I. F. Huntzinger, Appellate Printer, Camden, N. J.

New Jersey Court of Errors and Appeals

Between

Lida T. Allen,
Complainant-Appellant,

and

Charles S. Allen,
Defendant-Respondent.

BRIEF OF COMPLAINANT-APPELLANT.

The evidence is not voluminous and the material facts are concisely given in the conclusions of the Vice-Chancellor.

These conclusions err, in our view, in two respects, one of which presents a question of law and policy, requiring an extended examination of cases and texts; the other requiring merely a careful reading of the testimony in this case. As to the latter, which should be considered first, we believe the finding that the proof of the inherited and transmissible character of defendant's insanity was too uncertain and insufficient was wrong and should be reversed. Such

reversal will open the door to a full discussion of the question of law and policy involved in this extraordinary case. The Vice-Chancellor thinks the present case does not fall within the limits of the law as laid down in the Carris and Crane cases. We respectfully insist that it does.

I.

First, then, as to the evidence of hereditary insanity. Defendant was a graduate physician (14). There was insanity on both sides of his family (19, 31, 34, 35, 49, 50, etc.). He believed this (19) so strongly that he resorted to the most dangerous, reprehensible and criminal measures (18) to escape its expected consequences. He knew the facts known to Dr. Moulton and those known to Dr. Cort. Beyond reasonable question he knew more. He knew his family history, his own personal history, and it is scarcely reasonable not to suppose he knew all that reading and observation could tell him of the nature, causes and results of *dementia praecox,* a chronic, ineradicable and incurable form of insanity (48, 49). While it might possibly be proper to refuse relief on the basis of his confession alone or of Dr. Cort's testimony alone, should it have been held that the evidence of both together, with the added weight of the views of Dr. Moulton (45) and of defendant's present condition (33, 49), did not lay an amply certain and sufficient basis for a favorable decree? Dr. Cort is a highly reputable expert of great experience. He had long studied the very case in question. He could scarcely have been more explicit and positive. Further expert testimony would have been merely cumulative. The hereditary nature of the

malady was undisputed. The evidence should have been accepted or rejected. At the end of the first day's hearing, when the testimony and his preparatory reading were fresh in the Vice-Chancellor's mind, nothing further than such testimony as Dr. Cort subsequently gave appeared essential to the grounds of a decree (42, 43). The case could have been reopened and further proof on this point introduced. If this Court thinks proper, that may still be done (*Boyer vs. Boyer,* 76 Atl. 309). Dr. Ward (27, 37) is still available and hypothetical questions may be put to other experts of wide learning and experience. Complainant's remedy should not be foreclosed against her through any insufficiency in the exercise of judgment by her counsel. We urge, however, that no reasonable doubt can exist regarding the hereditary nature of defendant's insanity.

II.

But before the learned Vice-Chancellor reached the conclusion that the proof of the hereditary nature of the insanity was not sufficiently certain, he quoted from Chancellor Magie's opinion in *Crane vs. Crane,* and stated that it was obvious from the quotation that the ground of relief presented here would have been insufficient in the opinion of that learned Chancellor (59). On the contrary, a reading of the Chancellor's opinion leaves such a deduction far from obvious. He held there that the denial of marital intercourse consequent on discovery of the deceit made the procreation of children impossible. "In that view," he added, "the fraud in question touches an essential of the marital relation under the

doctrine of Carris vs. Carris." "Nor do any considerations of public policy," he further says, "debar a party, imposed on by such fraud and induced to enter into a marriage contract, the continuance of which must produce results so disastrous, from the relief of a judicial declaration that the contract is null and void." He was discussing the consequences of concealed syphilis. Can it be imagined he would have viewed with a more tolerant eye the effects of concealed hereditary insanity? Where is the essential difference between the present case and the Crane case? In the fact that a wife might bear insane children without unusual hurt to her own body? If this were assented to, it would be time to remind the Court that the merits of the case before it, like the rights of the patient under the knife of the eminent surgeon, who lectures as he operates, are entitled to some consideration. To primary consideration, we would suppose. Suffering of the mind can be as exquisite as suffering of the body, and the cause of it be as reprehensible in the one case as in the other. Complainant was a sensitive, intelligent woman, especially desirous of children (17) and moved by a love and regard for her parents (18, 20, 33) and for her wifely duties that cannot be too highly commended. The certainty of infection through intercourse with a sufferer from syphilis is not inherently greater than the certainty of transmitting the inherited mental imbecility of a father to his offspring. Nor can a humane, just or useful distinction be discovered, in our opinion, between the injury to a sensitive wife arising from forcing on her the imminent risk of a physical infection (which might be cured and the source of which might be cured), and the injury done her in forcing her to become the mother of weak- vicious- or criminally-

minded children. If so terrible an alternative could conceivably be forced on any woman, the heroism inherent in the spirit of motherhood leaves no doubt as to what the choice would probably be. The violence and horror of repeated abortion even would be preferable to the procreation of such radically defective issue. If physical danger must inhere in the situation before relief can lawfully be afforded by the Court of Chancery, do not let us overlook the constant possibility of violent outbreaks of insanity directed against the reproductive powers faced in such a marriage as complainant was inveigled into. It seems anything but obvious that the Chancellor who granted the prayer in *Crane vs. Crane* would have refused it in the case before us.

Nor can we believe that Chancellor Magie would have overlooked the obvious implications of a refusal to grant relief from this situation. He could not have failed to see that by such refusal the State would say to Mrs. Allen: "We admit you were tricked into marriage, but because the deception related to the sanity of your husband and not to his freedom from syphilis, we are powerless. We confess one is as bad as the other, from any point of view, but no case heretofore has held in your favor, hence we cannot so hold. No fresh applications of principle can be made. You must have insane children; or go childless. We cannot disapprove of concealing insane taints in one's family. That is for the Legislature alone." The author of the opinion in *Crane vs. Crane* would hardly have declared this to be our law.

But are we to consider this case quite as if the fate of actual offspring were involved? If the Carris and Crane cases are exceptions, then this is an exception. Its essential similarity to them cannot be

escaped from any view. *Consortium* alone does not make marriage. The distinction between voidable and void marriages gets its chief importance from the natural desire to make it possible to legitimatize the children and preserve the incidents of lawful marriage. But strictly these cases under discussion are cases of void marriage. *Concensus, non concubitus, facit matrimonium.* If it be agreed that the deceit related to an essential, the consent is robbed of all legal meaning and necessitates the conclusion that a valid marriage never subsisted. In the absence of offspring the consummation becomes of minor concern and the reasons that moved Justice Knowlton to grant relief in the Massachusetts case of *Smith vs. Smith,* become applicable here.

But we do not need to go beyond our jurisdiction for examples when our own precedents are available. That the doctrine of *Carris vs. Carris* has long been and still remains the law of this State must not for a moment be overlooked. It was painstakingly evolved, has been carefully followed and never disapproved by this Court. The one great question for this Court in the present case is whether the concealment of hereditary insanity is or is not as great a fraud, as much against public policy, as directly going to the *essentialia* of the marriage relation as the concealment of ante-nuptial pregnancy is or as the concealment of syphilis is. It cannot be correct to say that this Court cannot act until the Legislature has declared this form of marriage void, when this Court has already acted. Call it judicial legislation or not, the Carris and Crane cases themselves account for the absence of subsequent specific changes in our statute declaring the causes for annulment. These cases would have declared our public policy to favor rather than to frown on the an-

nulment of this marriage, without the instructive help of the legislative Act of 1904, prohibiting the marriage of those likely to transmit insanity or epilepsy. The recognized jurisdiction of Chancery requires no stretching to cover this case, nor will a decree for complainant for so unusual a cause open the door any wider than it should stand, or than it has stood since 1872.

The following cases and the statute cited show chronologically the development of the law applicable to this case.

1870 *McClurg vs. Terry,* 6 C. E. Gr. 225 (*consensus* necessary).
1872 *Carris vs. Carris,* 9 C. E. Gr. 516 (fraud must relate to *essentialia*).
1873 Anonymous, 9 C. E. Gr. 19 (void and voidable marriages).
1880 *Cook vs. Cook,* 5 Stew. 475 (infliction of venereal disease is cruelty).
1884 *Cowley vs. Smith,* 17 Vr. 380 (actual and constructive fraud).
1901 *Crane vs. Crane,* 17 Dick. 21 (Carris doctrine applied).
1904 2 Comp. Stat. 1778, Sect. 105C. P. L. 1904, 270 (certain marriages forbidden).

The following cases were referred to in the argument before Leaming, V. C. They all touch upon fraud in respect to marriage.

Cummington vs. Belchertown, 149 Mass. 223;
Smith vs. Smith, 171 Mass. 404; 41 L. R. A. 800;
Gould vs. Gould, 78 Conn. 242, 61 Atl. 604;
Svanda vs. Svanda, 93 Nebr. 404;

Keyes vs. Keyes, 22 N. H. 551;
Lyon vs. Lyon, 230 Ill. 366;
Moss vs. Moss, (1897) P. 263.

Respectfully submitted,

WESCOTT & WEAVER,
Sol'rs for and of Counsel
with Compl't-Appellant.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

In Chancery of New Jersey.

BETWEEN
LIDA T. ALLEN,
Complainant,
AND
CHARLES S. ALLEN,
Defendant.

(G. Doré Cogswell, Intervening.)

I.

The solicitor was assigned under the eighteenth section of the Divorce Act of 1907. The practice authorized is a modification of the English and Scotch procedure. We are called upon to defend the status of marriage. We are not put in the place and stead of the defendant, and we think one consequence of this principle is not to make us in anywise affected by conduct of the defendant that the Court may conclude is inequitable.

II.

The learned Vice Chancellor rested his decision on a somewhat narrow point. (*95 Atl. 363.*) That is, that a confession by the husband after the marriage

that he had concealed his affliction with the taint of hereditary insanity does not establish the fact of such affliction. The reasons for this conclusion are consonant with the principles of the matrimonial jurisdiction in this State. We rely on the opinion of the Vice Chancellor in that respect.

III.

He also gives a too faint approval to our main contention. We therefore restate the position we assumed before him.

When the Court of Errors and Appeals in *Carris* v. *Carris*, 24 *N. J. Eq.* 516, embarked upon a wide and uncertain sea in an heretofore unexercised branch of equitable jurisdiction in annulling marriages for fraud inducing a consent that would not otherwise have been given, but which was given, the vast extent to which such a jurisdiction could be stretched by the sympathetic judge, disturbed Judge Bedle, as it has ever since disturbed the student of the laws. He opined that the fraud must be "extraordinary," and must concern the essentialia of the marriage relation, and that the annulment must not be contrary to the policy of this State. Misrepresentation of birth, wealth, or external condition, would not avoid the marriage. The limits of the doctrine are thus stated in a book of general reference:

> "Deceit, concealment, or misrepresentation concerning the party's health, character, wealth, social position, previous history or habits, is not sufficient for this purpose, except perhaps in New York, where the rule has been broadly laid down that every misrepresentation of a material fact, made with the intent to induce the other party to enter into the marriage contract, and without which it would not have been made, authorizes its annulment."
>
> 26 *Cyc.* 905.

Whether it be the circumstance that in that populous commonwealth there is only one cause for absolute divorce, the fact is that the extreme liberality of the New York cases has caused them to be regarded as contrary to the weight of authority.

