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PETITION.

Filed July 2, 1919.

In Chancery of New Jersey

*To His Honor, Edwin Robert Walker, Chancellor of the State of
New Jersey:* 10

Complaining, shows unto your Honor your oratrix, Anna Pinkin-
son, of the City of Newark, in the County of Essex and State
of New Jersey:

1. On June 6, 1909, she was lawfully married to her present
husband, Jacob Pinkinson, at Newark, New Jersey.

2. After her said marriage, complainant and the defendant,
her said husband, resided at Newark, Essex County, in this
State, in a two-family house, which was owned by them jointly, 20
which house was known as No. 72 South street, and they lived
there for about six years.

3. Complainant, at the time of her marriage, was eighteen
years old, and her said husband was twenty-four years old, and
they have had one child, a girl, named Thelma Viola, who is now
seven years of age.

4. Defendant from the time of his marriage to complainant
has insisted that his mother, Mrs. Fannie Pinkinson, a widow,
should have charge of the house, and has compelled complainant
to submit to the directions of his mother, and with the exception 30
of the occasion hereafter stated, he has always refused to give
any money to complainant, but has given the money for the
house supplies to his mother.

5. Defendant's mother went to Europe while they were living
in the South street house, and was gone for about two years, and
while she was away defendant gave complainant the sum of \$15
per week for the purpose of supplying household necessities; and
at that time, defendant paid \$12 per month to a maid, who as-
sisted complainant in the household work. The child was born 40
while the defendant's mother was in Europe. The maid was kept
in their employ until defendant's mother returned, at which
time the maid was discharged, and defendant discontinued pay-
ments of money to complainant, and gave the money to his
mother.

Petition.

6. In the year 1915, defendant opened a confectionery store in Elizabeth, N. J., and took complainant there to live, and put his mother in charge of the house, and continued to give money to his mother for the household supplies, and gave no money whatever to complainant.

10 7. While complainant and her husband were living in Elizabeth, she took proceedings against him for support in the Police Court at Elizabeth, through the Overseer of the Poor, and her husband was ordered to pay her the sum of \$6 per week, and she was directed by the Court to leave him, and complainant did leave him, and was away from him for nearly two years and had the custody of the child at that time.

20 8. Early in the year 1918, defendant urged your oratrix to return to him, and she did so, but she was in such a physical condition that she was obliged to go to a hospital in Newark, and was there for about two months, and was then taken by defendant to rooms on South 12th street, in Newark, where his mother still had control of the household, and they lived in that place for about two months, and then went to their present home about May 1, 1918.

30 9. Complainant and defendant, and defendant's mother and the child are now living at 172 South 22nd street, Irvington, N. J., in four rooms, and defendant gives some amount of money to his mother every week, with which his mother purchases the supplies for the house, and gives to complainant the sum of \$2 per week, to provide herself and the child with clothing and incidentals.

10. Your oratrix alleges that she is living very unhappily; that defendant's mother treats her very badly, and even refuses to prepare any meals if the defendant is not at home, and tells complainant to take her own money and buy something to eat, and treats complainant with the greatest unkindness.

40 11. The defendant has not spoken to your oratrix for more than three months, and when he pays the \$2 per week, he hands it to the child. He goes out of the house every morning about 7:30 and does not say a word to your oratrix, and he comes home generally at midnight, and often very much later, and is often away all night.

12. About three months ago your oratrix asked defendant for shoes and for more money, and asked him if he would not take

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her out to some place of amusement occasionally, and he swore at her and called her vile names, and said he wouldn't; your oratrix thereupon refused to continue to cohabit with him, and your oratrix is now sleeping in another part of the house away from him, and is compelled to remain at the house, because she has no place to go to, and no money whatever with which to pay for lodging or for anything to eat.

10

13. The defendant's mother hides the goods so that complainant cannot get any, and she very seldom goes out of the house and is always on guard, and criticizes nearly everything that complainant does in the house, and is continually finding fault.

14. On June 23, 1918, complainant consulted her present counsel, and caused notice to be given to the defendant that she is very unhappy and discontented with the way in which she and the defendant are now living, and asked defendant to call on complainant's counsel and talk the matter over with him. Defendant has not mentioned to your oratrix the fact that he has received any such communication from her counsel, and, indeed, has not spoken to her, as before stated, for more than three months.

20

15. Defendant has been seen in the company of some woman, who is not known to your oratrix, at a restaurant known as "Nankin Garden," in the City of Newark, and driving with her in an automobile at night, and complainant charges that he is spending money with this woman, which should be applied to support of his wife and child.

30

16. Defendant is manager of the White Tar Company of New Jersey, at Kearny, N. J., and receives a salary of more than \$50 per week, and complainant is informed and charges that his salary is as much as \$75 per week.

17. Your oratrix shows and charges that ever since the first day of April, 1919, defendant has abandoned your oratrix without justifiable cause, and separated himself from her and has refused and neglected and still does refuse and neglect to maintain and provide for her and her said child.

40

In tender consideration whereof, and for as much as your oratrix can be relieved only in this court; to the end, therefore, that the said Jacob Pinkinson may answer the premises (but without oath), and that he may be ordered and decreed to provide such suitable support and maintenance, to be paid and

Petition.

provided by him, or made out of his property for your oratrix and the child of the said marriage, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowances, and to pay the same from time to time under the compulsory orders of this honorable Court, as provided by the statute; and in case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor, and that the defendant may be required to pay to your oratrix a proper amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

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 Jacob Pinkinson, 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 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, etc.

FRANK E. BRADNER,

Solicitor for and of Counsel with Complainant.

Answer.

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

ANNA PINKINSON, being duly sworn according to law, upon her oath deposes and says: I am the complainant named in the foregoing bill of complaint, and the said bill of complaint has been read to me. The matters and things therein alleged are true. 10
My husband has stated that he receives \$50 per week, and I am satisfied from his conduct and from other statements he has made that he receives more than \$50 per week, and I have heard that he gets as much as \$75 per week.

ANNA PINKINSON.

Sworn and subscribed before me this first day of July, 1919, at Newark, N. J.

FREDERIC R. PILCH, 20
Master in Chancery of New Jersey.

ANSWER.

Filed August 6, 1919.

The defendant answering the bill of complaint filed herein says:

He admits the allegations in paragraphs 1, 2 and 3 of said bill. 30
He denies the allegations in paragraph 4 and says: That at the time of the marriage to the complainant it was mutually agreed between the said complainant and himself that his mother, a widow, should live with them and manage the household and in consequence his mother did live with them and did manage the household until she left for Europe, which was about a year after the marriage. His mother was in Europe about two and one-half years, during which time the complainant had absolute control and management of the household, employing a servant to do the household work, which theretofore his mother had taken care of. 40
When his mother returned she again joined the household of the complainant and the defendant and the said complainant then continued in the management of the household for about four months. At the expiration of that time the complainant

Answer.

suggested that she be relieved from the duties of the household, because she wanted to devote her entire time and attention to the baby Thelma, and at her suggestion and request his mother again undertook the management of the said household and continued until the separation, which occurred some time in 1915.

10 It is not true that he has compelled complainant to submit to the directions of his mother and that with the exception of the occasions mentioned in the complaint has refused to give any money to the complainant. When the mother was managing the household, with the consent of the said complainant, she handled all the necessary household moneys, but the said complainant at all times obtained whatever money she required and asked for.

The defendant denies the allegations in paragraph 5 and says; that at no time was there any limit upon the amount of money

20 she was entitled to and received from the defendant. She received whatever money she asked for during the time that the mother managed the household and also during the time that she herself managed the household and made all expenditures that she wanted.

It is true that shortly before the first separation, due to reverses in defendant's business, he was obliged to curtail the expenses of household and the maid was discharged; in fact, there was no necessity for a maid at that time because his mother did all of the work that the said maid had formerly done, including

30 the care of the child.

He denies the allegation in paragraph 6 and says that the complainant left the defendant about six months before he moved to Elizabeth and due to reverses he lost his interest in the drugstore business conducted by him at 84 South street. After the complainant left him he lived with his mother for about six months, making his livelihood by acting as clerk and other times as relief clerk for drugstores throughout the State. His mother had a friend in Elizabeth who was in the confectionery business and who was desirous of disposing of the same and induced her to

40 purchase said confectionery business, and it being necessary that some man should manage the ice cream manufacturing end, the defendant moved to Elizabeth with his mother and managed the said ice cream business for her. While living there he was informed that his wife had been sick and was in a hospital in Newark, and after she was released from the hospital the said defend-

Answer.

ant and complainant resumed living together in Elizabeth. They lived there for about eight months, then being unable to agree the said complainant left the defendant, and he, at the order of the Elizabeth Police Court, paid her \$6 a week for her support. It is not true that while they were living in Elizabeth the mother was managing the household; the fact is, that his mother was engaged in managing the candy store and the complainant was therefore obliged to manage the household. It is not true that he gave no money whatsoever to the complainant; on the contrary, all of his earnings as manager for the ice cream business were given to the said complainant for the management and control of the said household. 10

He admits the allegations in paragraph 7 as explained and modified in the last paragraph of this answer.

He admits the allegations in paragraph 8, except that when said complainant lived with the defendant at the South Twelfth street address she herself declined to do any household work because she was still suffering from the effects of her last sickness and it was to accommodate her that his mother continued in the management of the household. 20

It is true that the defendant and his mother lived at 172 South Twenty-second street, Irvington, New Jersey, as alleged in paragraph 9, and that the complainant lived with them until on or about July 15th last, when she left. While living there complainant informed defendant that she preferred to work for herself and leave the management of the household and the child to the mother of the defendant. She then obtained employment as saleslady in the department stores of the City of Newark and left the management of the household and the child to the defendant's mother during all the time that they lived at South 22nd street, and she kept her salary for herself, and although she was earning money she requested the defendant to give her sums of money, varying from \$3 to \$5 per week for purchases for herself, and the defendant complying with her requests did give her whatever money she wanted. It is not true that he limited her to \$2 per week to provide herself and child with clothing. 30 40

He denies the allegations in paragraph 10. It is true that the complainant and the defendant are not happily married and have not been living together very happily. It is not true that the defendant's mother was treating her badly. The defendant's mother does all the cooking for the house and the complainant

Answer.

at all times was welcome to and had whatever food she desired for herself.

10 He admits the allegations in paragraph 11, that he and his wife had not spoken for three months. He is a supervising chemist at the White Tar Company's plant at Kearny, New Jersey, and his duties oblige him to remain there until 10, 11 and 12 o'clock at night; for this reason and for the reason that after his work he meets friends and acquaintances for recreation; he generally returns home about 11 or 12 o'clock at night. It is not true that he pays his wife only \$2 per week. He has given her from \$3 to \$5 per week as required by her for whatever purposes she might want the same.

20 He denies the allegations in paragraph 12 and particularly says it is not true that when the complainant asked him for shoes and for some money that he swore at her and called her vile names; the fact is that she asked him for money for shoes a few days before pay day and he not having the money at that time told her to wait until pay day, which is on Friday, and thereupon she became greatly provoked and from that time on she has refused to cohabit with the defendant and slept in another part of the house; that although he did give her the money to buy the shoes when he received his pay, that on or about July 15, 1919, she left the house.

He denies the allegations in paragraph 13.

30 He denies that he was ever requested to call upon complainant's counsel, as alleged in paragraph 14.

It is true that the defendant sometimes frequented the Nankin Garden, where he sometimes has his meals after he finishes his work at the White Tar Company's plant, and that there he meets acquaintances and friends, among whom are women. It is not true that there is anything improper in his relations with other women or that he has taken any women out driving or entertained them in restaurants.

40 The defendant receives a salary at the rate of seventy-five cents per hour as the supervising chemist at the White Tar Company's plant. His total salary, however, is not uniform, because of his overtime work, and it varies from \$50 to \$75 per week.

He denies that he abandoned complainant and that he neglects to support her and the child.

JOSEPH KRAEMER,
Solicitor for Defendant.

Anna Pinkinson, direct.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ANNA PINKINSON,</p> <p style="text-align: center;"><i>and</i></p> <p>JACOB PINKINSON,</p>	<p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>Defendant.</i></p>	<p><i>On Bill for Maintenance.</i></p> <p><i>Minutes of Final Hearing.</i></p>	<p>10</p>
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Chancery Chambers, Newark, N. J.

January 14th, 1920.

Before HON. JAMES F. FIELDER, *Vice-Chancellor.*

Appearances: 20

Frank E. Bradner, Esq., for complainant.

Joseph Kraemer, Esq., for defendant.

ANNA PINKINSON, sworn.

Direct examination by Mr. Bradner.

Q Mrs. Pinkinson, your full name? A Anna Pinkinson.

Q What was your maiden name? A Anna Bierman.

Q Is Jacob Pinkinson your husband? A Yes, sir.

Q When were you married? A June 6, 1909. 30

Q What was your father's name? A Harry Bierman.

Q What was his business? A He was a tailor.

Q And what was your mother's name? A Florence Bierman Fenster.

Q She married your father after her first husband died?

A Yes, sir.

Q Have you any brothers or sisters? A Yes, two brothers and one sister.

Q One brother is married? A Yes, sir. 40

Q And the other is a young man? A Yes.

Q What is his name? A Sidney Bierman.

Q You have a married sister? A Yes, sir.

Q How old were you at the time you were married? A I was not quite 24 years old.

Anna Pinkinson, direct.

Q How old was your husband then? A 24 years old.

Q Have you any children? A Yes, one.

Q Boy or girl? A Girl.

Q What is the child's name? A Thelma Viola Pinkinson.

Q How old is she? A She will be eight years next month.

10 Q When you were first married where did you go to live with your husband? A 72 South street.

Q Was that a house which you occupied entirely? A No, there was one tenant upstairs.

Q Who owned that house? A Mr. Pinkinson and I.

Q You owned it jointly? A Yes, sir.

Q Who bought it? A Well, we bought it together, but it was paid for with the money that my father gave me as a dower.

Q What has become of that house? A The house has been foreclosed.

20 Q You lost it? A Yes, sir.

Q How long did you live there? A Well, close to five years.

Q You and your husband together? A Yes, and my mother-in-law was with us.

Q And she was living with you? A Well, she was just living there.

Q And did she have to with the household part? A She was the entire boss; I had absolutely nothing to do.

30 Q How long did you live that way? A From the beginning of our marriage until the—

Q Was there any interruption? A Yes, sir, two years when she went to Europe.

Q While you were living on South street did she go to Europe? A Yes, sir.

Q She was away two years? A Yes, sir.

Q While she was away who had charge of the house? A I did.

