

Court of Errors and Appeals.

Between
SOLOMON CARRIS,
Complainant,
and
BERTHA CARRIS,
Appellant.

On Appeal
from
Final Decree.

ARGUMENT.

This cause is an appeal from the decision of the Chancellor, on a bill filed by Solomon Carris, for the purpose of having the marriage contract existing between him and Bertha Carris, declared null and void. The bill sets forth that on the twelfth day of November, in the year eighteen hundred and seventy-one, the said Solomon Carris was joined in wedlock to Bertha Carris, in the city of New York; that two months after the said marriage a healthy, full-grown male child was born of the said Bertha Carris; that the child was the offspring of some person unknown to the said complainant, and that the said complainant had had no intercourse with or access to the said defendant until his said marriage; and the said complainant resided in the West and North-west for the space of one year, and returned to Newark after being absent one year, and in six weeks after his return to Newark he married the said defendant; and during the absence of the complainant for the space of one year from New York City and Newark the said defendant resided at the city of New York; that the said defendant at the time of

her marriage to the said complainant concealed her pregnancy from him in a skillful and successful manner, so that the complainant remained in ignorance of the real condition of the said defendant until she gave birth to the said child, which was a healthy, full-grown, male child. All of the above-stated facts are fully substantiated by the testimony in the cause. The bill further sets forth that the said complainant would not have entered into the said marriage contract had he known or been informed that the said defendant was not chaste and virtuous, and was with child, and that he was induced to marry her on the belief of her being a chaste and virtuous woman, etc.

The Chancellor dismissed the bill on the ground that the complainant was not entitled to the relief sought and prayed for in his said bill, and the following reasons for his decree were assigned :

“The bill is filed for a decree on the ground of ante-nuptial incontinence, and on the ground that two months after marriage she was delivered of a full-grown child, gotten by some one besides the complainant, and concealed her pregnancy from him.”

“Such want of chastity and concealment are no ground for divorce.”

A cursory view of the bill evinces the fact that it prays for a nullity of the marriage contract. It does not pray for a divorce on the ground of ante-nuptial incontinence, but upon the ground that fraud was practiced on part of the defendant to bring about the marriage contract. It seems that the Chancellor has entirely ignored the gist of the bill. I contend that the complainant is entitled to a sentence of nullity on the following grounds :

Point I. Want of Consent or Consent obtained by Fraud.

Point II. That the contract was made in the State of New York, and the “*Lex loci contractus*” should govern.

And as to **Point I.** Want of Consent or Consent obtained by Fraud.

Marriage under our law is considered in no other light than as a civil contract (1 Black Com., p. 432). We find in it all the ingredients necessary to constitute a valid contract—Parties, consent, subject-matter and consideration. The law, however, in its wisdom exalted the marriage contract a grade higher than other civil contracts based on reasons springing from public policy. The distinction which exists between a marriage contract and other civil contracts arises after the marriage contract is consummated. For the law, having a peculiar regard for the social welfare, guards the marriage relation with peculiar jealousy. It prevents the parties from rescinding, while in other civil contracts no such restriction exists. In making, however, a marriage contract, the same requisites necessary to constitute a valid civil contract are required; and the peculiarity of the contract exists in the fact that the indissolubility of it does not attach unless all the previous essential elements necessary to make a valid contract are fully and fairly complied with. If fraud is used it vitiates it. Now, in a marriage contract we have parties, the male and female; consideration, the promise for promise; subject-matter, the marriage and consent.

For instance, where there is no consent, or consent is obtained by fraud, and all the other elements concur, can it be said that the peculiar status of a marriage contract attaches? Can it be considered a valid contract of marriage? Is it a contract at all? It cannot be considered a valid contract, for its most essential ingredient is lacking, that of consent. The contract it seems should be void *ab initio*. Now, in the case in question, we find A. an inexperienced man of 21; B. engages his affection and he consents to marry her; B., however, is pregnant, which fact she adroitly and effectually conceals from the knowledge of A. B. is aware in her own mind that if she discloses the fact to A. that she is with child by C., A. will refuse

