, I understand, is agreed to by the complainant.

The two hundred dollar (\$200.00) payments are to be made twice a month, on the 12th and 27th of each month. The check for said payments is to be sent to Judge Newcorn and to his order and Judge Newcorn is to see to it that the fixed charges such as taxes and building and loan, accruing on the house, are to be paid and receipts therefor rendered whenever requested by the defendant. 10

The house charges are to include whatever fire insurance premiums are necessary to protect the property. Is that all right?

Mr. Pierson: That is all right.

The Court: Is that to include necessary medical expense?

Mr. Child: Every incidental expense. 20

It is further stipulated that the alimony accruing under the order made by Vice-Chancellor Church in this cause, on April 16, 1932, is to be paid up to the time of the entry of the final decree in this matter.

FINAL DECREE.

(Filed March 17, 1933.)

IN CHANCERY OF NEW JERSEY.

10

87-266

Between

IRENE M. PIERSON,

Complainant,

and

HOWARD W. PIERSON,

Defendant.} On Bill, etc.
Final Decree.

20

This cause coming on to be heard in the presence of William Newcorn, solicitor and of counsel with the complainant, and Francis Child, of the firm of Child and Shipman, solicitors and of counsel with the defendant, before the Honorable James F. Minturn, one of the Advisory Masters of this court, to whom, by order previously made, it was referred to hear in the place and stead of the Chancellor; and the parties having stipulated in open court that the defendant is to pay the sum of two hundred dollars (\$200.00) per month for the support and maintenance of his wife, Irene M. Pierson, and Ellen and Howard, Jr., the children of the marriage, in

Final Decree

full for all bills and expenses whatsoever incident to the upkeep of the house, including building and loan payments, taxes, water rents, repairs and all other incidental expenses necessary in connection with the maintenance of the home occupied by the complainant and her children, together with the right to use the home belonging to the complainant and the defendant as long as she so desires, on paying the upkeep charges out of the sum aforesaid; the complainant to have the custody of the said children and privilege granted to the defendant to have the exclusive custody of the children for one day a week, and during the time of such exclusive custody, to have the sole custody and right to take the children to any convenient place, irrespective of whether it is in this State or in the State of New York; the said sum of two hundred dollars (\$200.00) to be paid in equal, semi-monthly payments on the 12th and 27th of each and every month in advance, said payments to be made by check made out to the solicitor of the complainant, who is to pay the fixed charges herein mentioned and the balance to be paid to the complainant; also that the back alimony, counsel fee and costs accruing under the order heretofore made on the 16th day of April, 1932, be paid up to the time of the entry of the final decree. And it appearing to the Court that the terms of said stipulation are considered and deemed a suitable allowance for the purposes aforesaid, under the present financial circumstances of the defendant;

It is thereupon, on this 11th day of March, A. D. 1933, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, ordered, adjudged and

decreed, that the defendant, Howard W. Pierson, do pay to the complainant, Irene M. Pierson, or to her solicitor, the annual sum of twenty-four hundred dollars (\$2400.00), in equal, semi-monthly installments of one hundred dollars each, on the 12th and 27th days of each month respectively, for the support and maintenance of the said complainant and Ellen and Howard, Jr., the children of the complainant and defendant, and the payment of the building and loan installments, taxes, water rents, repairs, fire insurance and all necessary expenses in the maintenance of the home belonging to the complainant and the defendant and now occupied by the complainant and her children, from the date of this decree, which dwelling house said complainant is to have use of as long as she desires, upon the payment of the upkeep charges;

20 And it further appearing that the parties, by stipulation in open court, have consented that the payments herein provided should be paid to the solicitor of the complainant;

It is ordered, adjudged and decreed that the installment payments to be made by the defendant under the order, be made to the order of the solicitor of the complainant, who is authorized, from said sums of money, to pay the installment building and loan payments, taxes, water rents, fire insurance and the necessary fixed charges on the property occupied by the complainant.

30 And it appearing to the Court that there is due and owing to the complainant from the defendant, arrearage for alimony and maintenance *pendente lite* under the order therefor previously made in

this cause, from the 24th day of November, to the making of this decree;

It is therefore ordered, adjudged and decreed, that the defendant do forthwith pay to the complainant or to her solicitor, the sum of money found to be due under the terms of the said order, the arrears of alimony as aforesaid, together with the counsel fee and costs allowed in the said order. 10

It is further ordered, adjudged and decreed that the exclusive control, possession and custody of Ellen and Howard, Jr., infant children of the said complainant and defendant, be given and committed to said complainant, subject, nevertheless, to the right of the defendant to the exclusive custody of the said children for one day a week, during which time of such exclusive custody, to have the right to take the children to any convenient place, irrespective of whether it is in the State of New Jersey, 20 or in the State of New York.

It is further ordered, adjudged and decreed that the said defendant do pay to the complainant or her solicitor, the costs of this suit to be taxed, and also the sum of one hundred fifty dollars (\$150.00), which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of complainant, in addition to the counsel fee heretofore allowed to the counsel of the said complainant; and that the said complainant do have execution for said costs 30 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.

Final Decree

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, maintenance and custody, as shall be just and equitable.

LUTHER A. CAMPBELL,
C.

10

Respectfully advised,
JAMES F. MINTURN,
Advisory Master.

A true copy.
FERD GARRETSON,
Clerk.

20

30

PETITION TO OPEN AND AMEND DECREE.

(Filed March 6, 1934.)

IN CHANCERY OF NEW JERSEY.

10

Between

IRENE M. PIERSON,
Complainant,
and
HOWARD W. PIERSON,
Defendant.

On Bill, &c.
Petition to Open and
Amend Decree.

20

*To the Honorable Luther B. Campbell, Chancellor of
the State of New Jersey:*

The petition of Howard W. Pierson, of Brooklyn,
New York, respectfully shows that:

1. Petitioner is the defendant in the bill of com-
plaint filed herein.

2. Said bill was filed for maintenance for com-
plainant and two minor children, Ellen and Howard,
Jr.

3. Defendant, upon being served with subpoena,
obtained as his counsel, Francis Child, Esq., of the

30

Petition to Open and Amend Decree

firm of Child & Shipman, of Newark, New Jersey, who, on his behalf, filed an answer in this cause, which answer contained a categorical denial of all of the charges in the complaint.

4. Said cause of action came on for a hearing in due course before Advisory Master James F. Min-
10 turn, on May 12, 1932. On the date set for a hearing, defendant attended with his witnesses and counsel, intending to make a vigorous defense to said action. During the noon recess and before complainant's case was finished and before the taking of any testimony on behalf of defendant, counsel for complainant and defendant conferred, and defendant being solicitous of the welfare of his minor children and wanting to support them in accordance with his means and station in life, agreed to have
20 an oral stipulation entered upon the records for a monthly payment of \$200.00, which was in full for all bills and expenses, including building and loan payments, taxes, water rent, etc.

5. At the time petitioner herein agreed to said payment, he was advised that said arrangement would not interfere with his later applying for a divorce from his wife, and petitioner further says that at the time of the oral agreement, it was distinctly understood and agreed that such action
30 should not be an admission on behalf of petitioner of the complainant's charge of abandonment.

6. Neither petitioner nor his counsel had any information that a final decree was about to be entered on said maintenance suit and no notice of complain-

Petition to Open and Amend Decree

ant's application for the entry of a decree was given to petitioner or his counsel; notwithstanding this fact, said decree was entered ten months, viz., on March 11, 1933, after the said oral stipulation was entered into and entered on the records of the Court.

7. In September, 1933, petitioner herein instituted suit in the Court of Chancery of the State of New Jersey, for divorce against his wife, Irene M. Pier- 10
son, on the grounds of desertion, and there was pleaded therein as a defense to said action and by way of answer in lieu of plea, the final decree in said maintenance suit.

8. Petitioner herein and likewise the petitioner in his present suit for divorce (Docket 98-441) there-
upon filed a replication. Defendant, Irene M. Pier- 20
son, by her counsel, moved to strike said replication, before Advisory Master Grossman, who on February 7, 1934, filed a memorandum, to strike the same, but no order pursuant thereto has been entered.

9. Petitioner avers that said decree in said main-
tenance suit (Docket 87-266) was not entered in
accordance with the rules of this court or the under-
standing between counsel, and if permitted to stand,
would be inequitable, unjust and be a fraud upon
petitioner and this Court, and that no order based 30
on the conclusion filed in the suit for divorce (Docket
98-441) should be entered until after the determina-
tion of the question raised herein.

By virtue of said decree, petitioner is greatly
prejudiced and injured in that he had no oppor-

Petition to Open and Amend Decree

tunity of being heard upon the entry of the decree, the legal effect of which might act as a bar to petitioner's present action for divorce which was in direct opposition to the agreement of counsel in the matter.

Petitioner therefore prays that said decree may
 10 be opened and set aside to the end that petitioner may be permitted to actively defend said suit on the merits set forth in his pleadings, and/or that said decree may be amended to the effect that same is entered without prejudice to the rights of either party to file a petition for divorce.

And petitioner further prays, that defendant, Irene M. Pierson, and her counsel, McDonough & McDonough, be restrained from entering any order
 20 or file other pleadings in the divorce suit (Docket 98-441) until further order of this Court.

RUSSELL S. HENDERSON,
Solicitor of Petitioner.

State of New York, }
 County of New York, } ss.

30 HOWARD W. PIERSON, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the petitioner in the foregoing petition named, and the matters and things therein set forth are true.

I was the defendant in a maintenance suit insti-

Petition to Open and Amend Decree

tuted in the Court of Chancery of New Jersey, wherein Irene Pierson was complainant (Docket 87-266). Said suit was instituted about November, 1931, and I engaged Mr. Francis Child, of the law firm of Child & Shipman, as my counsel. I advised my solicitors to file a defense to all of the allegations in the bill. This was done, and in due course a hearing was had before Advisory Master James F. Minturn, on May 12, 1932. The only testimony taken was that of the complainant and the noon recess interfered with the progress of the case so that the cross-examination of complainant was not completed. During the noon recess, counsel for Mrs. Pierson and counsel for myself, conferred concerning the matter. Following the conference, my solicitor consulted with me, and as it was my desire to properly support my two children and maintain their home, they being students at the Plainfield High School, an agreement was reached whereby I was to make payments for building and loan, taxes, etc., amounting in all to two hundred dollars per month. It was understood at that time, however, that this amicable agreement was not to act as an admission of abandonment on my part and I was assured by my counsel that such action would in no wise interfere with my later making application to this court for a divorce.

It appears from the record, that an oral stipulation made in open court immediately following the noon recess, did not admit any abandonment on my part but shows a consent order for the payment of various expenses, amounting in all to the sum of two hundred dollars per month.

Petition to Open and Amend Decree

I heard nothing further in the matter until April 4, 1933, when a copy of what purports to be a final decree was served upon me personally. This was approximately eleven months after the hearing before Advisory Master Minturn. I immediately took to my solicitor, Mr. Child, the copy of the final decree, which was served upon me. Mr. Child informed me that no notice had been served upon him advising him that a decree would be applied for.

In September, 1933, deponent desired to institute proceedings for divorce, and by reason of the fact that my former counsel, Mr. Francis Child, had been appointed an Advisory Master of the Court of Chancery, I engaged the services of Russell S. Henderson, of Bridgeton, New Jersey, who instituted suit for me. This suit is docket 98-441. An answer in lieu of plea was filed on behalf of the defendant, Irene M. Pierson, in the latter suit by McDonough & McDonough, of Plainfield, setting forth the decree in the maintenance suit as a bar to the continuance of my suit for divorce. I would never have consented to a settlement had I known such a decree could be pleaded as a bar to my divorce action.

I did not desert nor abandon my wife and children. To the contrary, in the testimony of my wife, taken at the maintenance hearing, she admitted that she refused intercourse with me and left our marital bed first. I am still willing and desirous of having the defense as set forth in my answer now on file, to be heard by this Court.

Deponent further says that he is still willing to support his children, but asks that the final decree

Petition to Open and Amend Decree

in the maintenance suit, referred to as docket 87-266, be opened so as to permit my defense to be heard, and/or amended so as to provide that said decree was entered without prejudice to either party to take such proceedings as they desire for divorce, which will permit the difference between the parties to be heard on its merits.

HOWARD W. PIERSON. 10

Sworn and subscribed before me this first day of March, 1934.

(Seal) KATHERINE FREELAND,
Notary Public.

State of New Jersey, }
County of Essex, } ss.

EVERETT M. SCHERER, of full age, being duly sworn according to law, upon his oath deposes and says:

I am a Master in Chancery of New Jersey, and am associated with the firm of Child and Shipman, who were solicitors for the defendant, Howard W. Pierson, in a suit in the Court of Chancery of New Jersey, in which his wife, Irene Pierson, was complainant, docket 87-266, which suit was a bill for maintenance filed by the wife. I was associated in the trial of the case with Mr. Francis Child, and appeared in court with him on the trial day. 30

The case came on in due course for hearing before Advisory Master James F. Minturn on May 13, 1932. The case proceeded during the morning and at the adjournment hour a conference was had

Petition to Open and Amend Decree

between the solicitors for the parties. The complainant's case was not completed at that time and no testimony had yet been offered on behalf of the defendant.

At the conference an amount was arrived at, which the complainant felt should be paid to her by the defendant in order to adequately provide for her and the two children of the marriage and keep up the home which was owned as tenants by the entirety by the complainant and defendant, and in which the complainant and her two children were then living. It was distinctly understood at that time that this was not to constitute an admission of abandonment on the part of the defendant, inasmuch as he was ready and had witnesses present to prove that he did not abandon complainant, and his answer filed in the cause contained a categorical denial of all the charges of the complainant, which denial the defendant stood ready at the trial to prove. A stipulation was dictated on the record as to the amounts of the payments, and there was nothing stated in the stipulation concerning the merits of the case.

All of the matters were settled at that time, except the matter of a *ne exeat* bond, and after some argument as to whether the final decree should contain a provision for the continuance of a bond, since the defendant was then residing in the State of New York, the Advisory Master ordered counsel to submit briefs. Accordingly, a decree was not then presented for signature.

On May 17, 1932, William Newcorn, Esquire, solicitor for the complainant, submitted to us a

Petition to Open and Amend Decree

form of decree which we refused to consent to, because he provided therein for a bond, and we refused to consent to such decree and advised Mr. Newcorn on May 24, 1932, that in view of the dispute, we assumed that he would give us the usual five days' notice of an application to settle the terms of the decree.

On June 2, 1932, we were requested by the Ad- 10
visory Master to submit a memorandum of law dealing with the question of whether a provision for the bond should be contained in the final decree. Pursuant to the Court's request, we submitted a memorandum on June 15th, a copy of which we served on the solicitor for the complainant, and on July 9, 1932, he filed with the Court his answering memorandum, and on July 13, 1932, we filed our reply. Thereafter, we had no further communication regarding the decree, either from the Court or 20
the solicitor for the complainant, until a certified copy of the decree and bill of taxed costs was delivered to us by the defendant, it having been served personally upon him. The decree was dated March 11, 1933, and the first intimation that we had that a decree was entered, or that the Court had decided the question of the bond, was when the defendant advised us that the decree had been served upon him.

It was never the intention of the parties that the 30
decree entered in the suit should be an admission by the defendant of the complainant's charges of abandonment, and a decree was entered merely for the purpose of having stated on the record in concrete form the money settlement which was made.

EVERETT M. SCHERER.

Order to Show Cause

Subscribed and sworn to before me this 21st day
of February, 1934.

SAMUEL B. HILFAND,
Atty.-at-Law of N. J.

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ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

	Between	
	IRENE M. PIERSON,	} On Bill, &c. } On Petition to Open } and Amend Decree. } Order to Show Cause.
	<i>Complainant,</i>	
	and	
20	HOWARD W. PIERSON,	}
	<i>Defendant.</i>	

A petition having been filed herein, by Howard
W. Pierson, defendant in the above-entitled cause,
wherein it is alleged that he is a resident of the
City of Brooklyn, in the State of New York, and
that he is the party in interest in the suit; that
30 process of subpoena was issued against him and
that on the date set for final hearing, oral stipula-
tions were entered into between counsel of the par-
ties, setting forth an amicable agreement for pay-
ment of certain moneys, but that said agreement was
in no wise to act as an admission on behalf of the

petitioner herein, of the complainant's charge of abandonment; that a final decree was entered by complainant's counsel without any notice to petitioner or his counsel and not in accordance with the rules of this court; and that such decree thus entered has been pleaded as a bar to petitioner's subsequent suit for divorce;

It is, thereupon, on this 6th day of March, 1934, 10
ordered, that Irene M. Pierson, the above-named
complainant, show cause before Dougal Herr, Ad-
visory Master for this Court, on the 20th day of
March, 1934, at the Chancery Chambers in the City
of Newark, at the hour of ten o'clock in the fore-
noon or as soon thereafter as counsel can be heard,
why the final decree of this Court made in this cause
(Docket 87-266) should not be opened, set aside,
vacated and/or amended and for nothing holden,
on the ground that the Court was fraudulently in- 20
duced to make said decree.

And it is further ordered that the said complainant and her solicitors be restrained from taking further steps or proceeding in the divorce suit now pending between said parties (Docket 98-441) until the further order of this Court.

It is further ordered that true but uncertified copies of this order and of the petition and affidavits whereon it is founded, be served upon the said Irene M. Pierson and her solicitors, McDonough & Mc- 30
Donough, within 5 days.

LUTHER A. CAMPBELL,
C.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.
87-266

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Between IRENE M. PIERSON, <i>Complainant,</i> and HOWARD W. PIERSON, <i>Defendant.</i> /	}	On Bill for Main- tenance. On Petition to Vacate Final Decree, &c. Conclusions.
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(Not to be reported in the official or unofficial reports.)

Russell S. Henderson, Esq., for defendant.
McDonough & McDonough, Esqs., for complainant.

30 HERR, A. M.:
A final decree was entered in this cause on March 11, 1933, in favor of the complainant. The defendant filed his petition on March 6, 1934, praying that the final decree "be opened and set aside to the end that petitioner may be permitted to actively defend said suit on the merits set forth in his plead-

ings, and/or that said decree may be amended to the effect that same is entered without prejudice to the rights of either party to file a petition for divorce.”

The affidavits accompanying the petition and those filed by the complainant on the return of the order to show cause, together with the pleadings and other papers filed in the cause, establish the following relevant facts: 10

To the complainant's bill of complaint charging abandonment and refusal by her husband to properly maintain and support her and the children of the marriage, the defendant filed an answer categorically denying the allegations of fact contained in the bill and comprising the charges of abandonment and non-support, thus putting both of these charges in issue. On the date fixed for final hearing the defendant appeared with his counsel and witnesses prepared to make a vigorous defense to the charges. The only witness who took the stand was the complainant, who was examined in chief and partly cross-examined. Her cross-examination was interrupted by the noon recess. 20

During recess counsel for the parties, with their respective clients' knowledge and consent, arrived at a settlement by which a decree was to be entered in the cause in favor of the complainant providing monthly payments of \$200 for her support and that of the children. This settlement was embodied in a stipulation dictated into the record, and the decree was (after some delay) advised accordingly. 30

The defendant makes affidavit that he understood that the agreement contemplated only the payment

of money and "was not to act as an admission of abandonment on my part, and I was assured by my counsel that such action would in no wise interfere with my later making application to this Court for a divorce." The defendant's then counsel has since been appointed and is now acting as an Advisory Master of this court and, no doubt for that reason, 10 has not furnished an affidavit, but his assistant at the hearing, a solicitor of this court, makes affidavit that he was present and participated in the making of the settlement, and that "It was distinctly understood at that time that this (the settlement) was not to constitute an admission of abandonment on the part of the defendant, inasmuch as he was ready and had witnesses present to prove that he did not abandon complainant * * * ."

20 The stipulation dictated into the record contains no reference to the charge of abandonment, nor does the final decree expressly adjudicate that the defendant had abandoned the complainant, although such was its legal effect. *Oertel v. Oertel*, 92 N. J. Eq. 327.

30 On September 28, 1933, the defendant filed a petition for divorce on the ground of desertion against the complainant herein, in this court (Dk. 98, p. 441), and was met by an answer in lieu of plea setting up in bar the final decree entered in this cause. To this answer he filed a special replication, whereupon motion to strike the same was made. The Advisory Master who heard the motion to strike has filed conclusions in which he says he will advise an order to strike. No other conclusion was open to him, since the replication amounted to a collateral attack.

No such order has yet been advised, however, since the present proceeding has intervened.

In my judgment the situation thus presented to the Court on the present application calls for equitable relief on well settled principles. The defendant has been deprived of his day in court and has lost a substantial right through accident, without any intention on the part of himself or his counsel to lose it. His authorization to his counsel was in effect to agree on a monthly sum for maintenance provided his right, if any, to bring suit for divorce at a later time be reserved to him and by inadvertence this does not appear in either the stipulation entered into in open court or in the decree. 10

In *Howe v. Lawrence*, 22 N. J. L. 99, the defendant was in possession of final judgment. His attorney made an agreement with the plaintiff facilitating proceedings on writs of error, affording the plaintiff every aid possible to secure a reversal, and agreeing that if reversal was not secured the judgment would be vacated and the litigation begun anew. There was doubt as to whether the attorney had been specially authorized by his client to make such an agreement. The Supreme Court held that in either event the agreement was bad, that it amounted to deliberate surrender of the defendant's substantial rights, that the attorney had no implied authority to make it, and that if he had express authority the effect could not have been understood by the defendant and so it was "not his agreement." 20 30

The second headnote reads as follows:

"Agreements made by attorneys and counsel,

as to the manner of conducting a cause, will be respected and enforced by the Court; but such agreements are not legal contracts, and are under the discretion and control of the Court; and an agreement wanting in mutuality, and by which, without the consent of his client, an attorney has waived his client's substantial legal right, will not be enforced."

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In *Dickerson v. Hodges*, 43 N. J. Eq. 45, Van Fleet, V. C., says:

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"Under the authority conferred by a retainer, a solicitor has no authority to surrender any substantial right of his client. A solicitor cannot give up the security of his client without actual payment, unless he is specially authorized to do so. *Terhune v. Colton*, 2 Stock. 21. Nor can he accept payment of a part of a debt in satisfaction of the whole, without like authority. *Watts v. Frenche*, 4 C. E. Gr. 407. And, while an attorney or solicitor may make valid agreements relating to the conduct of a suit, yet, even in such matters, he cannot surrender a substantial right of his client, without his client's consent. *Howe v. Lawrence*, 2 Zab. 99."

30

In *Faughnan v. Elizabeth*, 58 N. J. L. 309, the Supreme Court held that an attorney has no power to satisfy a judgment upon payment to him of less than the full amount due, without his client's consent, and a satisfaction of judgment so entered will be vacated if the defendant was not misled or rights of third parties intervene.

In *Callaway v. Equitable Trust Co.*, 67 N. J. L. 44, it was held that an attorney retained to draw a lease cannot without special authority bind his client to pay a broker's commission.

The Court of Errors and Appeals in *Bentley v. Fidelity & Deposit Co.*, 75 N. J. L. 828, held that an attorney cannot without special authority bind his client to pay counsel retained by the attorney 10 to assist him in his client's case.

In *Strauss v. Rabe*, 97 N. J. Eq. 208, *Bentley, V. C.*, held that the attorney of the vendor, on passing title under contract which makes time of the essence, cannot extend the time without special authority.

The Court of Errors and Appeals in *Hygrade Cut Fabric Co. v. U. S. Stores Corp.*, 105 N. J. L. 324, held that where plaintiff's attorney, without special authority, withdrew a deposit of money 20 made by defendant with the clerk of the court, under a misapprehension as to the legal effect of such withdrawal, which was that plaintiff was precluded from securing the balance of his claim against the defendant, the Court properly set aside the order allowing the withdrawal and restored the *status quo ante*.

In the recent case of *Crandol v. Garrison*, 115 N. J. Eq. 11, *Sooy, V. C.*, opened a final decree in partition after the lapse of years where it was 30 shown that the testimony upon which it was based incorrectly described the location of lands, applying the principle that where there is an untruthful representation of a material fact, though it arise through mistake only, it is a fraud in equity.

In the case *sub judice* the decree impliedly adjudicated that the defendant had abandoned the complainant. This adjudication was not based on evidence, but on a stipulation, which amounted to an incorrect and unintentional representation that the defendant admitted the abandonment charged.

10 A decree will be opened when it has been made unjustly against a right or interest that has not been heard or protected.

Brinkerhoff v. Franklin, 21 N. J. Eq. 334.

There has been no laches in making the application; the situation of the complainant has not changed since the decree was entered. The application was made within one year. There is no reason why it should not be granted on proper terms. The equities of the case require it to be granted.

20 Jones v. Fayerweather, 46 N. J. Eq. 237;
Steinhardt Bros. & Co. v. Cohen, 86 N. J. Eq. 323.

The decree cannot properly be amended by providing that it shall not prejudice the rights of the parties on the question of abandonment, because an adjudication of abandonment is jurisdictional: without it the decree cannot stand. It must be set aside. At the same time an order will be advised herein
30 continuing the money payments provided by the decree until the termination of the proceedings, and consolidating the two suits, so that the divorce petition will become a counter-claim in the maintenance suit. Appropriate pleadings may then be filed and both complaints brought to issue in the one proceeding. I will advise orders accordingly.

ORDER.

(Filed April 30, 1934.)

IN CHANCERY OF NEW JERSEY.

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Between IRENE M. PIERSON, <i>Complainant,</i> and HOWARD W. PIERSON, <i>Defendant.</i>	}	On Bill for Main- tenance. On Petition to Have Final Decree Vacated. Order.
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This matter being opened to the Court by Russell S. Henderson, solicitor of the defendant, Howard W. Pierson, in the presence of Andrew L. McDonough, of the firm of McDonough & McDonough, solicitors of the complainant, Irene M. Pierson, and the Court having read and considered the petition and affidavits of the said defendant, and the counter-affidavits of the said complainant;

And it appearing that the order to show cause made in this matter has been served in the manner therein directed; and the Court having considered the matter, and being satisfied that the final decree made on the eleventh day of March, 1933, was based upon a stipulation made in open court whereby the

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defendant without intent to admit the charge of abandonment made against him agreed that the complainant might take a decree for the payment of \$200.00 a month for her maintenance and that of the children of the marriage in her custody, and it further appearing that the said decree impliedly adjudicates that the said defendant was guilty of
10 abandoning the complainant as charged, which circumstance calls for the exercise by this Court of its discretionary power to open and vacate said decree to the end that the rights or interests of the said defendant, Howard W. Pierson, can be heard by this Court and his interest properly protected;

It is, on this 30th day of April, nineteen hundred and thirty-four, ordered, adjudged and decreed, that the final decree made in this cause be opened, set aside, vacated and for nothing holden.

20 It is further ordered that the two suits now pending in the Court of Chancery, docket No. 87-266 and docket No. 98-441, be and the same are hereby consolidated so that the divorce petition will become a counter-claim in the maintenance suit.

And be it further ordered that further necessary and proper pleadings may be filed by both parties in interest so that the matters therein contained may be brought to issue in one proceeding.

30 And it is further ordered that the said Howard W. Pierson pay to the said Irene M. Pierson the sum of two hundred dollars, monthly, during the pendency of this suit, which moneys shall be considered as alimony *pendente lite* for the maintenance and support of the said Irene M. Pierson and the two minor children of their marriage.

And it is further ordered that the defendant, Irene M. Pierson, have ten days from the date of service of a true copy of this order upon her solicitor herein in which to answer the counter-claim of Howard W. Pierson, for divorce.

LUTHER A. CAMPBELL,
C.

Respectfully advised,
DOUGAL HERR,
A. M.

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PETITION.

IN CHANCERY OF NEW JERSEY.

*To His Honor, Luther B. Campbell, Chancellor of 20
the State of New Jersey:*

The petition of Howard W. Pierson, of No. 50 Clark Street, in the City of Brooklyn, and State of New York, respectfully shows:

FIRST CAUSE OF ACTION.

1. He was lawfully married to Irene M. Pierson, the defendant in this cause, on the 12th day of October, 1916, by the Reverends Heber H. Beadle and H. E. Bodder, both ministers of the gospel, at Bridgeton, New Jersey. 30

2. Petitioner and defendant cohabited after their said marriage in the City of Bridgeton, Cumberland

County, New Jersey, for a period of two years, and then in the City of Plainfield, Union County, New Jersey, until early in the month of January, 1931, when said defendant deserted your petitioner, ever since which time and for more than two years last past the said defendant has wilfully, continuedly and obstinately deserted him.

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3. Defendant was a bona fide resident of the State of New Jersey when this cause of action arose and has ever since and for more than two years next preceding the commencement of this action, continued to be such a bona fide resident.

4. Two children were born of said marriage, to wit: Ellen Pierson, aged sixteen years, and Howard W. Pierson, Jr., aged fourteen years.

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SECOND CAUSE OF ACTION.

1. The allegations of paragraph 1 of the first cause of action, are repeated.

2. Petitioner and defendant, after their marriage, lived together as husband and wife until about the first of January, 1931, when defendant removed herself from the bedroom of petitioner, and later, during petitioner's absence, removed all petitioner's
30 personal belongings to another room, and upon his return at night, advised him that that was to be his bedroom in the future. Notwithstanding said act, petitioner remained in the same house with defendant until on or about May 4, 1931, when he was

compelled to leave defendant on account of her cruel and abusive treatment of him.

Particularly specifying said treatment, petitioner says that following defendant's removal from petitioner's bed, defendant refused to cook petitioner's meals; assumed a marked air of superiority and conducted herself in a manner at no time taking petitioner into consideration; would plan parties at the home and request petitioner to absent himself from the home as she did not want petitioner around when her friends came in. On other occasions, when petitioner would return home and find company there whom he did not know were to be present, defendant asked petitioner to leave the room and retire as she did not want him present. Defendant, during said period between January and May 4, 1931, would hold petitioner up to ridicule before the children. Defendant would treat petitioner as her intellectual inferior, became dogmatic and intolerant so that petitioner's health became impaired and rendered his life one of utter wretchedness and misery, and being unable to stand the strain of said treatment any longer, on May 4, 1931, was compelled to leave defendant, since which time he has lived apart from said defendant, and although petitioner has made representations for reconciliation, all of his efforts have failed.

The defendant, by the true intention and meaning of the statute in such cases made and provided, has, ever since the fourth day of May, 1931, and for more than two years last past, wilfully, continuedly and obstinately deserted your petitioner.

3. The allegations of paragraph 3 of the first cause of action, are repeated.

Petition

4. The allegations of paragraph 4 of the first cause of action, are repeated.

5. Petitioner further shows that the respective addresses of himself and defendant, are as follows:

Petitioner, Howard W. Pierson—No. 50 Clark Street, Brooklyn, New York.

10 Defendant, Irene M. Pierson—No. 433 East Seventh Street, Plainfield, New Jersey.

Your petitioner prays that the marriage between him and the defendant may be dissolved for the causes aforesaid, according to the statute in such cases made and provided, and that he may have such further relief as may be just, and your petitioner will ever pray, etc.

RUSSELL S. HENDERSON,
Solicitor of Petitioner.

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State of New York, }
County of } ss.

HOWARD W. PIERSON, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between he and the defendant, but in truth and good faith, for the causes set forth in the petition. 10

Deponent further says that the facts, matters and things set forth in the petition, so far as they relate to the acts of the petitioner, are true, and so far as they relate to the acts of others, he believes them to be true. 20

HOWARD W. PIERSON.

Sworn and subscribed before me at New York, this 14th day of September, nineteen hundred and thirty-three.

DOROTHY C. COZINE,
Notary Public of New York.

*Answer to Counter-Claim and
Counter-Claim*

ANSWER TO COUNTER-CLAIM AND
COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

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87-226

Between	IRENE M. PIERSON,	}	On Bill for Main-
	<i>Complainant,</i>		tenance.
	and		Answer to Counter-
	HOWARD W. PIERSON,		Claim and Counter-
	<i>Defendant.</i>		Claim.

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The answer of Irene M. Pierson, the complainant, and defendant on the counter-claim, to the petition of Howard W. Pierson, defendant and counter-claimant.

ANSWER TO THE FIRST CAUSE OF ACTION.

30 1. She admits that she was lawfully married to counter-claimant as alleged in paragraph 1 of the first cause of action in the petition.

2. She admits the allegations of paragraph 2, except that she denies that she deserted the counter-

claimant as alleged and thereafter wilfully, obstinately and continuedly deserted him for more than two years prior to the date of filing the counter-claim and alleges that on the fourth day of May, 1931, counter-claimant deserted her, ever since which time said counter-claimant has wilfully, continuedly and obstinately deserted her. 10

3. She admits that she was a bona fide resident of the State of New Jersey at the time the counter-claim was filed and has ever since and for more than two years next preceding the filing of said counter-claim continued to be a bona fide resident of New Jersey.

4. She admits that two children were born of her marriage to counter-claimant and that their names 20 and ages are as stated in the counter-claim.

ANSWER TO THE SECOND CAUSE OF ACTION.

1. She admits the allegations of paragraph 1 of the second cause of action.

2. She denies the allegations of paragraph 2 of the second cause of action.

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3. She admits the allegations of paragraph 3 of the second cause of action.

4. She admits the allegations of paragraph 4 of the second cause of action.

*Answer to Counter-Claim and
Counter-Claim*

5. She admits the allegations of paragraph 5 of the second cause of action.

Complainant prays that the defendant's counter-claim may be dismissed with costs and counsel fees.

10

COUNTER-CLAIM FOR DIVORCE.

The complainant, by way of counter-claim exhibited against the defendant, says that:

1. She and the defendant cohabited until the fourth day of May, 1931, at which time the said defendant deserted her, ever since which time and for more than two years last past, the said defendant has wilfully, continuedly and obstinately deserted her.

20

2. Complainant has been a bona fide resident of the State of New Jersey continuedly since the said desertion and the complainant has been continuedly a bona fide resident of the State of New Jersey for more than two years next preceding the filing of this counter-claim, residing at No. 433 East Seventh Street, in the City of Plainfield, County of Union and State of New Jersey.

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3. Two children were born of the marriage between defendant and complainant, to wit: Ellen Pierson, age sixteen (16) years, and Howard W. Pierson, Jr., age fourteen (14) years, who are in the custody of this complainant.

*Answer to Counter-Claim and
Counter-Claim*

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4. Complainant's maiden name was Irene M. McAllister.

5. The complainant prays that the marriage between the complainant and defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; that the defendant may be compelled by decree of this Honorable Court to support her and the children of said marriage; that she may be awarded the custody of the said children; that she may be permitted to resume the use of her maiden name and that she may have such further relief as may be just.

McDONOUGH & McDONOUGH,
*Solicitors for Complainant,
Irene M. Pierson.*

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State of New Jersey, }
County of Union, } ss.

IRENE M. PIERSON, being duly sworn according to law, upon her oath deposes and says:

I am the counter-claimant in the foregoing counter-claim. My said counter-claim is not made by any collusion between me and the said defendant therein, but in truth and good faith, for the causes set forth in the said counter-claim; that the facts, matters and things set forth in the said counter-claim, so far as they relate to the acts of the counter-claimant, are true, and so far as they relate to the acts of others, I believe them to be true.

IRENE M. PIERSON.

*Reply to Answer and Answer to
Counter-Claim*

Subscribed and sworn to before me this 18th day
of June, 1934.

HELEN MULLEN-VAN DERVEER,
A Notary Public of New Jersey.

[ENDORSED]

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I hereby consent to the filing of the
enclosed answer as of time.

.....
Solr. for Defendant.

REPLY TO ANSWER AND ANSWER TO
COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

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Between

IRENE M. PIERSON,
Complainant,
and
HOWARD W. PIERSON,
Defendant.

} On Bill for Main-
tenance, &c.
} Reply to Answer and
} Answer to Counter-
} Claim.

30 Defendant, Howard W. Pierson, joins issue on
the answer of complainant, and by way of answer to
counter-claim filed herein, says that:

1. Paragraph 1 is denied.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.

Reply to Answer to Counter-Claim

51

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied.

RUSSELL S. HENDERSON,
Solicitor for Defendant.

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REPLY TO ANSWER TO COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

87-226

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Between

IRENE M. PIERSON,
Complainant,

and

HOWARD W. PIERSON,
Defendant.

} On Bill for Main-
tenance.
} Reply to Answer to
Counter-Claim.

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The complainant, Irene M. Pierson, joins issue on the answer to her counter-claim filed herein.

McDONOUGH & McDONOUGH,
Solrs. for Complainant.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

87-226

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Between

IRENE M. PIERSON,
Complainant,

and

HOWARD W. PIERSON,
Defendant.} On Bill, &c.
Order of Reference.

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This matter being opened to the Court by McDonough & McDonough, solicitors for the complainant, and Russell S. Henderson, solicitor for the defendant, consenting thereto; it is, thereupon, on this twentieth day of July, 1934, ordered that the above-stated cause be referred to the Honorable Dougal Herr, one of the Advisory Masters of this court, to hear the same for the Chancellor and report to him what order or decree should be made therein.

30

(Signed) LUTHER A. CAMPBELL,

C.

I consent to the entry of the foregoing order.

(Signed) RUSSELL S. HENDERSON,
Solicitor for the Defendant.

Notice

A true copy.
 McDONOUGH & McDONOUGH,
Solrs. for Complainant.

 NOTICE.

IN CHANCERY OF NEW JERSEY.
 87-226

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Between		
IRENE M. PIERSON,	}	On Petition for Divorce. Notice.
<i>Complainant,</i>		
and		
HOWARD W. PIERSON,		
<i>Defendant.</i>		

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Please take notice that we shall move the hearing of the above-stated cause before the Honorable Dougal Herr, Advisory Master, on Wednesday, September 12th, 1934, at the hour of two o'clock in the afternoon, at the Chancery Chambers in the Court House at Elizabeth, N. J., pursuant to the designation made and filed in this cause.

Dated: August 25th, 1934.

McDONOUGH & McDONOUGH,
Solicitors of Complainant. 30

To: RUSSELL S. HENDERSON, Esq.,
Solicitor of Defendant,
 Finestein Building,
 Bridgeton, New Jersey.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

87-266	} Consolidated
98-441	

10

Between

IRENE M. PIERSON,	}
<i>Complainant,</i>	
and	
HOWARD W. PIERSON,	
<i>Defendant.</i>	

On Bill, &c.
Stenographer's
Minutes.

20

Elizabeth, N. J., September 12, 1934.

Before HONORABLE DOUGAL HERR, Advisory Master.

30 APPEARANCES:

MESSRS. McDONOUGH & McDONOUGH, solicitors of
complainant.

RUSSELL S. HENDERSON, ESQUIRE, solicitor of de-
fendant.

The Court: The two suits are now combined.

Mr. Henderson: Yes, sir.

The Court: The husband is suing for divorce on the grounds of desertion and extreme cruelty. I think it will be best in the order of proof if we took the husband's case first. 10

Mr. McDonough: Your Honor, there was a counter-claim for divorce filed by Mrs. Pierson.

The Court: You mean in the divorce case?

Mr. McDonough: Yes. A counter-claim for divorce was filed. I want to withdraw that counter-claim, that is, I want to withdraw her divorce action. 20

The Court: And leave in her maintenance suit?

Mr. McDonough: Leave her maintenance suit where it is.

The Court: Of course, there is no objection to that.

Mr. Henderson: No. 30

The Court: There being no objection to the motion to withdraw the counter-claim for divorce, it is granted. We will proceed then with the issue of the husband's divorce.

HOWARD W. PIERSON, SWORN.

Direct examination.

By Mr. Henderson:

10 Q. Mr. Pierson, you are the petitioner in this suit for divorce, are you not?

A. I am.

Q. And the defendant in the maintenance suit?

A. Yes.

Q. I show you a certificate ——

The Court: The marriage is admitted. You need not prove that.

20 Q. Where do you now live, Mr. Pierson?

A. At 66 Orange Street, Brooklyn.

Q. Where did you live in the year 1930?

A. In Plainfield, New Jersey.

Q. What was the year of your marriage?

A. 1916, I believe.

Q. How many children have you?

A. Two.

Q. Their ages?

A. Seventeen and fifteen.

30 Q. The oldest is the daughter?

A. That is right.

Q. And the younger is the son?

A. Right.

Q. How long have you lived in Brooklyn?

A. In Brooklyn, a matter of about two years.

Howard W. Pierson—Direct

Q. How long have you lived outside of the City of Plainfield?

A. I moved October 12, 1931; about three years.

Q. At the time you removed from Plainfield were you cohabiting with Mrs. Pierson as husband and wife?

A. No.

Q. How long had it been prior to October, 1931, 10 since you and Mrs. Pierson had been cohabiting as husband and wife?

A. The last time was in January, 1931.

Q. That is the date that you allege Mrs. Pierson deserted you, is it not?

A. Early in January.

Q. What was the occasion of this desertion?

A. I never knew.

Q. What were the acts of which you complain on the part of Mrs. Pierson? 20

A. She simply left my bedroom.

Q. Just tell the Court your experience in that behalf, Mr. Pierson, as to what took place.

A. I don't believe I get you.

The Court: What happened that night, on that date?

A. Well, when I went to bed that night as usual. She didn't go in the same room. She had removed 30 herself to another room.

Q. Had removed all her personal belongings?

A. I think so; yes.

Q. Did you say anything to her about it?

A. At that time, no.

Q. When did you?

A. Well, some time within the next few days, or a few weeks.

Q. Did you continue to occupy the same room?

A. Yes.

Q. But she had removed her belongings from your marital room?

10 A. Yes.

Q. Had you had any difficulty over any other matters up to that time?

A. Yes.

Q. Of what did the matters consist?

A. My difficulties were largely over financial matters.

Q. How long had that been going on?

A. For a matter of two, possibly three years.

Q. What was the difficulty?

20 A. Her unwillingness to cooperate at any time.

Q. In what respect; as to finances?

A. As to finances and as to the management of the home; in any respect.

Q. In January when you said that Mrs. Pierson removed herself from your bedroom, was there anything said about this matter between you?

A. Not that I recall.

30 The Court: You mean about her removing?

Mr. Henderson: Yes; about her moving.

A. She just simply left.

The Court: Weren't you surprised?

A. Yes.

The Court: But you said nothing to her?

A. I may have asked her the reason for that; yes.

Q. What reason did she give, if you recall?

10

The Court: Let us find out when he asked her first. You said it was a few days or weeks before you said anything about it. Do you know in fact?

A. It was within a few days.

Q. Did that continue after this night that she continued to remain away?

A. Yes; she stayed away every night.

Q. You say in a few days you said something to her about that?

20

A. As I recall, I said to her, what was the idea of moving away.

Q. What was her reply?

A. Her reply was that she didn't intend to sleep with me any longer.

Q. Has she since that time performed her marital duties to you?

A. She has not.

Q. Have you since that time cohabited with her as husband and wife?

30

A. No.

Q. How long did you continue to live in the home there, Mr. Pierson?

A. I lived there until May 4th, 1931.

Q. That was from January until May of the same year?

A. That is right.

Q. Without having any relations with Mrs. Pierson?

A. That is right.

Q. How many times during that time did you discuss with her about your family conditions?

A. Several times; many times, I would say.

10 Q. What would you say to her on those occasions?

A. I asked her on several occasions if we couldn't begin over again, to see if we couldn't make our married life together happier, and her repeated answer was that she was through, absolutely through.

Q. When did you remove yourself from the home, Mr. Pierson?

A. May 4th.

Q. Where did you then go?

20 A. I went to a boarding house two blocks away, at 216 East 7th Street.

Q. You had resided where?

A. At 433 7th Street.

Q. So that you only removed a distance of about two blocks from where you had been residing?

A. That is right.

Q. How long did you continue to live there?

A. I lived at that address from May until October.

30 Q. You moved then to New York?

A. I moved to New York.

Q. During that time from January until the time you removed to New York did you support your wife and family?

A. I did.

Q. In what manner?

A. I sent her a check regularly every Monday morning for \$20 and I paid all the expenses of the home, which included building and loan, taxes, water rents, interest on the second mortgage, insurance; all of the upkeep of the home.

Q. Did you keep a record of the moneys that you expended in that behalf? 10

A. I did.

Q. What was the total amount per month that you contributed for those expenses that you just enumerated?

A. Two hundred and seventy dollars and some cents; ninety-two cents, I think it was.

Q. At that time both the children were in high school, were they not?

A. Yes.

Q. Did Mrs. Pierson at any time say anything to you about leaving the home? 20

A. Yes, she did, many times, made repeated requests of me as to when I was going to leave.

Q. Asked you many times when you were going to leave?

A. That is right.

Q. Did she ever say to you that she wanted you to get out in the presence of anyone?

A. Yes; several times.

Q. In whose presence did she make that remark? 30

A. The first time as I recall it, it was made in the presence of her brother, Howard McAllister, and his son, Robinson McAllister.

Q. Do you recall the remark that she made?

A. At that time her brother asked her just what

she wanted to do about the situation and she said, "All I want is a divorce; I want to be rid of him".

Q. Did she make any more remarks in the presence of any other person?

A. Yes; later on.

Q. When was that?

A. That was on March 28th, 1931, on a Saturday
10 night, when she called into my home Harold High
and Walter Carson, two friends.

Q. Mr. High and Mr. Carson here?

A. Yes.

Q. Will you just tell the court the experience that
you had at that time, Mr. Pierson?

A. At that time, that Saturday night, I had gone
to call for the little girl; she was visiting in the home
of a friend; when I returned I found Mrs. Pierson
quite upset; she said that she had telephoned Mr.
20 High and Mr. Carson and asked them to come to the
house because she wanted to talk to them and a little
later they did appear and she did talk to them in my
presence.

Q. About what time did they arrive?

A. I should say it was between seven and eight
o'clock in the evening.

Q. How long did that conference last?

A. Until nearly midnight, or past, probably.

Q. Do you recall any statements made by her in
30 these two gentlemen's presence, as to what she
wanted?

A. Yes, she said very pointedly, very emphati-
cally, that she wanted me to get out, that she couldn't
tolerate me in that home and that it would suit her
perfectly if I would leave.

Q. Was the reason for any disagreements between you and Mrs. Pierson discussed at that time?

A. Yes.

Q. Who did most of the talking?

A. She did.

Q. Did you tell those gentlemen at that time in her presence of what your difficulties were composed? 10

A. I told them that my chief grievance was her unwillingness to cooperate in the home, particularly in financial matters.

Q. Now what was the condition of your finances during that period and for some time prior thereto?

A. I was indebted at that time to the extent of about \$2600, and had been going into debt for some time because of her extravagance.

Q. Of what did you claim those extravagances consist? 20

A. They would start over really small things until they went into large purchases at the department stores in New York and Newark, sometimes to the extent of \$150 or \$200 a day on a shopping trip; these trips were always taken without any consultation with me or without any knowledge to me.

Q. Would she advise you in advance that she was going to purchase that many articles or articles of that value?

A. She never consulted me in any way about her purchases. 30

Q. You discussed the matter with her?

A. Afterwards?

Q. Yes.

A. Yes.

Q. I don't know whether I asked you this, but I want to clarify it: How long prior to January, 1931, had these matters been coming between you?

