

INDEX

	Page
Petition for Divorce	1
Citation	3
Divorce Order Publication	4
Order of Reference	5
Depositions and Report of Special Master	7
Special Master's Report dated April 23, 1913 .	35
Memorandum of Advisory Master	37
Order to take Additional Testimony	38
Supplemental Depositions and Report of Special Master	39
Special Master's Report dated August 8, 1913 .	46
Memorandum of Advisory Master	48
Decree of Dismissal	49
Notice of Appeal	50
Petition of Appeal	51

WITNESSES

Petitioner's:

Barbara A. Flynn,	
Direct	7
Cross	16
Recalled:	
Cross	34
Carrie Harlor,	
Direct	19
Cross	23
Louise Kidd,	
Direct	25

Annie E. Doust,	
Direct	27
Cross	29
Alfred Huttlinger,	
Direct	30
Cross	31

ADDITIONAL TESTIMONY

Petitioner's:

Barbara A. Flynn,	
Direct	39
Richard Cantwell,	
Direct	42

New Jersey Court of Errors and Appeals

Petition for Divorce

(Filed, October 3, 1912)

IN CHANCERY OF NEW JERSEY

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

The petition of Barbara A. Flynn, of the City of Jersey City, in the County of Hudson and the State of New Jersey, respectfully shows: 20

(1) Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Joseph A. Flynn, Jr., on the Seventh day of August, A. D. One Thousand Nine Hundred, by Reverend Hickey, a minister of the Gospel in the church of St. Thomas Aquinas at Ninth Street and Fourth Avenue in the Borough of Brooklyn, County of Kings, State of New York.

(2) Petitioner and defendant cohabited after their said marriage until the twenty-seventh day of August, Nineteen Hundred and Four, when said defendant deserted her and for more than two years last past said defendant has wilfully, continuedly and obstinately deeserted your petitioner. 30

(3) Petitioner was a *bona fide* resident of this State, having her permanent home at #35 Bayview Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, when this 40

Petition for Divorce

cause of action arose as aforesaid, and has ever since and for more than two years next preceding the commencement of this action, continued to be such resident, residing continuously in the City of Jersey City, and the County of Hudson aforesaid.

10 (4) One child was born of the marriage aforesaid on the Eighteenth day of December, A. D. Nineteen Hundred and One, whose name is Theodore W. Flynn, and who is now ten years of age, and is in the custody of your petitioner and supported by her.

(5) The petitioner's maiden name is Barbara A. Hermans, and she has no means of support except from her own exertions.

20 (6) Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the defendant may be compelled by the decree of this Honorable Court to support her and the said child of the marriage, and that she may be awarded the custody of said child, and may be permitted to resume the use of her maiden name; and that she may have such further relief as may be just.

30 And your petitioner will ever pray, &c.
 BARBARA AGNES FLYNN.
 Petitioner.
 IRVING W. TEEPLE,
 Solicitor and of Counsel
 with Petitioner.

State of New Jersey, }
 County of Essex. } ss:

40 Barbara A. Flynn, being duly sworn according to law on her oath deposes and says, that she is the

Citation

petitioner in the foregoing petition, that the said petition is not made by any collusion between her and the defendant in said petition, but in truth and in good faith, for the causes set forth in said petition.

BARBARA AGNES FLYNN.

Sworn and subscribed to before me this

30th day of September, 1912.

10

Milton M. Unger,

Master in Chancery of New Jersey.

Citation

(Filed, November 4, 1912)

NEW JERSEY, to wit:

20

(Seal) THE STATE OF NEW JERSEY TO JOSEPH A.
FLYNN, *Greeting*:

You are hereby cited to be and appear before our Chancellor in our Court of Chancery, to be held at Trenton, on the 11th day of November next, to answer to the petition of Barbara A. Flynn exhibited against you, and hereof fail not.

WITNESS, Edwin Robert Walker, Esquire, our Chancellor, at Trenton, the 10th day of October 30
in the year of our Lord one thousand nine hundred and twelve.

SAM K. ROBBINS,
Clerk.

Irving W. Teeple,
Solicitor.

NOTICE: The defendant is NOT required to appear at Trenton in person, at the return day, but 40

Divorce Order for Publication

if he intends to make a defence it is only necessary for him to answer the petition within the time required by law.

SAM K. ROBBINS,
Clerk.

10

Divorce Order for Publication

(Filed, December 6, 1912)

IN CHANCERY OF NEW JERSEY

Between BARBARA A. FLYNN, and JOSEPH A. FLYNN, JR., Defendant.	}	Divorce Order Publication.
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The petitioner, having filed her petition in the above cause, and process of citation having been issued and returned according to law, and it now appearing that personal service of process upon the defendant within the State could not be made;

30 It is on this sixth day of December, A. D. nineteen hundred and twelve, on motion of Irving W. Teeple solicitor of the petitioner, ordered, that the said absent defendant do answer the petitioner's petition on or before the 7th day of February next, or that in default thereof, such decree be made against him as the Chancellor shall think equitable and just.

And it is further ordered, that the notice of
 40 this order prescribed by law and the rules of

Order of Reference

this Court, shall within twenty days hereafter, be published in Jersey Journal a newspaper printed at Jersey City in this State, and continued therein for four weeks successively, at least once in every week; and it is further ordered that service upon the defendant of the petition and of this order (or notice of this order) as service substituted for personal service of process within the State, 10 be made within said twenty days and in the manner prescribed by the Rules of Court for such substituted service.

E. R. WALKER,
C.

Order of Reference

20

(Filed, March 7, 1913)

IN CHANCERY OF NEW JERSEY

Between BARBARA A. FLYNN, and JOSEPH A. FLYNN, Defendant.	}	On Petition for Divorce. Order of Reference.	30
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Upon opening this matter to the Court by Irving W. Teeple, of counsel with the petitioner, and it appearing that due notice of the order of this Court, made on the Sixth day of December, Nine-

Order of Reference

teen Hundred and Twelve, directing the defendant to answer the petitioner's petition on or before the Seventh day of February, then next, has been duly published as in said order and by the rules of this Court, directed and prescribed; and due inquiry made to ascertain the whereabouts of the absent defendant, but without success, and
 10 further notice to the defendant being impracticable is dispensed with, and it appearing that the said defendant has not answered to the same within the time limited by law and said order.

It is thereupon on this Seventh day of March, Nineteen Hundred and Thirteen,

ORDERED, that it be referred to Thomas Anderson one of the Special Masters of this Court to ascertain and report as to the truth of the allegations of the petition, and his opinion thereon; and
 20 that the petitioner proceed to take depositions and other evidence before said Special Master, to substantiate and prove the allegations in said petition, and to bring on the hearing of the cause *ex parte*; and that the said Master do return, together with his report, and as part thereof, such depositions and other evidence as may be taken before him in pursuance of this order.

