

INDEX.

	PAGE
Bill of Complaint.....	1
Affidavit of Sally B. Riker.....	6
Answer	7
Final Decree.....	12
Notice of Appeal.....	13
Petition of Appeal.....	15
Amended Notice of Appeal.....	17
Testimony	19
Opinion	89

WITNESSES FOR COMPLAINANT.

Sallie B. Riker:	
Direct	19
Cross	27
Re-direct	41
Re-cross	47
Re-called:	
Direct	73, 88
Cross	74
Mrs. Mary S. Byram:	
Direct	50
Cross	54
Re-direct	57
Re-called:	
Direct	66
Cross	67

	PAGE
Mrs. Minnie Hartung Cumminskey:	
Direct	57
Cross	64
Charles H. Bryam:	
Direct	65
Cross	65
Re-direct	65
Frederick B. Riker:	
Direct	70
Cross	72

WITNESS FOR DEFENDANT.

Frederick B. Riker:	
Direct	75
Cross	84
Re-direct	87

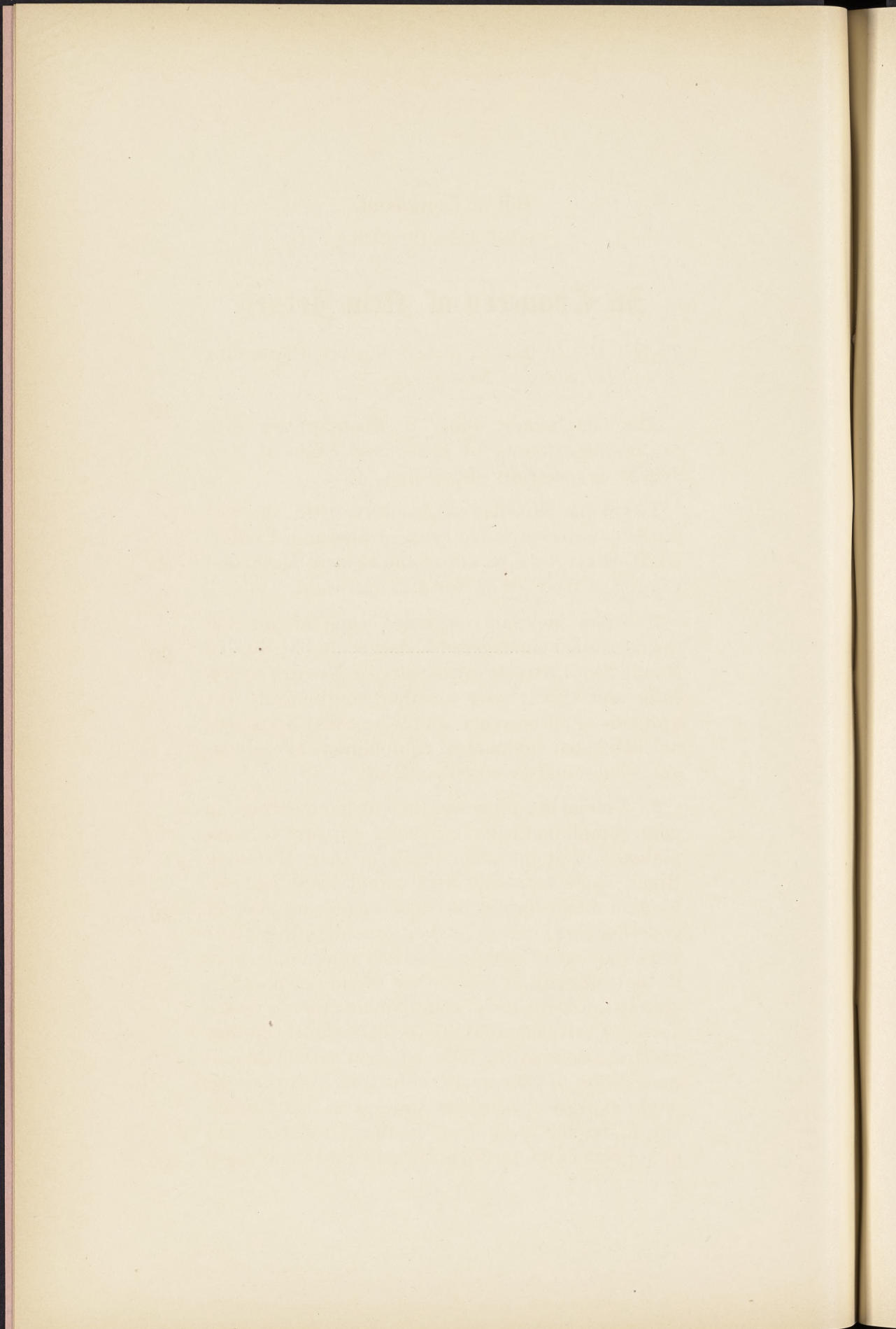
COMPLAINANT'S EXHIBITS.

	<i>Admitted at Page</i>	<i>Printed at Page</i>
C-1—Note from Frederick B. Riker to his Wife Sallie B. Riker.....	23	91
C-2—Letter Dated November 1, 1927 from Sallie B. Riker to Frederick B. Riker.....	24	91
C-3—Letter Dated December 1, 1927 from Frederick B. Riker to Sallie B. Riker.....	25	93
C-4—Letter Dated December 6, 1927 from Sallie B. Riker to Fred- erick B. Riker.....	25	93

	<i>Admitted at Page</i>	<i>Printed at Page</i>
C-5—Letter Dated February 25, 1930 from Frederick B. Riker to Sallie B. Riker.....	25	94
C-6—Letter Dated February 28, 1930 from Sallie B. Riker to Fred- erick B. Riker.....	26	94

DEFENDANT'S EXHIBITS.

D-1—Letter Dated May 25, 1926 from G. Earl Brugler to Eliza- beth Riker.....	37	96
D-2—Letter Dated October 20, 1927 from Sallie B. Riker to Eliza- beth Riker.....	38	97



Bill of Complaint.

(Filed July 19, 1928.)

In Chancery of New Jersey

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

The complainant, Sally B. Riker, of the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

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1. On the 28th day of January, 1925, she was lawfully married to her present husband, Frederick H. Riker, by a pastor of the Central Methodist Church in the City of Newark, aforesaid.

2. After her said marriage, complainant and the defendant commenced housekeeping at No. 103 North Ninth Street, in the City of Newark aforesaid, and there lived together continuously for upwards of three years, and where they cohabited until the abandonment of complainant by defendant as hereinafter complained of.

20

3. Defendant, from the time of his marriage to your complainant, gave meager support to complainant; that the defendant's mother, Elizabeth Riker, came to reside with complainant and defendant immediately on their commencement of housekeeping; that defendant and his said mother were extremely devoted to each other and were in the company of each other whenever possible, even to the exclusion of complainant; that from the outset of their married life the defendant's mother exerted a dominating influence over defendant and caused him to obey every whim and wish that she might express or he might anticipate; that defendant, under the spell of his mother's influence and at her command, performed every conceivable ser-

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Bill of Complaint.

vice to his mother possible, whether at the table, about the home or the room of his mother; that defendant's said mother frequently boasted to others how obedient and devoted her son always had been and that his marriage had not affected his feeling for her or attentions to her and cited
10 examples of defendant's abject obedience and submission to her will at all times throughout his life.

4. That defendant's said mother dominated his time and attention so completely that he would not undertake some of the most ordinary matters without consulting her wishes, even though said matters pertained to the strictly personal and private affairs of your complainant; that by reason of the dominating character of defendant's mother as aforesaid complainant and defendant became
20 estranged and unhappy due to defendant's failure to bestow the ordinary attentions and extend to complainant the ordinary considerations of a man devoted to his wife; that the longer that complainant and defendant cohabited together, the more defendant's said mother interfered with the household and other private relations and the greater became their estrangement; that defendant, except for a very rare occasion, never offered to take complainant to any place of amusement or
30 elsewhere and when complainant received an invitation from relatives or friends to go to a place of amusement or make a visit the defendant would refuse to accompany her unless his mother was to accompany them wherever they went; that while defendant's said mother was advanced in years, she enjoyed vigorous health and strength and was as active as defendant, taking long walks, going shopping in Newark and New York, personally attending to all her business affairs and collecting
40 rents; that defendant's said mother, enjoying full

Bill of Complaint.

strength and good health as she did, caused herself to be interested in everything about the home; that she meddled in the affairs of the household in which she had no part, endeavored to dictate as to how the house should be run, when purchases should be made and generally how the house should be kept, and when complainant did not always have the same ideas about matters and would not implicitly yield to her wishes as defendant was wont to do defendant's said mother became insolent and quarrelsome and made matters very unpleasant about the home. 10

5. That complainant frequently remonstrated with defendant concerning his lack of attentions to her and the interference of his mother in their affairs; that occasionally there was a little improvement in conditions but finally the defendant made no effort to regulate his mother and show a proper regard for complainant; that defendant finally stated that if complainant could not get along with his mother she could not get along with him and that they would both leave if she did not like the situation; that following this, the defendant's said mother became more dominating, sneering and obtrusive than ever until life in the home became unbearable and complainant was obliged to inform defendant that unless his mother lived elsewhere she would have to order her out; that defendant replied that his mother would not go unless he went with her and also that he would leave complainant if his mother went away; that complainant endeavored to persuade defendant to remain so they could live happily together and if he was not satisfied with their present place of residence, she would gladly accompany him elsewhere wherever he might provide a suitable home where his mother would not be a member of the 20 30 40

Bill of Complaint.

household; but notwithstanding complainant's entreaties, the defendant remained obdurate and on or about the 31st day of October, 1927, the defendant abandoned your complainant without justifiable cause and separated himself from her and has refused and neglected and still does refuse and neglect to maintain and provide for her except to contribute to complainant \$30.00 monthly, which is much insufficient and inadequate for her proper support, compelling complainant to depend upon the charity of her relatives for maintenance.

6. That the defendant is a man of considerable financial means, owns various properties in the City of Newark, has divers holdings in stocks and bonds, enjoys a good income therefrom, part of which possessions of defendant are in his own name and part being held by his mother; that defendant is also well able to earn a good livelihood by his own efforts; that the complainant has a small equity in a one-family frame house, known as No. 103 North Ninth Street, but has little or no income therefrom; that the defendant is about 56 years of age and has no occupation at the present time although is a skilled shoe cutter and his services have been sought; that said defendant is worth not less than \$30,000.00 and is abundantly able to maintain and support complainant in a manner suitable to their position.

7. Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That Frederick B. Riker, the defendant herein, may answer this bill of complaint (but without oath) and each statement therein made.

2. That he may be ordered and decreed to provide such suitable support and maintenance to

Bill of Complaint.

be paid and provided by him or made out of his property for the complainant and for such times as the nature of the case and the circumstances of the parties render suitable and proper.

3. That the 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 statute; and that he may be required to pay to the complainant a proper amount for counsel fees; and that she may have such further and other relief as to your Honor shall seem meet.

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4. That a writ of subpoena may issue out of and under the seal of this Honorable Court, commanding said defendant to answer this bill of complaint, and to abide by such decree as the Court may make in the premises.

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G. EARL BRUGLER,
Solicitor for and of counsel
with complainant.

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Affidavit of Sally B. Riker.

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

10 SALLY B. RIKER, of full age, being duly sworn according to law, upon her oath deposes and says that she is the complainant in the foregoing bill of complaint named; that the said complaint is not made by any collusion between her and the defendant, but in truth and good faith for the causes set forth in said bill of complaint.

Deponent further says that the matters and things set forth in said bill of complaint are true.

SALLIE B. RIKER.

20 Sworn and subscribed to before me this }
 17th day of July, A. D. 1928. }

LOUISE R. ROHS,
 Notary Public of New Jersey.

(A true copy.)

30 THOMAS BARBER,
 Clerk.

Answer.

(Filed October 20, 1928.)

IN CHANCERY OF NEW JERSEY.

Between SALLY B. RIKER, Complainant, <i>and</i> FREDERICK H. RIKER, Defendant.	}	On Bill, &c. Answer.	10
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The answer of Frederick H. Riker, the defendant, to the bill of complaint of Sally B. Riker, complainant. 20

This defendant, answering, says:

1. Paragraph 1 of the bill of complaint is admitted.

2. Defendant admits that he lived with the complainant at 103 North Ninth Street, in the City of Newark, until October 31, 1927, but he denies that he abandoned the complaint.

3. Defendant says that before he and the complainant were married he gave her exact and truthful information as to what means he had and it was understood between them that he should contribute for the maintenance and support of the complainant and himself the sum of \$60 per month, and that his mother should pay board of \$10 per week; and he further says that the arrangement so made was scrupulously adhered to by him and by his mother. The defendant admits that he is devoted to his mother and she to him, 30 40

Answer.

10 but he denies that he ever at any time excluded his wife from his companionship, and he denies that his mother dominated him in any manner and that he in any way neglected his duties to his wife, by reason of any attention that he gave to his mother; and he does not know that his mother ever made any such statements as are alleged in paragraph 3, to the effect that she boasted about her son's obedience and devotion, and he never heard of any such statements having been made until he was told they were alluded to in this bill of complaint.

20 4. The defendant repeats his denial that his mother dominated him in any way, and he denies that he and the complainant became estranged and unhappy, and he denies that he failed to bestow ordinary attentions upon the complainant and says that he gave her all his time, except when it was necessary to look after his mother, who was an invalid and had been an invalid for twenty-five years. He denies that he never offered to take the complainant to places of amusement and says that on the contrary she often went without him, because she wanted to go with other people and particularly her sister. He denies that his mother was in vigorous health and says that she required much attention, while she was able to a certain extent to go about she was not able to do any work and had to be waited upon. He denies that his mother meddled in the affairs of the household or dictated as to the way the house should be run and says that his mother spent her entire time in her room alone, excepting when she went to the dining room for lunch and dinner.

30
40 5. Defendant denies that the complainant ever remonstrated with him concerning his lack of at-

Answer.

tentions to her and the interference of his mother, and denies that he ever stated to complainant that if she could not get along with his mother she could not get along with him and that they would both leave; and he denies that his mother became dominating and sneering and obtrusive. He admits that his mother was told to leave the house, but it was not for the reason stated in the bill of complaint, and he says that he has set out in a subsequent paragraph herein a formal notice that was served on his mother. He denies that the complainant persuaded him to remain in the house and denies that she said she would accompany him elsewhere, and he says the fact is that she refused to go with him and wished to remain with her sister. He denies that he abandoned the complainant on October 31, 1927, or at any other time and denies that he has refused and neglected and does refuse and neglect to maintain and provide for her and says that he has been giving her \$30 per month since October 31, 1927, by agreement made with her at the time.

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20

6. Paragraph 6 is denied and defendant says that before his marriage, at his wife's request, he sold some property that he owned and invested the proceeds of sale in guaranteed mortgages of \$12,000, which pay him 5½% interest per annum; and that in addition to that he has about as much more income from another piece of real estate, and that he is now paying his wife about one-third of his net income. Defendant says that his wife and her sister, Mrs. Minnie Cuminsky, own the house 103 North Ninth Street, in the City of Newark, which cost \$12,000; that they have put up four garages in the rear, from which they receive rent. That Mr. and Mrs. Cuminsky board with the complainant, and complainant keeps lodgers

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Answer.

and boarders. Defendant denies that he is able to work and says that he has not worked at his trade since 1913, when he gave it up so that he could take care of his mother, who was alone and unable to look after herself. He says he cannot now get work if he wanted to, on account of his age and his loss of skill at his trade.

7. Defendant says that when he married the complainant it was understood that his mother was to live with him and that she was to pay board to the complainant. After the marriage the defendant's mother did live with them and paid board. Defendant did menial work in the house, doing all the work connected with the housekeeping; he washed dishes, cleaned house, did the chamber work, and even the laundry work. The real cause of any unpleasantness in the household was the complainant's sister, who wanted to get more money. In May, 1926, a demand was made upon the defendant's mother for more board, and for the purpose of avoiding any unpleasantness the demand was acceded to and more board was paid. On October 20, 1927, a formal notice in writing was served upon the defendant's mother to vacate the room which she occupied on October 29, 1927. On October 31, 1927, the defendant took his mother to a flat on the second floor of a house at 9½ Sterling Street, and is living with her, because it is absolutely necessary for him to do so. When he left his wife's home he handed her a letter, of which the following is a copy:

“A request and statement from Frederick H. Riker to his loving wife Sallie B. Riker: Please do not misconceive the meaning of my leaving this house. The true meaning is that I cannot remain in your sister's house any longer. In leaving your sister's house, I am

Answer.

going to establish a home of my own at 9½ Sterling Street, Newark, N. J. I am not deserting you; I am asking you will you come and live with me. I think we will live a happier life than ever before. I expect to furnish it with some of your furniture, some of mother's furniture and some of my furniture. You will please remember that it was you, without any suggestion from me, voluntarily offered my mother a home, which you should not have done without the full consent of all the owners of the house. That is what has caused all the trouble.

10

Dated, October 31, 1927.

FREDERICK H. RIKER."

At the time defendant left his wife's house, he told her that he would send her the \$30 per month, and he has been sending it to her regularly.

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FRANK E. BRADNER,
Solicitor for and of Counsel
with Defendant.

30

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Final Decree.

(Filed May 29, 1930.)

IN CHANCERY OF NEW JERSEY.

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Between

SALLY B. RIKER,
Complainant,*and*FREDERICK H. RIKER,
Defendant.On Bill, &c.
Final Decree.

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This cause coming on to be heard upon the bill and answer and proofs in the presence of G. Earl Brugler, of counsel with the complainant, and Frank E. Bradner, of counsel with the defendant, and the pleadings and proofs having been read and the arguments of counsel heard and considered, and the Court being of the opinion that the complainant is not entitled to the relief prayed for in her bill of complaint:

30

It is thereupon, on this 29th day of May, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the bill of complaint in the above stated cause be and the same is hereby dismissed.

E. R. WALKER,
C.

Respectfully advised,

J. O. BIGELOW,
Vice-Chancellor.

40

A true copy.

FERD GARRETSON,
Clerk.

Notice of Appeal.

(Filed December 12, 1930.)

IN CHANCERY OF NEW JERSEY.

68/629.

Between

SALLY B. RIKER,
Complainant,*and*FREDERICK H. RIKER,
Defendant.

10

On Bill, &c.
Notice of Appeal.

The complainant, Sallie B. Riker, hereby appeals from the whole and every part of the final decree made in the above entitled cause in the Court of Chancery, upon the 29th day of May, 1930, to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

20

Dated, November 20, 1930.

G. EARL BRUGLER,
Solicitor for Complainant.

30

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

G. EARL BRUGLER,
Of Counsel with Complainant.

40

Notice of Appeal.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 VICTOR C. HANSEN, of full age, being duly sworn according to law, upon his oath deposes and says, that he served the within notice upon Frank E. Bradner, solicitor for the defendant therein named, by leaving a copy of said notice at the office of said solicitor, in the Essex Building, in the City of Newark, and State aforesaid, on December 4th, 1930.

VICTOR C. HANSEN.

20 Sworn and subscribed to before me this }
 4th day of December, A. D. 1930. }

FREDERICK G. BERNHARD,
 Notary Public of New Jersey.

30

40

Petition of Appeal.

(Filed December 12, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

SALLIE B. RIKER,
Petitioner-Appellant,*and*FREDERICK H. RIKER,
Defendant-Respondent.Petition of
Appeal.

10

To the Honorable, the New Jersey Court of
Errors and Appeals, in the Last Resort in all
Causes.

20

The humble petition of Sallie B. Riker, the ap-
pellant in the above stated cause, shows that your
petitioner finds herself aggrieved by a Final De-
cree made in the Court of Chancery, bearing date
the 29th day of May, 1930, in a cause wherein she
was complainant, and Frederick H. Riker was de-
fendant, in this respect, to wit: that the said Final
Decree adjudges she is not entitled to the relief
prayed for in the bill of complaint and that said
bill of complaint be dismissed; and that your
petitioner humbly appeals from the whole and
every part of said decree upon the ground that
the same is erroneous for that the proofs before
the court establish the charges made by your peti-
tioner in her bill of complaint and the Court of
Chancery should have granted and afforded relief
prayed for in said bill of complaint.

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Petition of Appeal.

10 Your petitioner therefore prays, that the said Final Decree of the Court of Chancery be reversed, set aside and for nothing holden, and that the cause may be remanded to the Court of Chancery with directions to enter a decree in favor of complainant against the defendant, granting the prayer of said bill of complaint; and that your petitioner shall have such other relief in the premises as to this Honorable Court shall seem meet.