A. Practically all our married life. They reached an acute stage, I would say, about two years before we separated.

Q. In the year 1930, Mr. Pierson, do you have any
10 bills here showing what the extent of Mrs. Pierson's purchases in department stores were?

A. I do have them; yes.

Q. Where are they?

A. They are in my brief case; the black brief case.

Q. Will you produce them?

The Court: I don't suppose that they show
20 whether she was extravagant or not, do they?

Mr. Henderson: No; except to show the reason, if your Honor please, which led up to the difficulties.

The Court: We know now that there was difficulty about money.

Mr. Henderson: Money matters.

30 The Court: He claimed that she was extravagant and she claimed that she was not. It is not an unusual situation.

Mr. McDonough: Yes. Will your Honor permit me to give the reason on cross-examination as to the bills if it becomes necessary to prove that.

The Court: Yes. I won't shut you off if it is material. It seems to me now that it has very little bearing on the questions that are in issue.

Mr. Henderson: If Your Honor please, I presume there will be the same ruling in regard to some further testimony as to an effort that was made between Mr. Pierson, Mrs. Pierson and her brother 10 to work out a budget for the home during this time that would merely go to confirm this situation, I presume. I won't go into that unless —

The Court: You mean an attempt to work out a budget here after January?

Mr. Henderson: Yes.

The Court: It might be relevant or material for 20 another reason after that date, but you were just proposing to go back for two years prior to that.

Q. Was there an attempt made, Mr. Pierson, to work out a budget whereby you could continue along to pay your bills after January, 1931?

A. Yes.

Q. When was that?

A. That was on the occasion of a visit of her brother to my home on a Sunday afternoon in Feb- 30 ruary, 1931.

Q. Your difficulties were discussed between Mrs. Pierson, yourself, and Mrs. Pierson's brother, were they not?

A. That is right.

Q. Did those conversations center around the question of adopting a budget for the home?

A. Yes.

Q. Did you succeed in working one out?

A. Yes; a budget was worked out by Mr. McAllister.

10 Q. In his handwriting?

A. Yes.

Q. Do you have it here?

A. Yes, I do have it.

The Court: Is he her brother?

A. Yes.

Q. Will you produce it?

A. (Producing paper.) There are some notations on it in my handwriting, too.

20 Q. Now, these items, for instance, B. & L. taxes, interest, expense of conducting office, and so forth, in whose handwriting are they?

A. They are in Mr. McAllister's handwriting.

Q. Did you and Mrs. Pierson agree to try to go along in accordance with the budget which was prepared in the presence of both of you at that time?

A. We did.

30 Mr. Henderson: I offer this in evidence, if your Honor please.

Mr. McDonough: I am wondering what purpose it serves, if your Honor please, if they had a conference about financial matters.

The Court: I presume counsel has —

Mr. McDonough: I don't care about it.

(Marked Exhibit D1.)

Q. What date did you say that was?

A. That was in February, 1931; I think February 15th.

Q. How did you make out with the keeping of 10 that?

A. That was not a success; she refused absolutely to cooperate.

Q. After agreeing to it at that time?

A. That is right.

The Court: Now that doesn't mean very much when you say she refused to agree to it. Do you mean she said she wouldn't live up to it?

20

A. Yes.

The Court: You had just said she agreed on that occasion.

A. She had agreed to try but she never did try.

The Court: So that she never tried, or did she say she wouldn't?

30

A. She said she wouldn't.

Q. When did she say that to you?

A. You mean the exact date when she said it to me?

Q. Well ——

A. It was after the date of this conference when we attempted to put it into effect.

Q. She then told you that she would not live up to it?

A. I made out that the reason at that time that she gave was that it was unjustly drawn.

Q. Mr. Pierson, when was it that your son was
10 afflicted with infantile paralysis?

A. That was in September, 1931.

Q. What was Mrs. Pierson's attitude towards you at that time?

A. She notified me of the illness, calling me at my office telephone and told me that the doctor had said that Teddy had infantile paralysis. I immediately expressed my concern and told her to spare no expense in having him cured if it were possible.

Q. Did her attitude towards you during the ill-
20 ness continue in that manner?

A. No; she was very unfriendly after that. Every effort that I made to get in touch with the home she was very nasty and on one occasion she hung up the telephone three times in succession she refused to give me any information at all as his condition.

Q. On how many occasions would you say that happened?

A. Half a dozen times or more.

Q. Did you go to the home to inquire?

30 A. Yes.

Q. Would she talk with you?

A. No, she wouldn't. The house was quarantined, of course, I couldn't get inside the house.

Q. Would she come to the front and talk with you?

A. No.

Howard W. Pierson—Direct

Q. You say at least half a dozen occasions you called her and she refused to talk with you about it?

A. That is right.

Q. And that was in September, 1931?

A. That is right.

Q. I believe you testified that it was in October, 1931, was it not, then that you moved to New York? 10

A. That is right.

Q. What was your experience with Mrs. Pierson at the time that you left your place on Fourth Street, or was it Seventh Street?

A. Seventh Street.

Q. To go to New York; in regard to offering your son some of your furniture?

A. I phoned to the house and told her that I was moving to New York and that I had a desk that I had taken from the home with me, my own personal desk, which I wanted to return to the home for Teddy's use; she told me she didn't want the desk, not to bring it back; though I took it back on a Saturday preceding my departure for New York and she refused to let me take it into the house; she came out to the automobile in which the desk then was and she said, "You are a damn fool if you think I am going to let you bring this stuff into the house now." 20

Q. Did you tell her you were moving to New York at that time? 30

A. That is right.

Q. When was the maintenance suit begun against you, Mr. Pierson?

A. In November, 1931.

Q. Had you been contributing clear up until the time of that suit?

A. Regularly; every week.

Q. And in what amounts were you contributing?

A. To the extent of \$270 a month.

Q. For the items which you have hereinbefore specified?

10 A. That is right.

Q. You were seized under a writ of ne exeat, were you not?

A. I was.

Q. Where were you at that time?

A. I was attending a banquet in the Park Presbyterian Church, in Plainfield.

Q. The Mens Club of that organization?

A. That is right.

20 Q. Your arrest was caused to be made at that time?

A. That is right.

Q. But you say nevertheless you were contributing to the extent of \$270 a month during all the period from January up until that time?

A. I was.

Q. In September just prior to the date of the alleged desertion did Mrs. Pierson attend a family reunion with you?

A. Yes.

30 Q. Where was that?

A. That was held at Echo Lake Park, Westfield, New Jersey.

Q. Was your sister, Mrs. Mettam, also there?

A. Yes.

Q. After the arrest on the writ of ne exeat did

you have any further conversations with Mrs. Pierson concerning your marital status?

A. Yes.

Q. What did they consist of?

A. Well, we discussed the matter of the children's education at one time that I recall.

Q. Was there anything said then about her resuming relations with you as husband and wife? 10

A. I think not.

Q. Do you recall when that was?

A. Recall when what was?

Q. When that conversation was; was it before or after your arrest under the writ of ne exeat?

A. Well, I had a great many conversations with her before and after the arrest.

Q. Did you ask her why she did that?

A. Why she had me arrested?

Q. Yes. 20

A. Yes.

Q. And as a result of that arrest, Mr. Pierson, there was a temporary order made against you, wasn't there?

A. Yes.

Q. By whom?

A. By Vice-Chancellor Church.

Q. Were the figures that you have given to the Court here today as to your contributions and support given to the Court at that time? 30

A. Yes.

The Court: At what time?

Mr. Henderson: At the time of the preliminary order on the writ of ne exeat.

Q. And as a result were the figures that you had been contributing increased or decreased?

A. Decreased.

Q. The order was made for how much?

A. \$200 a month; the temporary order.

Q. Getting back, Mr. Pierson, to the time around about January and for some time prior to 1931,
10 some time shortly prior thereto, did Mrs. Pierson get your meals?

A. Prior to January, 1931, she was particularly irregular in the matter of getting my meals.

The Court: There is nothing pleaded prior to January, 1931. The charges are all subsequent to that date.

Mr. Henderson: The date of desertion, yes; but
20 if your Honor please I think it is relevant to show the feeling that existed during that time. I think it is evidential for that purpose. However, he says they were irregular subsequent to that time.

A. Subsequent to that time, late in March, she notified me that she would not get any more meals for me.

Q. That was March prior to the May that you moved about two blocks down the street?

30 A. That is right.

The Court: That was in May she told you that?

A. March.

By the Court:

Q. Notwithstanding, you continued to stay there until May?

A. That is right.

By Mr. Henderson:

Q. Prior to the time the writ of ne exeat was issued had Mrs. Pierson complained to you—that is from January until November, had she made any complaints to you that she was dissatisfied with the amount that you were contributing?

A. No.

Q. So that your arrest on this writ was a surprise to you, was it not?

A. It was.

Q. From January, 1931, until May, 1931, what else have you to say as to the conduct of Mrs. Pierson towards you other than what you have told the Court?

A. Well, Mrs. Pierson's attitude toward me, I would say, was one of studied intolerance; she was supercilious.

The Court: Did she speak to you?

A. Only upon necessity.

Q. Were you invited to parties at the home?

A. To one or two; not to all.

Q. Were there parties at the home of which you had no previous knowledge except at the time of their occurrence?

10

30

A. Yes.

Q. Did you say on one occasion or more than one?

A. There were two occasions that I recall.

Q. You say that you had no previous knowledge. Was there anything said by Mrs. Pierson to you as to whether or not your presence was wanted?

10 A. She had one week-end party in which she notified me very emphatically that I was not to participate. When I say a week-end party I-mean that the out-of-town guests arrived at my home on Friday night and the party consisted of a theatre party on a Saturday afternoon and dinner following the theatre, and practically an all day party at the house on Sunday. That was party that I was notified emphatically that I was not to participate in. When I came to my home on Sunday night she asked
20 me to get out and stay out, and she was not satisfied; when I did not go she came in my room where I was and repeatedly made a request for me to leave. I think this happened two or three times.

Q. When you came in your room she requested that you leave?

A. No; I was in the room separate from the guests. She came into my room and asked me to leave.

Q. Did you comply with her request?

30 A. No; I retired to my bedroom later.

Q. Was there any other occurrence that you recall, Mr. Pierson, between January and May, whereby Mrs. Pierson's attitude was plainly shown?

A. Well, as I said before, her whole attitude was one of studied indifference and intolerance; she re-

fused to have any sane conversation with me, she said on various times, on repeated occasions, she asked me when I was going to leave, that she wanted me to get out.

Q. I believe you said on one occasion Mr. High and Mr. Carson visited you she made that request in their presence?

A. That is right. 10

Cross-examination.

By Mr. McDonough:

Q. Mr. Pierson, I show you a letter dated March 26, 1931, on your stationery, and ask you if that is signed by you?

A. Is that signed by me?

Q. Yes. 20

A. Yes.

Mr. McDonough: I offer that in evidence.

(Marked Exhibit P1.)

Q. I show you a letter dated March 12, 1931, addressed to Albert R. McAllister, written on your stationery, signed by Howard; is that your signature? 30

A. Yes.

Mr. McDonough: I offer that in evidence.

(Marked Exhibit P2.)

- Q. With reference to the letter dated March 26, 1931, and marked Exhibit P1, written by you to Albert R. McAllister, in this letter you said. "Irene has also made the statement that I have broken my agreement made while you were at the house. As I remember it I agreed to let her educate the children and to leave her alone from physical contact."
- 10 What did you mean by an agreement to leave her alone from physical contact?
- A. I don't recall ever making such an agreement.
- Q. Well, what did you mean by putting those words in your letter?
- A. As I recall, at this conference Mr. McAllister suggested that maybe it would be convenient for the time being if I did not request Mrs. Pierson to have the regular marital relations, and I told her if that would relieve things for the time being I would leave
- 20 her alone. That must have been the thing that I referred to there.
- Q. So that you left her alone by agreement after that; that is, you had no more intercourse after that by agreement; is that correct?
- A. No; I did ask her on other occasions, later.
- Q. Isn't it a fact that a woman by the name of Miriam Reeves was also discussed in that conference?
- 30 Mr. Henderson: I object to that as not cross-examination.

The Court: You asked what was discussed in that conference when Mr. McAllister was there. I think you opened the door to anything that might

have been discussed at that time that was not brought out in direct.

Mr. Henderson: Is this in reference to the conference that was had?

The Court: That was the question that was put. I will overrule the objection. 10

Mr. Henderson: I will withdraw the objection.

A. Yes.

Q. Isn't it a fact that your agreement to leave Irene alone from physical contact was an agreement made at that conference that so long as you were visiting Mrs. Reeves you would not have further intercourse with Irene?

A. Certainly not. 20

Q. Now, in the same paragraph of Exhibit P1 you write: "I added the house rentals to the income and told her that unless she was willing to make her income a part of a joint account I did not feel such an account was fair." What did you mean by you added the house rentals to her income?

A. On the budget that Mr. McAllister drew up he made the suggestion that I have a sufficiently large bank account to cover certain expenses; he made an added suggestion that we have a joint account to cover what might be called mutual expenses; that has reference to the joint bank account. 30

Q. Was that joint account ever started?

A. No; because she refused to open such an account.

Q. Did you offer to put your income into that account?

A. At any time that she would.

The Court: She would what?

A. Put her money into the joint account.

10 The Court: Did she have a separate source of income?

A. Oh, yes; she was working at a salary.

Q. In estimating the income to meet these items in the budget you had not included the rentals that she was receiving from roomers; is that correct?

A. You will see figures on there showing those rentals were estimated at about \$35 a month.

20 Q. I am referring now to Exhibit D1, the budget offered by you?

A. Here; income, \$535.

Q. What does the item "Income \$535" mean?

A. That is income; I had \$500 gross income from my office and \$35 from the rental of the rooms.

Q. \$35 a month?

A. Yes.

Q. Then the \$535 you were not to give it to Irene, but rather she was to get it from room rent; from renting out rooms; is that correct?

30 A. I just said that \$35 came from rentals of the rooms, which passed through her hands.

Q. \$35 per month, do you mean?

A. Yes.

Q. How much per month did you give her?

A. This whole \$500 my whole income was budgeted under this plan.

Q. How much did you give her in cash each week?

A. I gave her \$15 a week.

Q. Out of how much salary you earned?

A. Well, my income was around \$400 at that time.

Q. I asked you how much salary you earned, gross?

A. About \$400 a month. My gross income was 10 \$1000 and my business expense was \$500 my income was about \$400. Is that clear?

Q. Per month?

A. Yes.

Q. In other words, out of an income of \$6000 a year you had to pay certain business expenses?

A. Twelve times four hundred is about forty-eight hundred a year.

Q. I said I understand that you had business expenses to pay out of a gross income of \$6000? 20

A. Yes.

Q. What business expenses did you have to pay?

A. I had to pay all my office expenses.

Q. How much rent per month?

A. About \$100 a month.

Q. What did it consist of at that time?

A. It consisted of office, rent, telephone, telegraph and other expenses.

Q. Give the items on that. How much did the office rent cost you? 30

A. My office rent as I recall it at that time was \$30 a month.

Q. How much did the telegraph expense amount to?

A. About \$15 a month.

Q. How much was your telephone expense? Did you have a telephone?

A. Yes; about \$20 a month.

Q. As a matter of fact, you rented desk room in another man's office, didn't you, at that time?

A. In 1931, I think it was in another man's office. I have had two offices; I don't recall just the exact
10 date.

Q. Isn't it a fact that at the time you rented desk room your rent was not \$30 a month?

A. It certainly was not. It was \$30 when I rented from the man; it was later decreased. You will notice in this budget the estimated office expense was \$50 but that did not include traveling expenses.

The Court: Did I understand that out of your net earning of \$400 a month you gave your wife
20 \$15 a week in cash and she had \$35 a month from the room rent?

A. Yes.

By the Court:

Q. She had her own salary?

A. Yes.

Q. How much was that at that time?

30 A. \$35 a week. Then she had in addition to that, then I paid all the bills for butter, milk, for meat and for all incidental expenses of the home, such as laundry, domestic help. That \$15 a week was only cash.

Q. Did you own the home?

A. It is in a joint title.

Q. Who paid the taxes?

A. I did at that time.

Q. Out of that \$400?

A. Yes.

Q. Was there a mortgage?

A. Yes.

Q. You paid the interest on that? 10

A. Oh, yes; there was a first mortgage held by the building and loan and I paid the building and loan itself and the interest on the second mortgage.

Q. That all came out of the \$400?

A. Also the water rent and the insurance.

Q. I show you a letter dated March 31st, 1931, to Albert McAllister, written on your stationery and signed Howard; is that your signature?

A. Yes.

20

Mr. McDonough: I offer that in evidence.

(Marked Exhibit P3.)

Q. I also show you three sheets of paper, one entitled "Statement of expenditures for the month of March, 1931, H. W. Pierson"; the other marked "Personal budget effective May 11, 1931," and another, "Money handled by Irene"; are they the three papers referred to as being enclosed in the 30 letter I have just offered in evidence?

A. I didn't read that letter. Was there any reference in this letter to any enclosure?

Q. (Counsel indicates.)

A. There is reference to a statement here, three

statements; this statement I prepared; all those. What do you want to know?

Q. You enclosed them with that letter to Albert McAllister, is that correct?

A. That one I didn't. (Indicating.)

Q. Which one?

A. Your Honor, this says, "Effective May 11, 10 1931"; this letter is written March 31st, 1931. I couldn't very well enclose that.

Q. Do you say that you didn't enclose that?

A. How could I?

The Court: No; just answer the question.

A. No; I didn't.

20 Mr. McDonough: I would like to mark in evidence the statement entitled "Money handled by Irene" and the "Statement of expenditures for the month of March, 1931."

Mr. Henderson: May I ask the purpose of the offer?

30 Mr. McDonough: Your Honor, the purpose is to show that the real fact is that this allowance was meagre and miserable; he was mistreating his wife in that he included in his wife's income; he took \$35 a week that his wife earned as salary; he says \$35 but in fact it wasn't; it was subject to a State cut on State salary, he allowed that net income for her use, and he made up the balance.

Howard W. Pierson—Cross

Mr. Henderson: I have no objection if he says he made them.

The Witness: There is only one objection to that statement of counsel. He says that I took the money that she earned. I never touched any of her money.

(Papers marked Exhibits P4 and P5.) 10

Q. With reference to the statement, "Personal Budget," which you didn't identify a moment ago, I want to ask you again if that statement was prepared by you, regardless of when?

A. Yes; it was prepared by me.

Mr. McDonough: I would like to offer the statement entitled "Personal Budget" in evidence.

20

The Court: Made by you?

A. Yes.

(Marked Exhibit P6.)

Q. So that, Mr. Pierson, reading from the statement entitled "Personal Budget," that is P6, "Irene, income from H. W. P." what does that mean?

30

A. That is money I gave her.

Q. Howard W. Pierson?

A. Yes.

Q. \$86.67?

A. Right.

Q. From room rents \$35?

A. Right.

Q. From salary, \$130?

A. Right.

Q. Total \$251.67?

A. Right; that is cash.

Q. All she actually received from you during the
10 month to which that refers was \$86.67?

A. In cash, yes, but now wait a minute. You notice that that statement, Mr. McDonough, is dated May 11th, one week after I left home. That was the budget beginning at that time, one week after I left home, you see. I left May 4th; that statement is dated May 11th.

Q. Mr. Pierson, reading from Exhibit P3, your
letter to Albert R. McAllister, dated March 31st,
20 "Knowing that you expect to see me soon I am enclosing a statement of my first month's operations under the budget; not that you are particularly interested in the figures, except perhaps as you may be called upon to explain to Irene." Now doesn't that refer to the month prior to March 31st?

A. That isn't the same statement, though. This is the statement you are talking about now. (Indicating.)

Q. You mean Exhibit P5 and Exhibit P4?

A. Yes.
30

The Court: Does that letter refer to both those Exhibits, P5 and P4?

A. I don't think so.

Q. Mr. Pierson, what income did you allow your wife prior to the 1st of January, 1931?

A. My entire income was spent in the home.

Q. I would like to have you answer the question. What did you allow your wife?

A. My entire income was spent in the home. The cash allowance that she had at that time was \$22.50 every two weeks. In addition to that I paid all the building and loan, for my mortgage; I paid all the expenses on the home; she had charge accounts; she wanted that cash only for her own spending money around the house for little incidental expenses. 10

Q. Going back again to the conference with Albert McAllister to which you referred in your direct testimony; was there any question with respect to contraceptives found in your pocket discussed at that conference?

A. No.

Q. Did Albert McAllister say anything to you about the contraceptives at any time? 20

A. No.

Q. Was the subject talked about in the presence of Albert McAllister at any time when you were there?

A. No.

Q. Were any contraceptives found in your pocket to your knowledge?

A. Not to the best of my knowledge.

Q. Not at any time?

A. No. 30

Q. You said you live at 66 Orange Street. Does that indicate a recent change of address?

A. Comparatively recent; yes.

Q. Where did you live prior to that?

A. 236 Sterling Street, Brooklyn.

Q. And where did you live prior to that?

A. 50 Clark Street, Brooklyn.

Q. When did you move from 50 Clark Street?

A. I moved from 50 Clark Street in October, 1933, I think,

Q. Where did Mrs. Reeves live in October, 1931?

A. To whom do you refer?

10 Q. Mrs. Miriam Reeves.

A. The Mrs. Miriam Reeves that I know lives at 264 Monroe Street, Brooklyn.

Q. Did she ever live on Clark Street?

A. No.

Q. How far is her home from the place where you reside?

A. Approximately three or four miles.

Q. Did you at any time live closer than that to her?

20 A. No.

Q. You testified that your last cohabitation was in January of 1931. You testified, too, that your wife left your room early in January and that when you came to bed she had moved to another room. Isn't it a fact that you and she later slept together again?

A. No.

Q. Was that the first time that she had left your room?

30 A. No.

Q. On a previous occasion you had made up again?

A. Well, yes; she would leave for maybe a few nights at a time and then come back.

Q. What was that the room in which you and she slept during the year 1930? Which room in the house did you sleep in?

A. In the front room on the second floor.

Q. What was the room that you slept in during the last few weeks of your residence at your Plainfield home?

A. She left the room where we had been sleeping together. She went and moved into the middle room. A little later, one night I came home and she notified me that she had moved my things into the middle room and she removed her belongings in the original room. 10

Q. Is it not a fact that your separation early in January and your termination of relations at that time was due to an argument that arose over you going to a dance in New York with a single girl?

A. No.

Q. Did you have a discussion on that subject around that time?

A. No. 20

Q. Did you ever discuss it with your wife at any time?

A. I discussed going to a dance with a young lady on New Year's Eve with my wife; yes.

Q. Wasn't the separation that followed the result of that discussion?

A. Not to the best of my knowledge.

Q. Was it one of the contributing causes?

A. As I said before, as I testified before, she said nothing when she left my room; there was no argument; no immediate argument that could be attached to that lady. 30

Q. So that you don't think the fact that a few days prior to that, on New Year's Eve, you had taken another girl to a dance in New York, had anything to do with her leaving your room?

A. If it did I didn't know it.

Q. Did you come home that night?

A. Yes.

Q. The night that you took the girl to a dance in New York?

A. Yes.

Q. Did you stay at the New Yorker Hotel around
10 that time?

A. Not that I recall.

Q. That dance that I refer to was held on New Year's Eve?

A. May I correct that testimony?

The Court: Yes; you may correct your statement.

A. I think the night before that New Year's Eve I did stay at the New Yorker Hotel.

20 Q. That was the night you took this girl out; is that correct?

A. No; that was the previous night that I stayed at the hotel.

Q. How much did it cost you to take that girl out that night?

A. As it happened it cost me about five dollars.

Q. Do you remember telling your wife that it cost you seventeen dollars?

A. No.

30 Q. Where did you go with the girl?

A. We went to White's Restaurant.

Q. From that time until the time of this week-end party to which you were not invited did you have any further disputes with your wife about any woman?

A. I have already referred to the conference that we had with her brother, at which time she brought up the matter of another woman; yes.

Q. Which woman did she bring up?

A. She named a Mrs. Reeves.

Q. How long have you known Mrs. Reeves?

A. For about fifteen years.

Q. Did you visit them very often?

10

A. Not very often; no.

Q. How many times per month or per week did you visit Mrs. Reeves?

A. Well, Mrs. Pierson and I visited them on week-end occasions a few times, probably five or six times, and later on I was in the habit—not in the habit, but I occasionally stopped at the house when my business took me into that neighborhood.

Q. Your office was over on Broadway, New York, was it?

20

A. No; I am outside selling.

Q. When you stopped in, how many times would that occur?

A. Perhaps once in every five or six weeks.

Q. Were there occasions on which you made these stops where Mr. Reeves was not present?

A. Mr. Reeves was not present.

Q. Was he present at any of those occasions?

A. Not when I called during the day time.

Q. So, that once every five or six weeks you would stop there in the day time to see Mrs. Reeves; is that correct?

30

A. That is right.

Q. And you knew that her husband would not be in at those times; he worked, is that correct?

A. I knew her husband was not there. However, she was not alone.

Q. Did your wife object to your going with Mrs. Reeves?

A. Never.

Q. She did, however, bring up the subject in that conference?

10 A. Yes.

Q. Did your wife know that you were stopping in there in the day time?

A. She asked me if I had been stopping there.

Q. Did you tell her you were?

A. Yes.

Q. When was that?

A. That was at the conference.

Q. Now that is all the way down to February you had been visiting her for years, hadn't you?

20 A. On occasions; yes.

Q. So that she didn't know anything about that until that February conference when you admit that you —

A. She knew practically every time I went there, if not every time.

Q. Did you tell her every time that you did visit Mrs. Reeves?

A. As far as I remember I always mentioned the fact.

30 Q. Do you think that that had anything to do with the trouble and with your leaving home?

A. It seemed to disturb her, but it certainly had nothing to do with her leaving my bedroom.

Q. You don't think it caused her to leave your bedroom?

A. No.

Q. Did she ever tell you that she would not at any time have intercourse with you until you stopped going with Mrs. Reeves?

A. No.

Q. I am wondering whether you can clear for us now what you meant by the agreement in the conference not to have further physical contact with Irene? 10

A. Didn't I already explain that?

Q. I want to know if it is clearer to you?

The Court: State it again.

A. Well, at that conference the matter — Mrs. Pierson brought up the matter of this girl and her brother made the suggestion to me that it would perhaps be better if I did not stay at this house until things were straightened out, and I said I was perfectly agreeable to that arrangement, because those visits were of no importance. 20

Q. Mr. Pierson, you had a conference with Mrs. Pierson, or at least she called you up to tell you that Teddy had infantile paralysis, or the possibility of it; is that correct?

A. She called me at my office and told me the doctor had pronounced him ill with infantile paralysis.

Q. According to your direct-examination you said, "Spare no expense," is that correct? 30

A. Right.

Q. Did you pay all the doctor bills for him?

A. To the best of my knowledge I did.

Q. Did you require her to share the doctor bills?

A. No.

Q. So that some of the difficulties were women as well as financial, were they not? Isn't that correct?

A. Judging from her attitude, that was her feeling.

10 By the Court:

Q. I am not clear about that conference or discussion. Your letter afterwards relates to something that you were to do about your not having any physical contact with your wife for the present. You say that at that conference it was suggested that you refrain from seeing this woman and you said that you were perfectly willing to do that.

A. Yes.

20 Q. Then what was the occasion for any agreement to not have physical contact with your wife?

A. I was merely trying to quiet her fears.

Q. If you agreed that you would not see this Brooklyn woman any more, then why was it necessary that you should not have any further contact with your wife?

30 A. As I recall it, she made the statement at that conference that she would not have anything more to do with me, she wanted me to leave, so her brother made the suggestion that I should make no demands to have anything to do with her physically until her suspicions were allayed; and I said that was perfectly agreeable as far as I was concerned; but I wouldn't take that to mean an indefinite time. May I explain a little more about that conference?

Q. I would like to have it.

A. It was at my suggestion, at my request, that Mr. McAllister came to my home, and he came and brought his grown son with him. When he came into the house I explained to him. Prior to that time, however, she had written a letter, I believe, in which she said that we were having difficulties and she had also broached my brother-in-law in Bayonne and told him that we were having difficulties, and he suggested that she get in touch with her brother, and she wrote him a letter. When I found out from my brother-in-law that he had made that suggestion I also wrote Mr. McAllister suggesting that he come to our house for this conference, because I knew that she reposed a great deal of confidence in Mr. McAllister and so did I, and so he came. When he came into the house I made the suggestion that she tell her story to Mr. McAllister, whatever her grievance might be. She refused to talk; she refused to have anything at all to say. So I told Mr. McAllister the situation as I saw it and as it affected me and my attitude toward her. He was entirely sympathetic with my attitude apparently at that time and drew up a budget upon my suggesting her unwillingness to cooperate in financial matters.

Q. What did she say as to that?

A. She agreed to this budget. After that he said, "Well, I don't see that there is anything here that we can't iron out without a great deal of difficulty"; so I said, "Well, I am not sure. Perhaps Irene has more to say that she hasn't said already. I want her to be entirely satisfied that this conference will

work toward a reconciliation." It was at that time that she brought forth the matter that I am interested in another woman.

Q. What did she say as to that?

A. Why, the first thing she did as I recall it, she inquired of me if I had been calling on this girl in Brooklyn; and I told her that I had as I always had
 10 ever since we had known them, they were friends of long standing. She inquired as I remember as to how often I had called and I told her that perhaps on an average of once a week for the past six weeks, because I had discussed with this girl our differences at home. Does that answer your question?

Q. Yes.

By Mr. McDonough:

20

Q. You said in your direct testimony that you discussed the children's education with Irene. Where are the children receiving their education at the present time?

A. The boy attended Plainfield High School and the girl attended Georgetown school, I believe.

Q. Do you know whether she has attended any other school?

A. I do not.

30 Q. Do you pay any part of the girl's school expenses?

A. Not directly.

Q. Do you pay it directly or indirectly?

A. No; unless she uses the money that I give her to pay it.

Q. Well, do you know who paid the girl's expenses in college?

A. I do not.

Q. You have no knowledge who paid those expenses?

A. I do not.

Q. Did you endeavor to pay her expenses?

A. I did not.

10

Q. Were you asked to pay her expenses?

A. No.

Q. Did I ever ask you to pay her expenses?

A. You, at one time, suggested that I contribute toward her education; yes.

Q. What did you agree to do?

A. I told you if it was within my means at any time I would be glad to contribute toward her education.

Q. You knew there was a burden of nine or ten hundred dollars a year there, didn't you? 20

A. Yes.

Q. You knew there wasn't enough in the allowance to take care of it, didn't you?

A. There should have been.

Q. In other words, that allowance of \$200 a month was entirely ample to take care of the girl's college education, to take care of that home, to pay \$69.50 on the mortgage and pay the insurance, pay the taxes, pay twelve or fifteen dollars a month coal bill and all the expenses incidental to the house? 30

A. It would be very difficult to do that on that amount.

The Court: Isn't that quite irrelevant, because there was an order of the Court at that time.

Mr. McDonough: Yes; I may be wrong.

The Court: He was justified in standing on the order.

By the Court:

10 Q. You are now living in Brooklyn?

A. Yes.

Q. Where do you consider your home to be; your permanent home?

A. My permanent home?

Q. Yes.

A. Well, that is my home; that is the only home I have.

Q. When you left New Jersey and went to Brooklyn, was it with the intention of definitely leaving
20 New Jersey and remaining in Brooklyn unless something unforeseen arose in the future?

A. My plans were very indefinite at the time I left home. I didn't go direct to Brooklyn. I lived first in New York City, in Manhattan. At the time I left home in May, 1934, I assumed that it would be only a temporary proposition. I only moved two blocks away.

Q. Yes; but I am speaking now of the time you
30 left for New York or Brooklyn; what was your intention with regard to the future?

A. As I say, my plans were very indefinite. It was done in the hope that it might reduce my expenses, as it did materially for some time.

Q. What is your present intention with regard to the future?

A. My present intention?

Q. Yes; as to your home. Where is your home to be in the future, so far as your present intention is concerned?

A. Well, my plans are very indefinite. Unless it is necessary, as I say, I have to live in this state of separation, I will continue to live probably in Brooklyn as I have a very nice home there. 10

Q. Do you vote over there?

A. I voted at the last election there.

Q. You have no present intention of returning to New Jersey at any definite time?

A. No; I haven't any definite plans.

The Court: I might as well tell counsel now that I asked those questions for this reason: That I doubt the jurisdiction of the Court to grant a decree of divorce on the petition of a husband who is not domiciled in the State of New Jersey, even though there may be personal service of process in this State, as there is here. There has been a decision just handed down by Advisory Master Rogers in the case of *Webb v. Webb*, which has not yet been reported, in which he holds that the Court has no jurisdiction under those circumstances; that the section relating to jurisdiction, where they use the term bona fide residence, it means domicile, and domicile in turn means matrimonial domicile, where there has been no delictum on the part of the husband; that is to say, the wife gets no separate domicile for the purpose of jurisdiction unless the husband has committed a matrimonial offense, and it therefore follows according to his reasoning and decision 20 30

that where the husband is the party who is suing, the actor, and he is not domiciled within the State, there is no jurisdiction in the State of either party. Now that is the present law and that decision binds me. This case is going to take more than today, I can see clearly, so that I hand it out to you now so that between now and the adjourned date you will
10 have an opportunity to look at the decision and discuss it.

Mr. Henderson: Was that decision, your Honor, where the defendant had been a continuous resident of the State beyond any question?

The Court: In the Webb case New Jersey was the matrimonial domicile. The parties lived here for some years. The husband's business took him
20 into another State and he had to live there. His wife refused to go with him; refused to leave New Jersey; and after two years, during which time the petitioner lived in New York, he came back and filed his petition here; and the Court denied the petition on the ground that there was no jurisdiction, although the wife lived here all the time.

Mr. Henderson: That is in direct conflict it seems to be with a long line of cases where it has been
30 held that where either the petitioner or the defendant is a resident of the State, and I think the rules themselves so provide.

By Mr. McDonough:

Q. Mr. Pierson, did you receive any present from Mrs. Reeves at Christmas of 1930?

A. No.

Q. Did you receive a fountain pen and pencil set from any person as a present around Christmas time of 1930?

A. I don't remember whether it was Christmas of 1930, but I have had two pen and pencil sets given me at Christmas.

Q. Who gave you the sets?

10

A. One was given me by glass work and the other by my sister.

Q. Did Mrs. Reeves ever give you a present of any kind?

A. No.

The Court: Mr. McDonough, let me interrupt you a minute. I can't see the materiality of any further testimony along that line. If Mrs. Pierson did leave the marital bed as charged and had no legal right to do so, unless her husband was guilty of a matrimonial offense. That is not charged here. She may have been very suspicious, but that is not enough.

20

Mr. McDonough: I am wondering, your Honor, whether he will put this witness on again. I was thinking that our maintenance action was to be considered also.

30

The Court: Well, on the maintenance —

Mr. McDonough: The decision of one is a decision of the other; it depends considerably on the motive, but the question is not if there is such a close

relationship between him and another woman. The question was of leaving without justifiable cause or not; that was the relevancy of it.

Mr. Henderson: If your Honor please, I felt that it was irrelevant, but I had no desire to shut out anything.

10

The Court: No; I don't want to shut out anything, either. Proceed.

Q. Did you give any girl a compact around Christmas of 1930?

A. No.

Q. Did you ever buy a compact at Saks'?

A. Yes.

Q. How many compacts?

20

A. I bought one compact.

Q. What did you do with it?

A. I gave it to the secretary of one of my best customers.

Q. Did you give any present to Mrs. Reeves at Christmas or around Christmas in 1931?

A. No.

Re-direct examination.

30

By Mr. Henderson:

Q. Mr. Pierson, was there anything other than friendship that existed between you and Mrs. Reeves and her husband?

A. No.

Q. You said that you had had a period of friendship for fifteen years?

A. Right.

Q. Where was your home prior to coming to Plainfield?

A. Where was my home?

Q. Yes.

A. In Bridgeton, New Jersey. 10

Q. Where was the Reeves home prior to coming to this end of the State?

A. Bridgeton, New Jersey.

Q. Did you know them in your younger days?

A. I knew Mr. Reeves very well, and I knew her just before leaving home.

Q. Repeat that again.

A. I knew Mr. Reeves very well, and I knew her just before the time I left Bridgeton.

Q. As a matter of fact, Mr. Reeves was one of 20 the officials at your wedding, was he not?

A. He was my usher.

Q. Was there at any time anything between you and Mrs. Reeves other than that which married folks should permit to exist?

A. No.

Q. There has been something said here about you taking a young lady to a dance about New Years; what was the reason for that, or the purpose, if any? 30

A. At Christmas time that year we had our usual Christmas celebration somewhat subdued at home. The next day when I came home the family was gone; there was no note from them as to where they had gone or why they had gone. I didn't hear from

them for one week and I assumed that they had gone to Bridgeton, New Jersey, but I had no word from them. On New Year's Eve, feeling my loneliness, I called up a friend of my wife's and a friend of mine and asked her if she knew of any girl that was available to go dancing that evening. She suggested a young lady who was working with her in the
10 restaurant where she worked and it was through her that I made arrangements to get this young lady for supper and dance on New Year's Eve. I came home very late that night and got the early morning train, and slept until about ten o'clock. Mrs. Pierson and the family returned home on that day and I told her, I think it was immediately that morning, what I had done the night before.

Q. There was something mentioned by Mr. McDonough about the finding of contraceptives, although you denied it. Were you in the habit of
20 using contraceptives at home?

A. Yes.

Q. And had that been your habit during all your married life?

A. Yes.

Q. Nothing unusual about that, was there?

A. No.

Q. Did you keep them at home all the time?

A. Yes.

30 Q. Now, there is another item that I want to bring out a little clearer. On cross-examination you made a statement that Mrs. Pierson, after leaving your room, later removed your personal belongings from the room. Did I understand that correctly?

A. That is right.

Q. Where did she remove your things?

A. She removed my things into the middle room where she had been sleeping and notified me that from that time on she would sleep in the other room, in the original room, and I was to take the middle room. It just amounted to an exchange of rooms.

Q. There was also something mentioned on cross- 10
examination as to whether or not you were contributing towards the college expenses of your daughter. Were you taken into consideration by Mrs. Pierson in selecting any schools to which your children should go?

A. No.

Re-cross examination.

By Mr. McDonough:

20

Q. How often, Mr. Pierson, did Mrs. Reeves visit at your home; Mr. and Mrs. Reeves?

A. I would say about half a dozen times.

Q. How often did you meet them when you were with your wife?

A. Did I meet them?

Q. How often were you and your wife together in meeting them?

A. Well, that is a pretty general statement. I 30
should say that we were most always together, except on occasions of those visits that I have described.

Q. How many times were they at your house in the last two years of your living there?

A. Two or three times.

By the Court:

Q. This budget, P6, effective May 11, 1931; was that adhered to by you?

A. That was my personal budget after leaving home, wasn't it, the one dated May 11th?

Q. Dated May 11th.

10 A. As nearly as I could; yes.

Q. Did you continue to be controlled by this budget from that time on until November?

A. I wouldn't say so; no.

Q. Have you anything in the way of cancelled check vouchers or anything else to show what you were paying toward the household expenses immediately prior to the maintenance suit?

A. Yes; I have all my check books home and my cancelled checks from January, 1930, until today.

20

The Court: I think at this point they might be put in. I also think it would be well —

By Mr. Henderson:

Q. Is that the analysis, Mr. Pierson, that you refer to which was made up from the check books, and so forth, that you have there, that you made up at my request?

30 A. Yes, sir. There is more than that, though, here. Yes; that is right.

Q. Do you have the vouchers that will verify the analysis?

A. I have all the cancelled checks and all my check books in here, which is my habit; I was paid by

check and I deposited my check and paid all my expenses by check.

Mr. Henderson: Is there any objection to the admission of them as a whole?

The Court: I suggest that they be put in now subject to any objection. Counsel may have ample opportunity to go through them. And I suggest also that the analysis go in evidence subject to that objection, as it will be quite helpful to have the analysis. 10

Mr. McDonough: What do you mean by the analysis?

The Court: Well, the witness says that he has made an analysis of his expenditures prior to the commencement of the maintenance suit. If that analysis is not correct it will appear so by examination; you can cross-examine on it; and while it is not competent evidence over objection, I suggest that no objection be made. 20

Q. Will you give me your account books to support the statement that you have made?

A. I made a statement from January 1st, 1930, to show my expenses for the year prior to this when I left home, from January, 1930, until the day I left home; in other words, all the year of 1930, from January to December, and from January to May of 1931. 30

The Court: I think the only period we are inter-

ested in is prior to November, of 1931; between May and November of 1931, unless counsel wants to put in more.

A. I can get that, but it will take me a few minutes to separate it.

10 The Court: I would suggest that we adjourn at this point for the day, and that you pick out or Mr. Pierson pick out now the cancelled check vouchers and check books between May and November, of 1931, and that they be marked in evidence now and then turned over to the other side for examination between now and the adjourned date; then you can cross-examine on those at the adjourned date.

20 Mr. McDonough: That is all right with me.

Mr. Henderson: Now, if your Honor please, I certainly will obey your Honor's desire to adjourn now, if that is really your wish, but I have three witnesses who should be very brief, and it would necessitate their returning at some other time. If you want to adjourn, however —

The Court: No; if you have some brief witnesses
30 we might hear them.

Mr. Henderson: I don't believe it would take over half an hour.

HAROLD G. HIGH, sworn.

Direct examination.

By Mr. Henderson:

- Q. Where do you reside? 10
A. Plainfield, New Jersey.
Q. What is your occupation?
A. I am assistant to the superintendent of the
Graselli Chemical Company.
Q. How long have you known Mr. and Mrs.
Pierson?
A. About seven or eight years.
Q. Do you recall the date of March 28th, 1931?
A. Very well.
Q. Were you called to the Pierson home? 20
A. I was.
Q. By whom?
A. Mrs. Pierson.
Q. What time did you arrive?
A. Probably between seven-thirty and eight.
Q. Who else was present?
A. I think when I arrived she was there alone,
and I think Howard came in shortly afterwards,
either with or shortly followed by Walter Carson.
Q. How long did your conference there last? 30
A. Until approximately midnight.
Q. Did Mrs. Pierson tell you the cause or the
reason why she had called you there?
A. Yes, she did on the telephone.
Q. What had she said was the purpose of her
request?

A. She said that she and Howard were having some domestic difficulties and that she would like to have me come down; she said she had already called Walter Carson and she was asking me to come down and counsel with her.

Q. Did she state what those domestic difficulties consisted of?

10 A. Not over the phone.

Q. After you had arrived?

A. Yes.

Q. What did she say?

A. Well, the conversation was—it is impossible to —

The Court: In effect what did she say?

20 A. Well, that Howard was very overbearing, that she didn't like to have him around, in general his presence was getting to be distasteful to her.

Q. What suggestion, if any, was made by Mr. Carson at that time?

A. Mr. Carson suggested that there should be a separation of probably a month or two, that they might get used to each other's absence and want each other's presence.

Q. What was Mrs. Pierson's attitude toward that suggestion?

30 A. The first time the suggestion was made she emphatically said that was just what she wanted him to do, but she didn't want him to come back.

Q. She said that in the presence of Mr. Carson and Mr. Pierson?

A. Yes, sir.

Q. What was her attitude during the time of this conference; was it one of reconciliation?

A. No; decidedly belligerent.

Q. What was her attitude at the time the conference broke up around midnight?

A. Well, from my standpoint it was unsatisfactory, because I was a friend of both and I didn't see any light on the horizon.

10

Q. Now, what did you do the next day?

A. At Howard's request I drove to Bridgeton in order to have a conference with Mr. McAllister.

Q. At Howard's request?

A. At Howard's request.

Q. After you returned from that visit did you have a conversation with Mrs. Pierson?

A. Yes; on some night during the following week, I don't recall whether it was Monday, Tuesday or Wednesday, but it was before the week, she called me on the telephone and asked me what had happened at Bridgeton, and I told her we had a very friendly conference with Mr. McAllister and that I hoped that she would go down to see him, because I knew he was going to give her some very good advice and that he thought a reconciliation was possible.

20

Q. What was her reaction to that?

A. She said she didn't care to talk to him if he was going to advise her about anything, that she had already made up her mind and that she would not listen to his advice.

30

Cross-examination.

By Mr. McDonough:

- Q. What was the date of that conference?
A. Which conference?
Q. That you are talking about.
10 A. With Mr. McAllister?
Q. The conference that you and Howard and Mr. Carson had.
A. March 28th, 1931.
Q. March 28, 1931?
A. I think it was; yes.
Q. Mr. High, you were a member of the bible class with Mr. Pierson?
A. Yes, sir.
Q. And you were a member of the bridge club or
20 round table with Howard?
A. Yes.
Q. You were entertained quite a few times at the Pierson house?
A. We were entertained there in turn; yes.
Q. You were very intimate with the Piersons?
A. Yes, sir.
Q. Did you observe anything up to that time of their marital affairs?
A. No.
30 Q. Did Mrs. Pierson tell you she thought that you should help fix up when you came over; did she invite you with that idea in mind?
A. She said she wanted it fixed up; that is I concluded that was what she hoped for.

Q. Was her attitude one of seeking reconciliation at the conference?

A. No; more one of seeking justification for her attitude.

WALTER CARSON, sworn.

10

Direct examination.

By Mr. Henderson:

Q. You reside in Plainfield, Mr. Carson?

A. Yes.

Q. You have known the Piersons for some time?

A. About six years prior to the date of that conference.

Q. Were you called to the Pierson home on March 20 28th, 1931?

A. Yes.

Q. By whom?

A. Mrs. Pierson.

Q. Who was present?

A. When I got there I think, as I remember it now, Mr. High.

Q. Mr. Pierson later joined you?

A. I believe so; yes.

Q. Did Mrs. Pierson tell you the purpose of calling you there? 30

A. Domestic troubles.

Q. What was her attitude during that conference toward Mr. Pierson?

A. Her attitude was one of indignation.

Q. Did you make the suggestion that there be a temporary separation?

A. I did.

Q. What was the reaction of Mrs. Pierson to that?

A. I don't know whether it was at that particular time, but she did say about that time that she could scarcely stand being in the same room with

10 Mr. Pierson.

Q. How long did the conference last, Mr. Carson?

A. Till very late into the evening.

Q. What was her attitude toward a prospective reconciliation when you left the home?

A. What was Mrs. Pierson's attitude?

Q. Yes.

A. Well, the prospects didn't look very bright.

Q. What was Mr. Pierson's attitude during this conference between you four people?

20 A. His attitude impressed me as I remember it now, to say the least, as one more willing to be reconciled than Mrs. Pierson.

Cross-examination.

By Mr. McDonough:

Q. Did you discuss the fact that Howard would not permit Irene to use the car at that conference?

30 A. I don't remember that coming up.

Q. Do you remember that that was the subject which caused the conference; that she had had a car and that she had a job with the State and could do her work only if she used a car, and that he had taken the car and that she was very indignant about his refusal to permit her to use the car?

