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New Jersey State Library

Notice of Appeal.

(Filed July 12, 1944)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

On Petition for Divorce, etc.

The petitioner hereby appeals from the whole of the order made in the court in the above entitled cause on the 11th day of July, 1944, adjudging the petitioner in contempt of court and ordering him to pay the defendant the sum of $162.00 and to be committed to the County Jail until he pays said sum, together with costs and a counsel fee of $200.00, to the Court of Errors and Appeals in the last resort in all causes.

Dated: July 11, 1944.

HYMAN HALPERN,
Solicitor of Petitioner.

ARTHUR J. CONNELLY,
Of Counsel with Petitioner.

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

ARTHUR J. CONNELLY,
Of Counsel with Petitioner.

Sat Below: Robert D. Grosman, A.M.

Service of a copy acknowledged July 11, '44.

Ernest F. Masini,
Solicitor of Respondent.

Petition of Appeal.
(Filed August 1, 1944)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Michael Giresi, *Petitioner-Appellant,* vs. Rose Giresi, *Defendant-Respondent.*	On Petition for Divorce. On Appeal from Chancery.

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Michael Giresi, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery by His Honor, Luther A. Campbell, Chancellor of the State of New Jersey, bearing date July 11, 1944, in a cause entitled as above, in these respects, to wit, that the said order orders and adjudges that the petitioner is guilty of contempt of court

in that he willfully violated the decree requiring him to pay $162.00 being the total amount due and owing under the terms of the Final Decree up to and including December 16, 1943; and said order orders the petitioner to be committed until he shall pay the said sum of $162.00 together with taxed costs including a counsel fee of $200.00; and that a warrant issue for this purpose.

Your petitioner humbly appeals from said portions of said order on the ground that the same are erroneous in that the evidence did not justify the court in finding the petitioner guilty of contempt; but that the evidence required to find that the petitioner was under no duty to pay any alimony, costs or counsel fee by reason of the fact that a final decree of divorce had been granted unto the petitioner against the defendant by the State of Nevada on November 6, 1943, dissolving the contract of marriage; that the defendant appeared and was represented in said action and said decree still remains in full force and effect, not having in any wise been reversed, annulled or modified. That said court should have dismissed the petition to hold the defendant in contempt and should not have allowed a counsel fee or costs.

Your petitioner therefore prays that the said order of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that the record may be remitted to the Court of Chancery with direction to reverse and set aside the order of July 11, 1944, and that your petitioner may have such

other and further relief in the premises as to this Honorable Court shall seem meet.

HYMAN HALPERN,
Solicitor of Appellant.

ARTHUR J. CONNELLY,
Of Counsel with Appellant.

Order.
(Filed July 11, 1944)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

This matter being opened to the Court by Ernest F. Masini, Solicitor for the Defendant, and it appearing to the Chancellor that an Order was entered in this cause on the 23rd day of December, 1942, wherein and whereby it was, among other things, ordered that the petitioner, Michael Giresi, pay to the defendant, Rose Giresi, the sum of $624 in weekly installments of $12 each, together with taxed costs and a counsel fee of One Hundred Dollars ($100); that there-

after petitioner failed to make the payments required under the terms of the said Order to be made; that an Order to Show Cause was made returnable on January 4, 1944, why the petitioner should not be adjudged guilty of a contempt of this court for his failure to obey the terms of the said Order; that hearing of the said Order to Show Cause was adjourned from time to time and the matter was finally argued before me in open court on January 25, 1944; and the court having heard the arguments of respective counsel and having considered the affidavits filed herein, and it now appearing that the said Michael Giresi is guilty of the contempt charged and that he has willfully violated the Order of this Court mentioned in the said Order to Show Cause;

It is on this 11 day of July, 1944, by the Chancellor, ORDERED AND ADJUDGED that the said Michael Giresi is guilty of contempt of this Court in that he has willfully violated the Decree requiring him to pay to the defendant the sum of $162.00, being the total amount due and owing under the terms of the said Final Decree up to and including December 16, 1943, the date of the filing of the Petition.

And it is further ORDERED that the said Michael Giresi be committed to the County Jail of the County of Essex or to such other jail in this State where he may be apprehended and there remain until he shall pay the defendant or to her Solicitor the aforesaid sum together with the costs of these proceedings to be taxed, including a counsel fee of $200, which is hereby adjudged to be a reasonable counsel fee, unless the Chan-

cellor shall see fit sooner to discharge him; and that a Warrant issue for this purpose accordingly.

Respectfully advised,

ROBERT D. GROSMAN, A.M.

LUTHER A. CAMPBELL, C.

Summons.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

No. 76102—Dept. No. 1.

MICHAEL GIRESI, *Plaintiff,*

vs.

ROSE TABON GIRESI, *Defendant.*

The State of Nevada Sends Greetings to the Said Defendant . . .

You are hereby summoned to appear within ten days after the service upon you of this Summons, if served in said county, or within twenty days if served out of said county but within said Judicial District, and in all other cases

within thirty days (exclusive of the day of service), and defend the above-entitled action. This action is brought to recover a judgment, against you, granting to Plaintiff a decree of divorce, forever dissolving the bonds of matrimony now existing between you and Plaintiff on the ground of living apart for three consecutive years, without cohabitation, as will more fully appear from the verified complaint on file herein.

Dated this 15th day of June, A. D. 1943.

E. H. BEEMER,
Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County.

OLIVER C. CUSTER,
153 N. Virginia St.
Reno, Nevada,
Attorney for Plaintiff.

By: A. G. CAUGHLIN, *Deputy.*

Complaint.

No. 76102—Dept. No. 1.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

MICHAEL GIRESI,
Plaintiff,

vs.

ROSE TABON GIRESI,
Defendant.

Filed
Jun 15 3:36 PM '43
E. H. BEEMER, Clerk
By A. G. Caughlin
Deputy

COMES NOW the above named Plaintiff and complaining of the Defendant for cause of action against, and divorce from, Defendant, alleges and avers as follows:

I.

That the Plaintiff is now, and for more than six weeks immediately preceding the commencement of this action has been, an actual bona fide resident of the County of Washoe, State of Nevada, and during all of said time has been actually, physically and corporeally present in said

County and State, and still is, and during all of said time has had his actual residence and home in said County and State and took up his residence and home with an intention to remain permanently, which intention continued during all of said time, and still continues, and Plaintiff still resides in said County and State aforesaid; and that the said Plaintiff is now domiciled in the City of Reno, County of Washoe, State of Nevada, with an intention to make his permanent home in said County for an indefinite period of time.

II.

That Plaintiff and Defendant were married in Brooklyn, New York, on the sixteenth day of June, 1908, and ever since said date have been, and now are, husband and wife.

III.

That there are no minor children, the issue of said marriage.

IV.

That there is no community property belonging to the Plaintiff and the Defendant in the State of Nevada, or elsewhere.

V.

That the Plaintiff and the Defendant have lived apart for three consecutive years, without cohabitation; that the Plaintiff gave the Defend-

ant no reason, cause or provocation or justification for this living apart from him.

WHEREFORE, Plaintiff prays Judgment:

1. That the bonds of matrimony now existing between Plaintiff and Defendant be dissolved and that each of the parties to this action be restored to the status of single persons and that Plaintiff be granted an absolute decree of divorce from Defendant.

2. That Plaintiff have all further and proper orders and receive general relief.

OLIVER C. CUSTER,
Attorney for Plaintiff.

STATE OF NEVADA, }
COUNTY OF WASHOE. } ss.:

MICHAEL GIRESI, of full age, being first duly sworn deposes and says as follows:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

MICHAEL GIRESI.

Subscribed and sworn to before me
this 15th day of June, 1943.

FRANCES M. SCOTT,
Notary Public in and for the County
of Washoe, State of Nevada.
My Commission Expires Sept. 25, 1943.

(Notarial Seal)

I, OLIVER C. CUSTER, attorney for the Plaintiff herein, hereby certify that the foregoing is a full, true and correct copy of the complaint filed and summons issued in the foregoing action.

OLIVER C. CUSTER.

Answer.

No. 76102

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

MICHAEL GIRESI,
Plaintiff,

vs.

ROSE TABON GIRESI,
Defendant.

MORLEY GRISWOLD and GEORGE L. VARGAS,
Attorneys for Defendant.

COMES NOW defendant above named and answering the complaint of plaintiff filed herein, says that:

I.

Defendant does not have sufficient information to form a belief as to the actual bona fide residence of the plaintiff in the County of Washoe and State of Nevada and, therefore, neither admits nor denies the same. However, defendant does deny that the plaintiff is or at any time was an actual bona fide resident of said County with the intention to remain, and states that the plaintiff's presence in Nevada is only temporary and solely for the purpose of securing a divorce. Defendant further denies that plaintiff is or ever was actually domiciled in the State of Nevada.

II

Defendant admits that she was married to the plaintiff as set forth in Paragraph II of the Complaint.

III.

Defendant admits Paragraph III of the Complaint.

IV.

Defendant admits the allegations of Paragraph IV of the Complaint.

V.

Defendant admits that she and the plaintiff have lived separate and apart for three consecutive years without cohabitation; defendant denies that the plaintiff gave her no reason, cause, provocation or justification for thus living apart from him but, on the contrary, states that the plaintiff without any justifiable cause whatsoever, deserted and abandoned the defendant and failed and refused to support her.

AS AND FOR A FIRST FURTHER SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, THIS DEFENDANT ALLEGES:

I.

Defendant denies that this Court has jurisdiction to grant a decree of divorce to the plaintiff.

Answer.

AS AND FOR A SECOND FURTHER SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, THIS DEFENDANT ALLEGES:

I.

Defendant alleges that this plaintiff is attempting to perpetrate a fraud upon this Court in that this plaintiff has falsely alleged that he has actually domiciled in the State of Nevada, whereas in truth and fact, said plaintiff has no intention whatsoever of remaining for an indefinite period in the State of Nevada or of regarding the State of Nevada as his home, but has merely gone to the State of Nevada as a temporary measure and solely for the purpose of obtaining a decree of divorce.

AS AND FOR A THIRD FURTHER SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, THIS DEFENDANT ALLEGES:

I.

Defendant alleges that the matters set forth in the plaintiff's Complaint are *res judicata* against him and have already been adjudicated adversely to him by the Decree of the Court of Chancery of New Jersey made on the 23rd day of December, 1942, a copy of which is annexed hereto, made a part hereof and marked "Schedule A."

II.

Defendant further states that on or about December 6, 1941, the plaintiff filed his Petition for

Answer.

Divorce against the defendant in the Court of Chancery of New Jersey, alleging therein that the defendant deserted him on October 1, 1938, ever since which time she willfully, continuously and obstinately deserted him. A copy of said Divorce Petition is annexed hereto and made a part hereof and marked "Schedule B."

III.

Thereafter, in the same suit, the defendant filed her Answer and Counterclaim wherein defendant denied the allegations of the Plaintiff's Petition and counterclaimed for a Decree of Separate Maintenance upon the ground that the plaintiff deserted and abandoned this defendant without justifiable cause.

IV.

Defendant appeared generally in said suit, and the Decree annexed hereto marked "Schedule A" was rendered. The New Jersey Court of Chancery is a Court of record, and had jurisdiction both of the parties and of the subject matter of said suit, and its Decree is *res judicata* and entitled to full faith and credit in the Courts of any and all States of the United States under the provisions of the Federal Constitution in such case made and provided.

V.

After the rendition of said Decree, the plaintiff failed and refused to abide by the terms thereof and was adjudicated in contempt of the New Jersey Court of Chancery for his willful failure and

refusal to abide by its Order, and on or about the 15th day of June, 1943, a Warrant issued for his arrest and commitment by reason of the said contempt. The said Warrant is now in the hands of the Sheriff of the County of Essex, State of New Jersey, for service but the said Sheriff has been unable to effect service upon the plaintiff.

AS AND FOR A FOURTH FURTHER SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT ON FILE HEREIN, THIS DEFENDANT ALLEGES:

I.

The plaintiff by his conduct in abandoning his marital obligations and in evading service of process of the New Jersey Court of Chancery, as set forth in the Third Separate Defense herein, is estopped from seeking the relief of the court of conscience in the premises.

WHEREFORE defendant prays that plaintiff take nothing by his said complaint, and that the same be dismissed; that defendant have judgment for her costs and attorneys' fees herein, and for such other and further relief as may seem just and equitable.

MORLEY GRISWOLD,
GEORGE L. VARGAS,
Attorneys for Defendant.

Answer.

STATE OF NEVADA, }
COUNTY OF WASHOE, } ss.:

MORLEY GRISWOLD, being first duly sworn, deposes and states: That he is an attorney at law, regularly and duly admitted to practice in the State of Nevada, and that he resides and has his law offices in the City of Reno, County of Washoe, State of Nevada; that he is one of the attorneys acting as counsel for Rose Tabon Giresi, the defendant named in the above and foregoing Answer; that the said defendant is absent from the county where her attorneys, Morley Griswold and George L. Vargas, reside and maintain their offices, to-wit, Washoe County, Nevada; and that he makes this verification by reason of the absence of the said defendant from the said County of Washoe; and said verification is not made by said Rose Tabon Giresi because of her absence from the said Washoe County, as aforesaid; that the said Morley Griswold has read the foregoing Answer and knows the contents thereof; that the facts therein contained and alleged are not within his personal knowledge; but that deponent is informed and verily believes and therefore alleges that the facts and matters contained, set forth and alleged in said Answer are true.

MORLEY GRISWOLD.

Subscribed and sworn to before
me this 9th day of August, 1943.

LYNN QUILI,
Notary Public in and for the County
of Washoe, State of Nevada.

(Seal)

Subscribed and sworn to before me
this 15th day of June, 1943.

FRANCES M. SCOTT,
Notary Public in and for the County
of Washoe, State of Nevada.
My Commission Expires Sept. 25, 1943.

(Notarial Seal)

I, OLIVER C. CUSTER, attorney for the Plaintiff herein, hereby certify that the foregoing is a full, true and correct copy of the complaint filed and summons issued in the foregoing action.

OLIVER C. CUSTER.

Exemplified Copy of Decree of Divorce of State of Nevada.

No. 76102—Dept. No. 1.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

MICHAEL GIRESI,
Plaintiff,

vs.

ROSE TABON GIRESI,
Defendant.

Decree.

This case came on regularly for trial on this sixth day of October, 1943, before the undersigned Judge of said Court, sitting without a jury, Plaintiff being present in person and by his attorney, Clyde D. Souter, Esquire, Defendant being present by her attorneys, Morley Griswold, Esquire, and George L. Vargas, Esquire, and such proceedings were regularly had herein that on the same day the Court rendered its decision in favor of the Plaintiff and against the Defendant, made and entered herein its certain Findings of Fact and Conclusions of Law and ordered that Judgment be entered accordingly.

NOW, THEREFORE, in consideration of the premises and in conformity with said Decision, Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Exemplified Copy of Decree of Divorce of State State of Nevada.

That Plaintiff be, and he hereby is, granted a decree of divorce from Defendant, final and absolute in form, force and effect, the laws of the State of Nevada providing no interlocutory period or conditions or restrictions on remarriage, on the ground provided by Statutes of Nevada, 1931, Chapter 111, "An Act creating and providing an additional cause for divorce," approved March 23, 1931, and as amended by Statutes of Nevada, 1939, Chapter 23, which amendatory act was approved February 23, 1939; and that the bonds of matrimony now and heretofore existing between Plaintiff and Defendant are fully, completely and forever dissolved, and that Plaintiff and Defendant are both and each hereby restored to the status of single persons.

DONE IN OPEN COURT this sixth day of October, 1943.

WM. MCKNIGHT (signed)
District Judge.

Filed October 13 4:41 P.M. '43

E. H. BEEMER, Clerk

By A. Whitehead (signed).
Deputy.

Order to Show Cause.
(Filed Sept. 21, 1943)

IN CHANCERY OF NEW JERSEY.
150/682.

ROSE TABON GIRESI,
Complainant,

vs.

MICHAEL GIRESI,
Defendant.

On Bill, &c.

Upon reading and filing the verified bill of complaint of the complainant herein, from which it sufficiently appears that immediate, substantial and irreparable injury will probably be suffered by the complainant unless an ad interim restraint be ordered pursuant to the prayer of said bill;

It is, on this 21st day of September, 1943, on motion of Ernest F. Masini, solicitor of complainant, ORDERED, that defendant, Michael Giresi, show cause before this court at Chancery Chambers, No. 1060 Broad Street, Newark, New Jersey, on the 19th day of October, 1943, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an Order should not be made enjoining and restraining him from proceeding further in any wise with the prosecution of the action brought by him in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, mentioned in the bill of complaint, and from instituting and prosecuting any other proceeding against the

complainant herein for divorce, or involving the matrimonial status of the parties, in the State of Nevada or elsewhere than New Jersey, pending this suit, and until the further order of the court.

And it is further ORDERED that, in the meantime and until the further order of this court, said defendant, his solicitors, attorneys, counsel and agents do absolutely desist and refrain from taking any further steps in said proceeding, and from instituting and prosecuting any other proceedings against the complainant herein for divorce, or involving the matrimonial status of the parties in the State of Nevada or elsewhere than in the State of New Jersey.

And it is further ORDERED that a copy of this Order and of the said bill of complaint and affidavit, which copies may be certified as true copies by the complainant's solicitor, be served upon said defendant, Michael Giresi, either personally or by mailing the same by registered mail, with return receipt requested, in care of his solicitor in the said Nevada proceedings, and that a copy thereof be mailed to said solicitor within one week from the date hereof.

And it is further ORDERED that the defendant may move to dissolve, enlarge or modify the restraint herein ordered upon not more than two days' notice.

Respectfully advised,

ROBERT D. GROSMAN,
A.M.

LUTHER A. CAMPBELL,
C.

Bill of Complaint.
(Filed Sept. 21, 1943)

IN CHANCERY OF NEW JERSEY.