G. EARL BRUGLER,
Solicitor and of Counsel for
Petitioner-Appellant.

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Amended Notice of Appeal.

(Filed December 20, 1930.)

IN CHANCERY OF NEW JERSEY.

(68/629)

Between

SALLIE B. RIKER,
Complainant,*and*FREDERICK H. RIKER,
Defendant.

10

On Bill, &c.
Amended Notice
of Appeal.

Sat below: BIGELOW, V. C.

20

The complainant, Sallie B. Riker, hereby appeals from the whole and every part of the final decree made in the above entitled cause in the Court of Chancery, upon the 29th day of May, 1930, to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

G. EARL BRUGLER,
Solicitor for Complainant.

30

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

G. EARL BRUGLER,
Of Counsel with Complainant.

40

Amended Notice of Appeal.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 VICTOR C. HANSEN, of full age, being duly sworn,
 according to law, upon his oath deposes and says,
 that he served the within notice upon Frank E.
 Bradner, solicitor for the defendant therein
 named, by leaving a copy of said notice at the
 office of said solicitor, in the Essex Building, in
 the City of Newark, and State aforesaid, on De-
 cember 17th, 1930.

VICTOR C. HANSEN.

20 Sworn and subscribed to before me this }
 18th day of December, A. D. 1930. }

LOUISE R. ROHS,
 Notary Public of New Jersey.

30

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Testimony.

IN CHANCERY OF NEW JERSEY.

Between

SALLIE B. RIKER,
Complainant,

and

FREDERICK B. RIKER,
Defendant.

On Bill, &c.

68-629.

Transcript of
Testimony.

10

Transcript of the testimony taken in the above stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Tuesday, May 27, 1930, at 10 o'clock in the forenoon, before His Honor, John O. Bigelow, Vice-Chancellor.

20

Appearances:

E. EARL BRUGLER, Esq., for the Complainant.

FRANK E. BRADNER, Esq., for the Defendant.

SALLIE B. RIKER, the complainant, sworn in her own behalf, testified as follows:

30

Direct examination by Mr. Brugler:

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

Q. Where do you live? A. 103 North 9th Street, Newark.

Q. When were you married? A. On January 28, 1925.

Q. To the defendant in this case? A. Yes.

40

Sallie B. Riker, for Complainant—Direct.

Q. Where were you married? A. By the pastor of the Central Methodist Church, in Newark, on Central Avenue.

The Court: The marriage is admitted.

10 Q. After you were married, did you live with your husband? A. Yes.

Q. Where did you live with him? A. 103 North 9th Street.

Q. Where you are living at the present time? A. Yes.

Q. Have you lived there continuously since the time of your marriage? A. Yes.

20 Q. Following the marriage, of what did your household consist? A. My sister and her husband and my husband and his mother and a friend, Miss Garlick, and myself.

Q. She boarded with you? A. Yes.

Q. Who owned this property where you resided? A. It belonged to my sister and myself—my sister and her husband and myself.

Q. How long ago did you purchase that? A. About 7 years, I think it is.

Q. Prior to the marriage? A. Yes.

Q. And you and your sister have an equal interest in the property? A. Yes.

30 Q. What did you pay for the property? A. \$12,000.

Q. How much mortgage is there on the property? A. There is on the house and garage together \$9,900 mortgage.

Q. That is for the entire property? A. For the entire property.

Q. That would leave an equity of about how much? A. Oh, about \$3,000.

40 Q. Now, what were the arrangements made between you and your sister and her husband with

Sallie B. Riker, for Complainant—Direct.

respect to the conduct of the household following the marriage?

Mr. Bradner: I object. I can't see how that has anything to do with Mr. Riker.

The Court: Who are interested?

Mr. Brugler: The complainant and the defendant on one side and the sister. 10

Mr. Bradner: Did you include him?

Mr. Brugler: I think so.

A. I did.

The Court: I will hear the question.

Q. (Question read by the stenographer.)

The Court: And your husband.

A. No special arrangement. 20

Q. What was the arrangement with him? A. My sister merely boarded with me—she and her husband.

Q. What board did they pay? A. They gave \$100 a month.

Q. That was for the two of them? A. Yes.

Q. And that money was paid to you? A. Yes.

Q. Did your husband work? A. Did he go to business, do you mean? 30

Q. Yes. A. No.

Q. Did he contribute any money to the house?

A. He gave me \$60 a month.

Q. And his mother how much? A. \$10 a week.

Q. Now, with these moneys, what did you do?

A. I ran the house.

Q. And paid all the expenses of the house? A. Paid all the expenses.

Q. Was your husband home? A. Yes.

Q. Did he assist you in the work? A. He assisted me in the work. 40

Sallie B. Riker, for Complainant—Direct.

Q. Was there any agreement before your marriage as to how much your husband was to contribute? A. Before the marriage he said he would pay me \$25 a week.

Q. How much did he pay? A. \$60 a month.

10 Q. Did you live happily together? A. Well, fairly, when his mother didn't interfere.

Q. Was his mother living with you all the time? A. All the time.

Q. What was the trouble? A. She interfered and made life miserable for him as well as me.

Q. What did she say? A. One day when he came down from his mother's room he said she had been giving him the devil, and I asked him what about, and he said because he had brought her up here, meaning up to North 9th Street.

20 Q. How did you and your mother-in-law make out? A. Well, fairly well, only when she would get her tantrums and find fault about things, even about what I wore when I went out any place, if I put on too good a dress when I went down to my sister's.

Q. Did you and your mother-in-law have any differences? A. Yes.

Q. Tell us what the trouble was.

30 The Court: May I interrupt for a moment? The charge is, I understand, that the defendant deserted the complainant; now has all this matter you are bringing up so far any materiality to the issue?

Mr. Brugler: It may have. Perhaps I am anticipating a little bit too much. Perhaps it would be just as well if I leave that now. I will come back to it later.

40 Q. Well, the household was run in this manner until what date? A. You mean until he went away? He left on the 31st day of October.

Sallie B. Riker, for Complainant—Direct.

Q. What were the circumstances of his leaving?

A. Because his mother left. In fact, I asked her to pay more board and she said she wouldn't, and so I had to have a paper issued to have her pay more board from that time on, and then things were very bad. I then asked him to have her leave the house and he said if she went he would go, too; and he said when half of the family couldn't get along with the other half it was time they parted. And then he had a property he wanted to sell and he wanted me to sign off, and I told him I would if he would put my name on the mortgage, and he declared he wouldn't do it, he wouldn't have my name on the mortgage.

10

Q. Prior to your husband leaving was there any discussion at all about breaking up the home? A. Well, he asked me once to go some place else to live, and I told him I would if his mother didn't go.

20

Q. What did you say? A. And then I said I wouldn't go any place with her.

Q. Now, when your husband went away did he speak to you or leave any message for you at any time? A. He left a statement.

Mr. Brugler: Here is the statement set out in the answer.

Q. I show you a paper and ask you if this is the statement you refer to? A. This is the statement.

30

Mr. Brugler: I offer it in evidence.

The Court: Any objection?

Mr. Bradner: No, it is set out in the answer, being a statement of Oct. 31, 1927.

(Marked Exhibit C-1.)

Q. Where did you receive it? A. He handed it to me just before he went out of the house and asked me to read it after he was gone.

40

Sallie B. Riker, for Complainant—Direct.

Mr. Brugler: I call upon the other side for the reply.

Mr. Bradner: I produce statement of November 1st. Here is one, and there is another one.

10

Mr. Brugler: It is all one document. The defendant produces original letter, being a reply to the statement or letter marked in evidence Exhibit C-1.

Q. I ask you if this letter which has been produced by the defendant is a letter replying to the letter or statement left by your husband when he went away? A. Yes.

Q. This is dated what time? A. November 1st, 1927.

20

Mr. Brugler: I ask that it be marked in evidence.

(Admitted and marked Exhibit C-2.)

Q. At the time of your husband's leaving, or prior thereto, when he spoke about a separation and the breaking up of the home, did he at any time speak about what he would pay you, or what you would take if he went away? A. No, I don't know about that.

30

Q. Did he at any time speak to you about money? A. He said he loved to talk money.

Q. Anyhow, after he went away, has he been paying you anything at all? A. Paid me \$30 a month since he went away.

Q. Have you seen him prior to today following his leaving you in October, 1927? A. No, I have not.

40

Q. Have you had any communication from him? A. I have had two or three letters, I'm not quite sure which.

Sallie B. Riker, for Complainant—Direct.

Q. Have you got them? A. I think you have them. I think I had two letters, not counting this statement, since he went away.

Q. I show you a paper, and ask you if that is a letter you received from your husband? A. That is.

Mr. Bradner: What is the date of that? 10

Mr. Brugler: I ask to have this marked in evidence.

(Admitted and marked Exhibit C-3.)

Mr. Brugler: I ask the defendant to produce letter dated December 6, 1927, written by the complainant to the defendant.

(Counsel produces paper.)

Q. Did you reply to the letter last marked in evidence as C-3? A. Yes. 20

Q. Is this the reply? A. Yes.

Q. You mailed that to your husband? A. Yes.

Mr. Brugler: I ask that that be marked in evidence.

Mr. Bradner: No objection.

(Marked Exhibit C-4.)

Q. Following this, did you receive any further communication from your husband? A. Yes, a letter received recently. 30

Q. Was it registered or unregistered? A. Registered.

Q. Is this the letter (handing witness paper)? A. Yes.

Mr. Brugler: I offer it in evidence.

(Admitted and marked Exhibit C-5.)

Sallie B. Riker, for Complainant—Direct.

Q. Did you reply to this letter? A. Yes.

Mr. Brugler: I call upon you to produce letter dated February 28, 1930, written by the complainant to the defendant.

(Defendant's counsel produces letter.)

10

Q. Is this the reply that you made?

Mr. Bradner: Letter dated what?

Mr. Brugler: Letter dated March 2nd, 1930.

A. Yes, this is the letter.

Mr. Brugler: I ask that that be marked in evidence.

(Admitted and marked Exhibit C-6.)

20

Q. Did your husband at any time call to see you after he went away? A. No.

Q. Did you have any communication other than by these letters? A. Nothing at all.

Q. Were you willing to live with your husband? A. Yes.

Q. Did you love your husband? A. Yes.

Q. And at the time he went away, were you willing to live with him? A. Yes.

30

Q. Would you have gone anywhere to live with him? A. Yes. I told him that.

Q. Was there any condition to that at all? A. Only that his mother not live with us. That was the only condition.

Q. Except for that, would you live with him anywhere? A. Any suitable place, yes.

Q. Any suitable convenient place? A. Yes.

Q. Do you know anything about your husband's financial circumstances? A. When we were married he was worth about \$24,000 or \$25,000, and

40

Sallie B. Riker, for Complainant—Cross.

he said when we were married that he and his mother divided their money; he took half and she took half.

Q. And since then his mother has died? A. Yes.

Q. You are informed—

Mr. Bradner: I object to that. That has nothing to do with the case.

10

Mr. Brugler: All right; strike it out.

Q. And since your husband went away he had been paying you— A. \$30 a month—

Cross-examination by Mr. Bradner:

Q. How old are you? A. I am 57.

Q. You were 52 when you were married? A. Yes.

20

Q. Had you ever been married before? A. No; no, sir, I hadn't been.

Q. How long had you been supporting yourself? A. Well, for a good many years; I don't know.

Q. Well, you had always supported yourself? A. My sister, she went to work, and I always kept the home.

Q. Just prior to your marriage, had you been keeping a lodging house in Rector Street, in the City of Newark? A. In a lodging house? We lived in Rector Street, but I never kept a lodging house. I had a few roomers, but I never kept a lodging house.

30

By the Court:

Q. What was your name before you were married? A. Hartung.

By Mr. Bradner (resumed):

Q. And were you the sole proprietor of that house? A. Yes. My sister went to business and boarded with me, and I rented a few rooms.

40

Sallie B. Riker, for Complainant—Cross.

Q. You took all the income from the house?

A. Yes.

Q. You paid the taxes, did you not? A. I paid all the expenses.

10 Q. Was there a mortgage on the house in Rector Street? A. Oh, we didn't own that house. All the expense was the rent that I had to pay.

Q. Well, were you living in Rector Street when you met Mr. Riker? A. Yes.

Q. What number in Rector Street was your home? A. 35 Rector.

Q. Did he live in Rector Street? A. Yes.

Q. What number was his home? A. 41.

Q. Did he occupy the whole house? A. Yes—well, no; he rented two floors of their house.

20 Q. And he and his mother had the first floor? A. Basement and the first floor.

Q. Who lived with him and his mother? A. No one that I know of.

Q. When did you meet him; what year? A. Well, I couldn't tell you the year. He went to the same church that we belonged to, and I just casually met him.

Q. Were you living in Rector Street before he came there to live? A. Yes.

30 Q. And how soon after he came there to live did you meet him? A. (The witness pauses.)

Q. Did you answer? A. I haven't answered; I am trying to think. I knew him perhaps three years before we were married; yes, perhaps four years. I really can't recall how long I knew him.

Q. Well, did you know his mother? A. Very well.

Q. Did you know her well enough to go in to see her? A. Yes.

Q. And you went in? A. I went in occasionally.

40 Q. Did she introduce you to some card party that she had to do with? A. Yes.

Sallie B. Riker, for Complainant—Cross.

Q. And took you about with her? A. Well, she asked me to join the club that she belonged to. That is, she asked me to come in as a substitute, and then the club asked me to join, which I did, and we went together. She didn't take me home; I paid my way and she paid her way.

Q. Well, when you were at her home sometimes you had opportunity to see who was doing the work there, did you not? A. Well, when I was in it was only of an evening, and there was really nothing to be done. 10

Q. Did you ever go there in the daytime when she wasn't there? A. I recall going in once with some flowers for her, and she wasn't there.

Q. When you have been there have you ever seen Mr. Riker working about the rooms? A. I can't say that I ever saw him working about. They were always sitting down when I went there. 20

Q. Well, somebody did the work there, didn't they? A. Must have.

Q. Do you know who did it? A. I think Mr. Riker did it.

Q. He did all the work of the house? A. I can't say as to that; I don't know.

Q. Do you know whether or not his mother ever did any work except to dress herself? A. If she didn't it wasn't because she wasn't able to. It was—— 30

Mr. Bradner: I move to strike that out.

The Court: Strike it out.

Q. Do you know whether she did or not? A. I don't know; I couldn't say.

Q. When you told her to go out of the house, she was 80 years old, wasn't she? A. Yes; she was perfectly strong and healthy. 40

Sallie B. Riker, for Complainant—Cross.

Mr. Bradner: Now, I object to that, and ask to strike it out.

The Court: Strike it out.

10 Q. So you knew Mr. Riker three or four or five years before you married him? A. Well, perhaps four.

Q. Did he ever take you anywhere during that time? A. No.

Q. Did he ever call on you? A. He came to the house.

Q. What house? A. He came to the house 35 Rector Street. He would drop in occasionally.

Q. When? A. Every afternoon.

Q. When you were alone? A. Yes.

20 Q. Did he ever go out with you at any time? I think you said no, he never took you anywhere. A. Well, I don't recall that we ever went any place together.

Q. Was he working anywhere, do you know? A. Well, he worked at the time of the War. That is the only time he worked since I have known him.

Q. Well, you didn't know him then, did you? The War stopped in 1918. A. Well, I couldn't say that he worked then; only from what he said.

30 Q. Didn't he tell you that he hadn't worked for from 10 to 12 years, and had been taking care of his mother all the time? A. I know he said he worked at the time of the War, but I never saw him go to work. I will say that.

Q. During the whole time he lived there in Rector Street did you see him going out to work there? A. No, I didn't know he did; he said he worked there.

40 Q. Did he tell you his family history about his mother and father? A. No, he never told me any of his family history.

Sallie B. Riker, for Complainant—Cross.

Q. Didn't he tell you his father had taken care of his mother up to the time of his father's death, and that after his father's death he had given up his work to take care of his mother? A. He never told me that.

Q. And you didn't know that he was taking care of his father? A. His father went to work. 10

Q. You didn't know his father? A. That is what they said.

Q. Who said? A. Mrs. Riker always spoke: "Poor little Pa went to work so pale that women got up out of the street car and gave him a seat."

Q. I am talking about Mr. Riker. A. He didn't tell me anything.

Q. Did you invite him and his mother to a little place somewhere called "Potter", I believe? A. Yes, they used to go with us in the summer time, and they went down and back at night, and once they stayed overnight. 20

Q. When did Mr. Riker propose marriage to you? A. Around the holidays, just before we were married in January.

Q. About Christmas time? A. Yes, about that.

Q. And where were you then? A. I was at home.

Q. In Rector Street? A. No, North 9th Street.

Q. Oh, you had moved to North 9th Street? A. Oh, yes, we had moved to North 9th Street. 30

Q. When did you move to North 9th Street? A. We lived there, I think, 7 years.

Q. You had moved, then, in about 1923? A. Yes.

Q. Did he go up nights to see you at North 9th Street? A. Yes, he came occasionally.

Q. Did his mother ever visit you there? A. Yes.

Sallie B. Riker, for Complainant—Cross.

Q. Did she come there alone? A. Yes, she went all around alone, right up to our last living in North 9th Street.

Q. You and her mother were very good friends?

A. When we went out to the Club, before we were married, we were very friendly.

10 Q. Now, when Mr. Riker spoke about marriage to you did he say anything about his mother? A. No.

Q. You mean to say that he didn't mention his mother to you when he talked about marriage? A. When he proposed to me he didn't say anything to me about her. Before that he had spoken about his mother.

20 Q. Hadn't he said to you that he couldn't marry you and leave his mother? A. I don't recall that he ever said that he couldn't marry me and leave his mother.

Q. Hadn't he said that he wouldn't marry and leave his mother? A. I didn't hear him say that.

The Court: Mr. Bradner, would it make any difference if he had said that and she thoroughly understood, and the parties had even made an agreement to that effect, would that modify the status?

30 Mr. Bradner: I think if it could be shown that it was distinctly agreed that the mother should live with him and that was a part of the marriage contract.

A. There was no marriage contract—

The Court: Just a moment.

Mr. Bradner: If that was a part of the marriage contract it would make a difference. That might constitute justifiable cause for leaving.

Sallie B. Riker, for Complainant—Cross.

The Court: I was wondering whether any contract that the parties might make would affect the marriage, could vary the effect of the marriage. They certainly couldn't agree that one party could have two or three wives or two or three husbands.

Mr. Bradner: They couldn't agree to anything that would be illegal, but the wife could agree to support from her husband; she could take a settlement in advance. There would be many agreements that could be made that would be a part of the contract. In its essence that marriage is a civil contract, but the State comes in and says, "We have got something to say about that, too, before you can break it up."

The Court: Going a little further into the marriage status: There are duties and obligations arising from that no matter what the agreement is.

Mr. Bradner: I am not arguing that he should be released from his marital obligations altogether unless there was fraud. If that was made with no intention on the part of one of them to keep it, that might constitute fraud on the other, and the marriage could be dissolved for that reason, on the ground of fraud vitiating the contract. I think I have covered the subject.

The Court: All right, go ahead.

Mr. Brugler: I have a case here.

The Court: I will wait until the argument.

Q. Didn't you ever discuss with Mr. Riker before your marriage what was to become of his mother in case of your marriage? A. He said she would come to live with us.

Sallie B. Riker, for Complainant—Cross.

Q. Did he state that? A. Yes.

Q. And you agreed to that, didn't you? A. Well, it was just understood. There was no agreement made.

10 Q. Now, before you were married did you suggest to Mr. Riker that he should sell his house in Rector Street? A. I didn't ask him to keep the house, because it was fully furnished and I suggested that we rent it as a furnished-room house and hire someone to take care of it.

Q. Well, the house was sold, was it not? A. It was afterwards.

Q. It was sold at a very great sacrifice, was it not? A. Well, I can't say as to that, but it wasn't because I wanted him to sell it.

20 The Court: Answer the questions and be as silent as a clam.

Q. You didn't want him to sell it? A. No.

Q. How long before you were married was the house sold? A. I couldn't tell you.

Q. Wasn't the sale, in fact, consummated a week or two before you were married? A. Yes, it was. He said—

30 The Court: Just a moment. You have answered the question.

Q. Then, of course, you knew when you were married that the house had been sold and that there was no place for the old lady to go to?

Mr. Brugler: If the court please, I object to this line of questioning about these pre-nuptial matters. I don't necessarily object, but I don't think it belongs to the case, and I make my objection at this time.

40

Sallie B. Riker, for Complainant—Cross.

The Court: I am inclined to think you are right, but I am going to overrule your objection just the same, because I may change my ideas on the law later when I have the facts.