A. Yes; that is true; I remember that was spoken of at that time.

Q. Wasn't that the principal subject of the conference; and wasn't that she tried to get straightened out?

A. I can't say that.

Q. Didn't she ask you to come in order to try to fix that up for her? 10

A. That wasn't the only thing; that wasn't the only point that was mentioned as I remember it.

Q. Did Howard give her back the car, or did he agree to give her back the car later?

A. I can't say that; I don't remember.

Q. You are a member of this bible class?

A. Yes.

Q. And you were a friend of Howard's as a member of that class?

A. Yes. 20

Q. Did he bring you to his home?

A. When do you mean?

Q. Did he bring you to his home and entertain you in his home?

A. Yes.

Q. Very frequently?

A. No, not frequently.

Q. Was there a club called the round table in that class?

A. Yes. 30

Q. Were they entertained at all their meetings in the beginning at Mrs. Pierson's home?

A. No; that was done alternately.

Q. Wasn't it done at the beginning down at the Pierson home entirely?

A. I don't know; I wasn't in Plainfield at the time.

Q. Did you notice any extravagant or richly made furniture in Mrs. Pierson's home?

A. No.

Q. Did she conduct herself and her house in a proper manner?

10 A. As far as my best recollection is concerned.

Q. She took good care of her husband's guests; is that correct?

A. She took good care of me.

Q. You never noticed anything wrong with or any friction in the relations between Mr. and Mrs. Pierson up to that time?

A. What particular time?

Q. At the time of that conference.

20 A. I don't like to answer a thing that isn't perfectly clear in my mind, but I believe I did.

Q. Well, was it at a time close to the conference or at a time far before, or long before, when you first noticed friction?

A. Well, I should say it was close to that.

Q. Would it have been within a month or two, or within three months of the time of the conference?

A. Yes, certainly; but I wouldn't like to answer that with exactness.

30 Q. What was the date of this conference?

A. March 28, 1931.

Q. Would you say that you noticed no friction in their relationship up to the first of the year?

A. Three or four months previous.

Q. Three months previous?

Grace Martin—Direct

A. I think I would say that, but I don't want to say exactly.

Q. That is all.

GRACE MARTIN, SWORN.

Direct examination.

10

By Mr. Henderson:

Q. Mrs. Martin, you are a sister of Mr. Pierson, are you not?

A. I am; yes.

Q. Did you attend the family reunion of September, 1930, which Mrs. Pierson attended?

A. I did; yes, sir.

Q. Did you hear a statement made by Mrs. Pierson at that time concerning her husband?

A. I did; yes.

Q. What was the statement?

A. She said that she was going to show him a few things before very long.

Q. To whom was she addressing those remarks?

A. She was talking to my niece at that time; she was a student; she was talking to her about marriage.

Q. What did she say about marriage?

30

A. She said that a woman was a fool for marrying for love; that the only thing to consider was a man's finances.

Mr. McDonough: I object to that.

The Court: Do you object to the question or the answer?

Mr. McDonough: To both the question and the answer.

The Court: I didn't hear any objection to the
10 question.

Mr. McDonough: The question was about marriage. I object to that question; it was a generality.

The Court: I will sustain the objection. In the first place it is away back in September, 1930.

Mr. Henderson: Only three months before this
20 time during which the petitioner testified that there had been some difficulties. I wanted that, if your Honor please, to show the frame of mind from September, 1930, to January, 1931.

The Court: Yes; that is closer than I was thinking.

Q. What was her statement, Mrs. Martin?

A. That she expected to show Harold a few things before very long.

30 Q. No; what was the statement she made about marriage?

A. Why, she was advising my niece when she married to marry a man who had money and not to consider love.

Q. And it was after that that she stated she was going to show Harold a few things?

A. I don't remember if it was before or after.

Q. But it was at the same time?

A. It was at the same time.

(No cross-examination.)

The Court: Between now and the next hearing I suggest that counsel agree on the figures of the expenditures between May and November.

10

Mr. Henderson: If your Honor please, I will have Mr. Pierson prepare the statement and will submit it to Mr. McDonough.

Mr. McDonough: I understood he had done that.

20

Mr. Henderson: Not the correct period. This takes in more than that period. I will have him confine it to that period, if your Honor please, from May to November, 1931.

(Hearing continued to October 4, 1934, at 10 A. M.)

30

Elizabeth, N. J., October 4, 1934.

(Hearing resumed in the presence of counsel for the respective parties.)

10

HOWARD PIERSON, recalled.

Direct examination.

By Mr. Henderson:

Q. Mr. Pierson, I show you a list and ask you
20 what that list represents?

A. This is a list of checks that I issued for the account of my home from the period May 4th, 1931, to November 19, 1931.

Q. And I show you a batch of checks and ask you if those checks are as represented by number, amount and date upon that list?

A. They are the correct batch.

Mr. Henderson: I offer the list and checks in
30 evidence.

(Marked Exhibits D1 and D2.)

Q. I have another check, dated November 16, 1931, payable to the order of Irene Pierson, which I had

Howard Pierson—Cross

in my file; Mr. Pierson did not have it in his possession, so that did not go in the list. I ask you what that check represents, Mr. Pierson?

A. That represents the weekly amount that I sent to Mrs. Pierson.

Q. How much is that?

A. \$20.

Q. And the date of the check is what? 10

A. November 16, 1931.

Q. And from the perforation can you tell us when that was paid?

A. It was paid on November 19, 1931.

(Marked Exhibit D3.)

Cross-examination.

By Mr. McDonough: 20

Q. Mr. Pierson, with reference to the checks offered in evidence as D1, will you refer to check No. 1029?

A. All right; I have it.

Q. And that check is for \$2 payable to whom?

A. Ellen Pierson.

Q. What was it given for?

A. That was given for her allowance, when I say allowance, I mean that covered her money for her 30 school, lunches and things of that sort; that is what her allowance covered.

Q. And check No. 1036 for \$2?

A. For Ellen Pierson.

Q. What is that for?

A. The same thing.

Mr. McDonough: Your Honor, there are \$64 in checks during the period from May 4, 1931, to November 19, 1931, of the same type as those now testified to. Those we admit as having been paid to the children, but they were an allowance that did not contribute to their support. They were distinctly ear-marked as an allowance for the children.

10 We deny that that contributed to the support of the children or his family.

Q. As I understand it, Mr. Pierson, there are \$64 in checks of two dollars apiece approximately during that period of time?

A. Yes.

Q. Which went for the school things and allowances?

A. For the two children; that is right.

20 Q. Now, Mr. Pierson, will you refer to check No. 29c?

A. Yes; I have it.

Q. What is that check?

A. That check is to the order of N. B. Dutcher, treasurer.

Q. For how much?

A. \$28.

Q. What was that for?

A. To cover expenses at the Y. M. C. A. camp for
30 the boy.

Q. Did that cover the entire expenses?

A. As far as I know; yes, the only bill I had.

Q. Check No. 1218?

A. 1218, is drawn to the Plainfield Y. M. C. A. for \$6.

Q. What did that cover?

A. That covered membership dues for the boy.

Mr. McDonough: Your Honor, \$34 in these checks, that is check 29c and 1218, for \$28 and \$6 respectively, \$34 altogether, we deny as having been contributed for the support and maintenance of Mrs. Pierson or of the family, but we admit that they 10 were paid as stated in the checks.

Q. Now, Mr. Pierson, will you refer to check 1011?

A. Yes; it is drawn to the order of the New Jersey Bell Telephone Company for \$9.84.

Q. What did that cover?

A. That covered the expense of the home telephone.

Q. For what period?

A. The check was drawn May 11th; I assume that it was for the—I don't know, but I think it was for 20 the previous month, April.

Q. You notified the telephone company that you would no longer be responsible when you left home; is that right?

A. It was after this date, May 11th.

Q. So that that check represents an item that was past due at the time you left home?

A. I wouldn't say it was past due; no.

Q. Wasn't it the previous month's telephone bill?

A. I think so, yes. 30

Q. Refer to check 1014.

A. Somerset Laundry, for \$9.26.

Q. Was that for a past due bill; was that paid for a bill which was past due at the time you left home?

A. I wouldn't say the bill was past due; it was due at the time I left home, yes.

Q. Did you ever pay for laundry bills after you left home?

A. This is the only one.

Q. Did you notify them that you would not be responsible for any further bills?

10 A. It was an advertisement that appeared in the Courier News, which was notification to all people that I would not be responsible for her bills.

Q. You gave that out publicly?

A. That is right; at the request of the State Trust Company of Plainfield.

Q. Refer to check 1024, for \$7.43.

A. To the Public Service Electric & Gas Company, for \$7.43.

20 Q. Was that a bill that was due at the time when you left home?

A. I would say without referring to the records that that was the previous month's bill; April's bill.

Q. April, 1931?

A. Yes.

Q. Did you notify the Public Service that you would not be responsible for any further bills?

A. I don't think so; not notified.

Q. Did you close your account with Best & Company?

30 A. I closed my account with all the department stores at several times during my married life; the last time I don't recollect the date.

Mr. McDonough: Well, your Honor, there are checks aggregating \$1058 of this type. I don't think

Howard Pierson—Cross

it is necessary to examine on all of them. They are all of the same character. They are issued at this time or later to pay items that were past due at the time Mr. Pierson left home and not to pay for current support. I don't see why this all could not be admitted to be past due.

Mr. Henderson: I will examine Mr. Pierson on 10 them, if you will state which ones you want.

Mr. McDonough: My own thought is to save time. It does not seem proper to waste time to go into that.

The Court: See if I get your point. You say that because these various amounts that were paid during the period from May to November they were past due when they were paid? 20

Mr. McDonough: No; were past due when he left home, and did not contribute to the support and maintenance of the home.

The Court: At a period after he left home.

Mr. McDonough: That is right.

The Court: That is quite obvious, I should think. 30

Mr. McDonough: In other words, a man could say that he was giving his wife \$25 a week by paying up the debts of his wife, and my impression would be that it would not be contributing to her support.

Q. Mr. Pierson, refer to check 1045.

A. That is a check drawn to C. Bessie Pierson for \$27.

Q. Who is C. Bessie Pierson?

A. My sister.

Q. What was the purpose of that check?

A. That was to pay interest on a joint note signed
10 by Irene and myself.

Q. Was there ever any suit brought on that note?

A. Subsequently; yes.

Q. By whom?

A. By my sister.

Q. Against whom?

A. Against both Irene and myself.

Q. Was Irene held liable for the payment of that
note?

A. She was not.

20 Q. So that she had no liability on that note; that
was a check paid for interest on your personal
items?

A. The Court held she had no liability on the
note, but she signed it.

The Court: What was it for?

A. It was for money to pay off household bills;
we borrowed \$400 on a joint note; we both signed
30 the note.

Mr. McDonough: The money was an obligation
of Mr. Pierson's and it was so held by the Court.

The Court: Naturally.

Howard Pierson—Cross

- Q. Refer to check 1c?
- A. Doctor Robert W. Rogers, \$102.
- Q. What was that for?
- A. That was for doctor bills for Mrs. Pierson, Teddy and Ellen.
- Q. Were any of those doctor bills between the time you left home and November 19, 1931?
- A. No. 10
- Q. Were they all doctor bills incurred prior to that period?
- A. Prior to May 4th.
- Q. Refer to check 2c?
- A. Plainfield Milk & Cream Company, \$38.11.
- Q. Was that for milk and cream products delivered before you left home?
- A. Products delivered before I left home; yes.
- Q. Did you ever pay the Plainfield Milk & Cream Company after you left home? 20
- A. This check was issued after I left home; this paid the account up to the time I left home.
- Q. You never paid for any accounts of the Plainfield Milk & Cream Company after you left home?
- A. No.
- Q. Refer to check 3c.
- A. C. H. Hall, \$32.07.
- Q. Was that for a bill rendered before you left home?
- A. Yes. 30
- Q. Refer to check 4c.
- A. Wadley & Smith, \$107.
- Q. Was that account in this case incurred before you left home?
- A. This was the account in full up to the time I left home.

Q. Did you ever pay Wadley & Smith for any coal delivered after you left home?

A. No.

Q. Refer to check 5c.

A. New Jersey Bell Telephone Company, \$13.65.

Q. Was that for service rendered prior to your leaving?

10 A. Yes.

Q. Refer to check 6c.

A. Owen J. Horne, D. D. S., \$28.

Q. Was that for dental services?

A. Dental services for Mrs. Pierson.

Q. Were the services rendered before you left home?

A. Yes.

Q. Refer to check 8c.

A. Dr. George D. Harney, \$6.

20 Q. Was that for services rendered before you left home?

A. Yes; for Mrs. Pierson.

Q. Refer to check 7c.

A. 7c, Doctor Clive Vivian Montfoot.

Q. How much?

A. \$44.

Q. Was that for services rendered prior to your leaving?

A. Yes.

30 Q. Refer to check 9c.

A. Brown & Kellers Cleaning Shop, \$32.80.

Q. Was that for services prior to your leaving?

A. Yes.

Q. Refer to check 13c.

A. J. D. Elwood Lumber Company, \$26.28.

Q. Was that for materials delivered prior to the time you left home?

A. Yes.

Q. Refer to check 15c.

A. Allied Home Window Cleaning Company, \$4.70.

Q. Was that for liability incurred before you left?

A. Yes.

10

Q. Refer to check 16c.

A. G. W. Cofut.

Q. How much?

A. \$7.

Q. Was that for an item or obligation that was past due when you left home?

A. It was incurred before I left home.

Q. Refer to check 19c.

A. Franklin Simons Company, \$82.29.

Q. Was that for an item that was past due at the 20 time you left home?

A. Incurred by Mrs. Pierson before I left home.

Q. Refer to check 20c.

A. B. Altman & Company, \$37.43.

Q. Was that an item incurred before you left home?

A. Yes.

Q. Refer to check 21c.

A. M. C. Van Arsdale, \$3.25.

Q. Was that for an item that was incurred before 30 you left home?

A. Yes.

Q. Refer to check 25c.

A. Brick Brothers, \$3.50.

Q. Was that for an item incurred before you left home?

A. Yes.

Q. Refer to check 26c.

A. Nelson Van Winkle, \$5.30.

Q. Was that for liability incurred before you left home?

A. Yes.

Q. Refer to check 27c.

10 A. Robert L. Leycock, \$80.01.

Q. Was that for 1930 taxes?

A. 1931 taxes; due in 1931; whenever they would cover.

Q. What was the date of payment of the check?

A. June 23, 1931; that would cover the first half of 1931.

The Court: Does that list show any payments after you left home which were not for previous
20 obligations?

A. That list shows all the checks that I sent to Mrs. Pierson, each payable \$20 a week; they also show payments for current building and loan dues; for interest on second mortgage; for taxes.

The Court: For the period from May 4th on?

30 A. Yes, sir; then there were some other items that I paid on account of the boy's illness, to the hospital and to the drug stores. This list of bills that you are reading from here, this covered items that were due at the time I left home; and I arranged to pay everything up to date at that time, and then turned the money over to her from that time on.

Howard Pierson—Cross

Mr. McDonough: I have finished, unless you admit that those items are all past due.

The Court: Isn't it true that everything except the checks for current weekly payments of \$20 and some building and loan payments, some of the medical expenses which are noted there, all of those things were for prior debts? 10

Mr. McDonough: The classification in those particulars; and I raise the question as to whether these were going for support.

Q. Mr. Pierson, did you consider that the taxes were paid for Mrs. Pierson's support?

A. Yes.

Q. Did you own an interest in the house?

A. Half an interest; she occupied the house herself with the children. 20

Q. Was that by your consent?

A. Yes.

Mr. McDonough: In the case of the building and loan items, your Honor, since there was a joint ownership of the house in husband and wife, we admit that half of the payments were for her support and maintenance.

30

The Court: I don't see why it didn't go to her support and maintenance, if she had the occupancy of the house and he kept it up.

Mr. McDonough: The interest perhaps might, but

the rest of that money went to increase the value or dues. While it is apparent that she had the occupancy of the house, so far as the moneys he paid in the building and loan and so on, it increased the value of the equity, and of course he got half the benefit; so that it does not seem to me, your Honor, that the \$63 payments should be considered
 10 to be entirely for her support.

The Court: The question is whether giving her the occupancy of the house and paying all the expenses of that occupation, plus twenty dollars a week, plus certain medical expenses, under all the circumstances of the case, was sufficient support and maintenance that he should have given her.

Q. Will you refer to check 28c, Mr. Pierson?

20 A. Yes, drawn to the order of C. W. Curtin & Company, \$17.53.

Q. Did that refer to an item that was past due at the time you left home?

A. Yes.

Q. And check 31c?

A. Best & Company, \$69.85.

Q. Was that a liability incurred before you left home?

A. Yes.

30 Q. Check 1140?

A. Drawn to the order of Bessie Pierson, \$3.

Q. Was that for interest on the note you referred to before?

A. Yes.

Q. Check No. 50b?

- A. State Trust Company, for \$100.
- Q. What was that for?
- A. That was for payment on a note.
- Q. Was it your note or Mrs. Pierson's note?
- A. That was my note, which I had taken out for our expenses.
- Q. Check 51b?
- A. State Trust Company, \$4.60. 10
- Q. What was that for?
- A. Interest on such a note.
- Q. Check 54b?
- A. State Trust Company, \$4.60.
- Q. What was that for?
- A. Interest on such a note.
- Q. These notes in each instance were signed by you?
- A. Yes.
- Q. And were not signed by your wife? 20
- A. No.
- Q. Check No. 55b?
- A. C. Bessie Pierson, \$7.50.
- Q. What was that for?
- A. Interest on a note.
- Q. Of your own?
- A. It is possible that this one was, because I did have some of my own; she had some of my own notes.
- Q. 56h or 56b? 30
- A. 56b is Northwestern Mutual Life Insurance Company, \$4.56; that is interest on a loan that I had on a policy.
- Q. 57b?
- A. State Trust Company, \$162.89.

Q. What was that for?

A. That was a payment of \$150 on account of a note and \$12.89 interest.

Q. Was it your note?

A. My note; yes.

Q. 58b?

A. Bessie Pierson, \$3.

10 Q. Was that for interest on a note?

A. Interest on a note; yes.

Q. In Exhibit D2 you list \$178.06 of checks to the Travelers Insurance Company, H. E. Draper, Provident Mutual Insurance Company, Massachusetts Mutual, Northwestern Mutual, Mutual Life, Provident Life and Trust Company.

A. Yes.

Q. What were those checks made for?

20 A. They were for premiums on life insurance policies.

Q. Who was the beneficiary under the policies?

A. The State Trust Company.

Q. Was there any interest that your wife had in these policies?

A. I have a trust agreement with the State Trust Company which provides for the administering of these policies in the event that they are paid, and that trust agreement provides for the children.

Q. Has your wife any interest in those policies?

30 A. What do you mean, any interest?

Q. Is she the beneficiary under the trust agreement or under the policies?

A. The State Trust Company was beneficiary on the policies.

Q. Was your wife the beneficiary under the trust agreement that you refer to?

A. Partly so; yes.

Q. To what extent?

A. I don't recall.

Q. Was any of the money from those insurance policies to go to your wife, directly or indirectly?

A. I had seven or eight policies; I don't remember whether any of them were. At the time I left home I think they were; she was the beneficiary on all of them. Shortly after that I transferred them to the State Trust Company under this trust agreement. 10

Q. Did you not eliminate your wife so that she had no claim under those policies or the trust agreement?

A. I believe the transfer would eliminate her and make the State Trust Company the whole beneficiary; yes.

Q. Did you ever tell her that you cut her off under your life insurance policies? 20

A. I don't think so; no.

Q. Was the agreement made with the State Trust Company for the sole benefit of the children?

A. No; provided for the payment of all my outstanding debts at the time of death and also made some other provisions in there, but the bulk, I would say practically 95 per cent, was provided for the children over a period of time.

Q. You made no provision for your wife there? 30

A. No direct provision; no.

Q. Why do you say no direct provision? Did you make any indirect provision for her?

A. Well, if there were any outstanding obligations at the time of my death, that would take care of them.

Mr. McDonough: Your Honor, these payments aggregating \$178.06 we deny as contributing to the support and maintenance of the family.

The Court: The insurance payments?

10 Mr. McDonough: Yes; as contributing to the support and maintenance of the family during that period.

The Court: Well, strictly they are not maintenance payments, but it is quite proper to make provisions for the future if in doing so the allowance for the present is not greatly decreased.

20 Q. Mr. Pierson, you made certain checks during the period from May 1st, 1931, to November 19th, 1931, of \$14 each and of \$20 each to your wife; is that correct?

A. Yes.

Q. What would they cover?

A. I sent her an amount each week; they were to cover that weekly amount.

Q. What was she to pay with the \$14 checks?

A. That was entirely up to her.

30 The Court: Do you mean you sent her \$14 a week plus the \$20 a week?

A. No; I sent her \$20 a week; a total of \$20 a week for a few weeks I divided the checks three ways, or made three checks, one for Mrs. Pierson, one for Ellen and one for Teddy.

Howard Pierson—Cross

The Court: And these three checks aggregate \$20?

A. Yes; beginning about the latter part of August I made the check to her for \$20 each week.

The Court: From then on it was for \$20 a week?

A. That is right. 10

Q. Well, she was to pay for the coal bills for the house?

A. I gave her that money for her support.

Q. Did you give her any other money for support than that?

A. All the money that I contributed here shows on that list; there were some bills paid after November 19th that might have contributed toward that period, but I gave the checks between the two 20 dates specified by the Court.

Q. Now, Mr. Pierson, when you said that you contributed \$270 a month to her support during that period, you were talking of the whole sum that you paid as shown by this list and dividing it by the number of months in that period; is that correct?

A. No.

Q. Well, the whole sum shown in Exhibit D2, your list of checks, is \$2313?

A. That is right. Divide that by six and a half 30 months and you have about \$350 a month.

Q. Well, what was the \$270 to which you referred in your direct testimony?

A. The \$270 was an average taken over a twelve-month period; that was an approximated average, if there is such a thing as an approximated average.

By the Court:

Q. Well, this last sheet of your Exhibit D2 shows the makeup of that \$270, doesn't it?

A. Yes.

Q. You have \$86.67; that was \$20 a week?

A. That is right.

10 Q. You have building and loan dues?

A. Right.

Q. How much of those dues, if you know, went toward the payment of interest and how much toward the payment of principal?

A. Why, I understand it is divided fifty per cent.

Q. Interest on second mortgage \$2. That mortgage was on the house?

A. Yes.

Q. Where she has lived?

20 A. Yes.

Q. Taxes \$13.50; that is the annual taxes divided by twelve?

A. Yes.

Q. Insurance payable to children; that is what you have been testifying to; \$40?

A. Yes.

Q. Do you still carry that?

A. No; not all of it; a large part of it I still carry.

30 Q. Payment of obligations, \$50, is the next item.

A. That is payment on notes that I had in the bank.

Q. That doesn't include any of those bills that that statement shows?

A. No.

Q. Interest obligations, \$13.75?

A. That is also a carrying charge.

Q. Water rents, \$2; is that on the house where she lives?

A. Yes.

Re-direct examination.

10

By Mr. Henderson:

Q. These payments on the notes, Mr. Pierson, what were those notes for?

A. Every one of the notes that I had at the bank I had taken out to pay our home bills.

Q. What do you mean by our own bills?

A. Our home bills.

Q. The list of checks enumerated by Mr. McDonough, which you say were for past due obligations and which were paid between May and November; whose obligations were they? 20

A. They were obligations for the home; joint obligations.

Q. And who contracted those bills?

The Court: It wouldn't make any difference, would it?

Mr. Henderson: No; I don't know that it would. 30

Q. Now, there was a question raised as to checks given to Ellen and Teddy; you testified, I believe, that they were for lunch expenses and so forth?

A. Allowances; that was specified for the children, to cover their allowance entirely.

Q. Was it customary for them to get their lunches at school every day?

A. Yes.

Q. And that allowance was for that purpose?

A. Yes.

Mr. Henderson: I want to further examine him, 10 if your Honor please, as to the residence of this defendant as represented by registration with the election board, and so forth. I feel that should be in the evidence.

The Court: Go ahead.

Q. Mr. Pierson, while you were on the witness stand the other day you testified that you resided in Brooklyn.

20 A. Yes.

Q. You left the home on Seventh Street at what time?

A. On May 4th, 1931.

Q. And moved two blocks further down; did you not?

A. On East Seventh Street; right.

Q. When was it that you removed or took a room in Brooklyn?

A. In 1932.

30 Q. Where did you vote in 1931 and 1932?

A. In Plainfield.

Q. I show you a letter from the Union County Board of Elections and ask you what that represents?

A. I was concerned as to whether I would be able

to vote in 1932 at the presidential election in Plainfield where I had always voted, so I wrote to the Union County Board of Elections after having received from them notice that I was not registered formally, and this letter tells me that I can vote there in 1932.

Q. Did you still consider Plainfield, Union County, your residence for the purpose of voting in 1932? 10

A. I voted from 433 Seventh Street, Plainfield, in 1932.

The Court: What month was it that you took this room in Brooklyn and went to live there?

A. I think it was October.

The Court: Just a month before the election, or just a few days before the election? 20

A. Just about a month before the election; yes.

Q. After that time, Mr. Pierson, was it your intention to make Brooklyn your home, or had you arrived at any intention as to any change of residence whatever?

A. As I testified before, my plans were very indefinite; I had no intention of establishing a definite home in Brooklyn.

Q. Have you ever since that time intended to establish a permanent home in Brooklyn? 30

A. No.

Re-cross examination.

By Mr. McDonough:

- Q. Mr. Pierson, did you intend to come back to Plainfield to live at 433 East Seventh Street?
A. I didn't under present conditions; I couldn't.
- 10 Q. Was it your intention to make your home at 433 East Seventh Street?
A. I had no definite plans; I didn't know what might develop.
Q. You didn't have any such intention?
A. I didn't know what might develop.
Q. You had no intention of coming back to Plainfield to make that your home?
A. If things might have been adjusted so that I could have gone back I would have.
- 20 Q. You had no intention of doing so as conditions existed in 1932?
A. I couldn't have gone back there then.
Q. Yet you say you voted in Plainfield in 1932?
A. That is right.
Q. Where did you receive your mail?
A. I received my mail at my office, 141 Broadway, New York.
Q. Did you receive any mail at your apartment in Brooklyn?
- 30 A. Not that I recall.
Q. How did you pay rent for that apartment?
A. In Brooklyn?
Q. Yes.
A. By check.
Q. How many rooms were there in that apartment?

Howard Pierson—Re-cross

- A. One.
- Q. How often did you pay the rent?
- A. Monthly.
- Q. Did you make a lease upon it?
- A. When I went there, no, I had a month-to-month arrangement.
- Q. Was that in writing?
- A. I think not. 10
- Q. Did you later make a lease on it?
- A. I don't recollect that I ever had a lease on it.
- Q. Have you got a lease on your present apartment?
- A. No.
- Q. Where are you living now?
- A. 66 Orange Street, Brooklyn.
- Q. How many rooms is that?
- A. One room.
- Q. How do you pay the rent on it? 20
- A. Weekly.
- Q. How often after you left home did you return to 433 East Seventh Street?
- A. I went there to see the children quite often.
- Q. How often?
- A. Well, I would say on an average of once a week over that period.
- Q. Until when?
- A. Well, I have continued that up until very recently. 30
- Q. What do you mean by very recently?
- A. Within the last year.
- Q. Did you ever sleep at that address?
- A. No; not after May 4th, 1931.
- Q. You said in your previous testimony, Mr. Pierson, that your plans were indefinite.

A. That is right.

Q. You didn't know just where you might be; you also said that you established your residence in New York in order to be closer to your work; is that correct?

A. I moved to New York to be closer to my work and to reduce my expenses.

10 Q. Did you pay an income tax in New York?

A. No.

Q. You never filed any return for income tax in New York?

A. No.

Q. Did you pay a Federal income tax?

A. Yes.

Q. What office did you pay it at?

A. Newark, New Jersey, until this last year; I paid it in Brooklyn this last year.

20 Q. Last year you paid at Brooklyn?

A. My return that I made in March, 1934, for 1933, was paid at Brooklyn.

Q. And your return for 1932, which was made in 1933, was paid at Newark?

A. Newark; right.

Q. Is the collector of internal revenue at Newark and the collector for the City of Newark also, do you know?

30 A. No; he is only the collector for the District of New Jersey, as I understand it.

Q. Why did you pay it at Newark?

A. Because that covers Plainfield.

Q. Did you state your residence in your income tax blank as Plainfield?

A. I can't remember that; I have a copy of my

income tax return here; whether it shows the address I gave or not I don't know.

Q. Do you have a copy here?

A. Yes.

Mr. Henderson: I would like to offer this letter in evidence.

10

Mr. McDonough: I object to offering this in evidence; it is a letter from the election board.

The Court: On what ground?

Mr. McDonough: It consists of information given by the Commissioner of Registration of Elections of Union County as to his residence and it has no evidential value here.

20

The Court: I guess that is so, isn't it?

Mr. Henderson: Well, I think he testified that he voted here on the strength of that.

The Court: That, of course, would be incompetent. I will overrule the offer.

A. Which year was it that you wanted?

Q. 1932.

30

A. Here is a duplicate; my address doesn't show; it has simply the figures.

Q. Have you the 1933 return?

A. Yes; that is the one that was sent in to Brooklyn.

Q. On this you gave your address as Brooklyn, Kings County, New York?

A. Yes; that was in 1933-1934, when this went in.

Q. Mr. Pierson, you left on May 4th, 1931; is that right?

A. Yes.

10 Q. You resided in Plainfield for four months?

A. From May to October.

Q. In October, 1931, you moved to New York; is that correct?

A. Right.

Q. You have lived in New York now since October, of 1931, for a period of almost three years?

A. That is right.

Q. What did you pay, Mr. Pierson, for rent for your office?

20 A. At the present time?

Q. Yes.

A. \$20.

Q. What do you pay for a stenographer?

A. \$60 a month.

Q. What do you pay for light?

A. For light, I don't have to pay for any light.

Mr. Henderson: If your Honor please, may I ask the purpose of this line of examination?

30

The Court: Haven't we been all over this the other day? Didn't you cross-examine on this part?

Mr. McDonough: Your Honor, he said it cost approximately \$1,000 a year for the cost of running his office.

Jessie Stevens—Direct

The Court: That is about \$100 a month he said. Didn't you cross-examine on that?

Mr. McDonough: I did, but I have later been told that he didn't have that much office expenses.

The Court: All right; I will allow that.

10

Mr. McDonough: From his affidavits in the case it would seem that his office expense was five or six hundred dollars.

Q. Mr. Pierson, what did you pay for light?

A. I had no bills for light.

Q. What did you pay for telephone?

A. About \$25 a month.

Q. What did you pay for—well, that constituted your

20

A. No; my telegraph expenses were about \$20 a month.

JESSIE STEVENS, SWORN.

Direct examination.

By Mr. Henderson:

30

Q. Miss Stevens, where do you reside?

A. 437 East Seventh Street, Plainfield, New Jersey.

Q. That is the residence adjoining that of the Piersons, is it not?

A. It is.

Q. Did you reside there during the years 1930 and 1931?

A. Yes.

Q. During the period from January until May, 1931, did you have any occasion to observe the method or the manner in which Mr. Pierson ate his
10 meals?

A. Yes; I did.

Q. Did he and Mrs. Pierson eat together or separately?

A. They didn't when I observed it.

The Court: They didn't what?

A. They didn't eat together at the time when I observed it. Mrs. Pierson would be sitting in the
20 room beyond the dining room while Mr. Pierson was eating his meals.

Q. During that period did you have an opportunity of observing the number of department store vehicles that would leave packages at the residence?

A. There were always a great many department store delivery wagons stopping there.

Q. Was that before this particular time as well as during that period?

A. Yes.

30 Q. Were you aware of the approximate time that Mr. Pierson ceased living at the home adjoining your residence?

A. No; I don't think I knew just when he left.

Q. Can you say approximately, Miss Stevens?

A. Yes; he left before the warm weather; in the spring of 1931; I couldn't say just the date.

Q. After that time were there parties of any number at the Pierson home?

A. Yes.

Mr. McDonough: I don't see how this is relevant.

The Court: I will allow it. 10

Mr. Henderson: For the purpose, if your Honor please, of showing the attitude of Mrs. Pierson only; that is all.

The Court: I will allow it.

Q. Prior to his leaving were there frequent parties?

A. Not as frequent as afterwards. 20

Q. Well, did the character of the parties change?

A. They were of longer duration after Mr. Pierson left.

Q. You mean lasting longer into the morning?

A. That is what I mean; yes.

Q. And were more frequent?

Mr. McDonough: She didn't say that. She said of longer duration.

30

A. I couldn't say that they were very much more frequent, but they were of longer duration.

Q. What was the character of the parties after that time as compared with the character before, as to noise, hilarity, and so forth?

A. I should think the parties afterward were more gay than the parties previous to Mr. Pierson's leaving.

By the Court:

Q. What makes you think that?

10 A. Simply the things that I would hear.

Q. You mean there was more noise afterwards than there was before?

A. Yes. My room was on that side of the house and I would naturally hear quite a bit of what goes on.

By Mr. Henderson:

Q. How late into the morning would they last?

20 A. I have seen lights there when I got up in the morning, which would indicate that the party —

Q. Was still in progress?

A. —Was still in progress. But I got up pretty early.

Q. During that time did you have occasion to see liquor being served?

A. Just once this spring.

Q. Once this spring?

30 A. What I judge was liquor, of course.

The Court: It might have been lemonade as far as you could tell?

A. No; I think not.

Mr. McDonough: I wish to object to this whole line of questions, on the ground that it has no bearing on whether he left his wife with or without justifiable cause and neglected and refused to support her; also on the ground that it has no bearing on whether a desertion took place.

Mr. Henderson: Yes, your Honor, I think it has. 10
It is facts and circumstances corroborative of the testimony of the petitioner himself as to the attitude of the defendant toward him, which I think the Courts have held were matters of corroboration.

The Court: How would that show her attitude toward him after he left, if she had some parties?

Mr. Henderson: Well, if the nature of that change, if your Honor please, would show that she 20
was perfectly happy over the situation. These are facts and circumstances showing her attitude.

The Court: Maybe she was trying to drown her sorrows. I don't think it is relevant. I will sustain the objection and strike out the testimony.

Q. Are you acquainted with a man by the name of David Smith?

A. Not personally. 30

Q. Do you know him when you see him?

A. Yes.

Q. Did he visit the Pierson home following this time with any degree of regularity?

A. He visited the Pierson home frequently and has done so for a long time.

Q. Since the spring?

A. Since Mr. Pierson left. I never saw him before.

Q. You say for a long time. Can you say as to the degree of frequency?

A. No; because ——

Q. Would you say once a week, or more than
10 that?

A. I should say almost daily.

Mr. McDonough: Your Honor, I am going to object to that on the ground that what is being done by Mrs. Pierson at this moment, or who she might be entertaining, is not relevant to the issues in this case as to whether he deserted her without justifiable cause and refused and neglected to support her. It is entirely irrelevant if she entertains somebody,
20 unless they laid a proper basis for it in the petition or in the answer. I can't see any relevancy under the present circumstances.

The Court: Why isn't that objection well taken?

Mr. Henderson: Why, if your Honor please, because it is a fact going to the question of the desertion which we allege. Now the last question Miss Stevens answered, she said almost daily. That is a
30 circumstance which your Honor has a right to take into consideration in considering the evidence along that line.

The Court: The issue is whether there has been a desertion on her part, which has been willful, continued and obstinate.

Mr. Henderson: Yes.

The Court: The evidence here, however, is that Mr. Pierson left on the 4th of May, 1931. Now I don't see how it is relevant to that, any evidence of what she did after that in her time.

Mr. Henderson: Well, willful, continued and ob- 10
stinate are the three requisites which must be
shown, if your Honor please. The testimony up to
the present time shows, the testimony of Mr. Pier-
son, her refusal of intercourse, the removal of his
things from his room, her refusal to get meals, re-
fusal to have anything to do with him until condi-
tions became such that for peace in the family, for
the family's sake Mr. Pierson left. Now, in con-
tinuation of that I think your Honor has a right to
consider those facts going towards — 20

The Court: I have a right to consider that; but
I am only questioning the value of it. I think I will
allow it because it may have some bearing on that
by way of corroboration, possibly, of the refusal
to have sexual relations.

Mr. Henderson: That is all I am offering it for.

Mr. McDonough: If your Honor please, on that 30
point, should it be allowed, I think it should not be
allowed and I object to it unless it can be proven
that he knew her and he came to visit her and that
there was some connection between them before Mr.
Pierson left his home in May, 1931.

Jessie Stevens—Cross
Beverly Hancock—Direct

The Court: You see, the point does not particularly concern this question. The question is as to her attitude of mind toward her husband during the two years and it is relevant back to what he says happened before that time. Now it may be quite remote; it may not be helpful in the future, but
10 under the case of Fallon v. Fallon I think it is perfectly admissible and I will allow it.

Cross-examination.

By Mr. McDonough:

Q. Miss Stevens, when did you observe Mrs. Pierson sitting in one room and Mr. Pierson in another while they ate meals?

20 A. Of course, I don't know the exact date, but it was during the winter of 1931.

Q. Do you know whether Mr. Pierson got home late in the evening?

A. Just what do you mean by that; to have his dinner?

Q. What time he reached home each evening?

A. No; I have no knowledge.

30

BEVERLY HANCOCK, SWORN.

Mr. Henderson: If your Honor please, I want to say that I am offering this witness for corroboration as to Mrs. Pierson's attitude for two or three

Beverly Hancock—Direct

days just prior to the time, May 4th, when he left; there was no attempt to cast aspersions on this gentleman or on Mrs. Pierson over that. I simply offer it for that purpose.

Direct examination.

By Mr. Henderson:

10

Q. You are acquainted with both Mr. and Mrs. Pierson, are you not?

A. I am.

Q. You reside in Plainfield?

A. Yes; I do.

Q. Did you attend a week-end party at the Pierson's home in May, 1931?

A. I should say it was on Saturday, beginning with a matinee in New York, dinner and dancing; 20 we all came home to Plainfield that evening. I went home that night and went to bed, and then I returned the next afternoon with my mother at a day party; I think that is what it was.

Q. You returned again Sunday evening?

A. I don't recall.

Q. Who invited you?

A. I believe Mrs. Pierson phoned and asked me would I like to join the party.

Q. You were her escort, weren't you, on those occasions you have mentioned? 30

A. I should say so. There was a large group of us.

Cross-examination.

By Mr. McDonough:

Q. What do you mean by being her escort?

A. Well, there were probably ten of us, and I believe I sat with Mrs. Pierson at dinner.

Q. Yes.

10 A. And probably had the first dance with her.

Q. This party was begun at a matinee in New York, as I recall it?

A. Yes.

Q. Then did you dance after that in New York?

A. I believe that we went to dinner and during the dinner we danced.

Q. How many were in the party, roughly?

A. I should say at least ten; it might have been more.

20 Q. Were there married couples?

A. The majority seemed to be married. I can't recall the names of all of them.

Q. Then you came out to Plainfield?

A. We came out, well, after the dinner. It was late.

Q. Did you all go to Mrs. Pierson's house?

A. I think we did stop there; yes.

Q. Where did you stay that night?

30 A. I went home two or three blocks away.

Q. Was Mr. Pierson in the house that night?

A. I don't think he was.

By Mr. Henderson:

Q. Mr. Pierson did not take part in the party, did he?

A. No; he didn't.

Beverly Hancock—Cross

Mr. Henderson: Now, if your Honor please, I have a transcript of the minutes of Mrs. Pierson's testimony that I would like to offer in evidence.

The Court: Taken where?

Mr. Henderson: In the previous case. Testimony was taken in this case following the filing of 10 her bill.

Mr. McDonough: I object, your Honor, to offering it in evidence. I don't know of any reason why it should be admitted. It does not seem to me to be proper to put that in the record here.

The Court: It isn't evidential unless it is properly proved, of course.

20

Mr. Henderson: Well, if your Honor please, I understand that transcripts are evidential, rather than to go through all the testimony again.

The Court: Well, the proper way to prove it is to bring the stenographer who took it with his original notes.

Mr. Henderson: This is not certified, but it is a transcript.

30

The Court: Of course, if the objection is on that ground I will have to sustain that objection. Do you object?

Mr. McDonough: Yes.

Mr. Henderson: If your Honor please, we rest.

Mr. McDonough: Will the Court entertain a motion to dismiss at this time?

The Court: Not unless you submit your case.

10 Mr. McDonough: I won't do that.

IRENE M. PIERSON, SWORN.

Direct examination.

By Mr. McDonough:

20 Q. Mrs. Pierson, you are the complainant in this cause?

A. I am.

Q. Where do you live?

A. 433 East Seventh Street, Plainfield.

Q. Is that your permanent residence?

A. Yes.

Q. You are the wife of the defendant?

A. I am.

Q. Where were you married?

30 A. In Bridgeton, New Jersey.

Q. Who married you?

A. Two ministers, Mr. Biddle and Mr. Bardo.

Q. When?

A. October 12, 1916.

Q. Where did you reside after you were married?

Irene M. Pierson—Direct

A. We lived in Bridgeton for about three years. We came to Plainfield, I think, in 1920.

Q. Did you live in Plainfield after that until the present time?

A. Yes; I have lived there ever since.

Q. Continuously?

A. Continuously, yes.

Q. Your husband left you on May 4th, 1931? 10

A. Yes.

Q. Will you state, if you know, the reason why he left?

A. Well, beginning at Christmas, 1930, my husband said that he did not want to go to Bridgeton for Christmas as we always did; we took the children and went down to see his family and my family. So it was understood, it was agreed between us that we would have Christmas in Plainfield and that I would take the children to Bridgeton after Christmas to visit their grandmother and other relatives, which we did, and I was in Bridgeton for about three or four days. When I returned with the children, the first evening that we were home, Mr. Pierson told me that he had gone to New York and taken a girl whom I knew slightly to a restaurant, rather an expensive restaurant in New York, and had dinner and had danced, and that he had stayed in New York all night that night or the night previous, I had forgotten which. As far as I know Mr. Pierson had never done anything of that sort before; it hadn't been the custom of either of us to go out with people of the opposite sex unless in a party, and I was very much surprised and indignant, and we quarreled about that incident for two rea-

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30

sons. Mr. Pierson had asked me to be very economical at Christmas time about Christmas presents, and I think he had given me no money at all for Christmas presents, and the presents that I had bought had been with money from rooms which I had rented in the house or money that I had earned in substituting at school or Plainfield dancing
10 classes, I have forgotten which means of earning money I had at that time. The evening out cost somewhere between twenty and twenty-five dollars; and I was surprised that he would spend money in that fashion, and also hurt and indignant because he had taken out a young woman on such an occasion; and we quarreled, and I left his bedroom and went across the hall and I occupied a room with our son. Some time elapsed; Mr. Pierson made no apology or no statement that he was sorry and that
20 he did not intend to do that sort of thing again. After some time elapsed and I thought that it was a rather futile thing to continue to quarrel, I again returned to his bedroom.

Q. When?

A. Some time afterward, I don't know whether it was a week or two weeks, but it was within a short time, I should say within two weeks; and just about that time was Mr. Pierson's birthday and I gave him a birthday party and baked him a birthday
30 cake and invited some friends, bought some presents for him with the money which I earned and we had a birthday dinner. Also during that time I entertained Mr. Pierson's relatives, his brother and two sisters and an uncle at dinner; it was my invitation, not Mr. Pierson's; they came at my request.

That was after the party that Mr. Pierson went to in New York. Some time following his birthday, which was in January, or about that time, Mr. Pierson told me that he was going to leave me, that he was tired of living with me, that I was extravagant, that I was high-hat, that I didn't appreciate him for all the things that he had done for me, and that he was going to leave me and that he was not going 10
to support me. He also told me, he would come home each evening and impress these facts upon me, that he was going to leave. On some occasions he would ask me to leave; told me to get out, that he was tired of me; on one occasion he told me that he was just waiting to get rid of me that he could marry the woman in New York.

Q. Did he mention who?

A. He did not; but he did mention the fact very emphatically that he wanted to marry a woman in 20
New York as soon as he could get rid of me. On one occasion I asked him; he said that he was not going to support me; one time he said that he would pay me twenty dollars a week; on another occasion he told me that he would pay me three dollars a week; and I asked him how he thought that I was going to live with the children, and he told me that I could enter a house of prostitution in order to earn my living.

Q. When was that? 30

A. That was in February, 1931.

Q. Mrs. Pierson, when you went back to his room did you have sexual relations with him?

A. Yes, after that first break we did.

Q. During what period did you remain in his bedroom?

A. Well, the first quarrel was after January 1st, so that the reconciliation was in January, after about two weeks, I should say, perhaps from the 15th or 18th of January until around the 1st of February we occupied the same room.

Q. What happened on the 1st of February?

A. Well, not exactly on that date; I am approxi-
10 mating dates; Mr. Pierson left the bedroom; this was about the time that he told me that he wanted nothing more to do with me, that he was through with me, that either I could get out or he would get out, that he would not live with me, and he moved across the hall into another bedroom.

Q. Did he ever come back to your room?

A. Not after that; no.

Q. Was it the other bedroom across the hall which
20 he was occupying up to the time he left the house on May 4th?

A. Yes; it was.

Q. In the interval from the time that he began to occupy that other bedroom did he ever visit you; visit your bedroom?

A. No; I don't think that he ever did. He may have come in to get some articles.

Q. During the time that he occupied the bedroom across the hall did you at any time have sexual relations with him?

30 A. No.

Q. Did you invite him to come into your room?

A. No, I didn't.

Q. Why didn't you?

A. I made various attempts at reconciliation, I didn't constantly; my attitude wasn't one of bel-

ligerency; it was one of long suffering and patience, to find out why this man was behaving in the way he was; I couldn't understand it. I had done nothing; I was living in exactly the same fashion that I had always lived in, and I couldn't understand his attitude; I couldn't understand why he suddenly told me that he was going to leave me; he told me that he was going to take our children away from me; that he was going to provide a home for them elsewhere. 10

Q. Now, after the time Mr. Pierson began to occupy a separate room, you made no effort at reconciliation during that period that he occupied that room; is that correct?

A. I made many efforts at reconciliation, in order to eliminate whatever was the cause of his behaviour I didn't say to him, "Come to my bedroom," but I prepared his meals, every one of them. During that period I saw that his clothes were laundered and mended; I saw that the house was taken care of; I had no maid; whatever was done in the house I did; I took care of the children; say that they were in school; whatever was needed to be done in the house I was doing. Mr. Pierson ate every meal in the house as far as I can remember except one, when he had told me that he would not be at home and I had not prepared any food for him and he came in unexpectedly and asked for food and I had nothing that he would eat because he wouldn't eat eggs or just anything that you have in the refrigerator. That, I believe, was the only meal. 20 30

Q. What did he eat?

A. Well, he was very fond of steaks and chops,

certain peculiarities of diet, which I well knew and to which I always catered.

Q. Now, Mrs. Pierson, after he left on May 4th, 1931, were there any efforts on your part to be reconciled to him?

A. On several occasions when I talked to Mr. Pierson I told him that it was his home and he had a right
10 to return to it.

The Court: Was that after he left?