To His Honor, Luther A. Campbell, Chancellor of the State of New Jersey:

The complainant, Rose Tabon Giresi, residing at 646 Elm Street in the Town of Kearny, County of Hudson and State of New Jersey, respectfully shows that:

1. Complainant and Michael Giresi, who is the defendant herein, were married in the Borough of Brooklyn, State of New York, on June 16, 1908, and continuously thereafter until the month of October, 1938, resided together and cohabited as husband and wife in the Town of Kearny aforesaid.

2. In the month of October, 1938, and ever since said time, the defendant herein abandoned and deserted complainant and has ever since remained away from the matrimonial domicile.

3. On or about December 8, 1941, the defendant, Michael Giresi, instituted a suit for divorce in the Court of Chancery of New Jersey against the complainant herein alleging desertion; and in the said suit the complainant herein filed her Answer and Counterclaim wherein she denied the allegations of the divorce petition filed by the defendant herein and prayed for a Decree for separate maintenance.

4. Such proceedings were had in the said matrimonial action pending as aforesaid in this Hon-

orable Court that on December 23, 1942, a Final Decree was entered therein by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, adjudging that the petitioner's (the defendant herein) petition be dismissed and that the said Michael Giresi do pay to the complainant herein, or to her Solicitor, the annual sum of $624.00 in equal weekly installments of $12.00, together with taxed costs and counsel fees.

5. The said Michael Giresi, defendant herein, failed to abide by the said Order of this Court, and absconded and left the jurisdiction of this Court so that, on June 15, 1943, an Order was made by this Court directing that a Warrant issue for the apprehension of the said Michael Giresi by reason of his contempt in failing and refusing to obey said Order of this Court. A Warrant was issued thereunder to the Sheriff of Essex County, which Warrant is still outstanding and the Sheriff has been unable to serve the same by reason of the fact that the said Michael Giresi has absconded and left the jurisdiction of this Court.

6. On the 22nd day of June, 1943, complainant was served with what purports to be a Summons and Complaint for divorce brought by said defendant, Michael Giresi, against the complainant in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

7. According to the provisions of which, complainant must answer said Complaint in the Second Judicial District Court of the State of Nevada within thirty days after service upon her

as aforesaid. A true copy of said Summons and Complaint is attached hereto and made a part hereof.

8. In and by the allegations of the said Nevada complaint, the defendant herein set—"1. That plaintiff is now and for more than six weeks last past has been an actual bona fide resident of the City of Reno, County of Washoe, State of Nevada." That the said allegation is false, and that said defendant is not and never has been a bona fide resident of the State of Nevada, but is still domiciled in the City of Newark, New Jersey, and that said pretended residence claimed by the said defendant in Nevada is in fraud of the said Nevada Court, of the State of New Jersey and of complainant, and is alleged by the said defendant for the purpose of inducing the said Nevada Court to grant a decree of divorce from the bond of said marriage to said defendant herein, who is a resident of this State, for an alleged cause which occurred while the parties resided in this State (and for an alleged cause which is not ground for divorce under the laws of this State), contrary to the provisions of the statute in such case made and provided, and that, if the said defendant herein shall obtain such a decree from the said Nevada Court the same will be of no force and effect in this State.

9. The said acts and conduct of defendant herein are inequitable and unjust and complainant is entitled to the protection of the injunctive orders and decrees of this Court for the preservation of the status of said marriage.

Bill of Complaint.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Michael Giresi, who is the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That the said Michael Giresi, his solicitors, attorneys, counsel and agents, be ordered and decreed to desist and refrain from proceeding further in any respect with the said action instituted by him against complainant in the said Nevada Court, and from entering or taking any order or decree therein, excepting a decree dismissing the said suit, and that he be decreed to desist and refrain from commencing and prosecuting any other proceedings to secure a divorce or concerning the said matrimonial status in the said State of Nevada or elsewhere than in the State of New Jersey.

3. That a writ of subpoena may issue commanding the said Michael Giresi to answer this bill of complaint and to abide by such orders and decrees as this Court may make herein.

ERNEST F. MASINI,
Solicitor of Complainant.

FRANK G. MASINI,
Of Counsel.

Bill of Complaint.

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

ROSE TABON GIRESI, of full age, being duly sworn, according to law, upon her oath, deposes and says that:

1. I am the complainant in the foregoing bill of complaint mentioned. I have read the same and am familiar with the contents thereof, and the matters and things therein set forth are true.

2. The said Michael Giresi and I were married in the Borough of Brooklyn, State of New York, on June 16, 1908, and continuously thereafter until the month of October, 1938, resided together and cohabited as husband and wife in the Town of Kearny, County of Hudson and State of New Jersey.

3. In the month of October, 1938, and ever since said time, the said Michael Giresi abandoned and deserted me and has ever since remained away from the matrimonial domicile.

4. On or about December 8, 1941, the said Michael Giresi instituted a suit for divorce in the Court of Chancery of New Jersey against me alleging desertion; and in the said suit I filed my Answer and Counterclaim wherein I denied the allegations of the divorce petition filed by the said Michael Giresi and prayed for a Decree for separate maintenance.

5. Such proceedings were had in the said matrimonial action pending as aforesaid in this Hon-

orable Court that on December 23, 1942, a Final Decree was entered therein by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, adjudging that the petitioner's petition be dismissed and that the said Michael Giresi do pay to me, or to my Solicitor, the annual sum of $624.00 in equal weekly installments of $12.00, together with taxed costs and counsel fees. Copies of the said Petition, Answer and Counterclaim and Final Decree are annexed hereto.

6. The said Michael Giresi failed to abide by the Order of this Court, and absconded and left the jurisdiction of this Court so that, on June 15, 1943, an Order was made by this Court directing that a Warrant issue for the apprehension of the said Michael Giresi by reason of his contempt in failing and refusing to obey said Order of this Court. A Warrant was issued thereunder to the Sheriff of Essex County, which Warrant is still outstanding and the Sheriff has been unable to serve the same by reason of the fact that the said Michael Giresi has absconded and left the jurisdiction of this Court.

7. On the 22nd day of June, 1943, I was served with what purports to be a Summons and Complaint for divorce brought by said defendant, Michael Giresi, against me in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

8. According to the provisions of which, I must answer said Complaint in the Second Judicial District Court of the State of Nevada within thirty days after service upon me as aforesaid.

9. In and by the allegations of the said Nevada complaint, the said Michael Giresi set up—"1. That he is now and for more than six weeks last past has been an actual bona fide resident of the City of Reno, County of Washoe, State of Nevada." That the said allegation is false, and that the said Michael Giresi is not and never has been a bona fide resident of the State of Nevada, but is still domiciled in the City of Newark, New Jersey, and that said pretended residence in the State of Nevada claimed by the defendant is in fraud of the said Nevada Court, of the State of New Jersey and of me, and is alleged by the said defendant for the purpose of inducing the said Nevada Court to grant a decree of divorce from the bond of our said marriage to said defendant herein, who is a resident of this State, for an alleged cause which occurred while we resided in this State (and for an alleged cause which is not ground for divorce under the laws of this State), contrary to the provisions of the statute in such case made and provided, and that, if the said defendant herein shall obtain such a decree from the said Nevada Court the same will be of no force and effect in this State.

10. The said acts and conduct of the said Michael Giresi are inequitable and unjust and I am entitled to the protection of the injunctive orders and decrees of this Court for the preservation of the status of said marriage.

ROSE TABON GIRESI.

Sworn to and subscribed before me
this 20th day of September, 1943.

DORIS NEWMAN,
Notary Public of New Jersey.
My Commission Expires Oct. 26, 1947.

Final Decree.
(Filed Dec. 23, 1942)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

This cause coming on to be heard in the presence of Anthony E. Casale, Solicitor for the Petitioner, and Ernest F. Masini, Solicitor for the Defendant, upon Petition, Answer, Counterclaim and Answer thereto, and upon proofs being taken in open Court, and the Court having heard and considered the pleadings and proofs and the arguments of Counsel, and it appearing that the Petitioner and Defendant were lawfully married on the 16th day of June, 1908, and that Peti-

tioner has failed to sustain the allegations of his Petition and that the same should be dismissed; and it further appearing that the jurisdiction herein has been acquired by personal service of process upon the Defendant within this State, and that the Defendant filed her Counterclaim against the Petitioner for separate maintenance, and it now appearing from the pleadings, proofs and arguments of Counsel to the satisfaction of the Chancellor that the Petitioner, without any justifiable cause, abandons the Defendant and refuses and neglects to maintain and provide for her;

It is thereupon, on this 23rd day of December, 1942, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, and of the acts of the Legislature in such case made and provided, does hereby ORDER, ADJUDGE AND DECREE that the Petitioner's Petition be dismissed with costs, and

It is further ORDERED, ADJUDGED AND DECREED that the Petitioner do pay to the Defendant, or to her Solicitor, the annual sum of $624.00, in equal weekly installments of $12.00 commencing upon the date of this Decree; and

It is further ORDERED that the Petitioner pay to the Defendant, or to her Solicitor, the costs of this suit to be taxed and also the sum of $100.00, in addition to the ad interim allowance already made herein, which is hereby adjudged and ordered to be a reasonable Counsel fee for the Solicitor of the Defendant, and that the said

Order for Warrant.

Defendant do have execution for said costs and Counsel fees according to the usual practice of this Court.

Respectfully advised,

ROBERT D. GROSMAN, A.M. LUTHER A. CAMPBELL, C.

Order for Warrant.
(Filed Nov. 3, 1943)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI, *Petitioner,*

and

ROSE GIRESI, *Defendant.*

On Petition, &c.

It appearing that by an Order of this Court dated December 23, 1942, the Petitioner herein was ordered to pay to the Defendant, or her Solicitor, the sum of $624.00 in weekly installments of $12.00 for the support and maintenance of the Defendant, together with taxed costs amounting to $23.85 and also the sum of $100.00 in addition to the ad interim allowance already made in this cause; that thereafter, on the 12th day of

May, 1943, the Petitioner, Michael Giresi, was adjudged guilty of a contempt of this Court for his failure to abide by the terms of the said Order;

And it further appearing that on June 15, 1943, it was Ordered that a Warrant issue for the commitment of the said Michael Giresi, which Warrant was duly issued to the Sheriff of Essex County and returned by him not served because the said Michael Giresi could not be found;

And it further appearing that the said Michael Giresi is now within the jurisdiction of this Court;

It is, on this 3rd day of November, 1943, ORDERED that an alias Warrant do issue forthwith for the commitment of the said Michael Giresi to the County Jail of the County of Essex or to such other jail in this State where he may be apprehended and there remain until he shall pay to the said Rose Giresi, or her Solicitor, the aforesaid sums now amounting in the whole to Four Hundred Seventy-one Dollars and eighty-five cents ($471.85), together with the taxed costs of these proceedings.

Respectfully advised,

ROBERT D. GROSMAN,
A.M.

LUTHER A. CAMPBELL,
C.

Order for Warrant.

OFFICE OF SHERIFF
Essex County Court House
Newark, New Jersey

GEORGE H. BECKER
Sheriff

(Seal)

November 5th, 1943.

IN CHANCERY OF NEW JERSEY.

Between:

MICHAEL GIRESI,
Complainant,

and

ROSE GIRESI,
Defendant.

Received from Michael Giresi, Five Hundred and Twelve Dollars and Twenty-nine Cents ($512.29) cash, in full payment of amount due on Warrant of Commitment in above entitled matter.

GEORGE H. BECKER, *Sheriff,*

By OLIVER WERKHEISER,
Executive Clerk.

Affidavit of Michael Giresi.

IN CHANCERY OF NEW JERSEY.
150/682

ROSE TABON GIRESI,
Complainant,

vs.

MICHAEL GIRESI,
Defendant.

On Bill, etc.

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

Michael Giresi, of full age, being duly sworn, according to law, upon his oath, deposes and says:

On October 6, 1943, I obtained a decree of absolute divorce against Rose Giresi, the complainant herein. Said decree was obtained in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, said court being a court of record and having jurisdiction over the subject matter of my said petition. On the aforesaid date at the conclusion of the hearing in the Reno court aforesaid, and after the decree was granted and after I had left the court and court house, I was served with the order of this court dated September 21, 1943. After the service of said order, I have done nothing in violation of the order of this court aforesaid.

MICHAEL GIRESI.

Notice of Motion.

Sworn to and subscribed before me
this 8th day of November, 1943.

MICHAEL L. MALANGA,
An Attorney at Law of N. J.

Notice of Motion.
(Filed Jan. 25, 1944)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

To: MICHAEL GIRESI, the above named Petitioner, or to HYMAN HALPERN, Esq., his Solicitor.

Gentlemen:

PLEASE TAKE NOTICE that on Tuesday, the 4th day of January, 1944, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to his Honor, Robert

Notice of Motion.

D. Grosman, the Advisory Master to whom this cause has been referred, at the Chancery Chambers, 1060 Broad Street, in the City of Newark, for an Order adjudging the Petitioner, Michael Giresi, in contempt of court for his failure and refusal to obey the terms of the Final Decree made in the above entitled cause.

In support of said application I shall use the duly verified petition, a true copy of which is served upon you herewith.

Respectfully,

ERNEST F. MASINI,
Solicitor for Defendant.

Dated: December 28, 1943.

Petition.
(Filed Jan. 25, 1944)

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

To His Honor, Luther A. Campbell, Chancellor of the State of New Jersey:

The petition of Rose Giresi respectfully shows that:

1. She is the defendant in the above entitled cause wherein suit for divorce was instituted against her by her husband, Michael Giresi, and wherein she filed her counterclaim for separate maintenance.

2. By a Final Decree entered in said cause on December 23, 1942, the petition of the petitioner was dismissed and it was, among other things, ordered, adjudged and decreed that the said petitioner do pay to the defendant, or her solicitor, the annual sum of $624.00 in weekly installments of $12.00 for her support and maintenance.

3. Nevertheless and in violation of said Decree, the petitioner, Michael Giresi, has failed and refused and still fails and refuses to abide by the terms of the said Decree and is presently in arrears on the said Decree in the sum of $346.56.

4. This petitioner, Rose Giresi, respectfully prays that this Court may adjudge that the petitioner, Michael Giresi, is guilty of a contempt of this honorable Court for his failure and refusal to obey the terms of the said Final Decree and may punish him for his contumacy, and this petitioner may have such other and further relief as in the premises seems just and equitable.

And your petitioner will ever pray, etc.

ERNEST F. MASINI,
Solicitor for Petitioner.

Affidavit of Rose Giresi.

IN CHANCERY OF NEW JERSEY.
140/313.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, etc.

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

ROSE GIRESI, of full age, being duly sworn, according to law, upon her oath, deposes and says that:

1. I am the petitioner in the foregoing petition. The facts, matters and things therein set forth insofar as they relate to my acts are true, and insofar as they relate to the acts of others, I believe them to be true.

2. Suit for divorce was instituted against me by my husband, Michael Giresi, and I filed my counterclaim for separate maintenance.

3. By a Final Decree entered in said cause on December 23, 1942, the petition of Michael Giresi was dismissed and it was, among other things, ordered, adjudged and decreed that the said Michael Giresi do pay to me, or my Solicitor, the annual sum of $624.00 in weekly installments of $12.00 for my support and maintenance.

4. Nevertheless and in violation of said Decree, the said Michael Giresi has failed and refused and still fails and refuses to abide by the terms of the said Decree and is presently in arrears on the said Decree in the sum of $346.56.

ROSE GIRESI.

Sworn to and subscribed before me
this 16th day of December, 1943.

DORIS NEWMAN,
Notary Public of New Jersey.
My Commission Expires Oct. 26, 1947.

Affidavit of Michael Giresi.
(Filed Feb. 23, 1944)

IN CHANCERY OF NEW JERSEY.
150/682

ROSE TABON GIRESI,
Complainant,

vs.

MICHAEL GIRESI,
Defendant,

On Bill, etc.

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

MICHAEL GIRESI, of full age, being duly sworn, according to law, upon his oath deposes and says:

Affidavit of Michael Giresi.

1. I have read the affidavit of Rose Giresi, dated December 16, 1943, attached to the petition.

2. I admit paragraph 2.

3. I admit paragraph 3.

4. I deny paragraph 4. Any and all monies including alimony, costs and counsel fees due under the terms of the final decree have been paid in full. Nothing is due and owing.

5. On the 15th day of June, 1943, I filed a petition for absolute divorce against the present complainant in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, said court being a court of record and having jurisdiction over the subject matter of my said petition. The complainant herein was served with process in said suit and had knowledge thereof and was represented and appeared and was present by her attorneys, Morley Griswold and George L. Vargas, and an appearance and answer on behalf of the defendant (complainant herein) was duly filed and entered. Counsel for my wife made application to the Reno Court and expense money to defend the suit and I paid her the sum allowed by the court. On October 6, 1943, by the decree of the aforesaid court, in the aforesaid cause, it was ordered, adjudged and decreed that I be and was awarded a decree of divorce against the defendant (complainant herein) dissolving the contract of marriage and the bonds of matrimony then and theretofore existing between us. Said decree of divorce remains in full force and effect, not having in any wise

been reversed, annulled or modified. A copy is attached hereto.

6. By reason of the above decree of divorce which I obtained against my wife, the status of the parties has been changed since the entry of the final decree in this court, and I am, therefore, under no present obligation to support my wife nor have I been under any obligation since October 6, 1943.

MICHAEL GIRESI.

Sworn to and subscribed before me
this 21st day of February, 1944.

MILTON SHOENHOLZ,
A Master in Chancery of N. J.

Memorandum.
(Filed June 6, 1944)

IN CHANCERY OF NEW JERSEY.
140/313.

NOT FOR OFFICIAL OR UNOFFICIAL PUBLICATION.

Between:

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

ERNEST F. MASINI, Esq.,
for the defendant-petitioner.

HYMAN HALPERN, Esq.,
for the petitioner-respondent.