Q How much money did you receive? A \$15 a week just for the table; he paid all other expenses.

40 Q How long ago is that? A To be exact between 5 and 6 years ago.

Q Wasn't it longer than that? A Yes, sir.

By the Vice-Chancellor.

Q Well, what year was it? A 1912, she came back and she left in 1910.

Anna Pinkinson, direct.

By Mr. Bradner.

Q Was your child born in the South street house? A Yes, sir.

Q Was your mother there at the time? A No.

Q At that time did you keep a maid? A Yes, sir.

Q And what work did the maid do? A She did all the work at the time I was living in the South street house and my mother-in-law was away to Europe at that time. 10

Q And then from there did you move to some other place? A Yes, we moved to Elizabeth.

Q How long did you live there? A Not quite two years.

Q And what, if anything, happened while you were at Elizabeth? A At that time my mother-in-law was the entire boss; every penny that I got I had to get through her hands and it became so abominable that I could not stand it and I went to the Overseer of the Poor and they brought him to court and he had to pay me \$6 a week. 20

Q Did you continue to live with him? A No, sir.

Q Where did you go? A To my mother's at 75 Baldwin street, Newark.

Q How long were you away from your husband? A Well, not quite two years.

Q And then what happened? A And then we went together once more.

Q And you continued to live with your mother from that time down to the present time? A Yes, sir. 30

Q Were you not in the hospital for a while? A Yes, sir.

Q When was that? A That was when I lived in Elizabeth, and when I got better—

Q Was it while you were in the hospital that you had no communication with your husband? A Yes, sir, but he did come there and when I got out of the hospital he took me to South 12th street.

Q How long did you live there? A One month.

Q Where did you go from there? A Up to South 22nd street, Irvington. 40

Q What kind of a house at Irvington? A We occupied four rooms on the ground floor, it is a rear house.

Q The family consisted of you, his mother and your child and your husband? A Yes, sir.

Anna Pinkinson, direct.

Q Who, since you have been living in the South 22d street house, has taken charge of the household affairs? A My mother-in-law.

Q What did you do? A I had to go to business.

Q Who handled the money to pay the household expenses?

10 A My mother-in-law.

Q What was given to you? A Nothing, that was the cause I had to go to work; for six months I did not have one penny from Mr. Pinkinson at the time I was working in Bamberger's.

Q What were you doing there? A I was a saleslady, because I had to get clothes and food to eat.

Q Why did you do that? A Because everything was hid from me and I could not get it and I had to send out to get it.

Q Before you went to work? A Why, I had something there but most of the time I got the money from my mother, and when I saw I could not get along that way continually
20 asking my mother, and so I went to work.

Q Up to the time you brought this suit did you and your husband occupy the same room? A Yes, sir.

Q You slept together? A Yes, sir.

Q When did you separate yourself from him? A Why about three or four weeks before we commenced this suit.

Q And where did you go to sleep then? A I went to a couch in another room.

The Vice-Chancellor. Can you fix the date?

30 Q How long prior to the time—you actually swore to this bill of complaint on July 1—how long prior to that did you separate from your husband? A About three weeks before that.

Q What was the occasion for your separating then? A Well, it was just the same thing and I continued to work for my clothes and I got things and Mr. Pinkinson stayed away all night some nights and he used to come home at 2 o'clock and continually hearing reports from different people that they had
40 seen him out with women.

Q Did you and he occupy the same room then? A Yes, sir.

Q Did you speak to each other? A For three months we did not speak together.

Q And part of this time you were actually sleeping in the same bed with him? A Yes, sir.

Anna Pinkinson, direct.

Q And you were not talking to one another? A No, sir.

Q Why was that? A That was on account of a pair of shoes and he kept putting it off from one week to another and I never got them.

Q You spoke to him about the shoes? A Well, through my child. 10

Q How long did you talk to him through your child? A Well, I said "Thelma, will you please go and ask your father if he will give me the money for the shoes" and she would come back and say that he said "this week or next week" or "he hasn't got it."

Q Were there any other differences between you? A You see I had been in the hospital from January to March and when I came home I said to him, "Jake, you know I can't work; the doctor says I can't; don't you think you ought to give me some money," and he said, "yes, I will give you \$2 a week," and after that we had a little difference; I don't remember what that was over; I sent the little kid to him for it and he said he had no bank account. 20

Q Do you remember the time you asked him for the shoes? A Yes, on the 10th anniversary of our wedding, I said, "Jake, don't you think it is right that you should take me out as it is our 10th anniversary," it was June 6, 1916?

By the Vice-Chancellor.

Q You said that you hadn't spoken to him; at that time you say you had not spoken to him at all for six months prior to your separation? A Well, just this day. 30

Q I know, but when your counsel asks you a question you ought to be definite; if there is an exception, say only once. A Oh, I see.

By Mr. Bradner.

Q What did you mean when you said you had not spoken to him for three months following your bill—you hadn't spoken to him except this one time? A That is right. 40

Q Do you mean that you never addressed a word or words to him? A I meant we never said "good morning" or anything else except this one time and that was on our anniversary day.

Anna Pinkinson, direct.

Q Well, who did the cooking in the house? A My mother-in-law.

Q Who cooked for you? A Nobody, sometimes I would have to do it myself and once in a while, if she felt particularly good, she would cook for me.

10 Q Didn't she used to prepare the meals? A Yes, she prepared the meals but not for me.

Q You mean that you would go to the table for breakfast in the morning and there would be nothing for you? A Yes, sir.

Q Was there something there for your husband to eat? A Yes, sir.

Q Now, wasn't there anything cooked for you? A I don't know; I used to send out a neighbor's child to get me something and I used to send out my own child.

20 *By the Vice-Chancellor.*

Q There was no food on the table when you got up? A There was no food on the table when I got up.

By Mr. Bradner.

Q Would you all go to breakfast together? A No, sir.

Q Who would go first? A Mr. Pinkinson and then the little girl.

30 Q Now, when you and the little girl went to breakfast wasn't there anything prepared for you? A No, sir, I had to prepare it for myself.

Q Why didn't you go to breakfast with your husband? A Because he would go out earlier than I did.

Q If you had got up for breakfast at seven would there have been something for you there? A Well, there might have been—

Q Did you have any talk with your mother-in-law on the subject of your meals? A Yes, sir.

Q More than once? A Yes.

40 Q What was said? A Well, the only thing that was said was that she does not have to cook for me.

By the Vice-Chancellor.

Q That was the only thing that she said? A Well, I asked her why she didn't and she said she didn't have to cook for me; she was only there to cook for him.

Anna Pinkinson, direct.

By Mr. Bradner.

Q How often did that kind of talk occur? A I can't be explicit in that Mr. Bradner.

By the Vice-Chancellor.

Q Wasn't there any food to be had that you could have cooked if you desired it? A Yes, sir; I used to buy my own food. 10

Q Any food kept in the house? A Yes, sir, it was kept in the house and hid and I didn't know where to look for it.

Q If you only occupied four rooms you didn't have much of a place over for it? A Well, I got disgusted.

By Mr. Bradner.

Q Where could she hide it; in one of those rooms? A Well, I wasn't there, but my child said she used to hide it all places. 20

Q But the fact is you did not have it? A I certainly did not unless I bought it myself.

By the Vice-Chancellor.

Q Did you expect your mother-in-law to cook for you? A No, I didn't expect my mother-in-law to cook for me but after she got all the money I think it was no more than right that I eat there.

By Mr. Bradner.

Q Well, how about supper time? A Well, she would prepare the meal, and when I would go home I would have something to eat, and after I got finished my kid, the next day she would say "Mamma, we had chicken yesterday" and I didn't have any chicken. 30

Q Where was your husband all this time? A Why, he would get home at 10 or 11 or 12 o'clock; he never had any regular time to come home.

Q Have you communicated with your husband since you filed this suit? A No, sir.

Q Have you seen him to talk to? A No, sir. 40

Q Prior to your filing of the suit, do you know whether or not any communication was sent to him? A Yes, sir.

Q By whom? A That was sent to Mr. Pinkinson.

Q Through whom? A Mr. Bradner.

Anna Pinkinson, direct.

Q Did he ever tell you that he had ever received any communication from me? A No, sir.

Q What is your husband's business? A Chemist.

Q Where at that time was he working? A The White Tar Company.

10 Q Do you know what salary he received? A I do not know accurately.

Q Has he ever told you what he received? A Yes, he used to tell me \$40 a week.

Q Up to what time prior to the beginning of this suit had he told you that he received \$40 a week? A Oh, when I came from the hospital the last time, that was in March, 1919.

Q Have you ever seen your husband out with some other woman? A Yes, sir.

20 Q Where have you seen him? A I stood on the corner of Broad and Market streets, Newark, waiting for a car and a woman was with him; that was four weeks ago.

Q Was that in the day time? A In the evening.

Q Was it dark? A Not around the Four Corners.

By the Vice-Chancellor.

Q This was four weeks ago? A Yes, sir.

By Mr. Bradner.

30 Q Now, prior to the time you brought suit had you ever seen him anywhere with a woman? A No, sir.

Q Had you been informed that he had been seen with a woman? A Yes, sir.

Q Did you say anything to him about it? A No, I didn't talk to him at that time.

Q That was during the time that you were not talking to each other? A Yes, sir; we were not talking to each other; that was during the time I was not talking to him.

Q After you brought the suit did you actually leave the house and go somewhere else? A Yes, sir.

40 Q Where did you go? A To my mother.

Q Why did you do that? A Because Mr. Pinkinson had been away for a trip for ten days and I didn't know where he had gone or anything about it; during this time his mother had charge of the house as usual and she gave Mrs. Posluszny's daughter of the lady upstairs one dollar and told me to buy

Anna Pinkinson, direct.

something to eat for myself and after that she didn't give me anything and so after that I had to go to my mother and borrow off Mrs. Posluszny to get something to eat.

By the Vice-Chancellor.

Q When you say your mother do you mean your own mother? 10

A Yes, sir.

By Mr. Bradner.

Q Was he away after you started the suit, do you mean?

A No, he came back to the house; after I left him he came back.

Q Your bill says that you swore to it on the 1st day of July? A Yes, sir.

Q Was he away at that time? A Yes, he was away at that time and when he came back and made no effort to talk to me and ignored me completely, and I said "Kiddie" go and ask your papa for \$2, and as I thought that that was enough; I could not stand it any longer. 20

By the Vice-Chancellor.

Q What was the date you left the house? A Well, it must have been July 23d.

By Mr. Bradner.

Q You said a moment ago that you left after you had sworn to the bill? A Yes, I left after I had sworn to the bill. 30

Q Now, on the day that you left did you go to the house where you had been living with your husband and get any of your clothes? A Yes, sir.

Q Did anybody go with you? A Nobody was with me at the time but my mother came up afterwards.

Q Was your brother there? A Yes, afterwards, he came with my mother.

Q And at what time of the day was it that your mother and brother were there? A My mother and brother came up at seven o'clock in the evening. 40

Q Had you seen your husband during that day? A Yes, he was lying in bed.

Q When was that? A The day I was moving; the day I left.

Anna Pinkinson, direct.

Q Did he see you moving things out? A Yes, sir.

Q Did he say anything to you? A No, he laid in bed whistling.

Q Well, what happened while your mother and brother were there? A Well, I wanted to take a piano and a rug and some dishes and they would not give them to me; they belonged to me.

Q That was after the bill was sworn to?

Mr. Kraemer. I object.

The Vice-Chancellor. Objection overruled.

A (No answer.)

Q What occurred while your mother and brother were there?

A Well, I wanted to take some things, and he rushed at me and grabbed me, and I dropped all the things, and then my mother wanted to help and he grabbed hold of my mother, and she was all bruises.

Q Did he hurt you in any way? A Well, I was black and blue.

Q What was his mother doing then? A She was standing there.

Q Did she have anything to say? A I don't remember.

Q Where are you living now? A 75 Baldwin street, Newark.

Q With your own mother? A Yes, sir.

Q Are you working? A Yes, sir.

Q Where are you working? A The Lanar Blouse Shop.

Q How much do you get there? A \$18 a week.

Q How much board do you pay for yourself and child?
A \$15 a week.

Q Have you a physician? A Yes, sir.

Q Why are you working? A Because I have to have money to clothe myself and my child; I cannot do it without I work.

Q What is your physical condition? A I am not in a physical condition to work.

Q What trouble have you? A I don't know.

Q Has the doctor told you? A No, he has never told me just what ailed me.

Q Does your husband know about it? A Yes, sir.

Anna Pinkinson, direct.

Q Does your husband know whether or not you are in a physical condition to do work? A Well, he has heard the doctor say time and time again that I should not work.

Q And who is the doctor? A Dr. Kupperman.

Q What relation, if any, to your husband is the doctor?
A A cousin. 10

Q Has your husband been sending you any money since this suit was brought? A Part of the time.

Q Do you know if any arrangement was made between the lawyers as to that? A I think there was.

Q And how much has he been sending you a week? A \$15 a week.

Q Is he in arrears now? A Yes.

Q How much? A About six weeks.

Q Well, on what days have you received the checks from him generally? A Well, I have received a check on Monday dated Sunday, and I have— 20

Q When did you receive it? A I received it a week ahead of the date of it.

Q Have all those checks been paid? A Yes, sir.

Q Have some been returned? A Some of them; I went to the bank to cash them and they told me they were absolutely "no good."

Q I think I asked you if you have received any communication from him since the suit was brought? A Yes, you did. 30

Q Have you? A No, sir.

Q Has he called you up on the telephone? A No, sir—would you call this sending word? If he asks the kid to send the doctor word; he sent word through the child whether I would call a doctor.

Q Has he sent any other word through the child lately?
A No, sir.

Q Didn't he send some word through the child that he wanted to take the child away? A Oh, yes, he did say that he wanted to take the child to Lakewood. 40

Q When was that—how long ago? A Well, right before Christmas.

Q Did you refuse to let him? A Yes, sir.

Q Didn't he take the child down to Bamberger's and buy some things for her? A Yes, sir.

Anna Pinkinson, direct.

Q What did he buy? A He bought her a dress for \$17 and a pair of shoes and a raincoat and underwear and two pairs of shoes.

Q How much did it amount to? A \$40.

10 Q And on account of that did you miss any checks from your \$15? A Yes, sir.

Q You took some things back? A Yes, sir.

Q What? A I took back the \$17 dress; I thought that my child didn't need a \$17 dress and I took back the underwear that my kid didn't need; I got her three sets at the beginning of the winter.

Q Do you know why he bought those things for the child? A I do not.