A. This was after May 4th, 1931; I told him in conversation several times that that was his home and that he had a right to return to the home and the home was open to him at any time. He wrote me a letter on one occasion and asked me if I would consider living in New York, that perhaps we could
20 start over again in another place, and I replied to it and told him yes, that I would live in New York, and I asked him in that letter if he thought that it was for the advantage of our children to move to a large city and enter them in the city schools, and he replied to that letter; I mean he said he would not live with me ever until I could behave and be a competent wife.

The Court: Where is that letter?
30

A. I am sorry; I haven't that letter. That is the letter he wrote me.

Q. Did he ever offer to be reconciled with you at any other time than in the writing of that one letter?

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A. No.

Q. Did he ever in conversation suggest that the two of you get together again?

A. In one conversation he said to me in the house that he might return to the house, and I said that was his privilege, that the home was open to him and always had been.

Q. What did he say?

10

A. He made no reply.

Q. When was that?

A. Well, I should say that that was late in 1931.

Q. At any time after Mr. Pierson left the house did you tell him that he could not come back?

A. No; I never told him that.

Q. What attitude did you observe toward him?

A. I had frequently written to Mr. Pierson; I had called him on the telephone; I had talked to him whenever he presented himself at the house, particularly about the affairs of the children; I had written letters, to which I have received no replies; I have telephoned him and had him tell me that he would consult his attorney before talking to me, that he thought it advisable; and I had no reply.

20

Q. Did that occur many times?

A. Yes; that occurred frequently.

Q. You had a party at your house around the 1st of May, 1931; was Mr. Pierson invited to that party?

A. Yes, if it were necessary to invite one's husband to a party when you are entertaining mutual friends, then Mr. Pierson was invited.

30

Q. Well, will you tell us the circumstances surrounding that invitation?

A. About a week before May 4th, 1931, I told Mr.

Pierson that we were going to have some guests from Bridgeton, who were mutual friends of ours, two couples, two married couples, whose homes, or the home of one at any rate I had visited and he knew as well as I did. When I told him that. Later he said, "I am not going to be at home; I am going to a dinner dance on Saturday night; I will not
10 be at home; you may tell them to come some other time; and I said no, I am not going to tell them to come some other time; one of the men was a doctor and his affairs could not be arranged instantaneously and I said they are coming on that week-end. he said, "Well, I won't be there." "Well," I said, "Of course, it is up to you, but those people are coming on this week-end and will be here from Friday night until Monday morning."

Q. Did he come, in fact, to the party?

20 A. My husband?

Q. Yes.

A. The people arrived on Friday evening about 8.30, and I was preparing supper for them. Mr. Pierson came in before we sat down at the table, so I asked him to sit down at the table; he refused. He took two of the guests and went out on some errand and then returned shortly to the house and I think went to bed; he went upstairs; I know that he didn't sit down at the table with us.

30 Q. Was a place prepared for him at the table?

A. The table was just being set; he could have sat down; it was an informal supper, just sandwiches and coffee, something of that sort.

Q. Did he participate at any time after that in the party on the following day and on Sunday?

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A. He came in the house on Sunday, there was a group of people there again, mutual friends of ours; he met these people, who had come from out of town; Mr. Pierson came into the house and spoke to a few people and ignored others, and I think went into the den; and I went in and spoke to him, because it was obvious; he closed the door and stayed inside until, of course, observed, then he came in and I 10 asked him why he behaved in that manner, that that was a peculiar manner in which to behave, but I think he stayed there for some little time and went upstairs.

Q. Now, Mrs. Pierson, during the time prior to January, 1931, what was Mr. Pierson's income, if you know?

A. \$6000 a year.

Q. How much did he allow you to run the house?

A. Until October, 1930, I was receiving \$12.50 20 a week in cash, which was supposed to cover food from the chain stores, not meat; Mr. Pierson was paying the meat bill; Mr. Pierson was paying for the milk. I was to buy food, the balance of the food, groceries, dry groceries and green vegetables, and any servants in the house; that is, I had usually a woman to come in to clean or help with the laundry, any personal allowances, gasolene for the car if I used it and it needed gasolene, and any special needs 30 of the children; he also usually paid, or sometimes paid for the automobile, the shoes, and trash.

Q. Did you have any other income to supplement that allowance?

A. Yes; I usually had a job of some kind; I substituted in the schools at Plainfield and North Plain-

field for three years, sometimes it was for a month at a time, sometimes it was for one or two days; I played for dancing classes two nights and every afternoon, at which I earned two or three dollars each day, and during all the time that we lived in Plainfield I had at least one room and sometimes as many as four rooms rented in the house.

10 Q. What income did you get from those rooms?

A. Varying amounts, from four dollars to sixteen dollars a week; it was only for a short time that I had as many as four rooms rented; and I had at one time, during one winter, I remember, I also took the census, during 1930, yes, January, 1930, I took the census and earned around \$100.

Q. Did you spend this income that you had on yourself or on your home?

20 A. It was spent on the home, on the children, on different things, ways that money was used, to take care, for instance, that money in 1930 which I earned taking the census, I remember very well, I had the living room papered and the old sham fireplace torn out and replaced, and I remember it cost about \$45 for that; we used all that money for that purpose.

Q. What was the type of furniture in your home; was it modest or luxurious furniture?

30 A. Why, it certainly is not luxurious or elaborate. We bought very little furniture when we were married. A great part of the furniture that I now have in the home was given me by my mother and various relatives.

Q. Well, what did you buy, if anything, at the department stores during that period?

A. In 1930, whenever I needed equipment for the

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house, some furniture was bought during 1930. We had bought no furniture during our married life, which had been about fifteen years we had it; during the year 1930 I bought some bedroom furniture for our daughter.

Q. Who paid the bills for that?

A. Mr. Pierson.

Q. Did Mr. Pierson pay all the department store 10 bills?

A. No; occasionally I would pay one with money that I had earned.

Q. Did you at any time ask him, or did you not, to stop going with any other woman?

A. Yes; I did.

Q. When?

A. Why, that was late in February.

Q. Who was he going with?

A. Well, going back to a dance to which we went 20 with a group of our friends in January, my husband had asked me to invite our friends to this dance, which was a benefit affair for the bible class to which he belonged, and I had asked a group of people in Plainfield and some from out of town to come to this dance. As the time grew near for the dance he became very disagreeable to me and told me that he was not going to take me to the dance, that I could get there the best way I could, that he was going to be busy, that he was going to have other 30 things on his hands that evening and that he was not going to take me. Well, since a group of our friends were going, I knew that I would get there in some way. About two or three days before the dance he told me that he wanted me to invite some

friends of ours from Brooklyn, Mr. and Mrs. Reeves, and I replied that we already had a large group of people and that it would be a little difficult to be hostess to any more people, and since these people didn't know any of the other people I thought it just as well that we not increase the group at that point; and he said, well, he was going to invite them
10 himself, and he would take care of them, that I didn't need to bother with them, that he would see that they were properly taken care of. So the evening of the dance came, my husband proceeded to the dance, and I came with these friends of ours, about fifteen people, I imagine. The Reeves came, Mr. and Mrs. Reeves and some friends of theirs, and Mr. Pierson was with them a good part of the evening.

Q. Did Mr. Pierson talk with you or stay with
20 you during the evening?

A. Mr. Pierson did not dance with me during the evening. A friend of ours noticed that circumstance and as I was dancing with those young people the playing stopped and my husband came across the floor; he took hold of his arm and he said, "Howard, you haven't danced with your wife." My husband replied, "No, and I am not going to"; he yanked his arm away and left us on the floor; so the people
30 observing thought that it was just a joke of some sort.

Q. Now, did he pay any particular attention to the Reeves woman that night, or did he not?

A. Yes; he danced with Mrs. Reeves several times, and danced with other girls also, but he danced with Mrs. Reeves several times, and when

they left the dance floor I had spoken to them, in fact had asked them to come back to the house, because they were friends of long standing and I didn't wish to ignore them or hurt their feelings in any way, and I asked them to come back to the house with the other people who would come back for sandwiches and coffee, and it was refused, they said they were going back to Brooklyn. So 10 when they left the dance floor a little earlier, Mr. Pierson went with them and was gone for some little time and eventually returned to the dance floor. Mr. Pierson came back to the house, but not with friends of ours who had gone to the dance.

Q. When he came back did he mix with the party at your house?

A. He came in and made some disagreeable remark to people who were sitting in one of the rooms.

Q. What did he say?

20

A. I think he asked them if anybody had been drinking or if they had any liquor there; somebody answered no, and he went upstairs or removed himself somewhere from the party.

Q. Did he participate further in the party?

A. No.

Q. When did he first begin to change in his attitude toward you?

A. Why, the first definite thing that I can put my finger on is New Year's Eve party; that was 30 the first definite thing that I can place my finger on; from that time on.

Q. You are referring now to the girl that he took to the New Year's Eve party?

A. Yes; from that time on he was consistently

and thoroughly disagreeable and belligerent; he came home in—he got his dinner and spent the evening with his family but he came home to quarrel definitely and nagged me each evening with some little disagreeable remark; he never said a pleasant word; he never—his manner was not even just—well, he didn't just come in and ignore me; he came
10 in and nagged me each evening with some disagreeable, fault-finding, nasty, ironical, sarcastic remark; he asked me repeatedly to leave; he told me repeatedly that he was going to leave.

Q. Did he say why?

A. Because he was tired of me; he wanted to marry someone else as soon as he could.

Q. Did he say that?

A. He said that.

Q. When did he say it?

20 A. I don't know the date, but I remember very distinctly that we sat in chairs opposite each other in the living room and he said to me, "I want a divorce to marry someone in New York as soon as I can get rid of you."

Q. Did you ever tell him that you wanted a divorce?

A. I did not.

Q. Did you engage in any conference with Mr. Elwood?

30 A. Mr. High?

Q. Yes.

A. Yes. Another cause of the trouble was the car. I had gotten a job and was on probation.

Q. When did you get that job?

A. That was in February, almost the last day;

I remember the first check that I drew was in March, March 15th, so that I think it was almost the last day of February, and I was on probation; it was necessary that I take the car in order to carry on my duties, and we had this old Ford sedan. Mr. Pierson had ordered me not to use it for personal use. So that when I needed the car for this job I had to ask him if I might use it and he gave me 10 permission to use it so long as I was doing work and for nothing else. Then on occasions he would tell me that I couldn't use it; and he would say that I wasn't to use it again. Once or twice he had taken the key away from me so that I couldn't use it that day and I had to have another key made. On this occasion he had told me definitely that I was not to use the car again. I called my brother on the telephone and told him that Howard said I couldn't use the car, and I was very much upset, 20 because I couldn't do the job that I had without the car, and he said, "Well, I can't come up to settle your matter. Why don't you talk to somebody, get some of your friends to talk to him and see if you can't settle this matter among yourselves." So I called Mr. Carson and Mr. High on the telephone and asked them both to come over.

Q. Who were they?

A. They were mutual friends of ours; in the first place, friends of my husband through the bible class, 30 and then friends of mine through his long association with them. They both came over to the house; that was why I called them, because I was very much alarmed lest I not be able to carry on my work without the car, and I was very much alarmed, as

Mr. Pierson spoke about leaving me and I had no means of support and I thought it necessary that I keep that job.

Q. Did Mr. Pierson tell you what he was going to do with the car?

A. He didn't say that he was going to do anything with it, but that I shouldn't use it; later on
10 he told me that; later on, in spite of his telling me not to use the car I took the car one day with my children and two neighbors and their two children and went for a picnic. When I came back Mr. Pierson was sitting on the stoop and he told me that he had reported the car as stolen and told the authorities to have any one arrested who had the car, and he told me at that time if I should ever touch the car again I would be arrested; he told me that in the presence of our children.

20 Q. Now, at this conference what happened; the conference with Mr. High and Mr. Carson?

A. I asked them to talk to Mr. Pierson; I was tremendously upset. They asked some questions; we discussed the various matters, the car being one of them; the only thing I wanted at the conference was permission to use the car, and my husband said that I could use the car, that that was just a passing idea.

30 Q. At that conference did you say that you could not tolerate your husband in the house?

A. Yes, I think I did.

Q. Did you say that you wanted him to get out of the house?

A. In finding some way to smooth matters over and come to some sort of an agreement, Mr. Carson

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said, "I think, Howard, it would be a good idea if you took rooms somewhere for a short time until these matters can calm down and you can reach some understanding," and I agreed with that suggestion, which was Mr. Carson's and not mine, that it might be a good idea for a short time.

Q. Was that suggestion acted on?

A. Not at that time.

10

Q. When did that conference take place?

A. That was in March; I don't remember the date.

Q. Why did you say you couldn't tolerate him?

A. Because of the manner in which he was behaving to me.

Q. What did it cost you to run the house from May 4, 1931, the date of his leaving, until November 19, 1931, the date of filing your suit; how much per month?

20

A. About \$200 a month.

Q. Have you any record of your expenses during that time?

A. Yes.

Q. Where is that record?

A. Right back there. (Indicating.)

Q. Is this the record? (Indicating.)

A. Yes.

Q. What were your expenses for May, 1931?

A. You mean the total?

30

Q. Yes; the total expenses from May 4th, 1931, until the end of May?

A. \$177.56.

Q. What did you receive from your husband during that period?

A. \$20 a week; that would be a little over \$80 a month.

Q. Was that \$20 all to go to you?

A. No; part of that was allowance for the children.

Q. Were the children's allowances used for their support?

10 A. No; the children's allowances were used for their lunches in school, for tickets for different things in school, year books, tennis, football games, various things that they needed money for.

Q. How did you secure the balance of the \$177 that it cost you to run the house during May?

A. I was working at that time; I was earning \$30 a week and I had one, I think I had two rooms rented in the house at that time.

Q. How much did you get from those?

20 A. I think \$8 a week.

Q. What did it cost you for June?

A. \$256.06.

Q. What did you receive from your husband?

A. Well, again the same amount, about \$20 a week; I mean not more than \$20 a week; it may have been less.

Q. Which \$20 includes allowances for the children?

A. Yes.

30 Q. In the month of July what was your cost of operating the house?

A. The month of July, it was \$313.80. The reason the amount is so large is because both children were in camp and because their equipment was expensive.

Q. Your husband testified that he gave \$28 to

Mr. Dutcher, treasurer of the Y. M. C. A. camp; was that all the expenses of sending the boy to the camp?

A. That was the actual expenses of two weeks in camp, but the boy stayed there for four weeks, and of course that did not include any equipment at all, that \$28 didn't.

Q. Did you ask your husband to pay the whole 10 bill, or did you not?

A. Yes; I asked him if he would pay for that whole bill for the boy because I paid for the whole month for our daughter which cost about three times as much, but he refused to pay any more than two weeks.

Q. Was the camp a necessary expense?

A. Well, the camp you wouldn't say is a necessary expense, but when you have two children, twelve and fourteen years of age, in a home which 20 is broken because their father isn't there, and a mother who is working, it is necessary that someone take care of them and that they be taken care of in some manner that would keep them off the streets and out of mischief; also, my daughter was very nervous and had failed her studies in school because of unsatisfactory conditions at home, and I felt that they both needed a month away from all of the unpleasantness in order to get back some of their mental balance and their health. 30

Q. What was your income for the month of June from your husband?

A. Well, about \$80, which would be four weeks and one-third, which would be a little over that.

Q. In the month of July what was your cost of operating the house?

A. \$313.80; that is the month we just discussed.

Q. What was your income in that month from your husband?

A. About \$80.

Q. In the month of August what were your expenses?

A. \$175.83.

10 Q. What was your income from your husband?

A. About \$80.

Q. The month of September, what were your expenses?

A. \$150.94.

Q. What was your income from your husband?

A. About \$80.

Q. In the month of October?

A. \$233.36.

Q. What was your income?

20 A. About \$80.

Q. In the month of November, up to the 19th, what did it cost you to operate the house?

A. \$236.97.

Q. What was your income for this period from your husband?

A. About \$80.

The Court: That isn't the whole month.

30 A. The 19th; oh, yes.

The Court: What were your expenses for just that part of the month up to the 19th?

A. That is up to the 19th, your Honor.

The Court: How much was that?

A. \$236.97.

Q. Now, Mrs. Pierson, are the figures you have given us a recapitulation of the checks —

A. Yes; they are.

Q. — and receipts in your possession?

A. Yes.

Q. During that period what was the total amount that your husband sent you for support and maintenance, from the 4th day of May, 1931, until the 19th day of November, 1931? 10

A. It was about \$750. I have forgotten the exact figures.

Mr. McDonough: I think we will admit on the record that we received checks for support and maintenance aggregating \$737.33.

Q. What were the aggregate expenses of running 20 your household for that time?

A. \$1643.52.

Q. Now, Mrs. Pierson, what is the cost of running your household today per year?

A. It cost just about \$100 a month for the house expenses; I mean building and loan, taxes, water rents, interest on the second mortgage, ash removal and coal, not including gas, electricity or telephone.

By the Court:

30

Q. Have you been paying on the building and loan charges?

A. Yes.

Q. Since when?

A. Since the order went into effect in—since the petition for alimony pendente lite was decided.

Q. Since the \$200 a month provision?

A. Yes.

By Mr. McDonough:

10 Q. You paid the taxes also on the house?

A. Yes.

Q. What did that amount to per year?

A. About \$120; a little less than that this year.

Q. Are the children home or are they not home at this time?

A. The children are not at home.

Q. Where are they?

A. Ellen, our elder child, is in Duke University, Durham, North Carolina, and our son, Howard, Jr.,
20 is in Mercersberg Academy, Mercersberg, Pennsylvania.

Q. Do you consider that it is a necessary expense to send them to college or private school?

A. The word "necessary" is perhaps not the word one would use there. When their father is earning \$6,000 a year and I am earning money, which I am willing to contribute toward part of their education, I feel that it is advisable that they have an education; yes.

30 Q. Mrs. Pierson, if they were not in school, is it not a fact that there would be nobody to take care of them while you work?

A. Yes; there is no one at home except a maid, part time. My daughter, of course, graduated from high school, so in order to qualify herself to earn

a living it is necessary that she have some training. The boy did not graduate from high school, but finished three years of high school, but he was on the verge of failing in his work; he had been without his father's influence or discipline, or the discipline of a man for three and a half years, he is fifteen years old and he needs the influence and discipline of men. He was spending three or four hours a day at the Y. M. C. A. and when he came home he was exhausted so that he couldn't study, so that next year, if his work continued to fail in the manner that he did last year, he would have flunked his entire course. He was offered work and a scholarship at Mercersberg for about half of the cost of the tuition. 10

Q. How much did the scholarship pay?

A. The cost at Mercersberg is \$1200 but he is going through for about \$550. 20

Q. Does he work to pay for that scholarship?

A. Yes, he works; he waits on the tables.

Q. How much does his father contribute to his college expenses?

A. His father hasn't contributed to his expenses.

Q. Was the girl in college last year?

A. No; she was in Georgian Court School last year.

Q. Did her father contribute to the payment of her expenses? 30

A. Her father did not contribute to her expenses.

Q. How much did it cost you to send her to that school?

A. The school cost \$900. It is a cultured boarding school. Ellen graduated from high school when

she was just fifteen years old; she is very small and very nervous; she had a very good school record and I felt that before she should enter a college that she should have a year of supervision, discipline and training that she would get in that type of school.

10 Q. Mrs. Pierson, is there anybody who would be able to take care of those children in the afternoon if they were home?

A. No, there isn't.

Q. Nobody at your house to take care of them?

A. No.

Q. What will be the cost of the school expenses for the two children this year?

A. Duke University for the daughter cost between five and six hundred dollars.

20 Q. That is tuition you are talking about; what would be the total cost to send her back, everything included?

A. Between five and six hundred dollars covers the board, tuition and certain other university expenses; it doesn't cover books, or college or medical expenses or traveling expense and allowances, but the actual college expense is between five and six hundred dollars; for all the other things it will be around eight or nine hundred dollars.

Q. Additional, you mean?

30 A. No, I mean total for Ellen.

Q. What about the total cost for the boy?

A. For his board and tuition and laundry and certain other school expenses, they are about \$550. Again you need to add two or three hundred dollars to cover his college and traveling expenses and his medical expenses and his books.

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Q. Then the money that is being paid for them, will that take up all of your income?

A. My own personal earnings?

Q. Yes.

A. Yes; it will come to more than that.

Q. What will it cost you, other than the \$100 a month that you testified to as the cost of paying for the building and loan, taxes and carrying charges 10 on the house, to maintain yourself this year?

A. Gas and electricity and telephone, you mean, in the house as it is now?

Q. Yes; what will all those charges aggregate; how much will it cost to operate your house this year?

A. You mean the actual house running expenses, including gas, electricity and telephone?

Q. Everything but the fixed charges for the house that you referred to before. 20

A. I am sorry, I don't understand just what you mean.

Q. Well, I will restate the question. What do you think the cost of maintaining the house, paying the fixed charges on it, and maintaining yourself and your family at the present time will be per month?

A. You mean all my expenses; my own personal expenses; my doctor bills, recreation and the charitable expenses? 30

Q. Yes.

A. Well, Mr. Pierson has been paying \$200 a month and I have been earning \$110 a month, so that my income has been about \$310 a month; one room rented, which is \$16. That is \$326 a month.

That hasn't been adequate to cover school expenses; I have borrowed money in order to meet school expenses at various times.

Q. How much did you have to borrow?

A. I borrowed \$150 recently from my brother in order to meet the first expenses in school; I borrowed \$260 last year from Warren, which I haven't
10 repaid, on which I must pay interest, which I must repay.

Q. Mrs. Pierson, did Mr. Pierson make his payments regularly to you?

A. No; he doesn't make them regularly.

Q. Does he owe any payments now?

A. He does.

Q. How much?

A. He owes \$475.

Q. Does Mr. Pierson ever come out to see the
20 children?

A. When; over what period?

Q. Does he ever come out now? Has he been out recently?

A. He saw our daughter on the 11th of September, in response to two letters and several telephone calls from her and from me myself; she was going to school on the 12th; the cost of her tuition at that time I believe was \$550 and I had written and telephoned him and urged him to send me some
30 money in order that I could meet the expenses, and Ellen had also written and telephoned, and on the 11th of September he telephoned her and told her that he would bring her some money if she would meet him at the station.

Q. That was the day before the last hearing in this case?

A. Yes; she met him at the station and he gave her a check payable to me.

Q. For how much?

A. \$175.

Q. It was your purpose to divert that check from your maintenance and support to the payment of her schooling; is that correct?

A. Yes. Previous to that time I can't remember 10 when Mr. Pierson saw the children. He went to the shore this summer and saw our boy and asked him to come and live with him in Bayonne and leave his home with me; and previous to that time I can't remember when he had seen the children.

Q. Had he seen them within the last year?

A. The last time that I remember that he visited them was in the summer of 1933, when he came to the house on one occasion and asked to see them. He had an invitation to our daughter's commence- 20 ment in June and he didn't go.

Q. Mrs. Pierson, did you make any effort to settle the matters between you and your husband before he left home, or ask any advice, other than Mr. High and Mr. Carson, to intervene?

A. Yes, early in February, I think.

Q. Who did you ask?

A. I went to see my brother-in-law—my husband's brother-in-law, his sister's husband, in his office in Bayonne, George Mettam, and I told him 30 that we were having a great deal of trouble and that I didn't know why.

Mr. Henderson: I object to this conversation.

The Court: I will sustain the objection. You can't tell what you told him.

Q. Did you have any conference at which the defendant was present, in an effort to straighten this matter out?

A. Yes.

Q. With whom?

A. With my brother.

Q. What transpired at that conference?

10 A. I had written and telephoned my brother several times to tell him that we were having —

The Court: Just what happened at this conference or talk that you had?

A. He came up to our home and we discussed the conditions that had arisen between us; I had objected to Mr. Pierson calling at Mrs. Reeves' home in Brooklyn and objected to his general demeanor
20 around the home.

Q. Was there or was there not any question as to your finding contraceptives brought up at that conference?

A. A few days previous to this conference I had reason to speak of just a little thing —

The Court: You are asked now to state what was talked about at the conference when the defendant was present, when your husband was present;
30 anything that was said in his presence you may repeat, but anything that is said out of his presence is incompetent.

A. I had gone through his pockets a few days before and had found in his coat pocket rubber

contraceptives, not in the envelopes as they are purchased, but they had been taken out of the envelope and prepared for use, and I remarked about it at the conference during this conversation with my brother and asked why he had them there.

Q. What did he say?

A. He gave no explanation.

Q. Were there any agreements reached as a result of that conference? 10

A. Yes; there were a number of agreements reached.

Q. What were they?

A. One, that we would have a joint bank account; two, that he was to stop calling upon Mrs. Reeves; and three, that he would not ask me to fulfill my marital duties until he had stopped calling upon Mrs. Reeves. He promised that he would stop going there, but he said that he must go once more to explain to her why he wasn't coming again. 20

By the Court:

Q. What was the date of that conference?

A. I am not certain; it was in February some time after the middle; I am not certain of the exact date.

Q. At that time you and your husband were not occupying the same room?

A. That is right. 30

Q. He had left your room at that time?

A. Yes.

By Mr. McDonough:

Q. How old are those children now, Mrs. Pierson?

A. Ellen is seventeen and Howard, Jr., is fifteen.

Q. Did you give your husband any reason to leave the house?

A. No.

Cross-examination.

10 By Mr. Henderson:

Q. What else, Mrs. Pierson, was discussed at the time of your conference with your brother in Mr. Pierson's presence?

A. Finances.

Q. As a matter of fact, wasn't that the main thing that was discussed?

A. Well, I don't think so.

20 Q. Well, as a result of that there was a working budget made up by your brother, or a suggested budget, was there not?

A. Yes, there was.

Q. And that suggested budget contemplated, as you have testified, the creating of a joint bank account?

A. That is true.

Q. That joint bank account did not materialize, did it?

A. No.

30 Q. As a matter of fact, you refused to put your earnings in such an account, did you not?

A. At the time of the agreement I had no earnings.

Q. Did you later refuse to do it?

A. I did.

Q. What was your reason for refusing?

A. Because Mr. Pierson had openly told me that he had not stopped going to see Mrs. Reeves and that he did not intend to stop going to see Mrs. Reeves.

Q. How long have you known Mr. and Mrs. Reeves, Mrs. Pierson?

A. I had known Mr. Reeves about, since about 10 1915, and Mrs. Reeves I met after we moved to Plainfield, in about 1919.

Q. A little while ago you testified about a party or dance at which Mr. Pierson wanted the Reeves invited.

A. Yes.

Q. And you said that they were mutual friends.

A. Yes.

Q. As a matter of fact, that is true, is it not?

A. It is.

20

Q. You had known both of them for a long time?

A. Yes.

Q. They called at your house frequently?

A. No.

Q. They were invited at times, from time to time?

A. Twice, I believe.

Q. And Mr. Pierson, as a matter of fact, was particularly friendly with Mr. Reeves, was he not?

A. Yes.

Q. Did Mr. Reeves officiate in any capacity at 30 your wedding?

A. He did; he was an usher.

Q. To your knowledge hadn't your husband and he been in close relationship ever since that time?

A. No; I wouldn't say in close relationship. They saw each other occasionally.

Q. Frequently in a business way?

A. No, not frequently, not to my knowledge.

Q. What was there about Mrs. Reeves that you objected to?

A. We had visited their home and they had visited ours; then I think we had gone back to Brooklyn—no, we were invited, but Mr. Pierson became ill
10 and it was necessary for me to send a telegram saying that we couldn't come. They apparently were annoyed by that because the telegram came just at the time they were expecting us. Mr. Pierson came down with the grippe. Some time elapsed and we were not invited. My husband suggested that they thought that we didn't want to come—I didn't want to come. They we went to Brooklyn for a week-end party, taking our children; one of them, anyway. While we were there I suggested to drive
20 to Oyster Bay on Sunday, and I said that we invited a young woman whom I knew who lived nearby to go with us, because Mrs. Reeves knew few people; she told us so; she told us she was anxious to meet some people; this girl was an interesting young woman and I thought Mrs. Reeves would enjoy meeting her, so we did ask this young woman to go with us on that trip to Oyster Bay and on returning leave the young woman at her home. We had dinner with the Reeves, and drove back to Plainfield. Later
30 on my husband told me that Mrs. Reeves was very much annoyed because this young woman had been invited and that she thought I only came over to see her, why I didn't care anything about seeing Mrs. Reeves, and that she was angry with me, and he asked me to apologize to her, to Mrs. Reeves;

and I said that that was ridiculous, that I had no intention of offending her in any way, that I had invited this young woman thinking that she would enjoy meeting her, and I had no intention of apologizing, because I had done nothing. So that was the rift in our friendship; I didn't see them after that.

Q. When was that rift in the friendship between you and her? 10

A. I really don't know; it has been some time ago.

Q. Well, in relation to the period of the year 1931; was it prior to that?

A. Yes; it was several years; I should say two years.

Q. Was that the reason, when Mr. Pierson suggested that you invite them to this bible class dance, that you didn't want to invite them, because of some feeling that existed between you and her? 20

A. Not primarily. It was because we had already a large group of people for whom I felt responsible, and I thought that that group was large enough. Many of those were strangers to each other, and you wouldn't be able to properly see that they were enjoying themselves.

Q. As a matter of fact, on the particular occasion which you mention, you made it your business to snub the Reeves, did you not? 30

A. No, I didn't.

Q. You did not?

A. I did not. I danced with Mr. Reeves twice, I think, and I spoke to Mrs. Reeves early in the evening, and before they left the dance hall I invited them back to my house.

Q. Otherwise you treated her very coolly, did you not?

A. Mr. Pierson told me he would take care of them; they were his guests.

Q. Now, Mrs. Pierson, you don't mean to say, do you, that there was anything immoral between them, in the relations of Mrs. Reeves and Mr. Pierson?

10 A. That I don't know.

Q. What, if any, facts do you have that would lead you even to a suspicion of any such relations?

A. You mean things that he said to me, or things that I may have seen?

Q. In any way; have you seen anything?

A. I saw nothing, because I never saw them together except at this dance.

Q. But it was prior to this particular occasion when there was a rift in the friendship between you
20 and Mrs. Reeves?

A. Prior to the dance; yes.

Q. Getting back to the time of the conference with your brother, will you fix the exact time of that conference, if possible?

A. I am afraid I can't do that. I have letters that would tell me.

Q. But it was sometime, was it not, in February?

A. Yes; it was late in February.

Q. Of 1931. Was that before or after the confer-
30 ence with Mr. High and Mr. Carson?

A. That was before.

Q. Were you present at the conference between Mr. High and Mr. Pierson and your brother in Bridgeton?

A. No.

Q. That was still later, was it not?

A. (No answer.)

Q. In January, 1931, you testified that following New Year's Day you occupied the bedroom with your son for a period of time; is that correct?

A. Yes.

Q. And that was not the room which you regularly occupied with your husband, was it? 10

A. No.

Q. How long did you occupy that room separate from your husband?

A. Perhaps ten days.

Q. When was it that you removed his clothing from his room and changed the rooms?

A. I didn't remove his clothing from my room.

Q. You positively testify that you did not change his clothing or remove them from the bedroom?

A. I do. 20

Q. Then Mr. Pierson is mistaken when he testified that you did?

A. He is.

Q. So that you say about the 10th of January, or approximately that day, you went back to his bedroom?

A. Yes.

Q. That you occupied at that time?

A. Yes.

Q. For how long a time did you remain there? 30

A. Well, I don't know, for a week or perhaps two weeks, I should say for about two weeks, because also during that time I had the birthday party and birthday dinner; during that time we were on a more friendly basis than we were previous to that time or following it.

Q. You testified, did you not, in a previous hearing in this matter, Mrs. Pierson?

A. Yes, I did.

Q. In response to a question, "Now you and he had not been having sexual intercourse since about January 1st," did you not reply, "That is right"?

A. I don't remember.

10 Q. In response to a question, "That was at your insistence", do you recall your reply?

A. I do not.

Q. Did you give any reason to Mr. Pierson, other than what you have stated, as to why you refused your marital obligations to him?

A. After January 1st?

Q. Yes.

A. No; we had a quarrel; it continued and our relations were strained for some time.

20 Q. Did you tell Mr. Pierson that the reason you refused to have intercourse with him was because you were not physically well?

A. That was one reason.

Q. Did Mr. Pierson request you to go to the doctor?

A. He did not. He told me that he would pay no doctor bills.

Q. At that time he told you he would pay no doctor bills?

30

(No answer.)

Q. In response to a further question at the time of the previous hearing, Mrs. Pierson, "And who left the matrimonial room first?" Did you not reply that you did?

Irene M. Pierson—Cross

A. I don't remember; but I did leave it following January 1st and did return to it.

Q. In further reply to a question, "And notwithstanding these accusations your husband made, did he ask you to have sexual intercourse with him," and you answered "Yes"; is that correct?

A. Can you read a little more of that? I don't just understand. 10

Q. The question is, "And yet notwithstanding these accusations your husband made he asked you to have intercourse with him, didn't he?" and your answer was "Yes"; was that correct?

A. I don't remember the question or the answer.

Q. And further the question, "And you refused? A. Yes; I did"; do you remember those questions and answers?

A. I do not.

Q. Getting down to the time of the conference, 20 Mrs. Pierson, with Mr. High and Mr. Carson; you heard them testify previously did you not?

A. I did.

Q. I believe you testified today that the principal reason of that conference had to do with your having the right to use the automobile?

A. That was why I called them on the telephone.

Q. That was why you called them?

A. That was a point at issue at that moment, but it wasn't the whole situation by any means. I had 30 hoped that they would be able to talk to Howard and perhaps understand what it was that was causing the trouble; but the automobile was the thing that bothered me at that moment.

Q. Did you hear Mr. High testify that you were in

a belligerent attitude during all the time of that conference?

A. I did.

Q. What was your reason for assuming that attitude, and yet hoping to secure a reconciliation?

A. I don't think that I was in a belligerent attitude. I don't think the word that Mr. High used
10 described the attitude that I had at that time. I was indignant.

Q. You were indignant. This conference lasted how long?

A. I don't know.

Q. Did you hear them testify that it lasted from about eight o'clock in the evening until twelve at night?

A. I did.

Q. What was Mr. Pierson's attitude at that time?

20 A. A very deceitful one.

Q. On what respect?

A. In every respect. He told them that I was extravagant and that was the cause of our difficulty; I was extravagant and did not use a matter of caution; but that was not the cause of our difficulty. He didn't tell them the cause that he was constantly and persistently repeating to me there when I was alone or in the presence of our children.

30 Q. Well, was your attitude of belligerence one of deceit or one of questioning of your rightful attitude?

A. I wasn't belligerent; I was indignant.

Q. Did you not say, in response to a suggestion of Mr. Carson's that Mr. Pierson leave, that that is exactly what you wanted, for him to get out and stay, or words to that effect?

Irene M. Pierson—Cross

A. I don't remember the words I used, but I know that I acquiesced in that suggestion, because I thought it might straighten our affairs out if he got away from his home and realized perhaps what it might mean to him.

Q. Did you make the further statement that you could not tolerate him in the same room with you?

A. I believe I did.

10

Q. Do you remember calling Mr. High on the telephone following the trip to Bridgeton after that conference?

A. I do.

Q. And did you ask Mr. High the result of that conference?

A. I did.

Q. Did Mr. High not tell you that your brother was going to recommend to you getting together and reconciling your differences?

20

A. I don't remember what Mr. High's words were about that conference.

Q. Well, as a result of his report suggesting that, what were your remarks to him?

A. That I had made up my mind what I was going to do; that I didn't need anyone's advice.

Q. Did you not say that if your brother recommended a reconciliation, you would not listen to him?

A. I did not. I don't recall that Mr. High said that my brother recommended reconciliation or recommended anything. I am very vague on what Mr. High said.

30

Q. Has Mr. Pierson since leaving in May, of 1931, made any suggestions to you of getting together and trying to adjust your differences?

A. I had the one letter which I mentioned to you, or mentioned in my testimony, asking me if I would live in New York.

Q. Your reply was that if certain conditions were complied with?

A. No; my reply was that I would.

Q. That you would?

10 A. And then I asked him to consider the effect of such a move on the children.

Q. Did he not thereafter invite you to bring the children and come to New York and have dinner with him and confer in regard to it?

A. He invited me to come to New York and have dinner with him; yes.

Q. And bring the children?

A. No.

Q. Did you go?

20 A. No; I didn't.

Q. Did you refuse to go?

A. Yes; I refused to go to New York and have dinner with him.

Q. You refused to have any conference with him at that time in regard to reconciliation, did you not?

A. No, I didn't.

30 Q. I show you a letter dated May 17th, Tuesday—I believe it is Tuesday—"My dear Howard? If you wish to discuss anything whatsoever with me I will be glad to make an appointment to meet you at Judge Newcorn's office"; is that your signature?

A. That is true; that is my letter.

Mr. Henderson: I offer that letter in evidence.

(Marked Exhibit D4.)

Q. As a matter of fact, you refused to have a conference with Mr. Pierson except with some other party present, didn't you?

A. Yes; that is true.

The Court: What is the date of that letter? 10

Mr. Henderson: May 17th.

Q. That was in 1932, was it not, Mr. Pierson?

A. Yes.

Q. Mrs. Pierson, you heard Mr. Pierson testify, did you not, that following Christmas of 1930 you left home with the children without advising him where you were going?

A. Yes; I heard him. 20

Q. Why did you do that?

A. I didn't do that.

Q. That is not so; is that correct; that is not so?

A. It is not true that I left without advising him.

Q. When did you return?

A. New Year's Day, I believe.

Q. So that you were gone from the day following Christmas until New Year's Day. What time did you return home on that day? 30

A. I don't remember.

Q. As a matter of fact, it was in the morning before noon, was it not?

A. I don't remember.

Q. Well, Mr. Pierson was home, was he not, at that time?

A. I don't remember.

Q. Do you mean to say that you don't remember at the time you got home whether or not Mr. Pierson was there? Don't you recall?

A. This was four years ago, or three and a half years ago. I went to Bridgeton many times and returned; I don't recall that particular occasion.

10 Q. Wasn't that the day that he told you, on the day of your return, that he had been to a dinner and dance in New York on New Year's Eve?

A. Yes; that is the time that he told me.

Q. And he told you the name of the lady, did he not?

A. He did.

Q. And who was the lady?

A. I don't remember her name. I knew her slightly, that was all.

20 Q. You knew her quite well, as a matter of fact, didn't you?

A. No.

Q. Wasn't she a friend of yours?

A. An acquaintance.

Q. And didn't you state to Mr. Pierson at that time that she was harmless, you knew her so to be, and that you didn't care?

A. I don't remember the talk as to that point.

30 Q. You don't remember the conversation on that point. You won't deny that you took that attitude; assumed that attitude at that time, would you?

A. I don't remember.

Q. Wouldn't you remember if that had been your attitude?

A. I don't quite understand. I don't think that

the girl was an improper person for anyone to go out with. That wasn't the point. The point was that he went anywhere with any woman to a dinner and dance.

Q. Didn't Mr. Pierson tell you the reason he had gone was because you had left home with the children without telling him where you had gone?

A. The reason that he gave me was ——— 10

Q. Just answer the question. Wasn't that the reason he gave you for going?

A. No.

Q. All right; now tell me what the reason was that he did give you?

A. He told me that he was going out with girls or women whenever he wanted to, he was going to do as he liked in the future, that he had been a good husband and that he intended to have some fun.

Q. As a matter of fact, he had been a good husband, hadn't he, up to that time? 20

A. That, I suppose, is a matter of opinion; but I will say yes.

Q. As a matter of fact, over a course of some time prior to this, you and Mr. Pierson had had difficulties concerning your incurring bills at the department stores, had you not?

A. We had difficulties; we had disagreements over how much money was spent.

Q. And didn't he on a number of occasions request you to stop spending money until he could get caught up and get your bills paid? 30

A. Yes.

Q. On each of such occasions there was a disagreement between you, was there not?

A. There was a disagreement about the way our money was handled.

Q. Do you remember one incident in particular where he took this question of finances up with you, and within a few days you incurred bills at the New York department stores of around \$200?

A. No; I don't.

10 Q. You don't recall it?

A. No; I don't recall it.

Q. You wouldn't say that you didn't do it then, would you?

A. I don't understand your question. You mean did I incur \$200 in bills?

Q. Did you actually do that?

A. Yes; I did.

Q. Within a few days?

20 A. I don't remember any disagreement previous to my incurring the \$200 bill.

Q. No; the question is, within a few days following one occasion in particular when he requested you to be careful in spending, did you not answer him by going to New York and spending in the neighborhood of \$200 for clothing and so forth?

A. The answer is no.

Q. Now, when was it that you replied just a moment ago that you did spend as much as \$200?

30 A. For furniture for our daughter's bedroom, about which I conferred with him and had his permission to buy a bed and bureau for her room.

Q. And that was about the time that you were having some difficulty over finances, was it not?

A. I don't know.

Q. A further question I want to ask concerning

this party of the Bible Class that you say Mr. Pierson did not take you to; was he not in charge of the affair that evening?

A. He usually was, so I presume that he was that evening.

Q. It was his duty, was it not, to make himself agreeable to everybody?

A. Apparently to everyone except his wife. 10

Q. Whom did you go with that night?

A. With a group of people, about fifteen, we left from our house.

Q. Did you all go in one automobile?

A. Oh, no.

Q. Did you take your car?

A. No.

Q. Mr. Pierson went ahead of you, did he not?

A. He did.

Q. Didn't he suggest that you take the automobile 20 so that you could have it to return in?

A. He suggested that I get there any way that I could.

Q. The car was left home?

A. It was.

(At this point a recess was taken until two o'clock. Upon reconvening the witness resumed the stand for further cross-examination by Mr. Henderson.)

30

Q. Mrs. Pierson, you testified and gave some figures in regard to your expenses during certain months; the months of May to November, 1931. Can

you tell us how those expenses were made up? For instance, in the month of June you said that your household running expenses were \$256.06; is that correct?

A. I don't have that statement here, but I presume it is.

Q. Will you get it, please?

10 A. Which month was that?

Q. The month of June.

A. You want the items or headings, do you?

Q. Yes; do you have that?

A. Yes. In that month I paid \$42 for my own expenses.

Q. \$42 for your own expenses. What do you refer to by your own expenses? Are they traveling expenses?

A. Well, yes; some traveling expenses.

20 Q. And that had to do with your job, did it not?

A. Yes; bus fares.

Q. So that they were not strictly household expenses?

A. No; those were my own expenses.

Q. Now, the others?

A. The doctor bill.

Q. How much was that?

A. \$8.32.

Q. What was that for?

30 A. That was a doctor bill; now I don't know whether—my doctor bills are not itemized, that is during that time; I don't know whether it was for my own care or for the children or both.

Q. Your next item?

A. Laundry \$12.32. That was —

Q. That was for a month's laundry?

A. Yes.

Q. Was that the approximate charge for your laundry bill prior to that time?

A. Well, I can't say what approximate charge we had, because sometimes I had someone come in and do the laundry and sometimes I sent some of it out, and sometimes I did it myself; it altogether depended upon the circumstances. 10

Q. The fact that you worked yourself necessitated you having it done outside, did it not?

A. No; I always had somebody to help in the house, because I had rooms rented and had to have the laundry done.

Q. What was the next item?

A. House, \$63.44.

Q. What did that consist of?

A. That consisted of Public Service bill, telephone, items for the house, such as slip covers for the furniture, painting; I had some woodwork painted, which had not been painted in a number of years. 20

Q. What portion of that \$63 was for painting?

A. \$10.

Q. Yes.

A. I purchased a mirror, which was \$10 and the maid's service also was under that.

Q. That was how much? 30

A. That was \$9.64.

Q. Wasn't that necessary by reason of your outside employment?

A. I don't think so. I have a ten-room house and have had—at this time I had two roomers; one at any rate.

Q. All right; and the next item?

A. I am not taking them item by item. \$3.40 was for some dishes, I believe, glasses, or some household—something for running the household.

Q. Just give me the entire list of items that make up the \$256. That is what I want.

A. Oh; I was just giving the items of household.
 10 I gave you \$63.44, and the house items, what that money was for, for the house; myself was \$42.08; the doctor was \$8.32; laundry and cleaning, \$12.32; and then the household upkeep was \$63.44; food was \$40; children \$19.

Q. What was that \$89 for?

A. You want me to give you each item as they came?

Q. Just the main items making up the \$89 the general items.

20 A. Camp equipment was \$15. A watch for Teddy when he graduated from grammar school was \$12. Allowances was \$6. Then there were two checks to Teddy for a total of \$4.90; there was an item for clothing \$10; and another one for \$5 and a third one for \$1.50 for the children; there was an item of \$4 for Mr. Lacy, who was giving Teddy clarinet lessons; there was an item of \$6 to Miss Moore, who was tutoring Ellen in Latin, I believe; and there was an item of \$20 as a preliminary payment at George
 30 School.

Q. So that of the sum of \$256 there was one item of \$42 which was your business expenses?

A. No; not business expenses; my personal expenses.

Q. Yes.

A. If I bought my lunch; if I had my shoes shined; if I bought a newspaper; if I bought a sandwich in the drug store.

Q. Your automobile expenses?

A. No. No automobile expenses.

Q. Did you get your automobile expenses from your position in addition to your salary?

A. No; wait just a minute. In June, 1931—you see I can't remember when I first started to drive a State car. It might have been at this time, or it might not have been. I don't have any items of gasolene under this. 10

Q. There is no item of gasolene under that. Did you before you drove your State car get your expenses?

A. For the car?

Q. For the car.

A. I got some. 20

Q. So that your salary of a hundred and some dollars was clear of your operating expenses so far as your position was concerned?

A. Up to a certain point; they allowed me certain mileage. If I went over that I had to pay.

Q. Is the distribution of those other items that you gave us for your monthly expenses about the same proportion as the items that you gave us for June?

A. No; they vary somewhat. I mean, I did not buy equipment for the house, or furnishings for the house, every month. In fact, after that period I bought very little for the house. I spent it entirely on the children. I have spent every cent that I possibly could on the children. 30

Q. In the month of July you said your expenses were considerably more; \$313 I believe; is that correct?

A. Yes.

Q. What was the reason for that increase in the expenses that month?

A. The big reason for that was \$140 for Ellen's
10 camp.

Q. And the large part of the expenditures that you have listed there are expenses for the children, are they not?

A. Yes; they are.

Q. During that time Mr. Pierson was contributing eighty-some dollars directly to you per month, paying the building and loan and the other expenses that he enumerated?

A. Yes.

20 Q. When he was on the stand?

A. Yes.

Q. And in addition to what he was giving you and the other expenses that he paid, you had an income from the renting of the rooms, plus your salary?

A. Yes.

Q. As a matter of fact, while you were spending all this money for the children you didn't consult your husband about your children's education, did you?

30 A. Are you speaking about this period, 1931, now?

Q. Yes; about these expenses and the spending thereof.

A. Yes; I talked to him about camp for the children and he agreed that it would be a very good thing for Teddy to go to camp.

Q. You mentioned an item, Mrs. Pierson, about earning some \$110 for taking the census, which I understood you to say you put into the house. Did you put all of that money into the house?