It is our contention, (1) that the husband was not mentally incompetent to contract marriage, and therefore he could not conceal what did exist, and could not commit a constructive fraud so far as that feature of the case is concerned; (2) that the failure of the husband to disclose to the wife that he had been insane, and might have recurrences of fits of insanity, cannot be such a fraud as to result in the annulment of the marriage, because (a) the Legislature has pronounced on this subject, and the exercise of the equitable jurisdiction would contravene the public policy of this State, and (b) the Court should not act until the Legislature has either expressly declared the marriage void or voidable, or, if it has prohibited the marriage, without declaring the marriage void or voidable; that there has been a concealment of the facts which has induced the innocent party to enter into the prohibited relation.

1. There was no mental incapacity to contract marriage. This man understood the marriage contract and gave intelligent consent thereto. The law requires no more than this. *Kerns* v. *Kerns*, 51 *N. J. Eq.* 574. Nor does the fact that he had previously been afflicted with mental disease, and was likely to have recurrences of insanity, though developing into a permanent form, render him mentally incompetent to contract marriage; no, even though the exercise of the marital right would induce such recurrence.

Brainen v. *Brainen*, 79 *N. J. Eq.* 270.

It follows that his silence would not amount to fraud, as the subject matter about which he was supposed to speak did not affect an essential of the marriage relation; he had mental capacity.

See *Crane* v. *Crane*, 62 *N. J. Eq.* 21, 27, 28.

2. It is upon the second ground, the want of health, that the bill in this case must really rest, if at all; that the husband, although at the time mentally competent to contract marriage, was, nevertheless, so infirm that the woman would not have married him if she had known that he would become insane shortly after the marriage, and might beget children that would share such traits of insanity.

a. The Legislature has made an adverse pronouncement.

As before stated, in the year 1893, in an opinion by the late Vice Chancellor Green, in *Kerns* v. *Kerns, supra,* it was held that insanity, as such, was not a ground for annulment of marriage. If the man did not know what he was doing, that destroyed the consenting mind, and, of course, there could be no contract, but the mere presence of mental disease, in either of the parties, did not prevent the formation of the relation.

In the year 1902, the Legislature adopted a new Divorce Act, in which, for the first time, this section appears under the head of "Causes of Divorce," not "Decrees of Nullity," although this is the first statute in which Decrees of Nullity under that name are provided for:

> "In case the parties, or either of them, was at the time of the marriage physically and incurably impotent, or was incapable of consenting thereto, and the marriage has not been subsequently ratified."

Although incapability of consent seems a strange ground for divorce *a vinculo,* yet there may be good historical reason for such legislation, and the case of *Gould* v. *Gould,* hereafter cited, may be read with profit. I think that the excellent revisers of our very admirable act of 1902 may have been desirous of preserving the incidents of a valid marriage, curtesy, dower, and the right of distribution, if the marriage was not dissolved, or of alimony to an innocent wife if it was, and, in

either event, the legitimacy of children (where there had been "incapability of consent" of a party) born from sexual intercourse under the forms of marriage.

In the year 1907, as the result of the Uniform Divorce Congress held at the City of Washington, a draft statute was submitted for adoption by the several States of the Union. In this draft statute the Congress suggested the following cause for annulment of marriage:

> "Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage; provided, that where the party *compos mentis* is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason."
>
> *Uniform Law, sec.* 1 e.
>
> *Pamphlet Address, &c., pp.* 21, 22.

Although the reference of *"compos mentis"* and "regaining reason," might have been construed to indicate that the insanity, as ground for annulment, must amount to a positive incapability to give consent, nevertheless there is evident a lack of exact expression, that might reasonably lead to a different construction. The New Jersey delegates therefore rejected this language. Instead, they split the section of the act of 1902 into two parts, putting both parts under the head of "Decrees of Nullity." The first part (now sec. 1, par. III,) was confined to the physical incapacity of impotence. The second part reads as follows:

> "IV. The parties, or either of them, was at the time of the marriage, incapable of consenting thereto and the marriage has not been subsequently ratified; provided, that when the party capable of consent is the applicant, such party shall have

> been ignorant of the other's incapacity at the time of the marriage, and shall not have confirmed the marriage subsequently to the other party regaining capacity."

This section as drawn passed into the Divorce Act of 1907. (*P. L.* 1907, *p.* 475; *C. S. p.* 2022.)

It was after this that the case of *Brainen* v. *Brainen* arose, being a proceeding on this very section, brought by the husband who was the capable party. It appears from the statement of facts that the wife concealed from him, at the time of the marriage, the fact that she had been several years before an inmate of a sanitarium "for nervousness and melancholia," which a physician sworn in the case described as a mild form of *dementia præcox*. This case was decided by a distinguished judge of the court who had been one of the delegates who drafted the act of 1907.

No, how can the taint of insanity, if concealed at the time of the marriage, be such a fraud as avoids the union at the suit of the defrauded party? The Legislature, having the opportunity to say so, has declined to prescribe that insanity merely as such, and not of that force to destroy the power of consent, shall be a cause of annulment. They have also passed a statute that holds the capable party, if not ignorant of the mental incapacity at the time of the marriage, strictly up to the status, and if he is ignorant, then if he confirms the marriage in a lucid interval of the incapable party, then also confirms to the status.

In face of this legislation, it is hard to reason that mere acuteness in charging fraud, and resorting to the general equity jurisdiction, should result in upsetting a marriage which the Legislature very apparently designed should not be destroyed. Nor is it our experience of the ways of the learned Vice Chancellor in *Brainen* v. *Brainen* that he would send the petitioner in that case away remediless without a suggestion that if

he had filed a bill instead of a petition, and had cried "fraud," he could have had all that he asked.

b. But if the policy of this State is not clearly enough defined, it appears to us that there is distinct authority from the books against maintaining this present bill. What is the real trouble? It must be that the essentialia of marriage is affected, because of the effects of sexual intercourse on the wife, and that the children of the marriage may inherit insanity. The first, we think, has no basis in fact, and we say no more of that. The latter is the only suggestion that can affect the question, Is the marriage to be annulled?

In *Crane* v. *Crane*, 62 *N. J. Eq.* 21, Chancellor Magie said (at page 26):

> "Misrepresentations as from freedom from disease in general, or concealment of the existence of a disease, although one in common apprehension communicable and transmissible to offspring, cannot, in my judgment, be so regarded as affecting an essential of the marriage relation. They fall within the line of false representations as to family, fortune or external condition, declared by Mr. Justice Bedle to be insufficient to justify the annulment of marriage."

The Chancellor's conclusion that the dread and communicable disease of syphilis is an exception is supported by the text-writers, and, in this country, by the courts of all but one or two States. But as soon as we step aside from this one disease, we can find no fair reasoning that justifies the judicial power in striking down the marriage because eugenically it ought never to have been entered into. We have been informed by a physician of note that the medical profession is "Split down the middle," as he termed it, on the question whether there are any diseases that are communicable to offspring (of course, excepting such diseases corrupting the blood, as syphilis). The better opinion is that

environment, and such like, are the chief causes of recurrence of the disease in the child. Perhaps all of us suppose that certain diseases of the ear and throat are likely to be inherited, but we never supposed that the marriage of the parents of the unfortunate child could be annulled, and the child be made a bastard along with his other ills.

There is an illustration which (to our mind) shows the correct rule to be adopted by the Court of Chancery henceforth in the exercise of its sweeping claim to jurisdiction over the status of marriage when appealed to on the ground of fraud, except in the two instances of fraudulent concealment of pregnancy by the female, or of a loathsome venereal disease by either party. These two instances have been long settled by adjudication.

In the year 1904 the Legislature passed the following statute:

> "It shall be unlawful hereafter for any person who has been confined in any public asylum or institution as an epileptic or insane or feeble-minded patient, to intermarry in this State, without a certificate from two regular licensed physicians that such person has been completely cured of such insanity, epilepsy or feeble mind, and that there is no probability that such person will transmit any of said defects or disabilities to the issue of said marriage; any person of sound mind who shall intermarry with any such epileptic, insane or feeble-minded person, with knowledge of his or her disability, or who shall advise, aid, abet, cause or assist in procuring any marriage contrary to the provisions of this act, shall be guilty of a misdemeanor."
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> *P. L.* 1904, *p.* 270; *C. S.* 1778, *Sec.* 105a.

In Connecticut, in 1895, the Legislature passed a similar act, confined to marriage of an epileptic, imbecile or feeble-minded person when the woman is

under 45 years of age. Just as in our statute, there is no express provision that the marriage shall be void. It was agreed by all the judges in *Gould* v. *Gould*, 78 *Conn.* 242; 61 *Atl.* 604, that the marriage was not void *ab initio*, but that under their statute that the marriage might be dissolved for "fraudulent contract," the marriage would be avoided if induced by fraudulent concealment. Here the Legislature has declared what shall be unlawful, and if the innocent party has been inveigled into the prohibited relation, he should be released from it; for can we suppose he would have consented to marry a person upon whom was fastened by a legal prohibition a legal incapacity for marriage?

Such was the understanding of *Gould* v. *Gould* by the Supreme Court of Illinois in *Lyon* v. *Lyon*, 230 *Ill.* 366, where it was held that "in the absence of a statute of the foreign state where a marriage took place making misrepresentation as to health ground for annuling the marriage, or of a statute having special application, the courts of Illinois will not annul such marriage upon the ground that the wife, in obtaining consent to the marriage, falsely represented that she had been permanently cured of epilepsy and had not been attacked for many years."

In the multitude of modern decisions it is not possible to say that there are none out of the State of New York, except *Keyes* v. *Keyes*, 22 *N. H.* 551, that may not give support to this complainant's case, but on our part we place main reliance on the Massachusetts case of *Cummington* v. *Belchertown*, 149 *Mass.* 223. A married woman who had been insane prior to her marriage, but who had recovered and was sane and competent to contract at that time, became incurably insane, and was duly committed as a pauper to a lunatic hospital. Subsequently the husband removed from Massachusetts to New York, and there procured a decree annulling the marriage on the ground of fraud in concealing from him the fact of her prior insanity.

Notice of the proceedings there were served upon her at the hospital, but she was not in any way represented therein. The Supreme Court Judicial Court of Massachusetts refused to give effect to the decree of annulment on the ground that not being obliged unless by comity to recognize it they must decline to do so because the fraud was not sufficient to annul the marriage. On page 228 the Court says:

> "Mrs. Richards (the wife) was sane at the time of her marriage, and entirely competent to make the marriage contract; she had been insane at a previous period, but had recovered from such attacks, and the fact of such previous insanity was concealed from her husband by Mrs. Richards herself and her family, in the hope that marriage would prove beneficial to her health. She lived with her husband about a year and three months before symptoms of insanity again developed themselves. The possibility or probability that she might again become insane, growing out of the fact that she had previously been so, did not constitute such a fraud as to entitle her husband to have the marriage dissolved."

Accord: *Svanda* v. *Svanda*, 93 *Nebr.* 404.

We fear we have taken up considerable space to meet the case on the only possible grounds it can rest. The complainant draws into the case certain very disgusting, criminal and reprehensible acts of the defendant committed after the marriage. These facts cannot be ground to annul the marriage, but a word may be addressed to this feature of the case.