Q You have had to buy some clothes, have you not? A Yes, sir, I bought a suit.

20 Q When did you buy a suit of clothes? A I bought a suit of clothes in October.

Q How much did you pay for it? A \$50 in New York.

Q Who paid the bill? A My mother.

Q Do you still owe her for this? A Yes, sir.

Q Well, what has been the effect of this manner of living with your husband as far as you know? A Well, it has practically ruined my health because I have had aggravation and it has practically ruined my health.

30 Q Have you seen any way out of it by living with him? A No, sir, not as long as my mother-in-law is there.

Q Well, how long have you been living unhappily with your husband? A Well, ever since my mother-in-law was there, only the two years.

Q Do you think if your mother-in-law was eliminated you and your husband would get along together all right? A Yes, as well as the average couple does.

Q Have you any other reason for your disagreement and difference and unhappiness except the mother-in-law? A That is all.

40 Q Well, why should there be so much trouble about the mother-in-law? A Because she has charge of the entire house; I am nothing; if he wants anything he does not come to me; if anything is wanted he goes to his mother; nobody asks me.

Q Who would you have these disputes with? A With my mother-in-law—we can have dispute over a doll; if I say that

Anna Pinkinson, cross.

Thelma could play with a doll and she takes it and puts it in the cellar.

Q You have a cellar in connection with these four rooms?
A Yes, sir.

Q You did not think at the time that that might have been a good place to hide it? A No, sir. 10

Q Does your husband own an automobile; do you know?
A Yes, sir.

Q What kind? A A Chalmers 5-passenger.

Q How long has he owned it? A Four or five months.

Q Have you ever been riding in it? A No, sir.

Q Has your child? A Once.

Q He took the child out once? A Yes, sir, and she had quite an experience that day, too.

Q When was that? A I can't be exact when that was. 20

Q It was after you started this suit? A Oh, yes.

Q And where did he get the child to take her? A He came to the house and blew the horn and she went out.

Cross examination by Mr. Kraemer.

Q You say the reason you left the house was because he had been away ten days without letting you know anything about where he was? A No, that is not the immediate reason; of course, all things combined—

Q The time he was absent for ten days was after the bill was filed, wasn't it? A No, sir. 30

Q Didn't you say on your direct examination that you left the house because he was away ten days without any explanation to you and your mother-in-law only gave you a dollar? A No, I didn't say that.

Q Well, how did it happen that you left the house? A Well, all night being away was the immediate cause.

Q You remained in the house after you had sworn to your bill before your solicitor, didn't you? A Yes, sir.

Q And you remained there for three weeks thereafter? A Well, yes. 40

Q Why did you leave then? A Because Mr. Pinkinson went away without leaving any money for us.

Q And although you had filed your bill charging him with all sorts of abuse and cruelty you remained there and required

Anna Pinkinson, cross.

him to support you after that time; isn't that right? A I don't quite get that.

The Vice-Chancellor. The question is argumentative.

10 Q You say you didn't expect your mother to do all that cooking—I mean your mother-in-law? A No, I did not.

Q And why; if she done the cooking, you would not do it for yourself? A I certainly did do it for myself, I had to or starve.

Q Do you recall making an affidavit in October in answer to an affidavit of Mr. Pinkinson? A Well, be a little more explicit and I may recall.

Q Well, look at this copy and see if you made this affidavit? A Yes, sir.

20 Q And didn't you in the course of that affidavit say "My mother-in-law refused * * * when Mr. Pinkinson was not at home?" A Yes, I said that but I may have forgotten to do it at other times.

Q Did you expect her to cook for you? A I did not expect her to cook for me, but she refused; she didn't cook for me.

Q "And after that my mother-in-law was not at home"? A That is not what I said, she refused absolutely to cook for me when Mr. Pinkinson was at home and other times.

Q Well, how long before this bill was filed did you leave his bed and go to some other room? A About three weeks.

30 Q And yet on June 10th you asked him to take you out to celebrate your tenth anniversary. Read that 3rd clause; before July 1st when you separated from him? A Yes, sir.

Q And yet on the 6th of June you asked him to take you out to celebrate your tenth anniversary, is that right? A Yes, sir.

Q And your relations at that time were that you were willing that you and he should go out and celebrate your tenth anniversary? A Yes, that is right.

40 Q What was the food for your breakfast? A Bread and coffee and if I would go out and get things, I would have that.

Q What was the food for the rest of the family? A Well, fresh eggs and coffee; I prepared the coffee for myself.

Q There was not a pot of coffee prepared? A No; I prepared a cup of coffee for myself; she would get up first and prepare a pot of coffee.

Anna Pinkinson, cross.

Q Why didn't you use the pot of coffee that was prepared by his mother? A Well, she only prepared enough for herself and him.

Q What did Mr. Pinkinson have when there was no coffee there? A Tea.

Q And you would have tea? A No, I never drink tea. 10

Q You prepared coffee? A Yes, sir.

Q Bread was there? A Well, sometimes and sometimes I had to take the little girl and send her to the store for rolls.

Q Lots of times you would find no bread or milk there? A Yes, sir.

Q You were under the impression that there was bread and rolls and milk hid from you? A Yes, I was.

Q What was the reason? A Too mean and disagreeable.

Q Both; there were rolls that were hid from you? A Positively. 20

Q Mr. Pinkinson you say never came home for supper? A Lots of times; it was his habit to stay away.

Q Did Mrs. Pinkinson, the mother, eat anything for supper? A Sometimes she would eat bread and onions.

Q And anything else? A Sometimes milk; as long as she had milk she was satisfied and I would send out and get it.

Q So the fact that she did not prepare a meal for you did not prevent you from eating; you always had something of your own selection? A Yes.

Q You worked in Bamberger's? A Yes. 30

Q And at the time you worked in Bamberger's you came home and prepared your supper? A Yes, sir.

Q And at the times you did not prepare your meals; where did you eat? A I used to eat at my mother's because there was nothing to eat at home for me.

Q So that your house was at all times without food? A No, there was food in the house but I did not know where to go and look for it.

By the Vice-Chancellor.

Q Did you go and look for it? A Yes, I did but I didn't know where she hid it. 40

By Mr. Kraemer.

Q Your home was four rooms? A Yes, sir.

Anna Pinkinson, cross.

Q Was there a food closet in the house? A No, just a dish closet.

Q Where did you keep the food? A Why, I could not keep any food, I always just got enough to eat.

By the Vice-Chancellor.

10

Q When you were looking around the house for it and found it, where did you find it? A Oh, I used to find cake under the pillow or in the wash tub or under the bed; I never found anything else; she used to take the meat and take it to her cousin, Mr. Klein's, who has a drugstore on the corner.

Q You said that you found it in the wash tubs and under the pillows? A No, I never found it there; I was told that it was there.

20

Q Did you look for it at any time? A No, sir, I didn't; up to that I had my own food in the house; I used to bring it up from business.

By Mr. Kraemer.

Q Up to that time had you ever, yourself, found any food in the house? A Yes, cake.

Q That was under the bed; I am talking about food? A No.

Q You never found any cooked food at all? A No, sir.

30

Q Now, when your mother-in-law was in Europe you took a maid in? A I did.

Q And frequently your mother-in-law was a substitute for a maid before she went to Europe? A No, I used to have a maid at that time because I had a child; at that time my child was born; I had to have someone to do all the heavy work; I had the cooking to do.

Q As soon as your mother-in-law came back did she dismiss the maid? A Yes, sir, and still I had my duties for my kid and therefore she went to work and dismissed the maid.

40

Q And before your mother-in-law went to Europe your child was not born? A No, sir.

Q How long after your mother-in-law went to Europe was your child born? A Well, not quite a year.

Q You were on pretty good terms with your mother-in-law then? A Well, it depends.

Anna Pinkinson, cross.

Q You used to write to her? A No, I didn't write to her; my husband sometimes he would say "what will I write, what will I say about you," and I would say "Well" or something like that.

Q And didn't you say you hoped she would be back soon?
A No.

10

By the Vice-Chancellor.

Q Did your husband while your mother-in-law was in Europe furnish you with any money for running the household? A Yes, sir, \$15 a week.

Q Every week? A Yes, sir.

Q And he turned that over to you? A Yes, sir.

Q And during the two years' period while she was away you lived happily? A Yes, sir, as the average couple.

By Mr. Bradner.

20

Q How much was your husband earning at that time? A Well, at that time he owned a drugstore; I could not tell you.

Q When did he go with the White Tar Company? A About two years ago; I found an advertisement in the newspaper and cut it out and gave it to him.

By the Vice-Chancellor.

Q Did you and your husband have any talk about how the house should be run? A Yes, sir.

Q I am talking about since you were married? A Well, I always asked him to let me run the house and he said "no," because he said his mother naturally could run the house better than I.

30

Q What did you say? I am talking about immediately after the marriage? A I was satisfied in the beginning.

Q Well, how long did you remain satisfied? A Well, not quite a year and I saw my mistake.

Q And after that what did you say to your husband about running the house? A Well, I used to say "Jake, I want you to let me run the house, I am perfectly capable," and he said "no."

40

Q Did he protest to that? A Yes, sir.

Q Did he make you any allowance for household expenses after the first year? A No, sir.

Anna Pinkinson, cross.

Q Did he make you any allowance for your clothing or spending money? A No, sir.

Q Absolutely none? A Positively none.

Q Well, did he give you any money for clothing, for household expenses or for spending? A No, sir.

10 Q He never gave you any during your whole married life?
A Well, this last period he used to give me \$2 a week.

Q When did that commence? A In March, he only gave me \$6 a week that the court made him give me in 1916; that was in June, 1916.

Q Now, how did you get any money for your clothes and for spending money? A My mother bought my clothes and my father was alive at that time; he used to buy me clothes; and my brother when he got from the service he gave me \$15 and—

20 Q I am talking about prior to 1916? A Well, my own mother used to give me everything.

Q Did you ever get any money from your mother-in-law? A No, sir.

Q Did you ever ask her for any? A Yes, sir.

Q And you did ask your husband and he gave you none? A Yes, sir; I asked him.

By Mr. Kraemer.

30 Q As a matter of fact, didn't you go to the drugstore and help yourself to as much money as you wanted? A No, sir; because that was a corporation and I could not touch the money.

Q You lived happily the first year of your married life? A Yes, sir.

Q And it was before the expiration of the first year that your mother-in-law left for Europe? A No; it was two years after that she left for Europe.

Q When you came back to your husband the last time he took you from the hospital? A What last time?

40 Q I don't recall the date; you know when you came back to your home the last time? A Yes; he took me from St. James' hospital.

Q And previous to then you had been separated from him? A Yes, sir.

Q And he went and asked you to come back to your home? A Yes, sir.

Thelma Pinkinson, direct.

Q And his mother was there? A Yes, sir.

Q And you were in the hospital previous to that time? A Yes.

Q That was the time that you suffered a broken joint on account of being in some kind of a motor cycle accident? A Yes, sir.

Q And when you came out of the hospital that time your husband took you out and took you to his home? A Yes, sir. 10

Re-direct examination by Mr. Bradner.

Q Have you taken any other proceeding against your husband on account of his neglect to support you? A Yes, sir.

Q Where was that? A That was in the police court here in Newark.

Q That was before the Elizabeth Court matter? A Yes.

Q What became of that? A I don't recollect; I just don't recollect what it was. 20

Q Was it contested? A Yes, sir.

Q And did your husband appear by attorney? A Yes, sir.

Q Before what court? A In the police court on Washington street.

Q And what disposition was made of your charge then? A Well, I don't know.

Q Were you directed by the Court at that time to proceed somewhere else? A Yes, sir; they told me to go to the Court of Chancery; I remember now why it was dismissed. 30

THELMA PINKINSON (not sworn).

By the Vice-Chancellor.

Q How old are you? A Eight years.

Q When is your next birthday? A 28th of February; I am just seven going on eight.

Q You will be eight years next month; is that right? A Yes, sir.

Q What month is this? A January. 40

Q What month comes after January? A February.

Q And what month comes after February? A April.

Q April comes after February? You are wrong about that; March comes after February. Do you go to school? A Yes, sir.

Thelma Pinkinson, direct.

Q Whereabouts? A Which school?

Q Yes. A Public school; it is a grammar school.

Q How long have you been going to school? A To this school?

Q Yes; to this school? A Since it opened.

10 Q Well, I was not there when it opened; when did it open?

A It opened on the first of the month.

Q Well, which month? Do you remember? A No.

Q How long ago? A It was about—

Q After the summer vacation? A Yes, sir.

Q Right after that? A Yes, sir.

Q Sometime before Christmas; a long time before Christmas?

A Yes, sir.

20 Q Do you know when the school closed for the summer vacation? A No, sir.

Q You don't remember when the school closed for the summer vacation? A No, sir.

Q Did you go to school before the summer vacation? A Yes, sir.

Q The same school or another school? A Another school.

Q And how long did you go to that school? A I went to that school—well, since we lived in 22nd street.

Q Since you lived in 22nd street? A Yes, sir.

30 Q Do you go to school? A No, sir.

Q You never went to church? A No, sir.

Q You never went to Sunday school? A No, sir.

Q Did you ever hear about God? A No.

Q Do you know what it is to tell a lie? A Yes, sir.

Q What will happen to you if you don't tell the truth? A You don't go up in Heaven; you go to the Devil and you go to State Prison.

40 *The Vice-Chancellor.* I don't think that she ought to testify; you may ask her questions; I will take a statement from her; there is no use of swearing her. She doesn't know what an oath means or what perjury means. She means to tell the truth. You know a child living with her mother sees things from the mother's view point.

Mr. Bradner. I know that.

Mrs. Flora Funsten, direct.

By Mr. Bradner.

Q Thelma, is your father here in the room? A Yes, mum.

Q Where do you live now? A 75 Baldwin street.

Q And who lives there? A My grandmother.

Q And while you have been living there, did your father ever come there and take you out in an automobile to ride? A Yes, mum. 10

Q Who was in the automobile? A My father and I, but I never went alone. I had another little girl with me because I didn't trust my father.

Q I didn't ask you that. Did he take you out sometimes when there was a lady in the automobile.

Mr. Kraemer. I object; the question is leading.

The Vice-Chancellor. The objection will be sustained. 20

Q Did he take you out riding more than once? A He took me riding a few times.

Q About how many times? A About four or five times.

Q Who went with you, anybody? A Yes, sir, a little girl.

Q Always a little girl with you? A Yes.