E. R. WALKER,
 C.

30 Respectfully advised,
 C. S. Biddle,
 A. M.

**Depositions and Report of Special
Master**

(Filed, April 28, 1913)

IN CHANCERY OF NEW JERSEY

Between BARBARA A. FLYNN, and JOSEPH A. FLYNN, Defendant.	}	On petition for Divorce and Order of Reference.	10
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Depositions taken in the above entitled cause, before me, Thomas Anderson, a Special Master, in Chancery of New Jersey, this 7th day of April, A. D. 1913 at 2 o'clock in the afternoon, at my office 800 Broad Street, Newark, N. J., in pursuance of an order of reference made in this cause and dated March 7th, 1913, in the presence of Mr. Milton M. Unger, of counsel with the petitioner. 20

BARBARA A. FLYNN, the petitioner, being duly sworn, according to law, upon her oath deposes and says: 30

Direct-examination by Mr. Unger

Q. You are the petitioner in this suit? A. Yes, sir, I married Joseph A. Flynn, Jr., the defendant. We were married on August 7, 1900, by Father Hickey of St. Thomas Church Fourth Avenue and Ninth Street, Brooklyn, New York.

Q. (Being shown a paper purporting to be the certificate of the marriage of Joseph Augustus Flynn and Agnes Barbara Hermons, on the 7th 40

Barbara A. Flynn—Direct

day of August, 1900, by the Reverend T. A. Hickey, and which certificate is dated the 25th day of February, 1913, and purporting to be signed by James Donahue, Rector, bearing the seal of St. Thomas Aquinas Church, Ninth Street and Fourth Avenue, Brooklyn, New York, the witness is asked): What is that paper? A. My marriage certificate which I received from Father Donahue.

Said certificate offered in evidence and marked Exhibit "A" on the part of the petitioner.

Q. After your marriage where did you and your husband go to reside? A. 622 Fifth Avenue, my mother's home, Brooklyn, New York.

Q. How long did you and your husband live there together? A. We lived there until he left 20 after the baby was born.

Q. A child was born to you? A. Yes, sir, on December 18th, 1901.

Q. Did anything occur after the child was born? A. He left the second night after my baby was born, he went away the second night and he stayed away from me. I was very sick at the time and they did not expect me to pull through, for I had went through an awful confinement with the baby. My husband had been drinking so very hard, and 30 he carried on terribly, and I was in such a condition that the baby could not nurse, and they did not think I could live, and my husband got angry, and he thought he ought to sleep in the bed with me, where the nurse had to sleep, and that was his only excuse for going away, he said the bed didn't suit him, my mother had fitted up a bed for him in the front, but he didn't want to sleep in there, he wanted to get in my bed, and that was 40 his excuse for leaving, and of course I was so

Barbara A. Flynn—Direct

sick that I couldn't argue with him, and he said he would go away, he would go to his mother's house where he would get decent bed; that is the excuse he made; of course he had been drinking hard at the time.

Q. Was he drunk then? A. He had drink in him, he wasn't sober, he was a very heavy drinker, in fact he drank all the time, I don't know of the time he didn't drink, after we were married. 10

Q. This, you say, was two days after the baby was born? A. Yes, the second night.

Q. How long was he gone? A. Well, he was gone away then for four weeks, Walter, my child was four weeks old, and then my husband came back, and I had just gotten up out of bed, and he wanted me to move and get out of the house, and of course I couldn't move, I was not in a condition to move, but I said to him, "If you find rooms I will go with you," but he wanted me to get right out that same night. 20

Q. What reason did he give? A. No reason, he didn't want to stay in that house, he wanted to go away, and I was ill, I had only gotten up that day out of bed, the nurse had only left me that day, and that was about four weeks after, I should judge, it is so long ago now, it is nine years nearly; as near as I can remember it was the latter part of January, that this happened. Then my husband said he would go away, and I didn't believe him, but he went in the front and packed his dress suit case and went away and stayed away from me; he did not say where he was going, and I was so sick at the time that I could not argue with him or anything with him, and he went away and stayed away five weeks or more, until the 17th of March; then my mother took me in and kept 40

Barbara A. Flynn—Direct

my baby and myself; she took me to her house to live. You see I had my own floor upstairs and was paying rent up there.

Q. Did you live in the same building with your mother? A. Yes, at that time my mother had her own rooms underneath, and I had my floors upstairs; it was my mother's house and she let us
10 have the floor cheap, you know, starting in, she thought it would help me along a little.

Q. Then he lived with your mother? A. No he didn't live with my mother; we had our own apartment.

Q. Well, when he returned? A. Well, the rooms were still kept upstairs, the furniture was there, and my mother let it stay there, and of course when my husband went away I went down and stayed with my mother and then my husband
20 came back the 17th of March, the same year, 1902.

Q. How long did you and your husband live together as man and wife after that? A. Up until August, and then he went away again, without any reason, whatever—no he stayed with me for five weeks and then went away and did not return until August, 1902.

Q. What were his habits at this time? A. Well, he was drinking all the time; he promised me
30 faithfully he would give up drinking, when he came back, he said he would, and I believed him, and probably for a week or two he done pretty good, and then it was the same thing over again, drinking just the same. Then he went out this Saturday night, and I had saved a little bit of money during that time, and he took every penny of it out of the sideboard drawer, I had saved
40 it from the little money he gave me, and during this time he was supposed to stop drinking, and

Barbara A. Flynn—Direct

my rent was only eight dollars, my mother only took eight dollars from me for rent, and I had saved up this little money and put it aside, and he took that money and went away, and he stayed away then until August, and then of course I had no support, and I was ashamed to be on my mother all the time, with the baby, and I sent my husband word, he was working in the Bank Note Company, in New York, and I telephoned him and asked him to send me some support for the baby, that I didn't think my mother, she was an old lady, ought to pay for the child and myself too, so he said if I would go housekeeping with him again he would give up drinking, if I would move out to the eastern district of Brooklyn.

Q. To what place? A. Well, this was Jefferson Avenue, Brooklyn, and I moved there, that was August 13th of that same year, 1902 and my husband and I lived there together for two months, and then I moved to 464 Fifth Avenue, Brooklyn, New York, with my husband, and I lived with my husband there until the year 1904, August 27th.