It is admitted that where the marriage relation has not been actually entered upon, and, especially where fraud and deceit has been accomplished by some measure of coercion and imposition, in the case of very young girls duped and decoyed into an unsuitable marriage, and in cases of aged persons of feeble intelligence,

who have been tricked and deluded, some courts have been inclined to relax the severity of their rules.

26 *Cyc.* 906.

Cox v. *Cox,* printed in *App. to Bid, Div. Pr. sec. ed., p.* 362.

Prof. Bishop urges that inasmuch as a religious ceremony, or even a civil one, is not indispensable to the contract of marriage, the mere shell should not affect the substance, and that before consummation the relation is inchoate.

1 *Bish. M. D. & S., secs.* 456, 461, 462.

The Massachusetts court has, among others, yielded to the force of this argument.

Smith v. *Smith,* 171 *Mass.* 404.

But marriage is either consummated or unconsummated. There is no third division. While the birth of children may powerfully impel a Court to refuse relief, the fruitfulness of the intercourse has not been considered necessary to marriage.

The conduct of the husband in seeking to prevent conception, or birth of offspring, would in itself, we think, very doubtfully amount to legal cruelty. If it endangered the life or health of this wife, that would be legal cruelty, and justify her in leaving him. For such conduct she could have obtained a divorce *a mensa et thoro,* or after two years, *a vinculo,* if his insanity had not supervened before the filing of the petition; perhaps in the latter case even if it had supervened. However, such speculations are not properly before the Court at this time. It is conduct after marriage, and cannot be ground to annul the marriage as void or voidable.

In conclusion, the Court cannot do harm to the citizens of this State by restraining itself in this regard. Eugenic reform is rife in our forty-eight States. The Legislature meets every year. If there be a public conscience that people tainted with insanity should not marry, the Legislature can prohibit the relation generally, or in specific instances, as seems to it most proper.

as in 1907 (not applicable to this case)

If the marriage is declared to be void or voidable, it may be annuled without any suggestion of fraud. If it is merely prohibited, this court can give relief under its general principles of the equitable jurisdiction. But with our asylums being filled up more and more with insane spouses, and with the powerful incentive on the part of their co-spouses on the outside to get rid of the relation, and the support of the other, it is most earnestly urged that it be left to the legislative power to first intervene.

It is respectfully suggested that such be the declared policy and rule of this Court, and that the present bill should be dismissed.

G. DORE' COGSWELL,
Solr. pro se.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Complaining shows unto your Honor, your oratrix, Lida T. Allen, of the Borough of Collingswood, in the County of Camden and State of New Jersey:

1. That on the nineteenth day of May, eighteen hundred and ninety-five, a form or ceremony of marriage took place between your oratrix and Charles S. Allen, the defendant in this suit, at Imlaystown, in the County of Monmouth and State of New Jersey, the said ceremony having been performed by Reverend A. M. Lake, a minister of the Gospel.

2. That your oratrix then resided in the said village of Perrineville, and has ever since resided in the State of New Jersey; that about one year after said marriage ceremony, the said Charles S. Allen informed your oratrix that he believed that he inherited insanity, that he was subject to periodic attacks of insanity, might become permanently and incurably insane and had known of his condition for a long time antecedent to the time of his marriage to your oratrix, and he further stated that he had concealed said knowledge and, at the time of said periodic attacks, had absented himself from your oratrix on one pretext or another, because he knew that she would not have married him, had she been aware of his infirmity.

3. That on or about the sixth day of June, nineteen hundred and one, the said Charles S. Allen became permanently and incurably insane and is now a patient in a hospital for the insane in the State of New Jersey, as your oratrix is informed and believes.

4. That during the interval between the date of said ceremony and the confession aforesaid, the said Charles S. Allen and your oratrix never completely sustained the marital relationship and that immediately subsequent to the said confession, all marital relations between your oratrix and said Charles S. Allen were abandoned and from the date of said confession until the last and permanent confinement of said Charles S. Allen as aforesaid your oratrix never exercised towards her husband any other relations than those of housekeeper, caretaker and business associate, because of the said statement of Charles S. Allen that he was insane.

5. That your oratrix believed at the time of her marriage that the said Charles S. Allen was sane and whole in body and mind; that she did not know and had not known in any wise of the aforesaid condition of Charles S. Allen, and that she entered into said marriage contract with him, by reason of her faith and belief in his sanity.

6. That your oratrix would not have entered into said marriage contract had she been informed of the condition of said Charles S. Allen, and that it was the proper duty of the said Charles S. Allen so to inform your oratrix long before, to wit, before said contract was entered into, but wholly neglecting so to do, he did, with intent wickedly to defraud and

mislead your oratrix, keep secret, hide and conceal his condition, so that she was induced to marry him, by reason of her said faith and belief, on the day and year aforesaid.

7. That your oratrix is credibly informed and verily believes that the said Charles S. Allen inherits his insanity, and that such insanity is inheritable and transmissible.

In tender consideration whereof, and forasmuch as your oratrix can be relieved only in this Honorable Court.

To the end, therefore, that the said Charles S. Allen may answer the premises, and that the said marriage may, for the fraud of the said defendant, be declared by this Honorable Court to be null and void, and that your oratrix may have such further and other relief as to your Honor shall seem equitable and just.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Charles S. Allen, commanding him by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises, and to abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, &c.

WESCOTT & WESCOTT,
Solicitors for and of Counsel with Complainant.

STATE OF NEW JERSEY,
COUNTY OF CAMDEN, } *ss.*

LIDA T. ALLEN, being duly sworn according to law, upon her oath deposes and says that she is the complainant named in the foregoing bill of complaint, and that her 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 the bill of complaint.

LIDA TAYLOR ALLEN, M. D.

Sworn and subscribed before me at Camden this 15th day of March, A. D. 1913.

F. D. WEAVER,
M. C. C. of N. J.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between
LIDA T. ALLEN,
Complainant,
and
CHARLES S. ALLEN,
Defendant.

ON BILL, &C.
ANSWER.

The joint answer of Samuel K. Robbins, guardian of Charles S. Allen, a lunatic, and G. Doré Cogswell, intervenor, assigned by the Court.

1. Samuel K. Robbins, Guardian, etc., answering for said defendant, says that by reason of said defendant's incapacity, he submits himself to the judgment of this Honorable Court and prays that the interest of said defendant may be protected and saved to him in the above-stated cause.

2. Said intervenor answering says that at the time of the said marriage between said complainant and the said defendant, the said defendant was of sound mind and memory and was not incapacitated from entering into a contract of marriage with the complainant, and that the alleged concealment of the alleged facts stated in the bill of complaint is not a

concealment affecting the essentials of the marriage relation and that the complainant has not in and by her said bill made or stated such a case as entitled her in this Honorable Court to any relief against the said defendant, as to the matters contained in the said bill or any of such matters, and this defendant hopes to have the same benefit of this defence as if he had demurred to the said complainant's bill.

G. DORÉ COGSWELL,
Solicitor and of Counsel for Samuel K. Robbins, Guardian, etc., and Intervenor.

ORDER APPOINTING GUARDIAN AD LITEM.

(Filed July 23, 1913)

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL, ETC., ORDER.

Upon reading and filing the petition of the above-named complainant, with affidavit annexed, praying that a guardian *ad litem* may be appointed for the

defendant in the above-entitled cause; and it appearing that said defendant is insane and that no application for such appointment has been made by him, or in his behalf, within the time required by law, although due notice of this application has been served upon the defendant and upon Howard Allen, his brother, and upon Mrs. William T. McMillan, his sister;

It is, on this fifteenth day of July, nineteen hundred and thirteen, on motion of Wescott and Wescott, solicitors of complainant, ordered that Samuel K. Robbins, Clerk, be appointed guardian *ad litem* of said Charles S. Allen, by whom he may appear, answer and defend this cause.

By the Statute,
JOHN H. BACKES,
Master.

Respectfully advised,
C. S. BIDDLE,
A. M.

A true copy,
SAMUEL K. ROBBINS,
Clerk.

ORDER ASSIGNING SOLICITOR TO ACTIVELY DEFEND.

(Filed July 23, 1913)

IN CHANCERY OF NEW JERSEY.

Between
LIDA T. ALLEN,
Complainant,
and
CHARLES S. ALLEN,
Defendant.

ON BILL.
ORDER.

It appearing to the Chancellor that the complainant has filed her bill in this Court, praying that her marriage with the defendant may be declared to be null and void on the ground that the defendant did fraudulently conceal and hide from the knowledge of the complainant at and before the time of said marriage certain facts regarding the mental condition of him, the said defendant, and for certain other reasons stated in her bill of complaint;

And it further appearing that after due service of process upon the defendant, the clerk of this court was appointed guardian *ad litem* for him upon the fact appearing by petition that the defendant is at this time a lunatic.

And it further appearing that the said guardian *ad litem* has duly appeared for the said defendant, but it being suggested that he is not able to hire and employ counsel to put into contest the allegations of the bill of complaint, and on his behalf to actively litigate the cause;

And it further appearing to the Chancellor that in consequence of the foregoing this case is uncontested within the meaning and purview of the statute in such case made and provided, and the Chancellor deeming it proper that a disinterested solicitor should be assigned to actively defend the case:

It is thereupon on this twenty-third day of July, nineteen hundred and thirteen, ordered, that G. Doré Cogswell, Esq., a disinterested solicitor of this court, be and is hereby assigned actively to defend this case.

And it is further ordered, that the said G. Doré Cogswell have thirty days from the date of this order in which to plead, answer or demur to the bill of complaint.

By the Statute,
JOHN H. BACKES,
Master.

Respectfully advised,
C. S. BIDDLE,
A. M.

A true copy,
SAMUEL K. ROBBINS,
Clerk.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL, &C., FOR ANNULMENT. FINAL HEARING.

Before his Honor, E. B. LEAMING, Vice Chancellor, at the Chancery Chambers, Camden, New Jersey, on Wednesday, June 24th, 1914.

APPEARANCES:
WESCOTT & WESCOTT, ESQS., for complainant.
G. DORÉ COGSWELL, ESQ., for defendant.

Mr. Wescott: If your Honor please, this case is peculiar and you probably have not had a like case to deal with. It involves a subject of hereditary insanity which was concealed purposely from the wife, and the bill is filed to annul the marriage on that ground. There has been a great deal of considera-

tion given to the matter. The Chancellor himself knows something about it, and Mr. Biddle has been conferred with a number of times in relation to points of practice, and finally Mr. Cogswell was appointed by the Chancellor to represent the defendant, and I understand that the practice followed right up to this present moment has been defined; in fact, I should not say I understand, I know it has been by the Chancellor and Mr. Biddle, so I assume that everything is technically correct and you are to deal with now simply the question of the proof. That is my understanding of the situation. Mr. Cogswell perhaps may wish to make some statement himself.

Mr. Cogswell: Your Honor, what Judge Wescott says is so. We have filed an answer, and we had a great deal of difficulty, Mr. Biddle and myself, in arriving at just what sort of an answer we should file, so that this is rather a composite answer, but it is the joint efforts of Mr. Biddle and myself.

Mr. Wescott: There are one or two witnesses who promised to be here, but they are doctors and probably they may be engaged down at Atlantic City. If it becomes necessary, I shall have to call them at some other time.