Q Who was with your father, anybody? A No, but one time the machine broke down; then he went to a garage and he talked to men and the men said the machine had to be fixed, and while they were looking at the machine a lady passed by, and my father said, "How do you do," and then, when I was in the machine, I said, "Who is that lady," and he said "That is that other man's wife." 30

Q He said that "that is that other man's wife"? A Yes, sir.

(Mrs.) FLORA FUNSTEN, sworn.

Direct examination by Mr. Bradner.

Q You are the mother of Mrs. Pinkinson? A Yes, sir. 40

Q Where do you live? A 75 Baldwin street.

Q Where? A Newark.

Q Have you ever been present, living for any length of time in the same house, with your daughter and her husband and his mother? A Yes, sir.

Mrs. Flora Funsten, direct.

Q And when was that? A That was at Bradley Beach.

Q When? A It was three years ago.

By the Vice-Chancellor.

Q 1917? A No, it is longer ago than that; it is five years
10 ago; five or six years ago; I don't exactly remember.

Q That is 1914 or 1915? A Yes, sir.

By Mr. Bradner.

Q Where were they living in their regular home at that time?

A They were living on South street.

Q In Newark? A Yes, sir.

Q Was that before they went to live in Elizabeth? A Yes.

Q And what were you doing down at Bradley Beach? A I
20 had a cottage there.

Q Had you invited them there? A Yes, Mr. Pinkinson said
he would come; that was the same year my husband died, and
Mr. Pinkinson said we were so broken-hearted we should cut
it out, and so I said to Mr. Pinkinson, "Take your mother out,
and we will all be there, and so she came out, and the baby was
a real small baby at that time; she was about a couple of months
old, and she started to mix in between the child, the old lady,
and I begged her to leave the girl alone and "let her raise the
child the way she wants to, won't you leave it alone," and she
30 said "No"; and she said "She should give it cold milk"; I said
"she is its mother," and so we started to fight, and we didn't
want her there, and I told her to go and she did, and since that
time we didn't see her for a whole summer; we didn't even write
her a postal.

Q Have you seen him since that time? A Yes, when my
daughter was sick, he was there one day in his home, and he
didn't even give her a glass of water, and she would call my
boy, and I was there and they didn't even give me a glass of
water, and I sent my boy out to bring me a cup of coffee be-
40 cause I hadn't had any for three days in my mouth.

Q Where was your daughter then? A She was sick and the
doctor said she has got to go to the hospital; that was last year,
and they took her to the hospital and she was there three weeks
and I paid for it; he didn't pay a cent for it.

Mrs. Flora Funsten, direct.

Q And you went to see her at her house when she was sick?

A Yes, sir, I was there from Saturday morning until Monday morning.

Q And you didn't get a thing to eat? A Well, they didn't give me any and I was busy with her, and they didn't give me any, and I said "Sam go home and get me a cup of coffee."

10

Q Was Mrs. Pinkinson, senior, there then? A Yes, sir, Mr. Pinkinson was one night away all night, and he didn't come home all night.

Q Did you have any talk with Mr. Pinkinson's mother? A No, I didn't speak to her.

Q Why didn't you ask her to give you something to eat? A Well, I knew she would not give me any; I thought she might give me poison.

Q You did not like her? A When they were first married my husband went over.

20

Q Those were the only occasions that you have been right in the house with them? A Yes, sir, and then she went to the hospital for three weeks, and she said she wanted to go home, and they didn't treat her right and I said I would ask the doctor and he brought her home in an automobile, and she would not stay there and she was home six months with me in my home and he never sent her a word, and one night my boy was with her and I was there one night when he heard that she would not get better and the doctor says, she cannot live; she has got a weak heart and she gained health and she got better; and she said "Mamma, I want my child," and he said, "No, I won't bring it to her," and he said "I should bring it to her," and so my other daughter took a taxi and we went home and the door was locked.

30

The Vice-Chancellor. A lot of this is absolutely incompetent, Mr. Bradner.

Q You went in a taxi and the door was locked—what time of the day was that? A That was about six o'clock.

Q Where was the child? A The old lady took the child.

40

Q You didn't know she took the child away? A Yes, sir, we telephoned that she is coming home after the sickness.

Q Did she finally get back to the house? A Yes, sir.

Q Did you ever write them at Irvington? A Yes, sir.

Q After she got back? A Yes, sir.

Mrs. Flora Funsten, cross.

Q And how long did you stay in the house? A A couple of minutes just to see how she is and I went right back.

Q Did you ever see her mother-in-law there? A Yes, sir.

Q Did you see what she was doing? A She was around the kitchen; I paid no attention to see what she was doing! I went
10 back home; I took sometimes cake and food for her, because I knew that he didn't give her anything.

Q Where is your daughter living now? A With me.

Q Does she pay you board? A Yes, sir.

Q How much? A \$15.

Q Do you know anything about a suit of clothes being bought? A Yes, sir; I bought it for her but she has got to pay me.

Q Who takes care of the child? A I do when she goes to
20 work.

Q Does the child go to school? A Yes, sir.

Q Whereabouts—what school? A Morton street school.

By the Vice-Chancellor.

Q While your daughter was at your house those six months after she came home from the hospital did her husband call on her? A She was at my house for six months. Well, sometimes she did; once in awhile she came in when he heard she was dying.

30 Q And when he came to see her on those occasions how long would he stay? A About ten or fifteen minutes.

Q Did he send you or her any money while she was at your house? A No, sir.

Q Did he bring her any clothing or food or anything to eat? A No, sir, nothing at all.

Cross examination by Mr. Kraemer.

Q This was four years after they were married that you asked Mr. Pinkinson to bring his mother to your house at
40 Bradley Beach? A That was when she came from Europe.

By the Vice-Chancellor.

Q You said it was the year your husband died? A Yes, sir.

Q Do you know when he died? A He died—I don't remember; I think it was in 1913.

Stephana Posluszny, direct.

Q Don't you know how long he has been dead? A It is going to be seven years.

Q He died in 1913? A Yes, sir.

Q And that was the year she came to visit you in Bradley Beach? A Yes, sir.

By Mr. Kraemer.

10

Q You told Mr. Pinkinson to bring his mother to your house at that time? A Yes, sir.

Q You had no objection to that? A No.

Q You were perfectly satisfied that she should come any time? A Yes, sir.

Q She was fond of the child that she differed with your daughter as to how it should be kept? A Yes, sir.

Q Now, before you came to your daughter's the last time on South 22nd street, she was sick a couple of weeks? A No, she was sick a couple of days; Friday she got sick and Saturday morning I was there and I took her to the hospital on Monday.

20

Q What time on Monday? A I was there about eleven o'clock.

Q Did you go to the kitchen? A I went through the kitchen, the bedrooms were in the other part of the house.

Q It was not necessary to pay for any food for her? A No, sir, she could not use it.

Q Did you try to eat something or see anybody else eat something? A No.

30

Q Did you see Mrs. Pinkinson, Sr., eat? A No, sir.

Q So you don't know when they ate their meals? A No, I don't know when they ate their meals; I never bothered.

Q You didn't want any food? A I didn't ask for it because my mind was not on it.

Q And you didn't observe the other people eat? A No.

Q If you had seen them eating would you have sat down and had something to eat with them? A If they had asked me maybe I would, but they did not ask me.

40

STEPHANA POSLUSZNY, sworn.

Direct examination by Mr. Bradner.

Q Where do you live? A In Irvington, 22nd street.

Q At the same house where Mr. Pinkinson lives? A Yes.

Stephana Posluszny, direct.

Q Who is there with him? A His mother.

Q Do you know Mrs. Anna Pinkinson? A Yes, sir, I knew her while she was living there.

Q Did you ever visit her in her rooms? A No, I never visited Mrs. Pinkinson.

10 Q Where did you live in the house? A Upstairs on the same floor.

Q They were in front and you were in the rear? A Yes, sir.

Q Did you ever meet Mrs. Pinkinson and sit with her on the front stoop? A Oh, yes, the young lady—in the summer time we used to eat some lunch—

By the Vice-Chancellor.

20 Q The question is—have you ever sat on the front stoop with her? A Yes, sir.

By Mr. Bradner.

Q Was there anybody else with you? A The lady next door.

Q Have you been there when Mr. Pinkinson came home in the evening? A Yes, I was there when Mr. Pinkinson was home and—

Q What I want to direct your attention to is if you were sitting there on the front stoop with Mrs. Pinkinson when her husband came in? A Yes, sir.

30 Q How many times have you seen him come in? A Many times.

Q What would he say to his wife? A He passed her as if he didn't know her.

Q Did he say anything to you? A No.

Q Have you ever heard any loud talking in their rooms?
A I don't know.

Q You don't know? A No.

Q I don't want you to say anything that you don't know?
A No.

40 Q Do you know anything about Mrs. Pinkinson eating there at her home? A I know she came all the time—she told—

Mr. Kraemer. I object.

The Vice-Chancellor. You must not tell what she told you.

Sidney Bierman, direct.

Q Have you ever seen any one take any food in the house where she lived? A No.

By the Vice-Chancellor.

Q Did you ever see the grocer or butcher there? A No, his mother used to get everything home.

10

By Mr. Bradner.

Q Do you know whether Mrs. Pinkinson ever went out to the stores to buy anything? A The young lady?

Q Yes. A Yes, she was by my butcher many times and she bought for me and she bought for herself.

Cross examination by Mr. Kraemer.

Q Did you go together to the butcher? A No, she went to the butcher herself and she would bring the meat for me and for her.

20

Q You do not know how much meat she bought? A One time she had 70 cents for meat.

SIDNEY BIERMAN, sworn.

Direct examination by Mr. Bradner.

Q How old are you? A Twenty.

Q Anna Pinkinson is your sister? A Yes, sir.

Q Were you with the family at Bradley Beach the time your mother referred to in the testimony? A Yes, sir.

30

Q Did you hear any of the conversations at that time? A Yes.

Q What did you hear? A I was in another room but I heard some differences over milk and other things; I didn't hear very much.

Q Well, since that time have you visited your sister at her home? A Which home?

Q Any of them? A Oh, yes, sir.

Q Now, I will call your attention particularly to the time up in Irvington; have you ever been up there? A Yes, sir.

40

Q On what occasion have you been up there? A Well, I have been up there a few times; right after she was sick; as I remember in my mind, I came home from school one night about

Sidney Bierman, direct.

seven o'clock and the lady next door called me and said there is a telephone—

Q You got to the house? A Yes, sir, and there was a telephone message for me and my mother was on the line and she said—

10 Q I want to know if you visited your sister? A Yes, sir.

Q And who did you see there? A I went to see my sister, and Mrs. Pinkinson, the old lady—

Q Did you ever take a meal in the house? A No, sir.

Q At any time during her married life have you ever taken a meal at her house? A No, sir.

Q You are the youngest brother and the youngest of the family? A Yes, sir.

20 Q Have you seen your brother-in-law in the company of any other woman outside his wife? A Yes, I saw him twice.

Q When did you see him? A I saw him last summer one time on a Sunday afternoon about two o'clock; he was in a machine running over Broad street and he was with a woman; I got a pretty good look at him.

Q Was there anybody else in the car? A No, just this woman; he was sitting at the wheel and the woman was by the side of him.

Q Did you recognize the car? A No, I recognized him.

30 Q Well, what was the other occasion? A The other occasion was on Central avenue; it was on a week day; I was going home from work and I was going up Central avenue and he was with the same woman.

Q In an automobile? A Yes, sir.

Q Was there anybody else besides those two in it? A No, that is all.

Q Were you present last summer when your sister, Mrs. Pinkinson, was moving some things away from the house? A Yes, and—

40 Q Now, state what occurred at that time? A That is what I started to tell; I got up there and everything was in a rumpus; I met my mother and my sister was in the room and they started to move some things; my sister wanted the piano and a rug, and Mr. Pinkinson would not let her have them, and she wanted some other things and the old lady would not let her have them and my sister sat on a chair and some one pushed her, and then

Mrs. Fanny Pinkinson, direct.

Mr. Pinkinson grabbed her and finally we got out of the house with some furniture, but we did not get the piano or rug.

Q What did Mr. Pinkinson say that you heard? A I heard him say that she could not get the piano, that is about it, and I hollered, "Don't you hit my mother."

Q Where was he? A He was in the kitchen with all of us, right there. 10

Q Did you hear any one use any profane language at that time? A Yes.

Q Who did that? A Mrs. Pinkinson, the old lady; she used some language in Jewish and I understood it.

Q What was it? A Well, it was some Jewish phrases that are not very nice to say.

Cross examination by Mr. Kraemer.

Q This first time that you saw Mr. Pinkinson with a woman was two o'clock in the afternoon? A Yes. 20

Q This second time was while you were going home from work? A Yes, sir.

Q And the second time was on Central avenue? A Yes, sir.

Q This avenue is quite a busy street? A Yes, sir.

(Mrs.) FANNY PINKINSON, sworn.

Direct examination by Mr. Bradner.

Q You are the mother of Jacob Pinkinson? A Yes. 30

Q How old are you? A I am 53 years old.

Q Is your husband living? A No, sir.

Q How long has he been dead? A He has been dead about 28 years.

Q Where did all this happen? A In America—in this country?

The Vice-Chancellor. Is all this material, Mr. Bradner?

Mr. Bradner. I want to prove if she has any means of living except with her son. 40

The Vice-Chancellor. I don't see how that is material to this issue; how is that material whether she has or not?

Mr. Bradner. It might be argued by the other side that she has no means of her own.

Mrs. Fanny Pinkinson, direct.

Q Have you any property of your own? A No, sir.

Q Did you at one time have a business in Elizabeth—a confectionery store? A Yes, sir.

Q Did you own that business? A Yes.

10 Q Where did you get that? A I was to the old country and I got some money from my father and when I came back I bought the confectionery store.

Q What became of the confectionery business? A I sold it out.

Q To whom? A To different people.

Q And what did you do with the money? A What did I do with the money?

Q Yes. A I got some.

20 Q You have money in a savings bank, of your own? A No, I have not got any money in a savings bank, no, I got it with my uncle.

Q Have you got enough to live on?

The Vice-Chancellor. That is a matter of argument and it is not a proper question.

Q How much have you got? A I got about \$1,000.

Q Have you any property besides that? A No.

Q Do you get money from your uncle? A I got it by my uncle.

30 Q Do you get any money now from your uncle for your support? A No.

Q Who supports you? A Oh, I keep the house for him and so I eat for that and so I have my support.

Q You are supported by your son? A Yes, sir.

Q How much money does your son give you to run the house? A Now?

Q Yes. A He gives me \$15.

Q How much did he give you while his wife was there? A While his wife was there?

Q Yes. A He gave me \$28.00.