Q. Now what happened on that day, or about that time? A. Well, about that time he had been away night after night drinking and coming in when he liked and staying away when he liked; and of course the rent was due, and I had no means of support, I had a young baby, and I was ashamed to have my mother supporting me all the time; my mother was a hardworking woman, and she always done good for him, and she bought the furniture really for my house and paid for it, because he couldn't save a penny, he spent his wages just as he got them, he earned good money but he would run up such awful liquor bills; he was a compositor and he was getting twenty-one dol-

Barbara A. Flynn—Direct

lars a week when he worked, and of course I never had any money, and he had been drinking so, and I was more or less getting my meals at my mother's house, I had a young baby at the time and it needed care, and on this day my husband came in, and of course he had a big rumpus with me, he was drinking and he was cursing and
 10 swearing and calling me out of my name; it was awful the names he called me; he had drink in him, but he wasn't always so drunk he didn't know what he was talking about, and then we had some words, and he said he would go out, and he said to me "Go home to your mother and stay there for I don't intend to do anything more for you."

Q. What was said before that? A. Well, he wanted my money from me all the time.

Q. What did he say that day? A. He asked
 20 for money for a pint of beer, and I didn't really have it to give up to him, and I said "I have only got this little bit in the house; would you take it?" and he says yes, he would, and one word followed another and we quarrelled over the money, and then he said he was sick and tired of doing for me, and that I should go back home and stay with my mother, and let my mother support the baby and I, but I didn't think he meant it, because
 30 he went and came back so many times. Of course the people in the house were sick and tired listening to the cursing and swearing. He did not come home that night, he left that day and he said I could go to hell and get support, or go to my mother.

Q. Did he say where he was going? A. No, sir, he did not.

Q. What did you say to that, when he said you could go to hell? A. I don't remember answering
 40 him at the time; I was so upset and crying so I

Barbara A. Flynn—Direct

don't think I answered him at the time, because I thought he would come back again.

Q. Was anybody else present at that time? A. Well, Mrs. Kidd wasn't present but she was coming to visit me and she was in the hall, and she heard this awful cursing and swearing, and she did not come in until after he had gone.

Q. Did your husband come back after that? A. 10
No, I never saw him after that and I have never seen him since.

Q.-What did you do after he left? A. I went to my mother's home then, because the rent was due and the woman downstairs, the landlady, she said even though I could stay and pay the rent I had to get out, she said, for she couldn't keep me on account of my husband, even if he came back, which of course he did not. I had no way of moving no money for moving, and I was cry- 20
ing when she came in, and she sent up to my mother's house, and of course she helped me get to my mother's house, my mother paid for the moving.

Q. Did you go to your mother's? A. I did, she lived at 522 Fifth Avenue, Brooklyn, New York.

Q. Did you take your baby with you? A. Oh yes, he was my only baby. I lived with my mother up until her death, in 1908, August 31, 1908 and during that time I did some sewing, dressmaking. 30

Q. Did your husband ever come to you while you were at your mother's house? A. Never at any time.

Q. Did he know where your mother lived? A. Oh, yes, we lived in that house when we were first married.

Q. Your mother died on August 31, 1908? A. 1908. After my mother's death then the home was broken up, my sister got married, and of 40

Barbara A. Flynn—Direct

course my brother had his own home, so Mrs. Doust, we knew one another from the time we were children, she is now a resident of Jersey City, 35 Bayview Avenue, and she offered me a home, she asked me to come up and do some sewing and stay with her for a while and when I went over there we made arrangements that I should
 10 stay with her, and she could look after the baby; this is in Jersey City, New Jersey, and I have been living there ever since with her, that is my home.

Q. Is your boy living with you? A. Yes, sir.

Q. And you are living there now? A. Yes, sir, at her home, I went there the latter part of the year my mother died, probably in November, it was before the holidays, 1908, and I have been living there continuously ever since.

20 Q. How have you supported yourself and your boy since then? A. By dressmaking, and any time I need a little help my people would help me out a little, with clothes for the child, and anything like that.

Q. Has your husband ever sent you any money for your support since that time? A. Never a penny.

Q. What was your maiden name? A. Barbara A. Hermans.

30 Q. In this marriage certificate Mrs. Flynn you are mentioned as Agnes Barbara Hermons? A. Well, you see I went by my middle name; I am really christened Barbara A. but in school they called me Agnes, and when I signed the marriage certificate I put down my name as I went by Agnes Barbara, but I understood afterwards that you have to sign your first name in full; I was really
 40 christened Barbara Agnes.

Barbara A. Flynn—Direct

Q. You are the Agnes Barbara Hermans mentioned in that certificate? A. Yes, sir.

Q. Do you recall any incident on Christmas day preceding the time when your husband left you in 1904? A. Yes, that Christmas eve he had been drinking something awful and he came in about 2 o'clock in the morning, and he was so drunk that he took hold of the Christmas tree and he wanted me to take the baby up out of bed, and I would have done it but the child cried so, he was so frightened, because my husband was so drunk he couldn't stand, and he wanted me to take that baby up and light the tree at that hour of the morning, and because I didn't do it he called me the most abusive names; I don't think a common woman in the street would get such names, and not I alone, I could stand it, but my mother, when I thought of what my mother done for him, and did do for him since we were married, and helped me out in the household things. Well, he kept that up, and then he struck me, because I wouldn't take the little boy up; I was in bed at the time he struck me, and I was so crazy that I said if he didn't stop I would open the windows and call the police.

Q. Did anybody see him strike you? A. Yes, my cousin, but he is dead. This happened at 454 Fifth Avenue, Brooklyn, and that was the Christmas preceding the one that he left me. That was Christmas eve, and Christmas morning he went out and came back again and renewed the quarrel, because I wouldn't let the baby get up out of his bed, and he struck me again that day in the mouth, and my mouth was bleeding as my sister came in the door, and she saw it.

Q. What is your sister's name? A. Carrie Harloe.

Barbara A. Flynn—Cross

Q. You desire to have the custody of this child awarded you? A. Oh my, yes.

Q. When was that child born? A. My boy was born December 18, 1901.

Q. And he is living with you and is supported by you? A. Oh, yes, he was eleven years old last December.

10 Q. Have you ever heard from or seen your husband since August, 1904? A. I have never seen anything of him or heard from him.

EXAMINATION by the Master:

Q. What is your age? A. Thirty-nine. My husband's age is about forty-one.

Q. Had you and your husband been in the habit of quarreling? A. Never only about drink, there was nothing else that there was any quarrel over,
20 there was no occasion for it, he was drinking so much that that would cause quarreling.

Q. You mean you found fault with him? A. I didn't find fault with him, but I had no way of support and if he came in and had no money I would ask him, and then sometimes he would have drink in him and he would start to quarrel over nothing, half the time I really don't know what he quarreled over, and half the time I never answered him, many a time I went to bed and laid
30 there until 3 and 4 o'clock in the morning and he would still be quarreling and fighting and I would never answer him, on account of the child.

Q. What, in your opinion, was your husband's reason for leaving you? A. I honestly don't think he wanted to live with me any longer.

Q. Why? A. Well, the few dollars he gave me I don't think he wanted to even give that. I think he wanted it for himself, he didn't want to
40 support me or the baby either.