A. Well, at the moment I can only recall what I did with \$45 of it.

Q. You do recall that you put that much into the house?

10

A. I did.

Q. What did those alterations and improvements in their entirety cost you, if you can recall?

A. As I recall it, it was about \$45.

Q. As a matter of fact, you didn't consult Mr. Pierson about doing it before you did it, did you?

A. Yes, I did, and he selected the person who was to do it.

Q. Isn't it a fact that the bills that you contracted at that time and on which you claim you paid \$45 on account, totaled \$250 and not \$45?

20

A. Not to my knowledge.

Q. Wasn't that another one of the items of over-expenditure that Mr. Pierson discussed with you?

A. I recall that I agreed for the papering and re-decorating of the living room and that Mr. Pierson selected the person to do it, and he told him that I would pay for it from my money when I got the check from the Government, which I did. I don't recall any \$250 expenditure at that time.

30

Q. Well, you did just about that time, didn't you, incur expense for remodeling without saying anything to your husband, aggregating \$250?

A. Remodeling what?

Q. To remodel the fireplace?

A. No.

Q. In the living room?

A. No. There was simply one of those false front fireplaces; the man took it out; there was a hole behind it and he put plaster over it, then he papered the room; that was all there was done.

Q. Didn't you also buy new electric fixtures for
10 the house without consulting him?

A. No; I didn't buy anything.

Q. Didn't you also paper the entire downstairs over without consulting him, for which he had the bills to pay?

A. No; it wasn't papered at that time.

Q. You mentioned in your direct testimony, Mrs. Pierson, that Mr. Pierson was, I think you said, \$475 in arrears. Might you not be mistaken about that, as to the exact amount?

20 A. I don't think that I am mistaken.

Q. Well, with that money were you not to pay certain fixed charges on the house; to the building and loan?

A. Yes.

Q. How far behind with the building and loan were you?

A. About six months.

Q. And that would aggregate about what?

30 A. Sixty some odd dollars a month; \$63 a month.

Q. How far behind with the taxes are you?

A. They are not paid for 1934.

Q. Are they paid for 1933?

A. They are.

The Court: Has Mr. Pierson paid those or are they still unpaid?

Irene M. Pierson—Cross

Mr. Henderson: The 1934 taxes?

The Court: And the building and loan?

Mr. Henderson: No; they are still unpaid.

Q. Mrs. Pierson, do you remember the time that Teddy was sick with infantile paralysis? 10

A. Very well.

Q. Why did you refuse to talk to Mr. Pierson in regard to that at that time?

A. I didn't refuse to talk to Mr. Pierson in regard to that. I made an extraordinary effort to get in touch with Mr. Pierson at that time. I called the place where he was supposed to be living to tell him, because I was in an agonized condition with our son threatened with infantile paralysis and not knowing what minute he was going to be paralyzed; 20 and I called the place and was given a very discourteous reply; the woman said she didn't know where he was or when he would come back; and I called again and asked for any suggestion about where I could find him; and I finally sent a messenger with a note, and he received the same reception at the house where Mr. Pierson was supposed to live. I telephoned Mr. Pierson the first minute in that morning that I thought he would be in his office and I told him what had occurred. Of course, 30 we were in quarantine; he couldn't come; no one could come in the house except the doctor.

Q. You said that you didn't refuse to speak to him on the telephone?

A. No, I didn't; I spoke to him every time he called me on the telephone after that.

Q. You spoke also on your direct examination of finding contraceptives in Mr. Pierson's clothes; is that correct?

A. It is.

Q. How many?

A. Several.

Q. Do you have them?

10 A. I do not.

Q. When was the first time that you said anything to Mr. Pierson about the finding of those contraceptives?

A. During the conversation that afternoon with my brother.

Q. And the finding of those contraceptives took place when?

A. Possibly two days before; possibly a day before.

20 Q. You didn't say anything to Mr. Pierson about that?

A. No.

Q. Until this conversation between you, your brother and Mr. Pierson?

A. No.

Q. What part of his clothing were they found in?

A. In his pocket; in his coat pocket.

Q. Outside coat pocket?

30 A. Outside coat pocket.

Q. You had no difficulty in locating them in searching his clothing, did you?

A. No.

Q. Where was the clothing placed?

A. In his closet.

Q. Upstairs or downstairs?

A. Upstairs.

Q. The room to which you had removed his clothing?

A. I didn't remove his clothing; it was in the closet of the room which he was at that time occupying.

Q. That was the room adjoining where he had 10 previously occupied, was it not?

A. Just across the hall.

Q. This coat was not concealed in any way, shape or form, was it?

A. No.

Q. What was your occasion for going through his clothes?

A. I think I was probably looking for the key to the car, because he had the annoying habit of hiding it or taking it with him, knowing that I wanted to 20 use the car.

Q. Yet you said nothing about it to Mr. Pierson directly?

A. Our relations at that point were very strained; he was saying nothing to me except something very disagreeable and I was saying nothing to him.

Q. Didn't you say on direct examination that you asked him why he had them and he made no response?

A. Yes. 30

Q. When was that?

A. In our conversation that afternoon.

Q. Which conversation?

A. With my brother. No. You asked me if I told my husband about it. I didn't; I asked him

about that in the presence of my brother for the first time.

Q. Oh, I see. That was a conversation that you had in the presence of the three of you?

A. Right.

Q. You also testified this morning that you were interested in the care of the children and that there
10 were expenses incident to their care; you stated that as one reason why they should be away in school. Who took care of the children prior to their going to school?

A. They were in school, of course, in Plainfield.

Q. Did you take care of them nights when you came home?

A. I did.

Q. As a matter of fact, weren't you out practically every night?

20 A. No, I wasn't.

Q. Weren't they able to take care of themselves?

A. I naturally left them at some times.

Q. Wasn't that a habit rather than the contrary?

A. It was occasionally necessary or desirable that I be out in the evening, sometimes on business, some-
times on pleasure.

Q. I can't understand that. I am asking wasn't that the habit rather than the contrary?

A. What do you mean by habit? Did I do it two
30 or three times a day; did I go out in the evening two or three times a week?

Q. Yes; when you left the children to take care of themselves?

A. I wouldn't say that I left the children to take care of themselves if I knew where they were. I

know what time they are going and what time they are coming; I know what they are doing at school and I know what they are supposed to do and what their marks are; and I supervised them constantly now as I always have.

Q. Weren't there times or spells for a long time when they had to get their own meals in the evenings? 10

A. No; there were never any times when they took their own meals.

Q. And that you didn't go home to take care of them?

A. Never.

Q. Were there ever any times between January, when Mr. Pierson testified you refused to have intercourse with him, and May, of 1931, that you refused to have further relations with him?

A. I can't recall that he ever asked me. His attitude was such a disagreeable, belligerent, unfriendly attitude, that I can. 20

Q. You can't believe that he did ask you?

A. I can't believe that he ever asked me.

Q. Then would your statement be that he did not ask you?

A. It would be.

Q. And, therefore, you did not refuse?

A. Yes. 30

By the Court:

Q. Can you tell me what your income was in the month of October, 1931?

A. My own personal earnings, your Honor?

Q. Yes.

A. I think it was \$130 a month, because at that time I was on probation and we receive a set amount, which after you finish probation it is cut for various reasons.

Q. How many roomers did you have at that time?

A. One.

10 Q. That was eight dollars or four dollars?

A. Four dollars a week.

Q. How about November; the same salary?

A. Yes.

Q. And one roomer?

A. Yes.

Q. Did you receive any other letters from your husband except the one that you spoke of already, after May, of 1931?

20 A. Yes, I received letters at various times from him.

Q. Did any of those letters request or suggest a reconciliation?

A. Only the one that I mentioned.

Q. The one in which he asked you to go to New York?

A. Yes.

Q. And that letter you haven't got?

A. No, that letter I haven't got.

Q. What became of it, do you know?

30 A. The only explanation I can think of is at that time Judge Newcorn was my attorney and took all of my letters; of course, and I think it has simply disappeared in the transfer of papers.

Q. You replied to that letter?

A. Yes; I did.

Q. Yourself, or through Judge Newcorn?

A. No; I replied myself.

Q. You said at the time of the conference between your brother and your husband in late February, that three things were agreed upon, as I understood you: First, that there would be a joint bank account; secondly, that he would not see Mrs. Reeves, was it, again? 10

A. Yes.

Q. And thirdly, that no sexual relations would continue or commence again between you until he had definitely parted with her; is that the true condition of your stipulation?

A. As I understand it, he made or suggested the offer himself, because I was suspicious and indignant over this affair, which had just come to my attention, with Mrs. Reeves, and he offered, he said, at any rate, that he wanted to affect a reconciliation 20 in the home, and as I remember he offered himself that part of the agreement.

Q. That he would not ask you for any such relations until he had effected it; is that it?

A. Yes.

Q. But he hadn't previously asked you, had he?

A. Well, it hadn't been very long, your Honor, I should say this was only, I think February 22d or 23d, and we had occupied the same room late in January, so it had only been a matter of a couple 30 of weeks.

Q. During that two weeks he hadn't approached you at all?

A. He had not, except to tell me to leave or that he was going to leave, or some other remark.

Re-direct examination.

By Mr. McDonough:

Q. Mrs. Pierson, you said you couldn't tolerate him in that conference with Mr. High and Mr. Carson; what did you mean by that?

10 A. I meant that the conditions under which we were living had become intolerable, because of his attitude toward me and toward people who came into the home, toward our children; he was constantly asking me to leave or threatening to leave me without support; he told the children that he was going to take them away from me; he had threatened to have me arrested; he told me I should not use the car; there had been any number of most unpleasant incidents that occurred; so that the situation and his attitude was intolerable.

20 Q. Was there any idea in that conference of a temporary separation?

A. Mr. Carson's suggestion was that he take a room for a short time.

Q. Was it in answer to that suggestion that you said he was intolerable and that you couldn't tolerate him in the house?

A. I think to that suggestion I said yes, I thought it was a good idea that he take a room for a short

30 time.

Q. Did you contemplate any permanent separation at any time in that conference?

A. I did not remark about being intolerable, I can't recall the question that brought it up, except that I was trying to explain to them the manner in which he behaved to me.

Q. The remark had reference to his behavior?

A. It just seemed to me that that covered the whole attitude.

Q. Now, Mrs. Pierson, you wrote a letter which was offered in evidence; was that in answer to a request for a conference, that you talk with him in front of Judge Newcorn; is that correct?

A. Yes.

10

Q. What request had he made of you?

The Court: Is that letter available?

A. Of course, I had much reason about mistrusting my husband's sincerity.

Q. No; I asked you what had he requested the conference about?

A. Yes; so he wrote me, I believe, after the maintenance decree went into effect and said that he would not pay the amount of maintenance that had been agreed upon, and I took the letter to Judge Newcorn and asked him what did he think about it, and I suggested—asked him should I discuss it with Mr. Pierson. He said that any matter involving our legal difficulties, that I should not discuss it except with him.

20

Q. Well, was Howard's letter to you one asking for a conference with respect to a reconciliation?

A. There were two letters; one letter he wrote me was that he would not pay the maintenance, there would have to be a reduction. The second letter he did write asking me to come to New York and discuss various things that arose or that might arise.

30

Q. Well, did that letter contain any suggestion that he wanted to discuss reconciliation?

A. No.

Q. What was your thought as to what the purpose of the conference was?

A. I mistrusted his sincerity; I didn't know what the purpose was, but I thought that anything that
10 he wished to discuss I would discuss with him willingly with Judge Newcorn.

Q. Well, did you or did you not have any idea that that conference was to discuss a reduction of the amount of the payments?

A. He so stated in one letter.

Q. In the period from May to November, 1931, how much did you receive altogether from your husband?

A. \$734 is the figure we arrived at.

20 Q. To refresh your recollection, we admitted \$737.

A. \$737.

Q. Did that figure include building and loan payments?

A. That included half, \$31.50, of the building and loan.

Q. Did that figure include the taxes?

A. Yes.

Q. Were there any payments made by Howard for your maintenance and support outside of that
30 \$737?

A. You mean personally, or for the family jointly?

Q. For the family.

A. Well, I have no—I think not, because that included that one small doctor bill and the drug store bill, in that \$700, in there there were no other payments.

Irene M. Pierson—Re-direct

Q. Now, this \$64 that was granted as allowance to the children, that is not included in the \$737 figure, is it?

A. No.

Q. And the \$34 for Y. M. C. A. and camp was not included, was it?

A. No.

Q. And the \$178 for insurance is not included 10
Now, did he make any other payments whatsoever for you or for the children, or any other purpose connected with your support and maintenance or others during that period?

A. Not to my knowledge.

Q. So that the total sum of the payments made to you was \$737.33, to the children was \$64 and the Y. M. C. A. was \$34 and for this insurance for the benefit of the children was \$178; is that right?

A. I have no knowledge of the insurance. 20

Mr. McDonough: I wish to call the Court's attention that the total of those figures is \$989 the total of all items, or \$148 a month.

The Court: Do I understand that during these months from May, 1931, inclusive until November, the building and loan charges and the taxes were paid by Mrs. Pierson?

30

Mr. McDonough: They are admitted in the \$737. The building and loan she admits receiving as to \$31.50 a month, and the taxes are admitted insofar as they apply to the period, at so much a month.

The Court: You mean in addition to those amounts of \$20 a week?

Mr. McDonough: Yes, in addition.

The Court: That is what I understood.

10 Mr. McDonough: But the taxes were paid for an entire year during the period of the six months, so that the taxes applicable to that period would have only been half of that sum. And the building and loan payments applicable to support and maintenance, one-half the total as I got is \$148, including taxes, including building and loan, including payments made for camp and Y. M. C. A., including allowances to children, and including the insurance, cover a year's period; not that period.

20 The Court: You make that average how much per month?

Mr. McDonough: \$148.60. But, your Honor, we don't admit that \$178 for insurance is the correct figure for that period of six months, nor do we admit that it was paid for the support of the family. That is a doubtful question.

30 The Court: All right.

Q. Now, Mrs. Pierson, during that same period you have testified that you received or that you paid out expenses of \$177 in May; of \$256 in June; of \$313 in July —

Irene M. Pierson—Re-cross

Mr. Henderson: If your Honor please, haven't we been all through that?

The Court: I don't know what the question is going to be yet.

Q. —of 275 in August, 1931; of \$150 in September; of \$233 in October; and of \$235 in the first 10 nineteen days of November; is that correct?

A. Yes.

Mr. McDonough: I call your Honor's attention to the fact that that total is \$1643 or \$246 a month expenses. So that the contributions of Mr. Pierson, \$989, are five or six hundred dollars under the expenses of running the house.

Re-cross examination.

20

By Mr. Henderson:

Q. Didn't I understand you to testify, Mrs. Pierson, in response to my question, that you wrote this letter to Mr. Pierson following the receipt of his letter in which he requested you to meet him looking toward a reconciliation?

A. He said nothing about reconciliation in that letter.

30

Q. He didn't say anything about trying to get together?

A. No.

The Court: I understand that letter was written later, in May, 1932; is that correct?

Mr. Henderson: Yes, 1932. But the question was brought out on the examination this morning whether or not there was an offer of reconciliation in May, 1932, and if this wasn't the reply, to which she said, "If you wish to discuss anything whatsoever with me I will be glad to make an appointment with you at Judge Newcorn's office."

10

Re-direct examination.

By Mr. McDonough:

Q. After you received that \$200 a month allowance by the court under the alimony pendente lite order, did you receive any moneys whatsoever other than that from Mr. Pierson until the present time; over and above the \$200 I mean?

20

A. No.

Q. Did Mr. Pierson pay the building and loan, or did you pay it out of the \$200?

A. I paid it out of the \$200 when I received it.

Q. Did you pay the taxes and carrying cost?

A. Yes.

Q. And you still do?

A. Yes.

30

Albert R. McAllister—Direct

ALBERT R. McALLISTER, SWORN.

Direct examination.

By Mr. McDonough:

Q. Mr. McAllister, what is your occupation? 10

A. I am a lawyer.

Q. You are a brother of the complainant, Mrs. Pierson?

A. Mrs. Pierson was adopted by my mother when she was quite a small child. I always considered her as my sister.

Q. Mr. McAllister, did you receive a call from Mrs. Pierson in February, of 1931, asking you to come up to her house?

A. I received a letter indicating that there was a 20 situation there that was not pleasant, but I didn't appreciate the seriousness of it. The invitation came upon my call after I had received some—yes, a letter from Howard's brother-in-law who lives in Bayonne; I don't recall his name at the moment.

Q. Did you come up to her house?

A. Yes.

Q. What time was that?

A. Well, I would have—my testimony before I came into the court room would have been early in 30 the year 1931; it was certainly in the winter of 1931.

Q. Well, to refresh your recollection, was it on Washington's Birthday; February 22d?

A. It was either a holiday or Sunday, I can't be quite certain.

Q. Now, Mr. McAllister, who was present with you at the house?

A. Besides the Piersons, my son was there.

Q. What was said?

A. Well, there was a great deal said.

Q. On the subject of a conference; pardon me.

A. Well, I found Mrs. Pierson in a highly nervous
10 condition, excited, crying, or had apparently been
crying when we arrived. I found Howard very calm
and apparently prepared for my visit, because he
had made notes covering the various matters he
wanted to present to me. I mention that because
it made quite a contrast. When I had made my
entrance into the home I made the suggestion that I
was surprised to know, as I was, that there were
real serious difficulties in that family; and that I
20 couldn't imagine that there were any that as a
father and mother of two fine children that could
not and should not be overlooked, forgiven and for-
gotten in time. That didn't bring any particular
response from either party. Because Howard was
very calm I directed my questions to him as to what
it was all about. He said that Irene had, as he
termed it, high-hatted him and he was not going to
stand for it; that from that time on he was going
to run the home, from now forth, to use the words,
he was going to be the boss of the ranch. I rather
30 got the idea that that was his view. I asked my
sister what was the difficulty from her standpoint.
She told me about this information of his being over
in New York while she was down home spending
Christmas; she told me about some trinket that had
come through on a bill, which seemed to be adapted
to present to a lady and she wasn't the lady.

Albert R. McAllister—Direct

Q. Was that said in Howard's presence, about that trinket?

A. Yes. He said it was some woman in some office where he transacted business and it was—well, it was good business to give that present to this particular woman; he didn't say who the woman was and I didn't question him in respect to it.

Q. Was there anything else said? 10

A. I told him that—I had endeavored to impress upon them, being the father of two children, I thought I could do that, that I believed I had; in fact, I know that I had the—I commanded the friendship of both of them; I think each respected me; I thought I could bring about a reconciliation. As I went into the facts it developed on the line that another complication had been the withdrawal from, as I understood it at the time, of Irene's denial of sexual relations. I endeavored to explain 20 my views at least as to what the rights of a husband were and the rights of his wife, for that matter; and then my sister mentioned the fact that she had found some rubber goods in his pocket.

Q. By that you mean contraceptives?

A. Yes. There wasn't any denial. There was a statement—I don't remember the exact words, but the idea being that she shouldn't have been there. There wasn't any explanation.

Q. It was said in Mr. Pierson's presence? 30

A. He was present all the time, yes; everybody was in the room at that time. My sister stated that she didn't intend to live with him as his wife until she had a satisfactory explanation of that particular situation, which to my mind apparently produced

the thought that he had been unfaithful to her. Another element that was brought into the discussion that afternoon was a woman who lived in Brooklyn, and apparently they had discussed that before.

Q. By that you mean Mrs. Reeves?

A. Yes; and that afternoon Howard admitted that it was almost a daily habit for him to stop at the
10 home of Mrs. Reeves, but that they were friends, and although it might have been indiscreet, there certainly wasn't anything actually wrong about it. I am not attempting to give you the exact words, but I am giving you the general facts, because I couldn't recall the exact language.

The Court: Well, from what you have just stated you were paraphrasing what he had said to you?

20 A. Yes, surely.

The Court: Including the admission that it might have been indiscreet?

A. Yes. I will say that he did admit in appropriate words that it might have been indiscreet. One of the things that Irene insisted upon—because at all times I was endeavoring to bring about a reconciliation—was that until that situation had been
30 cleared up to her situation, or until sufficient time had passed so that whatever strain there was in it had disappeared to a considerable extent at least, that she could not live with him as his wife. One of the conditions that I asked from Howard was that he would not go there any more to the Reeves

house, no matter how keen the friendship was and all that. At first he agreed to that condition, then he made a reservation that he would have to go once more to explain; that they had been friends during a long time and that he felt that it was his duty to explain, and after that he wouldn't go there any more. Another matter that was discussed and about which there was considerable discussion, Howard 10 claimed that Irene had been extravagant. Being pressed for a definite answer, definite figures and definite items of extravagance, I don't recall that there was anything very definite, except that a bedroom—not a bedroom suite, but some bedroom furniture and a chair had been purchased somewhere in New York, I think in Wanamaker's. Howard agreed to later supply me with a list of the purchases that had been made in several months past 20 which would support his views that she had been extravagant. I never have gotten that list. I found that they kept no budget system. I suggested that a budget system be installed, and that they keep within their budget. That was agreed to. As I recall it, the net result of the conference was the installing of a budget system, his agreeing not to visit this home in Brooklyn after a certain additional visit for the purpose of explanation, and—I can't quite remember what the third item was that 30 was omitted; but there were three matters in this arrangement; and I left, feeling that I had done a good day's work and everything was going to be satisfactory.

The Court: Was the third a stipulation or agree-

ment that he would not ask for sexual relations during the ——

A. I think that is right; until this other arrangement had been carried out about visiting the house in Brooklyn, or the home.

10 Q. Mr. McAllister, you have been intimately acquainted with the status of your sister and her husband since they were married; you have been in their house many times?

A. Well, frequently when they lived in Bridgeton; they were very few days or weeks; but not so often in Plainfield, but certainly every year and frequently oftener.

Q. What type of furniture and furnishings did they have in the house; was it expensive or an inexpensive type?

20 A. Well, I should say that they were very ordinary. What I mean by ordinary is, I would say such furniture as a fifty-dollar a week clerk having no special interest in his home would have; not better than that.

Q. Was there any evidence of anything in the furnishings that looked extravagant to you?

A. Not a single stick of furniture or furnishings.

Q. Was Mrs. Pierson's dress, or the clothing of the children of an extravagant type or simple type?

30 A. Well, I am inclined to think that my mother either furnished, made or assisted in the making of two-thirds of all the clothing she has worn since she has been married.

Cross-examination.

By Mr. Henderson:

Q. At that conference, Mr. McAllister, wasn't the question of finances one of the outstanding things that was discussed?

A. Well, it was discussed; finances by Howard 10
and matrimonial obligations by Irene.

Q. I show you an item marked Exhibit D1, and ask you if that is in your handwriting?

A. Those are my figures.

Q. That was the suggested budget that you made up at this time, was it not?

A. I don't recall whether this is the budget or whether this is right what we found that they had been spending; but these are my figures; that is my writing, made at that time. 20

Q. Isn't it true that you had had conversations with Mr. Pierson prior to this concerning the inability of his wife to stay within their means?

A. Frankly I don't believe so.

Q. Well, isn't it true that prior to this time that you had endorsed several notes at various times for Mr. Pierson in order to allow him to catch up with back expenditures?

A. No, that is not quite my recollection. I remember endorsing a note for \$1500 which as I recall 30
at this time was for the purpose of purchasing the property they now own at 433 East Seventh Street, Plainfield, and later on after that the note was paid; it was quite a long while being paid, I should say several years; a new note for, I believe, the same

amount was given, and then, as I understand it, as he explained it at that time, it was for the purpose of meeting some bills which had accrued, or some city taxes of one kind or other; but nothing in that request would indicate that it was through Irene's extravagance so far as I recall it at this time.

10 Q. Now, you stated that in the conversation it was brought out that there was an item purchased on Mr. Pierson's charge account which he admitted was given to a secretary in some business office?

A. Yes.

Q. Do you recall what that item was?

A. I think it was a compact.

Q. And that was on the regular charge account?

A. Yes.

Q. The monthly charge slip, wasn't it?

20 A. Yes. Personally I didn't see anything wrong about it. I am only mentioning that that was a thing that my sister thought that supported some of the other things.

Q. As a matter of fact, in passing, didn't you make the remark that that was a business proposition and that you had made presents yourself under similar circumstances?

A. I might have said that; I don't question but that I did.

30 Q. Isn't it also true that at this conference Irene told you that the thing she wanted was a divorce?

A. Oh, when she was hysterical, as she was for a time, I know that she said she didn't expect to live with him again; that she didn't want to see him any more and that sort of thing; but she shouldn't

have been charged with that, because she certainly was hardly capable of knowing what she was saying at that particular minute.

Q. But she did make that statement?

A. Yes, something to that effect.

Q. You argued with her at length, did you not, that that was not what she wanted?

A. I explained that that was not the attitude of a mother, as I explained to him that what he was suggesting was not the attitude of a father. 10

Q. Do you recall a later conversation with Mr. Pierson and Mr. High?

A. Yes. Do you mean a conversation?

Q. Yes; at the time they came to Bridgeton to see you.

A. Came to Bridgeton to me?

Q. Yes.

A. Yes. 20

Mr. McDonough: I object to that unless the complainant was present.

The Court: You are making him your own witness now. I will sustain the objection.

Mr. Henderson: Well, I will make him my own witness, if your Honor please, if that is what you mean. 30

Q. Do you recall the time of that, Senator?

A. No. It was in the summer or fall; it was a season of the year about like this; I am not sure whether it was spring or fall.

Q. It was just a short time, was it not, after your visit to Plainfield?

A. My recollection is that it was at least two or three months after that.

Q. Well, this visit to Plainfield was in the latter part of February.

A. Some time in February.

10 Q. Don't you recall that this time was in March?

A. I don't believe it was in March; I should say April or May; or in September or October; I have no way of fixing it in my mind, but I well recall the visit.

Q. That visit was to solicit your further assistance in the matter, was it not?

A. I was never quite sure whether it was to secure my assistance or to impress Mr. High; if that was his name.

20 Q. You had an extended conversation, however, with Mr. Pierson about the matter, didn't you?

A. Yes; they were probably at my home an hour.

Q. Didn't you examine him as to his intention for reconciliation?

Mr. McDonough: I object to that.

The Court: Objection sustained.

ESTHER HALDEMAN, SWORN.

Direct examination.

By Mr. McDonough:

Q. Mrs. Haldeman, where do you live? 10

A. Plainfield, New Jersey.

Q. Do you know the complainant and defendant in this case?

A. I do.

Q. How long do you know them?

A. I first met Mrs. Pierson in the spring of 1931, the early spring, and about a week later I met Mr. Pierson.

Q. That was after they had separated; the spring of 1931. 20

A. No; 1931; I beg your pardon.

Q. At that time where did you live?

A. 439 East Seventh Street.

Q. Was that next door or within a few doors of the Pierson house?

A. Next door but one.

Q. Were you intimately acquainted?

A. Not immediately.

Q. How did your acquaintance build up?

A. Well, I met Mrs. Pierson, we discovered after 30 the party was over that we lived next door but one from each other and that I had been living there seven months and we had never seen each other. A week or so later her little girl came in one evening and said, "Mother wants to know if you and Mr.

Haldeman want to go for a ride with us and Daddy; Daddy and I were going for a ride," and I said yes, we would go.

Q. Now, Mrs. Haldeman, on what kind of intimacy were you with them; did you visit back and forth, or did you not?

A. Do you mean right after that?

10 Q. Yes.

A. We became intimate; yes.

Q. Were you on intimate terms with Mr. Pierson?

A. Well, the night we went for the ride Mr. Pierson told my husband that he belonged to the Sunday school class at the Baptist Church and wanted to know if he would go with him, and he said yes, he would, so that some week, two or three times during that week, it was just baseball season, too, and Mr. Pierson came in and would take my husband with
20 him to those meetings or to baseball practice or some such thing.

Q. Did Mr. Pierson drop in frequently after that?

A. Yes. Almost every night or every other night.

Q. Did he ever talk with you about his marital affairs?

A. Yes; right after I met him he told me that he hoped Irene and I would get to be friends, because Irene had so few friends that she couldn't
30 keep any friends, she was a very hard person to get along with, and he hoped I would bear with her and be patient and maybe she would have a friend.

Q. Did he ever discuss with you a woman named Reeves?

A. Well, not right off.

Esther Haldeman—Direct

Q. Well, did he ever discuss her later?

A. Yes, he did.

Q. What did he have to say about her?

A. Well, it kind of grew.

Q. What do you mean by that?

A. Well, he first said when he talked to me that night about how he hoped Mrs. Pierson and I would be friends, he said, for instance, there is a couple 10
in Brooklyn with whom we were acquainted when we lived in Bridgeton, they are from Bridgeton, and she just can't get along with them; I don't know know why it was and I go there frequently and she doesn't want me to have anything to do with her. So then two or three evenings later or a week later, when he stopped in he said that he had been in to see the Reeves. So I didn't think anything of it at first until he began to go in to see the Reeves quite frequently, so—well, you know how you will 20
do—I said, "Have you seen your girl friend?" Naturally you kid with people if you see them more or less. So then Mrs. Pierson and I decided or planned a trip to Maine for about five days and took the children, both sets, and Howard asked me at that time if I would mind if he took Ralph to Ocean City with him in my father's car, while we were going to Maine we would take the Pierson car because we thought we would get more mileage; so I said no, I didn't care. So they went to Ocean City 30
and we went to Maine; and we did have a little difficulty on the trip to Maine, but if you ever travel with three children you will have trouble, but that all got over, and I told Howard about it when we got back, and I suppose Mrs. Pierson told Howard about it; but he still kept on coming to the house.

Q. Did he say anything about his trip to Ocean City to you?

A. He told me that they had seen the Reeves.

Q. Was Mrs. Reeves in Ocean City at that time? Did he say anything about them being in Ocean City?

A. He said as soon as they got down there they stopped in, but he didn't know it; she was stopping
10 at some of her relatives or something.

Q. Did he say anything about going with her at any time during the trip?

A. Oh, while they stopped there they made arrangements—they both told me this—they made arrangements to go over to Atlantic City for the evening, that is the whole group, their group and Howard.

Q. Did he say anything on the Ocean City trip about Cyril Reeves, the husband of Mrs. Reeves?

20 A. He was there.

Q. What, if anything, did he tell you about what he and Mrs. Reeves did at Ocean City?

A. He said they were in swimming, that is all; they didn't have much opportunity to be together, he added. By this time he was telling me more about his friendship with Mrs. Reeves.

Q. Now, did he ever tell you how frequently he visited her?

A. No, he didn't say in so many words how many
30 days he visited her, but when he would come in, if he had been there he would say he stopped in at the Reeves today; so that by the frequency of the times he told me I had a fair idea about how many times he stopped in.

Q. Did he ever tell you anything about having sexual relations with Mrs. Reeves?

A. He told me once that it hadn't reached the point of an affair yet and he didn't know how soon it would; he didn't care.

Q. Did he ever tell you anything other than that about sexual relations or about the attitude of Mr. Reeves in the matter?

A. Well, it was a funny position to be in; Mrs. Pierson and I were friends; Howard kept coming to me and telling me all these things, and I said to him once, "What do you think about? What are you doing to Cyril?" He called the man Cyril. I never met the man; that is all I knew him by. 10

Q. Mr. Reeves you are referring to?

A. Yes. "What do you think you are doing to Cyril?" And he said, "Oh, she is taking care of Cyril all right."

Q. Did he ever say anything other than that that would lead you to believe that he had relations that were improper with Mrs. Reeves? 20

Mr. Henderson: If your Honor please, I don't know if that is in the testimony that that had anything to do with the situation between the parties.

The Court: Of course, the question is developing that. It isn't what the witness may think. It is what the information leads to. Tell us just what he said about this Mrs. Reeves. 30

A. He did say that it hadn't reached the point of an affair and he didn't care how soon it did.

Q. When was that?

A. That was in the early fall.

Q. Of 1930?

A. Of 1930. Then at Christmas time; this was another definite thing he said; we were invited to the Piersons there to dinner and I said, "What did you get for Christmas?" This was right at Christmas time. He pointed to a pen and pencil set in his pocket and he said, "This," and I said, "What did you give her?" And he said, "I didn't give her a present; I gave her some money to get herself something with." He also told me that he bought two compacts and took them to Miriam to take her choice.

Q. By Miriam are you referring to Mrs. Reeves now?

A. Yes, I mean Mrs. Reeves. To take her choice; and she picked the more expensive. He didn't like it.

20 Q. Did he say what that compact cost or where he bought it?

A. He said one was ten dollars and the other was about fifteen, but I don't remember the exact prices.

Q. Now, then, did you attend a dance early in January with the Piersons?

A. Yes, I did.

Q. Was Howard in that party?

A. You mean did he leave the house with us?

Q. Yes.

30 A. No, he didn't.

Q. Was he at the dance?

A. Yes, he was there.

Q. Do you know whether or not Mrs. Reeves was there?

Esther Haldeman—Direct

A. Well, I had this person pointed out to me as Mrs. Reeves.

Q. Do you know whether or not Howard paid any attention to her?

A. Yes, I think he did.

Q. Well, what attitude did he have toward her at the dance?

The Court: What were his actions toward her at the dance as you saw them? 10

A. Well —

The Court: Would he dance with her?

A. Yes; nothing but to please; oh, you know, bustling about, getting this and doing that, taking care of her generally. 20

Q. What attitude did he have toward his wife at that dance?

A. I didn't see him approach her.

Q. Did you see Howard leave the hall?

A. I didn't.

Q. Now, Mrs. Haldeman, did you go straight home or did you go somewhere else after the dance?

A. I went to the Piersons.

Q. Were there any people at the Piersons?

A. Yes. 30

Q. Was Howard there?

A. He came in.

Q. What did he do?

A. I came in; I was in the kitchen when he came in, and I started through the den and I met him,

he was walking one way and I was walking the other, and he was furious, he was in a rage, and he came up to me and he said, "Have you been drinking?" And I said no. He said, "Has that man been drinking?" I said, "Not that I know of." He said, "If he has I am going to throw him out." And that was all I saw of Howard.

10 Q. Did he mix with the company that night?

A. No.

Q. What was his attitude towards the company?

A. I don't know if he even came in and spoke to the company. We were dancing and getting sandwiches ready and coffee.

Q. Did you ever tell Mrs. Pierson anything about this up to that time?

A. Up to the time of the dance?

Q. Yes.

20 A. No; not until a while after that.

Q. How did it transpire that you told her a while after the dance?

A. Mrs. Pierson said to me one day —

The Court: I don't suppose we want the conversations with Mrs. Pierson.

Mr. McDonough: I will withdraw the question.

30 Q. Did Mr. Pierson ever discuss his wife with you other than the occasions you have mentioned as taking place during the early summer?

A. He kept right on telling me how cold she was and how mean she was to him, how extravagant she was. He asked me what I should do.

Q. Did he or did he not ever express an intention to secure a divorce from her?

A. He told me, I should say it was in February or March, that two people could not continue living like that in such turmoil that somebody was going to get out.

Q. Is that all he ever said with respect to securing a divorce? 10

A. So far as I remember.

Q. What was Mrs. Pierson's attitude toward Howard up to February, if you know?

Mr. Henderson: I object to that as being too general, if your Honor please.

The Court: Yes; it seems to call for a conclusion. Did you observe Mrs. Pierson's conduct toward her husband in February, of 1931, when you 20 were together with her?

A. Yes.

The Court: What was her attitude toward him as shown by her conduct? What was her conduct?

A. Well, when we were there, of course, we were more or less guests, and it was always — 30

The Court: When you saw her how did she treat him?

A. She was one that did not keep things in a turmoil, by changing the subject and discussing

something more pleasant; she had grand meals; I thought she was a marvelous housekeeper; that was my thought, but that doesn't have anything to do with it; I thought she did pretty well; he kept complaining of her extravagance and I couldn't see it; of course, she lived just normally.

Q. Was the furniture in her house of an extravagant type or was it of a simple type?
10

A. No; just—I certainly didn't think it looked like the income which it represented.

Q. What did the living room furniture consist of, for instance?

A. A piano, upright; an old-fashioned rocker, which she had bought, a walnut table, an antique, which she had done over, that her mother gave her; two pieces of an overstuffed suite, which were very badly gone and seedy, and several odd chairs that
20 her mother had given her.

Q. Did she have a complete living room suite?

A. No.

Q. Did she have a dining room suite?

A. Yes.

Q. Was it all one set or parts of different sets?

A. It was all one suite; there was a complete suite there; then there was a table beside, a little side table beside.

Q. What type of clothing did she wear or did the
30 children wear?

A. Homemade.

Cross-examination.

By Mr. Henderson:

Q. When was this visit that you testified to, or this trip up in Maine that you talked about, Mrs. Haldeman?

A. In the summer of 1930. 10

Q. In the summer of 1930?

A. Yes.

Q. After you came back from that trip you and Mrs. Pierson were at odds for some time, weren't you?

A. A month.

Q. It might have been two months?

A. I said a month.

Q. During that time you talked to Mr. Pierson considerably about Mrs. Pierson, didn't you? 20

A. Probably.

Q. Sympathized with him as to how he got along with her, did you not?

A. No, he asked me what he should do.

Q. But you talked to him considerably about her, did you not?

A. I talked to him about the altercation.

Q. Your visits to the Pierson home were just as frequent, if not more so, than the Piersons' visits to you, were they not? 30

A. I wouldn't say that, no.

Q. Just as frequent anyway, weren't they?

A. Yes.

Q. Miss Stevens lives in the house in between where you reside and the Piersons, did she not?

A. Yes.

Q. I believe you said in a kidding manner you talked to Howard and asked him if he had seen his girl friend?

A. Yes.

Q. You were kidding about it, weren't you?

A. Yes.

10 Q. And he likewise replied to you in a kidding vein, did he not?

A. That he had seen her.

Q. I don't get you.

A. I mean, is that what you mean; is that the question?

Q. Yes.

A. Yes.

Q. When he told you of his visits to the Reeves' home he didn't say as to who was there, did he?

20 A. Yes.

Q. He did. Who did he say was there?

A. He said that very often Cyril was not there in the daytime, but there was somebody or other upstairs.

Q. The mother lived there?

A. I don't know who it was; they were always upstairs and they just didn't come into the thing.

Q. But he did say there were no relations that had amounted to an affair?

30 A. As yet.

Q. After that time you got angry at Mr. Pierson, didn't you?

A. No.

Q. Didn't you get angry at Mr. Pierson about this evening on which he questioned you about the presence of liquor in his home?

A. No.

Q. You didn't?

A. No, he got made at me before the dance because I wouldn't go with him.

Q. Now, who was the man that he referred to, when you testified he said, "Has that man with you got the liquor?" what was the name of that gentleman?

10

A. I don't remember.

Q. Some gentleman from Dunellen, was it not?

A. Not to my knowledge.

Q. Didn't you reply for him not to be an old maid, or something like that; to go on about his business?

A. I did not.

Q. You didn't?

A. I said no.

Q. Did you take Mrs. Pierson with you to the 20 dance that evening?

A. No; Mrs. Pierson was in another car.

Q. Mrs. Pierson's car wasn't taken, was it?

A. I don't know.

Q. You say that Mr. Pierson complained to you about Mrs. Pierson being cold, mean and extravagant; I think those were your words?

A. Yes.

Q. When was that?

A. When did he make that complaint?

30

Q. Yes.

A. Anywhere from May, 1930, until May, 1931.

Q. Anywhere from when?

A. May, 1930, until May, 1931.

Q. It was in February or March that he told you that they couldn't live together in such turmoil?

A. Yes.

The Court: You mean he said it repeatedly during that period from May, 1930, to May, 1931?

10 A. Yes.

Q. And he also told you, or also complained to you about Mrs. Pierson's extravagance, did he not?

A. Yes.

Q. Were you in a position and did you see on numerous occasions department store wagons stop at the Pierson home?

A. I wasn't in the front of the house very much; I had a young baby to take care of, and I just came out of the hospital about three months before.

20 Q. You weren't in a position to see that?

A. No.

Q. Then you didn't see that; is that your answer?

A. No.

Q. When was the period that Mr. Pierson discussed with you the question of Mrs. Pierson's extravagance?

A. Very shortly after May, 1930, until May, 1931.

30 Q. Now, I believe you also testified that before you went to Maine, Mr. Pierson and your husband advised you that they were going to Ocean City, is that correct?

A. Yes.

Q. There wasn't any secret about that, was there?

A. No.

Q. That was just over the week-end, wasn't it?

Esther Haldeman—Re-direct

A. I don't know.

Q. How long were you gone on your trip?

A. I don't remember.

Q. But you were advised of it before you went?

A. Yes.

Re-direct examination.

10

By Mr. McDonough:

Q. Now, Mrs. Haldeman, did Mr. Pierson ever tell you of any other woman than Mrs. Reeves with whom he had gone out?

A. He told me about the New Years' party.

Q. Did he ever tell you whether or not they were alone in going out; Mrs. Reeves and he were alone in going out?

20

Mr. Henderson: I object to that as leading.

The Court: In the first place it is not proper re-direct; and in the second place it is leading. I will sustain the objection.

Mr. McDonough: I will withdraw the question. I have one more witness for just one statement, your Honor.

30

RALPH A. HALDEMAN, SWORN.

Direct examination.

By Mr. McDonough:

10 Q. Mr. Haldeman, do you know the defendant in this case?

A. I do.

Q. Did he ever talk with you about his marital affairs?

A. Somewhat, yes.

Q. Did he ever talk with you about contraceptives of any kind?

A. I recall one time he said—how the conversation came about I don't recall, but he said that contraceptives had been found in his pocket and he had
20 a devil of a time getting out of that.

Q. Do you remember when that was, approximately?

A. Some time in the early part of March, of 1931, I guess.

(No cross-examination.)

Mr. McDonough: That is our case.

30

HAROLD G. HIGH, recalled.

Direct examination.

By Mr. Henderson:

Q. Mr. High, did you hear Mrs. Pierson testify 10
today?

A. I did; part of it.

Q. Did you hear her testify that she didn't recall
her testimony in a previous hearing in this matter,
as to her statements about withdrawing from inter-
course with Mr. Pierson?

A. Yes, I heard her testify on that.

Q. Did you attend a hearing before Justice Min-
turn in this case?

A. I did.

20

Q. Do you recall her testimony in that respect?

A. I recall it quite definitely.

Q. Will you tell the Court what her testimony
was?

A. The question was asked by Mr. Pierson's at-
torney, in defense, as to whether she had left him
or he had left her, and she said she had left him,
she had gone from the room and refused to re-enter
it; the matrimonial room.

Q. Do you recall if she testified when that was? 30

A. I can't say whether she testified—it seems to
me that the attorney was trying to be specific, I
think it was early in the year.

Q. Early in the year?

A. Yes.

(No cross-examination.)

Mr. McDonough: If your Honor please, we admit that she left the marital room early in January, but we assert that she came back again.

The Court: Yes, I understand it. There is no
10 doubt about the accuracy of that stenographic record, is there?

Mr. McDonough: On that question I don't think there is, your Honor. I noticed it and we admit that that is correct.

The Court: Why not put it in then without your formal objection, and then we will have it.

20 Mr. McDonough: That is all right; the only trouble is I wonder if we couldn't just let your Honor see it. My reason for that is that I don't want the record loaded up with all the evidence in the former case.

Mr. Henderson: I don't see that it would load up the record.

Mr. McDonough: In case of an appeal it would
30 mean a lot of printing.

The Court: Yes, of course.

Mr. Henderson: I think that is reasonable. I will allow your Honor that opportunity.

Discussion

Mr. McDonough: And I call your Honor's attention to the fact that the transcript does not give the complete testimony of Mrs. Pierson, because that was ended with the stipulation, and the cross-examination might have brought out the rest of the facts pertaining to that statement.

Mr. Henderson: Well, I know, but that would 10
be in the course of her direct statement; that is her direct statement that she left him early in January.

The Court: Since it is to be used against interest, the direct statement is the one that is more important.

Mr. Henderson: Shall we read into the record a stipulation that counsel consents to the admission of 20
certain questions and answers which were given at the time of the previous hearing before James F. Minturn, Advisory Master, at his office, 60 Park Place, Newark, New Jersey, on May 12th, 1932.

The Court: That is on direct examination of Mrs. Pierson, is it?

Mr. Henderson: I am not sure, if your Honor please. I think it was cross-examination. 30

Mr. Pierson: It is cross. Mr. Child asked the question on cross-examination, if your Honor please.

The Court: Very good.

Mr. Henderson: Said questions and answers being on cross-examination:

“Q. Did you and he occupy separate rooms?

A. After January 1st we did.

Q. That is what I mean.

A. Yes.

10 Q. Who left the matrimonial room first?

A. I did.”

I have something here, I see it is not exactly on this point; it goes to the question of the conditions which Mr. Pierson had stated —

The Court: Suppose you reserve that for the minute and let us get everything that has to do with that point.

20

Mr. Henderson (Reading):

“Q. Now, you and he hadn't been having sexual intercourse since about January 1st; is that right?

A. That is.

Q. And that was on your insistence, was it not?

A. It was.”

30 The Court: Is there anything just ahead of that to show as of what date the question relates?

Mr. Henderson: No; except the answer is January, if your Honor please. It doesn't say the year. The question is, “So you had been living apart since the 1st of January,” it doesn't say how long they had been living apart.

Discussion

The Court: Of course, it doesn't mean much.

Mr. Henderson: There is nothing immediately preceding that testimony that would indicate which January. Then further (reading):

"Q. Yet notwithstanding these accusations your husband made, he did ask you to have sexual inter- 10
course with him, didn't he?"

A. Yes.

Q. And you refused?

A. Yes, I did."

Mr. McDonough: Your Honor, that doesn't look complete, because it says accusations there.

Mr. Henderson: There are two questions before that speaking of a time in which these accusations 20
were made, and the question was:

"Q. Was it before or after January 1st?"

A. January 1st?

Q. Yes.

A. After."

The Court: There is nothing inconsistent that I could see in those questions and answers that you have just read and the testimony which has been 30
taken here.

Mr. Henderson: Except that she, as I recall it, I asked her about her testimony and she did not recollect it, and I feel that it is part of the rebuttal to have that put in the evidence.

The Court: Then it does not seem important, unless you point me out the inconsistency.

Mr. Henderson: Now, the other item, if your Honor please, for her questions on re-cross examination by Mr. Child:

10 "Q. Mrs. Pierson, as a matter of fact, the last four or five years you and Mr. Pierson were constantly having difficulties over finances; not between yourselves, but the inability to earn enough to get along, isn't that a fact?

A. We had some difficulty.

Q. You had constant difficulty to make both ends meet, didn't you?

A. Yes."

20

HOWARD PIERSON, recalled.

Direct examination.

By Mr. Henderson:

Q. Mr. Pierson, on the examination of Mrs. Pierson she testified that after Christmas, 1930, she advised you that she was going to take the family and go to Bridgeton, is that a fact?

30 A. No.

Q. She also testified that you told her you were going to leave because of her extravagance and that you were not going to support her, is that a fact?