40 Q \$28.00 a week? A Yes.

Q Where does your son work? A In the White Tar Company.

Q He works there now? A No.

Q When did he leave there? A In November; I think it is November.

Mrs. Fanny Pinkinson, cross.

Q Isn't he doing any work at all now? A No.

Q But he gives you \$15 a week just the same? A No, he don't give it to me some weeks.

Q He is behind some weeks? A Yes, sir.

Q How much did your son get while he was working for the White Tar Company? A He didn't tell me; he just gave me so much money to run the house. 10

Cross examination by Mr. Kraemer.

Q You say you got some money from Europe? A Yes.

Q And when you came back from Europe where did you go? A Well, they asked me to go to them.

Q What do you mean? A The children, my son and my daughter-in-law.

Q And when you say daughter-in-law who do you mean? A Anna Pinkinson. 20

Q Is Jacob Pinkinson the only son you have got? A Yes, sir.

Q And where were they living when you came back from Europe?

Mr. Bradner. I object.

The Vice-Chancellor. The objection is sustained.

Q Now, you say you had a business in Elizabeth? A Yes.

Q And when you had a business there where was your son living? A They didn't live together. 30

Q They didn't live together? A No.

Q Did Mrs. Pinkinson, your daughter-in-law, ever live at Elizabeth? A Yes, after she got back—after he took her back she lived there.

Q How many rooms did you have there?

Mr. Bradner. I object.

A Four.

The Vice-Chancellor. Mr. Kraemer, you understand you can't go into those questions unless you make her your own witness. Go ahead. 40

Q How much money did you bring back from Europe? A I brought back—it was about \$2,000.

Q And you now have \$1,000? A Yes, sir.

Jacob Pinkinson, direct.

Q Where did the other \$1,000 disappear to? A Why, I lost it in the business.

Mr. Bradner. We rest, your Honor.

10

DEFENDANT'S CASE.

JACOB PINKINSON, the defendant, sworn.

Direct examination by Mr. Kraemer.

Q Mr. Pinkinson before your marriage where did you live?

A Summer avenue.

Q With whom? A My mother.

Q How long did you live with your mother before you married? A Practically all my life.

Q Are you an American? A Yes, sir.

Q Born in this country? A Yes, sir.

Q After you were married did you speak to your wife about your mother? A I spoke to her before we were married regarding the mother; she was young and she said she would be very glad to have mother come and live with us.

Q Go on. A In the first place, she was young and she would be a great help to us, and not knowing how to manage a house was another reason and my mother came and lived with us.

Q And she lived with you up to the time she went to Europe? A Yes, sir.

Q While your mother was in Europe did you have any help in the house? A Yes, a maid.

Q Immediately after your mother left for Europe? A Yes, sir.

Q How long after your marriage was it before the baby was born? A Two and a half years.

Q And you had a maid immediately after your mother went to Europe? A Yes, sir.

Q How long was your mother away? A Two years and two months.

Q And while she was away did you have occasion to write her? A Yes, very often.

Q Did your wife have occasion to write to her? A Yes, she answered letters with me, using the same paper.

40

Jacob Pinkinson, direct.

Q How did it happen that your mother came back to your house? A Came back from Europe?

Q Yes. A Upon the request of both myself and my wife.

Q Did your wife tell you about a year after the marriage that now she was somewhat experienced and knew how to cook and take care of the house herself? A Not until my mother left about eleven months after and there was no reason for her to say it. 10

Q After your mother came back was the maid continued? A No.

Q How did it happen that the maid was dismissed? A Well, in the first place, it was business reverses, and after mother came back I suggested it would be a very good thing. In fact, it was a very good thing that mother came back because we had to send the maid away.

Q Did you at any time while your mother was in the house pay your mother? A No, sir. 20

Q What service did she render? A Taking care of the house—doing all the housework.

Q Well, would you designate it as housework? A Yes, sir, practically.

Q Was the child born before your mother came back? A Yes, sir.

Q How old was the child when your mother came back? A To be exact, about six months, possibly a little over.

Q Your mother has had some nursing experience, hasn't she? A Yes, sir, considerable. 30

Q What was her nursing experience? A For about three years in the Montefiore Home in New York City.

Q And who took care of the child when your mother came back? A Mother did.

Q How did that occur—what was the reason that your mother took care of the child? A Well, in the first place, she would be going here and there and she frequently left the child with my mother, and, in fact, when the girl was there, the child was left with the maid the same way; in fact, the child slept in the very same room and bed with the maid. 40

Q You say your wife went "here and there"; what do you mean? A Moving pictures and up to her mother's and here and there; I could not keep track of her; that is practically one of the reasons.

Jacob Pinkinson, direct.

Q Well, was the attention given by the maid satisfactory? A Well, as well as a maid could give it.

Q When your mother came back, I suppose she took care of the child? A Yes, sir.

10 Q How long did you remain down on South street after your mother came back? A About four or five months.

Q Where did you go from there? A Why, we were separated at that time.

Q Your wife and you? A Yes, and then I moved up to my uncle's on Spruce street after she had removed all the furniture.

Q Your wife took all the furniture? A Yes, except the piano.

Q And you went to live with your uncle after that, did you? A Yes.

20 Q Did you still have the drugstore? A No, sir.

Q What did you do? A I done some relief work in a drugstore and then I had a position at Point Pleasant for the summer with Abe Johnson, managing his store.

Q How long did you remain separated from your wife? A About a year and a half, possibly a little bit longer.

Q How did you come to get reconciled again? A Well, she met with an accident; they were down at Bradley Beach at the time and she met with an accident.

30 *By the Vice-Chancellor.*

Q When was this? A This was four or five years ago.

By Mr. Kraemer.

Q Well, do you recall when you were down at Point Pleasant? A 1915 or 1916, I can't really remember.

Q She met with an accident? A Yes, sir.

40 Q What happened after that? A She was taken to the hospital and being in Point Pleasant I used to go down and see the baby; when I came down that particular day I was told my wife was very badly hurt, in fact, not expected to live, and she was in the hospital.

Q You went to the hospital? A Immediately.

Q What hospital is that; where is it located? A The Long Branch Hospital.

Jacob Pinkinson, direct.

Q How long did she remain at the hospital? A Two days, until I could make arrangements at the St. Barnabas Hospital to bring her down there.

Q You arranged to bring her to that hospital? A Yes.

Q Who paid for that? A I did.

Q Was she a pay patient or a charity patient? A A pay patient. 10

Q How long was she there as a pay patient? A About two months.

Q Well, who paid for her as long as she remained a pay patient? A Her mother.

Q Did you visit her while she was there? A Yes, sir.

By the Vice-Chancellor.

Q Her mother paid for her while she was a pay patient at St. Barnabas' Hospital? A I arranged to bring her down with the ambulance and the room. 20

By Mr. Kraemer.

Q Why didn't you pay for it? A After the accident occurred I found out how the thing happened and with whom the accident happened; that is after I brought her down, and I simply refused to on those grounds.

Q Well, how long did she remain at the hospital? A Well, about seven months, if I remember correctly.

Q After she got out where did she go to? A The doctor advised her to go down to the seashore to take sea baths whereby her limbs would be strengthened by the waves, etc., and she didn't have any money, and I told her I would arrange for that, and she went down to Rockaway Park and I gave her money to pay for it down there. 30

Q How long did she remain at Rockaway Park? A About three or four weeks.

Q And you paid for her board there? A Yes, sir.

Q Where did she go after she came away from there? A I came down several times and she cried and said she tried at several places, and that the Young Women's Christian Association, and that they would not take her on account of her being married, and she said, "Take me back once more," and I did; I was at that time working in Elizabeth. 40

Q Where were you working? A With my mother.

Jacob Pinkinson, direct.

Q And your wife came in the same house? A Yes, sir.

Q What did your wife say about living with your mother? A Absolutely nothing.

Q How long did you remain in Elizabeth? A About two and a half years.

10 Q And you had trouble with your wife then? A Yes, sir.

Q And she had you taken before the Police Court and you were ordered to pay her \$6 a week? A Yes, sir.

Q What was the course of her conduct, Mr. Pinkinson?

Mr. Bradner. I object, there is nothing to notify us that they were going to criticize her.

The Vice-Chancellor. What do you say about it in the answer?

(Objection withdrawn.)

20

Q What was her course of conduct in Elizabeth? A She had absolutely to do nothing at the house, and very often she had a friend there and she would go down to South Beach and come home at all times of the night; on one occasion I locked the doors, front and rear, and she didn't come back until half-past two in the morning, and she had to go through the cellar door; I criticized her on this occasion; that really started this row; at the time of the infantile paralysis the brother of this woman—

30 Q What woman? A The woman that I was referring to— she was going to some kind of a party not far from Elizabeth and she wanted to take the child, and I objected on account of the infantile paralysis and I objected, and she said "I will go myself," and I said, "I don't care what you do, but don't take the youngster," and she did go herself and left the youngster home.

Q And the Police Court decision was that you should pay her \$6 a week?

By the Vice-Chancellor.

40 Q Did you separate then? A Well, she left my house.

Q Well, did you separate then? A Yes, sir; we separated then.

Q How long was she away then? A For about a year, I think.

Pages 49, 50, 51, and 52 follow

Jacob Pinkinson, cross.

day and mother was away at the time, and I had to eat my meals outside; at the expiration of the tenth day, I don't remember whether I consulted counsel or not, but I told a truckman to back up and put the things in storage, and when the truck came down, someone had telephoned her what I was doing and she came down with two men from the First or Fourth Precinct.

10

Q And you finally succeeded in moving the furniture? A No, she took it with her on the day she left, but prior to that I didn't know where she was.

Q Did you ask her to come back? A Not at that time; no.

Q Did you ask her why she went away? A No, sir.

Q And you didn't care whether she went or stayed? A Yes; I did at the time.

Q Well, why didn't you ask her to come back? A Why, because I didn't know where she was; I did when I saw her when she was moving the furniture.

20

Q After the ten days what happened? A Why, she took the furniture.

Q And you did not make any effort to get her back? A No, sir; absolutely none.

Q And she had an accident after that? A Yes, sir.

Q Where did that accident occur? A In Long Branch.

Q Did you know anything about the accident? A Yes, sir.

Q From information that she gave you? A Not she; but the man that was with her.

Q What did she tell you about it? A She told me that she and her sister were out with two friends on two motorcycles riding; the Elks were having a convention at that time and they asked her to go out for a ride and an automobile came out of the driveway and ran into her.

30

Q Was she injured? A Yes; very badly; her left leg was broken in three parts; the right in eight parts.

Q How long was she laid up as a result of that injury? A About eight months.

Q And she was brought up at that time to St. Barnabas' Hospital? A Yes, sir.

40

Q And you thought enough of her to pay her expenses and you paid for her transportation? A Yes, sir.

Q You did not insist upon paying for her at the hospital? A I refused after I found out how the accident happened.

Jacob Pinkinson, cross.

Q And did you tell her why you refused to pay for her? A Yes, sir; I told her if she was a woman of that calibre and if she would go with a man of that calibre that she would go out with a bum.

10 Q You charged her with being out with some other man and that being so, you would not take care of her? A Exactly.

Q And you did not take care of her? A No, sir.

Q And you ceased to care anything about her then? A Absolutely.

Q And you do not care anything for her now, do you? A No.

Q And you do not want to live with her? A No, sir.

Q Well, after she got out of the hospital did you finally resume living with her? A Yes, sir.

Q And where did you go to live? A Elizabeth.

20 Q And while you were at Elizabeth she went to the Overseer of the Poor and made complaint against you? A Yes, sir.

Q And you were arrested? A No, sir.

Q Well, you were summoned? A Yes; I was summoned.

Q And there was a hearing? A Yes, sir.

Q And that you should pay your wife \$6 a week? A Yes, sir.

Q And that she should live with you? A Yes, sir.

30 Q Did you get more than \$6 a week for your position in your mother's store? A It was not really a stated sum that I was getting.

Q How long were you away then at the time that you separated in Elizabeth? A About a year; possibly a little longer.

Q Now, go back again when she came out of the hospital, and you went to Elizabeth to live, did you resume marital relations with her? A At Elizabeth?

Q Yes. A Yes, sir.

40 Q Notwithstanding the fact that you had accused her of being out with some other man when she met with an accident? A I found out differently afterwards; now, get this right: I got the story from the man at the time, when she told me they were friends of hers whom she was going with, and the man came back and explained the whole situation to me, and said that she went as a single woman and he tried to apologize and he said, "These girls came to him as Miss Funston and her sister and that is the reason I took those girls out; I never saw them be-

Jacob Pinkinson, cross.

fore in my life," and after I had gone to see her she was down at Rockaway, before I brought her home; I suppose I felt a little soothed and I did take her back again.

Q That was after she was out of the hospital? A Yes, sir.

Q And then she went away again from Elizabeth? A Yes, sir.

10

Q Where did she go then? A After she left Elizabeth?

Q Yes. A To work.

Q Where did she live in the meantime? A With her mother.

Q How long did she stay away then? A About a year.

Q Did you visit her? A I visited the baby.

Q I asked you if you visited your wife? A No, sir.

Q Did you communicate with her in any way? A I sent her \$6 a week.

20

Q You had to pay her \$6 a week? A Well, outside of clothing the baby.

Q And then you took her back again, didn't you? A Yes, to 12th street and from there we moved to 22nd street.

Q Wasn't she sick again? A Yes, sir.

Q And she had to go to the hospital again? A Yes, sir.

Q And how long was she in the hospital that time? A She was not there very long; she was down at St. James' Hospital about two or three weeks.

30

Q Do you remember the occasion at Irvington when she was taken sick and her mother came and stayed with her? A Yes, sir.

Q Was that an occasion when she went to the hospital again? A Yes, sir.

Q Who paid her expenses at the hospital then? A I don't know.

Q You did not pay them? A No, sir.

Q And after she came back from the hospital she went to the 22nd street house? A This last time to 22nd street, yes.

40

Q And you lived there as man and wife? A Yes, sir.

Q And slept in the same bed? A Yes, sir.

Q And had sexual intercourse with her? A Not after that.

Q When did you cease to have sexual relations with her? A Oh, some time ago; I can't recall.

Jacob Pinkinson, cross.

By the Vice-Chancellor.

Q Do you recall whether it was a year ago or just previous to the filing of the bill in this cause? A Well, it might have been close on to that.

By Mr. Bradner.

10

Q Close on to a year? A Yes.

Q On this occasion when you had some quarrel about a pair of shoes that she wanted you stopped talking to each other? A Oh, we were not talking to each other long before then.

Q When did you stop talking to each other? A Oh, possibly three months prior to her asking for the shoes.