Barbara A. Flynn—Cross

Q. Why do you say that, did he ever say he wouldn't support you? A. Yes, he did, many and many a time, that he didn't want to support me, he said that.

Q. Did he say why? A. No, he would give no reason why, only that he didn't want to do it; I think that he drank so he wanted to keep the money for himself; what little money he gave me, 10 and have no care whatever, that is what I think, I don't know, I am sure I done everything I possibly could for him to keep the home together.

Q. He was in the habit of drinking and coming home drunk, was he? A. Oh, yes, night after night.

Q. Did he and you ever quarrel about his drinking, and did you tell him to get out you wouldn't live with him if he didn't stop drinking, or anything of that kind? A. No, nothing of that kind. 20

Q. And tell him you didn't want to live with a drunkard. A. No, It was he that left me all the time, I never said anything like that, because I didn't want to break up my home, I wanted to keep my home together.

Q. Have you any idea where your husband is? A. No, sir, I have not.

Q. What do you say his occupation was? A. Printer, compositor.

Q. Where was he employed at the time he left 30 you? A. I don't think he was working at all at that time, he had been out of work the biggest part of that summer, and I don't think he was working at that time, but prior to that he had worked for the American Bank Note Company.

Q. This man was a drunkard and treated you cruelly? A. Yes.

Q. Now would you have been willing to have lived with him if he had come back to you? A. 40 If he had done the right thing, yes.

Barbara A. Flynn—Cross

Q. If he came back and behaved himself as a husband ought to would you have been willing to receive him? A. I did receive him, he came back two times to me before that.

Q. I mean the last time, after he left you, if he came back. You charge him with desertion? A. Yes, sir.

10 Q. Was that desertion against your will? A. Yes, sir. I did not consent to it at all, I had nothing to say, he just went out and left me, I didn't say anything.

Q. Then you say that notwithstanding his treatment of you, and his habits of drinking, that if he had returned to you and desired to resume marital relations with you and promised to do better you would have been willing to receive him and live with him as his wife? A. Yes, sir, I
20 would.

Q. You never received any intimation for him in any way after he left you, that he wanted to return to live with you? A. No, never, not even one little present to the baby, not a penny; I never heard from him or seen him.

Q. Have you ever received any letter from him? A. No, sir, never, at no time.

Q. Or any communication by telephone or telegraph? A. No, sir.

30 Q. What efforts, if any, did you make to ascertain his whereabouts? A. Well, my brother knew a man friend of his and he asked him to try and hunt up my husband, to see if I couldn't get some support from him.

Q. Who is the man? A. Mr. Huttlinger, he asked him to try and see what he could do, and hunt him up and try to locate him, to get some
40 support for the baby and myself at the time, be-

Carrie Harloe—Direct

cause after my mother's death I was run down in health.

Q. What did Mr. Huttlinger report to you? A. That he couldn't locate him, and he got two other men besides, and he claimed he couldn't locate my husband anywhere; I gave him addresses of different places that I thought my husband would likely to be, like saloons, that I knew at the time he was living with me that he was in those places, but he claimed they didn't know his whereabouts whatever. 10

Q. Was your husband's health good? A. All right, outside of the fact that he had stomach trouble from drinking, but otherwise I never knew him to have any ailments of any kind.

Q. And he was an able bodied man? A. He was a man five feet eleven inches, I guess, I never knew him to be sick at any time, outside of being sick from the drink, and like that. 20

Q. You say the child has been in your care ever since? A. Yes, and is with me now.

BARBARA A. FLYNN.

Sworn to before me this

7th day of April, 1913 and

subscribed this 19th day of April, 1913,

at Newark, N. J.

Thomas Anderson,

Special Master in Chancery. 30

CARRIE HARLOE, a witness produced on the part of the petitioner, being duly sworn according to law, upon her oath deposes and says:

Direct-examination by Mr. Unger:

Q. Where do you live? A. 361 Eastern Parkway, Brooklyn, New York. 40

Carrie Harloe—Direct

Q. Are you married? A. Yes, sir. My husband's name is William L. Harloe.

Q. Are you related to Mrs. Flynn? A. A sister.

Q. Do you remember when she was married? A. Yes, I was not present at the ceremony, but I was at the house when she came back from church, and that was August, 1900.

Q. Was her husband with her after the ceremony? A. He was, and his name is Joseph A. Flynn, Jr.,

Q. Do you know where your sister and her husband went to live after they were married? A. My mother's home, 622 Fifth Avenue, Brooklyn, New York.

Q. Do you remember that a child was born there? A. I was present at the time, yes, sir.

20 Q. Do you recall anything that happened a few days after the child was born? A. I recall the night that the baby was born Mr. Flynn was intoxicated, very much so, and the doctor said that he ought to be sent somewhere, he really had delirium tremens, and he wasn't fit to be around, and that night or the next night I couldn't tell just which, he wanted to stay there in the room with my sister, and he wasn't allowed to be there, and then he left the house and went away, and of course, I went home and what occurred after that I don't know.

Q. Did you see him there subsequently? A. Oh, yes, sir.

Q. Do you recall seeing him in the following January or February, and did you hear him make any remarks about that time? A. I couldn't just recall now.

40 Q. Do you know whether he left during that time? A. Oh, he left during that time and went

Carrie Harloe—Direct

away and was away for a length of time, I don't recall how long. I was there a few weeks after the baby was born, and he came in that day and my sister was still in bed, and he looked around the house and wanted something to eat, and I remarked about him paying for it, something like that, and he said that he wanted Mrs. Flynn to come away with him, or something, there were 10
some remarks, and then he got ready and went out again and went away.

Q.-Did you hear him say anything about anything in general or make any remarks? A. No. He wasn't supporting her, my mother was paying all the expenses, and at that time he took all the money she had saved up, and he said he was tired, and he had no way of supporting her, and he needed the money he had for himself; I heard him say that, he said that to his wife, that he had no 20
money to support her, and what he had he needed for himself; and every week when he worked his money was taken up in drinking bills, when he came home and the drinking bills were paid there was no money for anything, and my mother was keeping her, and on top of that he took some money she had saved, and left my mother to pay for the expense of the nurse, the doctor's bill and everything about the confinement; I know that 30
positively.

Q. Do you know whether he came back after that? Did you see them together living in Brooklyn after that? A. They went to Jefferson Avenue to live, and I helped move them and settle.

Q. Did they subsequently move from that place? A. Then they moved to 464 Fifth Avenue, Brooklyn, New York, and I visited them there all the time they were there, and every time I went there they were quarreling, more or less. When a 40

Carrie Harloe—Direct

man works all week and drinks and comes home Saturday night and there is no money and you have your bills to meet and house to run, rent and everything and there is no money coming in naturally you ask for money, and that always led to a quarrel.