to marry her. She remains perfectly silent, and allows A. to be misled and to defraud himself. A believes that in marrying B. he marries a chaste and virtuous woman, *and the offspring of such marriage shall be of his own blood and not that of another.* A. married B., and two months after marriage she gives birth to a child, upon which A. immediately leaves B. It is now contended that B. misled A. and practiced fraud on him by concealing her pregnancy; that their minds never met, because, if A. had full knowledge of the facts which were material, he would never have entered into a marriage contract with B. So skillful was the defendant in her manner of dressing, that even persons who were at the head of large families did not detect or suspect that the defendant was with child (notwithstanding their daily contact with her) until she gave birth to one. Although she made no express representations in respect to her chastity and virtue, she did by her acts and manner effectually conceal her condition from the knowledge of the complainant for the purpose of ensnaring him into a marriage with her, and in which she succeeded. It is settled in the State of Massachusetts that express representations are not necessary; and the Court held there as follows: "In order to sustain a petition for a sentence of nullity of marriage on the ground of fraud in the contract, that the woman was pregnant by another man than the petitioner at the date of the marriage, and that she fraudulently induced him to believe she was chaste, it is not necessary to prove express representations by the woman as to her chastity." (See 9 Allen, 140.) And this seems to be the general rule. The withholding of material facts which ought to be disclosed in other contracts, and which would have prevented the contract from being made, and thereby one of the parties to the contract is misled, being ignorant of such facts, such contract no doubt would be set aside by a Court of Equity on the ground of fraud.

"And if a woman be with child by a stranger and her intended husband be ignorant thereof, he shall have a divorce, for the fraud upon him vitiates the contract." (13 Cal., p. 87.)

And all the cases upon this topic show that where a woman is pregnant by a stranger, and conceals that fact from her intended husband, and he marries her on the faith that she is chaste and virtuous, and able to comply with the marital obligation and rights, and he discovers that she bears in her womb the fruits of an illicit intercourse, Courts of Equity will annul the marriage contract on the ground of fraud. Bish. on Mar. and Div., p. 19, sec. 105; Reynolds *v.* Reynolds, 3 Allen's Rep., 604, 606 and 607; Wright (Ohio) 1, p. 630; Scott *v.* Schufeld, 5 Paige Ch., p. 43; 9 Allen, 140.

The present case is one of far greater strength than those in which Courts of Equity have interfered. The testimony shows a clear case of deliberate fraud on part of the defendant. It is apparent from a careful perusal of all the cases above cited, that the powers of a Court of Equity were not invoked for the purpose of granting divorces for mere ante-nuptial incontinence or pregnancy, but upon the ground of fraud, by concealing the pregnancy from the knowledge of the complainant.

Courts of Equity have unlimited jurisdiction over cases of fraud, and their power in that respect is not questioned. Although there is no statutory power given to the Chancellor to grant divorces for any other causes except those specified in the statute, there is no restriction, nor ever has been, on the power of the Chancellor to vacate contracts fraudulently made. And whether a marriage or other civil contract, Courts of Equity have full power to set it aside. In New Jersey, in the case of McClurg *v.* Terry, 6 C. E. Green, p. 229, the Chancellor says: "In the State of New York Chancellor Kent and Chancellor Sandford, both held with statutes more restricted than that of New Jersey, that the power of declaring marriages void for fraud or force, was vested in the Court of Chancery. See Aymar *v.* Roff, 3 J. C. R., 49; Wightman *v.* Wightman, 4 J. C. R., 343; Ferlat *v.* Gojan, 1 Hopk. 478. And the Supreme Court of the State of Vermont, in Cark *v.* Field, 13 Vermont, 460, on appeal from Chancery, in a well considered opinion delivered by Chief Justice Williams, held that the

Court of Chancery of that State had the power, without any direct delegation of it for that purpose, to declare a marriage produced by fraud and force, to be void. I am satisfied that this Court has the power, and this is the proper case to declare the marriage a nullity." 6 C. E., Green, 228 & 229.

Point II. That the contract was made in the State of New York, and the *lex loci contractus* should govern.

It is a well settled rule of law, that a marriage, valid where it is made, is valid everywhere. This rule applies also *E converso*, that a marriage which is void where contracted, is valid nowhere. It may be added that to these general rules there are a few exceptions. See Parsons on Contracts, Vol. II, 598, and cases there cited. According to the laws of the State of New York, and especially under the rulings of Chancellors Kent, Sandford and Walworth, marriages tainted with fraud are void. Concealment of pregnancy is considered fraud in that State, and sufficient to set aside a marriage contract. See same and analogous principles held in *Aymar v. Roff*, 3 J. C. R., 49, *Wightman v. Wightman*, 4 J. C. R. 343, *Ferlat v. Gojan*, 1 Hopk. 478, *Scott v. Schufeldt*, 5 Paige 43. Therefore, if under the New York law, the said marriage, under the circumstances as set forth in the bill, and which is fully proved by the testimony in the cause, is void, it certainly cannot be considered valid in this State.