LIDA T. ALLEN, the complainant, being duly sworn according to law, on her oath says:

By Mr. Wescott:

Q. You are Lida T. Allen, are you?

A. Yes, Judge.

Q. The person that filed the bill?

A. Yes.

Q. To get a divorce from your husband, who is Charles S. Allen?

A. Yes.

Q. Now, what is your age, Mrs. Allen?

A. Thirty-nine years old.

Q. Where were you born and brought up?

A. In Perrineville, Monmouth County, New Jersey.

Q. Is Perrineville a big place or a small place?

A. No, a small hamlet.

Q. Your parents' name was what?

A. Robert T. Taylor, deceased; Gruzella Taylor.

Q. Were your parents living at the time you were married to Mr. Allen?

A. Yes.

Q. In the first place, tell us the position socially and in a business sense of the Allen family in the village where you lived.

A. Well, the Allen family were rather prosperous farmers and store-keepers, somewhat the prominent family of the town, the village.

Q. And what was relatively the position of your family?

A. My father was a workingman, respectable man of the town, in moderate circumstances.

Q. How many children were in your family?

A. Four.

Q. Tell the Chancellor, please, how you were reared.

A. Very, very carefully from birth on up; I hadn't been away from home; my education and all was there at our home town, and I was very carefully reared in a home life, really had never asso-

ciated in company or been allowed privileges other girls might enjoy, because there was more or less home duties to be complied with.

Q. What sort of a man was your father?

A. Very strict and upright, very honest.

Q. And your mother?

A. The same disposition exactly.

Q. Well, before you met Mr. Allen had you ever had any social experience?

A. No, I was simply a school child, I had had no experience at all.

By the Vice-Chancellor:

Q. Did you state where the Allen people lived?

A. In Perrineville.

Q. The same town with you?

A. The same town, only a short distance from my home.

By Mr. Wescott:

Q. Let me ask you this: It may be rather leading. Mr. Cogswell, you put the brakes on if I go too far. Was the Allen family regarded as the leading family in the community?

A. Yes; yes, they were.

Q. How long had you known your husband?

A. I had known my husband in a casual way since I was a child; I became acquainted with him about the July previous to our marriage.

Q. When was your marriage?

A. 1895.

Q. Have you a certificate with you?

A. No, I didn't bring it, Judge; I should have brought it but I overlooked it entirely; it is home; I can get it any time.

Q. Now, how long was the courtship?

A. From July until the following May.

Q. Where did your courtship begin?

A. I was invited to go to a "harvest home" with the Doctor, invited to go out to a "harvest home,"—my courtship was at home.

Q. And were the attentions of the Doctor from that time persistent or casual?

A. Yes, persistent.

Q. Did you fall in love with him?

A. Somewhat so I did.

Q. Who married you?

A. Reverend Lake, of Imlaystown, N. J.

Q. And where were you married?

A. At his parsonage in Imlaystown, after the church services.

Q. Up to that time had you known anything about the mental status or condition of the Allen family?

A. No; I knew of their peculiarities but did not know positively their condition.

Q. Had you any suspicion or idea at that time that there was insanity in the family?

A. No.

Q. What was your husband's business?

A. He was a graduate physician.

Q. Did he practise medicine?

A. Not at that time.

Q. Did he afterwards practise medicine?

A. Yes.

Q. Now, after your marriage, where did you go to live?

A. At his home on the farm in Perrineville.

Q. How soon did your husband begin to practise medicine after your marriage?

A. Not until 1897, late in the year.

Q. And you were married what year?

A. 1895.

Q. Then you lived together two years before he began to practice medicine?

A. Yes, over two years.

Q. What did his family consist of?

A. One brother and sister and the Doctor, two children and his father, his mother is deceased.

Q. His father was living and who?

A. Mother deceased, father living, one sister and one brother.

Q. What was his brother's business?

A. Physician.

Q. Now, after you were married and lived together—well, let me ask your age at the time you were married?

A. Twenty.

Q. And his age?

A. Thirty-one.

Q. Now, after your marriage and your living together, did you notice any peculiarities about your husband?

A. Yes, always peculiarities, there had been more or less peculiarities.

Q. How?

A. Been very many peculiarities about the Doctor's condition.

Q. You became acquainted with them after your marriage to him?

A. Yes, after I went to live with him.

Q. Will you tell the Vice-Chancellor what they were?

By the Vice-Chancellor:

Q. I did not understand just what you said. Did you say peculiarities that you had noticed before marriage or first noticed after marriage?

A. After marriage.

By Mr. Wescott:

Q. Now, what were some of those peculiarities?

A. Well, of course, at that time I did not know what hallucinations meant, but after that I found out they were true hallucinations. For instance, he would be in the bedroom at night and I would awake and find him underneath the window listening, saying there were voices down under the windows talking, and many other peculiarities the same way. He had a way of hiding himself. A great condition of his was to close his eyes and roll them backward and forward. He had so many peculiar conditions, such as running on his tip-toes, many things like that,—barring himself in rooms and running on his tip-toes and muttering very peculiar things over and over with no sense or meaning.

Q. Well, how frequent was that?

A. Well, that was liable to come at any time; sometimes it would follow each day, sometimes not noticeable to that extent.

Q. Well, what impression did those peculiarities make on you?

A. I thought it was some little funny business he was trying to do, I didn't realize it really meant anything until later.

Q. At the time you were married, had you acquired any familiarity with physical life of man and woman?

A. No.

Q. Knew nothing about it at all?

A. Knew nothing about it.

Q. Was your attention drawn to any sexual peculiarities of your husband?

A. Yes.

Q. During that time?

A. Yes.

Q. What, for instance?

A. Well, that is a hard question to state, but it was an unnatural condition.

Q. Did you expect to have children?

A. Yes, I did, I wanted children.

Q. Will you tell the Chancellor, if you please, whether your husband indulged in any practise or practises calculated to prevent conception?

A. Yes.

Q. Now, what?

A. By means of medicine, emmenagogues, besides preventives.

Q. How?

A. He used medicines, I say, emmenagogues were used each month, or medicines for that purpose.

Q. Well, did you have any conversation with your husband about having children?

A. Yes, I always wanted children. We had a family in town that had a good many children; I always made the remark that we would have as many, but the Doctor didn't want children.

Q. Well, what did he say on the subject to you of his not wanting children?

A. He would always say about the time I had one I would be left with it; he didn't want children.

Q. Well, did he disclose any reason during these two years why he didn't want children?

A. For two years?

Q. No, during the two years.

A. No, not the whole information on it, just simply put me off with that.

Q. Your father and mother were living during this time?

A. Yes.

Q. Did you have any conversation with your mother about this family condition?

A. She very often wanted to know why there weren't children, she was anxious for a grand-child. I told her the same thing the Doctor had told me; still she didn't understand that, and thought as years grew on probably we would have children.

Q. Now, as time went along did you become pregnant?

A. Yes, in May, 1897.

Q. Did you know you were pregnant?

A. No; it was just a cessation of menstrual period, and the Doctor told me it didn't mean anything, only there was means used wherein he brought on at least some period of that kind, I supposed everything was over.

Q. Well, did you learn subsequently that you were pregnant?

A. Later in the fall he told me—in November, that he thought that must be the condition, there had been no period between that time.

Q. Now, that was November what year?

A. 1897.

Q. Well, in the fall, or in November, of 1897, what experience did you have with reference to your pregnancy?

A. He then told me he thought it was pregnancy and could not go on. He committed an abortion by the introduction of the speculum and bougie in the womb and vagina; after that the labor came on and foetus was expelled; he then called in his brother-in-law, Dr. MacMillan, who helped expel the child, or foetus so-called.

Q. Well, who was with you at that time—living with you?

A. We had several people living with us, but my sister stayed with me most all the time as companion to me.

Q. Was your sister with you at that time?

A. Yes.

Q. And she is present here in court?

A. Yes.

Q. Did you know that an abortion was being performed on you?

A. Not a true abortion, no, Judge, for I had no knowledge of such conditions as that.

Q. Well, how did you become apprised of the fact?

A. When he sent for his brother-in-law, I saw the foetus, then I knew what had occurred, and I also knew there was life in the child.

Q. Where were you living at that time?

A. At Perrineville.

Q. The same place?

A. The same place, on the farm.

Q. Was your husband practising medicine then?

A. No, not until the following month.

Q. Well, when you found that an abortion had been performed by your husband what did you say to him?

A. I asked him why it had been performed, why I hadn't knowledge that such was so, and he told me that he didn't want children, and he explained that he was afraid that he would have a living child to be given—the child to inherit his insanity which he knew that he positively had.

Q. What did you say to him then?

A. Why, I simply was horrified, and I asked him why he kept it from me previous to my marriage, and then he said that if he had told me he knew I wouldn't have married him at all, that he felt so confident of that or he knew positively that if he made

the matter plain to me that I wouldn't have married him.

Q. Was there anybody present at this conversation?

A. Yes, my sister was there. I was simply horrified over it. It was a terrible situation to place me in, because I knew there was life in the child.

Q. What condition of health had you at that time?

A. No health at all; my health was ruined for several years after that.

Q. When your husband disclosed this information to you, was it just an ordinary situation?

A. No, indeed.

Q. Well, give the Chancellor some idea of what the situation was.

A. Well, I was simply horrified because I realized there was life there, and it was more like murder, besides my terrible, terrible condition of life, and offspring, inheritance and everything of that sort, besides my father was very much opposed to the marriage anyway, the difference in ages, and I knew if my father knew it it would mean his death, and also my mother—I had to tell her of the conditions.

Q. What did you tell your mother?

A. I told my mother the whole condition, because she wanted to know why I was so ill, and I had to tell my mother what the state of affairs were, but I was afraid to tell my father of the terrible position because I knew what it would mean to him.

Q. Did you tell your mother of your husband's statement to you about the inherited insanity?

A. Yes; I left my mother on Thanksgiving Day, told her the day before that.

Q. Now, do you happen to know what effect that had on your mother?

A. Yes; my mother was never well afterwards and

died the following March. I left her heart-broken at that time.

Q. How long did you remain in the same home after this thing occurred?

A. From the 13th of—well, this happened on the 13th, and I say—Thanksgiving Day, that is the day we went to Ohio, the same November, 1897.

Q. Where did you go?

A. To Ohio.

Q. Yes.

A. Steubenville.

Q. And what did your husband do there?

A. Practiced medicine.

Q. Now, from the time of this abortion and this disclosure of your husband's condition what were the sexual relations between you?

A. None whatever, none whatever.

Q. Never had any sexual relations after that?

A. None, no, Judge.

Q. Did he want sexual relation with you?

A. No, he wanted no more offspring.

Q. How long did you remain at Steubenville, Ohio?

A. Going on two years.

Q. Then where did you go?

A. Pemberton, New Jersey.

Q. While you were at Steubenville your husband practised medicine, I understand?

A. Yes.

Q. Did you notice then anything further about his peculiarities?

A. Yes, the same things happened there, the very same, no different, but I thought I would try and live it out as long as I could.

Q. After your husband disclosed the situation of his mind did you make any inquiries or learn anything about his family?

A. No, I kept that to myself, because I was afraid to divulge much on account of my father's condition.

Q. When you came back to Pemberton, did your husband practise medicine there?

A. Yes.

Q. For how long?

A. He practised there until 1901.

By the Vice-Chancellor:

Q. How long did you say you were in Steubenville?

A. A year and a half; we came home at first, so that he didn't get to practise until about nine or twelve weeks after our arrival. We came in January, the Doctor didn't go until somewhere in April, if I remember right.