Q. You say you saw him on different occasions
10 when he came home Saturday night; what was said or happened? A. He was always intoxicated and would start to quarrel, and his language was terrible, swearing and cursing, it wasn't fit to be heard.

Q. Did they have any quarrels about money matters? A. They were always quarreling about money matters, there was no money, he gave her no money, and she couldn't live without money, and my mother supported her all the time, paid
20 the rent and everything.

Q. Did he furnish her with any money? A. Very little, because every week his money was taken up drinking for his drinking bills, and he paid that and let everything else go.

Q. Do you recall anything that happened on Christmas day? A. Christmas day, the second year after Walter was born I know he had a Christmas tree, and I was anxious to see it and I stepped in, and when I opened the door Mrs.
30 Flynn was crying and he had struck her and her mouth was bleeding and her teeth loose; I saw that, and he was very much intoxicated, and while I was there he said then that he was sick and tired of it all and that he was going to get out, and when he got out this time he was going for good, and he said to his wife "The best thing you can do is to pack up and go to your mother," and she came up home that day and she was terribly upset, and
40 then she went back home again as usual and

Carrie Harloe—Cross

thought she would try and put up with him, but it was the same thing, he didn't work and was all the time telling her to get out. He didn't seem to me to want to support her.

Q. Did you ever contribute anything to their support? A. I always helped my sister, and practically clothed the baby.

Q. Do you know anything about his leaving in August, 1904? A. Well, I know that she came home to my mother, that is all I know, and I did not see the defendant after August 1904. 10

Q. After that time where did your sister live? A. With my mother, until my mother's death, at 622 Fifth Avenue, Brooklyn, New York.

Q. When did your mother die? A. October 31, 1908.

Q. Your sister said August, 1908? A. Well, she made a mistake; mother was buried election day; Mrs. Flynn made a mistake. 20

Q. After your mother died what became of your sister? A. The home was broken up and my sister went to Mrs. Doust, 35 Bayview Avenue, Jersey City, New Jersey.

Q. Do you know where she has resided since that time? A. She has resided there ever since. I visit her about once every ten days and I have always found her there.

Q. Is that where she makes her home? A. Yes, 30 sir, and her baby is living there with her.

Q. Do you know how she supports herself? A. She sews, dressmaking.

Q. Have you ever seen or heard from her husband since 1904? A. Never.

EXAMINED by the Master:

Q. Did you ever hear your sister, Mrs. Flynn, and her husband quarreling? A. Yes. 40

Carrie Harloe—Cross

Q. What did you hear them quarreling about?

A. Well, it seemed to be always about money matters, there was no money there for anything, he drank and didn't work half of the time, he was idle half of the time, he would have a position for a short length of time and then lose it, and there was no money.

10 Q. Do you recall whether they quarreled at any time on any other subject except money? A. No.

Q. When you heard him say to his wife, that he was going to leave what would she say? A.

Well, she would always cry so, she was hysterical, and wouldn't say anything, she was in such a condition that every time he would quarrel, and holler and swear, she wouldn't hardly answer him, we always tried to tell her not to answer him, back, and that she would get along better perhaps; we

20 always felt that perhaps he would change and do the right things, and she hated to come home and live on her mother, and all that kind of thing, but it was the same kind of thing, every little while it was "Get out and go home," that was a regular sing-song, every little quarrel they had it was the same thing, "Go home to your mother and let her support you; I don't want to support you."

Q. Your sister has employed herself at sewing, has she? A. Yes.

30 Q. Does she go away from the house where she lives, for that purpose? A. No; she sews over in Jersey City, and she makes her home with Mrs. Doust, and she sews for her nearly all the time this lady has children, and she sews there nearly all the time, and anybody else that will bring a dress there she will make it for them.

Louise Kidd—Direct

Q. But all her work is done there at Mrs. Doust's? A. Yes, sir.

CARRIE HARLOE.

Sworn to before me this
7th day of April, 1913, and
subscribed this 19th day of April, 1913,
at Newark, N. J.
Thomas Anderson,
Special Master in Chancery.

10

LOUISE KIDD, a witness produced on behalf of the petitioner, being duly sworn, according to law, on her oath deposes and says:

Direct-examination by Mr. Unger:

Q. Where do you live? A. 5208 Fifth Avenue, 20
Brooklyn, N. Y. I am married and my husband's
name is Albert Kidd, and I live there with him.
I know Mrs. Flynn, the petitioner in this suit, and
her husband Joseph A. Flynn, Jr.

Q. How long have you known her? A. About
twenty-five years.

Q. Did you ever call on Mr. and Mrs. Flynn
when they were living together? A. Yes, sir.

Q. Where did you go to see them? A. When
they lived at 464 Fifth Avenue, Brooklyn. 30

Q. Did you hear any quarrel between them
when you were there? A. Yes, sir, the morning
I called there they were quarreling.

Q. Did you see them together after that? A.
No, sir; I did not, and that was about the time he
left her the last time.

Q. Where were you when this quarrel took
place? A. I was going up to the house, and I heard 40

Louise Kidd—Direct

the loud talking I was in the hall, and I heard Mr. Flynn swearing terribly, I don't know just what he was saying, but he was swearing terribly, using very bad language, and swearing at his wife, I know that because there was nobody there but Mr. and Mrs. Flynn.

10 Q. You were not in the room? A. I was going in and I heard the swearing, and then I would not go in, but I went in after Mr. Flynn went out.

Q. Did you hear Mrs. Flynn? A. No, sir; I heard her crying and she was crying when I went in; he was talking about money, he wanted money from her and she said she hadn't any to give him; I told her not to cry; that was the reason he was swearing at her and she was crying.

20 Q. Did you go into the room? A. After Mr. Flynn had left I did; I went into the room but he wasn't in the room where I was; I was too frightened to go in the room where he was.

Q. Did you know his voice? A. Yes, sir, quite well and I am positive it was his voice that I heard; I saw Mrs. Flynn after that.

Q. Did she tell you anything about the quarrel? A. She wasn't able to tell, she was so upset, she couldn't tell only that they had quarreled terribly.

30 Q. Did you hear him say anything? A. Only swearing, that was all, and when he went out he said he wouldn't ever come back again to her, he said "God damn it, I wouldn't come back here again, go home with your mother."

Q. Was that the last time you called at the place in Brooklyn? A. Yes, sir.

40 Q. Have you visited Mrs. Flynn since? A. Yes, at 35 Bayview Avenue, Jersey City, where she is living with Mrs. Doust and her husband and children; I have seen her there.

Annie E. Doust—Direct

Q. How often do you visit her there? A. Not very often, I haven't got the time, her boy is with her there. I have not seen Mr. Flynn her husband since the time of this quarrel, nor heard from him since.

Q. Do you know what his habits were? A. Drunkenness.

Q. Have you ever seen him since? A. I have 10
seen him on the street staggering from one side of the street to the other; he is never sober.