Mr. Bradner: I will admit it is a new question that I think is involved in this case. 10

Q. (The question is read by the stenographer). Is that so? A. Well, I presume I would.

Q. Well, you expected her to come and live in your house, didn't you? A. Yes, I expected her to come and live there.

Q. You had made arrangement with Mrs. Riker to pay board? A. No.

Q. And you didn't know how much she was to pay? A. She said she would give me \$10 a week. 20

Q. And you agreed to that? A. There was no agreement made. She simply said she would give me \$10 a week.

Q. You didn't say whether you would take it or not? A. She just handed it to me.

Q. Did you go away on a honeymoon with your husband? A. Yes, sir.

Q. And when you came back you found your mother-in-law installed in your house? A. Yes, she came before we had got home. 30

Q. She had moved in? A. Yes.

Q. She had a room by herself? A. Yes.

Q. She put her own furniture in it? A. No.

Q. Not any of her own furniture? A. She brought her own furniture but she didn't use it. Different things were stored in the store-room. She had a chair—rocking chair; outside of that it was my own furniture.

Q. And for perhaps two years she lived there; you went about with her as you had before and 40

Sallie B. Riker, for Complainant—Cross.

were friendly, were you? A. Well, I can't say that we were friendly, because she made it so miserable for me. That is, when we went to the Card Club we had to go together. We went to the same club.

10 Q. During the time that she was living at your house did you ever go up to a country place called Potter? A. She went up to my brother's. Mr. Riker wouldn't go any place with me without she went.

Q. Did you go away quite a good deal by yourself? A. Yes, because otherwise I couldn't go at all.

Q. You did go by yourself? A. Yes.

20 Q. You went out to places of amusement with your sister, did you not? . No, I went down to her farm, not to places of amusement.

Q. Didn't you go with your sister and her husband to places of amusement? A. No. What do you mean by "places of amusement"?

Q. Didn't you go to the movies or something of that kind? A. No.

Q. Did you go away over the week-ends? A. I went to Potter to my sister's. They were living down there.

30 Q. When you went there to Potter it was generally in the summer time? A. Yes, sir.

Q. And when you went away you left your husband at home? A. Yes, sir.

Q. Who took care of the house while you were away? A. Well, I presume he did.

Q. Who got the meals? A. I can't say; I wasn't there. I don't know who got them.

Q. Who washed the dishes? A. I don't know; I couldn't tell you.

40 Q. Who washed the dishes? A. Well, I have always a woman Monday. We came home early

Sallie B. Riker, for Complainant—Cross.

Saturday or late Saturday nights or Monday morning to do the washing.

Q. Did you have boarders in the house? A. Only Miss Garlick.

Q. The old lady kept pretty closely to her room? A. Yes.

Q. Were her meals taken to her? A. Oh, her breakfast always. 10

Q. Who took it? A. Mr. Riker.

Q. Did she come downstairs to all the other meals? A. All the other meals she came downstairs if—

Q. Did she require no attention at night that you know of? A. No, not that I know of.

Q. Don't you know that he rubbed his mother with alcohol every night? A. I never knew it if he did. He was in his mother's room a great deal, but I didn't know it. 20

Q. Didn't he tell you that he had rubbed his mother with alcohol for years? A. I never heard him say that.

Q. Well, you finally made up your mind that you wanted more board? A. Yes.

Q. You had consulted counsel? A. I did; had to.

Q. And you had him write a letter? A. Yes, sir. 30

Q. Did you see the letter before it was sent? A. Yes, sir.

Q. That is the letter, isn't it? A. Yes.

Mr. Bradner: I offer it.

Mr. Brugler: No objection.

(Admitted and marked Exhibit D-1.)

Q. I observe in that letter that all you ask of Mrs. Riker that she pay you more board; that is all you wanted her to do? 40

Sallie B. Riker, for Complainant—Cross.

Mr. Brugler: I object. The letter will speak for itself.

Mr. Bradner: Well, I can call her attention to it.

The Court: I will read the letter myself. You may proceed.

10

Q. You had no ground of complaint against Mrs. Riker at that time except that you thought she wasn't paying enough board? A. Indeed, I had enough ground for complaint.

Q. But you didn't say anything about it at that time? A. To her?

Q. Yes. A. Why certainly.

20

Q. Why didn't you write something about it? A. She was the one that caused the trouble, because we never went out without she went.

Q. I call your attention to the letter, that you would go to a lawyer and say that you must have more money, and you don't say anything about any grievance against her? A. I asked her for more money because I thought or I think she ought to pay more money.

Q. Didn't you ask for more money because you wanted to get her out? A. That didn't help the grievance any; that was still there.

30

Q. Did you give her another paper after that? A. Yes, sir.

Q. Is that the paper (exhibiting paper to witness)? A. That's it.

Mr. Bradner: I offer that in evidence.

(Admitted and marked Exhibit D-2.)

Q. That was a final notice, wasn't it, to get out (showing witness Exhibit D-2)? A. Yes.

40

Q. After you served the last notice did your husband say to you, "If my mother has to go I

Sallie B. Riker, for Complainant—Cross.

will have to go with her''? A. I don't recall his saying that, but she said, "If I go, do you suppose I will go alone?"

Q. Where did you expect her to go to after you put her out? A. There were a plenty of places that she might go to board, and she spoke once about going to a home. 10

Q. You knew she couldn't go to a home as quick as you could put her out? A. I wouldn't have put her out at that time if I knew she was planning to go to a home.

Q. Do you know where your husband took his mother? A. Not until I read the letter that he left there, the statement.

Q. Did you say to him before he left that your home was a happy home until he came there? A. No, I never said that to him. 20

Q. You were 52 years old when you were married, I think you said? A. Yes, sir.

Q. Did you expect to have any children? A. No, I did not.

Q. Why did you marry?

Mr. Brugler: I object.

The Court: I don't think it is material.

Mr. Bradner: It all bears on the other question, that a part of this marriage between them was more of a profit together. 30

The Court: I will allow it.

Q. Why did you marry? A. Because I loved him.

Q. Did he ever tell you that he loved you? A. Yes, he did.

Q. Do you remember an occasion at Potter when you were out in the field somewhere, and he said to you that he loved you, but that he couldn't marry you because he couldn't leave his mother? A. He didn't say that. 40

Sallie B. Riker, for Complainant—Cross.

Q. What did he say? A. He said that he loved me, but he couldn't marry me; that he could only afford to keep the two of them; he couldn't afford to keep a third party.

Q. He couldn't marry you and live with you and support you without his mother's help; is that it?

10 A. He didn't say that.

Q. But he did make some explanation for not marrying? A. He said he couldn't afford it; that's what he said.

Q. Now, Mrs. Riker, didn't he make it plain to you that he could not leave his mother as long as she lived; that he had to take care of her? A. He never told me that he could not leave his mother and that he had to stay with her.

20 Q. After he had gone and before you brought this suit for separate maintenance did you bring a suit against her for \$10,000 damages for alienating his affections? A. Yes, sir.

Q. Did you think that she had alienated his affections from you? A. Yes, she dominated him every minute of the day.

Q. She dominated him just as much before you were married, didn't she? A. I don't know about that.

Q. Did you hear of her death? A. Yes.

30 Q. At the time, in June, 1929? A. Yes.

Q. Did you go to the funeral? A. No, I did not.

Q. Did you send any message of sympathy? A. I did not; he didn't send me word.

Q. How did you hear it? A. My sister-in-law called me up and told me.

Q. Your sister-in-law called you up? A. Called me up on the 'phone.

Q. Where was she? A. She was in Cauldwell.

Q. Is she living with you now? A. No.

Sallie B. Riker, for Complainant—Re-direct.

Q. And you are running that house alone? A. My sister and her husband live with me, and Miss Garlick.

Q. And your brother-in-law's sister? A. No, my brother's widow.

Q. And they didn't go to the funeral, either? A. No.

10

Q. How many roomers have you in the house? A. I haven't any roomers.

Q. None now? A. No.

Q. Have you any boarders there? A. Miss Garlick.

Q. When Mr. Riker told you that he would go with his mother, did you say: "I don't care where you go; all I want is your money"? A. I never said it; I begged him not to go.

The Court: I ordered you off on a line of examination, Mr. Brugler. You may continue that if you wish to.

20

Re-direct examination by Mr. Brugler:

Q. Mrs. Riker, how did you and Mrs. Riker, your mother-in-law, make out in the same household following the marriage? A. She was always interfering.

Q. In what way did she interfere? A. About the food. She said that I prepared too much food, and she interfered about mostly everything—she had something to say.

30

Q. Did you have words with her? A. Yes.

Q. Did you speak to your husband about the difficulty with his mother? A. Yes.

Q. What did he say? A. He said if I couldn't live with her I couldn't live with him. It was time we parted.

40

Sallie B. Riker, for Complainant—Re-direct.

Q. Did you speak to your husband, also, about obtaining more board from your mother-in-law?

A. Yes.

Q. What did he say about that? A. Why, I don't just recall what he said.

10 Q. Did he ever say anything to you about how he made out with his mother—his troubles—whether he ever spoke to his mother about the conditions about the house? A. He said she gave him the devil every time he went up in her room.

Q. What was his mother's physical condition?

A. Very good; she never has a sick day.

Q. Was she a large woman, or small? A. Very large woman; strong.

Q. Did she at various times leave the house? A. Went out at any time alone.

20 Q. Would she remain long? A. All day and sometimes overnight.

Q. Were you ever with her? A. Only when we were to the card club.

Q. Did you go anywhere else? A. Not without Mr. Riker.

Q. With Mr. Riker, where did you go? A. To a cousin's, in New York.

30 Q. Were you ever in New York? A. Well, Mrs. Riker and my sister and I went to New York a whole day shopping.

Q. Was your mother-in-law ever sick, that you know of? A. Never.

Q. Did she ever complain of any physical infirmity or illness? A. I never knew it.

Q. Her breakfast she always took in her room? A. Yes.

Q. And that was carried to her by Mr. Riker? A. Yes.

Q. The other meals she ate downstairs? A. Yes.

40 Q. She spent a large amount of time in her room by herself? A. Yes.

Sallie B. Riker, for Complainant—Re-direct.

Q. Did you ever have company at your house?

A. Yes.

Q. At any time you had company you saw your mother-in-law, too? A. Yes, she always came down.

Q. Did you ever see her at any place when she was not downstairs? A. She used to listen over the balusters. She knew everything that was going on; knew everyone that came in and what was said on the telephone.

10

Q. Did your husband help you about the house? A. Yes.

Q. What did he do? A. He washed the dishes while I dried them and cleared away the things, and on washday he turned the wringer and handled the boiler.

Q. Did he do all the work? A. He did not; he simply helped.

20

Q. Did you work? A. I did, all the time.

Q. Did anybody else work in the house besides you and your husband? A. When my sister was there she always helped to dry the dishes.

Q. Did she always used to pay board? A. Rent when she was away; board while she was home.

Q. How long was she away? A. She went away about the first of September.

Q. During the time that you and your husband resided together and you collected these moneys from your sister and your mother-in-law, and had some money also from your husband, did you save money—make money? A. I didn't make money.

30

Q. Did you save money? A. I may have saved a little.

Q. Not much? A. Not specially.

Q. And at the present time have you any money or means other than your share in the equity in this home? A. Very little.

40

Sallie B. Riker, for Complainant—Re-direct.

Q. What is it? A. I had three shares of Pullman before it was cut up, and I had a few shares of Telephone & Telegraph, and a little limestone.

Q. Well, what would you say was the value of this stuff that you owned? A. I really don't know.

10 Q. A thousand dollars? As much as that? A. A year, do you mean?

Q. No, the worth, the market value of the stock that you owned. A. I really don't know. Not a great deal.

Mr. Bradner: How many shares has she got of T. & T.?

A. I think it is three.

The Court: That would be about \$575.

20 Q. How many shares of the other stock? A. Pullman. It was three before it was cut up. Whatever it is now I can't say.

Q. How many shares of limestone stock? A. Probably 15.

Q. What did you pay for that?

The Court: Pardon me, what is limestone stock?

30 Q. You mean Limestone Products of America. How much did you pay for those 15 shares? A. I couldn't say. Some of them were given to me for other stock.

Q. How much did you pay for the shares you did buy? A. I think \$50.

Q. Now, on these various stocks do you receive dividends? A. Very small dividend on the Limestone.

40 Q. How many dollars a year? A. Perhaps fifteen or eighteen dollars.

Sallie B. Riker, for Complainant—Re-direct.

Q. What dividend do you get on the other stocks? Do you get 9% on the Telephone stock?

A. I believe it is.

Q. What do you get on the other stock? A. I really don't know.

Q. Well, if you can't tell the percentage can you tell the amount that you got last year? A. On the Pullman it seems to me I got \$9, or something like that.

10

Q. For what you owned? A. Yes.

By the Court:

Q. Do you know what this limestone company does? Does it have a quarry up in New Jersey?

A. Yes, Sussex County.

By Mr. Brugler (resumed):

20

Q. Now, did you and your husband go around much together? A. No.

Q. Did you ever speak to your husband about going out? A. Yes.

Q. Did he ever speak to you about going out—invite you out? A. Very seldom. He took me to the movies probably two or three times.

Q. Two or three times during your entire married life? A. Yes.

Q. And during the time that you lived together did you ever speak to him about going to specific places? A. Yes.

30

Q. What were those places? A. I wanted him to go with me to my brother's in Warren County on Lincoln's birthday and he wouldn't go without his mother, and I stayed at home; and in July I wanted him to go up in the Catskills and my sister and he were invited and he wouldn't go. There was a friend of Miss Garlick's, and Miss Garlick was going also, and I said I couldn't go because it was a five-passenger car, and he said that would

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Sallie B. Riker, for Complainant—Re-direct.

be all right; we could crowd in, and it wasn't possible for his mother to go and so he wouldn't go.

Q. Was his mother invited to go? A. His mother wasn't invited to go.

10 Q. Who invited you? A. My sister asked me and my husband to go up there and he insisted that she go, too.

Q. Now, you said your mother-in-law went out at various times? A. Yes.

Q. Do you know where she went to? A. Went downtown to collect her rent, and would go around shopping, and go in the movies, and was gone from 9:30 in the morning until half past five at night, many times alone.

Q. Did your mother-in-law pay you \$14 a week after the notice? A. Yes.

20 Q. After you sent out the letter? A. Yes.

Q. Immediately after you sent out the letter? A. Yes.

Q. What was the occasion of your giving this notice marked Exhibit D-2? A. Because she wouldn't pay it without I sent this notice.

30 Q. In other words, then, she did not pay you the increase in board until you served her with this notice to vacate? A. She said she would not pay any more, and I asked her why, and she said: "Isn't Fred my son and he was giving me \$60 a month".

Q. And she did not pay you until she was served with that notice? A. No.

Q. How long after this notice was served was it that your husband went away? A. Just what date is that notice?

Q. October 20, 1917? A. It was a year later. She went away October 31st.

40 Q. Your mother-in-law did pay the \$14 for about a year? A. Yes.

Sallie B. Riker, for Complainant—Re-cross.

Q. Now, during this year was there more trouble? A. Yes, there was more trouble. She was uglier than ever.

Q. Did you also speak to your husband about this trouble? A. Yes, and he said she would cut him off from her money if he didn't speak to her.

Q. Your husband told you that? A. Yes. 10

Re-cross examination by Mr. Bradner:

Q. When did you buy these surplus stocks? A. I couldn't tell the date off-hand.

Q. Have you bought them since your husband went away? A. Oh, no; I had the Pullman for quite a long time.

Q. Have you bought any stocks since your husband went away? A. No, I don't think so. 20

Q. Did you buy any while he was living with you? A. Yes, I think it is the Telephone & Telegraph. I guess he got rights to something, and I subscribed to them.

Q. While he was living with you? A. Yes.

Q. And did you get those rights after he went away? A. Well, each time that they have offered rights I have taken my little share.

Q. In buying these stocks, did you use any of the money that came from your husband? A. I couldn't say. I used the money I had; I couldn't say just what it was. 30

Q. You had sufficient money to buy stocks with over your actual expenses. A. Well, it has been very small. I can't say that I have bought any since he went away.

Q. Now, you have had regularly every month \$30 since he went away? A. Yes.

Q. Have you put any of that money in the savings bank? A. No, I have used it right along.

Q. Have you bought any stocks with any of it? A. No, I have not. 40

Sallie B. Riker, for Complainant—Re-cross.

Q. Or any other property? A. Nothing.

Q. I would like to ask you one more question, Mrs. Riker: You know where your husband is living now, don't you? A. Yes.

Q. You know the place? A. Well, I know where it is.

10 Q. Have you seen the house? A. Yes, we passed it when he was living with me, in my sister's car.

Q. You know he has a five-room flat in the house that he owns himself? . So he says.

Q. Are you willing to go there and live with him? A. The way he has treated me, I don't think I would be justified. He has never come near me since he left, and he has had ample opportunity. Even in my last letter I tried to make an appointment with him, and I never had an answer from him.

20

Q. I ask you now, are you willing to go there and live with him now?

Mr. Brugler: I believe I will object, on the ground that the time has passed for this man to make any overtures that would be effectual in law. I object to the question.

The Court: When did the separation take place, October, 1927?

30 Mr. Bradner: Yes. It is never too late to repent.

The Court: I don't think so. She can't answer a hypothetical question of that kind and say what she would do if her husband would make overtures for her to come back.

Mr. Bradner: I have heard the question asked so many times in these cases; I have had the same feeling that they shouldn't be asked that question, but Vice-Chancellor Backes has allowed it repeatedly. Of

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Sallie B. Riker, for Complainant—Re-cross.

course, they always hesitate to answer it because there is a feeling of resentment.

The Court: Well, I will allow it.

Mr. Brugler: If the Court please, my position is—my understanding of the law is—after a case is once filed there is a different status between the parties.

10

The Court: That is true when a divorce is asked for.

Mr. Brugler: It is perfectly true in a divorce suit, and also applies in a maintenance action. Overtures might be made to the party before trial. Those overtures are treated with suspicion, and so the question is asked, after final hearing, of the complaining party—not what she will do, but what she is willing to do. It seems to me manifestly unfair.

20

The Court: Well, it is not fair to this defendant. And she can't say; she doesn't know. She would have to think it over to say positively what her mind is. I will allow it.

Q. Suppose, Mrs. Riker, that you felt that you could not live with your husband and his mother in the same house; now that she is dead, what objection would there be to your living together? What can you think of? A. It is rather hard to live with a man that doesn't love you.

30

Q. That is a pretty good answer. You think he doesn't love you? A. He certainly hasn't shown any love for me, even when we were living together.

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Mary S. Byram, for Complainant—Direct.

MRS. MARY S. BYRAM, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Brugler:

10 Q. Mrs. Byram, where do you live? A. 44 Fre-
linghuysen Avenue, Newark.

Q. You are married? A. Yes.

Q. Your husband's name is what? A. Charles
H. Byram.

Q. Is he in court? A. Yes, sir.

Q. Are you related to the defendant in this
case? A. Yes.

Q. In what way? A. He is my nephew.

Q. His mother was your sister? A. Yes.

20 Q. Do you know Mrs. Riker, the complainant?
A. Yes, sir.

Q. You knew her before she was married? A.
I never saw her but once before she was married
—no, twice. She came to my house; I gave her
supper one night.

Q. And you visited her home? A. No, I was
at my sister's home just a few minutes.

30 Q. After your nephew was married you visited
their home at different times? A. Well, I did
once by going to see my sister, but, of course, other
times his wife asked me, even in our family, to
come to her party.

Q. Before the marriage do you recall being with
Mr. Riker, your nephew, and his mother, when a
discussion was had about his proposed marriage?
A. Yes.

Q. Will you please tell us what was said at that
time. What was said by Mr. Riker? A. The day
before he was married?

40 Q. The day before he was married, yes. A.
Well, he thought his mother didn't want to go

Mary S. Byram, for Complainant—Direct.

over to 9th Street the day before, and he told his mother if she would go housekeeping with him he would throw the whole thing up and she could go and stay with him.

Q. Did his mother make any reply? A. No, sir.

Q. Did he say anything himself? A. He said, "I will marry Sallie and we will talk it over."

10

Q. Now, after the marriage, and you became a visitor or guest at their home, did you observe or hear anything out of the ordinary that occurred between Mr. and Mrs. Riker, or about the household in general? A. Well, I could see there was something the matter there every time I went there in the evening. I only went once in the afternoon. It was generally in the evening that Sallie had us there to play pinochle and I could see there was some trouble there.

20

Q. What did you observe, in the first place, when you went to visit; what part of the house did you do your visiting in? A. Well, the first time I went I visited in my sister's room.