This assertion may be based on the reason that there was no legal marriage in New York, or, expressed in stronger terms, there was no marriage at all; the fact existing, however, that such marriages are not absolutely void, but may be avoided by the injured party at his or her option, it becomes necessary to invoke the powers of a Court of Equity to lend to it its judicial sanction. It is the unqualified right belonging to every person entrapped into such a marriage contract in the State of New York, to have it dissolved by a Court of Equity. It cannot be conceived, therefore, that there would be no remedy for such a case in New Jersey. "For ubi jus ibi remedium." If that

right existed in the State of New York, it certainly entered into the marriage contract, and that law should govern in respect to its effect. Thus, if under the New York law, an infant was able to make a binding contract for non-necessaries, there is no doubt that such contract could be enforced in this State, although if made in this State it would have been considered a voidable contract, and not enforceable against the infant.

The distinction which exists between statutes conferring power on courts to annul marriages contracted by force and fraud, and those which confer the power of granting divorces for certain causes arising after marriage, seems to be, that the former statutory powers are to be regarded as declaratory of the existing law, and that it enters into the very essence of the contract, while the latter power is remedial, pointing out a remedy or remedies for the violation of valid marriage contracts. See Act concerning Mar. and Div., N. Y. Rev. St., vol. 3, § 44, sec. 30; and *Scott v. Schufeldt*, 5 Paige, ch. 43.

It seems that, independent of the position taken in the above points, public policy demands that contracts of such kind, contracted in such a manner, should be annulled. The paramount aim of the law is to promote domestic and social order. And to compel a man to live with a woman who has been in the embraces of strangers, and who brings with her the fruits of an illicit intercourse, seems far away from promoting domestic and social order. Said the learned Ch. J. Bigelow, in the case of *Reynolds v. Reynolds*, 3 Allen, 610: "The rule of the common law is, 'that if a man marry a woman who is with child, it raises the presumption that the child with which she is pregnant was begotten by him,' etc. A man, therefore, who has contracted a marriage with a woman under such circumstances, if he could not obtain a divorce on the ground of fraud, would be subjected to the painful alternative of disowning the child, and thereby publishing to the world the shame of her who was still to remain his wife, or to suffer the presumption of legitimacy to stand, and admit the child of another to share in his

bounty and receive support in like manner as his own legitimate children." These are not the only evil results which may follow such an infelicitous marriage ; they are so numerous and palpable as not to claim here any particular mention.

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In Chancery of New Jersey.

Between
SOLOMON CARRIS,
Complainant,
and
BERTHA CARRIS,
Defendant.

Bill
for
Divorce.

To the Honorable A. O. Zabriskie, Chancellor of the
State of New Jersey :

Humbly complaining, showeth unto your orator, 10
Solomon Carris, of the city of Newark, in the county
of Essex, and State of New Jersey, was joined in the
bonds of matrimony to his present wife, Bertha Carris,
on the twelfth day of November, in the year one
thousand eight hundred and seventy-one, at the city of
New York, in the county of New York, and State of
New York, by the Reverend Doctor Tintner, a clergy-
man of the Jewish persuasion, officiating in the said
city of New York. That your orator and his said wife
then resided in the city of Newark, in the county of 20
Essex, and State of New Jersey, until the twentieth
day of January, in the year of our Lord one thousand
eight hundred and seventy-two, when the said Bertha
Carris, wife of your orator, was delivered of a healthy,
living, full-grown child, which your orator verily
believes to have been unlawfully begotten by some
person whom to your orator is at present unknown,
and the said Bertha Carris removed to the said city of
New York, where she now is, and your orator still
continues to reside in the said city of Newark. 30

And your orator further showeth unto your Honor, that at the time of the birth of said child of said Bertha Carris, wife of your orator, your orator had been only joined in wedlock to the said Bertha Carris two months and two days.

And your orator further showeth unto your Honor, that the year prior to his said marriage to the said Bertha Carris, he, the said Solomon Carris, was in business in the West and Northwest, and during all
10 that space of time, he, the said Solomon Carris, did not have any intercourse or access, with or to the said Bertha Carris, and that he arrived at the said city of Newark about six weeks prior to the time of his said marriage to the said Bertha Carris, where he has ever since continued to reside and still does reside.