LOUISE KIDD.

Sworn to before me this

7th day of April, 1913, and

subscribed this 9th day of April, 1913,

at Newark, N. J.

Thomas Anderson,

Special Master in Chancery.

20

ANNIE E. DOUST, a witness produced on behalf of the petitioner, being duly sworn according to law, upon her oath deposes and says:

Direct-examination by Mr. Unger:

Q. Where do you live? A. 35 Bayview Avenue, Jersey City, New Jersey. I am married and my husband's name is Edwin A. Doust, and that is 30
our home, and we live there together, and have lived in Jersey City at that address for the last seven years.

Q. Do you know Mrs. Flynn? A. Yes, I have known Mrs. Flynn for twenty-seven years past.

Q. Did you know her husband? A. Well, yes, I knew him.

Q. Did you ever visit them when they were living in Brooklyn? A. Occasionally, and I saw 40

Annie E. Doust—Direct

her husband there I used to go to see them about once or twice a year; and I visited them after the baby was born; the baby was four or five weeks old at the time, and Mrs. Flynn was very sick then.

Q. Did you see her husband around? A. No, he had gone away then for the first time, and I did not see him around at all.

10 Q. Did you ever see him at their home in Brooklyn after that? A. Yes.

Q. What was his condition when you saw him? A. He wasn't just sober, at any time I saw him; and he was very irritable in drink, and sarcastic; when I saw him this time was when the baby was about two years old, and that was when they were living together on Fifth Avenue, Brooklyn. He was very disagreeable, and was drunk, not so very drunk at the time, but enough that it was notice-

20 able.

Q. You say he was disagreeable, in what way?

A. Well, as if he would like to find fault with everything, you could not please him with anything, and he would cut you short on anything that was said.

Q. Did he use disagreeable language to you? A. Not to me, no.

Q. Did you see any quarrel at that time? A. No, not at that time, he was just cranky, and would cut her short if she would speak. That was the last time I was there. Mrs. Flynn came to my house to visit me once in a while.

Q. Do you remember when her husband left her, in August 1904? A. Yes, I remember.

Q. Do you know where she went to live after that? A. She went to her mother's, and she was with her mother until she died, and then Mrs. Flynn came to my house, after her mother died,

40

Annie E. Doust—Cross

and that was in the fall of 1908, she came to live with me about a month or so after her mother died.

Q. How did she happen to come to live with you? A. After her mother died and the home was broken up, I had her come to do some sewing, for a few weeks, and we talked matters over, and I thought she might as well stay with me as long 10 as she was going to take up dressmaking, and I would give her accommodations for any outside work she could get, and she has been there ever since; she has her own room there, and her boy lives there with her, and that is her residence.

Q. To your knowledge has she been living there ever since she came to live with you in the fall of 1908? A. Yes, sir.

Q. Has she ever lived at any other place since that time? A. No, and she is living with me now 20 and supports herself by doing dressmaking.

Q. Does she pay you room rent? A. Yes, sir, and she pays for her boy too; he is now eleven years old.

Q. Have you ever seen her husband come there? A. Oh no, I never seen her husband in over eight years, and I have not heard from him, nor do I know of anybody who has heard from him.

EXAMINED by the Master: 30

Q. Are you related in any way to Mrs. Flynn?

A. No, just school friends, an old friend, I have known her since I was a little girl.

Q. Has Mrs. Flynn lived with you from the time you mention continuously, night and day?

A. Oh yes, she is right there all the time.

Q. Has not been employed outside? A. No, she sews, you know, takes in sewing.

Q. And any work of that kind she does is in 40

Alfred Huttlinger—Direct

your house? A. Yes, and she takes her meals there and sleeps there.

ANNIF E. DOUST.

Sworn to before me this
7th day of April, 1913,
and subscribed this
19th day of April, 1913,
10 at Newark, N. J.
Thomas Anderson,
Special master in Chancery.

ALFRED HUTTLINGER, a witness produced on behalf of the petitioner, being duly sworn, according to law, upon his oath deposes and says:

20 Direct-examination by Mr. Unger:

Q. Where do you live? A. 199 Bay 25th Street, Brooklyn, New York.

Q. What is your business? A. I am an official interpreter of the Fifth District Municipal Court, Brooklyn.

Q. Do you know Barbara A. Flynn, the petitioner in this suit? A. I do.

Q. Were you ever requested by Mrs. Flynn to investigate as to the whereabouts of her husband
30 Joseph A. Flynn, Jr.? A. I was.

Q. Tell us how you came to make these investigations? A. About four years ago her brother belonged to the same organization as I did, in Brooklyn, and he asked me if I couldn't do anything for his sister, telling me the story about Joe Flynn and herself. I said "I will find him for you if he is living." I used to work for the United States Secret Service, and I worked on special cases for Burns, foreign cases; so I
40 started right out from the beginning of their

Alfred Huttinger—Cross

married life, and found out that he had a woman living on Nineteenth Street; then also during the summer of either 1902 or 1903 in Rockaway he had a woman living there, and was living in a boat house with her; then afterwards in 1905, he had a woman living on Eighty sixth Street in New York; then I laid various traps for him to catch him, in New York, or Brooklyn, made appointments to try and get him jobs in a printing place, and I employed various detective agencies, by request of her brother, and nowhere could I find him. I was out here in Jersey City, a certain Joseph A. Flynn they said that he lived there in Westminster Park, and I stayed there for two days and then I found out that it wasn't him. I knew Joseph Flynn ten years ago or twelve years ago, when he was in the organization, because I used to live in that section, and I have made every effort to try and locate this man. 10 20

EXAMINED by the Master:

Q. Do I understand that he was in the Secret Service? A. No, he was a printer, but he belonged to a certain organization in Brooklyn, and I went there very often and in the neighborhood of Prospect Avenue, where his parents lived, and there was a certain place there where he used to play cards quite often and I saw him there ten years ago, but since about ten or twelve years ago I haven't seen him, and I have traced him all over, I have employed detectives, I went over to Jersey to look for him. My idea is that the man is not in the vicinity of New York, if he is living. In the Printers Union they don't know anything about him, and he hasn't paid his dues there for years. 30

Q. Up to what time had he paid his dues? A. I think until about five or six years ago. The 40

Alfred Huttinger—Cross

secretary said to me, "We don't recognize Joseph Flynn, because when he comes here he makes a row and he fights, he fights with anybody. I made some inquiries two or three years ago about him, and I know that he had some woman living in Rockaway and in Canarsie, Long Island, and then he was living with a woman in Eighty sixth Street,
10 New York.

