

pestering and annoyance to which he had subjected her, made her health precarious; that the husband suffered from delusions as to the infidelity of his wife, and it would be unsafe, both as to health and life, for her to return to him; and that the plaintiff had made out a case for alimony. The husband said he was willing to support the wife in another house; and the learned Judge found that the husband was not dishonest when he said that.

It appeared clear that the mental decay of the appellant was an essential element in the judgment that was rendered. This should be tried out, where it becomes an issue, in the fullest possible way, and before it becomes an issue it ought to be set out in the record. So serious a matter should not be investigated without both parties being prepared for its discussion, nor unless definitely raised by pleading.

Whether the trial Judge was right in his deductions was not the question. Probably he was not far astray. But, even if he was correct, it was questionable whether the proper judgment was one for payment of alimony. If the husband's delusions affected his general sanity, due protection must be accorded under the Rules. If the delusions did not affect his general sanity, there was a question whether the evidence of the men was admissible until the husband had testified to his belief in the truth of his own assertions—something he could hardly do if they were the product of an abnormal mind. See *Walker v. Walker* (1898), 77 L.T.R. 715. And the evidence of the sole alienist called was greatly weakened by the fact that it was based altogether upon his day in Court. He had no previous knowledge of the appellant and did not see him in the box.

With a view to a full investigation of the issues involved, there should be a new trial, before which all proper amendments should be made by both parties.

Costs of the last trial should be in the cause, and the costs of the appeal should be to the appellant in any event.

*Order for a new trial.*