Q Why did you stop talking to each other then? A As I said, on account of the baby; I objected to the way she was treating that baby.

20

Q You didn't talk a word to her as you passed her? A I don't remember passing her and seeing her.

Q And while you were not talking—not speaking a word to each other, were you sleeping together in the same bed? A Yes.

By the Vice-Chancellor.

Q You were? A Yes, sir.

By Mr. Bradner.

30

Q Do you own an automobile? A Yes, sir.

Q When did you buy it? A Last August.

Q From whom? A The Dixon Motor Company.

Q How much did you pay for it? A I don't know; I owe about \$1,000 on it, about \$700 or \$800.

Q You are buying it on instalments? A Yes, sir.

Q What do you use that automobile for? A Why, I use it in my business, traveling back and forward.

40

Q How large an automobile is it? A A five-passenger car.

Q Have you ever taken your wife out in it? A No.

Q Did you own an automobile while you and she were living together? A No, sir.

Q Did you drive one? A Yes, sir.

Q Whose was it? A The company's.

Pages 45, 46, 47 and 48 follow

Jacob Pinkinson, direct.

By Mr. Kraemer.

Q During that year where did you live? A In Elizabeth.

Q Well, how did you come to get reconciled to her? A She was taken ill again and she was at her mother's at the time and she was sick for several months and I came there to visit her, etc., and she started the same thing again to take her back again and give her one more trial, that the youngster needs a mother and she would do the best she could. 10

Q Where were you living at that time? A On 12th street.

Q Newark? A Newark, yes.

Q And you brought your wife to that house? A Yes, sir.

Q How long did you live there after you brought her back?

A About a month.

Q And then you moved where? A To the present address.

Q South 22nd street? A Yes, sir. 20

Q While you were living there where did you work? A For the White Tar Company.

Q And who took care of the house? A Mother.

Q How did that happen? A Well, she was too weak to do any housework—at either time when she came back from the hospital, the first time that she came back from the hospital to the house and the other time she was really convalescing around the house and was under the attention which mother gave her, and mother took care of the rooms as usual.

Q When did you have your meals in the house? A Mornings and evenings. 30

Q Did you ever have your meals with your mother? A If she would get it.

Q What did your meals consist of? A Oatmeal, bread and coffee; I didn't eat very much myself.

Q Do you know who prepared the meals? A Mother at all times.

Q Was there any arrangement made as to who should do the cooking in the house? A None that I know of.

Q How did it come that your mother done the cooking? A Well, she was in no position to do the cooking, she did not do the household work. 40

Q Did she ever take care of the housework? A Only the time that mother was away and then the maid did it.

Q Did you see any food in the house? A Always.

Jacob Pinkinson, direct.

Q Where was it kept? A Always on the table; that is where I looked and the other place would be in the ice box.

Q What food was kept in the ice box? A Well, the necessary things.

10 Q Did you pay any attention to that? A No, sir; absolutely none.

Q You left that to the house? A Yes, sir.

Q Where are you working now? A I am not doing anything at present.

Q When did you last work? A In November last.

Q And then you were working with the White Tar Company? A Yes, sir.

20 Q And you paid your wife \$15.00 a week for how long? A Up until three weeks ago—well, the first check I gave her I really don't remember how long ago that was; you have the first check there.

Q August 23rd, is that it? A August, I think, is the first one; since August I have been giving her \$15 a week; August 23rd is the first check.

30 Q Why did you stop? A I bought the youngster some clothes, some \$50, a dress, stockings and something else, and the next time I saw the baby she told me that her mother had returned the things, and I asked her what the reason was and she said she didn't know; I asked her "what things have you kept", and she said "I kept the shoes"; that was the reason I stopped paying her the \$15 a week.

Q Now, Mrs. Pinkinson says that some three months before she left you she sent the child to ask you for money for some shoes? A She didn't; she asked me for it herself.

Q What happened then? A It was on a Tuesday she asked me for them and I told her I would give it to her on Friday the day I got paid; that is all there is to it and she did get it on Friday.

40 Q Well, what led up to the last quarrel in the house? A Why, it was due to the youngster; she would simply take that youngster out and drag it to death; she would take it to New York and she would take it to the moving pictures and I seriously objected to it; that was the cause of the argument.

Q What did she say to you? A "It is my baby, I can do whatever I want with her."

Jacob Pinkinson, cross.

Q Did you stop speaking to one another after that? A Yes, I did.

Q And how long did you remain without talking to one another? A Oh, for a couple of months, and the first I heard was when I received a notice from the Court of Chancery.

Q She was sleeping in the same house but in a separate bed from you? A Yes, she left my bed about five days after I received a subpoena from the Chancery Court. 10

Q Where did she go then? A She went in to another room.

Q Now, she said you came home all hours of the night and sometimes not at all; what was your usual time for coming home? A Sometimes I would stay at the plant until half-past twelve, but not very often; that might be once or twice a month; but usually I was home at half-past ten o'clock; as I said my position required that I would have to be around at the plant, but not very often. 20

Q What were your duties that required you to be there until half-past ten? A I was a chemist there and things would go wrong and I would have to be there to fix them.

Q How long did this plant work? A Always.

Q Have you got men working there always? A Yes, sir.

Q And at six o'clock have you got a shift of men there? A Yes, sir.

Q What did you do after six o'clock? A Well, if we started a still later I had to be there to bring the naphthaline out and after I brought that out; that would depend when they brought the naphthaline in; sometimes it would be nine and sometimes ten o'clock; it would depend how the naphthaline would run. 30

Q It was part of your engagement that you should work those extra hours? A Yes, sir.

Cross examination by Mr. Bradner.

Q Mr. Pinkinson, I observe in your answer—paragraph 9—you say “that complainant and defendant are not happily married and have not been living together very happily”; is that a fact? A Yes, sir. 40

Q When did you discover that you were not happily married? A Oh, about two years after.

Q After the marriage? A Yes, sir; after the first two years.

Q Where were you living then? A On South street.

Jacob Pinkinson, cross.

Q And was your mother there? A Not at the time.

Q Had she gone to Europe? A She had gone to Europe; yes, sir.

Q Did you have any talk with your wife at the time on the subject of your marriage relations? A No, sir.

10 Q Did you discover that your own feelings for her had changed? A No; I would not say that; it was a cause that led up to it; in not having her cook for me and take care of the house properly that led up to this unhappy marriage.

Q Well, had she been cooking for you for a year? A No; mother was there.

Q And after your mother went away you were at home alone? A Yes, sir.

Q And that was the cause of your unhappiness? A No; not exactly; cooking would come under that head.

20 Q Did you find any fault with her then? A Not so much with the cooking as taking care of the house.

Q Then it was after that that she was away at the seashore and met with an accident? A Yes, sir.

Q Were you separated at that time? A Yes, sir.

Q And where had that separation taken place? A In Newark.

Q After your mother's return from Europe? A Well, let me see—yes, sir.

30 Q Where was the child? A The child was with my wife; she took the child with her.

Q Where was she living with the child? A With her mother.

Q In Newark? A In Newark.

Q How long was she away from you? A At the time of the accident?

Q At that time, when she was away with the child. A What do you refer to; the time of the accident?

Q How long did that separation continue? A About a year and a half.

40 Q And during all that time she was living in Newark with her mother, it that right? A That is right.

Q Did you go to see her? A No, sir.

Q Did you ask her to come back? A At that time?

Q Yes. A No, sir.

Q What was the cause of the separation then? A Oh, she left the house and was away for ten days and I was there every

Jacob Pinkinson, cross.

Q Did you ever take her out for a ride? A Well, I didn't use it as a pleasure vehicle; I simply used it for going back and forward to the plant.

Q Have you had any women out in that automobile? A Well, I might meet a friend of mine on the street and stop and pick her up; I don't say that I did not. 10

Q You don't deny that you may have taken a woman in that automobile alone with you? A I don't deny it.

Q Have you ever taken any women in the car? A Yes, if you call relatives.

Q How much do you pay for the keep of this car? A \$6 a month.

Q Where do you keep it? A In a garage.

Q How much does it cost you to run it? A I don't run it now.

Q Do you know some one named Grace and her last name begins with an "H"? A Yes, sir. 20

Q What is her name? A Her name is Hanson.

Q Who is she? A She was a neighbor when we lived on South street.

Q Did you ever get any letters from her? A No, sir.

Q Look at that letter and tell me whether you got that letter from her? A I don't remember it.

Q You don't remember it? A No, sir.

Q Is that her handwriting? A I don't know; I don't believe I ever saw her handwriting. 30

Q Did you ever see that letter before? A No, sir.

Q Didn't you carry it around in your pocket? A No, sir.

Q I may say that your wife found it in your pocket; does that recall it to you? A Not necessarily; as I don't remember having it in my pocket, and I don't remember even seeing it.

Q Did you ever receive a letter from Grace Hanson? A No, sir.

Q Did you ever take her out in an automobile? A No, sir.

Q Did you ever take her to dinner? A No, sir; I have not seen her in five years. 40

Q Did you see her quite frequently on South street? A When she called on my wife.

Q Did you ever go to see her? A Yes, in company with my wife.

Jacob Pinkinson, cross.

Q Did you ever go alone without her? A No, sir.

Q You have not been anywhere alone with Miss Grace Hanson? A No, sir.

Q Have you ever been to the Nankin Garden with a woman for a meal? A No, sir.

10 Q Did you ever take any woman there in the evening? A I have only been there a couple of times, but I know I was not with women.

Q You resigned your position with the White Tar Company around November 30th last? A Around that time.

Q You were not discharged? A No, sir.

Q Why did you resign? A I had my reasons for it.

Q What reasons? A Well, is it necessary that I should answer that question?

The Vice-Chancellor. Please answer the question.

20 A Well, there was another man came in there as manager and I thought I might lose my position, so before I would give him a chance I told him what I knew of the plant.

Q What was your position there? A Manager and chemist.

Q Was it a corporation? A Yes, sir.

Q Were you appointed for any definite time? A No, sir.

Q Who appointed you? A One of the firm.

Q You mean the corporation? A One of the firm, yes.

Q What is his name? A Mr. Cune.

30 Q What position does he hold? A Why, he was acting vice-president.

Q Did they have a board of directors? A Yes, sir.

Q Didn't the board of directors appoint you? A No, sir; not to my knowledge; they may have had a meeting and asked Mr. Cune to appoint me.

Q Did you hold any office besides manager? A No, sir.

Q Did you get a salary? A Yes, sir.

Q How much? A \$75 a week.

40 Q Did you get any commission in addition to that? A No, sir.

Q Did you get paid for overtime? A Why, that would bring that salary up to that.

Q And you gave up that \$75 a week position voluntarily? A Yes, sir.

Q Can you go back there if you want to? A I think so.

Jacob Pinkinson, cross.

Q When your wife brought this suit against you and you received a subpoena, I understood you to say that you continued to occupy the same bed for several days after that, is that so?

A Why, it was three days after; three or four days after I received the subpoena that she left the bed.

Q I understood you to say five. A Well, it may have possibly been five. 10

Q Did you say anything to her? A No, sir.

Q You didn't mention the fact that you had been sued? A No, sir.

Q You didn't care what she done? A I don't say that but I didn't say anything to her.

Q You did not feel hurt enough to say anything to her? A No, sir.

Q How did you feel towards your wife? A I can't say, your Honor, just how I could feel towards her. 20

Q You are not disposed to treat her with any consideration whatever, are you? A I think after I took her back three different times there must be something there.

Q Have you ever bought any clothes for your wife? A Yes.

Q When? A All times.

Q Have you bought her any within the past year? A Well, we separated about that time.

Q Up until the subpoena was served in this case on you had you bought her any clothes? A Yes, sir. 30

Q What? A Oh, shoes, and other little things; she went to work.

Q When did she go to work? A I just can't recall when; I refused to let her go to work on the strength that it was not necessary for her to work, and she said, "I can't stay here; I can't do housework", and I said if you go to work, you are not going to get a penny from me and I can't afford to let people see you do work in a store.

Q Your objection was that you didn't want people to know that your wife was working? A That she had to work. 40

Q You were ashamed of that? A Yes, sir.

Q And if that were so why didn't you supply her with sufficient money? A I did, I used to give her \$3 and \$5 a week outside all her clothing.

Mrs. Fanny Pinkinson, direct.

By the Vice-Chancellor.

Q When did you give her that extra money? A All the time she was with me on South 22nd street.

Q Are you willing now to provide a home for your wife and baby? A I will provide a home for my baby but not for my wife; three times are enough.

Q You will not provide a home for your wife and live with her? A No, sir.

FANNY PINKINSON, recalled.

Direct examination by Mr. Kraemer.

Q Mrs. Pinkinson, who took care of the house? I did.

Q Who did the cooking? A I did.

Q Did you ever speak to your daughter-in-law about taking care of the house and cooking? A What do you mean—that she should take care of it?

Q Did you speak to her about it? A I didn't say anything about it.

Q Did she ever say to you while she lived on South street or in Elizabeth when your son and daughter-in-law lived together that she wanted to take care of the household work and do the cooking? A No; she did not.

Q Did she say anything that she wanted you to do that? A Yes, sir; she did.

Q When did she say that? A All the time when he took her back, she would say she didn't want to do that because she was too weak.

Q At the time that you son took her back after the accident was she able to walk around the house? A She was able to just walk around.

Q Did she use a crutch? A No.

Q Did she use a cane? A A crutch, I am not sure about, but a cane I am sure about.

Q Was she able to do very much walking? A Not very much.

Q And at that time you took care of the house and all the cooking, that is, after she came back from St. Barnabas' Hospital? A Yes, sir; she used to do a little work, not very much, in the store.

Mrs. Fanny Pinkinson, direct.

Q And your son had to pay her \$6 a week; when she came back to South 12th street she was just from the hospital? A Yes.

Q And did she then say that she wanted to do any house-work? A She didn't say anything about it.

Q You continued to do the work there? A Yes, sir. 10

Q Did she at any time attempt to do anything? A No, sir; she said she would rather go to work than do the cooking.

Q Where did she say that? A In the house.

Q Where did you keep the food? A Where?

Q Yes. A I kept it in the ice box.

Q When did you have your meals in the house? A In the morning, breakfast at half-past seven and if she was home we had a little luncheon.

Q Who made the breakfast? A I used to make coffee for him; he had to go to work early and she made breakfast for herself. 20

Q Where did she get the bread and butter and things from? A In the ice box.

Q Who fed the child? A I did.

Q What did the child eat? A Sometimes if she wanted an egg or a glass of milk, I would always get it for the child.