Q. How did you get this information? A. By tracing him, by grocers, butchers and so on, describing the man, I gave a description of the man; he has a peculiar way about him, he throws his hands forward when he walks; it is a peculiar habit that man has, and it is something that you wouldn't find in one person out of a million. When I was first employed by Mrs. Flynn I asked different things about how I could identify him,
20 and that is what he does, he goes forward when he walks, I don't know why, but that is what he does.

Q. Anything peculiar in his appearance, in his face? A. Not anything special that I know of; he is about six feet tall, five feet eleven, something like that, he is a fellow about forty, forty-one or forty-two years old; his last known residence was in Nineteenth Street somewhere, and then in Prospect Place, in Brooklyn, 250 Prospect Place;
30 I went there and tried to see if we couldn't make a personal service on him, but colored people that lived downstairs told me that Flynn is gone from there for a long time, for years; then I went to the different saloons where he used to go, and they said "We haven't seen anything of Flynn here, and if he come here again we will break his neck, because the last time he hung us up for liquor." That fellow has a fine reputation; there wasn't a single person that had a kind word
40 for him.

Alfred Huttinger—Cross

Q. What information did you get about his having associated with other women? A. Only hearsay; through neighbors in Rockaway and neighbors in Canarsie and in Plum Beach, he had a woman in Plum Beach, a blond woman.

Q. These people that informed you about his associating with other women; did they give you information about these women. A. Yes, how I know about Plum Beach, I went there and stayed there for three or four days, I went from Bensonhurst every single day out there, and laid around the beach, and then I asked "Is Joe around" they said "You mean Joe Flynn" and I said "yes," they said "He hasn't been here for a year; I think he is over in Rockaway," and then I gave a description of him, they knew him out there, you understand, but they knew him as Joe; very few people call him anything but Joe, drunken Joe, that was his name, that is what they call him; then I asked if they knew where he was living and they told me he was living there with a blond woman, stout, and she has one eye, and the other eye is a glass eye, and she is pretty well to do, and she supports him; that is the description of the woman I got, and I followed that woman for three or four years but I never found her, could not locate her. There is no question but what Joe Flynn has left Brooklyn and New York, because I looked all over for him, because I wanted to serve him personally, and I had three or four men working with me on it.

ALFRED HUTTLINGER.

Sworn to before me this
7th day of April, 1913,
and subscribed before me this
19th day of April, 1913.

Special Master in Chancery.

Barbara A. Flynn—Direct

BARBARA A. FLYNN, the petitioner, recalled:

Examined by the Master:

Q. Was your husband American born? A. As far as I know he was, I believe he was born in New York.

- 10 Q. The name is an Irish name? A. Yes, although his father is, they claimed Scotch, and his mother German; he was American born; he didn't claim any Irish whatever; his father claimed he was Scotch.

Q. Where did his father live? A. Well, at that time his father did live at 250 Prospect Avenue, Brooklyn, New York, when I married Joe.

- 20 Q. When did you last see his father? A. Oh, I haven't seen his father for years, even before he left me; you see they never came to my house at all, or his mother either, his mother was an invalid, she had a sore leg and didn't go out much at all.

Q. What is your son's name? A. Theodore Walton Flynn.

By Mr. Unger: Q. On your direct-examination you stated that your mother died in August? A. Yes, I make a mistake, it was October, 31, 1908, I made a mistake; I had the dates mixed.

30

BARBARA A. FLYNN.

Sworn to before me this

7th day of April and subscribed this

19th day of April, 1913,

at Newark, N. J.

Thomas Anderson,

Special Master in Chancery.

Special Master's Report

IN CHANCERY OF NEW JERSEY

Between, BARBARA A. FLYNN, <div style="text-align: center;">and</div> JOSEPH A. FLYNN, JR., <div style="text-align: right;">Defendant.</div>	}	On Petition for Divorce, <div style="text-align: center;">per</div> Order for Ref- erence.	10
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In pursuance of an order made in the above entitled cause, bearing date the second day of March, nineteen hundred and thirteen, whereby it was referred to me, the subscriber, one of the special master's, to ascertain and report as to the truth of the petition, and my opinion thereon; and that the petitioner proceed to take depositions and other evidence before me, to substantiate and prove the allegations in said petition and to bring on the hearing of the cause *ex parte*; and that I do return, together with my report and as part thereof, such depositions and other evidence as might be taken before me in pursuance of said order. 20

I do respectfully report that I have been attended by Milton M. Unger, Esquire, of counsel with the petitioner and have taken the depositions of witnesses produced before me, and examined into the matters referred to me. 30

And I find and report that it is proved to my whose maiden name was Barbara A. Hermans, and the defendant, Joseph A. Flynn, Jr., were lawfully married on the seventh day of August, nineteen hundred, as in the petition alleged.

And I find and report that it is proved to my satisfaction that the petitioner and defendant 40

Special Master's Report

lived together as husband and wife from the time of their marriage, with frequent intervals during the absence of the said defendant from the said petitioner, until the thirtieth day of November, nineteen hundred and six, when the defendant deserted the petitioner, and that, in my opinion, the said desertion, since the last mentioned day, has
10 been wilful, continued and obstinate.

And I do find and report that the reason which caused the said desertion was the habitual indulgence by the said petitioner in the intemperate use of intoxicating liquors.

And I find and report respecting the residence of the petitioner that it is proved to my satisfaction that the petitioner was a *bona fide* resident of this state, having her permanent home at 35 Bay-view Avenue, in the city of Jersey City, county
20 of Hudson and 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 resident, residing continuously in the city of Jersey City, county of Hudson aforesaid.

And I find and report that one child was born of the marriage aforesaid on the eighteenth day of December, nineteen hundred and one, whose name is Theodore W. Flynn, and who is now
30 twelve years of age, and the said child is in the custody of his mother, the petitioner.

All of which will more fully appear by the testimony of the witnesses produced before me, and the exhibits offered in evidence and marked by me, which are annexed to this, my report and returned herewith.

And I do further report that I am of the opinion
40 that all the material facts charged in the petition

Memorandum of Advisory Master

are true and that a decree for divorce should be made for the cause of desertion, pursuant to the prayer of the petition.

Respectfully submitted this twenty-third day of April, Nineteen hundred and thirteen.

THOMAS ANDERSON,
Special Master in Chancery.

10

Memorandum of Advisory Master

(Filed, May 13, 1913)

BARBARA A. FLYNN,

vs.

JOSEPH A. FLYNN, JR.

20

Messrs. Irving W. Teeple and Milton M. Unger for petitioner.

MEMORANDUM

The desertion commenced in the State of New York in August, 1904. After this the petitioner lived with her mother in that State until the latter's death in August 1908, when she removed to the State of New Jersey.

30

The jurisdictional fact stated by the master that the petitioner was a *bona fide* resident of this State when the cause of action arose can not be sustained. *Koch vs. Koch*, 79 N. J. Eq., 24.

The petitioner should be dismissed.