Dated May 31, 1944.

GROSMAN, A.M.:

This is an application by Rose Giresi, the successful counterclaimant in the above entitled action, to have her husband, the petitioner, adjudged guilty of contempt of this court for the failure to pay her alimony at the rate of $12.00 per week, as provided by a Final Decree entered herein on December 23, 1942. At the time this application was made, there was due to the counterclaimant for arrears of alimony, counsel fees, etc., the sum of $502.56.

Memorandum.

Originally, Michael Giresi, the respondent herein, sued his wife, Rose Giresi, for divorce. She denied the charges and counterclaimed for separate maintenance. On final hearing, she prevailed. The husband's petition for divorce was dismissed and she was awarded a decree for separate maintenance on her counterclaim. She was allowed alimony at the rate of $624.00 per annum, payable in weekly instalments of $12.00 each. The husband fell into arrears and on June 15, 1943, an order was made, adjudging the respondent herein in contempt and directing that a warrant issue for his arrest. The warrant could not be served because the defendant had left the state. He went to Nevada and instituted suit for divorce on grounds not recognized in this state. The wife filed an answer in the Nevada proceedings, challenging the jurisdiction of the foreign court and, in order to further protect her rights, obtained an order in this court, restraining the defendant from proceeding with the Nevada suit. According to the wife's allegations, an attempt was made to serve the restraining order both on respondent herein and upon his Nevada solicitor. Both of them refused service. The respondent proceeded with his Nevada suit, obtained a decree of divorce on October 6, 1943, and immediately returned to New Jersey. He was arrested on the 16th day of October, 1943, on process issued out of this court, but promptly secured his liberty by paying the arrearages for which he had been adjudged in contempt. He has paid no money to his wife since and now resists her application to again adjudge him in contempt by attempting to set up his Nevada decree in bar. His position is without merit.

Memorandum.

Once this court has obtained jurisdiction over an action by personal service within this State, neither of the litigants may oust our jurisdiction by removing the cause to another forum. Were this otherwise, this court could never finally adjudicate any cause of action. The defendant is guilty of having contemned the decree of this court. Let a warrant issue for his commitment and submit an order in accordance herewith.

INDEX.

Amended Answer Filed by Wife in Nevada Action.

(Original Answer Appears in State of Case, at Pages 11A-11F)

No. 76102 Dept. No. 1

Morley Griswold and George L. Vargas
Attorneys for Defendant.

In the

SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA,

In and for the County of Washoe.

Michael Giresi,
Plaintiff,

vs.

Rose Tabon Giresi,
Defendant.

First Amended Answer.

Comes now the above named defendant, and, answering the complaint of the plaintiff on file herein, admits, denies and alleges as follows, to-wit:

I.

Answering Paragraph I of said complaint, defendant denies that for more than six (6)

weeks, or for any period of time whatsoever, or at all, either immediately preceding the commencement of this action, or at all, plaintiff has been or now is either an actual or a bona fide resident, or a resident at all of the County of Washoe, or of any County in the State of Nevada, or of the State of Nevada. As to plaintiff's allegation contained in said Paragraph as follows, to-wit: "and during all of said time has been actually, physically and corporeally present in said County and State," defendant states that as to such allegation she has not sufficient knowledge or information upon which to base a belief, and upon that ground denies said allegation and each and every part thereof, and denies that plaintiff either during all or any of said time, or at all, has had or now has his actual residence, or residence at all, or home, in said County or in said State, and denies that plaintiff took up his residence, or any residence, or home, with an intention, or any intention, to remain permanently or indefinitely, or other than temporarily, and denies that plaintiff's alleged intention or any intention to remain permanently or idefinitely existed during any of said time, or at all, and denies that the same ever existed or continued or now continues, and denies that plaintiff ever did, or does now, or still resides in said County, or in any County, or in the State of Nevada, and denies that said plaintiff is now domiciled, or ever was domiciled in the City of Reno, or any City, or the County of Washoe, or any County in the State of Nevada, and denies that plaintiff ever had or now has any intention to make his permanent home in said County or in said State

for an indefinite or permanent period of time, or any period of time, other than a temporary period of time.

II.

Answering Paragraphs II, III and IV of plaintiff's complaint defendant admits the matters in said Paragraphs contained.

III.

Answering Paragraph V of plaintiff's complaint defendant admits that she and plaintiff have lived separate and apart for three consecutive years, without cohabitation. Defendant denies that plaintiff gave her no reason, cause, provocation or justification for thus living apart from him, but, on the contrary, alleges that the plaintiff, without any reason, cause, provocation, or justification whatsoever, or at all, deserted and abandoned the defendant, and failed and refused, and still and now continues to fail and refuse to support her or provide her with the common necessaries of life.

WHEREFORE, defendant prays that plaintiff take nothing by his said complaint, and that the same be dismissed; that defendant have judgment for her costs and attorneys' fees herein, and for such other and further relief as may seem just and equitable.

MORLEY GRISWOLD,
GEORGE L. VARGAS,
Attorneys for Defendant.

Amended Answer Filed by Wife in Nevada Action.

STATE OF NEVADA,
COUNTY OF WASHOE, } ss.:

GEORGE L. VARGAS, being first duly sworn, deposes and states: That he is an attorney at law, regularly and duly admitted to practice in the State of Nevada, and that he resides and has his law offices in the City of Reno, County of Washoe, State of Nevada; that he is one of the attorneys acting as counsel for Rose Tabon Giresi, the defendant named in the above and foregoing First Amended Answer; that the said defendant is absent from the county where her attorneys, Morley Griswold and George L. Vargas, reside and maintain their offices, to-wit, Washoe County, Nevada; and that he makes this verification by reason of the absence of the said defendant from the said County of Washoe; and said verification is not made by said Rose Tabon Giresi because of her absence from the said Washoe County, as aforesaid; that the said George L. Vargas has read the foregoing First Amended Answer and knows the contents thereof; that the facts therein contained and alleged are not within his personal knowledge; but that deponent is informed and verily believes and therefore alleges that the facts and matters contained, set forth and alleged in said First Amended Answer are true.

GEORGE L. VARGAS.

Subscribed and sworn to before me,
this 25th day of August, 1943.

LYNN QUILL,
Notary Public in and for the County of Washoe, State of Nevada.

(SEAL)

Notice of Motion for Counsel Fee and Alimony *Pendente Lite.*

(Filed March 4, 1942)

IN CHANCERY OF NEW JERSEY.
No. 140-313.

Between

MICHAEL GIRESI,
Petitioner,
and
ROSE GIRESI,
Defendant.

On Petition, &c.

To: MICHAEL GIRESI, *Petitioner,*
and
ANTHONY E. CASALE, *Solicitor for Petitioner,*
98 Midland Avenue,
Kearny, New Jersey.

SIRS:

TAKE NOTICE that on Tuesday, the 13th day of January, A. D. 1942, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers, 1060 Broad Street, in the City of Newark, I shall apply to the Chancellor for an order requiring you to pay to your wife a proper allowance for her support and maintenance, pending this suit, and reasonable sum for counsel fees to enable her to defend the said suit, and annexed hereto and served upon you herewith are true copies of the

petition and affidavits upon which the said application will be made.

ERNEST F. MASINI,
Solicitor for Defendant.

Petition for Counsel Fee and Alimony *Pendente Lite.*
(Filed March 4, 1942)

IN CHANCERY OF NEW JERSEY.
140-313.

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

To HIS HONOR LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey.

The petition of Rose Giresi, the above named defendant, respectfully shows that:

1. Her husband, the above named petitioner has recently filed a petition against her in this suit for divorce for the cause of desertion.

2. She has been served with a process of citation and has put in her answer denying the allegations of the petition respecting said cause of desertion charged against her.

3. The charges made against her by her husband in his said petition are wholly untrue, and she says that she has always regarded her marriage vows and her obligations as the lawful wife of the petitioner, Michael Giresi.

4. Although the petitioner, Michael Giresi was ordered to pay defendant, Rose Giresi, the sum of $7.00 per week, on March 19th, 1939, he is in arrears to the extent of $512.00. The petitioner, Michael Giresi, has not supported her, and the defendant is without means to support herself and defend herself against the petition filed herein.

5. She is informed and verily believes that her husband is employed and earning a substantial salary, the amount of which is unknown to her and is able to continue with his work; that he has a new Sedan automobile which he drives around in; that he is always well dressed and wears good clothing, and it is very noticeable that he has ample funds; that he is amply able to maintain and support her in a manner suitable to her and to pay such sums as may be necessary for the purpose aforesaid.

6. At various times during the marriage between defendant and her husband, the petitioner, he has been cruel and abusive to her, beaten and

struck her, called her vile and indecent names without justifiable cause or reason.

7. That her health became impaired and that she needed medical treatment because of the abusive and ill-treatment and the beatings and assaults that the petitioner, her husband made upon her, although she gave her husband no cause for his action.

She prays that an order may be made requiring her husband, the petitioner, to pay her a proper amount for her support and maintenance until the termination of this suit; and also to pay forthwith a reasonable sum for the fees of counsel in defending this cause for her, and for such other relief as the circumstances of the case may render reasonable and proper.

And your petitioner will ever pray, etc.

ERNEST F. MASINI,
Solicitor for Defendant,
Rose Giresi.

Affidavit of Rose Giresi.

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

ROSE GIRESI, the above named defendant, being duly sworn according to law upon her oath deposes and says:

1. I have read the foregoing petition and know the contents thereof, and the allegations contained therein are true.

2. In particular, the charge made by my husband against me in his petition filed in this cause is untrue, and I specifically deny it to be true that I deserted my husband on the 1st day of October, 1938, and ever since that time and for more than two years last past have wilfully, continuedly and obstinately deserted my said husband.

3. From the time of our marriage until September 30, 1938, when petitioner abandoned me, my life has been one of misery as a result of the action and conduct of my husband.

4. Four children were born of the marriage between deponent and petitioner, namely, Salvatore Giresi, 31 years of age; Rose Giresi, 29 years of age; Grace Giresi, 29 years of age, and Santina Giresi, 26 years of age. The said Salvatore Giresi is married and lives with his wife and family, and the said Rose Giresi, Grace Giresi and Santina Giresi live with me.

5. At various times during the marriage between the petitioner and me, my husband has

been cruel and abusive to me, beat and struck me, and called me vile and indecent names without justifiable cause or reason.

6. That petitioner failed to provide me with sufficient monies to supply food to the family, and neglected to clothe and support me or provide for me in any manner whatsoever.

7. That my health became impaired and my life as a result of the action of the petitioner, became so utterly wretched and miserable, that I became very ill, and my husband failed to provide me with medicines or physicians and made light of my illness.

8. That in the month of February, 1938, petitioner commenced to argue with me as he refused to pay the gas and electric bill, and without justification and provocation, punched and beat me, using his fists and bruising me in various parts of my body, calling me vile names. My two daughters also received a beating from my husband, which resulted in one of my daughters, namely Toots, getting her teeth knocked out. My daughters, Toots and Mary Grace pressed charges against their father for assault and battery. My husband still refused to pay the gas and electric bill and the service was shut off. He further refused to pay other obligations and the rent for several months was delinquent. Therefore, in the latter part of September, 1938, we received a dispossess notice to vacate said premises, and thereafter my furniture and belongings were put out on the street. However, shortly before that time, my husband had already

removed his clothing and personal belongings and deserted me.

9. Under a court Order, on or about the 19th day of March, 1939, my husband was ordered to pay me $7.00 per week for my support and maintenance. He is in arrears to the extent of $512.00. He has been threatened to be sent to jail and be held in contempt and although he has promised to make good the arrears and continue his payments, he has failed to do so. Instead, he has filed divorce proceedings against me.

10. My husband has no regard for law and order and has a revolver in his possession. He has beaten me on numerous occasions and threatened to kill me. All these matters have been brought to the attention of the authorities. He has promised not to do it again, but notwithstanding he continues to do so.

11. I am informed and verily believe that my husband is employed and earning a substantial salary, the amount of which is unknown to me at this time, but when he was living with me, he was making on the average of $50-$60 per week, and he is able to continue with his work; that he has a new Sedan automobile which he drives around in; that he is always well dressed and wears good clothing and it is very noticeable that he has ample funds; that he is amply able to maintain and support me in a manner suitable to me and to pay such sums as may be necessary for the purpose aforesaid; that he is able to support and provide my daughter Toots with medicines or physicians as she is ill and cannot work.

12. I further show and charge that further cohabitation with my husband must be attended with grave danger to my life, and from his extreme cruelty and abusive treatment toward me and his present hatred of me, it would be improper and unsafe for me to return to him and live with him as his wife, as my husband has not given me any assurance on which I could rely that if I resumed cohabitation with him, he would treat me properly. However, if he promises not to beat me and put me in fear of my life, I am ready and willing to go back to live with him as heretofore. I do not want to be divorced and there is no cause or reason for it.

13. That the petitioner has, ever since the 30th day of September, 1938, and for more than two years last past, willfully, continuedly and obstinately deserted me.

14. I further show that I am ill and utterly destitute, and unable to work and support myself and my sick daughter, Toots, and unless petitioner is made to support me, I will be forced to depend on charity, friends and relatives.

15. I further show and charge that petitioner has refused and neglected to support me and has abandoned me without justifiable cause; has separated himself from me, and has refused and neglected, and still does refuse to maintain and provide for me and my daughter.

16. I pray that an order may be made requiring the petitioner, my husband, to pay me a proper amount for my support and maintenance, and for

the support and maintenance of my daughter, Toots, and that he shall also be ordered to pay forthwith a reasonable sum of counsel fees in defending this cause for me, and for such other relief as the circumstances of my case may require.

ROSE GIRESI.

Subscribed and sworn to before me,
this 5th day of January, A. D. 1942.

LYDIA CHRISTIANSEN,
Notary Public of New Jersey.

Affidavit of Sandra Giresi.

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

SANDRA GIRESI, being duly sworn according to law, upon her oath deposes and says:

1. I am also known as Toots Giresi. I am the daughter of Rose and Michael Giresi and have always lived at home.

2. In the month of February, 1938, my father commenced to argue with my sister, Mary Grace, and I about a gas and electric bill, and without justification and provocation administered a beating to me, as a result of which two of my teeth were knocked out, the bill for which is still unpaid and my father refuses to pay it. My sister and

Affidavit of Sandra Giresi.

I both pressed charges against my father for assault and battery.

3. I have been present on many occasions when my father commenced to argue with my mother without justification and cause, and often, either my sister or I would prevent my father from striking and punching my mother.

4. I have seen my father drive around in a new Sedan automobile; he is always well dressed and wears good clothing and it is very noticeable that he has ample funds; that he is amply able to maintain and support my mother in a manner suitable to her and to pay such sums as may be necessary for the purpose aforesaid, and to provide her with medicines or physicians.

5. I am ill and unable to work and although I have asked my father to assist me, he has refused and told me not to bother him and leave him alone. On June 4th, 1939, I had to go to the hospital for an operation and I got in touch with my father and asked him to please help me out as I needed money for the hospital. He told me he had no money for me, said I should leave him alone, and that I and all the family have made enough trouble for him. He deliberately refused to aid me when I was sick, yet after a week or so he purchased a new automobile.

SANDRA GIRESI.

Subscribed and sworn to before me,
this 5th day of January, A. D. 1942.

LYDIA CHRISTIANSEN,
Notary Public of New Jersey.

Service of a copy of the within Petition and Affidavits is hereby acknowledged this 7th day of January, 1942.

ANTHONY E. CASALE,
Sol'r for Petitioner.

Petition of Michael Giresi.
(Filed December 6, 1941)

IN CHANCERY OF NEW JERSEY.
140/313.

To HIS HONOR, LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey.

The petition of Michael Giresi, of No. 33 South 12th Street, in the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. He was lawfully married to Rose Giresi, the defendant in this case, on the 16th day of June, 1908, by Rev. Anthony of Our Lady of Pompei Church, in the Borough of Brooklyn and State of New York.

2. Defendant deserted him on October 1, 1938, ever since which time, and for more than two years last past, the said defendant has wilfully, continually and obstinately deserted him.

3. Petitioner was a bona fide resident of the State of New Jersey when this cause of action

arose, and has ever since, and for more than two years next preceding the commencement of this action, continued to be such bona fide resident.

4. That the defendant, Rose Giresi, resides at No. 684½ Chestnut Street, in the Town of Kearny, County of Hudson and State of New Jersey.

5. Four children were born of the marriage aforesaid, to wit: Salvatore Giresi, 31 years of age; Rose Giresi, 29 years of age; Grace Giresi, 29 years of age, and Santina Giresi, 26 years of age. The said Salvatore Giresi is married and lives with his wife and family. The said Rose Giresi, Grace Giresi and Santina Giresi live with the defendant.

6. He prays that the marriage existing between him and the defendant may be dissolved for the cause aforesaid, according to the Statute in such case made and provided; and that he may have such further relief as may be just.

ANTHONY E. CASALE,
Solicitor of Petitioner.

VINCENT J. CASALE,
of Counsel.

Affidavit of Michael Giresi.

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

MICHAEL GIRESI, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the petitioner named in the foregoing petition. My said petition is not made by any collusion between me and the defendant, but in truth and good faith, for the causes set forth in the petition; and that facts, matters and things set forth in the said petition, so far as they relate to the acts of this petitioner, are true and so far as they relate to the acts of others, I believe them to be true.

MICHAEL GIRESI.

Subscribed and sworn to before me,
this 29th day of November, 1941.

JAMES V. CAPOBIANCO,
Notary Public of N. J.
My Commission Expires Apr. 7, 1946.

(SEAL)

New Jersey State Library

Order.
(Filed March 4, 1942)

IN CHANCERY OF NEW JERSEY.
140/313.