Q And you made a cereal? A Yes.

Q Was that made in a fixed quantity, just enough for yourself and your son? A No, sir; I made enough for them all; I didn't hide anything. 30

Q Did you hide cake under the pillow or under the mattress? A I did not, what I would put under a pillow I would not eat myself.

Q Or the blanket? A No, sir.

Q Did you hide any food in the cellar? A No, sir.

Q Whose piano is that in the house? A Mine.

Q Where did you buy it? A Oh, I forgot, it is twelve years ago; I had a bill of sale for it.

Q Have you got it with you? A No; I didn't know that I needed it. 40

Q While you were in Europe, did you receive any mail? A Yes, sir.

Q Who from? A From my son and daughter-in-law.

Q Where did you leave these letters? A In Europe.

Mrs. Fanny Pinkinson, direct.

Q Was there anything in the letters at all in your daughter's handwriting? A Yes, sir.

Q Written by her in her own handwriting? A Yes, sir.

Q How do you know? A Because I have seen her handwriting; I knew it after the marriage.

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Mr. Bradner. I object.

The Vice-Chancellor. What is the objection, Mr. Bradner?

Mr. Bradner. Well, they have not made any attempt to get the letters.

By the Vice-Chancellor.

Q What happened to the letters? A I read them over.

Q What did you do with them after you read them over?

20

A I do not know.

Q Are they still there? A I don't know.

The Vice-Chancellor. I will admit the question and answer.

By Mr. Bradner.

Q What was written by your daughter-in-law in this letter?
A She said she made a nice dinner and made a pie and hoped that I would have a piece of pie.

30

Q And did she write anything about her coming to America?
A Yes; that she would take me out automobile riding when she came to America.

Q Did you ever have any quarrel with your daughter-in-law?
A I never had any quarrel with her.

Q When you came back from Europe, did you go directly back to your son's house to live? A When I came back—I didn't write at all—I telephoned them.

By the Vice-Chancellor.

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Q When you landed in this country you telephoned them that you had reached here? A Yes, sir.

Q When you telephoned them did you expect that you were going to live with them again? A I didn't know; they were glad that I had come home.

Anna Pinkinson, direct.

By Mr. Bradner.

Q When you got to the house, you were very much surprised to see the little girl there? A Yes, sir.

Q You did know that the child was there? A No, sir.

Mr. Kraemer. That is the defendant's case.

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(Mrs.) ANNA PINKINSON, recalled in rebuttal.

Direct examination by Mr. Bradner.

Q I show you a paper purporting to be a letter signed by "Grace", did you see it before? A Yes, sir.

Q Did you you get it from any place? A Yes; I got it from his coat pocket.

Q Whose coat pocket? A Mr. Pinkinson's.

Q When? A About four weeks before I left the house.

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Q In the letter there is reference made to "Date"; assuming that this letter is Grace Hanson's, who is "Date"? A Her brother.

Q Do you know Grace Hanson? A Yes, sir.

Mr. Bradner. I offer the letter in evidence.

(Letter admitted read in the record and marked D. 1.)

Mr. Bradner. Your Honor, may I put in evidence a certified copy of the proceedings in Elizabeth.

The Vice-Chancellor. Well, the only thing that that will show is that it will confirm the testimony that is in; I don't think that that is necessary.

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Mr. Bradner. I don't think so and we rest.

By Mr. Kraemer.

Q Was there any envelope accompanying this letter? A No; just the letter.

Q When did you take this letter out of his pocket? A About four weeks before I left.

Q Were there any other letters in that coat pocket besides this one? A Not at that time.

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Q You know Miss Hanson? A I do.

Q Did you have any idea who was the writer of this letter when you read it? A Certainly.

Q Where does she live? A 70 James street.

Jacob Pinkinson, direct.

Q Have you seen her recently? A Oh, she came in the store and bought a waist a few weeks ago.

Q Did you speak to her? A No; I did not.

Q Did you find out her address? A I did not; I know it was in the telephone book.

10 Q Did you speak to your husband about it? A I did not, because we were not on speaking terms.

Q Do you know in whose handwriting it is? A I think it is Grace Hanson's, but I am not positive.

Q Do you know whether this letter was sent through the mail or by messenger? A I do not.

By Mr. Bradner.

Q It has been testified that you take the child out and go to the movies and such places? A I do not do that.

20 *By Mr. Kraemer.*

Q You are working now, Mrs. Pinkinson? A Yes, sir.

JACOB PINKINSON, recalled in rebuttal.

Direct examination by Mr. Kraemer.

Q How did it happen that your mother did not know that the child was born? A Why, because we wanted to surprise her when she came back from Europe.

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CASE CLOSES.

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*Conclusions of Vice-Chancellor.***CONCLUSIONS OF VICE-CHANCELLOR.**

Filed January 24, 1920.

Frank E. Bradner, for complainant.

Joseph Kraemer, for defendant.

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FIELDER, V. C.

The parties were married June 6, 1909, and one child, now eight years of age, is the fruit of the marriage. Differences and disagreements arose between the parties within one or two years, resulting in several separations, the first of which occurred in or about 1915, and it is clear that the termination of each separation was at the complainant's request and while they resumed living together it was not in harmony and the defendant says he ceased to care for his wife after their first separation. When they resumed living together for the last time, which was about May 1, 1918, it is apparent that their differences had in no way abated. Each puts the blame for the disagreements on the other, but it is not necessary to determine where the truth lies. Although they lived together and they occupied the same bed up to three weeks prior to the filing of the bill of complaint, their marital relations had ceased long prior to that time, the defendant fixing the period as one year and they agree that they had ceased holding conversation with each other for three months prior to their separation and the complainant claims that her husband was not providing her with adequate support. Three weeks prior to filing the bill, the complainant says she could no longer stand this manner of living and she left his bed without objection on his part, occupied another room in the same house and went to see a lawyer with reference to compelling her husband to support her. Suit was commenced and they remained under the same roof for a few weeks thereafter, when she left because her husband had been away for ten days without telling her of his intended departure and without leaving any money for the support of herself and her child. When she finally left the house, taking the child with her, he was at home and saw her packing her things preparatory to moving, but did nothing to induce her and the child to stay. It must be presumed that he then knew what charges had been made against him in her suit, and if he felt he was not at fault and was not willing to have her go, but de-

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Conclusions of Vice-Chancellor.

10 sired to have her stay and live with him as his wife, it was his duty to tell her so. But his attitude toward her since their first separation has been that she is a woman with whom he had no desire to live, in fact, to sum up his testimony on the witness stand, he said he was unhappy with her after the first year of their marriage; that he does not care for her or to live with her and that he will not take her back or provide a home for her.

In my opinion he abandoned her or separated himself from her within the meaning of the statute, though living in the same house, when he refused to converse with her or to go anywhere with her and refused to have sexual intercourse with her and excluded her from his bed.

Anshutz v. Anshutz, 16 N. J. Eq. 162.

Weigand v. Weigand, 41 N. J. Eq. 202.

Margarum v. Margarum, 57 N. J. Eq. 249.

20 *Rector v. Rector*, 78 N. J. Eq. 386-407.

I also find that although the complainant and defendant were living in the same house when she commenced this suit, he had neglected to properly maintain or provide for her and her child. She had on another occasion during their married life, taken legal means to compel his support, and when she filed this bill of complaint, he was giving her but a few dollars a week, although he was earning \$75 a week and she was working as a saleswoman at \$18 per week, to earn money for herself and the child. He resigned his position shortly after the suit was brought and says that he has now no employment. I think this resignation was the result of a thought that it would have a bearing, advantageous to him, on the amount this Court would award the complainant, because he says he thinks he can go back to his old position. I believe his earning capacity is \$75 per week. The complainant says she is not in good health and that her physician has advised her she should not work, but there is no evidence to corroborate her, except that she limps slightly when she walks, which she attributes to injuries sustained in an accident. I shall award her \$24 per week for maintenance and support of herself and her child, with costs of suit and a counsel fee of \$100. When the decree is prepared, it should contain a provision that either party shall be at liberty to apply to the Court, upon a future change of circumstances of the parties, for a variance or modification of the decree touching the amount of complainant's maintenance.

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Final Decree.

FINAL DECREE.

Filed February 10, 1920.

This cause coming on to be heard in the presence of Frank E. Bradner, of counsel with the complainant, and Joseph Kraemer, of counsel with the defendant, upon the bill of complaint and answer and replication and proofs; and it appearing that the complainant and defendant were lawfully married on June 6, 1909, and that they have their domicile in this State, and that the defendant was personally served with process in this State, and that the defendant without any justifiable cause abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her; 10

It is thereupon on this 10th day of February, 1920, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the defendant, Jacob Pinkinson, do pay to the complainant the weekly sum of twenty-four dollars for maintenance and support of herself and her child, Thelma, an infant child of the said marriage, such payments to be made on the first Monday of each week after the date of this decree. 20

And it is further ordered, adjudged and decreed that the said defendant do further pay to the complainant or her solicitor the costs of this suit to be taxed, and also the sum of one hundred dollars, which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this Court. 30

And it is further ordered, adjudged and decreed that the said complainant have the exclusive care, custody, education and control of the said Thelma Viola Pinkinson, infant child of the marriage aforesaid, until the further order of the Court.

And it is further ordered, adjudged and decreed that either party shall be at liberty to apply upon a future change of circumstances of the parties, for a variance or modification of this decree touching said alimony, maintenance and custody, as shall be just and equitable. 40

Notice of Appeal.

NOTICE OF APPEAL.

Filed June 8, 1920.

IN CHANCERY OF NEW JERSEY.

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Between

ANNA PINKINSON,

and

JACOB PINKINSON,

Complainant,

Defendant.

On Bill, etc.

Notice of Appeal.

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Jacob Pinkinson, the above-named defendant, hereby appeals from the decree filed in this cause and dated the tenth day of February, one thousand nine hundred and twenty, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

JOSEPH KRAEMER,

Solicitor for and of Counsel with Defendant.

Dated, June 5, 1920.

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

Of Counsel.

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Petition of Appeal.

PETITION OF APPEAL.

Filed June 23, 1920.

New Jersey Court of Errors and Appeals

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Between

ANNA PINKINSON,

and

JACOB PINKINSON,

Respondent,

Appellant.

On Bill, etc.

*Petition of
Appeal.*

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

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The petition of Jacob Pinkinson, appellant, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the tenth day of February, nineteen hundred and twenty, in that the said decree recites and adjudges: that the defendant without any justifiable cause abandoned complainant and separates himself from her, and refuses and neglects to maintain and provide for her; and doth decree that the defendant do pay to the complainant the weekly sum of twenty-four dollars for maintenance and support of herself and the child, Thelma, an infant of the marriage, such payments to be made on the first Monday of each week after the date of this decree;

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And doth further decree that the defendant pay to the complainant or her solicitor the costs of this suit to be taxed, and also the sum of one hundred dollars, counsel fee for the counsel of said complainant;

And doth further decree that the said defendant have the exclusive care, custody, education and control of the said Thelma Viola Pinkinson, infant child aforesaid.

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And your petitioner appeals from the said decree, and from every part thereof, on the ground that the same is erroneous for that the said Chancellor should have recited and adjudged that

Petition of Appeal.

your petitioner did not separate himself from the complainant and refuse and neglect to maintain and provide for her, and should have dismissed the bill of the said complaint.

The petitioner therefore prays, that the said decree may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

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JOSEPH KRAEMER.

Solicitor for and of Counsel with the Petitioner.

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Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed July 9, 1920.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ANNA PINKINSON,

Complainant-Respondent,

and

JACOB PINKINSON,

Defendant-Appellant.

*On Appeal
from Chancery.*

*Answer of
Respondent.*

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This respondent not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a decree was on February 10, 1920, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition as therein stated; but as to substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be in all things affirmed with costs to be adjudged to this respondent.

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FRANK E. BRADNER,

Solicitor for and of Counsel with Respondent.

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New Jersey Court of Errors and Appeals

Between

ANNA PINKINSON,

Complainant-Respondent,

and

JACOB PINKINSON,

Defendant-Appellant.

*On Appeal
from Chancery.*

BRIEF FOR RESPONDENT.

This case was decided by Vice-Chancellor Fielder very speedily after the hearing and while the facts were fresh in his mind. A careful reading of the testimony shows that his determination of the facts is fully sustained. While it is true that Mrs. Pinkinson actually left her husband's house, the evidence is sufficient to show that the husband had abandoned her, not by actually leaving her and going away from the home, but in the sense that he ignored her; treated her as a stranger; did not speak to her; and gave her a mere pittance of \$2.00 or \$3.00 a week for herself and child out of his earnings of \$75.00 a week.

I desire only to supplement the Vice-Chancellor's opinion, by calling the attention of the Court particularly to the testimony of the defendant. On p. 44, he testified in relation to the occurrences while the parties were living at Elizabeth, in which he says that his wife appealed to the Police Court, and he was ordered to pay her \$6.00 a week, and that they separated then and she left the house and she was away for about a year, and during that year they lived in Elizabeth. They became reconciled, and they came to Newark to live on Twelfth street. That afterwards, when the defendant's mother had returned from a trip to Europe, the wife went away again (p. 48) and took the child with her and was living with her mother in Newark, and that separation continued about a year and a half.

At the bottom of p. 48 he is asked: "Q And during all that time she was living in Newark with her mother, is that right? A That is right. Q Did you go to see her? A No, sir. Q Did you ask her to come back? A At that time? Q Yes. A No, sir." It then appears that he moved the furniture out of the

house and that he didn't ask her to come back; and after that she met with an accident at Long Branch. "Q Was she injured (p. 49)? A Yes, very badly; her left leg was broken in three parts, the right in eight parts." She was laid up about eight months at St. Barnabas' Hospital in Newark. He paid her expenses for transportation, but he didn't pay anything at the hospital.

At the top of p. 50, he is asked: "Q And did you tell her why you refused to pay for her? A Yes, sir; I told her if she was a woman of that caliber and if she would go with a man of that caliber, she would go with a bum. Q You charged her with being out with some other man, and that being so, you wouldn't take care of her? A Exactly. Q And you didn't take care of her? A No, sir. Q And you ceased to care anything about her then? A Absolutely. Q And you don't care anything for her now, do you? A No. Q And you do not want to live with her? A No, sir."