A. No.

Howard Pierson— Direct

Q. She also testified that you told her to get out, is that so?

A. I never did.

Q. She also testified that you said you wanted to marry some woman in New York.

A. I never made such a statement.

Q. She also testified that you told her to enter a house of prostitution.

10

A. I never did.

Q. How many times after January did you approach Mrs. Pierson in regard to renewing your marital relations?

A. Well, there were many times; there were four or five times that I remember very distinctly.

Q. Will you tell the Court, please?

A. I kept a little memorandum book of my own expenses; I also jotted down in that book the different items that might refresh my memory. On March 8th I made a statement to Mrs. Pierson that I thought that we should see if we couldn't make a go of it and she said, "We will never get together, because I positively refuse to have anything to do with you." At the time of the conference between Mr. High, Mr. Carson, myself and Mrs. Pierson, she also made the statement that she could not tolerate me, she wanted me to get out and stay out. With the purpose of having a reconciliation I went to Bridgeton with Mr. High. On my return that night she wanted to know what was the purpose of that visit; what was the result of it.

20
30

Q. Did you tell her?

A. I told her that she would be much better satisfied if she asked her brother or Mr. High; that in

all probability she would not believe what I told her if I did tell her. She insisted, however, that I did tell her, and I told her that the purpose of the visit was toward reconciliation, and that her brother was going to talk with her, and I thought he was going to give her very good advice with the feeling that there might be a reconciliation. She made the statement at that time that we would never be reconciled. On May 11th we had a conference in the office of Judge Hetfield, who was then her attorney. I was there; my attorney, the man that was representing me at that time, was also present. Mrs. Pierson made some statements at that conference which I very seriously questioned her sincerity. We left the conference, however, after having agreed on the amount of money which I was to give Mrs. Pierson during the summer, which Judge Hetfield said would be acceptable.

Q. That was in May?

A. That was on May 11th, one week after I had left home.

The Court: What year?

A. 1931.

Q. And that was prior to the bringing of the maintenance suit?

30 A. That is right.

Q. All right.

A. During that evening, though, she had made some statements at that conference that she would be willing to be reconciled which troubled me somewhat and I went home. When I went to the home

she wasn't at home; she was stopping in at the Haldemans at that time, or visiting in at the Haldemans. I went to the Haldemans and asked her if she would come home and talk to me and she said she would, after sparring a bit, saying at first that she wouldn't. She came home with me and I made the statement to her, I said, "Irene, if you were sincere in the things you said this afternoon, there is no reason why you and I can't get together." She said, "You can come back and live in the house if you want to, but I will not have anything more to do with you; I am just through with you." That is all that happened; she gave no reason. Then later in the fall —

Q. That was about a week after you had moved down the street?

A. That is right. I made several efforts after that to talk with her, but she was always in a very nasty mood, I couldn't talk with her sanely on any subject, it was an impossibility; I just simply couldn't reach the point of sane discussion. However, when I got ready to leave for New York I suggested that she come to New York and live with me. She replied that if I could find a suitable place and under particular conditions she would come. There was no further correspondence about that and I went home. I went to the home just before I returned the desk that I had had, but that was the time that I testified to before that she was so very nasty, calling me vile names in front of the house, in a voice that could probably be heard three blocks away. Then later on after the maintenance suit I wrote her a letter suggesting that there were many

things that we might talk about, particularly pertaining to the children, and I suggested going to New York for dinner together, and if we wanted to have any further discussion that we could go to my room. The reply I got was this letter that I have been shown here. There were other occasions but they don't come to my mind definitely as those particular ones.

10 Q. Mrs. Pierson also testified that you told her if she drove the automobile you would have her arrested, is that true?

A. I think not, I never recall making such a silly statement.

Q. Did you ever tell Mrs. Pierson that you were going to take the children away from her?

A. No, I never did.

20 Q. I believe you testified that you came to an agreement in Mr. Hetfield's office as to the amount that was to be paid during the time following your leaving home in May.

A. That is right.

Q. Then you did come to an agreement as to the amount that was to be paid?

A. Purely a verbal agreement, yes.

Q. Did you keep that agreement?

A. I did.

30 Q. Mrs. Haldeman testified that you told her that you had purchased two compacts and took them to Mrs. Reeves to give her her choice on Christmas, I believe, 1930; is that a fact?

A. I never made such a statement, because I didn't take those compacts to Mrs. Reeves. I testified before that I gave them to the secretary of

Howard Pierson—Direct

one of my customers. I purchased one compact and found it was defective and returned it and I bought another one. The bill will show that the original compact was returned and that only the second pact was charged.

Q. But one was returned?

A. That is right.

Q. And that was purchased on whose account, 10
Mr. Pierson?

A. On Mrs. Pierson's account.

Q. So that the bill for it went to your home in Plainfield?

A. That is right.

Q. Mrs. Haldeman also testified that you had made certain complaints to her, or statements concerning Mrs. Pierson's extravagance, is that so?

A. Yes.

Q. She also testified that you frequently visited 20
her house, is that a fact?

A. I wouldn't say frequently, no.

Q. How often?

A. Well, I dropped in in the early evening, probably an average of once or twice a week over a period of maybe five or six weeks.

Q. You were friendly with Mr. Haldeman, weren't you?

A. Yes.

Q. She said that she made a kidding remark to 30
you about seeing your girl friend, is that a fact?

A. That is right; there were considerable flippant conversations between Mrs. Haldeman and myself.

Q. And did you reply in an equally frivolous manner?

A. I did.

Q. There wasn't anything wrong concerning your relations there with Mrs. Haldeman, was there?

A. My relations with Mrs. Haldeman?

Q. Yes.

A. No.

Q. As a matter of fact, for reasons your friendship
10 ship ceased, did they not?

A. Yes.

Q. Now, in regard to your income and expenses, Mr. Pierson, has your situation regarding your income since 1931, and up to the present time, changed?

A. It has changed materially.

Q. In what respect?

A. Well, with the incoming of repeal there was a great deal of activity in my business, which hap-
20 pens to be the selling of bottles. It was necessary at that time because of this increased activity for me to put a stenographer in the office full time and to secure the services of two men, whom I didn't have to compensate, but for whom I had to provide office space, and additional telephone service and wire service, which would be required by the additional men. The result is that my office expense for the year 1934 will be approximately \$1600 as compared with \$1200 in any previous year.

30 q. I believe you testified that you are on a salary, not on a commission basis?

A. That is right.

Q. And your salary is still \$6000?

A. I have a drawing account of \$6000 from which I pay all my own business expenses. That includes my traveling expenses and office expenses.

Howard Pierson—Direct

Q. You did have a conference, did you not, with Mrs. Pierson and Mr. McAllister?

A. Yes, on February 15th, 1931.

Q. Will you relate that conversation as you recall it, please?

A. The circumstances leading up to that conference are these: That Mrs. Pierson went to the office of my brother-in-law, George Mettam, at the Standard Oil Company in Bayonne, and told him that we were having difficulties at home, and she would like for him to use his offices in removing these difficulties, if possible. He told her that he didn't think that it was his place to go into the matter, because he was my brother-in-law, and he might be prejudiced, but he did know that her brother, Albert McAllister, had my confidence, and he also knew that he had her confidence, and he felt that Albert McAllister was the proper person to be called in at this time. So Mr. Mettam dictated a letter to Mr. McAllister and sent a copy to Mrs. Pierson and a copy to me; and as a result of that letter from Mr. Mettam and from myself, Mr. McAllister wrote a letter to me at some length, suggesting that this thing was not important enough to break up a home; but later in the week he called my home on the long distance phone. It happened that Mrs. Pierson said much for the moment, and I answered the phone; he asked for me.

The Court: Wait a minute. You were just asked to say what the conversation was at the conference.

A. I was just leading up to it.

The Court: Get down to the conference.

A. Mr. McAllister came to our house on Sunday afternoon, February 15th, accompanied by his son, Robinson. When he came into the house Mrs. Pierson was crying, as she has testified, and he came into the room; and I made the suggestion that since
10 she had initiated this conference by approaching my brother-in-law, that she should first tell her story. She refused absolutely to talk. So then I told him that I would like to tell the story as I saw it. I had prepared some notes so that I could talk coherently, knowing that I would be under more or less of a mental strain at the time. I told the story as I have explained it. He asked very few questions, but he listened very attentively. When I got through he was very sympathetic. He said, "As I
20 see it your main difficulties are finances, and I think we can easily straighten this out." He asked me for a piece of paper and he drew up this budget. He first asked me a lot of questions as to the amount of income and as to the budget which we had been upon. I told him the information and he drew up a tentative budget, and suggested that this budget be covered in two ways; by my bank account and a joint account which would cover specific items on that budget. To this budget I agreed and Mrs.
30 Pierson agreed. After we had finished the discussion of finances he said, "I don't see but what we can straighten this out; everything seems to be getting into shipshape." I said that I thought perhaps Irene had something in the back of her mind, from the way she was acting, and I would prefer that he

ask her the question did she have anything to say; and she said she didn't. At that time she asked the question, had I been calling on Mrs. Reeves in Brooklyn. I made the statement that I had called on Mrs. Reeves in the past and that she knew on practically every occasion; that I had went more frequently in the few weeks just previous to this conference, for the purpose of discussing with Mrs. Reeves some of our matrimonial difficulties, because I considered Mrs. Reeves a competent person to talk to, she knowing both of us, and so forth. She objected very much to those calls and I told Mr. McAllister there wasn't sufficient importance attached to those calls but what they could be stopped, and he suggested that I do stop these calls until such time as Mrs. Pierson was in a better frame of mind. I told him that was all right with me, I had no objection to stopping the calls. Then he turned to Irene after that matter had been discussed—he turned to Mrs. Pierson and said, "Now, Irene, just what do you want?" Irene said, "There is only one thing I want and that is a divorce; I want to get rid of him; I want to get rid of him as quickly as I can," and he sat down and had an open talk with her for about twenty minutes and argued with her that that is what she didn't want, a divorce. So after he had apparently convinced her, or had argued with her to some extent, I don't know whether he convinced her or not, but apparently he did; then she brought up the matter of having found contraceptives in my pocket, and that was a surprise to me, because I had never heard anything about it, and as I remember, the only reply I made

to her statement that she had found, I said, "It was a new one that you found in you found one, wasn't it?" and she said yes, and I said at that time that the only contraceptives I ever carried in my pocket were new ones, because I bought them at the neighborhood drug store; but I didn't know anything about her finding the contraceptives. Mr. McAllister suggested that we adjourn the conference and go out for dinner, which we did. That was practically the end of the conference.

By the Court:

Q. Something has been said about you being in arrears with your alimony payments. Are you in arrears?

A. At the present time I owe Mrs. Pierson \$400.

20 Q. Why is that?

A. That has been due to the pressure of these business expenses that I just told you about; also to the pressure of these other obligations which have been long standing at the bank. They have been pressing me for payment. That is the statement, that is the original I submitted here on the day of the opening of this hearing. That will probably show you in figures my arrears to date.

30 By Mr. Henderson:

Q. Were you sued, Mr. Pierson, in New York, by a concern for Mrs. Pierson's obligations?

A. Yes.

Q. And you had to pay that judgment, did you not?

A. Yes.

Q. What was the name of the concern that sued you?

A. Tepper Brothers, of Plainfield.

Q. Of Plainfield?

A. That is right.

Q. How much was the judgment?

A. \$200.

10

Q. When was it paid?

A. It was paid about six months ago.

Q. And that account was for what, Mr. Pierson?

A. As I have testified before, Mrs. Pierson had charge accounts in practically all of the leading stores in New York —

The Court: No, what was that one for?

Q. What was that account for, was that her charge 20
or for yours?

A. That was the account of Mrs. Pierson; she maintained it at Tepper Brothers against my instructions. I had bought nothing in that place.

Q. Do you know what it was for? Do you know what these things were purchased for?

A. No, because she handled the account.

Mr. Henderson: If your Honor please, I have 30
these letters that were offered in evidence as Exhibits P1 and P2.

The Court: They were offered at the prior hearing.

Mr. Henderson: At the prior hearing, by Mr. McDonough, and our letters from Mr. Pierson to Mr. McAllister, following this conference that they had had. The contents of the letters were not read into the record. I think it is important that they should be; at least parts of them. I don't know whether you have any objection or not.

10

The Court: They are exhibits. They will be left with the clerk.

By the Court:

Q. You heard Mrs. Pierson testify about a letter that she had written you in answer to the suggestion by you that she come to New York?

A. Yes.

20

Q. Have you that letter here?

A. The original letter?

Q. Yes.

A. I think not.

Q. Where is that?

A. It might be over home. You mean do I have it here?

Q. Yes.

A. No, I haven't it here.

Q. Do you remember seeing it?

30

A. I remember there was such a letter.

Q. Do you remember seeing it?

A. Yes.

Q. You heard her testify as to its contents?

A. Yes, I did.

Howard Pierson—Direct

Mr. Henderson: If your Honor please, I don't recall just what the testimony was on that. Will your Honor tell me what you had in mind?

The Court: Yes. She said she had a letter from her husband asking whether she would come to New York and live with him, and she replied that she would, and asked him to consider whether it would be for the good of the children. It seems to me that is a very important letter. I think it ought to be here. 10

Q. You don't have that letter, Mr. Pierson?

A. I will look and see. I am not certain, but I will look.

By Mr. Henderson:

Q. Is your recollection of the contents of that the same as Mrs. Pierson's? 20

A. No.

Q. What is your recollection of the contents?

The Court: You can't ask that. If the letter is in existence he can't state what the contents of it was, especially as it is apt to be very important.

Mr. Henderson: Her testimony was based on her recollection as to what was in the letter. If we can't produce the letter, his recollection of it would be the next best evidence, in reply to her statement. 30

The Court: Strictly speaking, of course, the let-

ter should have been called for and produced, but she testified without objection to the contents of it; but now I think it may become so important that the original letter should be here.

Q. I will you look for it in your file?

A. Yes.

10

Cross-examination.

By Mr. McDonough:

Q. Mr. Pierson, I show you a bill from Saks & Company; are those two items purchased in November the two compacts in question; one purchased November 3d, and one purchased November 15th?

A. I have the original bills there; that is merely
20 a statement of account, of the ledger account. I could tell from the original bill but not from this.

Q. You can't tell from this?

A. What was your question again?

Q. Are the two compacts shown on this statement as having been purchased on the 3d of November, 1931, and on the 15th of November, the ones to which you referred?

A. My recollection is that they were purchased in October; you see here is one compact charged
30 and credited against that; this one compact, \$10.50, that I kept.

Q. I call your attention to the fact that that statement shows that they were purchased before the 15th of the month, but the credit shows on the 18th of the month for the one returned.

Howard Pierson—Cross

A. This isn't the original bill; that is a statement.

Q. Are you sure of what you said when you said that you didn't take both compacts?

A. I positively did not take both compacts.

Q. That you returned one to the store?

A. That is right.

Q. And then took the other?

A. That is right.

10

Q. And if this statement shows that the other was credited three days later, that is an error, is that correct?

A. I said that was not the original bill; that I could tell from the bill.

The Court: Let me change my ruling on the matter of that letter. I think he is entitled to testify to the contents of the letter, although it may not be produced, because Mrs. Pierson has already testified to the contents of it. It is proper in rebuttal to contradict what she says.

20

Mr. McDonough: I object to that ruling. Mrs. Pierson hasn't the letter and it was not in her possession; she testified after he had alleged that there was such an effort at reconciliation on the first day's testimony; then she denied that.

The Court: All right. I will strike out her testimony then as to the contents of the letter.

30

Mr. McDonough: I would rather leave that in the record.

The Court: It is incompetent. If you think this is incompetent I will strike this out, but I will also strike the other out.

Mr. McDonough: I am willing to let the thing stand as it is, in that case.

10 By Mr. Henderson:

Q. Tell us what you remember about that letter that you received from your wife about going to live with you in New York; what did that letter contain, as you recall it?

A. My recollection of that letter was that Mrs. Pierson said she would be willing to come to New York provided I provided or offered a suitable place for her, and that I also think what the effect would
20 be on the children. It was to that general effect.

By the Court:

Q. Why didn't you then provide a suitable place and bring her over to New York?

A. My recollection of the matter is that I wrote her another letter following that, suggesting that she come to New York and that we could talk the matter over and she refused again.

30

By Mr. Henderson:

Q. Isn't that the letter, Mr. Pierson, which we are talking about here, of her refusal?

A. This was a later letter; but there was a second letter of refusal, very much like this.

Irene M. Pierson—Direct

By the Court:

Q. You haven't got that second letter?

A. Well, if I got one I have got both.

Q. Where are they?

A. They would be home.

The Court: Are counsel through now with the 10 case?

Mr. McDonough: If your Honor please, I would like to answer some new matter that was brought in by Mr. Pierson, that the allowance was acceptable at Judge Hetfield's office; something of that sort. I want to get my client's version of that.

The Court: Yes, I think that is important.

20

IRENE M. PIERSON, recalled.

Direct examination.

By Mr. McDonough:

Q. Mrs. Pierson, was any agreement ever made in Judge Hetfield's office, or elsewhere, approving an allowing for you, before the one set by the Court? 30

A. No; there was no agreement. Mr. Pierson offered \$20 and the Judge told him that it was not enough, and he said that all he could do. Judge Hetfield said, "Well, she can accept it until such

time as she can go to court about it, but it is not acceptable to us," and he told me not to sign any agreement to that effect.

Q. Do you recall any incident which took place at the Haldeman house on May 11th, where you refused to be reconciled?

10 A. He came to the house and I was having supper at the Haldemans. I went into the house with him and discussed different matters he had in mind, and I asked him at that time if he had changed his attitude in any respect concerning Mrs. Reeves, and if he wanted to come back to the house that we were to be really reconciled, and he said that I was to do as I was told and that he had a right to visit whom he pleased and when he pleased; so that our conversation got us nowhere.

20 Q. Mr. Pierson testified that you called him names which could be heard three blocks away on another occasion; did any such thing happen?

A. No, never.

By the Court:

Q. Did you ever call him vile names?

A. No, I never called him names.

(No cross-examination.)

30

TESTIMONY CLOSED.

OPINION.

IN CHANCERY OF NEW JERSEY.

87-266

10

Between

IRENE M. PIERSON,

Complainant,

and

HOWARD W. PIERSON,

Defendant.

On Bill for Maintenance and Counter-Claim for Divorce.
Opinion.

20

McDonough & McDonough, Esqs., for complainant.

Russell S. Henderson, Esq., for defendant.

HERR, A. M.:

On March 11, 1933, a final decree was entered in the above-entitled cause in favor of complainant for separate maintenance for herself and the children of the marriage in her custody, in the sum of \$200.00 per month. This decree was based not upon evidence but upon a stipulation made in open court and dictated into the stenographic minutes of the hearing, to the effect that the parties had arrived at an adjustment of their difficulties; that the defendant was willing to pay the sum of \$200.00 per

30

month for the support and maintenance of his wife and children in full for all expenses including the upkeep of the house, of which the use was conceded to the complainant, providing for the custody and visitation of the children and providing that a final decree might be entered thereon to carry into effect the terms of the stipulation.

- 10 On September 28th, 1933, the defendant, Howard W. Pierson, filed a petition for divorce in this court against the complainant herein on the ground of desertion (Docket 98-441), and was met by an answer in lieu of a plea, setting up in bar the final decree theretofore entered in this cause. He then moved in this court to vacate the final decree on the ground that he had not intended to admit the charge of abandonment and so to foreclose himself from subsequently suing for divorce on the ground
- 20 of desertion as soon as the period of two years should elapse after the separation. This Court on that motion determined that the final decree impliedly adjudicated that the defendant had abandoned the complainant (on the authority of *Oertel v. Oertel*, 92 N. J. Eq. 327), that such adjudication was not based on evidence but on the stipulation, that the stipulation was entered under a misapprehension on the part of defendant and his counsel as to its legal effect; whereby the defendant had
- 30 lost a substantial right through accident and without any intention on the part of himself or his counsel to lose it. Since the adjudication of abandonment, whether expressed in the decree or not, is jurisdictional, this Court opened and set aside the final decree and advised an order consolidating the

Opinion

two suits under the title hereinabove set forth so that the divorce petition became a counter-claim in the maintenance suit. Appropriate pleadings were thereafter filed and both complaints brought to issue in the one proceeding.

The case has now been fully heard. The proofs show that the parties cohabited as husband and wife for many years with comparative happiness until January, 1931, when the complainant left the marital bed. She testified that she returned after ten days and that sexual relations were resumed for some days or weeks and that the defendant then left the bed and refused to return. The defendant denies that he at any time left the bed. On this issue, I hold that the wife left the bed and did not at any time return. Mr. Albert R. McAllister, a brother of the complainant and a witness produced by her, testified that in February, 1931, he was brought in to try to effect a reconciliation between them and then learned of the withdrawal of Mrs. Pierson from sexual relations with her husband. He thereupon tried to explain to her what the rights of a husband were and she told him that she did not intend to cohabit with him, her husband, as his wife again until she had had from him a satisfactory explanation as to his possession of certain contraceptives which she found in his pocket.

The trouble between the parties was caused chiefly by continual disagreements as to money matters. The complainant was generally engaged in gainful occupation and had her decided ideas as to how money should be spent, which ideas were not always those of the husband. A secondary cause

of disagreement was the husband's frequent visits to a Mrs. Reeves in Brooklyn. While there is no evidence that his relations with Mrs. Reeves were not entirely proper, he still admitted to Senator McAllister on the occasion of the February conference that the frequency of his calls upon her was indiscreet. This conference resulted in an agree-
10 ment first, that a budget system would be devised and agreed to between the parties and Senator McAllister outlined a tentative budget at that time; secondly, the defendant promised not to see Mrs. Reeves again except once in order to explain to her why he would be obliged to discontinue his visits, and thirdly, that he would not press his wife for sexual cohabitation until he had definitely given up Mrs. Reeves. His agreement not to seek sexual
20 relations with his wife is very strong corroborative evidence that at that time and prior thereto since the early part of January, it was the complainant and not the defendant who objected to such relations.

On March 28, 1931, a Mr. High and a Mr. Carson, friends of the parties, were brought into conference with them. This conference lasted for about four hours. At that time she was overbearing in her manner and showed and said that she did not want her husband around and that his presence was dis-
30 tasteful to her. Her attitude was one of indignation; she said she could scarcely stand being in the same room with her husband. Her attitude was described by Mr. Carson as not such as to leave much hope for a reconciliation, whereas his attitude was more conciliatory. Mr. Carson suggested that

Opinion

there be a short separation. She said that that was exactly what she wanted and that she did not want her husband to come back. Mr. High described her attitude as "belligerent."

Finally, on May 4, 1931, the defendant left the home and has never since returned. He went to a boarding house two blocks away and lived there until October of that year, when he removed to New York. During this period he paid his wife \$20.00 a week together with the operating expenses of the home and certain prior obligations incurred on account of the home, out of a net income of \$400.00 a month. She had additional income of \$8.00 a week from roomers and \$30.00 a week salary. In November of 1931, when the defendant was attending a church meeting in Plainfield, the complainant caused his arrest on a *ne exeat*, although it appears that at that time he was paying generous amounts, either directly or indirectly for her benefit and that of the children.

The defendant claims that he made overtures to his wife after May 4th, looking to a reconciliation. She denies this, but admits that in answer to a request by him for a talk she wrote him that she would not meet him except in her solicitor's office.

Mrs. Pierson testified that after he left the home she requested him on several occasions to return and told him that she would consent to live in New York.

I am not satisfied from the evidence that the defendant made such just advances as he should have made and I am not satisfied that such just advances if made would have been unsuccessful in securing

a reconciliation. His own conduct contributed substantially to the disagreements between the parties. The complainant was not alone at fault. It is very apparent that she was jealous and suspicious of her husband's attentions to Mrs. Reeves and it was his duty under the circumstances to do what he promised in Senator McAllister's presence to do, that is, give up Mrs. Reeves. Instead of doing so, he appears to have continued in the same relations with her as before, a circumstance which contributed greatly to the final separation on May 4, 1931. He does not claim that he was justified in leaving his home on the ground that his wife was guilty of a matrimonial offense other than her refusal to have sexual intercourse, but this refusal had continued only since January of that year, a period of about four months. Until and unless it had continued for a period of two years, the complainant would not have been guilty of a matrimonial offense justifying the defendant's separation from her. He cannot maintain that it would have so continued had he remained in the home. He has failed to establish, as charged in his divorce petition, that the complainant deserted him on May 4, 1931, and that ever since that time her desertion has been wilful, continued and obstinate. Assuming that she was a deserter as of May 4, 1931, because of her refusal of sexual intercourse, such desertion was neither wilful nor obstinate over a period of two years. This disposes of the defendant's counter-claim.

In my judgment the evidence fails to establish a cause of action for maintenance in favor of the

Opinion

complainant against the defendant. It is doubtful whether the husband's separation of May 4, 1931, can be considered an abandonment within the meaning of the Act but it is not necessary to determine that question since the evidence clearly establishes that at that time and subsequently up to the time of the filing of the bill, and indeed, ever since, the defendant has not neglected or refused to maintain and provide for his wife and family in a suitable manner. If I were determining her suit on the evidence before me, I would be constrained to deny her the relief prayed for. 10

But in my judgment she is entitled to a decree for maintenance in accordance with the prayer of the bill because of the stipulation which was made in this cause as mentioned above. It is true that the decree based upon the stipulation was opened and set aside by this Court but that was on the ground that the defendant by suffering the decree to be entered against him had unwittingly and unintentionally precluded himself from subsequently asserting what he believed would be a cause of action for divorce for desertion. It now appears after full hearing that he has no such cause of action. Since it was to let in such cause of action that the decree was set aside, it follows that the stipulation calls for the re-entry of the decree. By the stipulation, had it been drawn in the manner intended, the defendant conceded the right of complainant to a final decree for maintenance subject only to his right, if any, to subsequently bring the divorce suit. Now that it appears that he has no such cause of action, the stipulation controls and I will advise a final de- 20 30

Final Decree.

creed in accordance with the prayer of the bill of complaint herein.

The decree should carry the agreed sum of \$200.00 per month, together with counsel fee of \$350.00 and costs.

10

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

87-266

98-441

Consolidated.

	Between		
20	IRENE M. PIERSON,	}	On Bill, etc. Final Decree.
	<i>Complainant,</i>		
	and		
	HOWARD W. PIERSON,		
	<i>Defendant.</i>		

30 This cause coming on to be heard in the presence of McDonough and McDonough, solicitors for the complainant, and Russell S. Henderson, solicitor for the defendant, on bill, answer, counter-claim and answer thereto upon proofs being taken in open court, and the Court having heard and considered the pleadings and proofs in this cause and the argument of counsel and it appearing that the complain-

Final Decree

ant and defendant were lawfully married on the twelfth day of October, 1916, as alleged in said bill; and

It further appearing that jurisdiction herein has been properly acquired and that on September 28th, 1933, the defendant herein filed a petition for divorce against the complainant herein and that by order of this Court on April 30th, 1934, defendant's suit was consolidated with this suit and the said petition made a counter-claim in this action; and 10

It further appearing that the defendant has failed by his proofs to sustain the allegations of his said counter-claim and that the same should be dismissed; and

It further appearing that the defendant, by oral stipulation heretofore entered into with complainant before this Court, conceded the right of complainant to a final decree for maintenance subject to his right to assert what he believed would be a cause of action for divorce for desertion and it now appearing, after full hearing, that he has no such cause of action and that his petition or counter-claim should be dismissed as aforesaid; and 20

It further appearing that in said oral stipulation the parties herein agreed, among other things, as follows: That the defendant pay the sum of two hundred (\$200.00) dollars per month for the support and maintenance, including medical expense, of complainant and the children of their marriage, said sum also to cover all upkeep cost of the house occupied by complainant on the date of said stipulation, May 12, 1932, including building and loan, taxes, water rents, repairs, fire insurance premiums 30

and maintenance; and further agreed that complainant have the use of said house so long as she desired upon paying the upkeep charges out of said allowance; and further agreed that defendant have the right to the exclusive custody of the said children one day in each week with the privilege of taking them to any convenient place, irrespective
10 of whether such place be in New Jersey, New York or anywhere in the metropolitan district; and further agreed that the said monthly allowance was to be split in two parts, one due on the twelfth day of each month and one due on the twenty-seventh day of each month, the payments to be made to William Newcorn, the solicitor for the complainant, who was to see to it that the fixed charges such as taxes and building and loan accruing on the house were paid and receipts therefor rendered on
20 request of defendant; and further agreed that a final decree be entered according to said stipulation; and it further appearing that subsequent to May 12th, 1932, aforesaid, the parties agreed that said payments be made to the complainant direct instead of to William Newcorn aforesaid; and

It further appearing that a final decree was entered by this Court on March 11th, 1933, which decree was subsequently, on April 30th, 1934, set aside by this Court to permit the defendant to file his
30 petition for divorce aforesaid but should now be re-entered inasmuch as defendant has failed to maintain his action; and

It further appearing that in the order of April 30th, 1934, setting aside the final decree aforesaid, this Court ordered the defendant to pay to the com-

Final Decree

plainant the sum of two hundred (\$200.00) dollars monthly for the support and maintenance of complainant and the aforesaid children;

It is thereupon, on this 13th day of December, 1934, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this court and of the Acts of the Legislature in such case made and provided, does hereby:

Order, adjudge and decree that the said petition for divorce heretofore filed by the defendant, Howard W. Pierson, and later consolidated with this cause and construed to be a counter-claim herein, be dismissed; and does hereby order, adjudge and decree that the defendant, Howard W. Pierson, do pay to the complainant, Irene M. Pierson, or to her solicitors, the annual sum of twenty-four hundred (\$2400.00) dollars in equal, semi-monthly installments of one hundred (\$100.00) dollars each, on the 12th and 27th days of each month respectively for the support and maintenance of the said complainant and Ellen Pierson and Howard Pierson, Jr., the children of the complainant and defendant, and the payment of the building and loan installments, taxes, water rents, repairs, fire insurance and all necessary expenses in the maintenance of the home belonging to the complainant and the defendant, and now occupied by the complainant and her children, from the date of this decree, which dwelling house said complainant is to have the use of as long as she desires, upon the payment of the upkeep charges; and

It is further ordered, adjudged and decreed that the exclusive control, possession and custody of Ellen and Howard, Jr., infant children of the said complainant and defendant, be given and committed to said complainant, subject, nevertheless, to the right of the defendant to the exclusive custody of the said children for one day a week, during which
10 time of such exclusive custody, to have the right to take the children to any convenient place, irrespective of whether it is in the State of New Jersey or in the State of New York; and

It is further ordered, adjudged and decreed that the defendant, Howard W. Pierson, do forthwith pay to the complainant, Irene M. Pierson, all arrearages, if any, due under the terms of an order of this Court made on April 30th, 1934, pursuant to which
20 the said defendant was required to pay to the complainant the sum of two hundred (\$200.00) dollars monthly for the support and maintenance of the complainant and the children of complainant and defendant; 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; and

It is further ordered, adjudged and decreed that the said defendant do pay to the complainant or
30 her solicitors, the cost of this suit, including the cost of the suit consolidated herewith, to be taxed, together with the sum of three hundred and fifty (\$350.00) dollars, which is hereby adjudged and decreed to be a reasonable counsel fee for the solicitors of complainant, without regard to other counsel

Amended Notice of Appeal

fees heretofore allowed in this cause 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 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, maintenance and custody, as shall be just and equitable. 10

Respectfully advised,

DOUGAL HERR,

A. M.

AMENDED NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

87-266

20

98-441

Between

IRENE M. PIERSON,
Complainant-Respondent,

and

HOWARD W. PIERSON,
Defendant-Appellant.

} On Bill for Maintenance and Counter-Claim for Divorce.
Amended Notice of Appeal.

The defendant, Howard W. Pierson, hereby appeals from the decree made in the above-entitled cause, on December 13, 1934, by Dougal Herr, Advisory Master, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all cases. 30

Petition of Appeal

Dated, December 29, 1934.

RUSSELL S. HENDERSON,
*Solicitor for and of Counsel
 with Defendant.*

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

10

LEROY W. LODER,
Of Counsel with Defendant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20	Between	}	On Petition for Di-
	HOWARD W. PIERSON,	}	vorce in Consoli-
	<i>Petitioner-Appellant,</i>	}	dated Causes.
	and	}	On Appeal from
	IRENE M. PIERSON,	}	Chancery.
	<i>Defendant-Respondent.</i>	}	Petition of Appeal.

*To the Honorable, the Court of Errors and Appeals,
 in the Last Resort in All Cases:*

30 The petition of Howard W. Pierson, appellant,
 shows that:

1. Your petitioner finds himself aggrieved by a
 decree final made in the Court of Chancery by the
 Honorable Dougal Herr, Advisory Master of said

Petition of Appeal

court, on the 13th day of December, 1934 (98-441), in that said decree recites and adjudges that your petitioner has not sustained the allegations of his petition and is not entitled to the relief prayed; and decreed that petitioner's said petition for divorce, be dismissed.

2. Your petitioner further finds himself aggrieved 10
by a certain decree final in a consolidated case
(87-266) by the same Advisory Master, the Honorable
Dougal Herr, in that said decree restores to
effectiveness a decree made March 11, 1933, which
decree, by order of the Court of Chancery made
April 30, 1934, unreservedly reopened and set aside
the same and which the Advisory Master in hearing
the bill of complaint in this maintenance suit
on its merits, says: "In my judgment the evidence
fails to establish a cause of action for maintenance 20
in favor of the complainant against the defendant."

3. Your petitioner appeals from the said decree
and from every part thereof on the ground that
the same is erroneous, and that the Chancellor
should have found and adjudged that the allegation
of petitioner's petition had been proved and that
the respondent in the divorce suit had been guilty
of continued and obstinate desertion as alleged in
the petitioner's petition, and should have ordered, 30
adjudged and decreed that the petitioner be divorced
from the bonds of matrimony with the respondent
for the cause aforesaid and that the bill of complaint
in the consolidated case should have been
dismissed for the reason that the complainant (the

Petition of Appeal

respondent herein) failed to establish a cause of action for maintenance under the statute.

Your petitioner therefore prays that the said decree in all respects may be reversed, rescinded and for nothing holden and that he may have such further relief as shall be just.

10

RUSSELL S. HENDERSON,
*Solicitor for and of Counsel
with Petitioner.*

20

30

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

Between

HOWARD W. PIERSON,
Petitioner-Appellant,

and

IRENE M. PIERSON,
Defendant-Respondent.

ON PETITION FOR DIVORCE IN CONSOLIDATED CAUSES.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF FOR PETITIONER-APPELLANT.

In November, 1931, complainant filed a bill for maintenance in the Court of Chancery (Docket 87-266). Within time allowed by the rules of that Court, an answer containing a categorical denial of the matters charged, was filed and the cause of action brought on for a hearing before the Hon. James F. Minturn, Advisory Master on May 12, 1932.

At the time of hearing, defendant, attended with his witnesses and counsel, intending to make a vigorous defense to said action. During the noon re-

Brief for Petitioner-Appellant

cess and before complainant's case was finished and before the taking of testimony on behalf of defendant, counsel for complainant and defendant, conferred. As a result, an oral stipulation was entered whereby a monthly payment of \$200.00 was agreed to, which was to be in full for all bills and expenses, including building and loan, taxes, water rent, etc., page 13.

On March 11, 1933, some ten months after the hearing, the then counsel for complainant, without notice to defendant or his counsel, entered a final decree (page 16).

In September, 1933, defendant in the above suit (Docket 87-266) filed a petition for divorce alleging desertion (Docket 98-441) and there was pleaded therein as a defense to said action, and by way of answer in lieu of plea, the final decree in said maintenance suit. A replication thereto was filed, and counsel for defendant (Docket 98-441) moved to strike said replication before Advisory Master Grossman, who on February 7, 1934, filed a memorandum, to strike the same.

Before any order was entered, petitioner (Docket 98-441) on March 6, 1934, filed a petition to open and amend decree (page 21).

An order to show cause was issued by the Chancellor, on the same date, returnable before Dougal Herr, Advisory Master at Newark, N. J., on March 20, 1934 (page 30).

Following a hearing on the return date of the order, the Advisory Master filed his conclusions (page 32). Subsequently, and on April 30, 1934, an

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order was entered, opening and setting aside (without reservation), the final decree in the maintenance suit (Docket 87-266), and further ordered the same be consolidated with (Docket 98-441) so that the divorce petition became a counter-claim in the maintenance suit (page 39).

After appropriate and proper pleadings, both cases proceeded to an order of reference to Advisory Master Dougal Herr (p. 52).

The Advisory Master, after a full hearing of both cases, filed his opinion and conclusions (page 273).

The gravamen of counter-claimant's petition charging desertion, was that complainant withdrew from sexual intercourse, left the marital bed and refused to return. On this question in his conclusion, the Advisory Master found,

“On this issue, I hold the wife left the bed and did not at any time return.” (See Conclusions, page 275, lines 16-17-18.)

The Advisory Master dismissed the counter-claim for the reason:

“I am not satisfied from the evidence that the defendant made such just advances as he should have made and I am not satisfied that such just advances if made would have been unsuccessful in securing a reconciliation.” (See page 277, beginning line 32, ending top page 278.)

As to the bill for maintenance, the Advisory Master found,

“In my judgment the evidence fails to establish a cause of action for maintenance in favor

Brief for Petitioner-Appellant

of complainant against the defendant. It is doubtful whether the husband's separation of May 4, 1931, can be considered an abandonment within the meaning of the Act but it is not necessary to determine that question since the evidence clearly establishes that at that time and subsequently up to the time of the filing of the bill, and indeed, ever since, the defendant has not neglected or refused to maintain and provide for his wife and family in a suitable manner. *If I were determining her suit on the evidence before me, I would be constrained to deny her the relief prayed for.* But in my judgment she is entitled to a decree for maintenance in accordance with the prayer of the bill because of the stipulation which was made in this cause as mentioned above." (See page 278, beginning line 34, concluding page 279, line 18.)

From the decree entered (page 280) the defendant appeals.

GROUPS OF APPEAL.

1. The counter-claim for divorce should not have been dismissed.
2. The evidence was clear that the defendant made all the advances for reconciliation that a reasonable man could be expected to make under the circumstances.
3. The bill for maintenance should have been dismissed.

4. The original decree entered by stipulation, having been re-opened, vacated and set aside, could not be reinstated after a trial on the merits, wherein it clearly appeared there was no abandonment as charged.

ARGUMENT.

The counter-claim for divorce should not have been dismissed, as the evidence supported the allegation of desertion, the gravamen of which was that the wife, Irene M. Pierson, refused intercourse with her husband and withdrew from his bed.

The Advisory Master found as a fact, that the wife left the bed and did not at any time return. (Page 275, lines 16-17-18.) The testimony amply corroborates this finding.

Howard W. Pierson testified (pages 57-59), that his wife early in January, 1931, removed herself to another room, taking her personal belongings and that when he asked her why, she replied that she didn't intend to sleep with him any longer, and that she hadn't cohabited with him since, as husband and wife.

On cross-examination (page 191), Mrs. Pierson, admits she occupied bedroom with son in January, 1931, for about ten days, but alleges she returned for about two weeks.

On pages 192 and 193, cross-examination, in response to questions by counsel as to certain answers made by her at the original hearing, her answers

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of "I don't remember" and "I don't just understand", were clearly evasive.

On page 250, counsel for Mrs. Pierson admitted that she left the marital room early in January. This was January, 1931.

After a discussion concerning the reading into the records of certain testimony given by Mrs. Pierson at the original hearing, the following questions to and answers by her, were admitted (pages 252 and 253):

"Q. Did you and he occupy separate rooms?

A. After January 1st we did.

Q. That is what I mean.

A. Yes.

Q. Who left the matrimonial room first?

A. I did."

And again:

"Q. Now, you and he hadn't been having sexual intercourse since about January 1st; is that right?

A. That is.

Q. And that was on your insistence, was it not?

A. It was."

And again:

"Q. Yet, notwithstanding these accusations, your husband made, he did ask you to have sexual intercourse with him, didn't he?

A. Yes.

Q. And you refused?

A. Yes, I did."

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Brief for Petitioner-Appellant

Little did Mrs. Pierson think that these answers given by her on cross-examination by Mr. Childs, when there was no charge of her desertion pending, could later be used against her. Her answers were emphatic.

But when on the trial of the case on its merits, her answers were evasive (pages 192-193). Also she sought to temper the effect of her early answers by asserting she returned to the marital bed for about two weeks in January, 1931 (page 191). Mr. Pierson denied this (page 86, line 27). This was but an afterthought with intent to deceive on the part of Mrs. Pierson, otherwise why didn't she so state on the original hearing.

The Advisory Master was not impressed, and he properly found in his conclusions,

“On this issue, I hold the wife left the bed and did not at any time return.” (Page 275, lines 16-17-18.)

There is nothing in the pleadings that charges Mr. Pierson with misconduct that would justify Mrs. Pierson in withdrawing from her marital relations. There was an effort made by Mrs. Pierson, however, to becloud the issue, to hide the bare fact of her attitude toward Mr. Pierson, which was one of intolerance and that she couldn't stand him in the same room.

On direct examination (157-158), Mrs. Pierson states that after Christmas, 1930, she and the children were in Bridgeton for about three or four days.

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“When I returned with the children, the first evening that we were home, Mr. Pierson told me that he had gone to New York and taken a girl whom I knew slightly to a restaurant, rather an expensive restaurant in New York, and had dinner and had danced, and that he had stayed in New York all night that night or the night previous, I had forgotten which * * *.”
“And we quarreled and I left his bedroom and went across the hall and I occupied a room with our son.”

The unusual part of this situation is that it bears out Mr. Pierson's testimony. If Mr. Pierson in this respect had been guilty of any misconduct, he surely would not have told Mrs. Pierson. I see in this situation solely the conduct of a man who was missing the atmosphere of a thoughtful and loving wife. His testimony tells the story (page 101, line 31):

“A. At Christmas time that year we had our usual Christmas celebration somewhat subdued at home. The next day when I came home the family was gone. There was no note from them as to where they had gone or why they had gone. I didn't hear from them for one week and I assumed that they had gone to Bridgeton, New Jersey, but I had no word from them. On New Year's Eve, feeling my loneliness, I called up a friend of my wife's and a friend of mine and asked her if she knew of any girl that was available to go dancing that evening. She suggested a young lady who was working with her in the restaurant where she worked and it was through her that I made arrangements to get this young lady for supper and dance on

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New Year's Eve. I came home very late that night and got the early morning train, and slept until about ten o'clock. Mrs. Pierson and the family returned home on that day and I told her, I think it was immediately that morning, what I had done the night before."

On cross-examination, Mrs. Pierson, when asked concerning this situation, again relaxed into the "I don't remember" attitude, as follows (page 197, beginning line 28 and page 198):

"Q. So that you were gone from the day following Christmas until New Year's Day. What time did you return home on that day?

A. I don't remember.

Q. As a matter of fact, it was in the morning before noon, was it not?

A. I don't remember.

Q. Well, Mr. Pierson was home, was he not, at that time?

A. I don't remember.

Q. Do you mean to say that you don't remember at the time you got home whether or not Mr. Pierson was there? Don't you recall?

A. This was four years ago, or three and a half years ago. I went to Bridgeton many times and returned; I don't recall that particular occasion.

Q. Wasn't that the day that he told you, on the day of your return, that he had been to a dinner and dance in New York on New Year's Eve?

A. Yes; that is the time that he told me.

Q. And he told you the name of the lady, did he not?

A. He did.

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Q. And who was the lady?

A. I don't remember her name. I knew her slightly, that was all.

Q. You knew her quite well, as a matter of fact, didn't you?

A. No.

Q. Wasn't she a friend of yours?

A. An acquaintance.

Q. And didn't you state to Mr. Pierson at that time that she was harmless, you knew her so to be, and that you didn't care?

A. I don't remember the talk as to that point."

The amazing part of this testimony is, that this event is the one Mrs. Pierson assigns for her leaving the marital room; yet she couldn't remember in answer to questions as above, when she returned home or whether or not she didn't tell Mr. Pierson that she didn't care.

It would fairly appear that this incident was the act of an incensed husband indeed. At least he was frank and such frankness does not bespeak guilt of conscience—as a concealing of the fact would.

Mrs. Pierson, on page 158, says,

"The evening out cost somewhere between twenty and twenty-five dollars."

This was mere assumption. The fact is, as Mr. Pierson testified (page 88), on cross-examination,

"As it happened, it cost me about five dollars."

A further effort by Mrs. Pierson, was the story of contraceptives (page 184, line 34):

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“A. I had gone through his pockets a few days before and had found in his coat pocket rubber contraceptives, not in the envelopes as they are purchased, but they had been taken out of the envelope and prepared for use, and I remarked about it at the conference during this conversation with my brother and asked why he had them there.”

Concerning this story, it is apparent that Mrs. Pierson bided her time to spring this on her husband in the presence of her brother. She needed the presence of a third party to bolster up her courage to make such an accusation as she well knew they were the ones Pierson used at home as he testified he used them at home all the time (page 102). This was not denied by Mrs. Pierson.

A man using contraceptives away from home, would not leave them where they could so easily be found.

Another effort by Mrs. Pierson to becloud the issue and to give the atmosphere of an injured wife was the attempt to show Mr. Pierson had bought a compact at Saks. Mr. Pierson stated that he did and gave it to the secretary of one of his customers, and that it was purchased on Mrs. Pierson's account, the bill for which was sent to Mrs. Pierson at Plainfield (pages 258-259).

A man having improper motives from such a circumstance, would not have purchased the same on his wife's charge account, knowing that she would get the bill.

And finally, Mrs. Pierson tries the final coup of

alleging undue friendliness with an intimate friend of the family, a Mrs. Reeves.

In the conference between Mrs. Pierson's brother and Mr. Pierson and Mrs. Pierson, the testimony of Mr. McAllister, of what Pierson said at the conference, is nearly the true situation (see page 226, line 8):

“A. Yes; and that afternoon Howard admitted that it was almost a daily habit for him to stop at the home of Mrs. Reeves, but that they were friends, and although it might have been indiscreet, there certainly wasn't anything actually wrong about it. I am not attempting to give you the exact words, but I am giving you the general facts, because I couldn't recall the exact language.”

Mr. McAllister here points out these were not the exact words, because he couldn't recall the exact language. I believe he was mistaken when he said Pierson said the visits were daily. Pierson's testimony doesn't vary from this except as to frequency of visits. It is as follows (page 263, beginning line 2):

“* * * At that time she asked the question, had I been calling on Mrs. Reeves in Brooklyn. I made the statement that I had called on Mrs. Reeves in the past and that she knew on practically every occasion; that I had went more frequently in the few weeks just previous to this conference, for the purpose of discussing with Mrs. Reeves some of our matrimonial difficulties, because I considered Mrs. Reeves a competent person to talk to, she knowing both of us, and so forth. She objected very much to those calls and I told Mr. McAllister there

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wasn't sufficient importance attached to those calls but what they could be stopped, and he suggested that I do stop these calls until such time as Mrs. Pierson was in a better frame of mind. I told him that was all right with me, I had no objection to stopping the calls. Then he turned to Irene after that matter had been discussed—he turned to Mrs. Pierson and said, 'Now, Irene, just what do you want?' Irene said, '*There is only one thing I want and that is a divorce; I want to get rid of him; I want to get rid of him as quickly as I can,*' and he sat down and had an open talk with her for about twenty minutes and argued with her that that is what she didn't want, a divorce * * *."