Q. Was there anybody else there besides you and your sister? A. Well, yes.

Q. Who? A. Fred was there and my husband was there.

Q. Where was your sister? A. Upstairs.

Q. Do you know whether she was invited up there? A. No.

30

Q. How many times did you visit her home? A. I can't tell you; it was only when she wanted to play pinochle awhile she wanted us to come over there.

Q. On the occasion you mentioned awhile ago when you were visiting your sister and nephew and you were in a room together was there anything said between you when you were in the room together about Sallie? A. Well, the only thing

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Mary S. Byram, for Complainant—Direct.

that he said he didn't think Sallie cleaned right and he got mad at her.

Q. Was there anything said because Sallie did not join the party? A. No.

10 Q. Was there anything said by Fred about conditions in the home, how he got along with his wife? A. Of course, they talked, but I didn't take it all in.

Q. What was said? A. Well, I say the only thing that I remember, I believe he was upstairs and Sallie was cleaning the walls and he didn't suit her, and so he got mad and came upstairs.

20 Q. Was there anything said by the mother or Fred about how they got along with Sallie and the conditions about the home, and what they would do or what they wouldn't do if things were different? A. No, not that day. I can't remember anything was said.

Q. You don't remember that? A. No.

Q. Did you ever talk with your nephew after his mother died? A. Yes.

Q. Where was that? A. Well, I was up to his house twice and he was down there three times and he lived—on what avenue? 43, I think it is.

Q. Was that 9th Avenue? A. No, he had moved.

30 Q. What was said by him to you on this occasion you have mentioned? A. Well, I can't tell you.

Q. Did he say anything to you about his mother? A. Well, of course, I know he missed his mother; he said that, of course, he missed his mother.

Q. I didn't quite understand that. A. Of course, he would talk that he missed his mother.

Q. Did he say anything about his wife? A. No, I don't think so.

Mary S. Byram, for Complainant—Direct.

Q. Did he say in what manner he missed his mother and whether or not there was any change in his life and it made any difference to him? A. He said he used his brain more now since his mother was gone than when she was alive.

Q. Did he say why? A. She always looked after him. 10

Q. Coming back once more to this day before the wedding ceremony when you were with Mrs. Riker, your sister, and your nephew Fred, can you tell the exact words, or as near as you can possibly do it, what Fred said about the proposed marriage? A. I understand—

Q. I understood you to say before that you asked certain questions which he did not answer and then he made a statement; will you tell us, for the benefit of the court, the exact words. A. She didn't want to go and leave my house and go to 9th Street. 20

Mr. Bradner: I can't hear her.

The Court: Finally the mother of the defendant said, or the defendant said to his mother, "If you will keep house for me I will throw up the marriage," or words to that effect. That is what the witness testified the first time. 30

Q. Did his mother say anything to that? A. No.

Q. Did he say anything further? A. No; seemed to be worried.

Q. Now, what would you say as to the physical condition of your sister during the time she was a member of the household on 9th Street? A. Well, of course, she was a real strong woman, but, as I say, she did about what she wanted. She never looked better in her life than she did while at Sallie's. 40

Mary S. Byram, for Complainant—Cross.

Q. Any weakness that she had—did that interfere with her going about and attending to her business? A. No; she could go out all right. She came over to my house after he got married.

Q. Where did you live at that time? A. 44 Frelinghuysen Avenue.

10 Q. How far was that from the home? A. She used to take the bus down to Broad Street and take the trolley car to my place.

Q. Do you know whether or not she owned her own property and took care of her own business? A. She took care of her own business.

Cross-examination by Mr. Bradner:

Q. How old are you? A. Did you speak to me?

20 Q. Yes. How old are you, madam? A. Nearly seventy-three.

Q. And your sister was 82 when she died? A. Yes.

Q. Do you know whether she had a stroke in about 1909? A. No, I don't remember that. I know she got kind of paralysis in her throat for three years.

30 Q. Do you know that she had a stroke soon after she left her daughter-in-law's house and went to Steuben Street to live? A. I don't know. It was only a couple of days after she got there when she was taken sick. The doctor said it was her heart.

Q. Did she finally die of heart trouble? A. I don't know. She lived 19 months after that.

Q. Did you go there to see her? A. Yes.

40 Q. Where did this conversation take place the day before the marriage ceremony? A. In my house. They were there, and he sold the house and he came to my house. I took them in for a week and a half because he broke up housekeeping.

Mary S. Byram, for Complainant—Cross.

Q. He had sold his house in Rector Street? A. Yes.

Q. And then he and his mother went to your house? A. Yes.

Q. And were boarding with you? A. Yes.

Q. The marriage ceremony was to take place the next day, was it? A. Yes. 10

Q. And you and your sister, Fred and his intended wife were there at your house? A. His intended wife wasn't there.

Q. Well, how did this spring up, this conversation? A. Because he saw his mother didn't want to go over there.

Q. She didn't want to go to Ninth Street? A. No.

Q. Did she say she didn't want to go? A. He told by her actions. 20

Q. Only assumed from her actions? A. That is what he did, yes.

Q. And then he said to her: "If you will keep house for me I will throw the whole thing up". A. Yes; that is what he wanted to do in the first place.

Q. And she didn't make any reply to that? A. No, didn't look up.

Q. What did you say? A. I didn't say anything; it wasn't any of my business. 30

Q. You made it your business to come and tell it? A. Well, I thought somebody ought to tell something.

Q. You stored that away in your mind to tell at some future time? A. I am very sorry I have to tell it, too.

Q. Did you ever tell it to anybody? A. No.

Q. Never mentioned it to anybody? A. Not until I did to the lawyer.

Q. When was that? A. Last week. 40

Mary S. Byram, for Complainant—Cross.

Q. Did Mrs. Riker leave you any money? A. She did not.

Mr. Brugler: I object as irrelevant.

The Court: It has been answered.

10 Q. Did you ever go to see your sister when she was living in Rector Street? A. My sister?

Q. Yes. A. I certainly did.

Q. Did you go there frequently? A. Yes.

Q. Did she do any housework there? A. Of course; she done the cooking.

Mr. Brugler: I object to this for the same reason, relating to a time prior to the marriage.

20 The Court: It seems to me we are going back that way. The question has already been answered.

Q. Well, was the son working at any job at that time?

Mr. Brugler: Of course, your Honor will allow me objection over the whole line.

30 A. I don't know whether it was a year or two years after he went to Rector Street. I don't know, after that he was home.

Q. Did you ever talk to his wife Sallie about him and about the fact that he was not doing any work? A. No, sir. I only knew Sallie a little while before they got married and then I went and saw her about 15 minutes at Mrs. Riker's house.

Q. And you didn't knew her very well when this conversation took place before the marriage? A. No.

40 Q. Did you go to the wedding? A. They didn't have no wedding; they went to the minister's.

Mary S. Byram, for Complainant—Re-direct.
Minnie H. Cumminskey, for Complainant—Direct.

Re-direct examination by Mr. Brugler:

Q. Mrs. Bryam, what is your own condition, fairly good? A. What is it?

Q. What is your own physical condition; would you say fairly good? A. Well, rather good; yes. 10

Q. How would you compare your condition at the present with that possessed by your sister? Was she more vigorous or less vigorous than yourself? A. Well, she looked stronger than me.

Q. From her actions, what would you say? A. Well, I don't know; she thought she couldn't do anything, but sometimes she could do things that I thought she ought not to do.

Q. Did you have any trouble in going around? A. Yes, I have to be very careful. 20

Q. In what way? A. I have got to see where I am walking and all that.

Q. You go where you choose to go; you do what you choose to do? A. (No answer.)

Mr. Bradner: Like me.

(Mrs.) MINNIE HARTUNG CUMMINSKEY SWORN on behalf of the complainant, testified as follows: 30

Direct examination by Mr. Brugler:

Q. Mrs. Cumminskey, you are a sister of the complainant? A. I am.

Q. You have, I believe, lived in your sister's home and were a member of the household from the time of your sister's marriage? A. Yes.

Q. In 1925? A. Yes.

Q. You and your husband pay your board to your sister? A. Oh, yes. 40

Minnie H. Cumminskey, for Complainant—Direct.

Q. How much? A. We pay one hundred dollars a month.

Q. Were you at the home all the while or do you go away sometimes? A. Well, we went down to my husband's father's in May and stayed until the 4th of December, and during our absence we always paid room rent.

10 Q. You paid room rent just the same? A. Yes.

Q. You and your sister, I believe, have joint ownership of that house? A. My husband and I own half.

Q. How does the deed read? A. One-half belongs to my sister and the other half belongs to my husband and myself.

Q. How much did you pay for the house? A. \$12,000.

20 Q. How much mortgage on the property? A. I think it is \$9,000.

Q. Who holds the mortgage? A. Mrs. May Ward owns the mortgage on the house, and the National Newark Banking Company and my brother own the mortgage on the garage.

By the Court:

Q. Let me get this property straight in my mind: It is on North 9th Street, I think? A. Yes.

30 Q. How much frontage has the lot? A. Our frontage is 50 feet.

Q. There is a house on one part of it and a garage on the other? A. The garage is back of it; the driveway is alongside of the house.

Q. How deep is the lot? A. Well, I should think 100 and—well, I don't know.

Q. Does it run through to Tenth Street? A. Oh, no; it runs the other side of East 8th.

Minnie H. Cumminskey, for Complainant—Direct.

Q. Now, do you own 25 feet front all the way through and your sister 25? A. No, the deed is together; sort of a partnership.

Mr. Bradner: Tenants in common, I suppose.

A. The deed was made out to two of us, or three of us. 0

By Mr. Brugler (resumed):

Q. Now, who managed the home during this time? A. My sister always managed the home.

Q. Who lived here besides you and your husband, your sister and her husband? A. Why, Miss Garlick.

Q. And who else? A. And Mr. Riker's mother.

Q. Mrs. Garlick was a boarder? A. Miss Garlick, yes. 20

Q. And Mrs. Riker was a boarder? A. Yes.

Q. Do you know whether or not they paid board to your sister? A. I suppose they did. I didn't see them hand her board.

Q. Do you know how your sister and her mother-in-law got along, in the main? A. Why, yes.

Q. Can you tell us?

The Court: Tell us all the details you can think of and not generalities. 30

A. She was a woman—very imperious woman—, very tall, weighed, I should think, about 200 lbs., with a very good complexion, quite an attractive-looking person, and she laid much stress on that fact, and always came in gushing, saying, "Never mind so-and-so," and so-and-so helped her in the car, and Mr. so-and-so wanted her to buy an automobile, and so when she was 80 years old they 40

Minnie H. Cumminskey, for Complainant—Direct.

10 thought she ought to buy an automobile; and she was very much grieved because her son's complexion was being ruined at 9th Street, and it was brown. She would say, "Look at your hands" sitting at the table; "You never were that way on Rector Street." Always very solicitous about his appearance, and would even complain in my presence. One night in particular we were going to my brother's in Jersey City and we invited my sister and her husband to accompany us, which she did, and Mrs. Riker felt very much grieved because Fred would not put on his wedding suit to wear that night because a cousin of ours from Kent, Ohio, was visiting, and she wanted Fred to appear there in that. And she said to my sister, "If I were you I wouldn't go; I would just make 20 him put it on—his wedding suit." She was always dictating as to what Fred should do, and my sister and my husband and I controlled that a great deal.

One evening she came to our door and she said, "Minnie, will you and Will come to my room; I want to see you?" And so we went over to her room, and she says, "Now, what is the trouble between Sallie and Fred? Can't things go along smoothly?"

30 "Well", I said, "now, Mrs. Riker, you have asked me a favor to stop in again, and I am going to be very frank with you." I said, "Sallie and Fred would get along very nicely if you didn't interfere." I said, "No matter how long you live in this house, you never will be able to run it or be the head of the house. My sister is the head of this house and you won't be able—she is the one, not me—not ask me."

40 And she said, "Supposing I go away, what about Fred?"

Minnie H. Cumminskey, for Complainant—Direct.

And my husband said, "Well, that Sallie and Fred will decide; that is for Sallie and Fred to decide." And that was all there was of the conversation, and we went back to our rooms.

Q. Did you hear any words between your sister and Mrs. Riker? A. No, I did not; no, I didn't; I wasn't home. I didn't know of this trouble. 10

Q. When did you last see Mr. Riker before today? A. The morning of the day that he and his mother left.

Q. What day was that? A. I think it was the 31st day of October, 1927, wasn't it?

Q. Do you know whether or not Mr. Riker has been around to see your sister since that time? A. Not to my knowledge.

Q. During the time that your sister and her husband were living together do you know whether or not they went out to places of amusement and visits? A. Well, one time my husband and I were going to a theatre in New York and have dinner there, and my sister and her husband went, too. She bought the tickets for the theatre—she bought his ticket and her ticket for this theatre. I think twice we went that way; both times she bought the tickets. And that is the only time that I remember that the four of us went out to a place of amusement. We rarely would go to the movies; that is, my sister or my husband or I. 20

Q. Do you know what Fred's attitude was about going out? A. Well, I know of that incident about going to the Catskills. 30

Q. What was that? A. Of course my husband objected to going more than five people in the car and he said he didn't like to have any one person on that 145 miles' drive to be sitting on the extra seat; he said he wouldn't feel comfortable. I 40

Minnie H. Cumminskey, for Complainant—Direct.

usually relieved him. He would drive part of the time and I would drive part of the time—

10 Q. The result was that Fred would not go unless his mother went, too? A. No, we have taken them from 9th Street to my brother's with six persons in the car. That was because the difference was not great and we would go. We have done that.

20 Q. What would you say as to the physical condition of Mrs. Riker? A. I would say that she was very fit physically. Before she came to the house I was under the impression that she perhaps needed a great deal of attention, but I remember distinctly one morning that it was just misty and she started out alone and without rubbers, and I said: "You know, your mother is going out without rubbers and without an umbrella." "Oh", he said, "she is able to take care of herself," and it seemed to me quite strange that she would go out that morning when it was raining without an umbrella and without rubbers.

30 Q. Do you know whether or not your sister made or saved money during the time that the house was run in this manner? A. I don't know what her affairs were; they were quite divorced from mine. I don't know what she did with the money.

Q. Did your sister pay the carrying charges on this property? A. Yes. In case my husband paid the taxes we jointly paid him; his check always paid the taxes and interest.

40 Q. Since Mr. Riker left his wife have you contributed to your sister's support? A. I have taken her to amusements all my life. When I was paying her board I clothed her and took her to amusements, and in vacation time I took her on as long a vacation as we did.

Minnie H. Cumminskey, for Complainant—Direct.

Q. Referring to the date Mr. Riker left your sister, have you continued to contribute and support your sister? A. Yes, I have; I have taken her to places of amusement and bought her things; but I haven't clothed her so completely as I used to.

Q. Do you know whether or not your sister has independent financial means of her own? A. You mean sufficient to support her? 10

Q. Yes. A. I know she has not.

Q. Do you know what she is worth? A. Well, I know that she now owes money to me on her payment on the house when it was bought.

Q. How much is that? A. Well, I should say perhaps \$600.

Q. She owns two shares of Telephone & Telegraph and some limestone stock and some other stock? A. Yes. 20

Q. Will you tell us what that stock is worth? A. Well, I haven't been following the market. I have been down to Potter for the last two or three years and I don't know what the market is.

Q. You have had quite an experience buying and selling stock? A. Yes.

Q. You know considerable about the market; how much would you say three shares—

The Court: You needn't prove that by her. 30

A. And then the Pullman stock and Limestone stock, I don't know anything about that.

Q. Do you happen to know what the stock in the Limestone Corporation is worth? A. I know nothing about what it is worth.

Q. Has it been paying any dividends? A. It has been paying 4% for about one year.

Q. Do you consider it worth much? A. No, I am sorry to say that I don't. 40

Minnie H. Cumminskey, for Complainant—Cross.

Cross-examination by Mr. Bradner:

Q. Is there a garage on the premises? A. There is.

Q. What is the rent of that? A. We are getting \$10 for three and \$11 for one.

10 Q. You have \$41 a month from that? A. Yes.

Q. Who takes that rent? A. We take it and put it in a fund out of which we pay the upkeep of the garage. The roof collapsed after we had it built and it cost us considerable to have it replaced.

Q. Does your sister pay any rent for the use of the house? A. No, it is put in a fund.

20 Q. I am talking about the house itself. She, you say, owns half of it? A. Yes, my husband and I own half of it.

Q. Does she pay you anything for your half? A. She pays rent every month.

Q. How much rent does she pay? A. \$75 a month.

Q. And that is used to pay interest and taxes? A. It is.

Q. So she gets the benefit of that, too, by the reduction in the payment of interest and taxes? A. Why, surely; and I get the benefit, too.

30 Q. And you pay a hundred dollars a month for your and your husband's board? A. Yes.

Q. When you are there? A. Yes. I pay room rent when we are not there.

Q. How much room rent? A. Last year I think we paid \$30 a month. I don't remember what it was before that.

40 Q. While Fred was living in the house, the husband of the proprietor of the house, what position did he occupy in the dining-room; was he at the head of the table? A. He wouldn't sit at the head of the table. My husband always did the carving and he would not sit there.

*Charles H. Bryam, for Complainant—Direct
Cross—Re-direct.*

Q. Who waited on the table? A. I always served the dessert and my sister would perhaps serve the tea or coffee, or whatever it may be.

CHARLES H. BRYAM, sworn on behalf of the complainant, testified as follows: 60

Direct examination by Mr. Brugler:

Q. You are the husband of Mrs. Bryam who previously testified and the uncle of the defendant in this case? A. Yes.

Q. Were you present the day before the parties in this case were married in your home, I believe, with the defendant, Mr. Riker, and his mother, and your wife, when some conversation was had respecting the marriage? A. Yes. 20

Q. What was the conversation? A. "Ma, if you say so I will throw up the whole thing and we will go to keeping house."

Q. To whom did he say that? A. Mrs. Riker.

Q. Who said that? A. Fred to his mother.

Q. What did the mother say? A. Nothing.

Q. Did Fred say anything further? A. Then he says, "Well, I will marry Sallie and we will have a home the rest of our life." 30

Cross-examination by Mr. Bradner:

Q. "We will have a home the rest of our life"? A. Yes.

Q. Did you understand in "we" his mother? A. Yes.

Re-direct examination by Mr. Brugler:

Q. He was talking to his mother, was he not? A. Yes, that was the question that he put to his mother. 40

Mary S. Byram, for Complainant—Direct.

(Mrs.) MARY S. BRYAM, recalled on behalf of the complainant, testified as follows:

Direct examination by Mr. Brugler:

10 Q. Were you ever at the home of your sister and nephew, the defendant, between the time he left his wife and the time of the death of your sister? A. About the time that he left his wife.

Q. Yes.

Mr. Brander: I think we went into that.

The Court: This question was whether this witness ever went to North 9th Street?

Mr. Brander: No, Sterling Street in Newark, where he lived when he left.

20 Q. Were you there at that time? A. Where, up in Sterling Street?

Q. Yes. A. Yes, sir; the time I went.

Q. During the time you were there—during that period—did you overhear any conversation between Fred and his mother; or was there anything said between the three of you respecting Sallie, the complainant? A. (Witness pauses.)

Q. Having in mind—

30 Mr. Bradner: I object to leading the witness so much.

Q. Having in mind that this was after the defendant had met his wife and before his mother and your sister had died. A. Well, of course, he talked about when his mother passed away whether he would have Sallie come and live with him if she would.

40 Q. Did he say anything about asking Sallie to come back to live with him? A. No, he didn't say he was going to ask her.

Mary S. Byram, for Complainant—Cross.

By the Court:

Q. Did he say anything about it, Mrs. Bryam?

A. No—yes, he said something about it.

Q. Do you remember what it was he said about it? A. He didn't think if she came back they would live happily together.

Q. Will you repeat that? A. He said if he came back he wouldn't stay over six months; he wouldn't treat her right, he didn't think.

10

By Mr. Brugler:

Q. Did he say what the legal situation would be after she had left him following the reunion? A. No. I often went there. He didn't say anything.

Q. Did he say—

Mr. Bradner: I object to leading questions, your Honor. Let her tell what he said.

20

The Court: I will permit them.

Q. Did he say why Sally wouldn't stay with him only about six months? A. He wouldn't use her properly.

Q. Did he say in what respect he wouldn't use her properly and why he wouldn't use her properly? A. No.

30

Q. You don't recall that. Was there anything else about this conversation that I haven't asked you, bearing upon the circumstances in the affairs of these parties? Was there anything else you can tell us, Mrs. Bryam? A. No, that is all I know.