By Mr. Wescott:

Q. And how long did you live in the same house with him at Pemberton?

A. We lived two years and a half in one place,—no, two years and three months in one place and nine months in another.

Q. Then you lived at Pemberton with him about a year?

A. No, three years almost, Judge.

Q. During that time was your husband always in Pemberton?

A. Always in Pemberton, yes.

Q. And at the end of these three years and some months——

A. Yes.

Q. ——where did your husband go?

A. He was taken out to Kirkbride's Insane Asylum.

Q. When was that? Can you tell?

A. The 6th day of June, 1901.

Q. And who took him there?

A. His brother and brother-in-law, two physicians, Dr. Allen and Dr. MacMillan, his father also.

Q. Before he was taken there, had these peculiarities developed any more pronouncedly?

A. Yes, very much more, his hallucinations grew more and more, by peculiar actions. He would imagine burglars were in the house, have them locked in and locked out, rambling the house all night, or have me in the attic, hunting places, all sorts of conditions, mere voices harassed him always, people were going to shoot him or do some damage, or they were talking about him, making comments over him.

Q. Were you told when he was taken to Kirkbride's?

A. No, I wasn't; they told me he had a nervous breakdown, they were taking him to the University.

Q. Who told you that?

A. His brother-in-law and his brother. I heard little; from time to time I would hear from his brother stating he was a little better or probably not so well, might be home in four weeks, and I finally concluded to write to the University, and I received a letter from the University saying there was no one there by that name, I must have the hospitals confused, and I found from his brother-in-law the same day that they had taken him to Kirkbride's.

Q. How long did he remain in Kirkbride's?

A. He remained there about six months.

Q. Did you see him when he was in there?

A. Yes, I saw him about eight weeks after he was taken from home, I wasn't allowed to go at first.

Q. You say you were not allowed?

A. No.

Q. Who kept you away?

A. Well, they thought his mind was in such a condition it would be better not to see his people, this was so plain anyway, there was eight weeks elapsed from the time he left home until I got to see him at Kirkbride's.

Q. When you saw him at Kirkbride's did he know you?

A. He knew me but not altogether; he had moments where he talked very well, and again, why, it was the same thing over and over, he had been that way since the 16th of May.

Q. Did you know that he was to be removed from Kirkbride's?

A. No; he was taken from there by his father. I went to see him one day and when I got there he had been taken away.

Q. Where was he taken from Kirkbride's?

A. He was taken to their home in Perrineville and from there to Trenton.

Q. How long did he remain at their home?

A. Just over night.

Q. And you say he was taken to Trenton. Where in Trenton?

A. At the insane asylum, State Hospital.

Q. Do you know where he has been since?

A. At the State Hospital.

Q. Have you been to see him?

A. Within two years, since that my brother has visited him.

Q. And when you went to see him in Trenton what was his condition?

A. Worse than ever.

Q. Did he know you?

A. No, my last visits he didn't know me, he had no idea.

Q. Now, after he was removed to Kirkbride's did you acquire any knowledge about the mental status of his family?

A. I inquired at the beginning—I was informed at my first visit by Dr. Moulton at Kirkbride's that it was an incurable case and one of hereditary insanity.

Q. No, you misunderstand me. After your husband was taken to Kirkbride's did you get any knowledge about his family?

A. Yes.

Q. Other members of the family?

A. Yes, and his sister also told me that the doctor had an attack of the same thing in Louisville, the same thing.

Q. When was he in Louisville?

A. In 1894.

Q. Louisville, Kentucky?

A. Yes, 1893 and 1894.

Q. What was he doing there?

A. He was supposed to be there in medical school. There is where he had one of these attacks.

Q. And his sister's name is what?

A. Lizzie MacMillan.

Q. Is she living?

A. Yes.

Q. Has she been apprised of your application for divorce?

A. Yes.

Q. Does his family know about it?

A. Yes.

Q. Now, after your husband was taken had you any means?

A. No, not anything; I had about $150 at that time, that is all I had.

Q. When your husband was taken to Kirkbride's

or after he was taken there did he ever support you in any way?

A. No way at all, not any of them.

Q. Neither he nor members of his family——

A. No one.

Q. Helped you in any way?

A. In no way.

Q. How do you maintain yourself now?

A. I took up the study of medicine, I am now a physician.

Q. When did you begin the study of medicine?

A. 1902.

Q. And where did you graduate?

A. Baltimore, Women's Medical College, 1906.

Q. And you live where?

A. Now?

Q. Yes.

A. Collingswood, New Jersey.

Q. How long have you lived at Collingswood?

A. Since 1908.

Q. Did you practice medicine?

A. Yes, all that time.

Q. How long have you been practicing medicine?

A. Since 1908. I took two years' hospital course after I graduated.

Q. And—pardon me for asking the question—has your practice been successful?

A. Very successful.

Q. You practise steadily at Collingswood?

A. All the time.

Q. All the time in Collingswood?

A. Never been away from there.

Q. When did you recover from the effects of this abortion?

A. Not until around 1900.

Q. What did you learn of insanity in his family?

A. I learned that on both sides there was an inheritance, on both mother's and father's side; the father had been insane, I was told by Dr. Ward of the Trenton Insane Asylum. Dr. Moulton from Kirkbride's told me it was inherited insanity on both sides, no cure, no hopes; that was in 1901. Dr. Ward knew both families very well, knew all the inmates of the asylum that had been there from the family, both sides, recent days and previous.

Q. Do you happen to know whether any of his family on either side were insane?

A. Yes.

Q. Who?

A. He had a cousin, a Mr. Hires, that has recently been to the insane asylum, and some in the Allen family, the direct family, and on the Tantum side his mother—Hartshorn Tantum is the man's name who was insane at one time.

Q. How about his father and mother? Are they infected with insanity?

A. The father.

Q. The father is?

A. The father.

Q. You never disclosed this situation to your father?

A. Not to my father until two years before his death last February, he knew then the whole thing.

Q. Have you talked to any members of his family about it?

A. Of the Doctor's family?

Q. Yes.

A. Not since I saw them at the time of our trouble, they knew then what my ideas were because the whole thing had been kept secret, I then talked with them.

Q. Well, by this "trouble" I suppose you mean this abortion?

A. Yes.

Q. Did you talk to any members of his family?

A. His sister.

Q. And she knows of this proceeding, does she?

A. Yes.

Q. Did she make any statement to you?

A. No, not at that time, not until the doctor was being removed to Kirkbride's, then she told me that it was the same thing that he had when he was in Louisville, he was in the same condition as I saw him there.

Q. Well, would you have married this man if you had known that he had inherited insanity?

A. I certainly would not, no.

Q. Do you know enough about insanity to tell the Court whether or not your husband is permanently insane?

A. Yes, I know enough. He has been adjudged permanently insane by two of the best physicians, besides ten years of insanity is the limit of it being cured, and he has been there thirteen years.

Cross-examination.

By Mr. Cogswell:

Q. Mrs. Allen, what was his condition at the time of the marriage ceremony?

A. Very peculiar. He had no set time for marriage. Now, of course, now that I know more about these things I see wherein some things were very peculiar. There wasn't even a written statement of the time of the marriage. He wanted everything kept secret. He asked the minister not to publish things, and, besides that, he waited until after the church services and went around the back and asked

the minister if he would tie a knot. When he came home—we came home to my father's place, and I showed him the certificate the next morning, but the doctor wasn't at my home for a week after that. He was very peculiar at that time, during the marriage ceremony.

Q. There was nothing, though, to make you suspect anything wrong with his mentality?

A. No. I thought he was peculiar. I had a very limited experience with any one of the male sex. I supposed it was just a peculiar habit of his or something of that sort.

ROSEANNA EARNEST, a witness produced in behalf of the petitioner, being duly sworn according to law, on her oath says:

By Mr. Wescott:

Q. You live where, please?

A. Perrineville.

Q. And you are related how to the witness who just left the stand?

A. Her sister; I am her sister.

Q. Are you younger or older?

A. I am younger.

Q. Were you present at your sister's marriage?

A. No.

Q. Did you know of her marriage?

A. After it was over, yes.

Q. Do you know the preacher who married them?

A. I do—I did, he is deceased at the present time.

Q. And what was his name?

A. Mr. Lake, Reverend Lake.

Q. How were you girls brought up?

A. Very strict.

Q. Were you permitted to receive company at home?

A. Not at a young age, no.

Q. The Allen family was what sort of a family in the community?

A. They were prosperous farmers, they also were store-keepers at one time.

Q. Well, no, I mean how did they stand? Did they occupy any conspicuous position?

A. Yes, they did.

Q. Did you know them?

A. I knew them, yes, because I was brought up in the town.

Q. You are married, of course?

A. Yes.

Q. You weren't married at that time?

A. No.

Q. After your sister's marriage were you with her?

A. Yes, I continued to be with her, I didn't make my permanent home there but I was with her every day on the farm; we only lived a short distance but Mother had me to go there every day.

Q. Did you at that time know anything about insanity?

A. No, nothing.

Q. Let me ask you whether this was looked upon as a pretty good match?

A. Yes, indeed, it was. They were considered to be prosperous and some of the would-be's of that little village.

Q. Did you notice any peculiarities about Mr. Allen?

A. Yes, he was peculiar. That is why I always

went with my sister and remained there during the day, because of his peculiar ways. We didn't know what it would lead to, for we didn't have experience enough.

Q. Did you know at that time that he was insane?

A. No, indeed.

Q. Inherited insanity?

A. No, knew nothing of it.

Q. Well, were you with your sister at the time this abortion was performed or right after it was performed?

A. Yes. I went up there and found sister grieving and wanted to know what the trouble was.

Q. Who was present? Don't tell us what she said to you.

A. Her husband.

Q. Anybody else?

A. And myself and sister.

Q. Did you hear any conversation between your sister and your brother?

A. I did.

Q. Or brother-in-law?

A. I did.

Q. What did you hear?

A. She wanted to know why she couldn't go on and be a mother and he said he inherited insanity and on that account he couldn't allow her to be a mother, because the child would inherit insanity. Sister became horrified and so did I.

Q. Was there a terrible scene there?

A. Yes, sir, indeed there was, because we wanted so much to have children in the family.

Q. Did you hear him state anything further?

A. Owing to the insanity?

Q. Yes.

A. She asked, and I did also, why he hadn't re-

vealed it to us and told us. He said had he told us Sister would never have married him.

Q. What state of mind and body was your sister in at that time?

A. Well, in a miserable state, in such a state that it necessitated my being there to assist her, and when she went to Ohio it was with an awful strain, both on me and my mother, and my mother became ill just before sister left and she remained ill during the winter months and died in March.

Q. Did you hear your sister disclose this situation to your mother?

A. Yes, and I was always with Mamma, I nursed her and cared for her.

Q. How long afterwards did your mother live?

A. Mamma died the 7th of March, or 5th of March, I think it was the 5th of March, about the 7th or 9th.

Q. Did you notice any change in her?

A. Yes, indeed, we had to have her under physicians' care all the time.

Q. And prior to her acquiring this knowledge about her daughter's misfortune, how was she?

A. She was doing nicely. She more or less had illness in her lifetime, but this was serious. She had for the last year been well, I considered, for Mamma; we didn't have to have the doctor until this occurred.