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

This matter having come before me on an application for alimony *pendente lite* and counsel fees and costs, which was duly served upon the petitioner, and continued until a further notice was served upon petitioner to appear before me on February 24, 1942, as to why he should not pay alimony *pendente lite* to his wife, and a reasonable sum for counsel fees and costs to defend the said suit; and it appearing, after hearing arguments of Ernest F. Masini, solicitor for the defendant, in the presence of Anthony E. Casale, solicitor for the petitioner, that the petitioner is now under an order to pay $7.50 per week, and that he is in arrears to the extent of $572; and it further appearing that by consent of counsel, all the arrears due the defendant shall be held in abeyance until final hearing, provided the petitioner pay $5.00 per week temporary alimony for maintenance and support of the defendant, and a temporary counsel fee of $100 and costs; and that the defendant need

not file an answer until the petitioner has complied with the terms of this order; it is, therefore, on this 24th day of February, 1942,

ORDERED that petitioner pay the defendant the sum of $5.00 per week, and $100.00 temporary counsel fees and costs, and costs of this application to be taxed; and it is further

ORDERED that the matter be continued until final hearing.

Respectfully advised,

JOHN A. MATTHEWS,
A. M.

LUTHER A. CAMPBELL,
C.

Answer of Defendant and Counterclaim.
(Filed April 15, 1942)

IN CHANCERY OF NEW JERSEY.
140/313.

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

The answer of Rose Giresi, defendant, to the petition of Michael Giresi, petitioner:

1. This defendant admits that petitioner and defendant were married as in said petition is alleged.

2. She denies that she deserted petitioner on the 1st day of October, 1938, and denies that ever since that time, and for more than two years last past, she has wilfully, continuedly and obstinately deserted the petitioner, but on the contrary she says that the petitioner deserted and abandoned her on the 30th day of September, 1938, without justifiable cause, and has separated himself from her, and has refused and neglected, and still does refuse to maintain and provide for her.

3. Defendant admits that she resides at 684½

Chestnut Street, in the Town of Kearny, County of Hudson and State of New Jersey, as alleged in said petition.

4. Defendant admits that four children were born of the marriage aforesaid, to wit: Salvatore Giresi, 31 years of age; Rose Giresi, 29 years of age; Grace Giresi, 29 years of age, and Santina Giresi, 26 years of age, as alleged in said petition.

5. Defendant prays that the petitioner's petition may be dismissed, with her reasonable costs and charges in that behalf most wrongfully sustained.

This defendant, by way of counterclaim exhibited against the petitioner, by her petition for alimony *pendente lite,* respectfully shows that:

1. She resides at 684½ Chestnut Street, in the Town of Kearny, County of Hudson and State of New Jersey.

2. She was lawfully married to her husband, the petitioner, the defendant in this counterclaim, as alleged in the petition filed herein.

3. She and the petitioner, the defendant herein, lived together from the date of their marriage until the 30th day of September, 1938, at which time the said petitioner, the defendant herein, separated himself from her, ever since which time he has abandoned and refused to support her.

4. She gave the petitioner, the defendant

herein, no reason or justification for his abandonment and refusal to support her.

5. At various times during the marriage between the petitioner, the defendant herein, and herself, her husband has been cruel and abusive to her, beat and struck her, and called her vile and indecent names without justifiable cause or reason.

6. Her health became impaired and her life became so utterly wretched and miserable as a result of the actions of the petitioner, the defendant herein, that she became very ill, and the petitioner, the defendant herein, failed to provide her with medicine or physicians, and made light of her illness.

7. Four children were born of the marriage aforesaid, to wit: Salvatore Giresi, 31 years of age; Rose Giresi, 29 years of age; Grace Giresi, 29 years of age, and Santina Giresi, 26 years of age. The said Salvatore Giresi is married and lives with his wife and family. The said Rose Giresi, Grace Giresi and Santina Giresi live with the defendant, the pettioner herein.

8. Petitioner, the defendant herein, failed to provide defendant, petitioner herein, with sufficient monies to supply food to the family, and neglected to clothe and support her or provide for her in any manner whatsoever.

9. In the month of February, 1938, petitioner, the defendant herein, commenced to argue with this defendant, the petitioner herein, as he re-

fused to pay the gas and electric bill, and without justification and provocation, punched and beat her, using his fists and bruising her in various parts of her body, calling her vile names. Her two daughters also received a beating from petitioner, the defendant herein, which resulted in one of the daughters, namely, Toots, getting her teeth knocked out. The daughters, Toots and Mary Grace, pressed charges against their father for assault and battery. Petitioner, the defendant herein, still refused to pay the gas and electric bill, and the service was shut off. He further refused to pay other obligations, and the rent for several months was delinquent. Therefore, in the latter part of September, 1938, they received a dispossess notice to vacate said premises, and thereafter the furniture and belongings were put out on the street. However, shortly before that time, petitioner, the defendant herein, had already removed his clothing and personal belongings and deserted defendant herein.

10. Under a court order, on or about the 19th day of March, 1939, petitioner, the defendant herein, was ordered to pay defendant, the petitioner herein, $7.00 per week for her support and maintenance. He is in arrears to the extent of $512.00. He has been threatened to be sent to jail and be held in contempt, and although he has promised to make good the arrears and continue his payments, he has failed to do so.

11. Petitioner, the defendant herein, has no regard for law and order, and has a revolver in his possession. He has beaten defendant, petitioner herein, on numerous occasions and threat-

ened to kill her. All these matters have been brought to the attention of the authorities. He has promised not to do it again, but notwithstanding, he continues to do so.

12. On the 6th day of December, 1941, petitioner, the defendant herein, instituted a suit against defendant for divorce on the ground of desertion. Defendant, the petitioner herein, is not guilty of the desertion charged against her, and has always been a faithful wife to the petitioner, defendant herein, and on the contrary, the petitioner, defendant herein, deserted and abandoed her without justifiable cause, and has separated himself from her, and has refused and neglected, and still does refuse to maintain and provide for her.

13. Further cohabitation with petitioner, the defendant herein, by defendant, the petitioner herein, must be attended with grave danger to her life, and from his extreme cruelty and abusive treatment toward her and his present hatred of her, it would be improper and unsafe for her to return to him and live with him as his wife, as he has not given defendant, petitioner herein, any assurance on which she could rely that if she resumed cohabitation with him, he would treat her properly.

14. Defendant, the petitioner herein, is ill and utterly destitute, and unable to work and support herself and her sick daughter, Toots, and unless petitioner, the defendant herein, is made to support her, she will be forced to depend on charity, friends, and relatives.

15. She charges that petitioner, the defendant

herein, is employed and earning a substantial salary, the amount of which is unknown to her at this time, but when he was living with her, he was making on the average of $50-$60 per week, and he is able to continue with his work; that he has a new sedan automobile which he drives around in; that he is always well dressed and wears good clothing, and it is very noticeable that he has ample funds; that he is amply able to maintain and support her in a manner suitable to her, and to pay such sums as may be necessary for the purpose aforesaid.

She therefore prays that the said Michael Giresi, the defendant herein, may answer this counterclaim; that he may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him, or made out of his property for the support of this defendant, petitioner herein, for such length of time as the nature of the case, and under the circumstances, is suitable and proper.

That defendant to this counterclaim may be compelled to give reasonable security for such support and maintenance and to pay the same from time to time under the compulsory order of this Court, as provided by State; and that he may be compelled to pay to her a proper amount for counsel fees; and that she may receive such further and other relief as the circumstances of her case may require.

And your petitioner will ever pray, etc.

ERNEST F. MASINI,
Solicitor for Defendant.

FRANK G. MASINI,
Of Counsel with Defendant.

Answer to Counterclaim.
(Filed May 25, 1942)

IN CHANCERY OF NEW JERSEY.
140/313.

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

The answer of Michael Giresi, the above-named petitioner, to the counterclaim of Rose Giresi, the above-named defendant, says that:

1. He admits Paragraph 1 of the counterclaim.

2. He admits Paragraph 2 of the counterclaim.

3. He denies Paragraph 3 of the counterclaim, and says that she, Rose Giresi, deserted him as charged in his petition and has refused to return to him.

4. He denies Paragraph 4 of the counterclaim.

5. He denies Paragraph 5 of the counterclaim.

6. He denies Paragraph 6 of the counterclaim, and says that she was ill at times but that said sickness was not caused by him or his actions. That when she requested a physician or medicines they were supplied by him. She was oper-

ated upon at one time by a certain Dr. Sprague of Newark, N. J., and was confined to St. James Hospital in Newark, N. J.; that Dr. Sprague and St. James' Hospital were fully paid by him and that he even brought pigeon soup to the hospital for her so as to help her regain her health. That he visited her at said hospital every day during her said confinement.

7. He admits Paragraph 7 of the counterclaim.

8. He denies Paragraph 8 of the counterclaim, and says that it was a custom, which started from the date of their marriage, that he would do the weekly shopping for the family; that he always purchased sufficient foods to provide for his said wife, Rose Giresi, and the family. He says that he gave his said wife, Rose Giresi, sufficient money to clothe herself according to his salary. At one time he purchased her a fur coat for $225 and a beaded dress for $75.

9. As to Paragraph 9 of the counterclaim he admits that he and his wife did have an argument in the month of February, 1938, but said argument was not over a gas and electric bill. It was because he objected to his children getting home at unreasonable hours, 1 to 3 A.M., and also because he objected to his children going with different boys. It would be one boy one week and another boy the next week. As a matter of fact this was the cause of many arguments between himself and his wife, and instead of his wife supporting him she would take the part of the children. He did not question the decency of his children but thought that they should be more careful. If the gas and electric

bill was not paid it was not his fault because he always left sufficient money to pay the gas and electric, insurance and other weekly bills with his wife.

He admits that the rent was delinquent for June and July, 1938, but says that it was paid. He denies that the real reason for the dispossession notice to vacate said premises was for unpaid rent but admits that he was dispossessed because the landlord of said premises through one William Kearns, the agent of said landlord, has sold said premises to a certain Mrs. Ella Hutchinson who was to get possession of said premises on October 1, 1938.

He denies that the furniture and belongings of his wife were put out on the street, but says that at her request said furniture and belongings were removed from said premises by a certain Mr. Mace, a moving man in the Town of Kearny, New Jersey, to a storage house designated and paid for by his said wife, Rose Giresi.

He denies that shortly before said furniture was removed he removed his clothing and personal belongings and deserted her. He did not remove his belongings until the moving man had started to remove the furniture and until his said wife had persistently refused to keep their home together although he requested her not to break up their home. He only removed his belongings when he was satisfied that his said wife would not move into a flat that he had rented from a certain Julius Bodnar.

He denies that in the argument of February, 1938, their two daughters received a beating from him or that one of his daughters, namely, Toots, had her teeth knocked out. He denies that their

daughters, Toots and Mary Grace, pressed charges against him for assault and battery in February, 1938. He says that in March, 1937, in an argument between himself and his wife over the late hours of his children, his wife attempted to hit him with some instrument (he thinks it was a broom) and that in attempting to avoid it he pushed it to one side and it struck his daughter Toots loosening a tooth. He says that his daughter Toots had him arrested but never made a formal complaint before the Court. As a matter of fact said charge was dismissed because of no complaint. If my said daughter Toots had any dental work done by reason of this accident I do not know because she never told me.

10. He admits that he is in arrears in his payments under an order to pay $7.00 per week made on March 19th, 1939, but does not know the exact amount of said arrears. He says, however, that said order was made conditional upon the amount of his weekly salary. He was to report his weekly salary to the Probation Officer each week and said Probation Officer was to deduct from his salary the amount to be applied to the support of his said wife, Rose Giresi. That this was done and that whatever is in arrears was made necessary by his small income.

11. He denies Paragraph 11 of the counterclaim.

12. He admits Paragraph 12 of the counterclaim in so far as it states that he, Michael Giresi, on the 6th day of December, 1941, instituted a

suit against her, Rose Giresi, for divorce on the ground of desertion, but denies the balance of said paragraph.

13. He denies Paragraph 13 of the counterclaim, and says that if further cohabitation by his wife with him is attended with grave danger to her life, then this is not his fault but comes from her own attitude. The hatred that she speaks of is her hatred of him as shown by her desertion of him and refusal to live with him. That as late as February 14, 1942, he was willing to set up home again with his said wife and actually went out and rented rooms which he did at the suggestion of Advisory Master John Matthews to attempt to work out a reconciliation. This offer on his part she refused to accept.

14. He says as to Paragraph 14 of the counterclaim that he has no knowledge whether his said wife is ill or how ill she is or that she is unable to work and support herself and her sick daughter, Toots. He denies that she is utterly destitute because their two daughters, Rose and Grace, who live with her, his said wife, are working steadily and certainly they must be, or ought to be, contributing something to her for their board and lodging. He says also that if she sets up a home with him again it will not be necessary for her to work and that he will support her and their daughter Toots, and she will not be forced to depend on charity, friends, and relatives.

15. As to Paragraph 15 of the counterclaim he says that from October 31, 1941, until re-

cently he was out of employment. His usual work is salesman of awnings, Venetian blinds and shades on a commission basis, and beginning with November of each year the work is always slack. He denies that when he was living with his wife he was making on the average of $50-$60 per week. His commissions varied between $20 to $60 per week. He further says that the automobile which he owns is not a "new Sedan." It was purchased by him in December, 1940, on time payments. He drives in it because it is necessary for his work; without an automobile he cannot work as a salesman. He says that he has two suits of clothes, which are necessary if he is to work as a salesman. He denies that he has ample funds but says that he is in debt.

He therefore prays that the said counterclaim of said Rose Giresi, the defendant-counterclaimant, may be dismissed, and that the marriage existing between him and the said defendant-counterclaimant, Rose Giresi, may be dissolved for the cause set forth in his petition, according to the Statute in such case made and provided; and that he may have such further relief as may be just.

And your petitioner, Michael Giresi, will ever pray, etc.

ANTHONY E. CASALE,
Solicitor for Petitioner.

Reply.

I, Ernest F. Masini, Solicitor of the defendant, Rose Giresi, hereby consent that this Answer to the counterclaim be filed as of time.

Dated: May 20, 1942.

Ernest F. Masini,
Solicitor of Defendant.

Reply.
(Filed June 4, 1942)

IN CHANCERY OF NEW JERSEY.
140/313

Between

Michael Giresi,
Petitioner,

and

Rose Giresi,
Defendant.

On Counterclaim.

Defendant joins issue with petitioner in answer to the counterclaim.

Ernest F. Masini,
Solicitor for Defendant.

Frank G. Masini,
Of Counsel.

Memorandum.
(Filed October 7, 1942)

IN CHANCERY OF NEW JERSEY.
140-313

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

(Not for Official or Unofficial Publication.)

ERNEST F. MASINI, Esq., for the Defendant-Counterclaimant.

ANTHONY E. CASALE, Esq., for the Petitioner.

Tried: September 30th, 1942.

Decided: October 5th, 1942.

GROSMAN, A.M.:

Petitioner sues for divorce on the ground of desertion. Defendant denies the charge and counterclaims for separate maintenance. The parties were married on the 16th day of June, 1908, and separated on October 1, 1938. Four children were born of the union, all now of age.

It seems that on the 1st day of October, 1938, the parties were dispossessed for non-payment of

rent. The petitioner took his personal belongings and went to a furnished room. He made no provision for his wife and children. He claims that some time prior to this date, he paid a deposit on a flat on Davis Street, in Arlington, but his wife refused to move there, because she didn't like the surroundings. Thereafter he made no further effort to find quarters for his family. He personally had made no effort to induce his wife to return. He did send a friend of his, Mario Casio, to see her. He saw her once and asked if she would return to her husband. She said she was afraid to do so. This was the full extent of the petitioner's efforts to induce his wife to return. About twelve years ago the defendant sued the petitioner for separate maintenance in this court. She was awarded a decree of separation by the late Advisory Master Child. Thereafter the parties reconciled. The three daughters of the parties testified for the mother.

The petitioner has failed to make out a case. His petition will be dismissed. There will be a decree for the defendant, on the counterclaim. Submit a decree, on notice.

(The final decree based on the foregoing is in the original State of Case at page 23.)

Notice of Motion.

(Filed May 4, 1943)

IN CHANCERY OF NEW JERSEY.
140/313

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

To: MICHAEL GIRESI, Petitioner.

SIR:

TAKE NOTICE, that on the 13th day of April, A. D. 1943, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers, at 1060 Broad Street, in the City of Newark, New Jersey, I shall apply to the Chancellor, for an Order why the petitioner should not be adjudged guilty of contempt of this Court for his failure and refusal to comply with the terms and provisions of the Final Decree entered on December 23, 1942, to pay alimony, counsel fees and taxed costs, and punished accordingly. I shall also make an application for counsel fees and costs on this notice and application.

ERNEST F. MASINI,
Solicitor of Petitioner.

Dated: March 25, 1943.

Petition.

IN CHANCERY OF NEW JERSEY.
140/313

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

To HIS HONOR, LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

The petition of Rose Giresi, respectfully shows that:

1. By a certain Order entered in this cause on the 23rd day of December, 1942, Michael Giresi was ordered to pay to this petitioner, or her Solicitor, the annual sum of $624.00 in weekly installments of $12.00, together with costs of said application amounting to $23.85 and also the sum of $100.00 in addition to the *ad interim* allowance already made in this cause.

2. The costs aforesaid were duly taxed at the sum of $23.85 and a true copy of said bill of costs was served upon the said Michael Giresi on the 4th day of January, 1943, as will appear by the Affidavit hereto annexed.

3. In accordance with the Order aforesaid, the said Michael Giresi should have paid to petitioner

the sum of $156.00 whereas in truth and in fact, the said Michael Giresi has only paid the sum of $81.00. The said Michael Giresi has also refused and neglected to pay the aforesaid $100.00 counsel fee together with the costs aforesaid amounting to $23.85. The said Michael Giresi has refused and neglected and still refuses and neglects to pay the said sums aforesaid.

4. For the past six weeks the said Michael Giresi has paid the sum of $5.00 per week instead of the sum of $12.00 per week ordered as aforesaid. The petitioner is in need of the sum of $12.00 per week.