Cross-examination by Mr. Brader:

Q. When was this occasion you visited them?

A. Why, up to his mother's house.

40

Mary S. Byram, for Complainant—Cross.

Q. When? A. The last year she was living—
oh, I can't tell you.

Q. What part of the year, in the summer time?

A. In the summer time, the last year she lived.

Q. And she died in June, 1929; how long before
she died? A. A few months.

10 Q. And then it was in the winter? A. It was in
the fall.

Q. In the fall before that? A. Yes.

Q. Didn't you go there alone to see her? A.
No, I took my oldest sister that day.

Q. Is she here today? A. No, she didn't come;
she had nothing to do with it; she is too old.

Q. She is too old to be in this case; how old is
she? A. Eighty-eight.

20 Q. And she heard this conversation? A. She
heard what he said.

Q. How did the conversation come about? A.
They were always talking about it and I got tired
of hearing things.

Q. That is, Fred and his mother were talking
about it to Sallie? A. Yes.

Q. And was he complaining about Sallie putting
his mother out of the house? A. Well, he did, but
she was asked to go out and she wouldn't go.

30 Q. Did the mother say anything about Sallie
having sued her for \$10,000 damages?

Mr. Brugler: I object as not proper
cross.

The Court: It is a part of the conversa-
tion brought out.

A. She didn't say anything to me about it.

Q. Did she say anything in your presence? A.
No.

Mary S. Byram, for Complainant—Cross.

Q. Did Fred say anything about it? A. No. I knew that Sallie had threatened to sue her and that is all.

Q. Did you know that the suit had been brought? A. No.

Q. And then this came right out of a clear sky; Fred said what? What did he say? A. About what? 10

Q. About his wife. A. Well, he doesn't see enough of her to live with her. That is all I can tell you.

Q. Did he say it or was that your thought? A. No, it isn't my thought.

Q. Well, tell us what he said. A. Well he said he acted so ugly to her that she couldn't live with him.

Q. And if he came there where she was living he would act so ugly that she couldn't live with him; and he said that to you? A. Yes. He was telling me or my sister; I don't know which. 20

Q. Is that the only time you heard him talk about it? A. I heard it the day before he got away.

Q. Have you any feeling against Fred? A. No, I think a great deal of Fred. I am very sorry I have to come here.

Q. And you would like to see him and his wife make up? A. I certainly would. 30

Q. You are trying to help them, aren't you? A. I am trying to help.

Q. Trying to help them make up? A. Right is right.

Q. You think you are trying to help them make up when you tell this story today? A. Friday.

Q. You kept it to yourself until last Friday? A. Yes.

Q. You didn't go to see Fred, did you? A. No. 40

Frederick B. Riker, for Complainant—Direct.

FREDERICK B. RIKER, the defendant, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Brugler:

10 Q. You are married to the complainant in this case? A. I am.

Q. Will you please tell us what your property consists of?

Mr. Bradner: I object. I think the time to go into that is when the Court goes into the decree. That's the practice.

The Court: I think I will go into it now.

20 Mr. Bradner: Then I think it ought to be limited to the time when they were separated. She hasn't shown any change in her condition that entitles her to any more because she may have required more.

The Court: If she is entitled to support under a decree of this Court this examination would be largely upon the defendant's present financial condition.

30 Mr. Bradner: If he wasn't able to support her at the time that he left and had no property, it might be different if he has acquired property and was under the order of the Court; but he was providing support at the time he left, out of his property, and they were living in a certain style. She isn't entitled to live any better than that; although he may have more money he doesn't have to spend it on his wife.

The Court: You think she doesn't share in his good fortune?

40 Mr. Bradner: No. A man doesn't have to go to live in a \$50,000 house when he has more. He can support her in the same

Frederick B. Riker, for Complainant—Direct.

style as they were when they were living together.

The Court: I will allow the question and overrule the objection.

Q. Will you please state what your worth is and of what it consists? A. At the present time?

10

Q. Yes, sir. A. About \$40,000; near that. I am not positive. I am only giving you a rough estimate.

Q. What is the nature of the estate? A. My investments?

Q. Yes, sir. A. \$22,000 in Fidelity Guaranty mortgages, 5½%; \$5,600 first mortgage, 5%; and about \$5,000 in the bank—two or three bank accounts.

Mr. Bradner: Savings Banks?

20

A. Savings banks.

Q. You have real estate also? A. Yes, sir.

Q. What is that? A. Well, the highest price I have been offered for that is \$12,000.

Q. Where is it? A. 543 Thirteenth Avenue.

Q. What rent do you get for that? A. \$65 and my own rent.

Q. How much taxes do you pay on that property? A. About \$200.

30

Q. Insurance? A. I have it insured for \$6,000; \$76 every three years.

Q. What is the type of structure; brick or frame? A. Frame.

Q. Have you told us of all of what your assets consist? A. All that I can think of.

The Court: Is that property mortgaged?

A. One moment. There is a vacant lot 355 South 19th Street.

40

Frederick B. Riker, for Complainant—Cross.

Q. How much is that worth? A. Well, I don't know.

Q. How long have you owned it? A. It was left to me by my mother.

The Court: What is the size of the lot?

A. 25 x 100.

10 Q. Do you know what your mother paid for it?

A. Yes, \$600.

Q. How long ago? A. 25 or 30 years. The taxing value is \$700. Of course, it is worth more than that now.

Q. What would you estimate the property is worth? A. Fifteen hundred or two thousand, I should think; I don't know. She had the chance to sell it but she never would sell it. That is the corner of South 19th Street.

20 Q. Have you any property in New York state?

A. No.

Cross-examination by Mr. Bradner:

Q. Did you acquire some of this property by your mother's will? A. Yes, sir.

Q. When did she die? A. June 1st, 1929.

Q. You got the lot from her? A. Yes.

30 Q. Did you get the house where you are living from her? A. I bought it from her about 25 or 30 years ago. I bought it for my own place.

Q. At the time you went away from your wife's house, what property did you own? A. The same as I have now.

Q. You mean it included what your mother gave you? A. Oh, no; where I am living, 543 13th Avenue is all I owned.

Q. Didn't you own some other personal property at that time? A. (Witness pauses.)

40 Q. When you went away from your wife's house, what stocks or bonds or mortgages did you

Sallie B. Riker, for Complainant—Direct.

own? A. Oh, I understand now; I have got only a one-track brain. I owned \$12,000 mortgage certificates of the Fidelity, and the house, is all I owned.

Q. What was your total income at that time from what you owned? A. Never \$1,200, but close to it. 10

Q. And since that time your property has been increased by what you got from your mother's estate? A. Yes, sir.

By the Court:

Q. How old are you? A. I will be 62 the 5th of June.

Mr. Brugler: If you are through with him I will go on with my case. I would like to ask Mrs. Riker a few questions. Mrs. Riker, is \$30 per month which you have been receiving from your husband sufficient for your needs? 20

Mrs. Riker: It is not.

The Court: You had better let the witness step down and have her take the stand.

(Mrs.) SALLIE B. RIKER, recalled in her own behalf, testified as follows: 30

Direct examination by Mr. Brugler:

Q. What is the means of your livelihood; the difference between \$30 a month which your husband has been giving you and what is required for your reasonable support,—where do you get it? A. My sister and brother-in-law pay me board.

Q. You manage this house; and do you still, by doing this work managing your home have 40

Sallie B. Riker, for Complainant—Cross.

enough for your support? A. Not entirely for my support.

Q. Where do you have to look to for other means? A. My sister helps me.

Cross-examination by Mr. Bradner:

10 Q. How much do you need for your support?
A. Well, I couldn't just say how much I need.

Q. You don't know how much you need? A. You mean, to keep me simply living?

Q. Yes; you have lived there in your own house as you have always lived; how much do you need for your comfortable support? A. Well, I really don't know how much I need.

The Court: What do you think you need?

20 A. I think I need enough so that I don't have to worry.

The Court: Does that mean \$10 a week, or what does it mean?

A. No, I suppose— (witness pauses).

The Court: If you don't know, the Court doesn't know.

30 Q. You are getting about \$8 a week now, aren't you, from him? A. Yes. I should think I should have fifteen or twenty dollars a week.

Q. You wrote a letter stating that you wanted \$15 a week; why did you fix that amount? A. Well, I presume I could get along on \$15 a week.

40 Q. Well, of course, if you didn't have your house and had some property of your own, maybe you couldn't get along unless you had \$15 a week, but you are running that house and having an income from it. A. Well, the income isn't very great and the expense is very heavy.

Frederick B. Riker, for Defendant—Direct.

Q. You have had enough income and have been able to save enough to make some investments?

A. No.

Q. Haven't you put any in the savings bank in the last 30 years? A. No.

Q. On the \$30? A. I used that to live on.

Q. How much does it fall short? A. I can't say just how much it falls short. I have had to be very economical. 10

Q. Your husband was very economical; he wasn't a spender? A. He never spent any on me.

Q. Never spent any on anybody? A. Not that I know of.

Q. And you agreed when you were married that he could contribute \$60 a month? A. There was no agreement; he just gave me \$60 a month and I got along with it. 20

Q. Now that you have one less mouth to feed how much do you think you require? A. I should think \$15 a week,—

Q. That would be more than you got before. A. —would be very small for a woman in these times to get along; it costs much more to live.

Mr. Brugler: Complainant rests.

FREDERICK B. RIKER, the defendant, recalled in his own behalf, testified as follows: 30

Direct examination by Mr. Brander:

Q. Did you state your age? A. Yes, sir.

Q. How old are you? A. 62 the 5th of June coming.

Q. Before you married your present wife were you ever married? A. Never. 40

Frederick B. Riker, for Defendant—Direct.

Q. Where had you lived all your life—with whom? A. My parents.

Q. Were there any other children in the family?

A. In early life my mother had four children; three died in infancy. I was the oldest.

Q. When did your father die? A. 1909.

10 Q. And your mother is now dead? A. My mother is now dead.

Q. When did she die? A. The first day of June, 1929.

Q. Did you have any trade? A. Yes, sir.

Q. What was your trade? A. Shoe cutter.

Q. Where did you work? A. Johnson & Murphy, Newark, N. J.

Q. How long did you work there? A. 25 years.

20 Q. Did you quit working at any particular time? A. 1913.

Q. Why? A. My mother was an invalid and had been for years. We sold the house where we lived. We moved to Rector Street, and went into——

Mr. Brugler: I object because it is not responsive.

The Court: I will allow it. Mr. Bradner is the one to object to that.

30 Q. You stopped working in 1913, you say? A. In 1913.

Q. And then what did you do? A. We moved to Rector Street. I quit my job to keep house for my mother. She was unable to keep house.

Q. What sort of a house did you have in Rector Street? A. Three-story and basement.

Q. Did you occupy the whole house? A. Basement and first floor.

40 Q. Who had the other floors? A. Two monthly tenants.

Frederick B. Riker, for Defendant—Direct.

Q. Who owned the house? A. I did.

Q. And you received the rents? A. I received the rents.

Q. When you lived with your mother who did the work at the house? A. I did.

Q. What did she do? A. Done most of the cooking, with my help.

10

Q. What other work did she do? A. She went out.

Q. You say she was an invalid; what was the matter with her? A. I say she was an invalid; for weeks and weeks she was never sick.

Q. Had she ever been sick? A. In 1900 she was very sick, and in 1900 she went blind and she was in a plaster cast for months, and my father and I were not well, but we took good care of her or we wouldn't keep her.

20

The Court: Had she had sickness after that?

A. Stroke of paralysis along in 1900.

Q. Well, you moved over to Rector Street while you lived there? A. Yes, I did.

Q. And made your home with the present Mrs. Riker while you lived there? A. Yes, I did.

Q. And she was living a few doors away? A. Yes.

Q. Do you know whether or not she and your mother became pretty good friends? A. Well, we were all pretty good friends right from the start; not so very close but good neighbors.

30

Q. Do you know whether Sallie ever came there? A. Yes.

Q. Could she see who was doing the work there? A. She certainly could.

Q. When did you begin to pay any particular attention to her? A. Well, three or four years before marriage.

40

Frederick B. Riker, for Defendant—Direct.

Q. And what was the beginning of it? A. Well, that's what I don't like to tell, but there was a beginning. The first time I told her I loved her; is that what you mean now?

10 Q. Yes. A. All right. About the time that they bought this 9th Street house Miss Hartung came to our basement door with a big bunch of gladiolus for my mother. My mother had been gone for about five minutes from the house. I told Miss Hartung that I was alone and that my mother had just gone out, and I asked her to wait a minute, I had something to show her in the paper. And what that was now I forget. But I went in to get the paper and Miss Hartung was right behind me in the house. I didn't invite her in; came through the basement door and she sat down. I
20 put the bunch on the table and we went upstairs to the parlor to get the vase. We were all alone in the house. We didn't know what to do. We went through the premises and bedrooms and out of the back door and back again and I got her the vase. She sat down again. I didn't know what to do with her, but I knew there was something up to me to say to that girl. That day there was no one question that I didn't mention,—I mean about me keeping my mother. I mean, that
30 I was no alluring man, that I never expected to get married; that I wasn't working; that I didn't have enough income for three. I had enough for two but not enough for three. And that day there was no one question that I couldn't think of that I didn't explain everything to her why I could not get married. I also told her I loved her. I kissed her,—my first kiss, and when she left that basement to go home in the afternoon we both understood that we were to be good friends but no marriage. We understood that thoroughly, because I knew where I was at and I made it very,
40

Frederick B. Riker, for Defendant—Direct.

very plain. I even went in the house to see her after she had gone. Right after she had gone I went in and asked her if there was anything that I had left unsaid that she would like to ask me so I could answer it, and she said "no". And I stayed about five minutes and then I went out. Now, that was all the first time.

10

The Court: This was about 3 years before you were married?

A. Between two and three. Shall I continue with another—

Q. Yes.

The Court: Perhaps we can save time if you ask questions.

20

Q. Did you have anything to do with her after that occasion? A. No.

Q. Did you go up to Potter? A. Not until the next summer; not right after that.

Q. Did anything occur at that place? A. Why, yes.

Q. State what occurred. A. There is one thing we knew, we both loved each other and we couldn't help showing it. I know I did, and I knew it was wrong. And in 1924, in the early summer I saw just what was ahead of us. My words to Miss Hartung were, "Sallie, you remember what I told you about me getting married, and the way we are getting on we must stop seeing each other." That was at Potter, New Jersey. "Now," I says, "remember what I told you, and another thing"—now here's my exact words—"you have a house all furnished", and so they did. Laughingly, she says, "Well, yes, I can give it away".

30

I says, "I never thought of such a thing".

40

Frederick B. Riker, for Defendant—Direct.

“Why,” she says, “don’t you think that my house is big enough for you and your mother?”

I says, “I don’t know; we never thought about breaking up housekeeping, but I will tell you what I will do; I will ask her”. And I did ask mother and she was tickled to death with it. And then I
10 didn’t see Sallie until we got the next invitation to Potter.

Q. When was that? A. About two weeks later. I told Sallie what my mother had said, “and I want you to remember I can’t support you in the right way”.

She says, “I know we had not ought to do it, but your mother can make her home with us”. And we did talk about selling or keeping my house at the time. We talked of keeping the house or
20 selling it. We talked it over very thoroughly, and the agreement at the finish was we both thought it would be a good thing to sell, and we both thought it would be a good thing to hold it, but the final agreement was to sell.

Q. Then what was to be done with your mother?

A. It was settled before that that my mother was to have her home up there at 9th Street.

Q. For how long? A. The rest of her life.

Q. How old was she then? A. 78.

30 Q. Well, you were married finally? A. Yes, sir.

Q. On the day before your marriage at your aunt’s home did you state to your mother, “If you will keep house with me I will throw up the whole thing,” or words to that effect? A. I can’t wait to answer that. I positively did not.

Q. Was there any occasion for your saying anything to your mother on the subject at that time?

40 Mr. Brugler: I object to the question as leading.

The Court: I will allow it.

Frederick B. Riker, for Defendant—Direct.

Q. Was there any talk upon that subject at that time? A. Why, I don't remember the first word of it.

Q. When you were married you went away on your honeymoon? A. I did.

Q. Where did you go? A. To Atlantic City.

Q. How long were you gone? A. Three days. 10

Q. When you came back where was your mother? A. In the house at 9th Street.

Q. In her room? A. Yes. May I interrupt?

The Court: No.

A. She was at 9th Street in her room.

Q. Do you know anything about the board which she was to pay? A. Yes, sir.

Q. Who made the arrangements about it? A. My mother made those arrangements and not me, and those arrangements were made before marriage. How it was done I don't know, but— 20

The Court: Never mind; don't talk so much.

Q. You know your mother paid \$10 a week? A. Yes.

Q. While you were living there at the house what work, if any, did you do about the house? A. Housework; wash dishes, washed clothes, windows, done repair work, sold eggs and chickens for my sister-in-law; rented rooms for roomers; rented garages, Sundays or Saturdays, at any time. 30

Q. Whose house was it? A. My wife's and her sister's.

Q. Did you know then whose it was? A. Before the marriage or after?

Q. Before you were married. A. That is the question now. 40

Frederick B. Riker, for Defendant—Direct.

The Court: Did you know whose house it was?

A. I understood it was my wife's house or Miss Hartung. She never once told me about her sister.

10 Q. When did you discover that her sister had anything to do with it? A. My wife.

Q. How long? A. Three or four months; a short time.

Q. Who told you? A. My wife.

Q. How did that happen, that you were talking about it? A. I was four there, being the head of the family, and I wanted to know where I stood, and I found out I was No. 4.

20 Q. What reason did you have for thinking you were not the head of the family? A. I wasn't used anywhere near the way I should have been used. I was slightly used and I found I was in the way.

Q. Did anybody tell you so? A. No, sir; not then.

Q. Well, did that situation lead to any discussion between you and your wife on the subject? A. Other events led up to that before that ever happened.

30 Q. What other events? A. The first day I went in the house—I wasn't there—my wife and I went down to Atlantic City. The first day my mother was in the house she committed a dreadful sin; she re-arranged the furniture in the room to suit herself, which she shouldn't have done—

The Court: You are wasting a lot of time; we have got a lot to do.

A. I will tell you it very short.

40

Frederick B. Riker, for Defendant—Direct.

Q. There were some differences between your wife and your mother about furniture and other things? A. Yes, certain furniture in the room.

Q. What did you have to do with that, anything? A. I spoke to my mother about it.

Q. Did your wife ever make any objection to you about your mother being there? A. Yes. 10

Q. What did she say? A. The first time she mentioned it there was a quarrel between mother and her, and I don't know what it was, and she says, "Don't you understand I can put your mother out?", three months after the marriage, and I said, "Sallie, you put mother out and I will go, too. You promised this home to her." She didn't have any other place to go.

Q. She had somebody to write your mother to raise the board? A. Yes. 20

Q. Did she pay any more board? A. She did, yes.

Q. And then another notice went, to get out? A. Yes, sir; mother moved to Sterling Street.

Q. What did you do? A. I went with my mother.

Q. What happened there? A. The second day of November she had a stroke.

Q. Did she ever go out after that? A. No.

The Court: When did you move to Sterling Street? 30

A. October 31.

Q. And who took care of her while you were there? A. I did.

Q. Why did you stay home and take care of her in Rector Street? Couldn't she have somebody else do it? A. I could have had somebody else do it, yes, but it wasn't satisfactory to either one of us, so I gave up my job and I took care of her. 40

Frederick B. Riker, for Defendant—Cross.

Q. Do you remember your aunt, who was on the witness stand, ever coming to the house in Sterling Street? A. Very often.

Q. Did you ever say in her presence if your wife came back there you would treat her so bad that she would be glad to go? A. I did not.

10 Q. Would you be willing now to resume relations with your wife and live with her, apart from her relatives? A. Well, sir, I would take her right home with me if she would go with me.

Q. You would now? A. Providing not to let any relatives enter my house, and that means both sides of the family; and I have got the home, and we would be in my own home.

20 Q. Mr. Riker, why did you go out with your mother when your mother was put out of the house? Why did you go? A. That home was promised to her. That notice that she had to move, she had no business to receive it. That was her home. She had no other place to go. That was her home and she had no business to be put out, as I see it.

Q. When you left there at that time, did you have any intention of abandoning your wife? A. I never had. I haven't abandoned her yet.

30 Q. You have since that time paid to her what you thought you could afford to pay? A. Very near one-third of my income right along—very near one-third.

Cross-examination by Mr. Brugler:

Q. Did you often visit her home before you were married to the complainant? A. I did.

Q. She didn't ask you to marry her? A. No.

Q. Did you ask your mother whether you should ask Sallie to be your wife? A. Hardly.

40 Q. Well, did you? A. No.

Frederick B. Riker, for Defendant—Cross.