Q. Was the matter disclosed to your father?

A. No, we didn't dare, father was—it would have been such a hard thing to him, for we was afraid of his health.

Q. Did you afterwards learn anything about insanity in the Allen family?

A. Yes; after he was in the asylum we learned it, because I was compelled to go stay with Sister when they first put him away.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Lida T. Allen)
)
vs.)
)
Charles S. Allen.)

Appeal from a decree in Chancery advised by Leaming, V. C.

For the appellant, Wescott & Weaver.

For the respondent, G.Dore Cogswell.

Per Curiam.

The bill in this cause was filed by the complainant for the annulment of her marriage to the defendant upon the ground that when the marriage took place the defendant knew that he was afflicted with a taint of insanity inherited by him and transmissible to his offspring; and that he fraudulently concealed the fact from her. The marriage took place in 1895. In 1901 the defendant's mental condition became such as to necessitate his confinement in an insane asylum, where he has ever since been, and apparently without any improvement.

Our examination and consideration of the testimony submitted in the court below leads us to the conclusion that there was no adequate proof that the defendant, at the time of his marriage to the complainant was afflicted with a taint of insanity. The most that can be said is that he believed that he was, although no basis for such a belief is disclosed in the proofs. The mere fact that one of the party to a marriage ceremony has such a belief, although there is no real justification for it,

and does not communicate it to the other contracting party, affords no ground for a subsequent annulment of the marriage. Nor does the defendant's mental breakdown, six years after complainant was married to him he became insane afford ground of support for his belief, that at the time of his marriage there was a taint of insanity in his blood. We conclude, therefore, that the complainant's bill was properly dismissed for the failure of proof to support the allegations of her bill. Reaching this conclusion for the reasons stated, we find it unnecessary to consider the interesting question discussed by the learned Vice Chancellor in his opinion, viz., whether the fact that one of the parties to a marriage is insane at the time when the marriage takes place and intentionally conceals that fact from the other party to the marriage affords just ground for its annulment.

Endorsed:

"Filed Nov 20 1916

THOMAS F. MARTIN

CLERK."

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Q. Then you learned all about the insanity?

A. Yes, but we didn't know where he was for eight weeks.

Q. Have you seen him since he was in Trenton?

A. Yes. I haven't seen him in the last four years. The last time I saw him he didn't know who I was.

Q. How long has he been in the asylum?

A. Thirteen years.

No cross-examination.

LIDA T. ALLEN, recalled.

By Mr. Wescott:

Q. The question that naturally arises is, after your husband had treated you the way he did and disclosed this situation, why did you stay with him, why did you live with him?

A. Because I didn't want conditions at home known, and I thought I had taken the step and I would have to stick by it. I didn't want any more trouble than had been. I knew nothing else could be done. I simply went from place to place with him, but in torture, great torture.

DOUGLASS WOODWARD, a witness produced in behalf of the petitioner, being duly sworn according to law, on his oath says:

By Mr. Wescott:

Q. Mr. Woodward, how long have you known the Allens?

A. About thirty years.

Q. And these young ladies?

A. About the same time.

Q. Do you know how Mrs. Doctor Allen was brought up?

A. Yes, brought up very strict, the family was very careful of bringing up, the father and mother was very careful in bringing up his family.

Q. The Allens occupied what position in the community?

A. Very prominent in the neighborhood, very good family.

Q. Do you know whether there was insanity in the family?

A. Yes, sir, I do.

Q. What do you know about insanity in their family?

A. Well, I know that the brother of the mother of Dr. Allen's husband was in the asylum, on the Tantum side.

By the Vice-Chancellor:

Q. That is the brother of whom?

A. The brother of Dr. Allen's mother. Dr. Allen's mother was a Tantum and her brother was——

Q. An uncle on his mother's side?

A. Yes, an uncle on his mother's side.

Q. How do you know that? What do you know about it?

A. Well, I think I was at Perrineville at the time that he was up at Trenton, I think so; it has been a long time ago but I remember it very distinctly, and it is generally understood by everybody in our vicinity that he was in the asylum.

By Mr. Wescott:

Q. Is he alive?
A. Yes, he is living.
Q. Is he insane now?
A. Well, I don't consider him of sound mind at all times. I am very well acquainted with him. He is eccentric and peculiar.
Q. Do you know of insanity in any of the rest of the Allens?
A. The Allens? Yes, there is insanity on the Allen side.
Q. Well, tell the Chancellor what you know about it, please.
A. Well, I know to my knowledge two, I think, of the Allens, descendants of the Allens, have been in Trenton.

By the Vice-Chancellor:

Q. Which two?
A. Edward Hires, I think, and his sister also.
Q. What relation are they to the father of Dr. Allen?
A. Own cousins.

By Mr. Wescott:

Q. Do you know of any of the rest of the Allens to have been insane?
A. I did not know positive that they had been to the asylum, no, but I know they were eccentric, some of them.
Q. How?
A. I know they are eccentric and peculiar in their

ways, and I don't know of any of them being in the asylum outside of those two.

Q. Do you know the husband of Mrs. Dr. Allen, Charles S. Allen?

A. Yes.

Q. How long have you known him?

A. About thirty years. When I first came to Perrineville he was a young man and I also.

Q. Do you know whether he is insane?

A. I know he was a year or so ago.

Q. Did you see him?

A. I saw him at Trenton, yes, and at the asylum.

Q. How was he then?

A. In bad condition, his mind was not——

Q. Did he know you?

A. No. If I told him who I was he seemed to know me for a little time, and then he would wander off.

No cross-examination.

Mr. Wescott: Now, if your Honor please, I had a couple of physicians to prove the incurability of Dr. Allen's insanity. Neither of them have turned up. Perhaps under all the circumstances there is sufficient proof on that point anyhow.

The Vice-Chancellor: Do you claim, Judge, that there was any insanity in the family of the defendant other than an uncle on his mother's side and two cousins on his father's side?

Mr. Wescott: I understand they are all insane.

LIDA T. ALLEN, recalled.

By Mr. Wescott:

Q. Will you tell his Honor, if you please, what you know about the insanity in this family told you by any one?

A. Well, we simply know that the doctor, my husband, told me that his father was insane, had been about the time of the conception—of his birth.

By the Vice-Chancellor:

Q. Well, have you no evidence of it excepting the statement of your own husband?

A. Yes; there is other people in the family, I don't know just where, have always said the same thing; there is one deceased, his uncle, Sheriff Allen that would have known the whole thing. They are very peculiar people, they have kept everything away, and at the time they took my husband they had the same idea in their minds, to keep him away a definite time and bring him home to me.

Q. Is there any one who can testify positively that the father of your husband was insane?

A. Well, Dr. Ward told me himself that he had been insane, he had been to the asylum.

By Mr. Wescott:

Q. This is hearsay.

A. Dr. Ward told me that his father was insane, and this doctor was the same thing, and it was inheritance, that my off-spring—it would have been the same thing; and Dr. Moulton told me that thing

about his father, but Dr. John Ward is a man who has known him, and of course the cousins, immediate cousins of the doctor's, why, that has been within recent years.

Q. What do you know about his cousins?

A. I know they have been in the Trenton Insane Asylum for a long time. This Edward Hires that they speak of, he has had two or three recurrences of it, and I think there was a lady, a cousin, was there for a while, I think it didn't terminate into a case, but she has been back again. There was several others we heard of who will probably develop the same thing, because they are not capable of taking care of anything at all. It seems to be a mental condition there altogether, cousins and second cousins of the father's but his father is still a very eccentric man and peculiar. And this is not altogether hearsay; it is from people who knew his condition years ago.

Mr. Wescott: Well, that is all we can produce on that point at the present time.

Mr. Cogswell: I might say I made an attempt to get the brother of the doctor here from New Egypt. When I was first appointed I got a copy of the complaint and advised him I had been assigned and told him I would like to confer with him. I never got an answer from him of any sort. I then wrote him another letter, asked him if he would kindly acknowledge receipt of the letter. He made no answer to that. Then after a little while I notified him of the trial and requested him to be present, and asked him to give me the names of witnesses who might aid in getting at the truth of this situation. I never heard a word from him.

The Vice-Chancellor: That was the brother of the defendant?

Mr. Cogswell: Yes, living at New Egypt. And I might say that Judge Wescott gave me every aid he could in this matter. I did not know where the brother lived until the Judge kindly furnished me with his address in New Egypt.

RALPH WESCOTT, a witness produced in behalf of the petitioner, being duly sworn according to law, on his oath says:

By Mr. Wescott:

Q. You have had something to do with the preparation of this case, haven't you?

A. Yes, sir.

Q. Can you recall what you did in relation to notifying the Allen family and getting them to aid you or to come here and aid the Chancellor? Did you have any correspondence that you can recall?

A. I wouldn't like to try to say definitely without refreshing my memory.

Q. Well, here are the papers.

A. In the papers there are some affidavits that I think I have taken. Before reading them I might say generally that I have tried to get into communication with the father of the defendant, and with his brother and his sister, and all those attempts have failed.

Q. Well, how were those attempts made?

A. By letter, registered letter, and with the brother by telephone conversations. I had one con-

versation with the defendant's brother over the 'phone, he being apparently in the office in New Egypt and I being here in Camden, in which I asked him if he would not acknowledge receipt of a copy of the bill and subpoena that I had sent and he refused to make me a definite answer. I asked him then if he would see me if I came to his house and explained the case to him, and he asked me if that is all I wanted to know; on my saying that it was he said, "good-bye" and hung up the receiver. The affidavits that I have made say substantially just what I have said now.

Q. Well, if that is all that will be sufficient.

Cross-examination.

By Mr. Cogswell:

Q. The affidavits, I suppose, are filed in the cause?

A. Oh, they appear there. There are a great number of papers here and it is pretty hard to locate them.

Mr. Wescott: Would your Honor like to have some further information about the insanity in this family? We probably will be able to procure it.

The Vice-Chancellor: I entertain no substantial doubt that there is insanity in the family of the defendant, although it is possible there ought to be more definite proofs on that subject.

Mr. Wescott: I do not want to force this lady to go to the expense of getting these medical men from Trenton but I suppose we will have to do it.

The Vice-Chancellor: There seems to be no one

who knows by competent information that the father has actually been insane, and it might be well or necessary to have some evidence of some disinterested physician. Dr. Ward, of course, would be the best one who could testify that the nature of the insanity of this defendant is consistent with its being inherited. I apprehend that if a husband becomes insane through some extraneous cause that it is no ground for divorce, and if any divorce is granted or annullment decree is made in this case it must be upon the theory that there was a fraud practised, that this disease lingered in his system at the time of his marriage and that he knew it and deceived the defendant.

Mr. Wescott: That is all there is in the case.

The Vice-Chancellor: I should suppose that it would be essential to have some evidence of some one who knew or who was capable of forming an opinion to the effect that the present condition of this man, especially when taken in connection with what may be shown of his father's condition, is obviously an inherited taint. It seems to me that the very foundation of your case is the inheritance.

Mr. Wescott: Yes. I had a physician who promised to be here this morning competent to testify to the hereditary character of the disease.

The Vice-Chancellor: There never has been, so far as I am aware, a divorce granted in this State by reason of inherited insanity.

Mr. Wescott: Unless there is an element of fraud in it.