Petitioner, therefore, prays that the said Michael Giresi may be adjudged in contempt of this Honorable Court for his contumacy in refusing and neglecting to perform the terms and directions of the aforementioned Order, in the particulars before stated, and that he be punished accordingly; and that your petitioner may have such other relief as may be equitable and just.

And your petitioner will ever pray, etc.

ERNEST F. MASINI,
Solicitor for Petitioner.

Affidavit of Rose Giresi.

IN CHANCERY OF NEW JERSEY.
140/313

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

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

ROSE GIRESI, of full age, being duly sworn, according to law, upon her oath, deposes and says that:

1. I am the petitioner named in the foregoing petition; that the matters and things therein set forth are true to the best of my knowledge and belief.

2. By a certain Order entered in this case on the 23rd day of December, 1942, Michael Giresi was ordered to pay to your petitioner, or her Solicitor, the annual sum of $624.00 in weekly installments of $12.00, together with costs of said application amounting to $23.85 and also the sum of $100.00 in addition to the *ad interim* allowance already made in this cause.

3. The costs aforesaid were duly taxed at the

sum of $23.85 and a true copy of said bill of costs was served personally upon the said Michael Giresi on the 4th day of January, 1943.

4. In accordance with the Order aforesaid, the said Michael Giresi should have paid to petitioner the sum of $156.00, whereas in truth and in fact, the said Michael Giresi has only paid the sum of $81.00. The said Michael Giresi has also refused and neglected to pay the aforesaid $100.00 counsel fee together with the costs aforesaid amounting to $23.85. The said Michael Giresi has refused and neglected and still refuses and neglects to pay the said sums aforesaid.

5. For the past six weks the said Michael Giresi has paid the sum of $5.00 per week instead of the sum of $12.00 per week ordered as aforesaid. Your petitioner is in need of the sum of $12.00 per week.

ROSE GIRESI.

Sworn to and subscribed before me
this 29th day of March, 1943.

DORIS NEWMAN,
Notary Public of New Jersey.
My Commission Expires Oct. 26, 1947.

(SEAL)

Order.
(Filed May 12, 1943)

IN CHANCERY OF NEW JERSEY.
140/313

Between

MICHAEL GIRESI,
Petitioner,

and

ROSE GIRESI,
Defendant.

On Petition, &c.

This matter being opened to the Court by Ernest F. Masini, Solicitor for the defendant; and it appearing to the Chancellor that an Order was entered in this cause on the 23rd day of December, 1942, wherein and whereby it was, among other things, ordered that the petitioner, Michael Giresi, pay to the defendant, Rose Giresi, the sum of Six Hundred and Twenty-four Dollars ($624.00) in weekly installments of Twelve Dollars ($12.00) each, together with taxed costs and a counsel fee of One Hundred Dollars ($100.00); that thereafter petitioner failed to make the payments required under the terms of the said Order to be made; that notice was served upon the petitioner returnable on April 13, 1943, that the defendant would apply to the Chancellor for an Order adjudging the petitioner in contempt of court for his failure to obey the terms of the said Order; that on the return day of said notice, the matter was continued until May 4, 1943, at which time neither the petitioner nor his counsel

appeared, and the Court having considered the matter and the oral statements made in open Court, and it now appearing that the said Michael Giresi is guilty of the contempt charged and that he had wilfully violated the Order of this Court mentioned in the said Notice of Motion;

It is on this 12th day of May, 1943, by the Chancellor, ORDERED and ADJUDGED that the said Michael Giresi is guilty of contempt of this Court in that he has wilfully violated the said order requiring him to pay to the defendant, Rose Giresi, the sum of Two Hundred and Forty Dollars ($240.00) being the total amount of installments of alimony for the support of the defendant, Rose Giresi, together with the sum of One Hundred Dollars ($100.00) for counsel fee and Twenty-three Dollars and Eighty-five Cents ($23.85) taxed costs under the terms of said Order.

And it is further ORDERED that the said Michael Giresi be committed to the County Jail of the County of Essex or to such other jail in this State where he may be apprehended and there remain until he shall pay to defendant or to her Solicitor the aforesaid sums now amounting in the whole to Two Hundred Sixty-seven Dollars and Eighty-five Cents ($267.85) together with the costs of these proceedings to be taxed, including a counsel fee of Twenty-five Dollars ($25.00) which is hereby adjudged to be a reasonable counsel fee, unless the Chancellor shall see fit sooner to discharge him; and that a warrant issue for this purpose accordingly. Let the war-

INDEX.

Wife has decree for maintenance. ~~Husb~~. Husb. sued for divorce & she countered for maintenance from July 11/44 date of decree She was awarded $12. a wk. etc. He must to

Notice of Application for Alimony and Cost of Printing Record on Appeal and Counsel Fee.

New Jersey Court of Errors and Appeals

Between MICHAEL GIRESI, Petitioner-Appellant, *and* ROSE GIRESI, Defendant-Respondent.	On Petition. On Appeal from Chancery. Notice of Application for Alimony and Cost of Printing Record on Appeal and Counsel Fee.

To Hyman Halpern, and Arthur J. Connelly, Esq., Solicitors of Petitioner-Appellant:

TAKE NOTICE that we shall apply to the New Jersey Court of Errors and Appeals at the State House in Trenton, on Tuesday the 17th day of October, 1944, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order directing the petitioner-appellant to pay for the printing of the brief of the defendant-respondent, and also to pay a reasonable counsel fee for counsel on appeal and for a continuance of the support and maintenance made by a Final Decree of the Court of Chancery, or for alimony *pendente lite,* or for such proper support and maintenance to be paid by the petitioner-appellant as may be proper.

Upon such application we shall use a petition and affidavit, copies of which are hereto annexed.

Dated: September 30, 1944.

ERNEST F. MASINI,
BILDER, BILDER & KAUFMAN,
Solicitors for Defendant-Respondent.

BERNARD HELLRING,
Of Counsel.

Petition for Alimony and Suit Moneys.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

On Petition.
On Appeal from Chancery.
Petition for Alimony and Suit Moneys.

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

The petition of Rose Giresi, defendant-respondent, shows:

1. She is the defendant-respondent in the above entitled cause now pending before this court.

2. She is without funds to pay the cost of printing the brief on this appeal.

3. She is without funds and has no means of support, nor has she any money to pay counsel on this appeal.

4. On December 23, 1942, a Final Decree was made in the above entitled cause, directing the petitioner-appellant to pay to the defendant-respondent, the sum of $12.00 per week as and for her support and maintenance.

5. Said Final Decree remains in full force and effect, not having been in anywise vacated, modified or reversed.

6. On July 11, 1944, the Court of Chancery adjudicated that the petitioner-appellant was in contempt of said court for his willful violation of said Decree, and ordered petitioner-appellant to be committed until he shall have paid said arrearages and taxed costs.

7. Defendant-respondent further shows that on the 30th day of August, 1944, she was served with notice of appeal from the Decree of the Court of Chancery to this Honorable Court, and that the petitioner-appellant, since taking said appeal, has paid nothing either on account of the arrearages of maintenance and support adjudged by said Decree to be due to the defendant-respondent or any future maintenance and support accruing thereafter.

She therefore prays:

1. That the petitioner-appellant pay the cost of printing her brief on this appeal.

2. That he pay to counsel a reasonable sum for representing her in the matter of this appeal.

3. That he pay to her the sum of $12 per week, weekly in advance as alimony *pendente lite,* commencing from the 11th day of July, 1944, for the support and maintenance of defendant-respondent.

ERNEST F. MASINI,
BILDER, BILDER & KAUFMAN,
Solicitors for Defendant-Respondent.

BERNARD HELLRING,
Of Counsel .

Affidavit of Rose Giresi.

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

ROSE GIRESI, of full age, being duly sworn, according to law, upon her oath, deposes and says:

1. I am the defendant in the appeal in the above entitled cause.

2. I was married to my husband, Michael Giresi, petitioner-appellant, on the 16th day of June, 1908, and we lived together as husband and wife until in or about the month of October, 1938.

3. On December 23, 1942, a Final Decree was made by the Court of Chancery directing the petitioner-appellant to pay me the sum of $12.00 per week, and he was further directed to pay my solicitor in these proceedings the sum of $100.00 counsel fee together with taxed costs.

Affidavit of Rose Giresi.

4. An appeal is now pending in this court from such Final Decree and I will be required to be represented by counsel in the matter of said appeal from the decree of the Court of Chancery to this court, and it will be necessary for me to have prepared and presented in the form of a printed brief the arguments of my counsel in support of the decree of the Court of Chancery.

5. I am without funds and have no means of support pending said appeal and neither have I any moneys or means to pay counsel to represent me on said appeal.

6. I am presently sick and have been sick for the past few years and am consequently physically unable to earn any money for my support.

ROSE GIRESI.

Sworn to and subscribed before me this 30th day of September, 1944.

DORIS NEWMAN,
A Notary Public of New Jersey.

Statement on the Motion.

The printing expenses of the respondent on this appeal are $25.80. These could not be ascertained until the printing was done and are therefore noted here.

Respondent submits that she is entitled to an order of this court awarding a reasonable fee to her counsel on this appeal. The expenses for the retention of counsel have been made necessary by the appellant and should be paid by him. The appellant's right to appeal from the order of the Chancellor is, of course, clear, but the total expenses of that appeal, on both sides, should be borne by him.

BRIEF FOR RESPONDENT.

I.

This is an appeal from an order of the Chancellor holding the appellant husband in contempt for failure to obey a Chancery decree dated December 23, 1942 (23). There is no dispute on the facts. Appellant admits the existence of the Chancery decree and admits that he violated its terms. He argues, however, that he had a right to disregard and disobey the decree.

By the terms of the decree of December 23, 1942, the Chancellor dismissed the husband's suit for divorce and granted the wife's counterclaim for separate maintenance. It therefore stands as a money decree for twelve dollars per week in favor of the wife and against the husband. The husband has paid up to and including November 5, 1943 (26-27). Since that time he has paid nothing.

On January 4, 1944, the wife applied for a contempt order (29-34). On July 11, 1944, the Chancellor adjudged the husband in contempt and ordered the issuance of a warrant (4-6). From that order, the husband now appeals.

Appellant argues that on October 6, 1943 he obtained a decree of divorce in Reno, Nevada; that the New Jersey maintenance decree of December 23, 1942 was thereby *ipso facto* rendered null and void; that he immediately acquired the right to disregard the New Jersey decree without more.

The single issue on this appeal is, therefore, whether the Nevada divorce decree *ipso facto* vacated and terminated the New Jersey maintenance money decree of December 23, 1942.

II.

Appellant's entire brief is devoted to sustaining the validity of the Nevada divorce decree. That is not an issue in this case. The husband has never applied to our Court of Chancery for a modification or a termination of its maintenance decree on the basis of the Nevada divorce. He has never put the validity of the Nevada decree in issue in this state.

The existence of the Nevada divorce decree was suggested in one of the husband's affidavits (35), but even that affidavit was filed in a different cause and is not a part of this record. (See Docket numbers p. 34 and compare with Docket numbers p. 4.) It must be noted further that the other documents in the State of Case relating to the Nevada proceedings are not properly a part of the record, since they were not introduced on any application by the husband to modify or terminate the New Jersey maintenance decree.

The Nevada decree may be valid or indeed it may be invalid. That question was not presented to the court below, was not decided by the court below, and is not in issue here.

The case of *Davis* v. *Davis,* 305 U. S. 32, 83 L. ed. 26, upon which appellant so heavily relies, is a decision on the validity of a foreign divorce decree and has no application here. In the *Davis* case, the wife obtained a decree *a mensa et thoro* in the District of Columbia. Later the husband was granted an absolute divorce in Virginia. He then applied to the District of Columbia Court "to set aside or modify" its decree *a mensa et thoro.* On that application, the Virginia decree was held valid and the earlier decree terminated.

It may be that appellant in this case should have made a similar application to our Court of Chancery as was made by the husband in the *Davis* case. That was for him and his counsel to decide. The fact is that no such application has been made nor is that issue involved here.

As appears from the memorandum of the Court below (38), as well as from the affidavit of the husband (35), he went to Reno, Nevada early in 1943 for the clear purpose of obtaining the divorce which our courts had already denied to him in December of 1942. In fact he was enjoined by the Chancellor of New Jersey from proceeding further in Nevada (38). For these and other reasons, the Nevada decree may well be invalid as a fraud, upon our courts. That question may be determined on an application by the husband to set aside or modify the maintenance decree—just as it was determined on a similar application in the *Davis* case, cited first by appellant.

No such application has ever been made by the appellant and the New Jersey maintenance decree of December 1942 stands unchanged in any respect. Instead, the husband came back to New Jersey after obtaining the Nevada decree and was promptly arrested for contemning the New Jersey decree. (25-27) He paid all his arrearages to the Sheriff up to November 5, 1943—a period which ran one month beyond the date of his Nevada decree.

The issue dealt with in appellant's brief is, therefore, not before this court, just as it was not before the Court below. Neither the memorandum (37-39) nor the order (4-6) of the court below passes upon the question. Respondent submits, therefore, that the validity of the Nevada divorce decree is not an issue on this appeal.

III.

Appellant's contention is that his Nevada decree, *ipso facto* and without more, terminated the New Jersey maintenance decree and made it unenforceable. The court below held that its money decree of maintenance dated December 23, 1942 had not been modified in any respect; that it could not be modified by the mere issuance of a foreign divorce decree; and that it remained effective until changed or set aside.

The courts of this state have already established that a decree of divorce does not in and of itself void a prior decree of maintenance. This principle was first laid down by the Court of Chancery in

Schimek v. *Schimek,* 109 N. J. Eq. 395 (1931).

It was expressly followed and unanimously affirmed by the Court of Errors and Appeals in the recent case of

Bowers v. *Bowers,* 132 N. J. Eq. 431.

These cases are dispositive of the issue raised on this appeal. In each of the cases cited *the wife* obtained a divorce decree *in New Jersey* after an earlier maintenance decree from the same court. It was nevertheless held that the later divorce decree does not, without more set aside, modify, or void the earlier maintenance decree. *A fortiori,* in the case at bar, the later *foreign decree of divorce obtained by the husband who could not obtain it here,* did not *ipso facto* terminate or modify the prior New Jersey maintenance decree.

A maintenance decree is purely a money decree and has no bearing on the matrimonial status.

Adams v. *Adams,* 77 N. J. Eq. 123.

A decree of divorce, on the contrary, has no bearing except on the matrimonial status unless provision for alimony be included therein. No such provision was made in the Nevada divorce decree in the case at bar. It cannot, therefore, *ipso facto* affect the New Jersey maintenance decree.

On the authority of the cases cited above, this court should affirm the order of the Chancellor made herein.

The same principle has been established and followed in other jurisdictions. It was first adverted to by the United States Supreme Court in

> *Barber* v. *Barber,* 21 How. (U. S.) 582, 16 L. ed. 226 (1859).

In that case, the wife obtained a decree *a mensa et thoro* in New York. The husband then obtained a decree of divorce in Wisconsin. The court held that the Wisconsin divorce decree did not release the husband from liability under the New York money decree for payments therein ordered.

The leading case on this subject is almost identical, factually, with the case at bar

> *Simonton* v. *Simonton,* 40 Idaho 751, 236 Pac. 863 (1925—Sup. Ct.).

In that case, the husband sued the wife for divorce in Idaho. She counterclaimed for maintenance. The Michigan court dismissed the petition for divorce and gave the wife a maintenance decree ordering payments of fifteen dollars per month. Later the husband obtained a decree of divorce in Washington which made no provision for alimony. He never applied to the Idaho courts for a modification of the maintenance decree.

After his death, the wife sued his estate for unpaid installments due under the maintenance decree.

While the court pointed out that the Washington divorce decree was valid, it held that the Idaho maintenance decree was not affected, modified, or terminated thereby. It gave judgment to the wife for all unpaid installments due under the Idaho maintenance decree. In so holding the court said,

> "To hold otherwise would in effect be allowing Rolvin D. Simonton to have indirectly, through the Washington decree, had the Idaho decree modified in a manner and under service which would not have been sufficient to enable him to have directly had the Idaho decree modified. The Idaho decree did not affect the status of the parties, and the Washington decree in no way affected the rest of the property; nor did it affect the status or res of the obligation resting on Rolvin D. Simonton to continue under the Idaho decree, the support of his then minor children."

The *Simonton* case is a clear cut holding on the precise issue on this appeal. So also is the case of

Miller v. *Miller,* 206 N. W. 262 (1925 Iowa),

in which it appeared that the wife was granted a maintenance decree in Iowa. Later the husband obtained a divorce decree in Missouri. The Iowa court, on a similar application to the one made here, ordered the husband to comply with its maintenance decree, despite the existence of the Missouri divorce.

These cases required continued payments under the maintenance decrees accruing both before and after the divorce decrees. In the case at bar, the appellant has already made payments under the New Jersey maintenance decree accruing after the entry of the Nevada divorce decree.

To the same effect as the cases already discussed are

Weaver v. *Weaver,* 96 Misc. 476, 160 N. Y. Supp. 642 (1916);

Bragg v. *Bragg,* L. R. (1925) Prob. (Eng.) 20.

On the authority of the cases cited above as well as on the reasoning and principle applied by the Advisory Master, this court should affirm the order of the court below.

Respectfully submitted,

Ernest F. Masini,
Bilder, Bilder & Kaufman,
Solicitors for Defendant-Respondent.

Bernard Hellring,
Of Counsel.

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New Jersey Court of Errors and Appeals

Between

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

On Appeal from Court of Chancery.

BRIEF ON BEHALF OF PETITIONER-APPELLANT, MICHAEL GIRESI.

(Undesignated numbers refer to pages of State of Case.)

Facts.