Q. Did you talk it over with your mother first about marrying? A. I presume I did.

Q. What did you say to your mother? A. I was going to ask Sallie to marry me and if she was satisfied to break up home.

Q. You were never coerced, never under duress? 10

The Court: No, there is no claim of that at all.

Mr. Brugler: He said something about coming over with some flowers.

Mr. Bradner: That was just preliminary.

Q. You loved Sallie before your marriage? A. I certainly did.

Q. You love her now? A. It is almost down to zero. 20

Q. But you have loved her all the time? A. I certainly have.

Q. Did you love her since you were away from her? A. Better than she did me.

Q. Did you love her at that time? A. I did.

Q. Did you ever ask your wife to live with you at any place in a home where your mother could not be? A. Only here lately. While my mother was living my mother was always included.

Q. But not until after your mother died. You say lately; you refer to the time after your mother died? A. Before my mother died my mother was always included. 30

Q. Did your wife offer to go anywhere? A. Yes, she was willing to go with me without mother.

Q. She told you different times, didn't she? A. Yes.

Q. You overheard your wife and your mother quarreling different times? A. I don't believe I did. It was out of my hearing except only once or twice. 40

Frederick B. Riker, for Defendant—Cross.

Q. Didn't she complain to you about your mother? A. She went to my mother and complained about me, too.

Q. Didn't she ask you to speak to your mother and see if you couldn't improve conditions? A. I did speak to my mother.

10 Q. What did your mother say? A. My mother stayed in her room 23 hours of the day to keep out of trouble—23 hours of the day.

The Court: Once is enough.

(Recess until 2 P. M.)

20 Q. Mr. Riker, are you very sincere in your desire to provide a home for your wife? A. It is provided, and I am sincere. It is my own home.

Q. Is your desire prompted because of your love? A. Partly. I think that love can be restored by good treatment. I can't do it all.

Q. Is the love a large part of your desire? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. In other words, your desire and sincerity corresponds with your love, does it not? A. I would say that.

30 Q. You are satisfied to let it be that? A. Yes.

Q. Your mother didn't have any increase in board until she got notice, did she? A. No, because she had paid off one week when she did pay.

Q. But she didn't pay the increase until she got the notice? A. No.

Q. And that is why notice was served? A. Yes.

Q. Did you object to the fact that somebody else sat at the head of the table? A. No.

40 Q. You were asked? A. No.

Frederick B. Riker, for Defendant—Re-direct.

Q. Wait for the question: You were asked to sit there were you not? A. No.

Q. But you did not object? A. No.

Re-direct examination by Mr. Bradner:

Q. I think I asked Mrs. Riker whether she ever said to you that you could go any time you pleased if you would give her \$60 a month, and she denied it. Did she ever say that to you? A. Several times.

10

Q. How long before you actually left? A. Why, the week before was the last time.

Q. Have you now an apartment large enough for two people to live there? A. Five rooms.

Q. All furnished? A. Three rooms are furnished.

20

Q. May I ask another question, if your Honor please, I forgot: Did you ever have any opportunity to sell the house where you are now living? A. I did.

Q. When was that? A. 1926, around May or June.

Q. Did your wife know that you had that opportunity? A. She did.

Q. I think she testified something about it. Did you have some conversation about it? A. Yes, sir.

Q. What was it? A. I asked her if she would sign off.

30

Q. What did she say? A. She took a few days to think it over and she finally made up her mind that she would sign off if I gave her half the mortgage, which meant \$5,000. I refused. I offered her \$1,000 cash for her signature and she refused. One hour later my mother offered her one thousand dollars if she would let her stay in the house as she was without this arrangement that you have referred to here and she refused.

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Mr. Bradner: Defendant rests.

Sallie B. Riker, for Complainant—Direct.

(Mrs.) SALLIE B. RIKER, recalled in her own behalf, in rebuttal, testified as follows:

Direct examination by Mr. Brugler:

10 Q. Did you agree with your husband or his mother that she should have a home with you and your husband for the rest of her life? A. No.

Mr. Bradner: I object. That is repetition.

The Court: She has already answered it. I think you are correct; it is repetitious.

Q. Did you serve notice to vacate upon your mother-in-law?

20 Mr. Bradner: That all came out in the main case.

The Court: I don't see that that is rebuttal of anything. The complainant brought that out in her main case, that she served this notice.

Mr. Bradner: The notice is in evidence.

The Court: She was asked on cross-examination whether she didn't serve it in order to get the mother-in-law to leave the house and she denied it.

30 Mr. Brugler: If that is in the record I am satisfied.

The Court. I am correct in that.

Q. Did you ever have any conversation with your husband in respect to his position at the table? A. Yes, I asked him to sit at the table and he refused.

Mr. Bradner: I object to that.

40

Sallie B. Riker, for Complainant—Direct.

The Court: She said, or somebody said, in the direct case the husband didn't like to carve.

Q. Did I understand you to say that you asked him to take the head of the table? A. I did.

Q. What did he say? A. He said, no, let Will sit where he always has; it don't make any difference. He said, "On coming into the family I don't want you to make any difference with Will or the rest of the family." 10

Q. Did you ever tell your husband to go, or he might leave you and you would be satisfied providing he paid you a certain amount each month? A. Never.

CASE CLOSED.

20

Opinion.

BIGELOW, V.-C. (orally):

I will advise a decree dismissing the bill of complaint.

I am not much impressed by the theory that the alleged agreement between these parties in advance of the marriage that the mother should live with them had any effect on their respective duties to each other after the marriage, and I do not base my conclusions at all on the ground that there was such an agreement. 30

There is no public policy of the state more important than the policy which tries to build up happy homes and keep the relations of man and wife amicable. It is the duty of both husband and wife to try to make a success of their relationship with each other. In this case, I think it might be said that the venture of these parties 40

Opinion.

10 was foolhardy. The woman was 52 years old, as I recall it, and the man 57 at the time of his marriage, and they both presumably had acquired set habits of life and they went to live with the wife's sister and the latter's husband and with the mother of the defendant. It would have been almost a miracle if the relationship in that household had been pleasant.

20 Now, there is nothing in the evidence to indicate that the senior Mrs. Riker attempted to act as the head of the household. It appears quite plainly to the contrary that the younger Mrs. Riker was the head of the household, although she felt that her mother-in-law was interfering with her. This is not one of the cases in which the husband has failed in that he has not permitted his wife to be the recognized head of the home. It must not be overlooked that this mother of the defendant was 78 years of age, and even though she was strong and well for that age, still it was the duty of all the parties to treat her with consideration and to make the most earnest effort to get along with her.

30 When the complainant went, as she did, to a lawyer and had that lawyer write a letter to her mother-in-law, who was then a member of the household, demanding an increase in board, and when five months later she served a formal notice demanding possession of the room occupied by the mother-in-law, she put upon the defendant's mother an indignity that, it seems to me, he was bound to resent, and which the wife must have anticipated he would resent, and so he left the house taking his mother with him, and offered to take care of his wife, the complainant, in the new household.

40 I am satisfied that there was no abandonment of the wife without justifiable cause and for that reason I will advise a decree, as I have said.

Exhibit C-1.

Being note written by Defendant to Complainant on Oct. 31, 1927, as set forth in Defendant's Answer, pp. 10 and 11.

Exhibit C-2.

November 1st, 1927.

Dear Fred,

As you requested, I kept the message which you handed me and read it after you went away yesterday. You know that I have always desired to live with you as we got along fairly well together except when your mother interfered, which was often.

You are mistaken when you refer to the house where we have lived since our marriage, as being my sister's. It is true that the property belonged to my sister and self but I have the sole management of the home and, as you know, my sister and her husband have only lived at the place a small part of the year and only as our boarders, which we were glad to have because of the help we received in that manner. My sister has been good enough to even pay her room rent for the entire year although she is absent for the greater part of the time.

You have left me without any justification. You have yielded to the demands of your mother to live with her. I told you different times that I would live with you at any reasonable place but not with your mother in the same household as

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Exhibit C-2.

she and I are unable to get along together. You have told me that you would not live anywhere unless your mother was with you. I assume that the home which you claimed you were going to establish on 9½ Sterling Street would be one in which you desire your mother to live with us.

10

I will come to live with you, although you have mistreated me, provided you do not insist that you mother live with us. You have left our home only because I requested that your mother find a place to board elsewhere. I served your mother with a written demand that she leave, after requesting her to do so different times. When you and she saw that I intended that she depart from the home which you and I established, you stated that if your mother had to go that you would leave also and that is exactly what you did.

20

Please let me hear from you very soon as I am sorry that you went away and desire that we live together as I am sure we could be happy if your mother is not around.

You never objected to us having my sister and her husband with us as boarders but if you had done so, I would have informed them that they could not live with us, even for the small part of the year which they did.

30

I am willing to live with you alone if the persons with whom we have been living in the past are objectionable to either or both of us.

Please let me hear from you soon so we can make our plans together.

SALLIE

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Exhibit C-3.

9½ Stirling St
Dec 1st. 1927

My Dear Sallie

In enclose herewith check for \$30.00 which is the amount I have been paying you for your support

10

Of course, as I told you in writing when I moved, I will be glad to have you come and live with me at the home I have made for us.

Your loving husband
FRED.

Exhibit C-4.

20

December 6th, 1927.

Dear Fred,

I have your letter of the first of the present month enclosing check for \$30.00 on account of my support. I accept the money on account but it is far from being sufficient for my needs. I want you to let me have at least \$15.00 each week; that is little enough.

As to the other part of your letter where you asked me to come and live with you, I refer you to my last letter. You very well know it would be impossible for us to get along together in a household in which your mother forms a part.

30

Do not forget to send me at least \$15.00 a week as it is wrong for me to depend upon my relatives for their charity when you are well able to properly provide for me.

Sincerely,
SALLIE

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Exhibit C-5.

543 13th Ave Feb 25th 1930

My Dear Sallie

I cannot go on living alone very much longer.
I thought that you would call on me after I left
Stirling St but I was mistaken

10

You cruelly treated my 80 year old mother
and me.

You broke your promise to me that my mother
could make Her home with us.

And when you sued Her after having Her dis-
possessed was the indirect cause of Her death, in
other words She died with a broken heart.

20

But that dont alter the fact that you are my
Wife, and Sallie your place is here with me. So
I am taking this means of asking you again to
come here and live with me

When you do come here please be sure to always
come alone.

Your Husband
FRED.

Exhibit C-6.

February 28th, 1930.

30

Dear Fred,

I received your letter under date of the 25th in-
stant and, of course, showed the same to my coun-
sel who, I am honest enough to say, has advised
me as to my rights, although you did not mention
in your letter that your counsel had suggested
that you do what you did, and, perhaps, was the
author of what you wrote. My first impression
was not to reply because of the utter unreason-
ableness and absurdity of your statements.

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Exhibit C-6.

Before you deserted me, you never had one word of complaint or dis-satisfaction with respect to our relationship, except as the same concerned your mother, who was your paramount interest and whom you served, maybe, perhaps, commendably to some extent, but with such distorted obeisance as to utterly disregard your conjugal duties to me. 10

You threatened to leave me because your mother could not remain as a member of our household and you left in pursuance to your threat. I have not seen or heard anything of you since you deserted me and went away with your mother, on October 31st, 1927. The least you could have done in the meanwhile, since you did not care to provide a suitable home for us, was to provide me with proper support. If you really cared to talk to me, why haven't you called to see me where I am living. You could, at any time, see me alone as I am alone a great deal of the time and if you did not care to talk to me in the house where there might be others we knew, although out of hearing, we could have gone somewhere else. 20

In your letter there is no expression of sorrow or regret. You have not asked forgiveness for your wrongs. Although you, at this late time, have offered, in a cold, formal, distant manner, by registered mail, for which you demanded a post office receipt, have asked me to come to live with you, I cannot believe that you have any love or feeling for me. 30

As the hour of the hearing of our case approaches, after more than two years of silence on your part, it appears instead that you are trying to bolster up a defense. Your mockery is not going to mislead me or the court, where I have been obliged to seek relief. 40

Your wife,

SALLIE

Exhibit D-1.

LAW OFFICES
 TIFFANY, BRUGLER & WITTREICH
 SECOND NATIONAL BANK BLDG.,
 HOBOKEN, N. J.

May 25, 1926.

10 Mrs. Elizabeth Riker,
 103 North 9th Street,
 Newark, New Jersey.

Dear Madam:—

20 My cousin, Sally Riker, your daughter-in-law,
 has consulted me concerning your boarding with
 her. It appears that you have been asked to pay
 \$14.00 per week board but refused to do so. Of
 course, you may refuse to pay \$14.00 a week but
 in that event you must find another place. Our
 client certainly has a right to choose whom she
 desires to take as a boarder, if anybody, and at
 what price she is willing to keep boarders.

I am reluctantly obliged to inform you that if
 you desire to remain a boarder as above, you will
 have to pay \$14.00 per week or find another place.

30 This is personal notice to you to vacate the room
 occupied by you in the home of our client on or
 before June 5th, 1926, otherwise the necessary
 steps will be taken to remove you from the prem-
 ises with what personal effects you may have.

40 I trust that it will be unnecessary to resort to
 any unpleasant procedure in this matter. You
 have been notified a long time ago and certainly
 cannot complain that you were not given sufficient
 time to find another place. You are again given
 over a week but must understand that appropri-
 ate action will be taken immediately following
 June 5th if you have not made a decision for your-
 self.

Very respectfully,

G. EARL BRUGLER,
 Per. L. R. R.

GEB.LRR.

Exhibit D-2.

Mrs. Elizabeth Riker,

103 North Ninth St., Newark, N. J.

TAKE NOTICE, I hereby demand you to deliver unto me, the undersigned, possession of the room in the above premises, on the 29th day of October, 1927, on which day your right of possession of said room will expire, together with all rights by you as my boarder and lodger at the above address.

10

Yours respectfully,

SALLIE B. H. RIKER

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Dated October 20th, 1927.

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13 OCT. T. 1931

New Jersey Court of Errors and Appeals

Between

SALLIE B. RIKER,
Complainant-Appellant,

and

FREDERICK H. RIKER,
Defendant-Respondent.

On Bill for
Separate Main-
tenance.

Appeal from
Court of
Chancery.

BRIEF OF COMPLAINANT-APPELLANT.

Preliminary Statement.

This is an appeal from the Court of Chancery, wherein the complainant brought a cause for separate maintenance against her husband, under the 26th Section of the Divorce Act, on the ground of his abandonment of her on October 31st, 1927, since which time he failed to adequately provide for her support in accordance with his means and their station in life.

The parties were married on January 28th, 1925. Following the honeymoon, they commenced housekeeping immediately, at 103 North Ninth Street, in the City of Newark, where they cohabited until October 31st, 1927 (22-40), when the defendant left the domicile and went away with his mother, who had been living with them. Defendant deserted in accordance with his previous undenied ultimatum to the effect that *if complainant could not live with his mother, she could not live with him, and it was time they parted* (41-38).

The complainant's mother had lived with them

since their marriage. The defendant contended that this was pursuant to an arrangement made by them before the marriage. The complainant, on the other hand, denied this alleged arrangement and, furthermore, contended that if such arrangement had been made, it could have no effect, as any such alleged arrangements were extinguished by the inter-marriage and the rights of the parties were to be determined only by the law applicable to the marital status. It is true the wife was originally willing to have the mother board and lodge with them. The husband agreed before the marriage to contribute \$100.00 monthly for the support of the household (22-5). The complainant had a half interest with her sister, in the property where they lived. The property, however, was heavily mortgaged, and in order to obtain her half interest, complainant was obliged to borrow from her sister (63-18).

After housekeeping was commenced, the complainant, contrary to the pre-nuptial arrangement, only contributed \$60.00 a month instead of \$100.00 for the support of the household. His mother paid only \$10.00 a week for board and lodging, which she just handed to complainant without inquiring if the amount was satisfactory (35-20). While defendant immediately broke his agreement as to his contribution for the support of the household, complainant accepted the situation until defendant's mother commenced to interfere in the household relations, dominated her son and made herself continually obnoxious about the household, making complainant's life miserable (36-5). The defendant's mother's intrusion and interference with complainant in the management of the household over which she had the right to preside as mistress, became progressively more pronounced so as to be unbearable.

Both parties were of matured years when married, she being 52 and he being 56, neither had been married before. The discretion signified by their delay, was proven by the fact that they never had any personal animosities despite the wrecking of the matrimonial bark by the defendant's mother. In justice to the defendant we must say he endeavored to dissuade his mother not to interfere in the household but he had no power over her and his efforts resulted only in his "getting the devil" (42-12).

Besides the parties, the household consisted of defendant's mother, a roomer by the name of Mrs. Garlich, and Mr. and Mrs. Cumiskey, the complainant's sister and brother-in-law. Complainant's sister contributed \$100. a month. This board money, to a large extent, was unearned, because complainant's sister had a half interest with her in the house, and the Cumiskeys were absent for long periods, living and visiting elsewhere, and, when with the Rikers, helped with the work, supplied much for the table, paid for the telephone and assisted generally.

The \$100. thus paid by the Cumiskeys was in accordance with a pre-nuptial arrangement whereby the Cumiskeys and Rikers should make a like contribution to the common household, in which there was a common interest. The defendant, as before stated, immediately violated this arrangement, and only contributed \$60. a month. While the aforesaid arrangement could not any more affect the marital rights of the parties than the alleged arrangement which defendant contended was made with respect to his mother living with them, yet it plainly shows that defendant had little respect for his word or duty. The record shows that nowhere did defendant attempt to deny the pre-nuptial agreement whereby he, for himself and wife, promised to contribute \$100. a month, and

the Cumiskeys agreed to contribute a like amount.

Defendant's mother, having become an intolerable nuisance about the house, the complainant deemed that if she remained a member of the household, the least that should be required would be for her to pay a reasonable amount for board and lodging. Accordingly, the complainant caused the defendant's mother to be served with a notice to vacate, following which the new board arrangement was made, although the defendant's mother objected to paying more board, stating that "Fred" was her son and was giving the defendant \$60. a month (46-30).

Having shown that the defendant was worth in the neighborhood of \$50,000., and all that he had been paying her since his desertion, was a sum equivalent to \$6.92 a week, an amount grossly inadequate for her needs and not at all commensurate with the defendant's circumstances, she was entitled to a decree in her favor, but the court dismissed the action resting his *opinion upon one ground*, to wit: "I am satisfied that there was no abandonment of the wife without justifiable cause and for that reason I will advise a decree, as I have said."

POINT I.

Defendant abandoned complainant on October 31, 1927, without justifiable cause.

(a)

The defendant, of course, is to be commended for his filial concern for his mother, but, he cannot be excused by that for his willingness to ignore his plain duty to complainant. He had no right to be sub-servient to another even though his mother, and to permit her to dominate himself and inject a control over the household. More-

over, with reason or without reason (although there was ample), complainant was not obliged to tolerate the keeping of an objectionable person in the home.

Complainant testified and it is not denied, that she complained to her husband and asked him whether he ever spoke to his mother concerning conditions about the house, and that the defendant said that "she (his mother) gave him the devil every time he went up in her room" (42-12).

When defendant abandoned complainant he handed her a note (10-35), just before he went out, and requested complainant to read it *after* he had gone (23-38). This note requested complainant to come and live with him (and with his mother) at a new place, the defendant implying therein, that he could not remain in the house of complainant's sister any longer. It will be interesting to observe in his testimony, the defendant did not show that Mrs. Cumiskey had caused any trouble about the house or that she was in any way running the house. However, even if that were true, the complainant stated, and it is nowhere denied, that she was at all times willing to live with her husband in any home he might establish for them apart from his mother and her sister (26-30; 85-34; 92-30).

It is apparent that defendant's conduct in leaving this note, which was to be read after his departure, was most peculiar and, coupled with the fact that he never again returned to the home and never made any effort deserving of consideration, in the nature of overtures, looking toward a reunion and setting up a home apart from his mother and apart also from complainant's relatives if he so desired.

The complainant, on November 1st, 1927 (Ex. C-2, p. 91), replied to defendant's note, stating

that she had read the same after he had gone away, as requested, and among other things said, "that she was willing to live with defendant alone, if the persons with whom they had been living in the past were objectionable to either or both of them."

We would respectfully request the court on appeal, to read this exhibit, together with defendant's aforesaid note of departure, in full, as the same presents the exact situation of the parties. It will be manifest in the light of defendant's subsequent conduct, that he intended to abandon complainant, had no bona fide desire that he would ever again live with her. He never made any effort such as recognizable in law as became his duty to affect a reconciliation.