At the bottom of p. 51, the witness refers to moving into the Twenty-second street house at Irvington, where they were living the time the suit was brought, and he is asked the question: "Q And you lived there as man and wife? A Yes, sir. Q And slept in the same bed? A Yes, sir. Q And you had sexual intercourse with her? A Not after that. Q When did you cease to have sexual relations with her? A Oh, some time ago, I can't recall." On p. 52, by the Vice-Chancellor: "Do you recall whether it was a year ago or just previous to filing the bill in this cause? A Well, it might have been close on to that." "Q Close on to a year? A Yes. Q On this occasion when you had some quarrel about a pair of shoes that she wanted, you stopped talking to each other? A Oh, we were not talking to each other long before then. Q When did you stop talking to each other? A Oh, possibly three months prior to her asking for the shoes. Q And while you were not talking and not speaking a word to each other, were you sleeping together in the same bed? A Yes."

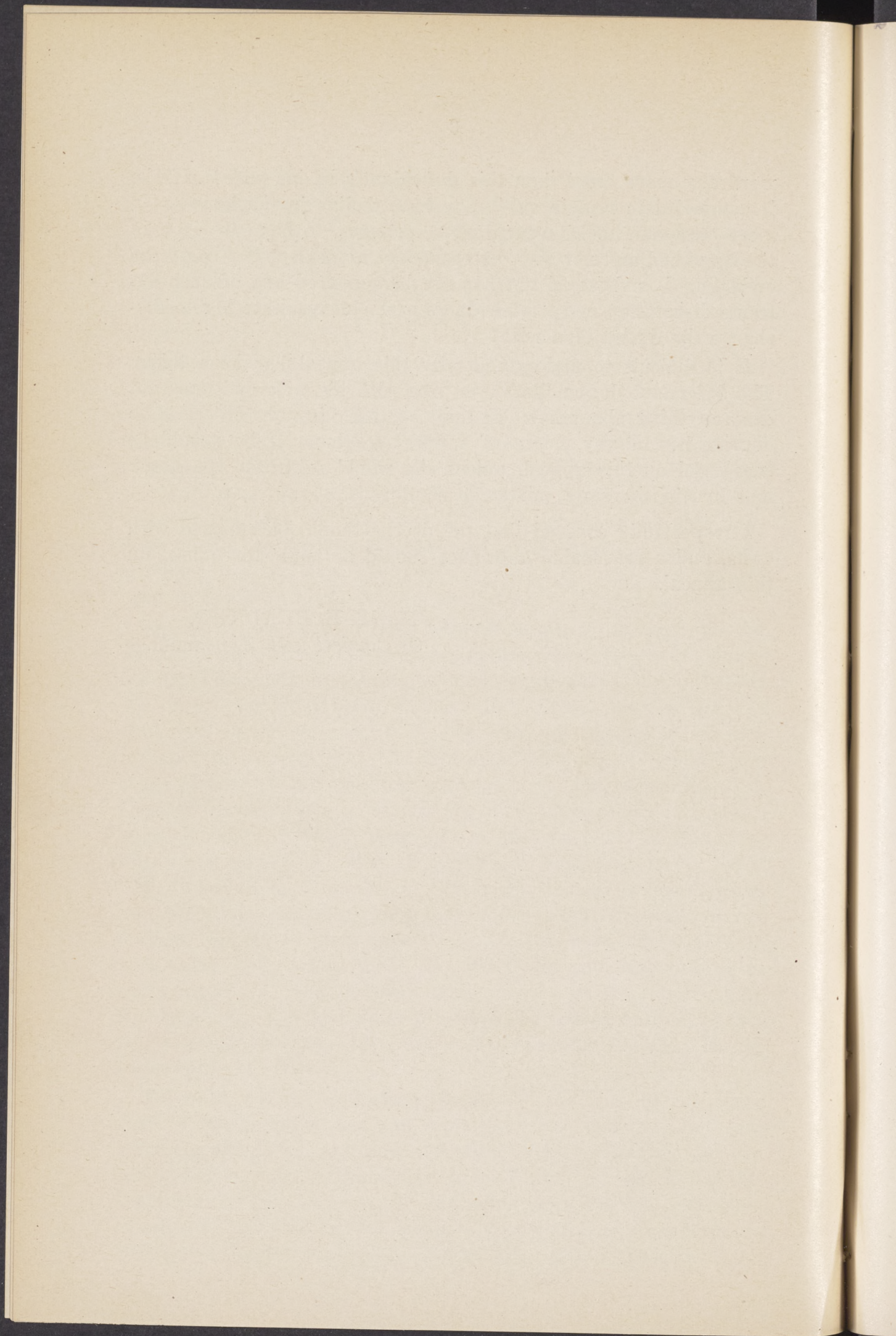
Not only has the defendant abandoned his wife in the sense that he has forsaken her and repudiated her, and does not care anything about her, and does not want to live with her, and has given her a mere pittance for herself and the child, but his treatment of her, as shown by his admissions and his testimony, constitutes extreme cruelty within the meaning of that term, as defined in *Taylor v. Taylor*, 73 Eq. 745. Could there be treat-

ment any more cruel than this defendant's of his wife? If she is compelled to remain subject to him, to live in the house as a mere occupant, to be treated as a stranger, to have to sleep in the same bed and not even be spoken to, would not her health be endangered, and would not her life be rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife?

It is difficult to understand why this appeal has been taken. The defendant does not want to live with his wife and does not care anything about her. It may be that his only object is to deprive her of any means of support whatever if he should be successful on this appeal, unless she would return to the house and live in the same miserable conditions.

I respectfully contend that the decree should be affirmed with costs, and a reasonable allowance should be made to counsel on this appeal.

FRANK E. BRADNER,
Of Counsel with Appellants.



New Jersey Court of Errors and Appeals

ANNA PINKINSON,

Complainant-Appellee,

vs.

JACOB PINKINSON,

Defendant-Appellant.

*On Bill for
Maintenance.*

MEMORANDA FOR DEFENDANT-APPELLANT.

This is an appeal taken from the decree of the Court of Chancery, entered on February 10, 1920, adjudging that the defendant-appellant without any justifiable cause abandons the complainant and separates himself from her and refuses and neglects to maintain and provide for her, and awarded the complainant twenty-four dollars for support money and counsel fee of one hundred dollars.

Facts.

The parties were married in Newark on June 6, 1909, and lived at various places, Newark, Elizabeth and Irvington. One child, Viola Thelma, was born of the marriage. There were two previous separations and reconciliations before the final separation. After the last reconciliation the defendant took the complainant with him to his home on South Twelfth street, Newark, N. J., where they lived for about one month, and then moved to South Twenty-second street, Irvington, N. J. They occupied the same bed until three or four weeks before the institution of suit, when the complainant left the bed of the defendant, and from thence slept on a cot in another room. The bill filed herein was sworn to on July 1, 1920, but the complainant remained in the house of the defendant until July 23, 1920, when she left his home and went to the home of her mother, where she has lived since.

POINT I.

There is no evidence justifying the conclusion that the defendant without any justifiable cause abandons the complainant and separates himself from her and refuses and neglects to maintain and provide for her.

It is admitted that the complainant left the home of the defendant. Under such circumstances the burden is upon her to show, among other things, that her going away from her husband was not voluntary, but that she was compelled to go by his conduct or treatment; for such a course of conduct on her part is *prima facie* an abandonment of her husband. *Dummer v. Dummer*, 41 Atl. 149. (Not reported in the State reports.) In that case Judge Hendrickson, speaking for the Court of Errors and Appeals, said:

“While there has been some variance in the authorities at different periods, and in different jurisdictions, as to the proper answer to this question, it now seems to have become the settled doctrine of the American courts and in this State, that, in order to justify a wife’s desertion of her husband he must have been guilty of such a course of conduct towards her as would, under the law, entitle her to a decree of separation or absolute or limited divorce against him.”

This view is followed in the cases of *Sarfaty v. Sarfaty*, 59 Equity 193, 45 Atl. 261; *Thomas v. Thomas*, 74 Atl. 127. The degree of extreme cruelty which will entitle a wife to a decree of separation or absolute or limited divorce against him is defined in the case of *Taylor v. Taylor*, 73 Equity 745, 70 Atl. 323. The Court of Errors and Appeals, adopting Vice-Chancellor Leaming’s opinion, holds:

“To justify a decree *a mensa et thoro*, actual physical violence need not be proved, but such conduct by the husband must be shown as will justify the Court in saying that if he is allowed to retain the power over his wife, and she is compelled to remain subject to him, her life or health will be endangered, or that he will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife.”

In the opinion of Vice-Chancellor Leaming is listed and summarized all the decisions in this State sustaining that view.

Mere unhappiness as complained of by the complainant in this case is not sufficient. This was the situation presented in the

case of *Sarfaty v. Sarfaty*, 59 Equity 193, 45 Atl. 261. In the opinion of Vice-Chancellor Grey, he says:

“The only instance of physical violence towards the wife was shown two years before she left her husband, and the quarrel resulting in his order that she should go was two weeks before her departure. That there was inconsiderate and unkind treatment by the husband towards the wife is too apparent, and his conduct cannot be held to be undeserving of blame. But the proof is not satisfying to show that it either produced in the wife a condition of terror or that at the time of the separation it had undermined her health. The weight of the testimony is that there were contentions and ill-feeling between the parties, to which the husband contributed his full share, and it is probable that during one of these quarrels he told her to leave his house. The only physical violence towards the wife, and the hasty and ill-tempered command that she should leave, were both too remote to have seriously influenced her departure. There is no proof of any further act done by the husband which indicated a purpose to drive the wife away, nor that she believed when she went that she was in any danger of violence at his hands. She left her husband deliberately and of her own free choice, provoked to it, no doubt, by her unhappy situation. She might, however, had she chosen so to do, have remained to suffer the discomfort of his further selfishness. This was the “for worse” which, by her marriage contract, she undertook to bear, and for which the law affords no remedy. Neither extreme cruelty, such as the law takes cognizance of, nor the husband’s compulsion, occasioned the wife’s departure.”

Stress is laid by the learned Vice-Chancellor upon the fact that the defendant improperly provided for his wife’s support, but this cannot be considered as justifying the separation by the wife from the defendant. That was decided in the case of *Skeen v. Skeen*, 33 Equity 148, where Vice-Chancellor Fleet held:

“Failure by the husband to furnish his wife with sufficient support is not a ground for divorce, nor will he be considered a deserter if she leaves him for that cause.”

And he quotes from Vice-Chancellor Zabriskie in *Palmer v. Palmer*, 22 Equity 88, as follows:

“There is no rule that makes want of sufficient support by a husband or total want of support a desertion of the wife. This is no cause for divorce, and the Court cannot, by construction, convert it into a ground for divorce.”

And the same view was adopted by Vice-Chancellor Walker in *Thomas v. Thomas*, 74 Atl. 127.

“While his failure to provide for her may have justified her in leaving him without making that a desertion on her part, it cannot operate to make the separation a constructive desertion on his part. Nor did his assertion that she might go away if she wanted to afford her an opportunity of going and thereby giving to his conduct a character which it did not bear.”

The last sentence from the quotation of Vice-Chancellor Walker is pertinent as bearing upon the findings of the learned Vice-Chancellor in this case that the conduct of the defendant in standing by and permitting his wife to leave is proof of constructive desertion on his part.

The complainant has not met the burden of proving extreme cruelty, such as would entitle her to a decree of divorce against the defendant if this were a suit for divorce. She left of her own accord, her justification is that her life was unhappy, and that this was due to the fact that the defendant did not show her the attentions that he should; that the management and control of the household affairs was taken from her hands, and that the defendant failed to properly provide for her. There is ample evidence that she acquiesced and approved of the control of the household affairs by the mother of the defendant, and that this course was necessary either because of her own incompetence or her physical condition.

People marry for better or for worse, and her unfortunate condition is that of the “for worse,” but it is not of a degree sufficient to meet the test of extreme cruelty required by the decisions of this State.

POINT II.

There is no evidence that the defendant refused to have sexual intercourse with the complainant and excluded her from his bed.

The testimony bearing on this phase of the case is the testimony of Anna Pinkinson (state of the case, p. 12, l. 22):

Q Up to the time you brought this suit did you and your husband occupy the same room? A Yes, sir.

Q You slept together? A Yes, sir.

Q When did you separate yourself from him, A Why, about three or four weeks before we commenced this suit.

Q And where did you go to sleep then? A I went to a couch in another room.

And from the testimony of Jacob Pinkinson (state of the case, p. 47, l. 3):

Q And how long did you remain without talking to one another? A Oh, for a couple of months, and the first I heard was when I received a notice from the Court of Chancery.

Q She was sleeping in the same house but in a separate bed from you? A Yes, she left my bed about five days after I received a subpoena from the Chancery Court.

Q Where did she go then? A She went into another room.

Nor is there any evidence that the defendant refused to have sexual intercourse with the complainant. There is no evidence in the testimony of complainant, or of any of her witnesses, to such fact. There is no allegation of that fact in her complaint. During the testimony of the defendant it developed that there was a cessation of intercourse for a period of about one year. Testimony of Jacob Pinkinson (state of the case, p. 51, l. 40):

Q And after she came back from the hospital she went to the Twenty-second street house? A This last time to the Twenty-second street; yes.

Q And you lived there as man and wife A Yes, sir.

Q And had sexual intercourse with her? A Not after that.

Q When did you cease to have sexual relations with her? A Oh, sometime ago; I can't recall.

By the Vice-Chancellor.

Q Do you recall whether it was a year ago or just previous to the filing of the bill in this cause? A Well, it might have been close on to that.

By Mr. Bradner.

Q Close on to a year? A Yes.

All that appears is that there was a cessation of intercourse. There is no evidence indicating that there was any request on the part of the complainant for the resumption of marital relations and the refusal by the defendant; in fact, there was no complaint made by the complainant at all.

In the case of *Rector v. Rector*, 79 Atl. 295, 78 Equity 386, which followed *Raymond v. Raymond*, 79 Atl. 430, the Court holds:

“That in order to establish desertion on the ground of refusal of marital intercourse, proof must show that wherever one spouse, without justifiable reason, refuses for the statutory period to have sexual intercourse with the other, and withdraws from all other marital duties than merely living under the same roof in the same relationship that could exist between a man and his housekeeper or a woman and her boarder—a condition in which the fact that she is the wife or that he is the husband is of no consequence whatever in their relation and method of living together—the desertion exists, and the one who has caused this situation against the will of the other is the offender.”

Conclusion.

It is respectfully submitted that the evidence in this case does not show that the complainant when she separated from her husband was justified in so doing either because of any acts of cruelty on his part or because of refusal of intercourse on his part, and that therefore the decree should be reversed and the bill dismissed.

JOSEPH KRAEMER,
Solicitor for and of Counsel with
Defendant-Appellant.

October 27, 1920.

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