This is an appeal from an order of the Court of Chancery made on July 11, 1944, (4) adjudging the petitioner-appellant (hereinafter called husband) in contempt for failure to comply with the terms of a final decree in a maintenance action in the Court of Chancery of New Jersey ordering the husband to pay defendant-respondent (hereinafter called wife) the sum of $12.00 per week for her support. The final decree in the separate maintenance action was made against the husband, December 23, 1942 (23).

On June 15, 1943, the husband, after establishing a bona fide residence in the State of Nevada, filed a petition for divorce against his wife in the District Court of the State of Nevada, in and for the County of Washoe (8). On August 9,

1943, the wife filed an answer in said Court by her attorneys (11-a—11-f), submitted to the jurisdiction of the Court, appeared by her attorneys, and after a trial in which her attorneys participated, a judgment of divorce was rendered against her by the Nevada Court (12).

On October 6, 1943, the husband obtained a final decree of divorce against his wife in the State of Nevada (12). The final decree of the State of Nevada states (12, ll. 24-36):

> "This case came on regularly for trial on this 6th day of October, 1943, before the undersigned Judge of said Court, sitting without a jury, Plaintiff being present in person and by his attorney, Clyde D. Souter, Esquire, Defendant being present by her attorneys, Morley Griswold, Esquire, and George L. Vargas, Esquire, and such proceedings were regularly had herein that on the same day the court rendered its decision in favor of the Plaintiff and against the Defendant, made and entered herein, its certain Findings of Fact and Conclusions of Law and ordered that Judgment be entered accordingly."

The husband was not in arrears after November 3, 1943. He paid all arrearages for support together with costs and counsel fees. Up to December 16, 1943, they amounted to $471.85, according to the court order (25, ll. 27-31). This sum, together with the costs and counsel fees were paid in full on November 5, 1943, as evidenced by the receipt of the sheriff (27). The petitioner further contends that the order for contempt was improper in that prior thereto on October 6, 1943, he obtained a final decree of

divorce against his wife in the State of Nevada. On September 21, 1943, after the wife had filed her answer in Nevada and prior to the trial in that state, the wife filed in the Court of Chancery of this State a bill alleging the prior proceedings in the Court of Chancery, and alleging further that the husband's residence in Reno was not bona fide and amounted to a fraud and prayed for a restraining order to prevent further procedure of the Nevada matter (16). An order to show cause containing the usual restraints was made on September 21, 1943 (14). However, it was never served upon the husband until after the rendition of the Nevada decree (28, ll. 31-40). The order to show cause was served upon the defendant in Nevada after the Nevada proceedings were concluded. However, the husband returned to this state to answer said order which was returnable on October 19, 1943 (14, ll. 28-31), and adjourned to November. In answer thereto the husband filed an affidavit setting forth the fact that he had obtained a decree of divorce against his wife and that he was not served with the order until after the conclusion of the case (28). At the argument, the Court directed counsel for the wife to amend the bill alleging her charge of fraud in the procurement of the divorce and pray that it be set aside. However, nothing further was done with reference to said bill. Instead the wife on January 25, 1944, filed a petition to hold the husband in contempt for failure to pay alimony accrued since November 3, 1943 (34).

In answer thereto the husband filed an affidavit (34), in which he stated that there was nothing due for alimony, costs or counsel fee (35, ll. 10-15). He further recited the Nevada proceedings

and that his wife was served with process in said suit and had knowledge thereof and was represented and appeared and was present by her attorneys, Morley Griswold and George L. Vargas, and an appearance and answer on behalf of the wife was duly filed and entered (35, ll. 22-32). The wife's counsel made application to the Reno Court for expense money to defend the suit and the Court allowed her a sum of money which the husband paid (35, ll. 29-32). He further set forth the change in the status of the parties since the final decree of the Court of Chancery (36, ll. 8-14). However, on the basis of said petition for contempt the Court made its order of July 11, 1944, holding the defendant in contempt (4).

The memorandum of the Advisory Master recites the facts of the Reno proceedings, the wife's answer therein, and the divorce decree rendered by the Nevada Court in favor of the husband (38, ll. 19-40). However, the Advisory Master dismisses these prior proceedings and the Reno decree with the statement that "Once this Court has obtained jurisdiction over an action by personal service within this State, neither of the litigants may oust our jurisdiction by removing the cause to another forum. Were this otherwise, this Court could never finally adjudicate any cause of action" (39, ll. 5-10). We are of the opinion that the conclusion of the Advisory Master was erroneous and should be reversed.

Question Involved.

The question involved is whether a husband can be held in contempt for failure to pay alimony under the terms of a final decree in a separate maintenance action in this State when the following facts appear. Subsequent to the entry

of the final decree the husband established a bona fide residence in Nevada, filed a petition for absolute divorce in Nevada, the wife is served with process, enters an appearance and files an answer by her attorneys, asks for and obtains an order of the Nevada Court for expense money, a hearing is had on the merits in the presence of her attorneys and a decree of divorce is granted in favor of the husband. In addition thereto all counsel fees, costs and alimony for at least several weeks beyond the date of the Nevada decree are paid in full. Furthermore, after filing answer in the Nevada Court, the wife filed a bill in this State to restrain the Nevada proceedings. She failed to file an amended bill in this State to test the validity of the Reno decree and no hearing of any sort was had in the Court of Chancery of this State to determine the validity of the Reno decree. Instead she files a petition to hold the husband in contempt for failure to pay alimony for a period subsequent to the date of the Reno decree and the Court held the husband in contempt.

POINT I.

The Nevada decree is valid.

The case of *Davis* v. *Davis,* 305 U. S. 32, 83 L. Ed. 26, controls the case at bar. It was decided in 1938.

In that case the United States Supreme Court held that the final judgment of a court of another state rendered upon a contested hearing and a determination of the existence of jurisdictional facts, in which proceedings the contesting party appeared, participated and raised and controverted the question of jurisdiction, is protected

under the full faith and credit clause and may not be impeached in another state on the ground of lack of jurisdiction in the Court rendering it.

Under the decision in the *Davis* case if the defendant appears and joins issue on the jurisdictional fact of plaintiff's residence in the divorce forum, he or she will be concluded by any adverse finding from subsequently attacking the decree in another state on the ground that the Court rendering it had no jurisdiction over the subject matter of the divorce suit because of lack of residence in the state by the divorced plaintiff.

In the *Davis* case the wife appeared and filed a plea stating that she appeared "specially and for no other purpose than to file this plea to the jurisdiction of the Court" and claiming that the Court in Virginia had no jurisdiction of the divorce suit because neither of the parties to that suit were domiciled or resided in Virginia for the requisite period of time and that the husband's residence in Virginia was not bona fide but for the sole purpose of creating jurisdiction in the Court to hear and determine the suit.

It is to be noted too that the facts in the case at bar would seem to be much stronger because in the case at bar the wife filed no special appearance but a general appearance. Her answer to the allegation of the husband's bona fide residence was that she had no sufficient information to form a belief and neither admitted nor denied it (11-a, ll. 29-33). She admitted that she and her husband lived separate and apart for three years (11-b, ll. 22-24). She also set up separate defenses to the effect that the Nevada Court had no jurisdiction in the matter. But there was no special appearance filed to test the jurisdiction of the Court, but rather she put that question in issue and it was decided against her.

Justice Butler, writing for the Supreme Court, stated:

> "The lower court held a decree of the circuit court of Arlington County, Virginia, entered June 26, 1929, granting petitioner an absolute divorce from the respondent upon the ground of desertion, not entitled to recognition in the Supreme (now district) Court of the District of Columbia. The question arose upon his application to that court to set aside or modify a decree it entered October 29, 1925, granting him a divorce a mensa it thoro from respondent on the ground of cruelty."

* * *

> "The decree of separation * * * directed him to pay $300.00 a month for support of wife and daughter."

* * *

> "She filed a plea stating she appeared 'specially and for no other purpose than to file this plea to the jurisdiction of the court.' In that document she alleged that neither she nor petitioner had been a resident of Virginia for a year before commencement of the suit and asserted that he was not then a bona fide resident there but that the residence he was attempting to establish was for the sole purpose of creating jurisdiction in the court to hear and determine the suit for divorce and was therefore a fraud upon the court and not residence in contemplation of law."

* * *

New Jersey State Library

"As to petitioner's domicil, for divorce, and his standing to invoke jurisdiction of the Virginia court, its finding that he was a bona fide resident of that state for the required time is binding upon the respondent in the Courts of the District. She may not say that he was not entitled to sue for divorce in the state court, for she appeared there and by plea put in issue his allegations as to domicil, introduced evidence to show it false, took exceptions to the commissioner's report, and sought to have the court sustain them and uphold her plea. Plainly the determination of the decree upon that point is effective for all purposes in this litigation.

"As to respondent's appearance in the Virginia court. The assertion in her plea that it was special and made for the sole purpose of challenging jurisdiction is of no consequence if in fact it was not so limited. Sugg v. Thornton, 132 U. S. 524, 530, 33 L. Ed. 447, 449, 10 S. Ct. 163; Sterling Tire Corp. v. Sullivan (C.C.A. 9th), 279 F. 336, 339. If the plea alone may not be held to amount to a general appearance, there arises the question, whether by her participation in the litigation and acquiescence in the orders of the court relating to merits, she submitted herself to its jurisdiction for all purposes. Her plea and conduct are to be considered together.

"There had been no claim of jurisdiction over her person. The plea did not challenge jurisdiction over petitioner or the court's authority, if appropriately invoked, to grant the decree petitioner sought. It merely asserted that he lacked domicil required by

Virginia law. Her allegations and prayer show that the sole purpose of the plea was to join issue with petitioner's allegation of domicil in Virginia, to secure a finding against him on that point, to obtain a decree that he had no standing to bring the suit and so put an end to his efforts to obtain divorce in that state.

"The recital in the decree of reference, that the cause came on for hearing, upon inter alia, argument of counsel, suggests that both parties were heard."

* * *

"Plainly her plea and conduct in the Virginia court cannot be regarded as special appearance merely to challenge jurisdiction. Considered in its entirety, the record shows that she submitted herself to the jurisdiction of the Virginia court and is bound by its determination that it has jurisdiction of the subject matter and of the parties."

It seems to us that the facts of the *Davis* case are similar to those in the case at bar. It is to be noted that in the *Davis* case as well as in the case at bar there was a decree of separation in the original court awarding the wife a monthly sum of money.

It would also seem that the *Davis* case is a complete answer to the Advisory Master's opinion that "Once this court has obtained jurisdiction over an action by personal service within this State, neither of the litigants may oust our jurisdiction by removing the cause to another forum. Were this otherwise, this Court could never finally adjudicate any cause of action" (39, ll. 1-10). The *Davis* case directly contradicts

the Advisory Master.

Had the wife not appeared in the Nevada court and taken no steps therein the situation might be different. But having appeared in Nevada and contested the action and the Court having entered a judgment against her she cannot now just forget about it and resume proceedings in the courts of this state as though nothing happened in Nevada. Yet that is just what the Advisory Master countenanced.

Another case in point is that of *Greene* v. *Greene,* 2 Gray 361, United States Supreme Court, wherein the Court stated:

> "The maxim that fraud vitiates every proceeding must be taken like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible; the party is estopped to set up such fraud, because the judgement is the highest evidence, and cannot be contradicted. It is otherwise he says, with a stranger to the judgement."

This same principle is adopted in the case of *U. S.* v. *Throckmorton,* 98 U. S. 61; 25 L. Ed. 93, 96.

In the case of *In Re Leupp,* 108 N. J. E. 49, the Court of Chancery stated at page 58:

> "It is a doctrine of universal acceptation that the judgment of a competent court of jurisdiction is, until reversed, final and conclusive upon the parties, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but

as to any other admissible matter which might have been offered for that purpose" (cases cited).

It is now the established rule that the foreign decree is entitled to full faith and credit if the petitioner was domiciled in the state of the forum whether service was personal or by publication. *Williams* v. *State of North Carolina,* 317 U. S. 287.

And it would seem that the proviso to N. J. S. A. 2:50-35 must yield when it conflicts with the federal constitution.

When the federal full faith and credit clause becomes operative, the effect is to compel New Jersey to give to a decree of divorce or of nullity of a sister state the same force and effect in New Jersey as it has in the state where rendered. If the parties are no longer man and wife by virtue of a decree of divorce or of nullity of a sister state, and the decree has been obtained in such manner as to be entitled to full faith and credit in New Jersey, this state may not regard the parties as divorced in the sister state but as married in New Jersey.

The conclusion seems inescapable that the husband could not be held in contempt for the reason that at the time he was before the Court on an alleged charge of contempt, he held a decree of absolute divorce against his wife and he was under no obligation to pay his wife alimony.

POINT II.

The Nevada decree must be given full faith and credit and must be recognized unless and until declared invalid in this state.

We have not had the benefit of a hearing based on proper pleadings, to determine the validity of the Nevada decree. Without adjudicating that the Nevada decree is invalid, the Court refused to recognize it. Until and unless a foreign decree is tested on a proper bill to have it declared invalid, the New Jersey Court cannot by its *ipse dixit* declare it invalid or disregard it without benefit of a hearing and affording the parties all the benefits of offering proof. Yet this is just what the court below did. It should have held that the only way it could refuse to recognize the foreign decree would be after a proper hearing on the merits.

In the case of *Feickert* v. *Feickert,* 98 N. J. E. 444, Chancellor Walker stated at page 447:

> "Mrs. Feickert assumes to treat the Nevada proceedings and decrees as invalid. I am not permitted to indulge any such presumption. In law the presumption is the other way. If they are unvalid it is because they are fraudulent, and fraud is never presumed, but always has to be strictly proved."

And at page 450:

> "If the Nevada decree in the Feickert case contains recitals which, on their face, ascertain that Mr. Feickert had proper residential status there to begin and prosecute his suit in that state, and the decree adjudges that

> fact and grants a divorce, it cannot be denied that that divorce is valid in New Jersey, unless procured by fraud."

And on page 451:

> "Of course, if a resident of this state goes into another state to obtain a divorce and does not acquire a bona fide residence there, such divorce will be null here, but its nullity will have to be proved here."

An on page 452:

> "The petitioner in this case could not be permitted to make proof of the Nevada proceedings and decree and attack them as invalid, without pleading them. Testimony to be relevant and admissible must be such as will tend to prove a fact or facts in issue. Marsh vs. Marsh Heating, etc., Co., 57 N. J. L. 36; Perkins vs. Perkins, 22 N. J. L. J. 174. The petitioner in the case at bar has not put the invalidity of the foreign divorce of the defendant in issue by pleading it. This will have to be done if she is to proceed."

Likewise in the case at bar, before it can be said that the Nevada divorce is invalid, the wife will have to put it in issue by pleading it, and having the Court then rule upon it after hearing. This has not been done in the case at bar. In the cases of *Mascola* vs. *Mascola,* 134 N. J. E. 48, and *Wolff* vs. *Wolff,* 134 N. J. E. 8, it was held that the foreign divorces were invalid but only after proper pleadings and hearing and a finding that the decrees were invalid. In those cases the foreign divorces were held invalid in this

state but the facts were very different from those at in the case at bar.

In the case at bar the Nevada decree, good on its face, required that the Court of Chancery recognize its validity. It is to be afforded full faith and credit until vacated in this state for invalidity. But that could not come about until after proper pleadings, offer of proof and a determination based thereon, that it is invalid. No such proceedings were had in the Court of Chancery.

POINT III.

The award of counsel fees and costs was improper.

The Court found the husband guilty of contempt of court and ordered him committed until he shall pay the sum of $162.00 alleged to be due for alimony, together with taxed costs and a counsel fee of $200.00 (3, ll. 5-13).

We contend that if the order adjudging the defendant in contempt is improper, then necessarily the allowance of costs and counsel fees is improper.

Conclusion.

For all the reasons urged it is respectfully submitted that the order of the Court of Chancery of July 11, 1944, should be reversed, vacated and set aside with costs.

Respectfully submitted,

HYMAN HALPERN,
Solicitor of Petitioner-Appellant.

ARTHUR J. CONNELLY,
Of Counsel

Affidavit in Opposition to Motion for Alimony, Costs and Counsel Fees.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

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

MICHAEL GIRESI, of full age, being duly sworn, according to law upon his oath, deposes and says:

1. I am the petitioner-appellant in the above entitled cause. I make this affidavit in opposition to the motion by my wife for alimony pending the appeal and for counsel fees and costs for this appeal.

2. On October 6, 1943, I obtained a final decree of divorce against my wife in the State of Nevada which decree is still in full force and effect.

3. My wife contested said action. She was allowed a fee of $180.00 by the Nevada court for her expenses which I paid her.

4. I am presently irregularly employed and earn only sufficient moneys for my necessary living expenses. I have no funds of any sort or character. I am greatly in debt because of the present and past litigation. I have not paid my attorney for his services.

5. My wife resides at the home of my three single daughters who are all working and she is well provided for and lacks for nothing. Furthermore, my wife owns a one-third interest in a farm in Ardonia, New York, from which she derives an appreciable income.

The matter is now pending on appeal before this honorable court and I believe that any motions should await the outcome of this pending appeal.

MICHAEL GIRESI.

Sworn and subscribed to before me
this 14th day of October, 1944.

TOBIAS L. CERRATO,
An Attorney at Law of N. J.

Service of a copy acknowledged this 16th day of October, 1944.

BILDER, BILDER & KAUFMAN,
Solicitors for Defendant-Respondent.
Per Bernard Hellring.

202 MAY 7 1945

New Jersey Court of Errors and Appeals

Between

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

On Appeal from the Court of Chancery.

SUPPLEMENTAL BRIEF OF PETITIONER-APPELLANT, MICHAEL GIRESI.

This brief is submitted as supplemental to our original brief.

The question to be decided was stated in our original brief at page 4.