Defendant's mother, although of advanced years, was a "very imperious woman, very tall, weighed * * * about 200 pounds" (59-32); according to Mrs. Byram, her sister, "she was a real strong woman * * *. She never looked better in her life than she did while at Sallies" (53-35); she was never sick a day (42-14); she "went downtown to collect her rent, and would go around shopping, and go to the movies" and would be gone sometimes alone from 9.30 in the morning until 5.30 at night (46-14); she had considerable independent means and did her own business (54-16). In her estimation, her son never achieved manhood and needed her constant surveillance. Furthermore, she was unwilling that another of her sex should in any way supplant her years of mothering of her "boy."

Complainant was sorely tried by her mother-in-law's conduct, ranging all the way from criticisms as to what she wore (22-23), to eavesdropping over the balusters (43-10). Defendant probably will try to claim the elder Mrs. Riker was feeble and dependent both physically and finan-

cially upon him. Of course, that is not true. After all, the "mother-in-law" is not the issue in this case. It is regrettable that we have to mention her as she, at heart, undoubtedly meant the best for her son although her self-indulgence and abnormal concern for his daily curriculum warped her judgment.

To defendant, his mother was the paramount consideration and in the final analysis, the only issue then and now. He chose (or his mother chose for him), to cast aside his marriage bonds and set up a new home for his mother and self. He told his wife his mother "gave him the devil" and attempts no denial of this admission or of his mother's domination generally.

A husband is not entitled to inflict the objectionable presence of his mother upon his wife and this is particularly true where the mother had means of her own for independent support, as in this case.

The wife is entitled to a home established by the husband over which she may rule as mistress, free from any third person which she deems objectionable. A wife is justified in leaving her husband in a case where he compels her to suffer the presence of another in the home.

How much stronger the complainant's case must appear when it is remembered that she did not leave the defendant but that he summarily and coldly left her. Instead of a case of the wife leaving for a just cause and the situation operating as a constructive abandonment by the husband, we have a case of his leaving and an *actual abandonment by him*.

The Vice-Chancellor, in rendering his opinion, said that he did not base his conclusions at all on the ground that there was any agreement between the parties that defendant's mother should live with them; or that such alleged agreement in ad-

vance of a marriage would have any affect on their respective duties to each other after the marriage, but fell into error, when he further expressed in his opinion (90-25), that complainant not desiring her mother-in-law in the household and demanding an increase in board, she put upon defendant's mother an indignity that he was entitled to resent; that "*I am satisfied that there was no abandonment of the wife without justifiable cause and for that reason I will advise a decree, as I have said*".

Assuming (but, of course, denying, with all our strength, because the evidence is entirely contrary) that the wife had no real reason to object to defendant's mother being in her home, following the many incidents of annoyance and quarreling, we, nevertheless, contend that the wife was not obliged to submit to her presence, and defendant, under no circumstances, with or without cause for *resentment*, had the right to insist that she must accept his mother as a member of their household and to abandon complainant.

The trial court thus predicated his decision upon the solitary ground that incompatibility of a wife and her mother-in-law was justifiable cause for a husband to desert or abandon. Heretofore, we were unaware that mere incompatibility, even of the principals to a marriage contract, constituted a cause for separation.

Our conception of the law is, that there could be no justifiable cause for one spouse leaving the other short of a matrimonial offense, such as cruelty and adultery, or some constructive conduct, as distinguished from actual, which would be tantamount to a recognized offense of that nature.

"Under our statute desertion is justified only when the deserting party has been so offended against as to authorize at his or her

instance a decree of divorce or judicial separation, but the guilt of the offending party must appear by clear and satisfactory proof”.

Rogers v. Rogers, (Court of Errors and Appeals) 81 N. J. Eq. 479.

“The general rule is that one spouse is not justified in leaving the other unless the conduct of the offending spouse is such as would in itself constitute grounds for divorce.”

19 C. J. 80 § 181.

“The spouse who by his or her act intentionally brings the cohabitation to an end is guilty of desertion”.

19 C. J. 61 § 116-117.

“If there is anything settled in the law of divorce, it is that the reasonable cause which would justify a desertion must be such as would authorize a dissolution of the marriage”.

Van Dyke v. Van Dyke, 135 Pa. 459; 19 Atl. 1061.

“It is the duty of a husband to provide a home for his wife in which she is recognized by its inmates as the household mistress. And when the husband subjects his wife in the management of her household affairs to the interference of his mother, who manifests an enmity towards the wife and by words and acts assails her conduct and reputation to such an extent that she cannot endure and leaves the home for that reason, her desertion may be willful, but it does not become obstinate so long as the husband makes no effort to induce her to return to the home freed from the contentious element.”

“This case illustrates the futility of attempting to establish such a home as a husband should provide for his wife, when one of the component parts is his mother, who, up to the time of the introduction of the wife

is its head, and who is not willing to graciously accord to the wife her rightful possession as mistress, and where the husband, in all disagreements between his mother and wife, either supports the mother or remains neutral between the contending forces.”

Fraser v. Fraser (Court of Errors and Appeals), 87 N. J. E. 633.

“Any man who has proper tenderness and affection for his wife would certainly not require her to reside near his relatives if her peace of mind were thereby seriously disturbed. This would be very far from compliance with the scriptural exposition of the duty of husbands: ‘That for this cause shall a man leave father and mother and cleave to his wife, and they twain shall be one flesh’.”

Powell v. Powell, 29 Vt. 148.

“Whatever his filial obligation may be, a man may not bring his mother to preside in his new home; that place belongs to his wife; neither may he, without her consent, take her to the home of the mother, there to be under her dominion and control. And when the wife objects to this she does not thereby forfeit her right to support and maintenance.”

Brewer v. Brewer, 79 Neb. 726; 113 N. W. 161; 13 L. R. A. (N. S.) 222.

In *Gersinger v. Conners*, 130 La. 922; 58 So. 815, it was held that a husband was not entitled to a separation on account of the refusal of his newly wedded wife to come and live with him in a room in a flat occupied by his mother, whose disposition towards the wife was unfavorable.

“Held that where husband was financially able to provide an independent home for his wife and refused to do so, insisting that they make their home with his parents, which arrangements had been tried and found unsatis-

factory, the wife was not chargeable with desertion in refusing to live with her husband.”

Hoffhines vs. Hoffhines, (Ct. of Appeal of Md.) 146 Md. 350; 126 Atl. 112.

“The husband can neither arbitrarily compel the wife to live with or in close proximity to his relatives, nor can he, without reason, forbid social intercourse between the wife or her relatives or exclude them from his home. It is his duty to furnish a home wherein the wife is free from abuse, ill treatment, and unwarranted interference from members of the household. If such a home is not provided, the wife is justified in leaving and not only is not guilty of desertion in so doing, but she may charge the husband with constructive desertion.”

9 R. C. L. §152, p. 366.

“A wife is not guilty of desertion in refusing to follow her husband to the place of abode selected by him if it has been chosen without reason and discretion. Thus it has been held that a wife is not guilty of desertion for refusing to follow her husband * * * to a place among his relatives who are unpleasant to her, and who would interfere with her control of the home * * *”

19 C. J. p. 60.

“The husband has the right to establish a separate home and is not compelled to live with relatives of his wife”. *Child on Divorce*, p. 127. Conversely, a wife is not compelled to live with relatives of her husband.

(b)

The defendant, perceiving his matrimonial offense, endeavored to destroy its consequence, by going through motions of making overtures to re-establish a new home. These overtures were con-

ditional and were preceded by a self-serving declaration to his wife, contained in the note he handed her *to be read after his departure*. A month later (Ex. C-3 p. 93), with a check for \$30. forwarded as his wife's support for the month, he enclosed a note, naively stating that he would be glad to have her come and live with him in the home he made for them. As has been seen, the new home he established was for himself and mother. Past experience made it plain that the plan was unworkable and unacceptable. To this note, the complainant replied (Ex. C-4 p. 93), that the defendant well knew it would be impossible for them to get along together in a household in which his mother was a part.

Three years later, *eight months after his mother died and after this suit had been commenced*, complainant received another short message from defendant (Ex. C-5, p. 94), which stated that he thought complainant would call on him after he had left her and that complainant had cruelly treated his mother and self. Complainant replied to this message (Ex. C-6, p. 94), to the effect that defendant never before had one word of complaint or dis-satisfaction with respect to their relationship, except as the same concerned his mother; that he threatened to leave her only because his mother could not remain in the household and that he did leave in pursuance to his threat; that she had not seen anything of him since he deserted her and went away with his mother over three years before; that the least the defendant could have done in the meanwhile, since he did not care to provide her with a home, was to provide her with proper support; that if he really cared for her, why didn't he call to see her; that he could, at any time, see her alone, as she was alone a great deal of the time and if he did not care to talk to her in a house where there might

be others, although out of hearing, they could have gone somewhere else; that defendant, instead of expressing sorrow for his mis-conduct, in abandoning her and otherwise, and asking forgiveness, "in a cold, formal, distant manner, by registered mail", for which he demanded a post office receipt, asked her to come to live with him; that she could not believe, under the circumstances, that he had any love or feeling for her, but instead, it appeared that defendant was trying to bolster up a defense; and that his mockery would not mislead her or the court where she was obliged to seek relief.

Certainly, by no stretch of the imagination, could defendant's efforts of note writing be ascribed as evidencing a bona fide desire on his part to regain his wife's society. The new home he had established for himself and mother was in the same city, not far away, and if he were in earnest, why didn't he make a personal appeal. His wife remained amenable to any sincere advances he desired to make. Notwithstanding defendant's evident insincerity and lack of genuine interest and effort to console his wife and effect a reunion, she left the door open and suggested an avenue to him whereby he could reasonably hope to accomplish a result if a grain of sincerity abided in his breast.

A husband's sincerity is largely gauged by the character of his acts; with what he did and what he did not do; his state of mind as revealed by his past and present attitude; his concern or lack thereof for the feelings and welfare of his spouse; and the effect the lapse of time may have upon the sum total of his mental complexes. In this case, the husband experienced no change of heart or manner from the beginning to the end; his attitude was one of cold indifference and his regard for the sanctity of his marriage obligations were

no more than the bare legal necessities, and even this he flouted with the meagre sum of \$6.92 per week.

There is a mountain of evidence that defendant did not care for the wife and did not desire a restoration of relations. Defendant was the sole witness in his own behalf. At the hearing, we find him in categorical reply to questioning by his counsel, glibly saying that he would "be willing now to resume relations" (84-10). His fixed attitude with regard to living with his wife was demonstrated by the following (85-25):

"Q. Did you ever ask your wife to live with you at any place in a home where your mother could not be? A. Only here lately. While my mother was living my mother was always included."

And on the bottom of the same page, the following:

"Q. Did your wife offer to go anywhere? A. Yes, she was willing to go with me without mother.

Q. She told you different times, didn't she? A. Yes.

Q. You overheard your wife and mother quarreling different times? A. I don't believe I did. It was out of my hearing except only once or twice."

As bearing upon the defendant's expressed attitude at the time of the hearing, we find him giving the following testimony (85-19):

"Q. You love her now? A. It is almost down to zero."

And again (86-18):

"Q. Is the love a large part of your desire (to re-unite)? A. Yes, sir.

Q. It is? A. Yes, sir.

Q. In other words, your desire and sincerity corresponds with your love, does it not? A. I would say that."

The defendant swore that his love was “*almost down to zero*”. He thereafter testified, that his desire and sincerity corresponded with that love. Defendant thus measured his own desire and sincerity and the Court is informed it is somewhere about “zero”. This is a direct refutation by defendant himself of all claim to any *bona fide* desire to have his wife with him.

It is much enlightening also, to read the testimony of defendant’s aunt, Mrs. Byram, sister of his mother and matrimonial guide (53-1 to 10).

“Q. Did he (referring to defendant after his mother’s death) say in what manner he missed his mother and whether or not there was any change in his life and it made any difference to him? A. He said he used his brain more now since his mother was gone then when she was alive.

Q. Did he say why? A. She always looked after him.”

And this witness, relating a conversation had in her presence, between the defendant and his mother, prior to their marriage and concerning the coming event, testified as follows (55-18 to 25):

“Q. She didn’t want to go to Ninth Street?

A. No.

Q. Did she say she didn’t want to go? A. He told by her actions.

Q. Only assumed from her actions? A. This is what he did, yes.

Q. And then he said to her: “If you will keep house for me I will throw the whole thing up”. A. Yes; that is what he wanted to do in the first place.”

Charles H. Byram, an uncle of the defendant, was also present with defendant and his mother, the day before the marriage and gives his version of the same conversation, as follows (65-22):

“Q. What was the conversation? A. “Ma, if you say so I will throw up the whole thing and we will go to keeping house.”

Q. To whom did he say that? A. Mrs. Riker.

Q. Who said that? A. Fred to his mother.

Q. What did the mother say? A. Nothing.

Q. Did Fred say anything further? A. Then he says, “Well, I will marry Sallie and we will have a home the rest of our life.”

Mrs. Byram, being interrogated further as to events subsequent to defendant leaving complainant stated (bottom of page 66 and top of page 67):

“Q. Did he say anything about asking Sallie to come back to live with him? A. No, he didn't say he was going to ask her.”

“By the Court:

“Q. Did he say anything about it, Mrs. Byram? A. No—yes, he said something about it.

Q. Do you remember what it was he said about it? A. He didn't think if she came back they would live happily together.

Q. Will you repeat that? A. He said if he came back he wouldn't stay over six months; he wouldn't treat her right, he didn't think.”

And again (69-16):

“Q. Well, tell us what he said. A. Well, he said he acted so ugly to her that she couldn't live with him.”

The Court, in *Kennedy vs. Kennedy*, 112 Atl. (N. J, Ch.) 492, in dealing with a situation where a wife left her husband because of being obliged to live with her mother-in-law, stated it was the husband's legal duty to seek out his wife and if required, search night and day, and to say to her “we can get along happily together, I know, if we live by ourselves. Now, we never have had a chance to try. Come with me. I will get you the

best home that I can provide; I will do everything that my finances will permit in the way of making you happy in that home. Come with me and I will make you happy.”

“The duty of the husband to love and support his wife is a practical duty and is not performed by a manifestation of sentiment without corresponding conduct.”

Coe v. Coe, 68 N. J. Eq. 157, 159.

The Court in *Parker V. Parker*, 57 N. J. Eq. 577, commenting upon a formal invitation of a husband to his wife, to resume relations after suit was brought because of his abandonment, characterized the same as “a mere pretence to avoid the making of a mandatory order upon him to maintain her.”

“While the law regards a sincere and honest desire, on the part of the husband, to put an end to an unfortunate separation between himself and wife, with favor, and as tending to relieve him from responsibilities the law might otherwise impose upon him it cannot give such effect to the simple declarations of a defendant in a suit already commenced, without any manifestations by act or effort that his proposition is sincere or made with the expectation of having it accepted.”

Elliott v. Elliott, 48 N. J. Eq. 238.

“A formal invitation to the wife by the husband to return, where made after the suit brought by the wife for support because of abandonment and refusal to support, there being no evidence of his intent to treat his wife justly, does not relieve the husband of the consequences of his abandonment and refusal to support his wife.”

Parker v. Parker, *supra*.

“As we understand it, the invitation back which the rule contemplates is a cordial over-

ture by the husband to return to the bosom of his family, and there, as its head, to discharge the household duties and to be cherished and supported as a wife should be, and be treated with respect and conjugal love and tenderness."

Briggs v. Briggs, 24 S. C. 377.

"Although a husband offers to take his wife back, the Court should be very slow to accept repentances made at the eleventh hour, and under the provocations of a decree for alimony hanging over his head."

Rae v. Rae. 31 Ont. Rep. 321.

In *Shore v. Shore*, 96 N. J. Eq. 661, the husband sent a note to his wife that he wanted her to resume cohabitation. The Court observed it was "neither preceded or followed by any personal conversations or interviews nor even requests for such conversations or interviews on the part of the husband", and held that the husband who had left his wife had "not made sincere efforts to have her rejoin him"; that the note "was altogether anything but the burning words of a repentant and repining husband".

In the above case, the Court further stated that the rock on which the matrimonial bark originally foundered appears to have been a decided difference of opinion as to the economic scale on which the future home was to be based; that the husband testified that his regard for his wife was that of a "friend"; that a husband, within reasonable limits, had the right to select the home, nevertheless, such a disagreement did not entitle him "to follow up an unreasoning departure with a cold-blooded request for his wife's return, unaccompanied by the natural evidences of affection which would convince her of the sincerity of his desire for the resumption of their married life".

That is quite a parallel to the case *sub judice*. Instead of trouble over money, we have trouble over a mother-in-law. Instead of the husband measuring his regard for his wife as that of a "friend", we have our defendant saying his love for his wife was about "zero". Both husbands were merely cold-blooded note writers, and made no attempt to show even false affection, there being no real affection.

Judge Kays, speaking for this Court in *Segal v. Segal*, 146 Atl. 189, said that even if a husband should abandon his wife *with* her consent, he was required to make reasonable effort to persuade her to resume relations and is required to support her; that reasonable effort was not shown by writing letters and by the husband sending his brother to see his wife, whom she informed "Joe (her husband) can go to hell"; that the husband should have gone himself to see his wife.

"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. *Octa exteriora indicant interiora secreta.*"

Popovics v. Popovics, 98 N. J. Eq. 350.

In *Schmidt v. Schmidt*, 117 Atl. (N. J. Ch.) 400, the husband wrote a number of letters to his wife asking that he be taken back, and sent two women acquaintances to solicit her to do so, but she refused. The Court held that letter writing and sending emissaries was not the way, as "personal communication—heart to heart talk—might have brought favorable results."

Vice-Chancellor Lewis, in *Barto v. Barto*, 112 Atl. (N. J. Ch.) 888, in commenting upon an alleged desire of a husband to restore connubial

relations, held that the fact that the husband sent his sister to see his wife when he has always been in a situation where he could have reached her without difficulty, could not be said to be sincere; that he "never sought her out during the long period that had elapsed since they parted and made what is sometimes called a "robust" effort to procure her return."

The latest reported decision seems to be *Gaffney v. Gaffney*, 152 Atl. 233, wherein this court affirmed our Court of Chancery on the opinion filed below, which recited that the wife had left the husband after which he claimed to have written her numerous letters, one of which was produced; that if either of the parties had desired to resume their marital life it would have been the easiest thing in the world for one to have sought out the other and made the necessary overtures to effect a reconciliation.

"It is not, under our law, the duty of the wife to do it, but it was the duty of the husband". The husband called on the wife in company with another man, obviously for the purpose of furnishing evidence in a divorce suit; that no court would be justified in holding that such advances satisfied the rule requiring a sincere effort at a reconciliation by the husband." *Ibid.*

Even in the skimpy notes written by Mr. Riker, there was not a plea or entreaty from which a wife could glean that her husband had a warm regard and earnestly solicited her comradeship and that happiness awaited them.

The case at bar is much weaker than any of the cases herein cited, in the showing made by the husband with respect to an alleged desire for a reconciliation and a consequent effort to effectuate that object. Cohabitation in the mind of Mr. Riker was one of the lightest concerns any man

ever had, except perhaps until complainant brought her suit, when the subject became a matter of concern to him, not because of any desire to live with his wife but because of a necessity in his mind to defeat the impending action. He thereupon wrote the letter marked "Exhibit C-5", p. 94, and took care to have it registered, demanding a registry return receipt, so that evidence would be readily at hand to substantiate his magnanimous proposal. It has been seen that our courts have had no patience with a man who made such effortless effort as Mr. Riker. Here, at every turn, the defendant's insincerity is indubitably revealed, not only by what he did but what he failed to do. Coupled with this, we find the undenied statement by the defendant to his aunt, to the effect that he didn't think they would live happily together (67-9); that he wouldn't use her properly (67-25), and that she wouldn't stay with him six months, he wouldn't treat her right, etc. (67-11).

POINT II.

Defendant failed to adequately provide for complainant following his abandonment of her.

The defendant admits he is worth in the neighborhood of \$46,000. He first testified he was worth about \$40,000 (71-11). He then itemized his estate as follows: \$22,000 in Fidelity Guarantee mortgages; \$5,600 in a first mortgage; \$5,000 in two or three savings accounts; \$12,000 in 543 13th Avenue, Newark, and \$1,500 or \$2,000 in 355 South 19th Street, Newark, making a minimum total in excess of \$46,000. Since examination required the defendant to admit that he was worth at least \$46,000 instead of \$40,000 which he stated orig-

inally, it is quite likely that he is worth considerably in excess of even \$50,000, as claimed by complainant (top of page 71 and top of page 72). When the parties were married, the defendant was worth about \$24,000 or \$25,000, he and his mother having divided their worldly possessions at the time, he taking half and she taking a like amount (26-38). Inasmuch as defendant took his mother's estate following her death, it is reasonable to assume that with his own possessions he became worth at least \$50,000, and probably much more, in view of the parsimonious mode of living of both defendant and his mother.