The Vice-Chancellor: The furthest that any Court has gone, so far as I am aware, is in a decision of the Court of Errors written, I think, by Judge Biddle, ex-Governor Biddle, which holds that fraud relating to matters which he describes as essential to the marriage relation is sufficient. I remember reading that case with a feeling that while making that statement he might well have amplified it to make it more definite, and at any rate, give the notion of that Court touching what elements there might be that were considered essential to the marriage relation that could be affected by fraudulent misconduct or concealment. But it seems to me that if anything can be of the essence of the marriage relation it is a healthy mind and body or a mind and body that will not with reasonable certainty impart taints of insanity to the offspring. Our leading legal philosophers have said that the purpose and essence of marriage was the propagation of issue, and if that essential function of marriage is to be tainted by a taint of insanity in that issue it seems to me that it is impossible to regard it as anything but one of the essential elements of the marriage relation touching which a fraud has been practised in this case, and as presently advised I would sign a decree of nullity in this case unless I should conclude that there ought to be more definite evidence touching the hereditary nature of this man's disease.

Mr. Wescott: Well, if your Honor will pardon me for breaking in on you, that is exactly my view of the case, and it is the view of my son; we discussed it with Mr. Biddle and the Chancellor and others and I think the consensus of opinion was that there ought to be shown hereditary insanity in this

case, and I had no doubt of my ability to show it, and I had a physician who intended to be here to show that, and that physician having failed to turn up I admit the evidence is a little scant on that point.

The Vice-Chancellor: I suggest, Judge, that there be additional testimony on that subject so that there can be no possible doubt. I do not think I care to hear any evidence on any other subject. If Dr. Ward could be gotten here he would be the most satisfactory because he knows apparently of the insanity of the father, although you can probably get some one else.

(Continued to day to be fixed.)

Hearing resumed on Tuesday, October 13th, 1914, in the presence of counsel for the respective parties heretofore noted.

Albert R. Moulton, a witness produced in behalf of the petitioner, being duly sworn according to law, on his oath says:

By Mr. Wescott:

Q. Doctor, do you practise medicine?
A. I do.
Q. Licensed to practise?
A. Yes, sir.
Q. Are you familiar with the medical practise dealing with insanity?
A. I am.

Q. Will you state to the Court, please, your qualifications in the way of education and hospital service, and so on?

A. I have been practising medicine since 1876, most of the time dealing with the insane. I have been at the Pennsylvania Hospital for the Insane for twenty-three years. I resigned there last spring. I now have an office on Locust Street, in practise.

Q. Do you know the defendant in this case, Dr. Charles Allen?

A. Yes, sir.

Q. How long have you known him?

A. Well, I knew him during his residence in the Pennsylvania Hospital.

Q. That was at what time?

A. If I may look at my notes I can give you the exact time. Dr. Allen came to the hospital on June 15th, 1901, and he remained there until November 8th, 1901.

Q. Are you familiar with his condition at present?

A. I don't know what his condition is at the present time; I haven't seen him since he was discharged from the hospital.

Q. Will you tell us what his condition was at the time you have just referred to?

A. At that time he was suffering from insanity induced by taking opium and liquor. He was in a confused state, very hallucinatory, imagined he heard voices, and he was constantly talking about these voices. Sometimes he thought that his brother had been—something had been done to his brother and that he was suffering because of it; he used to ask me to go upstairs and relieve his brother.

Q. Speaking generally, Doctor, was that condition a condition that you would call permanent?

A. He had some symptoms that were rather un-

favorable and usually accompany chronic insanity. That is, his hallucinations of hearing. They are very common in chronic insanity, and persons suffering from profound hallucinations of hearing voices that last for some considerable time do not as a rule get well.

Q. Did he improve any?

A. A little but not very much. He did improve at one time quite a little. He was so bad when he came in that it was necessary to keep him in a violent ward.

Q. Well, the question we are trying to get an answer to is whether the condition that he is now in is permanent. If you can throw any light on that from your experience with him I wish you would.

A. Well, I can't help you very much on that, because I haven't seen him, you know, since he left the hospital in 1901.

Q. Well, I suppose it is proper for you to say whether in your opinion he would be likely to become permanently insane?

A. Well, I think he was likely to become permanently insane when he left the Pennsylvania Hospital.

Q. Now, one more question, Doctor: Was his insanity hereditary?

A. In answer to that question I will say that our record books have printed on the sheet the question which asks if the patient had any insane relations. The father of this patient gave the information and he answered no, he had no insane relations, but I have consulted the hospital—in fact, this paper I hold in my hand is a copy of the records and in my own hand is a question mark following that answer, so that I assume that I learned that the answer perhaps was not correct, but I do not remember that I learned who the insane relatives were.

Mr. Wescott: Pardon me, would the Court like to have that memorandum read into the record?

The Vice-Chancellor: No, I should think that would be sufficient. I do not think it would be evidential unless the original was produced, anyway.

Q. These notes that you hold are taken directly by you?

A. No, these were taken by the hospital stenographer, they were copied from the records and given to me.

Q. And in answer to the question I have asked you you said, as I understand, from these notes simply that the statement that there were no insane relatives is incorrect?

A. I assume that it was incorrect because I questioned that answer.

Q. And your questioning of that answer is based upon facts that you are testifying to now from that memorandum?

A. No, they are not based upon this because I took this from the hospital record.

Q. Well,I haven't yet understood you, Doctor.

The Vice-Chancellor: He said there was a question mark on the record and he took for granted that something must have arisen to have occasioned that question mark and he cannot tell what. Isn't that correct?

The Witness: That is it exactly; that is correct, exactly.

Q. Well, now, from your personal observation of Dr. Allen while he was a patient under your care, or

where you were, can you give us any idea as to whether his insanity was of a hereditary nature?

A. No, I cannot, not from Dr. Allen.

Q. Or from any other facts that have come within your knowledge could you say whether his insanity was hereditary?

A. The only thing that leads me to believe that there was a hereditary taint is that question mark, which I put there myself in these records.

Q. Well, possibly I haven't followed you closely but I don't understand what led you to put that mark there.

The Vice-Chancellor: He says he doesn't know.

Q. You can't remember now?

A. I don't know but I received some information of some sort from somebody, but who I don't know. This was a good many years ago all this happened.

Cross-examination.

By Mr. Cogswell:

Q. Doctor, did you have any personal acquaintanceship with any of his relations?

A. No, sir; I never saw any of his relatives until the patient came to the hospital.

Q. Did you investigate the prior history of the case, or of the patient?

A. Investigated it by asking questions of the father who brought the patient.

Q. At that time?

A. At that time.

PAUL L. CORT, a witness produced in behalf of the petitioner, being duly sworn according to law, on his oath says:

By Mr. Wescott:

Q. Are you a medical practitioner, Doctor?

A. I am, yes, sir.

Q. Specializing in insanity?

A. I graduated in 1895 and I have been in practise continuously ever since. For eight years I was assistant physician at the New Jersey State Hospital at Trenton. Since then I have been in private practise, and my specialty has been mental and nervous diseases.

Q. Do you know Dr. Charles Allen?

A. I do, yes, sir.

Q. Are you familiar with his present condition?

A. I am, yes, sir.

Q. And how long have you known him?

A. I received Dr. Charles Allen, I was then assistant physician at the State Hospital at Trenton when he was admitted there; I received him on November 9th, 1901. He was accompanied to the institution by his father, Edward Allen, and by his brother, Dr. H. Allen. I have seen him almost continuously since that date. After leaving the State Hospital I became consulting neurologist, and my duties have called me to the institution frequently since, so that he has been under my observation continuously from the time of his admission.

Q. What is his condition at this time?

A. He is suffering from dementia praecox.

By the Vice-Chancellor:

Q. What is that?

A. It is a form of mental disease, chronic mental trouble; it is sometimes known as hereditary insanity.

By Mr. Wescott:

Q. Will he recover?

A. I believe not, no, sir.

Q. Is he what you would call permanently insane, then?

A. He is, yes, sir, very pronounced.

Q. And in your opinion is his insanity hereditary?

A. It is, yes, sir. My reason for saying that is based partly upon the history of the case. When he was admitted the cause given—we have a question in the case book which asks the alleged cause of the present attack, and the answer given by his father—this was put down in my handwriting at the time—the answer was stimulants, narcotics and overwork; and further on in the taking of the history we have another question which questions the hereditary taint, and in that the father stated that there was a maternal uncle who was temporarily deranged. Now, in looking up the history of the case, I find that he had a cousin on his father's side, Edward A. Hayers, of Imlaystown, Monmouth County, New Jersey; he was admitted to the State Hospital on April 29th, 1906.

By the Vice-Chancellor:

Q. A first cousin?

A. First cousin, yes, sir. Then he had an uncle on his mother's side, Hartshorn Tantum; he was admitted to the State Hospital in January, 1912; which shows that he had a defective hereditary taint, and that is always in this form of insanity.

Q. When was the present patient admitted to the State Hospital?

A. The cousin was admitted April 29th, 1906.

Q. Both were admitted after he was?

A. Yes, but he had previous to that an uncle, a maternal uncle, who, his father stated, was temporarily deranged for some time. Now, I haven't the name of that uncle.

By Mr. Wescott:

Q. Doctor, are you acquainted with the father of Charles Allen?

A. Yes, sir.

By the Vice-Chancellor:

Q. That makes three relatives; I thought there there were only two.

A. Really three.

Q. A maternal uncle; a paternal cousin.

A. Yes.

Q. And who was the third?

A. A maternal uncle. That may have been the same uncle, but he has been admitted since that time to the State Hospital, he may have had two admissions.

Q. You haven't the name in the second instance?

A. No.

By Mr. Wescott:

Q. Is there any abnormality, mental abnormality, in the father that you know of?

A. Well, I haven't seen the father for years. He is rather an eccentric man. I would not be able to say that he was mentally deranged.

Q. As to any other members of the family, can you tell us whether they are mentally abnormal?

A. No, I could not; I never examined any of the other members of the family.

Q. And are not acquainted with them outside of your medical practice?

A. No.

Cross-examination.

By Mr. Cogswell:

Q. Doctor, do you know the cause of the insanity of the maternal uncle?

A. Of the paternal uncle—yes, it was maternal uncle, it was the mother. The cause was alcoholism, opium and an auto accident.

Q. When was he admitted?

A. He was admitted in 1906.

Q. Wasn't there one you mentioned that was admitted in 1901?

A. Yes, but I don't know—no, he wasn't admitted at that time, but the patient's father, Dr. Charles Allen's father, gave me the information that he was temporarily deranged but he was not admitted to the institution.

Q. Did you have any knowledge, Doctor, of this defendant at the time of the marriage, in May, 1895?

A. No, sir.

Q. Did you have any personal acquaintance with any of the relations of the defendant prior to the time of his being admitted to the hospital?

A. No, sir.

Q. In looking up the history of the case what did you do? Whom did you consult with?

A. Whom did I consult with?

Q. Yes.

A. With the physician in charge, Dr. Funkhauser.

By the Vice-Chancellor:

Q. If these collateral relatives were insane through excessive use of alcohol or opium, why would you attribute that as an evidence of insanity taint in the family blood?

A. It is my experience in taking histories in these cases that the answers given by the friends and relatives are not always truthful, the whole truth. I believe that alcoholism and the opium habit were simply things that entered into the cause, but it was altogether likely that these patients, these people, were insane to begin with.