The case at bar presents a question of novel impression in this State. This is so because of the fact that the wife vigorously contested the husband's action in Nevada by filing an appearance and answer, and contesting the entire proceedings and merits of the case. The question was posed but left unanswered by this Court in a recent case. In sustaining a decree of divorce obtained by the husband in Reno on the ground of laches on the part of the wife, this Court stated in the case of *Sleeper* v. *Sleeper,* 129 N. J. E. 94, at p. 99:

> "Whether or not the facts incident to, and the circumstances under which she entered into and vigorously conducted her defense

in the Nevada suit would, by themselves, bar the relief now sought is not determined."

The case at bar is therefore controlled by the law as expounded by the United States Supreme Court and other State courts.

The facts of the case have been fully set forth in our original brief. We wish merely to add a matter of importance that we have since discovered, namely, that the wife filed an amended answer in the Reno proceedings (Supplemental S. of C., p. 1). The original answer is found in (S. of C., p. 11a). The amended answer denies that the husband has a bona fide residence in the State of Nevada; admits that she and her husband have lived separate and apart for three consecutive years but denies that he gave her no reason, cause, provocation or justification for thus living apart, but that he abandoned and deserted her. The original answer, in addition to pleading the above, pleaded in addition that the final decree in the maintenance action in this State was *res adjudicata* (S. of C., p. 11a, 28-35). It would seem, therefore, that the plea of *res adjudicata* was abandoned by the wife in the Reno proceeding.

The State of New York has settled the question.

The State of New York furnishes a precedent for a solution in the case at bar. The Courts of New York have decided that where a separation judgment was granted in New York State, this was superseded by a judgment for an absolute divorce obtained thereafter in Massachusetts. The question arose on a motion to punish the

husband for contempt for failure to pay alimony in the separation action. It was held that alimony need be paid only up until the time of the divorce decree. The facts in that case are identical with those in the case at bar. If the names of the parties were substituted, it would not be differentiated from the case at bar. The exact situation warrants a somewhat lengthy quotation. The case is *Richards* v. *Richards* (New York, 1914), 87 Misc. 134, 149 N. Y. Supp. 1028, Supreme Court, Special Term, New York County.

The case came up on a motion to hold the husband in contempt for failure to comply with a final separation decree by the payment of $13.00 weekly. A decree of separation was entered in the New York Court in favor of the wife against the husband and ordered him to pay $13.00 per week alimony. This decree was made on March 15, 1912. The husband in defense pleads a final decree of divorce based on desertion in his favor entered in the State of Massachusetts on December 4, 1912.

The wife voluntarily appeared in the Massachusetts action, but was not present when the decree was first entered. At p. 1030, Donnelly, J., stated,

> "He may, however, defend any motion made by the plaintiff, and it is therefore necessary to consider the effect of the judgment for absolute divorce obtained by him in the Massachusetts Court, in order to dispose of the motion to punish him for contempt, for failure to obey the directions of the New York decrees, respectively, directing him to pay alimoney. The defendant contends that said decree is an absolute bar, in that it changes the status of the parties in

the separation suit, and that, the Massachusetts Court having acquired jurisdiction over the parties and subject matter by reason of their voluntary appearance and the local statute vesting it with power to grant an absolute divorce, its judgment for absolute divorce supersedes the judgment for separation obtained in this state. The plaintiff, however, insists that the judgment for divorce obtained in the Massachusetts Court does not supersede the judgment entered herein, for the reason that the Massachusetts tribunal, while it obtained jurdisdiction over the persons who were parties to the litigation in question, never acquired jurisdiction over the subject matter of the action. Her contention is predicated on the theory that the Massachusetts final decree is void, because it is based on the finding that the parties to the suit were residents of the State of Massachusetts, when, as a matter of fact, they were residents of the State of New York. The libel alleges that Boston has always been his (George Richards') residence, and the final decree likewise recites a repetition of this statement. The finding in the separation suit in this case was just the reverse of this, namely, that the parties were residents of this state, and therefore the plaintiff argues that inasmuch as a right to a divorce in Massachusetts is a statutory one, and the local statute prescribes residence as one of the essentials to give jurisdiction the court would be without jurisdiction to grant the divorce, unless the facts prescribed by said local statute authorizing the granting of the same were established. She accordingly seeks to attack the Massa-

chusetts judgment collaterally by proving on this motion that the parties were residents of this state, notwithstanding the adjudication by the Massachusetts Court to the contrary.

Full faith and credit must be given to the judgments and decrees of a sister state. Const. U. S. Art. 4 Sec. 1. Congress has prescribed that they shall have such effect in every court within the United States as they have by law in the courts of the states in which they are taken. R. S. U. S., p. 171, sec. 905 (U. S. Comp. St. 1913 sec. 1519) Mills v. Duryee, 7 Cranch, 481, 3 L. Ed. 411. Such a judgment cannot be attacked collaterally unless it be shown that the court was without authority to render it, or through failure of service of process or other cause had no jurisdiction of the subject matter or of the party against whom it was rendered; and where jurisdiction depends upon a fact that is litigated in the suit and is adjudged in favor of the party who avers it, the question of jurisdiction is judicially decided, and the judgment record is conclusive on that question until set aside or reversed by a direct proceeding. Ferguson v. Crawford, 70 N. Y. 265, Am. Rep. 589; O'Donoghue v. Boies, 159 N. Y. 99, 53 N. E. 537. The plaintiff in the pending suit, having voluntarily appeared in the Massachusetts action, the question of jurisdiction by the Massachusetts Court is limited to the inquiry whether or not the court acquired jurisdiction over the subject matter of the action

What constitutes jurisdiction of a court over the subject matter of a litigation was discussed at length and definitely decided

in the case of Hunt v. Hunt, 72 N. Y. 217, 28 Am. Rep. 129. The court, at page 229 of 72 N. Y. (28 Am. Rep. 129), states the rule to be as follows:

> 'Jurisdiction of the subject matter is power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case, arising, or which is claimed to have arisen, under the general question * * * It is the power to act upon the general—and, so to speak, the abstract question, and to determine and adjudge whether the particular facts presented call for the exercise of the abstract power. A suitor for a judgment of divorce may come into any court of the state in which he is domiciled, which is empowered to entertain a suit therefor, and to give judgment between husband and wife of a dissolution of their married state. If he does not establish a cause for divorce, jurisdiction to pronounce the judgment does not leave the court. It has power to give judgment that he has not made out a case. That judgment would be so valid and effectual as to bind him thereafter, and to be res adjudicata as to him in another like attempt by him. If that court, however, should err, and give judgment that he had made out his case, jurisdiction remains in it so to do. The error is to be corrected in that very action. It may not be shown collaterally to avoid the judgment, while it stands unreversed, whether the judgment be availed of in the state of its rendition, or a sister state,

granted always that there has been jurisdiction of the parties to it. The judgment is in such case also res adjudicata against the party cast in judgment.'

The Massachusetts Court had power to pass upon the questions of residence under this statute, and therefore had jurisdiction of the subject matter. Hunt v. Hunt, supra. And that fact having been litigated in the suit, its finding is conclusive until it is set aside, or reversed by a direct proceeding in the suit. It cannot be attacked collaterally. Ferguson v. Crawford, supra; O'Donoghue v. Boies, supra. We therefore have a valid judgment for separation from bed and board rendered in this state, bearing date March 15, 1912, and, for the purposes of this motion, a valid judgment for absolute divorce rendered in the state of Massachusetts, bearing date December 4, 1912. It has been held in this state that a judgment for absolute divorce will supersede a judgment for separation (Tonjes v. Tonjes, 14 App. Div. 542, 43 N. Y. Supp. 941; Burton v. Burton, 150 App. Div. 791, 135 N. Y. Supp. 248; Gibson v. Gibson, 81 Misc. Rep. 508, 143 N. Y. Supp. 37), and, as full faith and credit must be given to the Massachusetts judgment in every court within the United States, it follows that it supersedes the judgment for separation obtained in this state.

Motion to punish for contempt is granted, but only to the extent of the money found to be due at the time of the entry of the Massachusetts judgment for absolute divorce."

It seems that the facts and the law of this New York case are entirely dispositive of the issue in the case at bar.

We quote from another recent New York case. *Glaser* v. *Glaser,* 276 N. Y. 296, 12 N. E. (2nd) 305, Court of Appeals of New York (1938), Crane, Chief Judge,

> "This is an action brought by a wife for a separation. The sole question presented here for determination is the validity of a Nevada divorce heretofore granted the husband.
>
> The parties were married in the City of New York on August 29, 1935. Both parties had been residents of the state of New York, and after their marriage continued to reside there. In November 1935, the husband left the state of New York and became a resident of the State of Nevada. There he commenced an action against plaintiff for a divorce, in accordance with the laws of Nevada.
>
> On November 4, 1935, the plaintiff executed and acknowledged a power of attorney wherein she appointed Joseph P. Haller, of Reno, Nevada, her lawful attorney at law in fact to represent her in the divorce action with full power and authority to do all acts that may be exercised and done by an attorney. Thereafter the plaintiff appeared in the divorce action by Haller, as her attorney. A decree of the Second Judicial Court of the State of Nevada, dated January 6, 1936, dissolved the marriage between plaintiff and defendant.
>
> The plaintiff alleges in her complaint that the power of attorney was procured from her

by fraud and false representations, that she never intended to execute such a document and did not intend to submit herself to the jurisdiction of the Nevada court either by appearance in person or through an attorney. She also alleges that defendant was not an actual and bona fide resident of the State of Nevada at the time he instituted the divorce, that he went there solely to procure the decree and never gave up his residence in the State of New York. These issues have been resolved by the courts below against the plaintiff. It has been found that defendant 'duly became a resident of the state of Nevada,' and that plaintiff executed the power of attorney voluntarily, understanding the contents and nature of the instrument, and without any false representations on the part of the defendant. There is evidence to support these findings, and this court cannot interfere with them.

Plaintiff, however, raises a further argument against recognition of this decree. The marriage was performed in this state, both parties were domiciled in this state, and after the decree was rendered the husband resumed his domicile here. Plaintiff charges that the main purpose of her husband in going to the foreign state was to procure the divorce, and she contends that a decree of divorce obtained under such circumstances is invalid, offends our public policy, and should not be recognized here. Cf. Andrews v. Andrews, 188 U. S. 14, 23 S. Ct. 237, 47 L. Ed. 366. No legislative enactment expressing such policy is pointed out as in the Andrews case. Plaintiff rests her argument upon the general policy of the state

with respect to marriage and divorce, as interpreted by the courts. A sufficient answer to plaintiff's argument is that our courts have many times recognized such decrees as valid, and have never indicated in any way that any policy of this state was infringed."

In passing, it is to be noted that in the *Richards* case the husband obtained a final decree of divorce in Massachusetts on the ground of desertion. This Court no doubt will take judicial notice of the fact that desertion is not a ground for divorce in the State of New York.

The *Richards* case has been followed in the State of New York in many later cases. One of such cases is *Scheinwald* v. *Scheinwald,* New York 1930, 231 App. Div. 757, 246 N. Y. Supp. 33. Supreme Court, Appellate Division.

> "We are of opinion that the decree of absolute divorce granted to respondent in the State of Nevada on July 5, 1929, in which action appellant personally appeared and interposed an answer, is binding upon her in this state; that from the date thereof it terminated her rights under the separation decree of March 22, 1928; and that appellant is entitled to no alimony under said decree subsequently to its date, namely July 5, 1929."

The Nevada decree is entitled to full faith and credit in the State of New Jersey.

The decree obtained by the husband in the State of Nevada is entitled to full faith and credit in New Jersey. This means that it is en-

titled to the same *res adjudicata* effect in New Jersey as it is in Nevada.

The decree obtained in Nevada is good under the celebrated case of *Williams* v. *North Carolina* (1942), 317 U. S. 283, 63 S. Ct. 207. In that case there were two petitioners who had been convicted in North Carolina of bigamous cohabitation in violation of the code of that State. The judgment of conviction was affirmed by the Supreme Court of North Carolina and was taken to the United States Supreme Court, which reversed. Petitioner Williams was married to Carrie Wyke in 1916 in North Carolina and lived with her there until May, 1940. Petitioner Hendrix was married to Thomas Hendrix in 1920 in North Carolina and lived with him there until May, 1940. At that time the petitioners went to Las Vegas, Nevada. On June 26, 1940, each filed a divorce action in the Nevada Court. The defendants in those divorce actions entered no appearance nor were they served with process in Nevada. In case of defendant, Thomas Hendrix, service was had by publication of the summons in a Las Vegas newspaper and by mailing a copy of the Summons and Complaint to defendant's last post office address. In the case of the defendant, Carrie Williams, a North Carolina sheriff delivered to her in North Carolina a copy of the Summons and Complaint. A decree of divorce was granted petitioner Williams by the Nevada court on August 26, 1940, on the grounds of extreme cruelty, the Court finding that he had a bona fide and continuous residence in the County and State for more than six weeks. The Nevada court granted the petitioner Hendrix a divorce on October 4, 1940, on the grounds of wilful neglect and extreme cruelty and made the same finding as to petitioner's bona fide and con-

tinuous residence in the county and state for more than six weeks. The petitioners were married to each other on October 4, 1940. Thereafter, they returned to North Carolina where they lived together until the indictment was returned. They pleaded not guilty and offered in evidence exemplified copies of the Nevada proceedings. The State contended that since neither of the defendants in the Nevada actions had been in that State nor appeared, the decrees would not be recognized as valid in North Carolina. The Court so charged the jury in substance. It was further contended by the State that the petitioners went to Nevada not to establish a bona fide residence but solely for the purpose of taking advantage of the laws of that State to obtain divorces through fraud upon the Court. On that issue the Court charged the jury that the defendants had the burden of satisfying the Court therein beyond a reasonable doubt of the bona fide residence in Nevada for the required time.

The Supreme Court of North Carolina in affirming the judgment held that North Carolina was not required to recognize the Nevada decrees under the full faith and credit clause of the Constitution by reason of the decision of the United States Supreme Court in *Haddock* v. *Haddock,* 201 U. S. 562, 50 L. Ed. 867.

The United States Supreme Court reversed the conviction and held the Nevada decrees entitled to full faith and credit. The Court said:

> "So when a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full

faith and credit clause, merely because its enforcement or recognition in another state would conflict with the policy of the latter."

The Court specifically overruled *Haddock* v. *Haddock*. The effect of overruling this decision, therefore, is that where a husband or wife leaves the other, whether wrongfully or not, and goes to another State where he or she obtains a divorce on constructive service only, that divorce must be recognized in the State of the matrimonial domicile where it appears that the plaintiff in the action had validly acquired a bona fide domicile in the State where the divorce was granted.

Prior to the decision in the *Williams* case, a distinction was made with regard to the right of a party to a marriage to change his or her domicile depending upon which deserted the other. There are rulings indicating that, where one spouse abandoned the matrimonial domicile and went to another State and became domiciled there, a decree of divorce obtained by him in the State to which he went would have no extraterritorial effect. On the other hand, the spouse who was abandoned could change her domicile and could there sue and obtain a divorce that would be recognized as valid.

This rule which was not accepted everywhere, has now obviously been ended by the decision in the *Williams* case. It indicates that the extension of the power of the State under the full faith and credit clause of the Constitution does not depend upon whether or not the person who had removed from the matrimonial domicile had lawfully done so. Today, it may be repeated, either party to the marriage may, wrongfully or not, change his or her domicile and if this is

valid and bona fide may at the place of that domicile obtain a divorce which is entitled to full faith and credit in all States.

It is clear also that the decision in the *Williams* case did not change the rule that a divorce decree based on a bona fide domicile of the plaintiff must be recognized in all the States where personal jurisdiction has been obtained of the defendant either by personal service of notice within the State in which the action is brought or by voluntary appearance.

> *Cheever* v. *Wilson* (U. S. 1869), 9 Wall 108, 19 L. Ed. 604.

This rule has been applied even in States refusing to recognize foreign divorces, in spite of the fact that plaintiff's purported domicile may have been shown and taken solely for the purpose of obtaining a divorce.

> *Glaser* v. *Glaser* (1938), 276 N. Y. 296, 12 N. E. 305;
> *Borenstein* v. *Borenstein* (N. Y. 1934), 151 Misc. 160, 270 N. Y. Supp. 688, aff'd 242 App. Div. 761.

Practically every State requires residence, meaning a domicile as a prerequisite to jurisdiction. So long as it is established in a manner sufficient to satisfy the Court granting the divorce and this is not disturbed either by appeal or a motion to vacate, the decree thus granted is clearly valid in the State where rendered. This was recognized in the *Haddock* case.

In the *Williams* case the Court said that the decision in the *Haddock* case did not purport to challenge or disturb the rule earlier established

that even though the cause of action could not have been entertained in the State of the forum, a judgment obtained thereon in a sister State is entitled to full faith and credit.

Christmas v. *Russell* (U. S. 1866), 5 Wall 290, 18 L. Ed. 475;
Fauntelroy v. *Lum* (1907), 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039.

Clearly also the *Williams* decision upheld the rulings previously made by the Supreme Court that the judgment of a State Court should have the same credit, validity and effect in every other court in the United States which it had where pronounced. *Hampton* v. *M'Connell* (U. S. 1818), 3 Wheat 234, 4 L. Ed. 378; *Fauntelroy* v. *Lum,* 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039. The Constitution and statutes require that not ~~the same~~ some but full faith and credit be given judgments of a sister State.

Davis v. *Davis* (1938), 305 U. S. 32, 59 S. Ct. 3, 83 L. Ed. 26.

The *Williams* case seems to affirm the rule that only such an attack can be made on a divorce decree in a State other than that in which it was granted that can be made on it in the State whose court granted the decree.

State courts have followed the same principle.

The question recently presented to a New York Court—May the courts of one State entertain a collateral attack on a judgment of a sister State which attack involves contesting a factual find-

ing necessary to the decision and embodied in the judgment?

The Court held that the question was not what credit New York courts give to the judgment of the courts of that State but what Nevada gives to its own. It summed up the rule as follows: "We are not required to give them more than they do; and we may not give them less."