Complainant has a half equity, above two mortgages, or \$1,500, in 103 North 9th Street, Newark, less \$600, which she borrowed from her sister in order to make the investment, leaving a net interest in the transaction of \$900; has two shares of Telephone & Telegraph stock; three shares of Pullman stock, and some shares of stock in a limestone company. The value of these shares was not exactly shown, but complainant is willing to concede that she has assets around \$2,000, from which she has an annual income of \$181, or about \$2.29 a week. Since defendant deserted complainant, he paid her to the time of the final hearing \$30 a month, or at the rate of \$6.92 a week for the year. The complainant is without means of support of her own and is dependant upon the charity of her sister, except for the small personal income mentioned.

The Court below gave no consideration to defendant's ability to support complainant, other than observing that complainant "if she is entitled to support under a decree of this court, this examination would be largely upon the defendant's present financial condition" (70-23). The Court later on, in his opinion, paid no attention whatever to the question of support, and decided

the case wholly upon the theory that the defendant having resented the fact that his wife could not get along with his mother and that his wife had demanded additional board, the same justified him in abandoning her. Of course, if the Trial Court were correct in dismissing the complaint upon the ground he did, there was no need to consider the question of adequate support, but we have seen *there existed no legal ground for abandonment and the question of support had to be considered.*

“The words of the statute, ‘refuse or neglect to maintain and provide’, mean to maintain and provide in a suitable manner.”

Hollingshead v. Hollingshead, 91 N. J. Eq. 261.

“It (her right to be supported) is co-extensive with the husband’s position and ability. His ability and the justice of her enjoyment of her right are subject to the change of circumstances which the court cannot anticipate, and hence complete justice requires that the court’s power to act shall be kept open so long as it may be needed to direct just variation.”

Lynde v. Lynde, 54 N. J. Eq. 473; affirmed on opinion below, 55 N. J. Eq. 591.

POINT III.

Court below admitted illegal evidence over objection of complainant.

The theory of the defense was that complainant had breached an alleged pre-nuptial contract whereby the wife agreed to include his mother in the marriage (32-30; 33-15), and respondent’s counsel argued: “if that was part of the marriage

contract it would make a difference. That might constitute justifiable cause for leaving" (32-35). The whole defense was conducted along that line and counsel, on cross-examination of complainant, asked her the following question (34-32), to which objection was made and the court overruled:

"Q. Then, of course, you knew when you were married that the house had been sold and that there was no place for the old lady to go to?"

Mr. Brugler: If the court please, I object to this line of questioning about these pre-nuptial matters. I don't necessarily object, but I don't think it belongs to the case, and I make my objection at this time."

Counsel for defendant, in pursuing the same line of examination, asked the following question (39-25), which was allowed over the objection of complainant:

"Q. Why did you marry?"

Mr. Brugler: I object.

The Court: I don't think it is material.

Mr. Bradner: It all bears on the other question, that a part of this marriage between them was more of a profit together.

The Court: I will allow it."

From the first objection interposed by complainant's counsel, it will be seen that objection was made to the entire line of examination by defendant bearing upon alleged pre-nuptial arrangements. The original objection was worded in this language so as not to clutter the record with repeated interruptions, but the court, nevertheless, erroneously allowed this testimony.

In the introductory part of our brief, we believe that it has been made clear that even though there might have been some conversation before the marriage as to the conduct of the household, such

as the mother-in-law coming to live with the parties, the amount of contribution the newly-weds should make toward the running of the household on the one hand and the amount to be contributed by the Cumiskeys toward the running of the household on the other hand. It appears, that the defendant agreed that his contribution should be \$100. a month and there is nowhere a denial by him that he made such promise, and no denial by him that he contributed but \$60. a month; so if there had been any definite pre-nuptial arrangements, the same were immediately broken and discarded by defendant.

In *Albee v. Albee*, 43 Ill. App. 370, affirmed in 141 Ill. 550; 31 N. E. 153; it was held not to be desertion for a wife to refuse to live in the house of her mother-in-law, with whom she did not get along pleasantly. As to the effect of an ante-nuptial agreement to live there, the court said:

“Much stress is laid on the fact that before the marriage she agreed to live at his mother’s house. Such an ante-nuptial contract is of no force; all such promises are merged and obliterated by the marriage contract which bound the husband to ‘leave father and mother and cleave to his wife.’”

In *Brewer vs. Cary*, 148 Mo. App. 193, 127 S. W. 685, it was held that a written contract between a Protestant man and a Roman Catholic woman at the time of their marriage, that the children should be educated in the faith of the Roman Catholic Church, even though the woman should die, was not enforceable at law or in equity.

In *Ryan v. Dockery*, 134 Wis. 431, the Court held that the law required a husband to support, care for, provide comforts for his wife in sickness as well as in health. This requirement is grounded upon principles of public policy. The husband cannot shirk it, even by contract with

his wife, because the public welfare requires that society be thus protected, so far as possible, from the burden of support of its members who are not ordinarily expected to be wage earners, but may still be performing some of the most important duties pertaining to the social order.

“The husband and wife may contract as to their mutual property rights, but they cannot vary the personal duties and obligations to each other which result from the marriage contract itself.”

Ryan vs. Dockery, supra.

Any agreement which strikes at the fundamentals of the marriage relations has always been held void, although agreements for a marriage settlement are favored and upheld in equity if they are not unfair to the wife. An agreement of this character which would not contravene public policy has been the subject of definition.

“Ante-nuptial settlements are contracts or agreements between a man and woman before marriage, but in contemplation and generally in consideration of marriage, or contracts between both or either of them and a third person, in consideration of their marriage, whereby the property rights and interests of either the respective husband, wife or of both of them, are determined, or where property is secured to either or both of them, or to their children.”

30 C. J., §181, p. 627.

There was no agreement between the parties whereby the defendant's mother was to live with them. There was no evidence in the case worthy of the name, tending to show any such alleged agreement. If there had been an agreement of some sort, no one knows exactly what, either oral

or written, it would be ineffectual. Assuming there was an agreement, nowhere is there any intimation that it was *in writing* that attempt was made to effect rights which flowed from the matrimonial status. Moreover, any agreement made upon consideration of marriage, on the subject in question, even if otherwise good, not being in writing, was absolutely void.

“That no action shall be brought * * * to charge any person upon any agreement made upon consideration of marriage * * *, that is not to be performed within one year after the making thereof; unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.”

2 N. J. C. S., p. 2612, §5.

While the Court below stated it did not conclude that defendant was justified in abandoning complainant on the ground there was an antenuptial agreement that defendant's mother should live with them, nevertheless, it sustained that defense theory, both by ruling the testimony tending to prove the same (although it by no means did) was admissible, and inferentially concluding abandonment by the husband upon that ground was justified.

Granted, that the reason assigned by the Trial Court as proper grounds for the abandonment by the husband was *resentment* entertained by him or, by induction, *incompatibility* existing between his mother and his wife—grounds so utterly lacking as legal grounds as to require no argument, we have been constrained to make it clear that the decision cannot stand upon any ground whatsoever.

Conclusion.

The complainant has made out a case under the Twenty-sixth Section of the Divorce Act which entitles her to a decree for separate maintenance by reason of the abandonment of her by defendant and his failure to adequately provide for her.

Defense was feebly attempted upon the ephemeral notion that the marriage between the parties was not an ordinary marriage, entitling it to the ordinary application of rules of justice, but rather a marriage of convenience as to which counsel for defendant labored under the idea that (35-8) "It is a *new question* that I think is involved in this case".

The defendant seemed to also have the idea that after having abandoned his wife, as the Court found (but erroneously upon the hypothesis of justifiable cause), that it befell the wife to humbly beseech him, imploring forgiveness for wrong that she never had committed. While we have the strongest conviction that this Court will have no hesitation reversing the decree below, yet, we do not want any remarks we may make hereafter, be in anywise construed as an indication of weakness. With this preface, we would like to say that if the decree should be assumed correct in result in dismissing the case because, perhaps, \$7 a week was sufficient support, it nevertheless is unfair and highly prejudicial to the rights of complainant by dismissing her action upon the ground that defendant was justified in abandoning her.

As the decree stands, it is an adjudication in favor of the husband, probably barring any further action by the wife based upon the question of desertion or abandonment by him and probably supporting any action that might be brought by

the husband for divorce on the ground of desertion, which is palpably unfair.

Following the final hearing, the decree was made and entered without notice to complainant and without an opportunity afforded her to be heard on its terms. While we continually stress the point that the decree is altogether improper, we, at this juncture, strive to show that in its most favorable aspect the same represents a wrong.

The decree entered in the Court of Chancery should be reversed and the cause remanded to the court below for further proceedings, with instructions for the entry of a decree in favor of complainant, awarding her such reasonable amount for support as shall be found adequate.

Respectfully submitted,

G. EARL BRUGLER,
Of Counsel with Complainant-Appellant.

May Term, 1931.

New Jersey Court of Errors and Appeals

Between

SALLY B. RIKER,
Complainant-Appellant,

and

FREDERICK H. RIKER,
Defendant-Respondent.

*On Appeal
from Court
of Chancery.*

BRIEF FOR DEFENDANT-RESPONDENT.

The bill of complaint was filed July 19, 1928, and alleges that the defendant abandoned the complainant on October 31, 1927, without justifiable cause and has refused to support her, except that he has contributed \$30.00 a month which complainant alleges is insufficient. An answer was filed October 20, 1928; the subpoena being returnable October 5, 1928. The cause was referred to Vice-Chancellor Bentley, and he made an order in November 1928, designating May 27, 1930, at the Chancery Chambers, Jersey City, as the time and place for the final hearing of the cause. This order was consented to in blank by me and I was not present when the motion was made to the Vice-Chancellor. The order is not included in the printed case, but will be found in the files transmitted by the Clerk in Chancery to this court.

The complainant did not apply for alimony *pendente lite*. It may be therefore, fairly assumed that she did not need any more money for her support than the defendant was contributing. The final decree was made on May 29, 1930, and a copy of the proposed decree

was sent to the solicitor of the complainant, with notice to him that it had been sent to the Vice-Chancellor.

The defense set up in the answer, may be stated briefly as follows:

Prior to the marriage of these parties, it was understood between them and agreed to that the defendant's mother who was then 78 years of age, and was an invalid, should live with them when they were married, and should pay board, and that the defendant should contribute for himself and his wife the sum of \$60.00 per month for their joint support in the wife's home. After the marriage, the agreement was carried out by the defendant and his mother, but it was not performed by the wife; she afterwards demanded an increase in board from the mother and subsequently served a formal notice on her to vacate the room. The defendant had sold his own home and had no place to which his mother could go, and he felt it to be his duty to go with her to care for her. He left his wife's home on October 31, 1927, and stated to her that he would give her one-half of the \$60.00 per month and that he had been paying that amount. He expressly denies that he abandoned his wife and that he has refused to support her.

ARGUMENT.

1. The complainant failed to prove the two essential requirements of the statute.

“For a wife to prevail in a suit for alimony, it is necessary for her to show, first, that her husband has abandoned her, or separated himself from her without justification, and second, that he has refused

or neglected to maintain and provide for her.”

Pinkinson v. Pinkinson, 92 N. J. Eq., p. 669, at p. 670, Court of Errors.

The defense set up by the defendant was clearly proved by his testimony, and the complainant admitted on cross examination that it was understood and agreed before marriage, that the aged mother should live with them (p. 32, *et seq.*; also p. 80, ll. 1, 17 and 26).

If the complainant had no intention of carrying out the agreement when it was made, she deliberately deceived the defendant, and her conduct so soon after the marriage raises the inference that she did not intend to permit the aged woman to live in her home. She is not seeking a dissolution of the marriage and the defendant has not indicated in any way that he desires a dissolution of the marriage.

The defendant's position is this: You promised me that my mother could live with us. You had known her and associated with her for several years. You knew that she had had a stroke some years before; you knew that I had given up my employment as a shoe cutter some 12 years before we were married, and had given my whole time to the care of my mother. You knew that it was quite impossible for her live alone and that strangers could not and would not give her the care that she was entitled to and had been receiving from me. Notwithstanding what you knew and your promise to me, you deliberately put her out of the house and would have had her forcibly ejected and put in the street if I had not interfered and gone with her.

The promise made by the wife to permit the husband's mother to live with the married couple

in the wife's home, made her act in throwing the mother out of the house a justifiable cause for the husband leaving the home to take care of his mother. No more cruel act could be conceived of. If the husband had treated his wife in the same manner, by forcing her to leave the house, the law would call it extreme cruelty. While the wife did not direct the force towards her husband personally, she did make it necessary for him to stand by his aged mother and protect her. Consequently, it was the wife's conduct, her cruelty, which forced the husband to leave the house. Notwithstanding the outrageous conduct of the wife in so treating an invalid woman, who was then 80 years of age, and who, according to the testimony, suffered another stroke two days after she was ejected from the house, this defendant handed his wife a note, which was offered in evidence by the complainant, and is marked Exhibit C. 1 and reads as follows:

“A request and statement from Frederick H. Riker to his loving wife Sallie B. Riker: Please do not misconceive the meaning of my leaving this house. The true meaning is that I cannot remain in your sister's house any longer. In leaving your sister's house, I am going to establish a home of my own at 9½ Sterling Street, Newark, N. J. I am not deserting you; I am asking you will you come and live with me. I think we will live a happier life than ever before. I expect to furnish it with some of your furniture, some of mother's furniture and some of my furniture. You will please remember that it was you, without any suggestion from me, voluntarily offered my mother a home, which you should not have done without the full

consent of all the owners of the house. That is what has caused all the trouble.

Dated October 31, 1927.

Frederick H. Riker."

Complainant's counsel quotes the scriptural text as to the duty of a husband to leave his father and mother and to cling to his wife, but he forgets the first commandment, to "honor thy father and mother."

The Vice-Chancellor did not elaborate in his opinion the facts in the case, but he heard the testimony and could judge as to the credibility of the witnesses; and there can be no doubt that he felt the wife's conduct did amount to extreme cruelty and that she forced her husband to leave the house. It follows therefore, that the complainant failed to prove that her husband abandoned or separated himself from her without justifiable cause, and the bill was properly dismissed. Her contention that she required the mother-in-law to leave the house because she was offensive and interfered with the management of the house, was not supported by the evidence (p. 86, l. 10, *et seq.*). The Vice-Chancellor found as a fact as follows (p. 90, ll. 12 to 20): "Now there is nothing in the evidence to indicate that the senior Mrs. Riker attempted to act as the head of the household. It appears quite plainly to the contrary that the younger Mrs. Riker was the head of the household, although she felt that her mother-in-law was interfering with her. This is not one of the cases in which the husband has failed in that he has not permitted his wife to be the recognized head of the home." Neither of the documents served on the aged woman (Exhibits D. 1 and D. 2) makes any reference whatever to the mother-in-law's conduct or any objection to her personally. The purpose seems

to have been to get more money from her for board, and complainant also told the defendant he could get out if he paid her \$60.00 a month (p. 87, l. 5, *et seq.*).

The complainant also failed to prove refusal or neglect to support her. The refusal or neglect must have existed at the time the bill was filed. It appears that the defendant paid to his wife for their joint support \$60.00 per month, and that when he left he stated to her that he would send her \$30.00 per month, and he has done so. Although she did write him a letter stating the amount was insufficient, she waited nine months before bringing suit and has not applied for alimony *pendente lite*, and waited seven months after the decree was made dismissing her bill before she took an appeal. She was unable to state what amount of money she actually needed. Her material testimony is as follows (p. 74, l. 10):

Q How much do you need for your support?

A Well, I couldn't say just how much I need.

Q You don't know how much you need?

A You mean to keep me simply living?

Q Yes; you have lived there in your own house as you have always lived; how much do you need for your comfortable support?

A Well, I really don't know how much I need.

The Court: What do you think you need?

A I think I need enough so that I don't have to worry.

The Court: Does that mean \$10 a week, or what does it mean?

A No, I suppose—(witness pauses).

The Court: If you don't know, the Court doesn't know.

The evidence shows that the complainant is keeping a boarding and lodging house and had been keeping one before the marriage, and that she is living just the same as before marriage, and her sister and brother-in-law lived with her, who paid board. There is no evidence to prove that her needs are any greater than they were before she was married. She is receiving \$30.00 per month, not because she needs the money, but because the husband feels that it was his duty to keep his agreement with her, although she did not keep her agreement with him. There is some evidence which tends to show that she is saving the money that she has been receiving from her husband and is investing it (p. 47, l. 12, *et seq.*).

2. Complainant has refused to live with defendant in a home provided by him.

It appears from the note which defendant handed to his wife when he left her house, that he offered her a home with him and his mother. This note was offered in evidence by the complainant and made a part of her case. Two days after the aged woman was ejected from the complainant's house she suffered a stroke and her health rapidly declined and she died in June 1929.

On February 25, 1930, defendant sent a letter to his wife, and in order to be sure that she actually received it he had it registered and asked for a return receipt. This letter was put in evidence by the wife as a part of her case. It is marked Exhibit C. 5, p. 94, and is as follows:

"543 13th Ave. Feb. 25th, 1930.

My dear Sallie:

I cannot go on living alone very much longer.

I thought that you would call on me after I left Stirling St. but I was mistaken.

You cruelly treated my 80 year old mother and me.

You broke your promise to me that my mother could make her home with us.

And when you sued her after having her dispossessed was the indirect cause of her death, in other words she died with a broken heart.

But that don't alter the fact that you are my Wife, and Sallie your place is here with me. So I am taking this means of asking you again to come here and live with me.

When you do come here please be sure to always come alone.

Your husband
FRED."

The complainant replied to this letter (Ex. C. 6, p. 94) and insinuates that defendant's lawyer was the author of the letter the defendant wrote. She admits that her reply was advised by her counsel. There is not the slightest evidence in the case that defendant's counsel had anything to do with the writing of the letter of February 25, 1930. On defendant's cross examination (p. 85) he did testify that his love was almost down to zero now, as quoted in complainant's brief. He modifies this by stating that he has loved her all the time and better than she loved him, and he further testified as follows (p. 86, line 20):

Q Mr. Riker, are you very sincere in your desire to provide a home for your wife? A It is provided and I am sincere. It is my own home.

Q Is your desire prompted because of your love? A Partly. I think that love can be restored by good treatment. I can't do it all.

Q Is the love a large part of your desire? A Yes, sir.

Q It is? A Yes, sir.

Q In other words, your desire and sincerity corresponds with your love, does it not? A I would say that.

Q You are satisfied to let it be that? A Yes.

The complainant testified (p. 48, line 2, *et seq.*) that she was not now willing to live with defendant, and her counsel interposed an objection to the line of questioning on the ground that the time has passed for the defendant to make any overtures. The court disposed of the objection and stated that it would be a proper one in a divorce suit, but not in a maintenance suit. The defendant did not interpose the defense that he had made overtures to his wife. The subject matter was brought into the case by the complainant, who introduced the letters above mentioned in evidence.

It appears that the complainant brought an action against her mother-in-law for damages, which was still pending at the time of the elder Mrs. Riker's death. During the pendency of the action, the defendant could not have been expected to bring into his home the wife who was pursuing his mother, a woman 80 years of age, to recover money damages. After his mother's death, he naturally felt resentful and unhappy for a considerable period of time. His letters and his testimony show that he wants to be and tries to be just. His last letter to his wife states that he is tired of being alone and he again asks her to come and live with him. I think there

can be no doubt of his sincerity. Possibly other men would have gone to the wife's home and had a talk with her, but it must be remembered in this case he was justified in leaving and the wife's sister was largely responsible for what had occurred, and he did not want to risk coming in contact with her. There was testimony to the effect that he would treat her badly when she came back to him, but he denies it (p. 84, line 7) and testified that he would take her right home with him if she would go with him; provided, of course that relatives on either side would not enter the house.

Note: The court's attention is called to an apparent error in the Vice-Chancellor's opinion, which may have been the error of the stenographer. The opinion reads that 5 months after the letter (Ex. D. 1) was delivered to defendant's mother, the notice (Ex. D. 2) was given. The letter is dated May 25th, 1926. The notice is dated October 20, 1927. The fact is, that a year and a half intervened between the letter and the notice. The inference is that the complainant was satisfied so long as she received an increase of board from the defendant's mother.

It is respectfully submitted that the decree appealed from should be affirmed.

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