Q. Do you say that from your recollection of the case or from probabilities?

A. Well, in this case from my recollection of the case.

Q. In which case?

A. The case of Dr. Charles Louis Allen or Charles S. Allen.

Q. No, I am referring now to the collateral relatives, the cousin and the uncle.

A. Yes.

Q. Do you know anything about their cases or do you simply assume that it is likely that alcoholism and opium were given as causes when other causes might have existed?

A. Yes, sir, I assume it because of my experience in similar cases.

Q. But the alcoholism and opium will occasion insanity, will they not, in a normal person?

A. Yes, sir.

Q. But in such cases you would hardly use that normal person as a point of departure for hereditary traits?

A. No, sir.

Q. Then your conclusion that this insanity was hereditary would be based upon the assumption that this cousin and uncle were insane from causes other than alcoholism?

A. Yes, and that the alcoholism was simply a result of their abnormal condition, was one way of perhaps relieving their feelings. People who are insane are more given to vicious habits.

Q. Will the existence of a mentally deficient uncle be regarded as sufficient to justify the conclusion that the nephew is mentally deficient from hereditary causes rather than from some excess that he may have indulged in?

A. Taking that history into consideration with the history of the case it would, yes, sir, the very form of insanity from which he is suffering at the present time.

Q. What circumstances did you take in connection with the question I asked? You said taken in connection with the circumstances shown by the history of the case. What circumstances do you refer to?

A. Well, he has become more and more demented since his admission to the hospital, he has shown no signs of recovery, and he has shown all the symptoms of this disease which I mentioned, dementia praecox, which is caused more by hereditary taint than by any alcoholism excesses or opium habit or anything of that kind.

Q. The hereditary taint in an uncle of course would have to come through a grandfather or grandmother. Do you know whether there has been any suggestion of insanity in the direct line?

A. Only by hearsay.

Q. Only by that?

A. Yes.

Q. Well, then, let me give you a purely hypothetical question: Given the case of a person who is insane and has resisted any efforts of restoration to a normal condition for a period of a number of years, and that person is found to have had an uncle who was mentally deficient through causes other than self-abuse: Would the conclusion be justified that the patient under your care was afflicted with hereditary insanity by reason of the condition of the uncle? Do I make my question clear?

A. Not exactly.

(Question repeated).

A. Yes, sir.

Q. Would that conclusion also be justified in the absence of any evidence of insanity in a direct line?

A. Yes, sir; yes, sir, I believe it would.

Q. Assuming that your information touching this case, touching the history of this case, was accurate, would you have any hesitancy in stating that Dr. Allen was afflicted with hereditary insanity?

A. No, I would have no hesitancy in stating so.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL FOR ANNULLMENT OF MARRIAGE. CONCLUSIONS.

WESCOTT & WEAVER, for complainant.
G. DORÉ COGSWELL, for defendant.

LEAMING, *V. C.*

By the bill filed herein complainant seeks a decree annulling her marriage to defendant on the ground that at the time of her marriage defendant knew that he was afflicted with a taint of hereditary insanity and with that knowledge stealthfully concealed the fact from complainant. Defendant is now insane and an answer has accordingly been filed and a defense made in his behalf by a guardian *ad litem* appointed for that purpose.

The evidence discloses that the parties were married in July, 1895. The husband was then a graduate

physician and thirty-one years of age; the wife was twenty; they each lived with their parents and had been reared on near-by farms. About two years after their marriage the wife became heavy with child and without knowledge on the part of the wife touching the husband's purpose he performed on her an abortion. This occasioned a confession by the husband that his determined avoidance of offspring was made necessary by reason of his having inherited insanity, and that he had concealed his affliction at the time of his marriage knowing that its disclosure would have prevented the marriage. It is this intentional concealment by the husband at the time of his marriage of the fact that he was afflicted with hereditary insanity which is now urged as such a fraudulent procurement of complainant's consent to marriage as will at this time justify a decree in behalf of the wife annulling the marriage.

The abortion and confession above referred to were established by the testimony of complainant and complainant's sister who was present at the time of the confession. These events occurred in November, 1897. Shortly thereafter the husband determined to enter the practice of his chosen profession and for some four years thereafter was engaged in the practice of medicine. At the end of that period—in1901—his mental condition became such as to necessitate his confinement in an insane hospital; since then he has grown worse and now appears to be permanently insane. During the four years intervening between the husband's disclosure of his condition to his wife and the time of his commitment to an asylum, during which time the husband was engaged in the practice of medicine, his wife resided with him as a wife, but her statement is that by mutual purpose no sexual intercourse occurred between them.

There is no doubt of the husband's mental capacity to marry at the time of his marriage. Nor does there seem to be any reason to doubt that about two years thereafter he made the confession already referred to. It must, therefore, be accepted as a fact that at the time of his marriage he believed that he was afflicted with hereditary insanity and concealed his belief because of the fear that its disclosure would have defeated his purpose. Nor is there any doubt that six years after his marriage he became violently insane and has since remained in that condition. But aside from the husband's manifest belief that he had inherited insanity and that the unfortunate inheritance would have fallen to his offspring there is little evidence to establish the fact. Certain hearsay testimony which was introduced touching the husband's earlier mental condition and touching his father's condition must, of course, be excluded. There is evidence that a maternal uncle and a paternal cousin of defendant have been insane; but no evidence establishing the fact that any lineal ancestor of defendant has at any time been insane. The only evidence that defendant's insanity is hereditary, aside from his own belief, is to be found in the opinion of Dr. Cort to that effect. That opinion appears to be chiefly based upon the present symptoms of defendant and the circumstance of insane collateral relatives. On what defendant based his belief that he was infected with hereditary insanity does not appear.

In Carris vs. Carris, 24 N. J. Eq. 516, our Court of Errors and Appeals determined that this Court has inherent jurisdiction to annul a marriage for fraud. It is there held, however, that, unlike ordinary contracts induced by fraud, in voidable as distinguished from void contracts of marriage, (that

is, contracts in which the parties have actually contracted marriage with a purpose, desire and capacity to marry as distinguished from contracts of empty form without mutual intent or capacity to marry, such as duress, marriage in jest, misapprehension of the party, and mental incapacity to contract) fraud is insufficient to annul the marriage unless three elements are found to exist: 1. The fraud must be extraordinary or extreme in kind or degree. 2. It must relate to the essentials of the marriage relation. 3. It shall not in any circumstance avoid the marriage contract against sound considerations of public policy. It will be readily conceded that neither of these three requirements, in manner stated, is sufficiently inflexible or definite to be easily applied to a concrete case other than the one then before the Court. It is, however, there explicitly pointed out that false representations in regard to family, fortune or external conditions or even antenuptial incontinence are not sufficient ground for a decree of annullment, whereas fraudulent concealment of pregnancy at the time of marriage, the husband being innocent, is there held sufficient, providing there has been no acquiescence upon the part of the husband after discovery of the fraud. As incontinence was there stated to be insufficient it necessarily follows that the basis of the decree was pregnancy. That was declared by the Court to relate to the essentials of the marriage relation because it rendered the wife, for the time being, incapable of being impregnated by her husband; the necessity which the fraud imposed upon the husband of accepting or repudiating issue not his own was also held to render the decree of annullment consistent with public policy. In the later case of Crane vs. Crane, 62 N. J. L. Eq. 21, a decree of annullment was made based

upon the husband's concealment of his syphlitic condition at the time of his marriage. In that case the basis of the conclusion of the learned Chancellor appears to have been that the disease named necessarily or appropriately terminates the marriage relation because that relation could not continue except at the risk of infection by the wife. In considering what misrepresentations can be deemed to affect an essential of the marriage relation, the learned Chancellor, at page 26 of the reported case, says: "Misrepresentation as to freedom from disease in general or concealment of the existence of a disease, although one in common apprehension communicable and transmissible to offspring, cannot, in my judgment, be so regarded. They fall within the line of false representations as to family, fortune or external conditions, declared by Mr. Justice Bedle [in Carris vs. Carris, *supra*] to be insufficient to justify the annullment of marriage. As to such and like matters the parties take each other for better or for worse. 1 Bishop Mar. D. & S. Sec. 457." From the above quotation it is obvious that in the opinion of that learned Chancellor the ground upon which the bill in the present case seeks a decree is insufficient. The adjudicated cases in other states afford little aid. In a recent case in the Supreme Court of New York (Sobol vs. Sobol, reported in N. Y. Law Journal of Dec. 7, 1914, at page 927) tuberculosis, concealed at marriage, was held to afford ground for annullment. While the opinion in that case refers to the effect of the disease upon offspring, the primary ground of the decision appears to be that the danger of infection from tuberculosis, like syphilis, renders contact dangerous and accordingly effects an essential of the marriage relation. A somewhat extended review of

earlier cases will be found in Lyon vs. Lyon, 230 Ill. 366.

I think it will be found that in the absence of statutes specifically authorizing a decree of annullment or declaring the marriage unlawful at the time it was contracted no satisfactory authority exists to support the view that a marriage contract, voidable only, can be annulled by a Court of Equity for fraudulent concealment by a party touching his or her physical condition except in the extreme instances already referred to of disease of either party of a nature to render contact seriously dangerous to the other or pregnancy of the wife. The importance of healthful offspring cannot be overestimated, but that consideration appropriately belongs to the Legislature.

In cases of impotency, involving as they do total failure of issue, this Court has refused relief by either decree of annullment or dissolution of the marriage contract until our Legislature authorized a divorce on that ground. Anon. 24 N. J. Eq. 19.

But I am convinced that the relief here sought must be denied in any event for want of adequate proof of the fact that defendant was at the time of his marriage afflicted with a taint of insanity which would have been inherited by his offspring. Defendant's confession of his belief to that effect cannot be properly accepted as sufficient to establish the fact, and the basis for Dr. Cort's opinion in the matter is too uncertain. The fact must be determined with reasonable certainty to justify a decree of that nature.

I feel obliged to advise a decree dismissing the bill.

Submitted: April 14, 1915,
Determined: September 15, 1915.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL FOR ANNULLMENT OF MARRIAGE. FINAL DECREE.

This cause coming on to be heard in the presence of Wescott and Weaver, of counsel with the complainant, and G. Doré Cogswell, of counsel with the defendant, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint:

It is on this 21st day of March, A. D. nineteen hundred and sixteen, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant's bill be, and the same is hereby dismissed.

Respectfully advised.

E. B. LEAMING, *V. C.*

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL, &c. NOTICE OF APPEAL.

The complainant hereby appeals from the whole and every part of the final decree made in the above-stated cause to the Court of Errors and Appeals in the last resort in all causes.

Dated, March 21st, 1916.

WESCOTT AND WEAVER,
Solicitors of Complainant.

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

JOHN W. WESCOTT,
Of Counsel with Complainant.

PETITION OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between LIDA T. ALLEN, *Complainant,* and CHARLES S. ALLEN, *Defendant.*	ON BILL, &C. PETITION OF APPEAL.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Lida T. Allen, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 21st day of March, 1916, wherein the said Lida T. Allen was complainant and Charles S. Allen was defendant, in this respect, to wit, that the said decree adjudges that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint.

And your petitioner humbly appeals from the whole and every part of said decree, upon the ground that the same is erroneous for that the said Court of Chancery should have adjudged that the complain-

ant was entitled to the relief prayed for in said bill of complaint.

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

WESCOTT AND WEAVER,
Solicitors of Appellant.
JOHN W. WESCOTT,
Of Counsel with Appellant.