And your orator further showeth unto your Honor, that he believed at the time of his said marriage to the said Bertha Carris, that the said Bertha Carris was chaste and virtuous, and that he entered into such
20 marriage contract with the said Bertha Carris, by reason of his faith and belief of her virtue and chastity.

And your orator further showeth unto your Honor, that the said Bertha Carris knew at the time of her said marriage to your orator, that she was not chaste and virtuous, and did willfully and fraudulently conceal from the knowledge of your orator that she, the said Bertha Carris, was with child by some person whom to your orator is unknown.

30 And your orator further showeth unto your Honor, that he would not have entered into said marriage contract had your orator been informed of the condition and unchastity of the said Bertha Carris, and that it was the proper duty of the said Bertha Carris to inform your orator before his said marriage to her, that she, the said Bertha Carris, was with child unlawfully begotten by some person whom to your orator is unknown, but she wholly failed and neglected so to do, but with intent to wickedly defraud and mislead

your orator, did keep, secrete, hide, and conceal her condition and unchastity from the knowledge of your orator, so that he was induced and led to believe she was chaste and virtuous, and thus induced to marry her by reason of such faith and belief, on the day and year aforesaid.

In tender consideration whereof, your orator prays that the marriage between your orator and the said Bertha Carris may be declared null and void, and that your orator may have such other and further relief in 10 the premises as may be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said Bertha Carris, commanding her on a certain day and under a certain pain, therein to be expressed, personally to be and appear before your Honor, in this honorable Court, then and there to make full and perfect answers to all and singular the premises, and to stand to, and 20 abide by and perform such orders, direction and decree as to your Honor shall seem meet, and in such case made and provided.

SAMUEL KALISCH,

Solicitor for Complainant.

C. L. C. GIFFORD,

Of Counsel with Complainant.

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

Personally appeared before me, a Master in Chan- 30
cery in and for said State, the complainant in the fore-
going bill, and who being by me duly sworn, saith,
that his bill of complaint is not made by any collusion
between him and the defendant in the said bill for the

purpose of annulling their marriage, but in truth and good faith for the cause set forth in the bill of complaint.

SOLOMON CARRIS.

Sworn and Subscribed before me, at Newark, N. J., this First day of March, A. D. 1872,

J. P. PENNINGTON, *Master in Chancery.*

10

{ L. S. }

NEW JERSEY, *to wit:*

The State of New Jersey, to Bertha Carris, Greeting:

We command you, that you personally appear before our Chancellor, in our Court of Chancery, on the eighteenth day of March, at Trenton, to answer to a bill of complaint, exhibited against you in our said Court, by Solomon Carris, and to do, further, and receive what our said Court shall have considered in that behalf; and this you are not to
20 omit, under the penalty of Five Hundred Dollars.

Witness his Honor, A. O. Zabriskie, Chancellor of our said State, at Trenton, the Fourth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

H. S. LITTLE, *Clerk.*

SAMUEL KALISCH, *Solicitor.*

NOTICE.—The defendants are not required to appear at Trenton in person, at the return day, but must cause a written appearance to be entered, by a solicitor or
30 otherwise, and answer the bill of complaint within the time required by law.

RETURN.

NEW JERSEY, }
 ESSEX COUNTY. } ss.

{ L. S. } Ebenezer W. Davis, Deputy Sheriff of the County of Essex, being duly sworn on his oath, saith, that he has enquired for the defendant within named, for the purpose of serving her therewith, and has not been able to find the said defendant in his county, and this deponent is credibly informed and verily believes that the said 10 defendant resides out of the State of New Jersey, to wit, in the State of New York.

EBENEZER W. DAVIS.

Sworn and Subscribed }
 before me, this Fifth day }
 of March, A. D. 1872. }

JAMES D. CLEAVER, *M. C. C.*

The service of this writ will appear by the affidavit hereon endorsed.

JAMES PECKWELL, *Sheriff*, 20

By EBENEZER W. DAVIS, *Deputy*.

IN CHANCERY OF NEW JERSEY.

To Bertha Carris :

By virtue of an order of the Court of Chancery of New Jersey, made on the nineteenth day of March, eighteen hundred and seventy-two, in a cause wherein Solomon Carris is complainant, and you are defendant, you are required to appear and plead, answer or demur to the bill of said complainant on or before the twentieth day of May next, or the said bill will be taken 30

as confessed against you. The said bill is filed against you for a divorce from the bonds of matrimony.

SAMUEL KALISCH,

Solicitor for Complainant, 782 Broad St., Newark, N. J.

Dated, Newark, March 27th, 1872.