Fondiller v. *Fondiller* (N. Y. 1943), 179 Misc. 800, 41 N. Y. Supp. (2) 124.

A somewhat similar ruling was made in Iowa. It was there held that a divorce decree of a State court is entitled to the same credit, validity and effect under the Federal Constitution in every other court which it has in the State in which it was granted. The pleas that would be good to a suit thereon in the State where granted and no others may be pleaded in other courts of the United States.

Hobson v. *Dempsey Const. Co.* (Iowa, 1943), 7 N. W. (2) 896.

Likewise, it was held in Illinois that where a decree of divorce granted in Nevada is valid in that State, it is entitled to full faith and credit in Illinois.

Stephans v. *Stephans* (1943), 319 Ill. App. 292, 49 N. E. (2) 560.

Where the wife appeared and contested the question of residence in the Nevada court and its decision was adverse to her, the question of whether or not the husband was a bona fide resident of Nevada was *res adjudicata* and the courts

in Missouri were held bound to give full faith and credit to the decree.

Keller v. *Keller* (Mo. App. 1910), 129 S. W. 493.

Where the Court has jurisdiction of the parties and the subject matter of the action, the usual rule seems to apply that the decree cannot be attacked collaterally but relief must be sought in the court granting it.

Hunt v. *Hunt* (1878), 72 N. Y. 217;
Durlacher v. *Durlacher* (U. S. 1941), 123 F. (2) 70, certiorari denied 315 U. S. 805, 62 S. Ct. 633.

The Nevada court lost jurisdiction to modify the Nevada decree and therefore the decree and therefore the decree is absolute and unassailable in Nevada as well as in every other jurisdiction.

The judgment entered in this case is absolutely final and not subject ot modification of any kind or character. The leading case in Nevada is *Sweeney* v. *Sweeney,* 42 Nev. 431, 179 Pac. 638, where it was held that

> "A decree a vinculo is final, and the jurisdiction of the court over the parties is after the expiration of the term at an end; and just as there can be no grant of alimony after such a divorce, so there can be no change in the award of alimony, unless the right to make such a change is reserved by the court in its decree, as it may be, or is given by statute.

> "Since terms of court are abolished, a judgment can be set aside or amended only as provided by Rev. Laws, Sec. 5084 (now Nevada Compiled Laws 8640), except for fraud."

In *Jones* v. *Court,* 59 Nev. 460, 96 P. (2nd) 1096, rehearing denied 59 Nev. 460, 98 P. (2nd) 342, the Supreme Court held that after a final decree of divorce there can be no change in the award of alimony or in the provisions for support of minor children, unless the right to make such changes is reserved by Court in its decree or is given by statute.

The Court quoted District Court Rule XLV which reads as follows:

> "No judgment, order or other judicial act or proceeding, shall be vacated, amended, modified, or corrected by the court or judge rendering, making or ordering the same, unless the party desiring such vacation, amendment, modification or correction, shall give notice to the adverse party of a motion therefor, within six months after such judgment was rendered, order made, or action or proceeding taken."

Other Nevada cases indicating the finality of the decree are:

Lewis v. *Lewis,* 53 Nev. 398, 2 P. 2nd 131;
Aseltine v. *Court,* 59 Nev. 269, 62 P. 2nd 701;
Groves v. *Court,* 61 Nev. 269, 125 P. 2nd 723;
Jones v. *Court,* 59 Nev. 460, 96 P. 2nd 1096, rehearing denied 59 Nev. 460, 98 P. 2nd 342;

Lauer v. *Court* (Nev.), 140 P. 2nd 953;
Helvering v. *Fuller,* 319 U. S. 69, 84 L. Ed. 1084.

In other jurisdictions it is held that the final decree determines all questions.

Schnerr v. *Schnerr* (1932), 128 Cal. App. 363, 17 P. (2nd) 749;
Astall v. *Astall* (Tex. Civ. App. 1926), 283 S. W. 564.

Other Courts, too, have held that the final decree itself could not after its entry, be modified or amended to provide for alimony.

Matter of Philips (N. Y. 1932), 235 App. Div. 879, 255 N. Y. Supp. 596;
Wills v. *Wills* (N. Y. 1928), 223 App. Div. 773, 227 N. Y. Supp. 569;
Jones v. *Jones* (1940), 284 Ky. 511, 145 S. W. (2nd) 90;
Harner v. *Harner* (1931), 255 Mich. 515, 238 N. W. 264;
Keene v. *Keene* (1926), 241 Ill. App. 414;
Gillespie v. *Andrews* (1926), 78 Cal. App. 595, 248 P. 715;
Marshall v. *Marshall* (1932), 162 Md. 116, 159 A. 260;
Hamilton v. *Hamilton* (1936), Utah 554, 58 P. (2nd) 11;
Handsaker v. *Handsaker* (1937), 233 Iowa 462, 272 N. W. 609;
McDonald v. *McDonald* (1936), 56 Idaho 444, 55 P. (2nd) 827.

It therefore follows that since Nevada itself is powerless to amend or modify its own decree, it is final and absolute. By reason thereof, it

must be accorded the same efficacy by our courts as the Nevada court itself must render it.

The Nevada decree is dispositive of the issue of alimony.

The Nevada decree is silent as to any alimony for the wife. It is in effect a decree that the wife is not entitled to alimony.

In 27 *Corpus Juris Secundum,* page 944, Sec. 23, it is said,

> "Some authorities hold that the question of alimony being an issue that was or might have been litigated in the original proceeding the decree renders the question res adjudicata."

Generally, alimony cannot be allowed in an action after the action of the decree where this makes no provision for it.

Erkenbrach v. *Erkenbrach* (1884), 96 N. Y. 456;
Koehl v. *Koehl* (N. Y. 1915), 92 Misc. 579, 156 N. Y. Supp. 234;
Tenny v. *Tenny* (1941), 147 Fla. 672, 3 So. (2nd) 375;
Davenport v. *Davenport* (1942), 178 Tenn. 517, 160 S. W. (2nd) 406;
Jones v. *Jones* (1940), 284 Ky. 511, 145 S. W. (2nd) 90;
Mack v. *Mack* (1938), 283 Mich. 365, 278 N. W. 99;
Hawkins v. *Hawkins* (1937), 288 Ill. App. 623, 6 N. E. (2nd) 509;
Whitaker v. *Whitaker* (1936), 52 Ohio App. 223, 3 N. E. (2nd) 667;

Commonwealth ex rel. Kett v. *Kett,* 1935, 120 Pa. Super. 8, 181 A. 518;
Player v. *Player* (1926), 162 La. 229, 110 So. 332;
Darby v. *Darby* (1925), 152 Tenn. 287, 277 S. W. 894.

In some States this rule is based upon the proposition that since the marriage has been dissolved there is no longer jurisdiction for granting alimony.

Duvall v. *Duvall* (1932), 215 Iowa 24, 244 N. W. 718;
Allen v. *Baker* (1939), 188 Ga. 696, 4 S. E. (2nd), 642;
Staub v. *Staub* (1936), 170 Ma. 202, 183 A. 605.

Petition of Philips, New York, 1932, Supreme Court, 235 App. Div. 879, 255 N. Y. Supp. 596.

"The decree contains no provision for alimony, and no reservation for any such provision. It became final when entered, and there is no authority now under the statute for modifying it."

A decree of a foreign court giving the husband a divorce is usually a bar to an action by the wife for alimony.

Joyner v. *Joyner* (1908), 131 Ga. 217, 62 S. E. 182.

Likewise, the omission of alimony in a foreign decree for divorce is usually a final decree on the subject and is a bar to an attempt to obtain alimony in another State.

McCormick v. *McCormick* (1910), 82 Kan. 31, 107 P. 546.

Respectfully submitted,

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ARTHUR J. CONNELLY,
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202 MAY 7 1945

New Jersey Court of Errors and Appeals

Between

MICHAEL GIRESI,
Petitioner-Appellant,

and

ROSE GIRESI,
Defendant-Respondent.

On Appeal from the Court of Chancery.

ADDITIONAL BRIEF OF PETITIONER-APPELLANT, MICHAEL GIRESI.

This additional memorandum is submitted at the request of the Court concerning several questions which were asked during the oral argument.

I.

The ruling in Williams vs. North Carolina II applies solely to uncontested divorce decrees.

At the oral argument in this cause the Court instructed counsel to submit a brief on the case of *Williams* vs. *North Carolina,* decided by the United States Supreme Court on May 21, 1945.

In that case the United States Supreme Court reviewed judgments of the Supreme Court of North Carolina, affirming convictions for bigamous cohabitation, assailed on the ground that full faith and credit, as required by the Constitution of the United States, was not accorded the

divorces decreed by one of the courts of Nevada. *Williams* vs. *North Carolina I* decided an earlier aspect of the controversy, and it was therein held that a divorce granted by Nevada, on a finding that one spouse was domiciled in Nevada, must be respected in North Carolina, where Nevada's finding of domicile was not questioned, though the other spouse had neither appeared nor been served with process in Nevada and though recognition of such a divorce offended the policy of North Carolina. The facts in both cases showed that Mr. Williams and Mrs. Hendricks, residents of North Carolina, went to Nevada where each procured divorces from their respective spouses and as soon as each had done so, married one another and returned to North Carolina to live there together as man and wife. Both cases were uncontested.

Williams vs. *North Carolina II* does not reverse the law laid down in *Williams* vs. *North Carolina I* in a case where a State does not find that no bona fide domicile was acquired in the foreign State. The rule enunciated in *Williams* vs. *North Carolina I* is still law and full faith and credit must be given to foreign divorce decrees where the foreign State's finding of domicile of one spouse is not questioned. And it must be borne in mind that the United States Supreme Court therein focused its attention and applied its thought and resultant ruling to uncontested divorces wherein the defendant spouse had neither appeared nor been served with process in the foreign State and it added, "though recognition of such a divorce offended the policy of North Carolina." Contested divorces were not within the purview of the Court's deliberations.

In *Williams* vs. *North Carolina II* the Court refers to the doctrine expressed in one of its

early cases, *Mills* vs. *Duryee,* 7 Cranch 481, that "the judgment of a state court should have the same credit, validity, and effect in every court in the United States, which it had in that state where it was pronounced" and states that in *Thompson* vs. *Whitman,* 18 Wall. 457, that doctrine was found to be too loose, adding that it comes into operation only when "the jurisdiction of the court of another state is not impeached, either as to subject matter or the person," in which case the record of the judgment is entitled to full faith and credit. And the Court further holds "a judgment in one state is conclusive upon the merits in every other state, * * * if the court of the first state had power to pass on the merits —had jurisdiction, that is, to render the judgment." This is evidently the present state of the law on the subject and, applied to the instant case, is dispositive favorably to appellant of the full faith and credit phase of our controversy as the jurisdiction of the Nevada court cannot be impeached, either as to subject matter or as to the person and the judgment is conclusive upon the merits and jurisdiction in New Jersey.

The Court not only conclusively placed contested divorces beyond the pale of its decision but decisively settled the effect of adjudications therein of all issues and jurisdictional questions in the following language:

> "It is one thing to reopen an issue that has been settled after appropriate opportunity to present their contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be relitigated as between the parties. Forsyth vs. Hammond, 166 U. S. 506, 517;

> Chicago Life Insurance Company vs. Cherry, 244 U. S. 25, 30; Davis vs. Davis, supra."

In a footnote to the above Mr. Justice Frankfurter states:

> "We have not here a situation where a State disregards the adjudication of another state on the issue of domicile squarely litigated in a truly adversary proceeding."

The *Williams* cases are to be distinguished from the case at bar in that they were uncontested, whereas in the instant case there was an appearance and contest.

II.

Esenwein vs. Pennsylvania governed by Williams vs. North Carolina II.

Counsel was also instructed to submit a brief on the case of *Esenwein* vs. *Pennsylvania,* decided by the United States Supreme Court on May 21, 1945.

The opening paragraph of the opinion delivered by Mr. Justice Frankfurter reads as follows:

> "This case involves the same problem as that which was considered in Williams vs. North Carolina, No. 84, decided today. There are minor variations of fact, but the considerations which controlled the result in the Williams case govern this."

Petitioner-husband (and respondent-wife) were married in Pennsylvania in 1899 and separated in 1919, but continued to live there. The wife-

respondent obtained a support order in Pennsylvania. Twice the husband sought a divorce in Pennsylvania and failed. In 1941 he went to Nevada and six weeks later filed a suit for divorce. Shortly thereafter he took up his residence in Ohio, where he made his home. On February 1, 1943, petitioner filed an application for total relief from the support order. He did so on the basis of *Williams* vs. *North Carolina I.* The Court denied the application. The Superior Court affirmed the decision on the ground that petitioner did not have a bona fide domicile in Nevada when he obtained his decree of divorce. This was sustained by the Supreme Court of Pennsylvania and the United States Supreme Court granted certiorari. The latter affirmed the Supreme Court of Pennsylvania.

The facts relating to domicile are essentially the same as those set forth in *Williams* vs. *North Carolina II* except that petitioner instead of staying in an auto court lived in a hotel and did not return to Pennsylvania but went to Ohio; in other words, the opinion deals with an uncontested divorce, not one in which the spouse from whom the decree of divorce is obtained voluntarily appeared and contested the action as in the case at bar.

Mr. Justice Douglas, in his concurring opinion, states that,

> "It is one thing if the spouse from whom the decree of divorce is obtained appears or is personally served. See Yarborough vs. Yarborough, 290 U. S. 202, and Davis vs. Davis, 305 U. S. 32. But I am not convinced that in absence of an appearance or personal service the decree need be given full faith and credit when it comes to maintenance or

support of the other spouse or the children. See Pennoyer vs. Neff, 95 U. S. 714."

Being in line with the *Williams* vs. *North Carolina II* decision, this case is also to be distinguished from the case at bar in that it was uncontested, whereas in the instant case there was an appearance and contest.

III.

The foreign decree may be raised as a collateral issue.

A foreign decree of divorce may be made a collateral issue where the wife seeks to have the husband adjudged in contempt for failure to obey a final decree for separate maintenance. That is the situation in the case at bar. This principle was enunciated by this court in the case of *Kaufman* v. *Kaufman,* 120 N. J. Eq. 603. In that case it was decided that the issue of the foreign divorce may be raised collaterally on a petition to adjudge the husband in contempt for failure to obey a final decree for separate maintenance.

Justice Parker stated at page 605:

> "The first point made for appellant (husband) is that the Idaho decree should be attacked by bill, and not simply ignored in a petition supplemental to a decree for maintenance. This is apparent by the rule in a case where the suit for maintenance is pending. Fairchild v. Fairchild, 53 N. J. Eq. 678, 681; Feickert v. Feickert, 98 N. J. Eq. 444. But we concur in the view of the advisory master in the present case, that the decree

> entered on January 25th, 1932, was final in its nature, and established the rights of the parties; and that it was for the husband to establish any change in that status, and not for the wife to show its persistence by instituting an attack on a proceeding in another state begun subsequent to the decree."

In the case at bar the husband did establish the change in status by apprising the Court by affidavit of the Reno divorce (S. of C., pp. 35 and 36), and offering an exemplified copy thereof (S. of C., p. 12).

The same principle was followed in the case of *Fried* v. *Fried,* 99 N. J. Eq. 106. In that case the wife filed a bill for separate maintenance and as a collateral issue sought to have a foreign decree of divorce obtained by the husband declared invalid. The Court allowed the wife maintenance and ruled the foreign divorce invalid. Vice-Chancellor Buchanan stated at page 109:

> "Having thus jurisdiction of the main cause, this court has also jurisdiction of the secondary question as to the validity of the Illinois decree interposed as a defense."

To the same effect is the case of *McWhinnie* v. *McWhinnie,* 118 N. J. Eq. 265 (E. and A.)

The principle that the husband may raise the foreign decree of divorce as a collateral issue in defense is also stated by Herr in his book Marriage, Divorce and Separation, in section 310:

> "Under certain circumstances the foreign decree of divorce may be impeached collaterally in the Court of Chancery, as, for instance, in a suit for divorce, or in a suit

by the wife for separate maintenance under the statute, or on a petition in the cause to increase the allowance under a final decree for separate maintenance, or on a petition in the cause to adjudge the husband guilty of contempt for failure to obey a final decree for separate maintenance."

IV.

The Reno decree is res judicata.

It is the contention of the husband that the wife by filing an appearance and answer and having vigorously contested the Nevada proceedings, the Nevada decree is *res judicata* as to every issue including further payment of alimony. The Nevada decree was litigated in the court of Nevada by the wife, she failed to ask for alimony and a determination of the entire matter was made.

In the State of New Jersey there ~~are~~ is a long line of decisions enunciating the principle of *res judicata.* In the case of *City of Paterson* v. *Baker,* 51 N. J. Eq. 49 (headnote):

> "When the second action is founded on the same claim or demand the judgment is conclusive, not only as to all matters which were actually litigated and decided, but as to all which might have been";

The same principle was enunciated by the Court of Errors and Appeals in the case of *In re Walsh's Estate,* 80 N. J. Eq. 565, at page 569.

The principle is repeated in *Lane* v. *Rushmore,* 123 N. J. Eq. 531, wherein Vice-Chancellor Stein stated at page 545:

"It would be intolerable to permit a suitor endlessly to litigate and relitigate his alleged grievance. At some point in the controversy he must accept the award of the court as final and conclusive, and that point is reached when a court of competent jurisdiction has heard and considered all that has been or could have been said by way of evidence and argument on the issues raised in the pleadings, and handed down its decision. Mendel v. Berwyn Estates, 109 N. J. Eq. 11. Here, as was said by the Court of Errors and Appeals in In re Walsh's Estate, supra, 'All that is necessary is that the right to relief in the one suit shall rest upon the same point or question which, in essence and substance, was litigated and determined in the first suit, and in such a case the parties and those in privity with them are concluded, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' "

Respectfully submitted,

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