

## LUPTON v. LUPTON.

4-7890

194 S. W. 2d 686.

Opinion delivered May 27, 1946.

1. DIVORCE—EVIDENCE.—The testimony of appellee and his witnesses was sufficient to establish indignities and intolerable conduct on the part of appellant entitling appellee to a divorce.
2. APPEAL AND ERROR.—While there is some conflict in the testimony, it cannot be said that the finding and decree of the chancellor were against the preponderance of the evidence.
3. DIVORCE—APPEAL AND ERROR.—The decree of the chancellor will not be reversed, unless it is against the weight of the evidence.

Appeal from Garland Chancery Court; *Sam W. Garratt*, Chancellor; affirmed.

*Jay M. Rowland*, for appellant.

*William G. Bowic*, for appellee.

ROBINS, J. Appellee brought this suit praying for divorce from appellant on the ground that appellant had been guilty of such indignities toward him as to render his condition in life intolerable. Appellant's answer was a general denial of the charges against her. The lower court found the issues in favor of appellee and from decree granting him a divorce this appeal is prosecuted.

For reversal appellant argues that the evidence is not sufficient to sustain the decree.

These parties were married in 1920, and have two grown children. According to appellee's testimony appellant, for a number of years before their separation, had quarreled at appellee, upbraiding him at mealtime until he could not eat in peace and nagging him at night until he could not sleep; and appellee asserted that this conduct on the part of appellant was such as to injure his health. There was some corroboration of appellee's version of the matter, and, taken as a whole, the testimony of appellee and his witnesses was sufficient to

establish the indignities and intolerable conduct which we have held sufficient ground to entitle the innocent spouse to a divorce. *Rose v. Rose*, 9 Ark. 507; *Preas v. Preas*, 188 Ark. 854, 67 S. W. 2d 1013; *Welborn v. Welborn*, 189 Ark. 1063, 76 S. W. 2d 98.

While the effect of the testimony of appellant and her witnesses was to contradict the appellee and his witnesses, we cannot say that the findings and decree of the lower court were against the preponderance of the testimony. Therefore, under our long established rule that we do not reverse the decree of a chancery court on a question of fact, unless the finding of the lower court is against the weight of the evidence, the decree appealed from must be affirmed. *Giberson v. Wilson*, 79 Ark. 581, 96 S. W. 137; *Bank of Pine Bluff v. Levi*, 90 Ark. 166, 118 S. W. 250; *O'Neal v. Ross*, 100 Ark. 555, 140 S. W. 743; *Fisher v. The Rice Growers Bank*, 122 Ark. 600, 184 S. W. 36; *Reeves v. Reeves*, 165 Ark. 505, 264 S. W. 979; *Horn v. Hull*, 169 Ark. 463, 275 S. W. 905; *Atwood v. Ballard*, 172 Ark. 176, 287 S. W. 1001; *Field v. Koonce*, 178 Ark. 862, 12 S. W. 2d 772, 68 A. L. R. 1303; *Jackson v. Banks*, 182 Ark. 1185, 33 S. W. 2d 40; *White v. Williams*, 192 Ark. 41, 89 S. W. 2d 927; *Piggott Nursery Company v. Davis*, 195 Ark. 738, 113 S. W. 2d 1102; *High v. Bailey*, 203 Ark. 461, 157 S. W. 2d 203; *Burnett v. Clark*, 208 Ark. 241, 185 S. W. 2d 703.

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