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

Abner Kalisch being sworn on his oath, deposes and says, that he did on the twenty-seventh day of March, 10 in the year eighteen hundred and seventy-two, serve a copy of the above notice on Bertha Carris, in the city of New York, at her residence known as No. 50 Chrystie Street, in the said city, by leaving a copy of the above notice with her personally.

ABNER KALISCH.

Sworn and Subscribed before }
me, this Fourth day of April }
A. D. 1872, at Newark, }

{
N. P.
L. S.
}

CHARLES JACOT, *Notary Public.*

IN CHANCERY OF NEW JERSEY.

Between
SOLOMON CARRIS,
Complainant,
and
BERTHA CARRIS,
Defendant.

On Bill, &c.
Order for
Publication.

The complainant having filed his bill in the above cause, and process of subpoena having been issued and returned according to law; and it being made to 30 appear, by affidavit, that the defendant resides out of

the State of New Jersey, and that process could not be served upon her, it is on this nineteenth day of March, one thousand eight hundred and seventy-two, on motion of Samuel Kalisch, solicitor of the complainant, ordered, that the said absent defendant do appear and plead, demur or answer to the complainant's bill, on or before the twentieth day of May next, or that in default thereof, such decree be made against her as the Chancellor shall think equitable and just. And it is further ordered, that the notice of this order, 10 prescribed by the rules of this Court, shall within twenty days hereafter be served on the absent defendant, either by actual service upon said defendant personally, or by leaving the same at her residence, with a person of the family, or in default of such service, that said notice be published within the said twenty days in The Newark Evening Journal, a newspaper printed at Newark, in this State, and continued therein for six weeks successively, at least once in every week, and that a copy thereof be also mailed, within the same 20 time, to the said absent defendant, directed to her post-office address, if the same can be ascertained.

A. O. ZABRISKIE, C.

IN CHANCERY OF NEW JERSEY.

Between
SOLOMON CARRIS,
Complainant,
and
BERTHA CARRIS,
Defendant.

On Bill, &c.

*Order of
Reference.*

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Upon opening the matter to the Court in behalf of Samuel Kalisch, solicitor of the complainant, and it appearing that due notice of the order of this Court, made on the nineteenth day of March last, directing

the defendant to appear and plead, demur or answer to the complainant's bill, on or before the twentieth day of May, then next, has been duly published and served as is in said order directed and prescribed, and that the said defendant has not appeared, pleaded, demurred or answered to the same within the time limited by law and said order, but has wholly failed and neglected so to do. It is therefore, on this twenty-ninth day of May, A. D. eighteen hundred and

10 seventy-two, ordered, that it be referred to William Silas Whitehead, Esquire, one of the Special Masters of this Court, to ascertain and report as to the truth of the allegations of the complainant's bill and his opinion thereon; and that the complainant proceed to take depositions and other evidence before said special master, to substantiate and prove the allegations in said bill, and to bring on the hearing of the cause *ex parte*; and that the said master do return, together with his report, and as a part thereof, such depositions

20 and other evidence as may be taken before him in pursuance of this order.

A. O. ZABRISKIE, C.

Between
SOLOMON CARRIS,
Complainant,
and
BERTHA CARRIS,
Defendant.

On Bill, &c.
Depositions
and
Report of
Special Master.

To his Honor, Abraham O. Zabriskie, Chancellor of New Jersey:

30 I, the undersigned, one of the Special Masters in Chancery of New Jersey, to whom it was referred by an order of this Court, bearing date on the twenty-ninth day of May, in the year eighteen hundred and

seventy-two, to ascertain and report as to the truth of the allegations of the complainant's bill, and my opinion thereon, beg leave respectfully to report :

That I have been attended by Samuel Kalisch, Esquire, solicitor of the complainant, and in his presence have taken the depositions of the witnesses produced before me, which depositions are annexed to this report and form part thereof.

And I do further report, that said depositions prove to my satisfaction that the complainant and defendant 10 intermarried in the city of New York, on the twelfth day of November, in the year eighteen hundred and seventy-one, and that the marriage ceremony was performed by the Rev. Dr. Tintner, a clergyman of the Jewish persuasion.

And I do further report, that said depositions prove to my satisfaction that at some time in the latter part of January, in the year eighteen hundred and seventy-two, the defendant was delivered of a healthy, living, full-grown child. 20

And I do further report, that I am satisfied from said depositions, that the complainant was not the father of said child, he not having had access to the defendant for over a year prior to his marriage, and that the complainant, at the time of the marriage, had no knowledge or information that the said defendant was with child.