Mrs. Pierson's testimony on page 190, tells the story:

"Q. Now, Mrs. Pierson, you don't mean to say, do you, that there was anything immoral between them, in the relations of Mrs. Reeves and Mr. Pierson?

A. That I don't know.

Q. What, if any, facts do you have that would lead you even to a suspicion of any such relations?

A. You mean things that he said to me, or things that I may have seen?

Q. In any way; have you seen anything?

A. I saw nothing because I never saw them together except at this dance.

Q. But it was prior to this particular occasion when there was a rift in the friendship between you and Mrs. Reeves?

A. Prior to the dance; yes."

The rift in the friendship of Mrs. Reeves and Mrs. Pierson, was the breeding ground for suspicions, the

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fact being as she testifies above, "I saw nothing, because I never saw them together except at this dance."

In the foregoing incidents there is not one act on the part of Mr. Pierson, which entitled Mrs. Pierson to desert her husband by withdrawing from relations.

The true situation that brought about differences, was the financial question.

Mrs. Pierson admits they had financial difficulties, page 199:

"Q. As a matter of fact, over a course of some time prior to this, you and Mr. Pierson had had difficulties concerning your incurring bills at the department stores, had you not?

A. We had difficulties; we had disagreements over how much money was spent.

Q. And didn't he on a number of occasions request you to stop spending money until he could get caught up and get your bills paid?

A. Yes.

Q. On each of such occasions there was a disagreement between you, was there not?

A. There was a disagreement about the way our money was handled."

Mr. McAllister admitted that Exhibit D1 was figures made up by him at the conference (page 229).

Mr. Pierson (page 63), states that Mrs. Pierson was unwilling to cooperate in the home, particularly in financial matters. And on page 64, he states that financial troubles had come between them practically all their married life and had reached an acute state, about two years before the separation.

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On this point also, a Miss Jessie Stevens, a neighbor testified (page 146, line 25), that,

“There were always a great many department store delivery wagons stopping there.”

That there were financial difficulties that loomed large, there can be no doubt.

This brought about in Mrs. Pierson, a spirit of rebellion that offset her better judgment. And it started before the episode of Mr. Pierson taking a young lady to dinner, the contraceptive episode and that of Mrs. Reeves. It started long before but the first proof of it is found in the testimony of Grace Martin, as follows (pages 115 and 116):

“Q. Mrs. Martin, you are a sister of Mr. Pierson, are you not?

A. I am; yes.

Q. Did you attend the family reunion of September, 1930, which Mrs. Pierson attended?

A. I did; yes, sir.

Q. Did you hear a statement made by Mrs. Pierson at that time concerning her husband?

A. I did; yes.

Q. What was the statement?

A. She said that she was going to show him a few things before very long.

Q. To whom was she addressing those remarks?

A. She was talking to my niece at that time; she was a student; she was talking to her about marriage.

Q. What did she say about marriage?

A. She said that a woman was a fool for marrying for love; that the only thing to consider was a man's finances.”

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(This was objected to, but finally permitted to stand, page 116, line 23.)

The beginning of Mrs. Pierson's carrying out her promise to show Mr. Pierson, was her leaving home the day after Christmas (Mrs. Pierson admitted they had an economical Christmas, top page 158). This requested economical Christmas, only fanned the blaze of indignation in Mrs. Pierson.

The next event was the conference with her brother and Mr. Pierson, the latter part of February, 1931.

Mr. Pierson testified that his wife at this conference, said,

“All I want is a divorce; I want to be rid of him.” (Page 62.)

On cross-examination, Mr. McAllister admitted the following (page 230, line 30):

“Q. Isn't it also true that at this conference Irene told you that the thing she wanted was a divorce?”

A. Oh, when she was hysterical, as she was for a time, I know that she said she didn't expect to live with him again; that she didn't want to see him any more and that sort of thing; but she shouldn't have been charged with that, because she certainly was hardly capable of knowing what she was saying at that particular minute.

Q. But she did make that statement?

A. Yes, something to that effect.”

The attempted excusing by Mr. McAllister of his sister's remarks, was a kind and expected brotherly

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act, but this outburst that she wanted a divorce was the cry of her desire within her and only came to the surface when she saw the conference was supposed to end with a reconciliation. This was proven by the later conference in March in the presence of Messrs. High and Carson. On pages 108 and 109, Mr. High, called in by Mrs. Pierson, stated that Mrs. Pierson said,

“Howard was overhearing, that she didn’t like to have him around, in general his presence was getting to be distasteful to her.”

That in response to a suggestion by Mr. Carson that they separate awhile, she emphatically said that was just what she wanted him to do, but she didn’t want him to come back; that her attitude was not one of reconciliation but that it was decidedly belligerent. That later Mrs. Pierson called him on the ’phone about a trip to Bridgeton to talk with her brother, Mr. McAllister.

“That I told her we had a very friendly conference with Mr. McAllister and that I hoped that she would go down to see him, because I knew he was going to give her some very good advice and that he thought a reconciliation was possible.” (Page 109.)

That her reaction to that was:

“She said she didn’t care to talk to him if he was going to advise her about anything that she had already made up her mind and that she would not listen to his advice.” (Page 109.)

On cross-examination of Mr. High (page 111), the following question and answer is enlightening:

Brief for Petitioner-Appellant

“Q. Was her attitude one of seeking reconciliation at the conference?

A. No; more one of seeking justification for her attitude.”

Mr. Walter Carson’s testimony on this point (pages 111-112), is as follows:

“Q. What was her attitude during that conference toward Mr. Pierson?

A. Her attitude was one of indignation.

Q. Did you make the suggestion that there be a temporary separation?

A. I did.

Q. What was the reaction of Mrs. Pierson to that?

A. I don’t know whether it was at that particular time, but she did say about that time that she could scarcely stand being in the same room with Mr. Pierson.

Q. How long did the conference last, Mr. Carson?

A. Till very late into the evening.

Q. What was her attitude toward a prospective reconciliation when you left the home?

A. What was Mrs. Pierson’s attitude?

Q. Yes.

A. Well, the prospects didn’t look very bright.

Q. What was Mr. Pierson’s attitude during this conference between you four people?

A. His attitude impressed me as I remember it now, to say the least, as one more willing to be reconciled than Mrs. Pierson.”

On page 146, line 18, Miss Jessie Stevens, next door neighbor, testified that during the period from January until May, 1931, when she observed, Mr. Pierson ate his meals alone.

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Mrs. Pierson *never denied this or attempted to explain.*

Mrs. Stevens further (pages 149-150), testified that after Mr. Pierson left the home (which was May, 1931), a Mr. David Smith called at the Pierson home frequently, almost daily and has done so for a long time.

Mr. McDonough objected after the questions were answered, but the same were allowed to stand as they related to Mrs. Pierson's attitude of mind toward her husband during the two-year period (page 152). *Mrs. Pierson never denied this fact.*

This is the strongest kind of corroboration of her desire expressed several times in the presence of the above mentioned witnesses, that she wanted a divorce.

These, and many other facts, sustain the Advisory Master's findings that Mrs. Pierson withdrew from the marital bed and never returned.

Fallon v. Fallon, 111 N. J. E. 512 (162 Atl. 408), states that to justify wife's refusal to live with husband, wife must, in separate maintenance suit, show that husband's conduct endangered her life or health or incapacitated her to discharge her duties, or that it would have.

No such proof was even attempted here, therefore, Mrs. Pierson's refusal of continuing marital relations, stamps her as a deserter in the first instance.

In the face of these facts, what does the law require a husband to do to bring about a reconciliation and in the light of the same, was not Pierson's efforts all that a reasonable man could be expected?

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Mrs. Pierson, having withdrawn herself from marital relations, and as Mrs. Stevens testified, Mrs. Pierson sat in another room while Mr. Pierson ate his meals, and having made repeated demands for a divorce, Mr. Pierson stayed in the home until May 4, 1931 (page 59):

On pages 60 and 61, the following questions and answers are helpful:

“Q. How many times during that time did you discuss with her about your family conditions?

A. Several times; many times, I would say.

Q. What would you say to her on those occasions?

A. I asked her on several occasions if we couldn't begin over again, to see if we couldn't make our married life together happier, and her repeated answer was that she was through, absolutely through.

Q. When did you remove yourself from the home, Mr. Pierson?

A. May 4th.

Q. Where did you then go?

A. I went to a boarding house two blocks away, at 216 East 7th Street.

Q. You had resided where?

A. At 433 7th Street.

Q. So that you only removed a distance of about two blocks from where you had been residing?

A. That is right.

Q. How long did you continue to live there?

A. I lived at that address from May until October.

Q. You moved then to New York?

A. I moved to New York.

Brief for Petitioner-Appellant

Q. During that time from January until the time you removed to New York did you support your wife and family?

A. I did.

Q. In what manner?

A. I sent her a check regularly every Monday morning for \$20 and I paid all the expenses of the home, which included building and loan, taxes, water rents, interest on the second mortgage, insurance; all of the upkeep of the home.

Q. Did you keep a record of the moneys that you expended in that behalf?

A. I did.

Q. What was the total amount per month that you contributed for those expenses that you just enumerated?

A. Two hundred and seventy dollars and some cents; ninety-two cents, I think it was."

It was between the period of January 1, 1931, and May 4, 1931, that Mrs. Pierson stated in the presence of Harold High and Walter Carson, that she wanted her husband to leave and didn't want him to come back (108) and likewise when she told her brother in Mr. Pierson's presence that what she wanted was a divorce (230).

Then the first of May, 1931, Mrs. Pierson invited a Beverly Hancock to be her escort at a party beginning with a matinee in New York, dinner and dancing (page 153).

Mrs. Pierson didn't deny this because she couldn't.

As to this party, Mr. Pierson (page 74), testifies that his wife told him emphatically that he was not to participate.

Mrs. Pierson's direct testimony on this score, is enlightening:

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In answer to her counsel's question (page 163) :

“You had a party at your house around the 1st of May, 1931; was Mr. Pierson invited to that party?”

A. Yes, *if it were necessary to invite one's* husband to a party when you are entertaining mutual friends, then Mr. Pierson was invited.”

It was only after this that Pierson moved down the street two blocks and stayed there until October 12, 1931.

This was simply following out the advice of Mr. Carson hoping that Mrs. Pierson would wake up and realize the error of her way. If Pierson had wanted to desert his wife, he would have gone direct to New York.

On May 11, 1931, one week after leaving the home, Mr. and Mrs. Pierson conferred at Judge Hetfield's office (page 256).

On pages 256 and 257, Mr. Pierson tells of a statement made by Mrs. Pierson, that she was willing to be reconciled, but when he went to see her at the home at night, her reply was :

“You can come back and live in the house if you want to, but I will not have anything more to do with you; I am just through with you.”

Then later on the same page, he testifies he made several efforts to talk with her after that, but she was always in a nasty mood. He further says :

“However, when I got ready to leave for New York, I suggested that she come to New York and live with me. She answered she would under particular conditions.”

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As to Pierson's story about going back to the home on the night of May 11, 1931, to request a reconciliation, the fact that he did go and called her out from a neighbor's, is verified by Mrs. Pierson's own testimony (page 272), although her version of the visit is different. But it is reasonable to assume that having just seen Mrs. Pierson that afternoon in a lawyer's office, he wouldn't hunt her up and call her home from a neighbor's house to quarrel with her that night. Pierson was telling the truth when he said he went to see if she was sincere about the statement she would be reconciled.

The next act on Mrs. Pierson's part, was to have him arrested on a writ *ne exeat* for non-support, while he was back in Plainfield attending a Bible School banquet in the church. Humiliation was the idea back of this plot, for there was no grounds for it as Mrs. Pierson, on page 206, on cross-examination, testified as follows:

“Q. During that time Mr. Pierson was contributing eighty-some dollars directly to you per month, paying the building and loan and the other expenses that he enumerated?

A. Yes.

Q. When he was on the stand?

A. Yes.

Q. And in addition to what he was giving you and the other expenses that he paid, you had an income from the renting of the rooms, plus your salary?

A. Yes.”

She thus admits getting eighty-some dollars per month in cash, having the building and loan and

other expenses enumerated by Mr. Pierson on page 61, paid room rent from house and over a hundred dollars a month salary, she then being employed.

Pierson still cared enough for his home to voluntarily pay all this, as admitted by Mrs. Pierson. Yet the arrest at church in the presence of his friends; money meant more to Mrs. Pierson than anything else. As she stated in September, 1930 (page 115):

“The only thing to consider was a man’s finances.”

Does this not further show the impossible person with whom Mr. Pierson was dealing? And yet Pierson was not done.

Pierson, in answer to question (page 255):

“How many times after January did you approach Mrs. Pierson in regard to renewing your marital relations?” says,

“Well, there were many times; there were four or five times that I remember distinctly.”

And then follow pages 255-256-257-258, showing definite times and the writing of letters, which were largely corroborated.

The last desperate stand by Pierson was the letter written to Mrs. Pierson in May, 1932. The letter itself was not produced by Mrs. Pierson. She didn’t dare produce it. But her reply to the same, a year and five months after she deserted her husband, still shows the same deserting attitude. Her admission of her refusal to go to New York and have dinner with Mr. Pierson and the letter, is told

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by her own testimony (page 196, beginning line 12, on page 197):

“Q. Did he not thereafter invite you to bring the children and come to New York and have dinner with him and confer in regard to it?

A. He invited me to come to New York and have dinner with him; yes.

Q. And bring the children?

A. No.

Q. Did you go?

A. No; I didn't.

Q. Did you refuse to go?

A. Yes; I refused to go to New York and have dinner with him.

Q. You refused to have any conference with him at that time in regard to reconciliation, did you not?

A. No, I didn't.

Q. I show you a letter dated May 17th, Tuesday—I believe it is Tuesday—‘My dear Howard? If you wish to discuss anything whatsoever with me I will be glad to make an appointment to meet you at Judge Newcorn's office'; is that your signature?

A. That is true; that is my letter.

Mr. Henderson: I offer that letter in evidence.

(Marked Exhibit D4.)

Q. As a matter of fact, you refused to have a conference with Mr. Pierson except with some other party present, didn't you?

A. Yes; that is true.

The Court: What is the date of that letter?

Mr. Henderson: May 17th.

Q. That was in 1932, was it not, Mr. Pierson?

A. Yes.”

Mrs. Pierson, however, admits on cross-examination that she received letters at various times (page 214, line 16):

“Q. Did you receive any other letters from your husband except the one that you spoke of already, after May, of 1931?

A. Yes, *I received letters at various times from him.*

Q. Did any of those letters request or suggest a reconciliation?

A. Only the one that I mentioned.”

Why did Pierson write his wife letters at various times (and they weren't produced by her) if they were not for the purpose as he testified, to effect a reconciliation? A disinterested husband would never have bothered.

Certainly in the face of Mrs. Pierson's demands in the presence of witnesses including her brother, that she wanted a divorce; her entertaining a man at the house almost daily after Mr. Pierson moved two squares away; her having him arrested without cause while attending a church banquet; her invitation to Beverly Hancock, to be her escort at a New York dinner party; Mrs. Pierson's conversation only three months before she deserted Mr. Pierson as to her attitude about love and money, and her threat in the presence of Mrs. Martin that she was soon going to show Howard something, all clearly, to my mind, prove a preconceived plan to rid herself of her husband who had been asking her to cut down on her expenditures, the efforts of Mr. Pierson for a reconciliation were more than adequate under the law.

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Mrs. Pierson testified on page 215, line 20, that her husband said he wanted to make a reconciliation.

In contrast to this, a few terse statements taken from the testimony of Mrs. Pierson, clearly indicate her attitude. They are as follows:

Page 162, Mrs. Pierson on two occasions stated it was her husband's home and he had a right to return to it.

On page 163, line 7, she again reiterates such a suggestion and on line 19 of the same page, she says, "I had talked to him whenever he presented himself at the house."

Mrs. Pierson admitted she refused to join Mr. Pierson at dinner in New York; she admitted the letter of May 17, 1932, that she would not see him about anything except in the presence of her attorney; she admitted Pierson came to the home and called her out of the Haldeman house; and she admitted he wrote her at various times, but couldn't or wouldn't produce a single one of those letters. And she didn't deny the Hancock invitation and party or the almost daily calling upon her by one David Smith.

There is no doubt of Mrs. Pierson's desertion of her husband. She admits she withdrew from intercourse and the Advisory Master found that she never returned. This Court said in *Gilson v. Gilson*, 113 N. J. E. 32 (166 Atl. 118):

"Denial of sexual relations between husband and wife, is * * * simple desertion."

Did Mrs. Pierson intend to desert her husband, *Child on Divorce*, page 121, under heading "Conduct and Declarations of Desertion," says:

"* * * the intent to desert can be proved by the conduct or declarations of the deserter, at, prior or subsequent to the desertion; such as declarations that the deserter was leaving never to return, threats to leave * * * expressions of dislike toward the petitioner," and cites *Herr v. Herr*, 72 N. J. E. 617, 65 Atl. 1013.

Mrs. Pierson's statement to Mrs. Martin, Messrs. High and Carson; and her statement in the presence of her brother, that she wanted a divorce proved beyond a question of doubt her intention and desires in the matter.

Did Mr. Pierson act like a just man, in the face of these circumstances? I think he did.

In *Jacobs v. Jacobs*, 100 N. J. E. 482, 135 Atl. 792, it is said that all of the authorities are to the effect that there is a presumption that a spouse who commences a suit for divorce does not want to resume cohabitation, and that it is fair to presume, ordinarily that after a suit is instituted, but before decree or judgment, the petitioning spouse is well content to have the other away, and such a presumption can only be overcome by competent and sufficient proof to the contrary. The presumption aforesaid, has not been overcome by the complainant. The above is cited in *O'Brien v. O'Brien*, 142 Atl. 898, on page 902, in which case the action was by *Bill for Maintenance* and a counter-claim by the husband for divorce as in the present case. Also

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in the case the Court calls attention to the case of *Popivics v. Popivics*, 98 N. J. E. 350, 129 Atl. 126 (a maintenance suit), the husband claimed he had endeavored to procure his wife's return and that she had obstinately and unreasonably refused to listen to his appeal. The Court declared:

“A plea of that character must be supported by at least proof of his bona fide intention and some proof of his heartfelt contrition for his past conduct.” Citing *Lister v. Lister*, 55 Atl. 1093. “* * * in estimating the sincerity of such an appeal, the Court necessarily proceeds upon the theory *quo animo*, and in reaching any satisfactory conclusion as to his motives, the old adage that conduct speaks louder than words must needs play an important part.”

The Court in the O'Brien case then continued:

“Considering that the complainant's abandonment of the defendant was based upon alleged acts of cruelty, of which he was exonerated, it appears to me it was incumbent upon her to have manifested contrition or repentance for her unjustified abandonment of her husband.”

In the instant case, the desertion by Mrs. Pierson of her husband, was unjustified. The Advisory Master says Mr. Pierson did not abandon his wife or family. Pierson was thereby exonerated and following the Court's reasoning in the O'Brien case, it was in the face of Mrs. Pierson's conduct, incumbent upon her to have manifested contrition or repentance for her unjustified desertion of her husband. And, in the face of his arrest at church before

friends whose friendship he stood a chance to lose; the false accusations made against him without proof; the calling in of friends and telling them she wanted a divorce, to expect Mr. Pierson to do more than he did, would be to impose upon human nature an artificial and extravagant attribute of self-abnegation, which neither the law of nature nor the law of the land contemplates or exacts.

In the face of these facts, I believe that Mr. Pierson should even be absolved from making any efforts toward reconciliation.

In the case of *Hall v. Hall*, 46 Atl. 866, this Court stated that where it is manifest from the facts in the case that honest effort by the husband to bring the separation to an end would be unavailing, or only temporarily successful, the duty of making it ceases to exist. This case is cited with approval in a long list of subsequent cases.

Mrs. Pierson's efforts to discredit Mr. Pierson, amounted to an effort to show recrimination. These efforts failed sadly. In *Galoppa v. Galoppa*, 110 N. J. E. 481, 160 Atl., page 395, this Court says:

“As to recrimination, the charges of cruelty were not sufficiently made out and do not constitute a defense, since under the well established rule the facts set up by way of recrimination must amount to a matrimonial offense.” Citing *Cilente v. Cilente*, 104 N. J. E. 605 (146 Atl. 469).

Quoting further from the *Galoppa* case, the Court says, on page 396 (Atlantic):

“In the present case the husband was called vile names, ordered out of the place and he was

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threatened with arrest by the wife. This indicates a fixed and unalterable determination on the wife's part not to return to him."

The instant case is even stronger. Pierson testified his wife called him vile names, in front of the house in a voice that could probably be heard three blocks away (257); she made repeated requests that he leave (61) and actually did have him arrested at his church during the dinner hour.

These facts together with her repeated statements that she wanted to get a divorce, certainly indicates a fixed and unalterable determination on Mrs. Pierson's part not to return.

Any further efforts than those made by Mr. Pierson would have availed him nothing.

If the Court adopts this view, then no further argument on the Advisory Master's conclusion as to reinstating the original consent decree, is necessary. If the Court does not, however, it is advisable to point out that we believe the Court erred in reinstating the decree for the following reasons:

First: *The decree was opened and set aside unreservedly.*

Using the words of Advisory Master Herr, in opening the case as per order made (page 40):

"It is on this 30th day of April, nineteen hundred and thirty-four, ordered, adjudged and decreed, that the final decree made in this cause be opened, set aside, vacated and for nothing holden."

In the Advisory Master's conclusions on which this order was based, he said, on page 35:

“In my judgment the situation thus presented to the Court on the present application calls for equitable relief on well settled principles. The defendant has been deprived of his day in court and has lost a substantial right through accident, without any intention on the part of himself or his counsel to lose it.”

And on page 38:

“In the case sub judice the decree impliedly adjudicated that the defendant had abandoned the complainant. This adjudication was not based on evidence, but on a stipulation which amounted to an incorrect and unintentional representation that the defendant admitted the abandonment charged. * * * The decree cannot properly be amended by providing that it shall not prejudice the rights of the parties on the question of abandonment, because an adjudication of abandonment is jurisdictional; without it the decree cannot stand. It must be set aside.”

On the hearing, the Advisory Master heard both the divorce suit and the maintenance suit. He found that the complainant has not proved her charges of abandonment.

If the judgment of reinstatement of the old decree is permitted to stand, the defendant would be in the incongruous situation of being found not guilty of abandonment on the merits, but the old decree would in law and effect, pronounce him guilty of abandonment as it cannot stand without an adjudication of abandonment, this being jurisdictional. *Oertel v. Oertel*, 92 N. J. E. 327.

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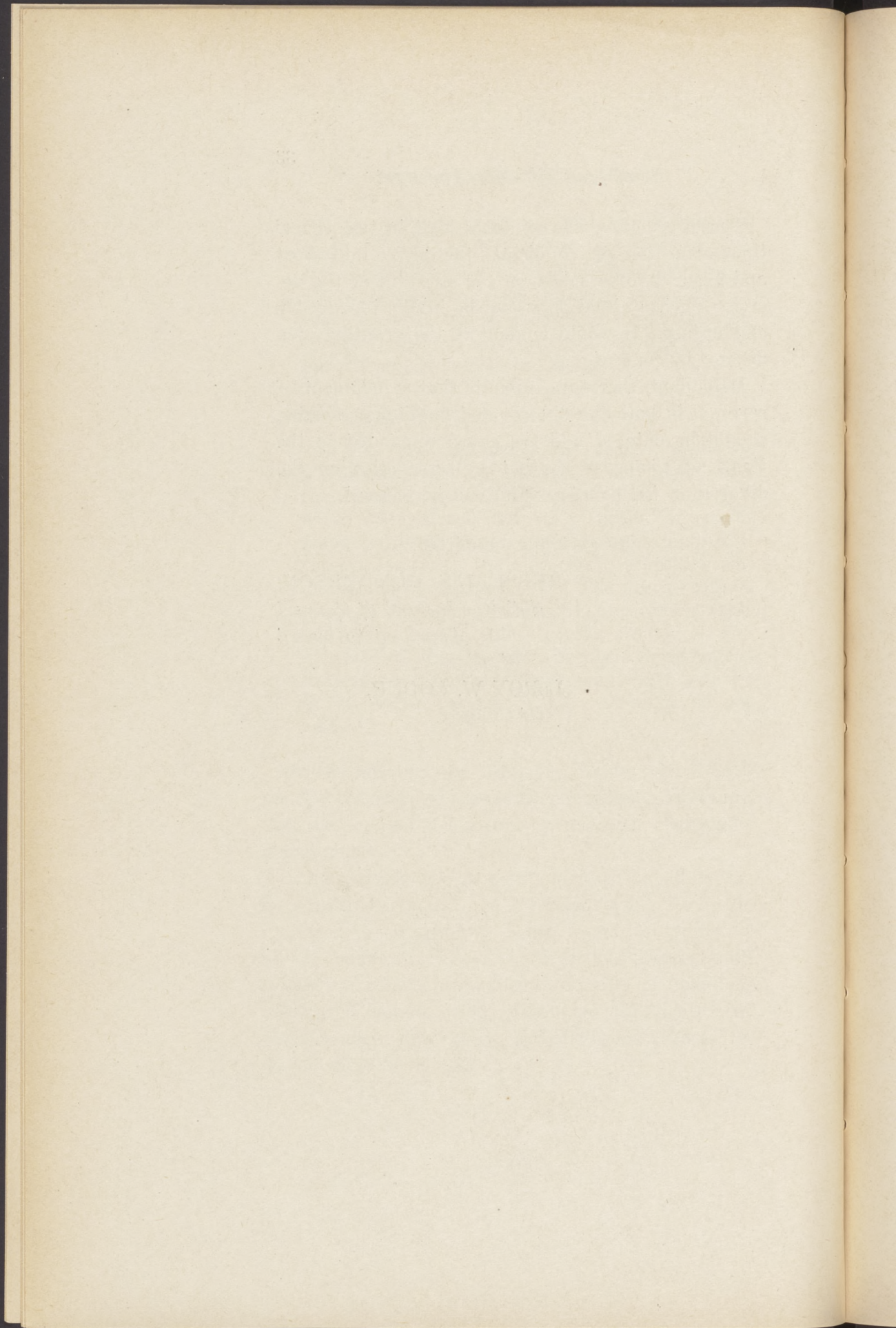
The effect of which would be that in two years' time, Mrs. Pierson, could take the decree into court and get a divorce solely on the strength of the decree. Such a situation would be highly inequitable and unjust. It would amount to the granting of a divorce by consent.

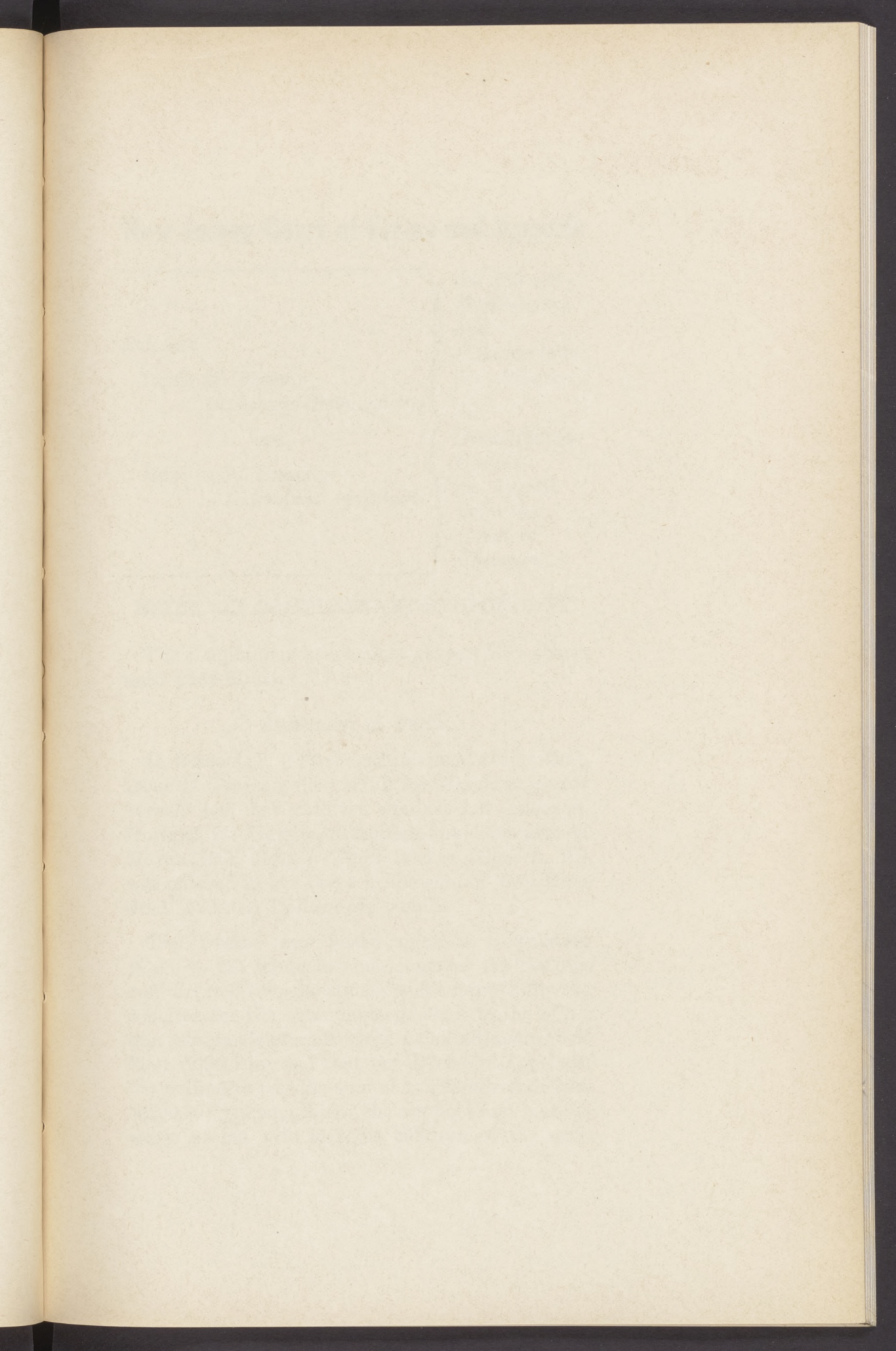
Defendant, therefore, submits that a judgment of reversal in both the divorce and maintenance suits, should be entered and the cause remanded to the Court of Chancery so that a decree allowing the divorce on the counter-claim can be entered.

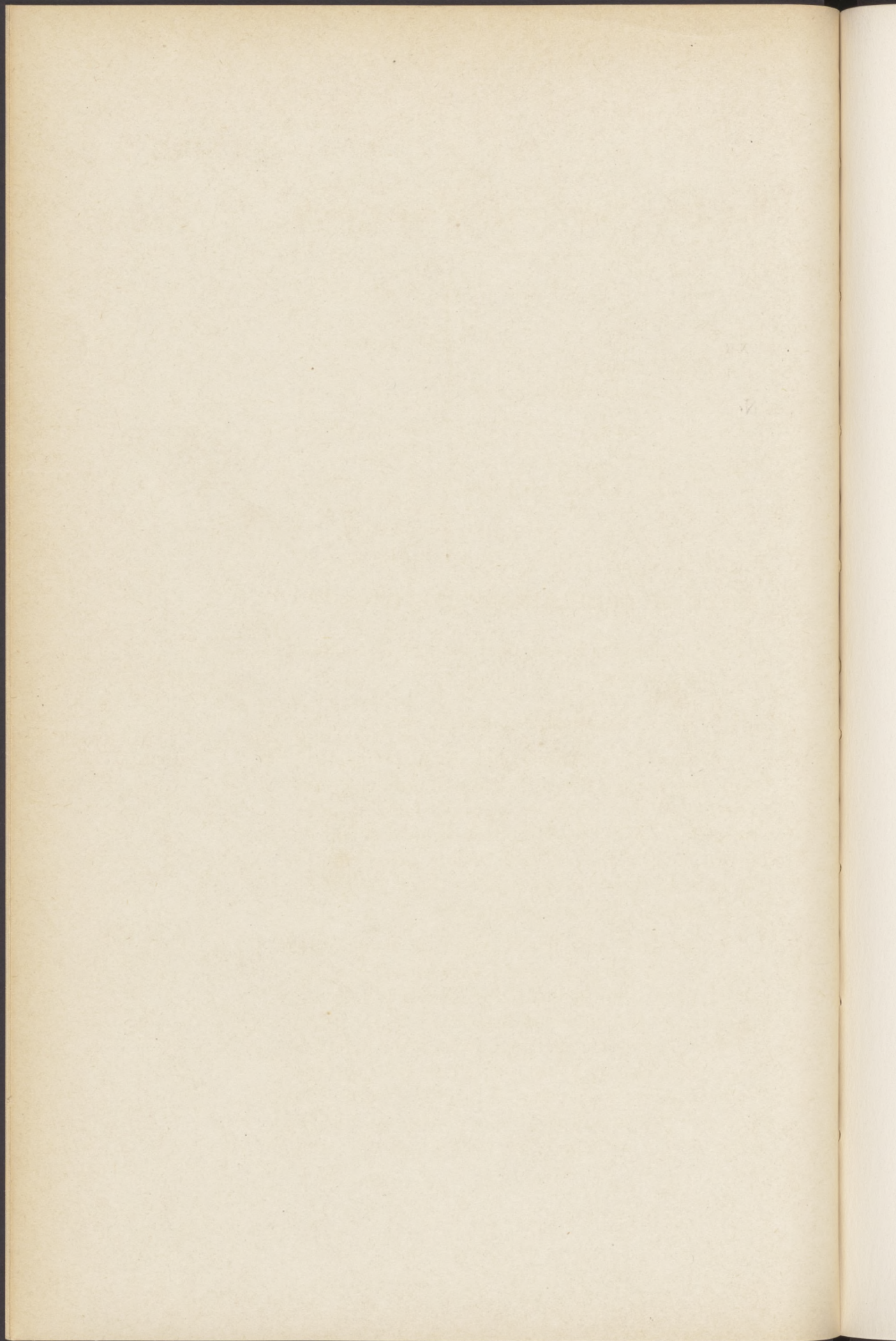
Respectfully submitted,

RUSSELL S. HENDERSON,
*Solicitor for and of Counsel
with Appellant, Howard
W. Pierson.*

LEROY W. LODER,
Of Counsel.







New Jersey Court of Errors and Appeals

Between

IRENE M. PIERSON,
Complainant-Respondent,

and

HOWARD W. PIERSON,
Defendant-Appellant,

*On Bill for
Maintenance
and
Counterclaim
for Divorce.*

*In
Consolidated
Causes
on Appeal
from the
Court of
Chancery.*

BRIEF OF COMPLAINANT-RESPONDENT.

The complainant-respondent respectfully shows unto your Honors:

Statement of Facts.

In November, 1931 the complainant-respondent, Irene M. Pierson, filed a Bill for Maintenance for herself and her children against her husband, Howard W. Pierson, defendant-appellant and on March 11th, 1933, a Final Decree (Case p. 16) was entered in her favor in the sum of Two Hundred (\$200.00) Dollars per month.

The Decree was based upon a Stipulation (Case p. 13) made in open court at the hearing and dictated into the stenographic minutes by the solicitor for the defendant-appellant to the effect that the parties had arrived at an adjustment of their difficulties and that the defendant-appellant "is willing to pay the sum of two hundred dollars (\$200.00) per month for the support and maintenance of his wife and the children of the mar-

riage in full for all bills and expenses whatsoever”, awarding the custody of the children and providing for making up arrearages of payments under a previous order to “the time of the entry of the Final Decree in this matter” (Case p. 15).

The Decree was not entered “without notice to defendant or his counsel” as stated on page 2 of the brief for defendant-appellant although defendant-appellant urged that position (Case p. 22, l. 34) in a Petition to open and amend the Decree.

Everett M. Scherer, associate of the solicitor for the defendant-appellant admitted (Case p. 28, l. 34) that a Decree was submitted and certain terms disputed and that later memorandums were submitted. The Court, after examining the memorandums, but months later, filed an opinion advising the Decree.

On September 28th, 1933 the defendant-appellant filed a Petition for Divorce (Case p. 41) on the ground of desertion and was met by answer in lieu of plea setting up the previous decree as a bar on the ground that it impliedly admitted abandonment without justifiable cause (Case p. 274, ll. 10 to 15). Defendant-appellant then moved to vacate the Final Decree on the ground that it was not intended to admit the charge of abandonment and thus foreclose him from subsequently suing for divorce on the ground of desertion as soon as the period of two years should elapse after the separation (Case p. 274, l. 15); and the Court, on that motion, determined that the Final Decree impliedly adjudicated abandonment (on the authority of *Oertel v. Oertel*, 92 N. J. E. 327). That such adjudication was not based on evidence but on the Stipulation. That the Stipulation was entered under a misapprehension

on the part of defendant-~~respondent~~^{appellant} and his counsel as to its legal effect; and that the defendant-~~respondent~~^{appellant} had lost a substantial right through accident and without any intention on the part of himself or his counsel to lose it (Case p. 274, ll. 22 to 33).

The Court further found (Case p. 40, l. 10) that this circumstance "calls for the exercise by this Court of its discretionary power to open and vacate said decree to the end that the rights or interests of the said defendant, Howard W. Pierson, can be heard by this Court and his interest properly protected;"

It further ordered the decree "be opened, set aside, vacated and for nothing holden."

It further ordered "That the two suits now pending * * * be and the same are hereby consolidated so that the divorce petition will become a counterclaim in the maintenance suit."

It would be in point here to call to the attention of the Court that the proper title of the cause after the Order of Consolidation would have been identical with the title of the maintenance suit and it is for that reason that this brief is entitled as set forth at the beginning.

After the Order of Consolidation appropriate pleadings were filed and the two causes (Docket number 87/266 and docket number 98/441) proceeded to final hearing.

It should be specifically noted that the reason for vacating the Decree was to permit the defendant-appellant to assert the substantial right, namely to bring a divorce action later if he had wanted, which he claimed had been lost through inadvertence by the mistake of himself and his counsel as to the legal effect of the Decree and it

follows that if he had no such substantial right and should not maintain his divorce proceeding later the Decree should be reentered or appropriate proceedings had to the same effect.

There is much conflicting testimony as to whether Mrs. Pierson or Mr. Pierson left the marital bed first in January 1931 but the Advisory Master found (Case p. 275, l. 16) on this issue "I hold that the wife left the bed and did not at any time return."

There is evidence by way of justification offered on her part of which the Court, in his opinion had this to say, "His own conduct contributed substantially to the disagreements between the parties. The complainant was not alone at fault. It is very apparent that she was jealous and suspicious of her husband's attentions to Mrs. Reeves and it was his duty under the circumstances to do what he promised in Senator McAllister's presence to do, that is, give up Mrs. Reeves. Instead of doing so, he appears to have continued in the same relations with her as before, a circumstance which contributed greatly to the final separation on May 4, 1931."

The Advisory Master, in his opinion, (Case p. 277, l. 28) held

"Mrs. Pierson testified that after he left the home she requested him on several occasions to return and told him that she would consent to live in New York.

"I am not satisfied from the evidence that the defendant made such just advances as he should have made and I am not satisfied that such advances if made would have been unsuccessful in securing a reconciliation."

He further stated in his opinion, (Case p. 278, l. 24):

“He has failed to establish, as charged in his divorce petition, that the complainant deserted him on May 4, 1931, and that ever since that time her desertion has been wilful, continued and obstinate. Assuming that she was a deserter as of May 4, 1931, because of her refusal of sexual intercourse, such desertion was neither wilful nor obstinate over a period of two years. This disposes of the defendant’s counterclaim.”

The Court later advised a Decree which, among other things dismissed the counterclaim (Case p. 283, l. 13). In considering the Bill for Maintenance, the Court did not base its judgment on the evidence submitted although he commented on it. Such comments could, at the best be considered *obiter dicta* and had no bearing on the final decision but held on the maintenance bill (Case p. 279, l. 12).

“If I were determining her suit on the evidence before me I would be constrained to deny her the relief prayed for.

“But in my judgment she is entitled to a decree for maintenance in accordance with the prayer of the bill because of the stipulation which was made in this cause as mentioned above. It is true that the decree based upon the stipulation was opened and set aside by this court but that was on the ground that the defendant by suffering the decree to be entered against him had unwittingly and unintentionally precluded himself from subsequently asserting what he believed would be a cause of action for divorce for desertion. It now appears after full hearing that he has no such cause of action. Since it was to let in such cause of action that the decree was set aside, it follows that the stipulation calls for the re-entry of the decree. By the stipulation, had it been drawn in the manner intended, the defendant conceded the right of

complainant to a final decree for maintenance subject only to his right, if any, to subsequently bring the divorce suit. Now that it appears that he has no such cause of action, the stipulation controls and I will advise a final decree in accordance with the prayer of the bill of complaint herein."

Final decree (Case p. 28) was entered accordingly and the issue comes before this Court on appeal from that decree.

ARGUMENT.

In order to maintain his counterclaim for divorce it was necessary that the defendant-appellant prove that the desertion alleged was wilful, obstinate and continued.

"1. Wilful—that is, intended by the deserter.

2. Obstinate—that is, persisted in against the will of the deserted.

3. Continued—that is, without interruption for the statutory period". *Stover v. Stover*, 94 N. J. Eq. 703.

"The burden of this proof is on the petitioner. He must show by preponderance of the evidence that the defendant is guilty of obstinate desertion." *Goldberg v. Goldberg*, 101 N. J. Eq. 284.

"Under these rules all doubt is resolved against the petitioner." *Wood v. Wood*, 63 N. J. Eq. 688.

"The burden is on the petitioner to show that the desertion was wilful, continued and obstinate." *Rogers v. Rogers*, 81 N. J. Eq. 481.

The defendant-appellant did not sustain the burden of proof in the case in point and the Advisory Master rightfully found "such desertion was neither wilful nor obstinate over a period of two years" (Case p. 278).

The record shows and the defendant-appellant admitted in his counterclaim (Case p. 43) that he had lived apart from the complainant-respondent since May 4, 1931, moving first to a boarding house on East Seventh street in Plainfield, a few blocks from his home (Case p. 60), and moving to New York in October, 1931 (Case p. 69), and subsequently to Brooklyn (Case p. 56).

He alleged (Case p. 57) that the last sexual relations between the parties was in January 1931 although there is some question as to the date, the complainant-respondent asserting (Case p. 160) that there was a quarrel around January 1st, 1931 and a reconciliation about two weeks later.

Mr. Pierson testified (Case p. 57) that she left his bedroom.

The complainant-respondent testified (Case p. 160) that she left the bed at the time of the first quarrel but that later, after the reconciliation, Mr. Pierson moved across the hall into another bedroom.

Thereafter there were no more sexual relations.

Mr. Pierson assigned no reasons for the original break and testified (Case p. 57) that he never knew why she left his bed. He later testified that he asked her a few days after the occurrence (Case p. 59) and that her reply was that she didn't intend to sleep with him any longer.

Mrs. Pierson (Case pp. 157 and 158) has a logical explanation for what occurred. She testifies of a quarrel that arose over a girl whom Mr. Pierson had taken to a dance in New York on New Year's Eve, a few nights before the first

breach and at a time when Mrs. Pierson was in Bridgeton, New Jersey with her children visiting her relatives and the relatives of her husband.

Mr. Pierson admitted that the discussion occurred (Case p. 87), but denied that it was one of the contributing causes to the withdrawal of his wife from sexual relations.

Since Mr. Pierson did not know why his wife left his room and there is no other testimony in the record, it is reasonable to assume that Mrs. Pierson's statement was correct.

Mrs. Pierson was apparently shocked at the idea that her husband had gone out with another girl. She testified (Case p. 157) "It hadn't been the custom of either of us to go out with the opposite sex." She testified that she was surprised and indignant; that Mr. Pierson had asked her to be economical at Christmas and that she was surprised that he would spend money in that fashion (Case p. 158) and also hurt and indignant because he had taken the young woman out.

It would not seem that this situation was ~~not~~ an unusual one. It was the reaction that might have been expected of any married woman under the same circumstances and, in itself, it certainly did not show an intention to desert. It does, however, constitute the beginning of the series of incidents which led to the final breach. Mrs. Pierson continues in her testimony (Case p. 158):

"Some time elapsed; Mr. Pierson made no apology or no statement that he was sorry and that he did not intend to do that sort of thing again. After some time elapsed and I thought that it was a rather futile thing to continue to quarrel I again returned to his bedroom."

In answer to the question as to when she returned, Mrs. Pierson testified that the reconciliation was in January, that is, about the 15th or 18th of January (Case p. 160), and that Mr. Pierson thereafter, around the first of February left her bedroom and never came back.

She testified that they had sexual relations during the period of the reconciliation (Case p. 159, l. 32).

The defendant-appellant denies the reconciliation and denies any relations subsequent to the original breach between the parties. But the point is not very material in view of the later occurrences and further the defendant-appellant is not corroborated by other testimony.

The argument of the defendant-appellant in his brief beginning on page 5 and ending on page 10 is entirely concerned with the original withdrawal from sexual intercourse on the part of Mrs. Pierson.

This goes to the question of the wilfulness of the desertion. That is, whether it was intentional. But the defendant-appellant fails to sustain the burden of proof and as has been pointed out the defendant-appellant's testimony as to the original withdrawal from relations is not corroborated and his uncorroborated denial of the reconciliation can be given no more weight than the assertion of the complainant-respondent to the contrary.

Beginning at the bottom of page 10 and continuing through page 11, of defendant-appellant's brief, the matter of testimony concerning contraceptives appears.

Mrs. Pierson had testified (Case p. 184, l. 34) "I had gone through his pockets a few days

before and had found in his coat pocket rubber contraceptives * * * and I remarked about it at the conference during this conversation with my brother and asked why he" (Mr. Pierson) "had them there." She testified that Mr. Pierson made no satisfactory explanation.

Mr. Pierson on cross examination denied the discussion categorically (Case p. 85). The cross examination being as follows:

"Q Going back again to the conference with Albert McAllister to which you referred in your direct testimony; was there any question with respect to contraceptives found in your pocket discussed at that conference?

"A No.

"Q Did Albert McAllister say anything to you about the contraceptives at any time?

"A No.

"Q Was the subject talked about in the presence of Albert McAllister at any time when you were there?

"A No.

"Q Were any contraceptives found in your pocket to your knowledge?

"A Not to the best of my knowledge.

"Q Not at any time?

"A No."

Later Mr. Pierson directly reversed this story (Case p. 263, l. 32) and admitted the whole matter.

This constitutes one of the reversals which might have raised a question of credibility as to his testimony in the mind of the court.

It is to be noted too that the defendant-appellant did not reverse his story until after Mr. McAllister had testified as to the discussion (Case p. 225, l. 24) and after Mr. Haldeman had testified about it (Case p. 248).

Mr. Haldeman testified about a conversation with the defendant-appellant as follows:

“I recall one time he said—how the conversation came about I don’t recall, but he said the contraceptives had been found in his pocket and he had a devil of a time getting out of that.”