And I do further report, that at the time of said marriage, and at time of exhibiting the bill in this cause, the complainant was an actual resident in the State of New Jersey. 30

I do therefore report, that said depositions sustain the allegations of the complainant's bill. Inasmuch as the prayer of said bill is for a decree of nullity of the marriage contract on the ground of fraud, and not for a decree of divorce for the reasons specified in the statutes. I do not deem it to be within my province to report, whether or not in my opinion the decree prayed for should be granted. All which is respectfully submitted.

WM. SILAS WHITEHEAD,

Special Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between SOLOMON CARRIS, <i>Complainant,</i> and BERTHA CARRIS, <i>Defendant.</i>	}	<i>On Bill, &c.</i> <i>Depositions.</i>
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Depositions of witnesses in the above cause had and taken this fifth day of June, in the year of our Lord
 10 one thousand eight hundred and seventy-two, before the subscriber, one of the Special Masters in Chancery of New Jersey, at his office, No. 751 Broad Street, Newark, New Jersey, on behalf of the complainant, in the presence of Samuel Kalisch, Esq., solicitor for the complainant.

WM. SILAS WHITEHEAD,
Special Master in Chancery of New Jersey.

Solomon Carris, the complainant, being duly sworn on his oath, saith :

20 I am the complainant, am about twenty-two years old. I reside at No. 46 North Canal Street, Newark, N. J. I have resided in this city about seven months. My business is cigar-making. I know Bertha Carris; her maiden name was Elizabeth Fisher. I was married to her on the twelfth day of November, in the year eighteen hundred and seventy-one, in the city of New York, by the Rev. Dr. Tintner, a clergyman of the Jewish persuasion; the ceremony took place in East Broadway. Mr. Moses Cohen and Mr. Joseph Lehman
 30 were present. Before I was married I had been in Toledo, Ohio; I had been in Toledo about five or six months; before that, I had been in Laporte, Indiana, I was there about two months or so; I have lived in Utica, New York; I lived in Utica about three or four

months; I went to Laporte from Utica. I came to Newark from Toledo. I worked at all these places at the cigar-making business. I had been at Newark about two months before I was married. I lived at Newark before I went to Utica. I was away from Newark about twelve or fourteen months before I returned. I had known Elizabeth Fisher before I left Newark for the West. After we were married a little while my wife had a child. The child was born going on three months after we were married. It was a male 10 child. At that time I was living at No. 46 North Canal Street, Newark. I did not know at the time of the marriage that the defendant was with child. I had had no intercourse with her previous to the marriage. From the time I went to Utica until my return to Newark, I had not been to Newark or New York. The defendant at the time of the marriage lived in New York city. I had not seen the defendant at all from the time I went West until I returned to Newark. I would not have entered into the marriage with the 20 defendant if I had known of her pregnancy. I did not discover that she was with child until she gave birth to it. I could not find out any way until the night before she gave birth to the child, she told me that she felt bad; I asked her what was the matter with her; she said she had a pain in the side; I asked her if I might go for a doctor, she said, no, you needn't do that, I think I will get over it in a short time. The next morning, about six o'clock, she told me she felt worse; I told her I was going for a doctor, she said I 30 shouldn't go; I asked her if I might go to work as I couldn't do any good there, she wanted to know if I couldn't stay till about ten o'clock and then go to work, I said I couldn't well do it. I went to my work. Mr. Moses Cohen about ten o'clock brought me word that my wife had been confined. He told me he had heard it from some one else. I went home about eleven o'clock and found that my wife had been delivered of a child. I had a little conversation with her.

I asked her whose child that was, and told her it wasn't mine. She pretended to feel bad about it. I stopped at No. 46 North Canal Street that day. My father occupied the lower part of the house and I occupied the upper part. I stopped that day with my father. The next day I left the house. She concealed the matter from me by her manner of dressing. It was a pretty large child at its birth. Just before I left I asked her to tell me who was the father of the child; that, she said, she couldn't do. I believed at the time I married her that she was chaste and virtuous. From the time I left the house, I have never lived with the defendant; she went back to her father, and I went back to the house and lived with my father.

SOLOMON CARRIS.

Sworn and subscribed this }
 Fifth day of June, A. D. }
 1872, before me,

WM. SILAS WHITEHEAD,

20 *Special Master in Chancery of New Jersey.*

Moses Cohen, a witness produced and sworn, on the part of the complainant, on his oath, saith:

I know the complainant; I have known him for ten years. I reside at No. 74 Mulberry Street, Newark. My business is cigar-making; Mr. Carris is in my employ, and has had charge of my place since he came from the West; he came to Newark September 2d, 1871, and came to work for me September 5th. I knew the defendant; she was residing at that time in New York. Her name was Bertha Fisher. I know the time that the parties were married, I think it was November 12th, 1871, or about that time. Mr. Carris had been living at Newark before he left for the West. He was absent from Newark the last time in the neighborhood of thirteen months. He worked for me before he left for the West. The parties to this suit were married in East Broadway, New York; I was present

at the ceremony ; Mr. Lehman and his wife and several other people from Newark were present. I am a married man ; I have been married ten years ; I have four children living ; I have lost one. I saw the defendant at the marriage ; I had a conversation with her ; I did not discern that she was in a family way ; I had no suspicion of it ; I had a good opportunity for observing ; she was dancing around that night as I had seen her before she was married. The defendant was delivered of a child not quite three months after the marriage. The parties were living after the marriage in the upper part of No. 46 North Canal Street. Mr. Carris was working for me at the time the defendant was confined. I brought him the news of her confinement. After the complainant discovered that his wife had been confined, he left her and went to live at his father's house. I spoke to the defendant about nine or ten days after the confinement ; she said she was going to move the things to New York, that she was going to take everything with her. I had no conversation with her respecting the child. The parties were married by a clergyman of the Jewish persuasion. It was not more than four months from the return to Newark of the complainant, that the child was born.

M. COHEN.

Sworn and Subscribed this)
 Fifth day of June, A. D.)
 1872, before me, at Newark,)

WM. SILAS WHITEHEAD,
Special Master in Chancery of New Jersey.

30

Joseph Lehman, a witness produced and sworn on the part of the complainant, on his oath, saith :

I reside in the city of Newark. I have lived here for the last seven years. I am married. I have been married near seven years. I have no children of my own.

I am in the dry goods business ; my place of business is in the Centre Market. I know the complainant ; I have been acquainted with him for six or seven years. I know the defendant. I knew her before she was married. I had known her for five or six years. I know when Mr. Carris was married. The ceremony took place about the middle of November, A. D. 1871. The marriage took place in East Broadway, New York, two doors from Pike Street. The ceremony was performed by a Jewish clergyman by the name of Dr. Tintner. I was present. Mr. Cohen and his wife were present and several other gentlemen and ladies. Before Mr. Carris got married, I know he was out West, because I used to read his letters and answer his letters. He was West over a year. He left in July, 1870, and came home about the first of September, A. D. 1871. During that time I carried on the correspondence between the complainant and his family until the middle of August, 1871. I saw Mrs. Carris at the wedding. I had a conversation with her. I had an opportunity of observing her. I could not discern any evidence that she was with child. There was dancing there in which the defendant joined most every dance. After the marriage Mr. and Mrs. Carris resided at No. 46 North Canal Street. I live in the same house. I remember when Mrs. Carris was confined after her marriage. It was in the latter part of January, 1872. I was in the Market with my wife, went over to the house about ten o'clock in the morning, and when she came back in about half an hour, she told me that Mrs. Carris had been confined. I asked her if it was a miscarriage. She said no, it was a full-grown, healthy child. I told Mr. Cohen. I saw Mrs. Carris frequently while she lived at No. 46 North Canal Street. She had to pass my door going up and down. I was surprised when I heard that she was delivered of a child. I saw nothing in her appearance that would indicate that she was pregnant. Mr. Carris left the same day and went to his father's apartments and stayed there.

I saw Mrs. Carris go away. It was nine or ten days after her confinement.

JOSEPH LEEMAN.

Sworn and Subscribed this }
Sixth day of June, A. D. }
1872, before me, }

WM. SILAS WHITEHEAD,
Special Master in Chancery of New Jersey.

Solomon Carris, being recalled :

I did not know or hear before my marriage of any 10
conduct of my wife that led me to think or believe
that she was not a chaste woman.

SOLOMON CARRIS.

Sworn and Subscribed this }
Fifth day of June, A. D. }
1872, before me, }

WM. SILAS WHITEHEAD,
Special Master in Chancery of New Jersey.