Page 11 of the defendant-appellant’s brief certainly advances no reason for reversal. The evidence concerning the contraceptives might tend to show justification of the complainant-respondent for a prior refusal of sexual relations and then could be but one link in the chain but certainly it does not tend to prove either the wilfulness of her alleged desertion or that it was obstinate or that it was continued.

Page 12 of the defendant-appellant’s brief concerns a conference with Mr. McAllister, Mrs. Pierson’s brother, and Mr. Pierson which occurred on February 15th, 1931 (Case p. 262, l. 3) at which the defendant-appellant agreed not to have sexual relations with his wife.

This agreement is substantiated in the testimony of several witnesses and it is to be noted that it bears strongly on the wilfulness of the alleged desertion for if Mr. Pierson made such an agreement on February 15th, 1931 it would vitiate the effect of any previous withdrawal from sexual relations and break the continuity of any desertion which had taken place before it. If Mr. Pierson made that agreement to withdraw from sexual relations there could be no wilful or intended desertion on the part of Mrs. Pierson while the agreement was in effect.

Exhibit P. 1 was offered in evidence (Case p. 75). It was a letter to Mr. McAllister (Case p.

76, l. 3) admitted by Mr. Pierson to have been signed by him (Case p. 75, l. 15) and read in part as follows:

“As I remember it I agreed to let her educate the children and leave her alone from physical contact.”

Mr. Pierson made no satisfactory explanation of the letter but testified (Case p. 76, l. 18) “I told her if that would relieve things for the time being I would leave her alone.”

Mrs. Pierson testified to the making of the agreement (page 215) and Mr. McAllister testified to it (Case p. 227, l. 35).

From the above it will be obvious that the Advisory Master in the Court below had the best of grounds in finding in his opinion (Case p. 277) that

“the defendant promised not to see Mrs. Reeves again except once in order to explain to her why he would be obliged to discontinue his visits, and thirdly that he would not press his wife for sexual cohabitations until he had definitely given up Mrs. Reeves.”

On the question of the relationship with Mrs. Reeves the defendant-appellant admitted (Case p. 263) that he had called on Mrs. Reeves frequently and he admitted that his wife had objected to the calls. He further admitted (Case p. 89) that at the time when he called Mrs. Reeves' husband was not present.

The Advisory Master, in his opinion held (Case p. 278):

“His own conduct contributed substantially to the disagreements between the parties. The complainant was not alone at fault. It was very apparent that she was jealous and suspicious of her husband's at-

tentions to Mrs. Reeves and it was his duty under the circumstances to do what he promised in Senator McAllister's presence to do, that is, to give up Mrs. Reeves. Instead of doing so he appears to have continued in the same relations with her as before. A circumstance which contributed greatly to the final separation on May 4, 1931."

On pages 12 and 13 of the brief of the defendant-appellant there is nothing that goes to the wilfulness, the obstinacy or the continuity of the alleged desertion of Mrs. Pierson except certain testimony by the defendant-appellant to the effect that Mrs. Pierson had said she wanted a divorce at the conference with her husband and Mr. McAllister on February 15, 1931.

But the defendant-appellant himself, after stating what she said testified that Mr. McAllister "sat down and had an open talk with her for about twenty minutes and argued with her that that is what she didn't want, a divorce."

If the defendant-appellant had continued to quote from his own testimony at page 263 he would have added the following:

"so after he had apparently convinced her, or had argued with her to some extent, I don't know whether he convinced her or not, but apparently he did;"

In the cross examination of Senator McAllister the following questions and answers with respect to Mrs. Pierson's alleged desire to secure a divorce appear at page 230 of the record.

"Q Isn't it also true that at this conference Irene told you that the thing she wanted was a divorce?"

"A Oh, when she was hysterical, as she was for a time, I know that she said she didn't expect to live with him again; that

she didn't want to see him any more and that sort of thing; but she shouldn't have been charged with that, because she certainly was hardly capable of knowing what she was saying at that particular minute."

From the testimony it would appear that Mrs. Pierson did make a statement that she wanted a divorce and it would also appear both from the testimony of Mr. McAllister and the testimony of Mr. Pierson that Mr. McAllister thought he (Mr. McAllister) had convinced her that she was wrong. This is further borne out by the fact that the agreement heretofore cited resulted from the conference. An agreement not to have sexual relations until Mr. Pierson had given up Mrs. Reeves certainly did not imply an intent to secure a divorce but rather of a resumption of the marital status when the condition was complied with.

I do not think this statement, in view of the circumstances surrounding it, can be considered as bearing on the question of whether the alleged desertion was wilful. Its evidential value was nullified by the admission of the defendant-appellant and the statement of Senator McAllister, indicating that she had been convinced that she did not want a divorce and further nullified by the agreement which resulted from the conference. If she wanted a divorce she would never have made the agreement. Her attitude was one of indignation and injury. Her rights had been imposed on by her husband in his association with Mrs. Reeves and in the contraceptive incident and she did the human thing, she demanded some guaranty that he would conduct himself properly in the future before marital relations were resumed.

The whole conference contemplates a resumption of marital relations rather than a divorce.

On page 14 of the defendant-appellant's brief an attempt is made to show that financial troubles constituted a reason for an alleged withdrawal of Mrs. Pierson from sexual relations and that at the conference on February 15th, 1931, Senator McAllister had drawn a budget, Exhibit P. 1, to settle this question.

It is true that financial troubles constituted an issue between the parties. Senator McAllister testified (Case p. 227, l. 24) that a budget system resulted from the conference, but he also testifies at the same point that Mr. Pierson agreed at the conference "not to visit this home in Brooklyn after a certain additional visit for the purpose of an explanation" and being interrupted by a question from the Advisory Master as follows: "Was the third a stipulation or agreement that he would not ask for sexual relations during the—" he answered "I think that is right until this other arrangement had been carried out about the visiting the house in Brooklyn or the home."

Financial troubles might have been an issue between the parties but the withdrawal from sexual relations was predicated directly on an agreement, well substantiated by the evidence, and admitted by the defendant-appellant in his letter to Senator McAllister, Exhibit P. 1 (Case p. 76, l. 7).

The unwillingness to cooperate in the home in financial matters referred to by Mr. Pierson in his testimony on pages 63 and 64 and brought out on pages 14 and 15 of his brief seem to be pretty well refuted by other witnesses.

Mrs. Haldeman testified on page 242 that the furniture in Mrs. Pierson's house did not look "like the income which it represented." She testified that Mrs. Pierson had a complete dining room suite but did not have a complete living room suite and she testified that Mrs. Pierson wore home made clothing.

Mr. McAllister's testimony on page 228 was as follows:

"Q What type of furniture and furnishings did they have in the house; was it an expensive or inexpensive type?

"A Well I should say that they were very ordinary. What I mean by ordinary is, I would say such furniture as a fifty dollar a week clerk having no special interest in his home would have; not better than that.

"Q Was there any evidence of anything in the furnishings that looked extravagant to you?

"A Not a single stick of furniture or furnishings.

"Q Was Mrs. Pierson's dress or the clothing of the children of an extravagant type or simple type?

"A Well, I am inclined to think that my mother either furnished, made or assisted in the making of two-thirds of all the clothing she has worn since she has been married."

Mrs. Pierson's testimony on page 165 was that Mr. Pierson's salary was \$6,000.00 a year although other evidence shows that he had deductions for business expense of approximately \$100.00 per month. She testified that she received \$12.50 a week in cash until October 1930. She testified that she usually had a position of some kind; that she substituted in the schools of Plainfield and North Plainfield for three years, some times for a month, sometimes for one or two days. She testified on page 166 that she

played for dancing classes two nights and every afternoon and earned two or three dollars a day and adds "and during all the time we lived in Plainfield I had at least one room and sometimes four rooms rented in the house." She testifies that she received from room rents varying amounts from \$4.00 to \$16.00 a week. She testifies that she took the census in 1930 and earned about \$100.00 and spent the money on the home and on the children. She testified (Case p. 170) that she secured a position in probation work near the end of February 1931 and (Case p. 174, l. 16) that she was earning \$30.00 a week.

The above testimony certainly does not indicate that Mrs. Pierson was extravagant or that there was any proper basis for saying that she failed to cooperate in money matters. Her unrefuted testimony as to her earnings during the years prior to the separation indicates a degree of cooperation in financial matters that was unusual and meritorious, even though it might have been unsatisfactory to her husband.

Her testimony as to present handling of finances (Case pp. 178 to 181) shows that she is educating both of her children, one in Duke University and the other in Mercersburg; that the cost at Mercersburg is about \$650.00 (Case p. 179, l. 19); that the cost at Duke University is \$900.00 per annum (Case p. 179, l. 34) and that Mr. Pierson has not contributed to the expenses of either.

She testified (Case p. 181, l. 1) that it cost more than all her personal earnings to keep the children in school and on page 182 testified that she met the deficit to cover school expenses by borrowing.

A review of the evidence as to Mrs. Pierson's earnings and what she did with them would seem to demand a conclusion that Mr. Pierson's complaint, referred to on page 14 of the defendant-appellant's brief, of her unwillingness to cooperate in the home and financial matters, comes with very poor grace and was not justified by the facts. There is evidence in the record at various points to show that Mr. Pierson did not have any choice in the matter of the education of the children but it should be noted that the agreement reached in the conference of February 15th, 1931, and admitted by the defendant-appellant in his letter to Mr. McAllister, Exhibit P. 1 (Case p. 76, l. 7) and as stated by him in the letter was "I agreed to let her educate the children."

The matter of financial troubles referred to on pages 14 and 15 of defendant-appellant's brief are disposed of by the evidence as above stated and even if they existed they do not seem directly or indirectly to bear on the question of the willfulness or the obstinacy of the alleged desertion.

Page 15 of the defendant-appellant's brief quotes testimony of Mr. Pierson's sister, Mrs. Martin, from pages 115 and 116 of the record. The testimony concerns a family reunion in September 1930. It should be noted that this occurred four months before the first break testified to between the parties and eight months before the time the defendant-appellant left his home, May 4th, 1931. The pertinent part of the testimony is as follows:

"Q Did you hear a statement made by Mrs. Pierson at that time concerning her husband?

A I did; yes.

Q What was the statement?

A She said she was going to show him a few things before long.

Q To whom was she addressing those remarks?

A She was talking to my niece at that time; she was a student. She was talking to her about marriage.

Q What did she say about marriage?

A She said that a woman was a fool for marrying for love; that the only thing to consider was a man's finances."

The value of this testimony is minimized first by the fact that it occurred at a time when the evidence discloses no trouble existing between the parties and second the fact that it was obviously an attempt at humor. It loses importance as bearing on the wilfulness of the desertion also from the fact that the witness did not testify to the exact words that Mrs. Pierson used. Under similar circumstances where the court could not determine the exact wording used in a letter in the case of *Currier v. Currier*, 68 N. J. Eq. 7, affirmed 68 N. J. Eq. 797, this court refused to accept as corroboration the testimony of the petitioner and another witness as to what the contents were.

The testimony of Mrs. Martin loses value also from the fact that she overheard only these remarks. It might have been that other remarks were made which she did not hear which would have thrown further light on her two statements and the attitude of this court in the case of *Currier v. Currier*, above cited, is not favorable to such random and isolated statements.

As to the second statement about a woman being a fool for marrying for love and that the only thing to consider was a man's finances, this statement has been made by many a woman

who had no intention of getting a divorce. It was a mere random thought which might not be lacking in truth and had elements of humor that apparently were not appreciated by Mrs. Martin.

The argument on page 16 of the defendant-appellant's brief showing Mrs. Pierson's statement that she wanted a divorce at the conference of February 15th, 1931, have already been covered. They go to the question of wilfulness but are nullified by the fact as hereinbefore stated that she was argued out of that position and the conference in fact resulted in an agreement not to have sexual relations until Mr. Pierson quit calling on Mrs. Reeves, which agreement of course contemplated a renewal of sexual relations as soon as Mr. Pierson carried out his part of the agreement.

Pages 17 and 18 of defendant-appellant's brief argue again to the wilfulness of the desertion and are concerned with evidence of a conference on March 28th, 1931 (Case p. 107, l. 18), approximately six weeks after the agreement not to have sexual relations.

This conference was with two members of Mr. Pierson's Bible class, Mr. High (Case p. 110, l. 17), and Walter Carson (Case p. 113, l. 16). The conference was called, according to the defendant-appellant's own testimony (Case p. 62, l. 10), by Mrs. Pierson.

The reason for it she testifies to (Case pp. 171 and 172) as follows:

“It was necessary that I take the car in order to carry on my duties, and we had this old Ford sedan. Mr. Pierson had ordered me not to use it for personal use. So that when I needed the car for this job (her State position) I had to ask him if I might use it

and he gave me permission to use it so long as I was doing work and for nothing else. Then on occasions he would tell me that I could not use it; and he would say that I was not to use it again. Once or twice he had taken the key away from me so that I couldn't use it that day and I had to have another key made. On this occasion he had told me definitely that I was not to use the car again. I called my brother, Mr. McAllister, on the telephone and told him that Howard said I could not use the car, and I was very much upset because I could not do the job that I had without the car, and he said, 'Well I can't come up to settle your matter. Why don't you talk to somebody, get some of your friends to talk to him and see if you can't settle this matter among yourselves.' So I called Mr. Carson and Mr. High on the telephone and asked them both to come over. They are mutual friends of ours; in the first place, friends of my husband through the Bible class, and then friends of mine through his long association with them. They both came over to the house; that was why I called them because I was very much alarmed lest I not be able to carry on my work without the car, and I was very much alarmed as Mr. Pierson spoke about leaving me and I had no means of support and I thought it necessary that I keep that job."

In answer to a question as to whether Mr. Pierson told her what he was going to do with the car, Mrs. Pierson testified:

"He didn't say that he was going to do anything with it but that I shouldn't use it; later on he told me that; later on, in spite of his telling me not to use the car I took the car one day with my children and two neighbors and their two children and went for a picnic. When I came back Mr. Pierson was sitting on the stoop and he told me that he had reported the car as stolen and

told the authorities to have anyone arrested who had the car and he told me at that time if I should ever touch the car again I would be arrested; he told me that in the presence of our children."

It will be obvious from the foregoing testimony that bitter quarrelling and an unreasonable attitude on the part of Mr. Pierson had preceded the calling in of Mr. Carson and Mr. High. It should be noted that this was not an attempt on the part of the husband to effect a reconciliation or to terminate his agreement of six weeks previous whereby sexual relations were to cease until he quit going with Mrs. Reeves.

The brief of the defendant-appellant (p. 18) stresses Mr. Carson's testimony to the effect that Mrs. Pierson had said in the conference "that she could scarcely stand being in the same room with Mr. Pierson" and Mr. Carson's testimony that "His attitude impressed me as I remember it now, to say the least, as one more willing to be reconciled than Mrs. Pierson." He also stresses (p. 17 of the brief) Mr. High's testimony that at the conference of March 28th, 1931 Mrs. Pierson said that "Howard was overbearing, that she didn't like to have him around, in general his presence were getting to be distasteful to her."

In the background of this conference was apparently an almost unbroken series of nagging by Mr. Pierson running back into January, eight or nine weeks previous to the conference of March 28th, 1931.

Quoting Mrs. Pierson's testimony (Case p. 159, l. 2):

"Some time following his birthday, which was in January, or about that time, Mr. Pierson told me that he was going to leave

me, that he was tired of living with me, that I was extravagant, that I was high-hat, that I didn't appreciate him for all the things that he had done for me and that he was going to leave me and that he was not going to support me. He also told me, he would come home each evening and impress these facts upon me, that he was going to leave. On some occasions he would ask me to leave; told me to get out, that he was tired of me; on one occasion he told me that he was just waiting to get rid of me that he could marry the woman in New York."

In answer to the question as to whether he mentioned who the woman was Mrs. Pierson's answer was

"He did not; but he did mention the fact very emphatically that he wanted to marry a woman in New York as soon as he could get rid of me."

It is to be noted that Mr. Pierson testified (Case p. 255, l. 18) that he kept a memorandum book of expenses and also jotted down in the book different items that might refresh his memory, and thus predicates the accuracy of the exact words said at a talk between him and Mrs. Pierson on March 8th.

There might be some reason for supposing that the attitude of the defendant-appellant was one of forcing a divorce or separation in order to marry someone else or for other reasons rather than one of seeking conciliation.

He had, according to the testimony of Mrs. Haldeman (Case p. 238), received a pen and pencil set from Mrs. Reeves for Christmas in 1930 and had given her money instead of a Christmas present and had also bought a compact for Mrs. Reeves on another occasion.

Mrs. Pierson testifies (Case p. 159) as to another incident in February 1931 as follows:

“He said that he was not going to support me; one time he said that he would pay me twenty dollars a week; on another occasion he told me he would pay me three dollars a week; and I asked him how he thought I was going to live with the children AND HE TOLD ME THAT I COULD ENTER A HOUSE OF PROSTITUTION IN ORDER TO EARN MY LIVING.”

She testifies (Case p. 160):

“I made various attempts at reconciliation, I didn't constantly; my attitude wasn't one of belligerency; it was one of long suffering and patience, to find out why this man was behaving in the way he was; I couldn't understand it. I had done nothing; I was living in exactly the same fashion that I had always lived in, and I couldn't understand his attitude; I couldn't understand why he suddenly told me he was going to leave me. He told me he was going to take our children away from me; that he was going to provide a home for them elsewhere.”

She further testified (Case p. 161):

“I made many efforts at reconciliation, in order to eliminate whatever was the cause of his behaviour. I didn't say to him, ‘Come to my bedroom,’ but I prepared his meals, every one of them. During that period I saw that his clothes were laundered and mended; I saw that the house was taken care of; I had no maid; whatever was done in the house I did; I took care of the children; saw that they were in school; whatever was needed to be done in the house as far as I can remember except one, when he had told me that he would not be at home and I had not prepared any food for him and he came in unexpectedly and asked for food and I had nothing that he would eat

because he wouldn't eat eggs or just anything that you have in the refrigerator. That, I believe, was the only meal."

She testified (Case p. 169, l. 35 and p. 170),

"From that time on he was consistently and thoroughly disagreeable and belligerent; he came home in—he got his dinner and spent the evening with his family but he came home to quarrel definitely and nagged me each evening with some little disagreeable remark; he never said a pleasant word; he never—his manner was not even just—well, he didn't just come in and ignore me; he came in and nagged me each evening with some disagreeable, fault-finding, nasty, ironical, sarcastic remark; he asked me repeatedly to leave; he told me repeatedly that he was going to leave."

Further questions and answers at this point (Case p. 170) are as follows:

"Q Did he say why?

A Because he was tired of me; he wanted to marry someone else as soon as he could.

Q Did he say that?

A He said that.

Q When did he say it?

A I don't know the date, but I remember very distinctly that we sat in chairs opposite each other in the living room and he said to me, 'I want a divorce to marry someone in New York as soon as I can get rid of you.'"

This ties in with Mrs. Haldeman's testimony (p. 241) as to Mr. Pierson:

"He told me, I should say it was in February or March that two people could not continue living like that in such turmoil, that somebody was going to get out."

The situation between the parties preceding the conference of March 28th, 1931 with Messrs. High and Carson is further shown by the evidence of Mr. Pierson on page 263 stating that he

had gone frequently in the few weeks just previous to March 28th, 1931 to visit with Mrs. Reeves.

It should also be remembered that in the background of the March 28th, conference with Mr. High and Mr. Carson was the conference the parties had with Mr. McAllister wherein the incident of the compact, the finding of contraceptives and the objection of Mrs. Pierson to the visits to Mrs. Reeves had been discussed, the conference which resulted in the agreement previously referred to whereby sexual relations were to cease until Mr. Pierson quit calling on Mrs. Reeves.

It was natural that Mr. High and Mr. Carson should have found (Case pp. 111 and 112) that Mrs. Pierson's attitude was one of seeking justification and that Mr. Pierson should have been found more willing to have been reconciled than Mrs. Pierson as testified to by Mr. Carson.

It was an actual fact that Mr. Pierson had become intolerable. His conduct was such as to make living conditions in the home almost unbearable and might have even constituted such cruelty as would have justified his wife in leaving the home. Mr. Pierson did not show at the conference on March 28th by his attitude the disposition that a man who really and sincerely wanted a reconciliation would have shown.

“A man in this situation should woo his wife as he did during the courtship.” *Glusker v. Glusker*, 13 N. J. Misc. 105.

A man who was keeping a note book to refresh his memory could hardly be said to have any other purpose in mind than to keep a record of a case he knew would eventually get into the courts.

Mrs. Pierson admitted the statement that she had said he was intolerable at his conference of March 28th, 1931 and said (Case p. 173) that the reason she said she couldn't tolerate him was "because of the manner in which he was behaving to me."

It is not difficult to see why this woman said that she could not tolerate her husband; a woman who was threatened with desertion, whose husband had been visiting another woman; whose husband had been buying compacts for another woman; whose husband had taken another woman to a dance a few weeks previously; whose husband had been carrying contraceptives in his pocket at a time when sexual relations between himself and his wife did not warrant it; whose husband had told his wife that he would leave her, asked her to get out, threatened to take her children from her, told her that she could enter a house of prostitution, threatened to cut her allowance and then to cap the climax denied her the use of the car.

It would be difficult to picture her at the conference on March 28th, 1931 in any other attitude than as testified to by Mr. Carson (Case p. 111, l. 33) "Her attitude was one of indignation."

There is no evidence in the case showing that Mr. Pierson ever quit his relationship with Mrs. Reeves so as to comply with the agreement of February 15th, 1931 under which sexual relations were withheld pending the termination of his visits to Mrs. Reeves.

The Advisory Master found

"Instead of doing so he appears to have continued in the same relations with her as before, a circumstance which contributed

greatly to the final separation of May 4, 1931."

In the case of *Currier v. Currier*, 68 N. J. Eq. 7, affirmed 68 N. J. Eq. 797 it was held:

"To turn such separate living into wilful desertion there must be satisfactory proof that the consent thereto was withdrawn and the marital duty was demanded."

There is no such evidence in this case. There is no showing that at any time the defendant-appellant came within the provisions of the agreement whereby he withdrew from sexual relations by terminating his visits to Mrs. Reeves. The Advisory Master therefore rightfully found (Case p. 278, l. 32) that the alleged desertion was not wilful.

This is no evidence that he really sought a reconciliation at the conference of March 28th, 1931 with Mr. High and Mr. Carson. The conference, apparently assumed the status of a quarrel with recrimination on both sides and Mr. Pierson was the quieter of the two. Which attitude, under the circumstances, constituted good grace in view of the things his wife had testified that he had done and said prior to the conference.

Page 19 of the defendant-appellant's brief is concerned with the testimony of Mrs. Jessie Stevens, a neighbor, who testified on behalf of Mr. Pierson that a man named Smith called frequently at the Pierson home after Mr. Pierson left.

The testimony was objected to on the ground that it was irrelevant. There was nothing in the counterclaim for divorce which charged Mrs. Pierson with any improper conduct but the court admitted it for what bearing it might have by

way of corroboration of the refusal to have sexual relations (Case p. 151, l. 21).

The whole testimony in this respect is as follows:

“Q Are you acquainted with a man by the name of David Smith?

A Not personally.

Q Do you know him when you see him?

A Yes.

Q Did he visit the Pierson home following this time with any degree of regularity?

A He visited the Pierson home frequently and has done so for a long time.

Q Since the spring?

A Since Mr. Pierson left. I never saw him before.

Q You say for a long time. Can you say as to the degree of frequency?

A No; because—

Q Would you say once a week, or more than that?

A I should say almost daily.”

There is no evidence here that the man even called on Mrs. Pierson nor is the time fixed, nor is there anything to show what the purpose of his calls were.

Any corroborative value it had to support the withdrawal from sexual relations would have been lost for this reason but subsequent evidence of other witnesses destroyed its value anyway in that the sexual relations were proven by later witnesses to have terminated as the result of an agreement between the parties on the 15th day of February, 1931.

The brief of the defendant-appellant, through the first nineteen pages, certainly does not show that a wilful desertion took place. There is nothing asserted in the brief that is not at some point in the evidence contravened.

The statement at the top of page 20 of the defendant-appellant's brief that Mrs. Pierson withdrew herself from marital relations is not consistent with the evidence. The evidence was that sexual relations ceased as a result of the agreement of February 15th, 1931.

Mrs. Stevens' testimony referred to at the same point in the brief was as follows:

“Q During the period from January to May, 1931, did you have any occasion to observe the method or manner in which Mr. Pierson ate his meals?

A Yes; I did.

Q Did he and Mrs. Pierson eat together or separately?

A He didn't when I observed it.

The Court: They didn't what?

A They didn't eat together at the time when I observed it. Mrs. Pierson would be sitting in the room beyond the dining room while Mr. Pierson was eating his meals.”

Taking the entire evidence in the case it would not be improbable that Mr. Pierson desired to eat alone. The wife's testimony hereinbefore cited was that she got every meal, took care of his laundering and performed her duties in every way but her testimony as to his attitude was such that it might be inferred that if he ate alone it was by his own choice. Nothing was said by any other witness as to this fact and it seems to be irrelevant, not being fixed in time, and the number of occasions on which it happened not being stated in the evidence.

On page 20 of defendant-appellant's brief it quotes Mr. Pierson as saying:

“I asked her on several occasions if we couldn't begin over again, to see if we couldn't make our married life happier and her repeated answer was that she was through, absolutely through.”

This is not corroborated and it is a generality from which it would be difficult to conclude that the efforts he made were bona fide. No particular instance is stated. No words are given. No description of circumstances nor any other facts about the repeated requests from which it might be inferred that a bona fide effort at reconciliation was attempted. Neither was there any showing here of an intention to quit Mrs. Reeves as Mr. Pierson had agreed to do nor are the times when the conversations took place fixed. It cannot be inferred from this statement that it was an attempt made after the agreement by which sexual relations were terminated.

On page 21 of the defendant-appellant's brief reference is made to the testimony of Beverly Hancock and of the fact that Mrs. Pierson did not deny that he was her escort at a party on the first of May, 1931.

Mr. Hancock's testimony disclosed no facts of importance in the case. There were no allegations of improper relations with Mr. Hancock and the testimony was irrelevant. The testimony appears at pages 153 and 154 of the State of the Case.

He testified he attended a week end party at the Pierson home in May, 1931. That it began at a matinee in New York on Saturday; that they came home to Plainfield that evening; that he went home that night and went to bed and that he returned the next afternoon with his mother at a day party. It would appear that he might have been an escort of his mother.

He testified that Mrs. Pierson asked him if he would like to join the party and in answer to

a question as to whether he was her escort he testified:

“I should say so. There was a large group of us.”

On cross examination he was asked “What do you mean by being her escort” and his answer was that “Well there were probably ten of us and I believe I sat with Mrs. Pierson at dinner and probably had the first dance with her.” He also testified that the majority of the people present were married people and was uncertain as to whether he stopped at Mrs. Pierson’s house on the way home from the party. The testimony was so valueless that it is not worthy of comment.

It is not shown in the evidence that Mr. Pierson made any objection to Mr. Hancock’s visit, although Mr. Pierson was living at the house at the time.

Page 22 of the brief of defendant-appellant contains evidence tending to show that Mr. Pierson was not invited to a party at his house about the 1st of May, 1931.

Mrs. Pierson testified as follows about the party on her direct examination:

“Q You had a party at your house about the 1st of May, 1931; was Mr. Pierson invited to that party?

A Yes, if it were necessary to invite one’s husband to a party when you are entertaining mutual friends, then Mr. Pierson was invited.

Q Will you tell us the circumstances surrounding that invitation?

A About a week before May 4th, 1931, I told Mr. Pierson that we were going to have some guests from Bridgeton, who were mutual friends of ours, two couples, two married couples, whose homes, or the home of

one at any rate, I had visited and he knew as well as I did. When I told him that. Later he said, 'I am not going to be at home; I am going to a dinner dance on Saturday night; I will not be at home; you may tell them to come some other time; and I said no, I am not going to tell them to come some other time; one of the men was a doctor and his affairs could not be arranged instantaneously and I said they are coming on that week end.' He said, 'Well, I won't be there.' 'Well,' I said, 'of course, it is up to you, but those people are coming on this week end and will be here from Friday night until Monday morning.'

Q Did he come, in fact, to the party?

A My husband?

Q Yes.

A The people arrived on Friday evening about 8:30 and I was preparing supper for them. Mr. Pierson came in before we sat down at the table, so I asked him to sit down at the table; he refused. He took two of the guests and went out on some errand and then returned shortly to the house and I think went to bed; he went upstairs; I know that he didn't sit down at the table with us.

Q Was a place prepared for him at the table?

A The table was just being set; he could have sat down; it was an informal supper, just sandwiches and coffee, something of that sort.

Q Did he participate at any time after that in the party on the following day and on Sunday?

A He came in the house on Sunday, there was a group of people there again, mutual friends of ours; he met these people, who had come from out of town; Mr. Pierson came into the house and spoke to a few people and ignored others, and I think went into the den and I went in and spoke to him, because it was obvious; he closed the door and stayed inside until, of course, observed,

then he came in and I asked why he behaved in that manner, that that was a peculiar manner in which to behave, but I think he stayed there for some time and went upstairs.”

This incident happened just four or five days before Mr. Pierson left the house and it very thoroughly illustrates what his attitude toward his wife and toward mutual friends was.

On page 22 of defendant-appellant’s brief he argues to the obstinacy of the desertion showing that Mr. Pierson tells of a statement made by Mrs. Pierson that she was willing to be reconciled; that Mr. Pierson went to see her that night and her reply was that he could come back but she would have nothing more to do with him.

This matter is covered twice in the record. First, Mr. Pierson’s version and later Mrs. Pierson’s version.

Mr. Pierson testified (Case p. 256) as follows:

“During that evening, though, she had made some statements at that conference that she would be willing to be reconciled which troubled me somewhat and I went home. When I went to the home she wasn’t at home; she wasn’t at home; she was stopping in at the Haldemans at that time, or visiting in at the Haldemans. I went to the Haldemans and asked her if she would come home and talk to me and she said she would, after sparring a bit, saying at first that she wouldn’t. She came home with me and I made the statement to her, I said, ‘Irene, if you were sincere in the things you said this afternoon, there is no reason why you and I can’t get together.’ She said, ‘You can come back and live in the house if you want to, but I will not have anything to do with you; I am just through with you.’ That is all that happened; she gave no reason.”

Mrs. Pierson's version of this incident (Case p. 272) is as follows:

"He came to the house and I was having supper at the Haldemans. I went into the house with him and discussed different matters he had in mind, and I asked him at that time if he had changed his attitude in any respect concerning Mrs. Reeves and if he wanted to come back to the house that we were to be really reconciled, and he said that I was to do as I was told and that he had a right to visit whom he pleased and when he pleased; so that our conference got us nowhere."

Mr. Pierson was the moving party on the counterclaim for desertion. It was his duty to sustain the proof. He does not in any way corroborate his testimony on the above point.

It will be noted that in the conference to which the above testimony relates, on May 11th, 1931, a week after he had left his wife and home, he still persisted in his attitude toward Mrs. Reeves. He was still not willing to comply with the agreement the parties had entered before Senator McAllister on February 15th, previous, namely, not to have sexual relations with his wife until he stopped seeing Mrs. Reeves. If his attempt at a reconciliation was bona fide he would have told his wife at the conference on May 11th, that he was having nothing more to do with Mrs. Reeves. But he did not do so. Instead he asserted his right to "visit whom he pleased and when he pleased."

This incident does not establish the obstinancy of the desertion. It shows no bona fide attempt on his part to resume marital relations.

At the bottom of page 22 of the brief of defendant-appellant he refers to testimony of Mr. Pierson about a suggestion that Mrs. Pierson

come to New York and live with him and an answer to the effect that she would under particular conditions. The record shows (p. 257, l. 23) that Mr. Pierson testified, "However, when I got ready to leave for New York (October 1931) I suggested that she come to New York and live with me." She replied, "that if I could find a suitable place and under particular conditions she would come. There was no further correspondence about that and I went home." This does not indicate that she refused in October of 1931 to resume the marital status but rather it indicates that she was at that time willing to resume. While the testimony does not state the conditions it cannot be presumed that the conditions she laid down were derogatory to the marital status. If she was willing to go to New York at all it must have been with the intention of resuming the marital status.

Page 23 of the defendant-appellant's brief re-argues the merits of the evidence pertaining to the conference of May 11th, which is already quoted above.

Then the defendant-appellant presents this argument (pp. 23 and 24 of the Brief):

"The next act on Mrs. Pierson's part was to have him arrested on a writ of *ne exeat* for non-support while he was in Plainfield attending a Bible Class banquet in the church. Humiliation was the idea back of this plot for there was no grounds for it as Mrs. Pierson on page 206 on cross examination testified as follows:"

Then follows the testimony showing that Mr. Pierson was contributing \$87.00 per month besides other expenses. There is nothing in the record to show that the purpose of the arrest was humiliation. There is no activity of Mr.

Pierson's shown by the record other than his Bible Class and the more probable explanation of the arrest while he was at a Bible Class affair is that he had to be arrested while he was in the State of New Jersey and that this was one of the odd times when he got into the State. Whether she was justified or not is borne out by the fact that preliminary orders were made in the case under which she received \$200.00 per month from Mr. Pierson until the date of entry of the final decree in 1933. This is conclusive as to whether she had the right to arrest him.

Defendant-appellant argues on page 24 as to various times in January 1931 when Mr. Pierson is alleged to have approached his wife in order to renew marital relations. Such evidence would not go to the obstinancy of the desertion. To begin with they are generally stated and it must necessarily be that all the circumstances surrounding each attempt to effect a reconciliation must be shown to the court in order that the court may determine whether or not it was a bona fide attempt and in the second place the continuity of the desertion alleged was broken by the agreement under which Mr. Pierson agreed not to seek sexual relations until he quit Mrs. Reeves. This agreement was made in Senator McAllister's presence on February 15th, 1931 and its effect was to break the continuity of the desertion so that if obstinancy is to be established it must be by a showing on the part of the defendant-appellant that bona fide attempts at reconciliation were made after the date of the agreement, that is, after February 15th, 1931.

The defendant-appellant's brief (p. 24) then refers to attempts at reconciliation shown on pages 255, 256, 257 and 258. On page 255 Mr.

Pierson, referring to the memorandum book wherein he kept items that might refresh his memory, the existence of which book raises a question of his sincerity, testified:

“On March 8th (context indicates that this was in 1931) I made a statement to Mrs. Pierson that I thought we should see if we couldn't make a go of it and she said that 'We will never get together, because I positively refuse to have anything to do with you.' ”

The evidence heretofore cited in this Brief shows that on May 11th, following, Mrs. Pierson was willing to be reconciled.

There is no corroboration of the testimony as to the March 8th incident, and Mrs. Pierson, as will later be shown refuted this effort at reconciliation. There is nothing in the record either to show the bona fideness of the offer.

On page 255 the following data with respect to a reconciliation appears in the testimony of Mr. Pierson.

“With the purpose of having a reconciliation I went to Bridgeton with Mr. High. On my return that night she wanted to know what was the purpose of that visit. What was the result of it.” “I told her that she would be much better satisfied if she asked her brother or Mr. High; that in all probability she would not believe what I told her if I did tell her. She insisted, however, that I did tell her, and I told her that the purpose of the visit was toward reconciliation, and that her brother was going to talk with her, and I thought he was going to give her very good advice with the feeling that there might be a reconciliation. She made the statement at that time that we would never be reconciled.”

Had she not made the statement that they would never be reconciled it would have been obvious from what occurred. The defendant-appellant was crediting himself with a move looking to a reconciliation and would not even confide his moves to Mrs. Pierson, telling her to consult with Mr. High or her brother. This certainly was no attitude calculated to secure a reconciliation. It lacks sincerity and it was not bona fide.

The testimony as to attempted reconciliations on pages 256 and 257 have already been discussed in this brief and will not be further discussed. Beginning in line 35 on page 257 and continuing over on the next page appears the following testimony by Mr. Pierson:

“Then later on after the maintenance suit I wrote her a letter suggesting that there were many things that we might talk about, particularly pertaining to the children, and I suggested going to New York for dinner together, and if we wanted to have any further discussion that we could go on to my room. The reply I got was this letter that I have been shown here.”

The date of the letter in question was apparently May 17th, 1932 (pp. 196-197) and it was set out on page 196, line 29 as follows:

“My dear Howard? If you wish to discuss anything whatsoever with me I will be glad to make an appointment to meet you at Judge Newcorn's office.”

Mrs. Pierson identified the letter as having been signed by her and it was offered in evidence as Exhibit D. 4.

It is to be noted that Mr. Pierson did not present a copy of the letter suggesting that they dine in New York together and that if they wanted to have further discussion they could go

to his room. It would seem that in order to determine whether it was a bona fide offer of reconciliation there should be more facts before the court. The whole context of the letter should be in evidence.

Currier v. Currier, 68 N. J. Eq., 7 affirmed 68 N. J. Eq. 797, in the above cited case this court held:

“Petitioner testified that he wrote letters to his wife, which he claims notified her that he had withdrawn his consent to separate living and that he demanded her return to him. No copies of the letters were retained by the petitioner, nor is any witness called who saw them. What the contents of the letters were can only be discovered from petitioner’s testimony. There is therefore no direct corroboration of petitioner in this respect on this essential point in his case.”

There is nothing in the record to show that defendant-appellant demanded the production of the original letter, which letter he testified on page 258 that he wrote.

The following questions and answers appear on page 217 with respect to the letter offered in evidence.

“Q Now, Mrs. Pierson you wrote a letter which was offered in evidence; was that in answer to a request for a conference, that you talk with him in front of Judge Newcorn; is that correct?

A Yes.

Q What request did he make of you?

The Court: Is that letter available?

A Of course, I had much reason about mistrusting my husband’s sincerity.

Q No, I asked you what had he requested the conference about?

A Yes; so he wrote me I believe after the maintenance decree went into effect and said that he would not pay the amount of

maintenance that had been agreed upon and I took the letter to Judge Newcorn and asked him what did he think about it, and I suggest—asked him should I discuss it with Mr. Pierson. He said that any matter involving our legal difficulties, that I should not discuss it except with him.

Q Well was Howard's letter to you one asking for a conference with respect to a reconciliation?

A There were two letters; one letter he wrote me was that he would not pay the maintenance, there would have to be a reduction. The second letter he did write asking me to come to New York and discuss various things that arose or that might arise.

Q Well, did that letter contain any suggestion that he wanted to discuss reconciliation?

A No.

Q What was your thought as to what the purpose of the conference was?

A I mistrusted his sincerity; I didn't know what the purpose was, but I thought that anything that he wished to discuss I would discuss with him willingly with Judge Newcorn."

If the defendant-appellant had written a letter asking for a reconciliation and the letter was in evidence, or a copy of it, and seemed to be bona fide; and the request for reconciliation were refused, we might have some evidence in the above incident going to the obstinancy of the alleged desertion but Mr. Pierson's letter asked for no reconciliation. It discussed no bona fide intentions. There was no copy of it available to the court and Mrs. Pierson testified that she questioned her husband's sincerity and, in view of the argument that had arisen over the maintenance payments, she, quite properly replied with the suggestion that the conference be in the presence of her then solicitor, Judge Newcorn.

Mrs. Pierson testified (Case p. 162) with respect to efforts she made to be reconciled as follows:

“Q Now Mrs. Pierson after he left you on May 4th, 1931 were there any efforts on your part to be reconciled to him?

A On several occasions when I talked to Mr. Pierson I told him that it was his home and he had a right to return to it.

The Court: Was that after he left?

A This was after May 4, 1931; I told him in conversation several times that that was his home and that he had a right to return to the home and the home was open to him at any time. He wrote me a letter on one occasion and asked me if I would consider living in New York, that perhaps we could start over again in another place and I replied to it and told him YES, THAT I WOULD LIVE IN NEW YORK, and I asked him in that letter if he thought that it was for the advantage of our children to move to a large city and enter them in the city schools, and he replied to that letter; I mean he said he would not live with me until I could behave and be a competent wife.”

Mr. Pierson testified (Case p. 270) with respect to the same letter.

“My recollection of that letter was that Mrs. Pierson said she would be willing to come to New York provided I provided or offered a suitable place for her, and that I also think what the effect would be on the children. It was to that general effect.”

The various arguments set forth in defendant-appellant's brief from pages 24 to 31 have already been answered herein and need not again be covered.

The testimony relied on by defendant-appellant to establish the wilfulness of the alleged

desertion and its obstinacy has been analyzed herein and it is submitted that at no point is it convincing.

The Advisory Master correctly found in his opinion that the defendant-appellant had failed to establish wilful and obstinate desertion for the statutory period.

It has not been possible in this brief to argue point by point. The defendant-appellant stated four grounds of appeal on page 4 of his brief but did not separate his arguments so as to make it possible to argue directly against each point.

His argument could roughly be classified into two contentions. (1) That the evidence showed wilful, obstinate and continued desertion and (2) that the bill for maintenance should have been dismissed because it was predicated on a stipulation in the first trial rather than on the evidence introduced at the second trial.

The first contention has been answered herein by a thorough analysis of the evidence offered with reference to the alleged desertion.

The second contention, which the defendant-appellant argues on pages 31, 32 and 33 of his brief, is now in point.

The maintenance bill (Case p. 1) was filed in November, 1931.

After proper pleadings had been filed it came to a hearing on May 12th, 1932, before the Honorable James F. Minturn, Advisory Master, at his office 60 Park Place, Newark, New Jersey, William Newcorn being solicitor and of counsel with the complainant-respondent and Francis Child being solicitor for and of counsel with the defendant-appellant (Case pp. 13 and 14).

No counterclaim for divorce had been filed up to that time.

The hearing went on as usual but was terminated as the result of an agreement reached at the noon recess before Mrs. Pierson's case had rested (pp. 1 and 2 of the brief).

After the noon recess Mr. Child, solicitor for the defendant-appellant, dictated into the record in the presence of the court the stipulation (Case p. 13) on which the settlement was made which provided among other things for the payment of \$200.00 per month by Mr. Pierson to his wife for the support and maintenance of herself and the children. The stipulation also provided for the custody of the children and the payment of arrearages on prior orders up to the "time of the entry of the final decree in this matter."

The final decree (Case p. 16) was entered on March 11th, 1933, pursuant to the stipulation and without any questionable variance therefrom.

In September following the entry of the decree defendant-appellant filed a petition for divorce (Case p. 41) on the ground of desertion. He was met by an answer in lieu of a plea which set up the previous decree in the maintenance suit as a bar (Case p. 34, l. 25).

Defendant-appellant filed a special replication to the answer in lieu of plea attacking the decree and on motion the replication was stricken out since it amounted to a collateral attack. The stipulation dictated into the record had contained no reference to the charge of abandonment (Case p. 34), nor did the final decree adjudicate that the defendant had abandoned the complainant,

nevertheless that was the effect of the decree (*Oertel v. Oertel*, 92 N. J. Eq. 327).

On petition and order to show cause (Case pp. 21 to 31) the decree was opened and vacated.

The order to open the decree contains (p. 39) the following finding:

“The court having considered the matter and being satisfied that the final decree made on the 11th day of March, 1933, was based upon a stipulation made in open court whereby the defendant without intent to admit the charge of abandonment made against him agreed that the complainant might take a decree for the payment of \$200.00 per month for her maintenance and that of the children of the marriage and their custody, and it further appearing that the said decree impliedly adjudicates that the said defendant was guilty of abandoning the complainant as charged, which circumstances call for the exercise by this court of its discretionary power to open and vacate said decree to the end that the rights or interests of the said defendant, Howard W. Pierson, can be heard by this court and his interest properly protected;

It is, on this 30th day of April, nineteen hundred and thirty-four, ORDERED, ADJUDGED and DECREED that the final decree made in this cause be opened, set aside, vacated and for nothing holden.

It is further ordered that the two suits now pending in the Court of Chancery, docket 87-266 and docket 98-441, be and the same are hereby consolidated so that the divorce petition will become a counterclaim in the maintenance suit.

And be it further ordered that further necessary and proper pleadings may be filed by both parties in interest so that the matters therein contained may be brought to issue in one proceeding.”

The order went further to provide for alimony *pendente lite* and ordered Mrs. Pierson to answer the counterclaim for divorce in ten days (Case p. 10).

It will be noted that the court did not dismiss the maintenance action. The effect of the order was that the maintenance bill stood where it was together with all the pleadings and only "further necessary and proper pleadings" were to be filed by the parties. Nothing in the maintenance suit up to the time of the decree was disturbed. Hence the stipulation in the maintenance suit remained a part of the proceedings and eventually the vital part.

The Advisory Master had set aside the decree because in making the stipulation Mr. Pierson had without intent admitted the charge of abandonment. His conclusions (Case p. 35, l. 10) with respect to Mr. Pierson's intent were:

"his authorization to his counsel was in effect to agree on a monthly sum for maintenance, provided his right, if any, to bring suit for divorce at a later time be reserved to him and by inadvertence this does not appear in either the stipulation entered into in open court or in the decree."

And again on page 38:

"this adjudication was not based on evidence but on a stipulation which amounted to an incorrect and unintentional representation that the defendant admitted the abandonment charge. A decree will be opened when it has been made unjustly against a right or interest which has not been heard or protected."

It is a necessary conclusion that the whole purpose of opening the decree was to give Mr. Pierson an opportunity to assert the right he claimed to have been denied, namely, to contest his petition for divorce and it is a necessary con-

clusion that if he had no such right the decree should be re-entered or a decree to the same effect as the previous one should be entered. The court has authority under Section 26 of the Divorce Act "to make such further orders * * * as shall be just and equitable," and as Mr. Pierson's denied right had been heard the court could do nothing else but rely again on the stipulation and enter a decree accordingly and this notwithstanding the remainder of the evidence heard in the second trial.

The Advisory Master properly found in entering the final decree from which this appeal is taken (Case p. 279):

"It is true that the decree based upon the stipulation was opened and set aside by this court but that was on the ground that the defendant by suffering the decree to be entered against him had unwittingly and unintentionally precluded himself from subsequently asserting what he believed would be a cause of action for divorce for desertion. It now appears after full hearing that he has no such cause of action. Since it was to let in such cause of action that the decree was set aside, it follows that the stipulation calls for the re-entry of the decree."

The argument that a decree once opened cannot be re-entered is light. "Re-entered" in this sense means that a decree to the same effect, as nearly as circumstances warrant, should be entered.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

McDONOUGH & McDONOUGH,
Solicitors for the
Complainant-Respondent.

ANDREW V. McDONOUGH,
Of Counsel.

The first part of the paper discusses the general principles of the theory of the atom, and the second part discusses the application of these principles to the case of the hydrogen atom. The author shows that the theory of the atom can be derived from the general principles of quantum mechanics, and that the results of the theory are in agreement with the experimental facts.

The author then discusses the application of the theory to the case of the hydrogen atom, and shows that the results of the theory are in agreement with the experimental facts. The author also discusses the application of the theory to the case of the helium atom, and shows that the results of the theory are in agreement with the experimental facts.

The author concludes that the theory of the atom is a very successful theory, and that it is able to explain the experimental facts of the atom. The author also discusses the application of the theory to the case of the hydrogen atom, and shows that the results of the theory are in agreement with the experimental facts.

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