Rosa Lehman, a witness produced by me, sworn on
the part of the complainant, on her oath, saith : 20

I am a married lady. I am the wife of Joseph
Lehman. I live at No. 46 North Canal Street, Newark,
New Jersey. I knew Bertha Carris, the defendant.
I have known her many years, while she was a girl.
She lived in Canal Street, Newark, before she moved
to New York. I know Solomon Carris. I was at the
wedding and saw him married. It took place in New
York City. I saw Mrs. Carris at the time of the wed-
ding. At the time of the wedding she was stout. She
wore hoops at the time. I couldn't tell whether she 30
was with child or not. I was present at the time that
the defendant gave birth to a child. That was eight or
nine weeks after the wedding. I was with her at the
time the child was born. It was born alive. It was a
full-grown child. I saw her constantly before she
gave birth to the child. She lived in the same house.

I did not know or expect that she was going to give birth to a child. Mrs. Carris, the mother of the complainant, was also present at the time the child was born. I couldn't tell from her appearance that she was going to have a child. I have two children, by a former husband, before I married Mr. Lehman.

ROSA ^{her}X LEEMAN.
mark

Sworn and Subscribed this }
Fifth day of June, A. D. }
10 1872, before me, }

WM. SILAS WHITEHEAD,
Special Master in Chancery of New Jersey.

RULE FOR HEARING, }
Entered June 8th, 1872. }

It is ordered, on motion of Samuel Kalisch, solicitor for complainant, that this cause be set down for hearing at the present May term of this Court, now being held at the State House, in the city of Trenton, as soon as counsel can be heard thereon.

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By the Court,

H. S. LITTLE, *Clerk.*

IN CHANCERY.

CARRIS, }
v }
CARRIS. }

The bill is filed for a divorce, on the ground of antenuptial incontinence, and on the ground that two months after marriage she was delivered of a full-grown child, gotten by some one besides the complainant, and had concealed her pregnancy from him.
30 Such want of chastity and concealment are no ground of divorce.

A. O. ZABRISKIE, *C.*

IN CHANCERY OF NEW JERSEY.

Between
 SOLOMON CARRIS,
Complainant,
 and
 BERTHA CARRIS,
Defendant.

On Bill
for
Divorce.

This cause coming on to be heard at the last regular term of the Court of Chancery of the State of New Jersey, in the presence of Samuel Kalisch, of counsel 10 with the complainant, no one appearing for the defendant, and *and* the pleadings, depositions, exhibits and proofs being read, and now, on this seventh day of August, in the year one thousand eight hundred and seventy-two, it appearing to the Chancellor, that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint. It is ordered, adjudged and decreed, that the complainant's said bill be, and the same is hereby dismissed.

A. O. ZABRISKIE, C. 20

IN CHANCERY OF NEW JERSEY.

Between
 SOLOMON CARRIS,
Complainant,
 and
 BERTHA CARRIS,
Defendant.

On Bill
for
Div., Null., &c. 30
Appeal.

The complainant, Solomon Carris, hereby appeals from the final decree made in this Court, in the above stated cause, made the seventh day of August, A. D.

eighteen hundred and seventy-two, to the Court of Errors and Appeals, in the last resort in all causes as heretofore.

SAMUEL KALISCH,
Sol. of Complainant.

Dated August 29th, 1872.

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

C. L. C. GIFFORD,
Of Counsel.

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NEW JERSEY COURT OF ERRORS AND
APPEALS,

IN THE LAST RESORT IN ALL CAUSES, &C.

Between
SOLOMON CARRIS,
Appellant,
and
BERTHA CARRIS,
Appellee.

*On Bill
for Divorce.
Petition
of Appeal
from
final Decree.*

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*To the Honorable, the Court of Errors and Appeals,
in the last resort in all causes as heretofore:*

The humble petition of Solomon Carris, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved, by a final decree, made in the Court of Chancery, by the Honorable Abraham O. Zabriskie, Chancellor of New Jersey, filed August the seventh, one thousand eight hundred and seventy-two, in a suit, wherein the said Solomon Carris was complainant, and the said Bertha Carris was defendant, in respect that the said decree ordered, adjudged and decreed that the complainant's bill be dismissed.

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And your petitioner humbly appeals from the said decree of the Chancellor, upon the ground, that the same is inequitable and erroneous, for that the complainant is entitled to the relief sought and prayed for by him in his said bill of complaint.

Your petitioner therefore prays, that the said decree of the Chancellor be reversed, set aside and for nothing holden, and that your petitioner may have such relief as to this honorable Court shall seem meet. Dated the twenty-ninth day of August, A. D. eighteen hundred 10 and seventy-two.

SAMUEL KALISCH,

Sol. of Appellant,

C. L. C. GIFFORD,

Of Counsel.