C. S. BIDDLE,
Advisory Master.

Order to Take Additional Testimony*(Filed, June 9, 1913)*

IN CHANCERY OF NEW JERSEY

10	Between BARBARA FLYNN, and JOSEPH A. FLYNN, JR., Defendant.	}	On Petition for Divorce. Order to take Additional Tes- timony.
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The petitioner applying for leave to take additional evidence in the above entitled cause.

20 It is on this ninth day of June, Nineteen Hundred and Thirteen, ORDERED, that the said cause be opened and referred back to Thomas Anderson, Esquire, one of the Special Masters of this Court, to take such additional testimony,

30 And it is further ORDERED that the said petitioner proceed to take depositions and other evidence before said Special Master *ex parte*; and that the said Master do return together with his report and as part thereof such depositions and other evidence as may be taken before him in pursuance of this order.

E. R. WALKER,
C

Respectfully advised,
 C. S. Biddle,
 A. M.

Barbara A. Flynn—Direct

Q. In your former testimony you stated that the last time that you had seen your husband was in August, 1904? A. Yes, sir.

Q. Is there anything in that testimony which you wish to change now? A. Yes; at that time you know I was so upset I didn't really think, but I told you afterwards I had remembered that, and
10 you said I should have told it, that I did meet my husband one Sunday morning in the spring of 1908.

Q. Where did you meet him? A. At the corner of Fourth and Sixteenth Street, Brooklyn.

Q. In the spring of 1908? A. Yes, sir.

Q. You are positive of that? A. Yes. I am positive of that, it was a Sunday morning, I was coming from church.

Q. Was it the same year that your mother died?
20 A. Yes, it was that spring.

Q. Did you have a conversation with your husband at that time? A. Very little; I know I was upset and nervous because that summer I was very sick, and I guess I was bordering on a sickness that spring, and I met him and not seeing him for such a long time I was nervous and upset, and I remember he passed the time of day to me, he said good morning.

Q. Did he say anything else to you? A. He
30 didn't say much to me; he said something to the effect would I come and live with him again.

Q. Did he say where? A. Well, he said if I could come, not in the city, he said he would never support me while I lived in Brooklyn, or any-
where around my people.

Q. Did he tell you where he wanted you to go?
A. Out of the state, he said out of Brooklyn alto-
40 gether; he didn't say any definite place, he didn't

Barbara A. Flynn—Direct

talk long enough for that; he wanted me to go with him; this was the spring, just before my mother died.

Q. He wanted you to go away with him? A. Yes, he said if you come with me out of the city I will support you, just something to that effect.

Q. Did you answer him at that time? A. Well, I said all right I will see, something like that; I know I was very nice to him, because I was nervous and upset, and I thought I wouldn't make any fuss, or anything, I said "All right, I will see," and that following summer I took very sick, in fact I didn't think I would live. 10

Q. Did you see him after that? A. No, I never saw him after that, and that I am positive of; you know I told you this right after the hearing, and you said I should have told it.

Q. Can you explain to us why you did not recollect this, or why you did not testify at the previous hearing to it? A. The only thing I can say, I was awfully upset, worried and bothered and nervous, and of course I am not the strongest, and going over all this thing upsets me and makes me nervous, when I think of those things, and that is all I can say, why I did not at that time. 20

Q. You refer to the time when you became hysterical at the hearing? A. Yes, at the hearing on the seventh of April. 30

Q. Do you know a Mr. Cantwell? A. Yes.

Q. Do you know his sisters, Mrs. Kidd and Mrs. Hickey? A. Yes.

Q. Did Mrs. Hickey ever tell you of any information which she had learned from her brother, Mr. Cantwell? A. Yes, Mr. Hickey was over to see me not long ago, a few weeks ago, or a month ago I should say.

Q. Was that after you had given your testimony here? A. Oh, yes. 40

Richard Cantwell—Direct

Q. On the previous hearing? A. Oh, yes.

Q. What did Mrs. Hickey tell you then? A. Well, we were speaking of different things relating to the case, and she said "I never thought of telling you, but my brother told me he had met your husband in the fall of 1908," well, she wasn't sure of the year, but he said it was 1908; she said
10 1907 or 1908, but it was 1908 he said, and he had some conversation with my husband.

Q. You don't know what that conversation was?
A. No, I could not say.

Q. In all other respects there is no change you wish to make in any of your testimony? A. No, everything is all right, as far as I remember now.

BARBARA A. FLYNN.

Sworn to before me this

19th day of July, 1913,

20 and subscribed this

23d day of July, 1913,

at Newark, N. J.

Thomas Anderson,
Special Master.

RICHARD CANTWELL, a witness produced on behalf of the petitioner, being duly sworn, according to law upon his oath deposes and says:
30

Direct-examination by Mr. Unger:

Q. Where do you live? A. City of Brooklyn.

Q. Do you know Barbara A. Flynn, the petitioner in this suit, and Joseph Flynn, the defendant? A. Yes, sir.

Q. How long have you known them? A. Oh, I
40 have known Mrs. Flynn ever since she was a girl,

Richard Cantwell—Direct

I guess about twenty-five years, in fact all her folks, I have know that long, because we were brought up right in the same neighborhood.

Q. How long have you known her husband? A. I have known him about fifteen or sixteen years, all of that anyway.

Q. Did you ever speak to Mr. Flynn regarding his wife? A. Yes, sir, I did, one time I met him. 10

Q. When was that? A. That was in the fall of 1908.

Q. You are positive that is the time? A. Yes, I am positive, because I got a new suit of clothes at that time, and I was coming home with them, and that is how I know, on account of my knowing the family, and I knew his wife and the child, and I knew the mother, and I spoke to him in reference to support for his wife, because I knew he hadn't done anything for her, I asked him did he ever intend to do anything for her, when I met him I said "Hello," he said "Hello where are you going," and I spoke to him about the suit of clothes, and then he said to me, I don't know whether he asked me to have a drink or not; of course I am not a drinker in any way, but I told him I had a suit of clothes, and then I spoke to him about his wife, I said to him "Joe, why don't you do something for your wife and child," and he said "My wife and child," I said "Yes, you ought 20 to do something in the way of their support," he said "Well, I won't do anything for them," he said "I will support her if she will come out of the state, or out of this state, otherwise I won't do anything for her," and I guess that was about all he said; he seemed very mad any way when I spoke to him about it, and on account of my knowing the family I spoke about it. 30

Richard Cantwell—Direct

Q. What did you say to him? A. That is what I said to him, I said that he ought to provide for his family.

Q. And then he said he would support them if they would leave Brooklyn? A. Yes, he said "If she will come with me outside of this State," that is, outside of Brooklyn, whether he meant the State or whether he meant just Brooklyn, I took it that he meant some other state, he said outside of the State, and I took it that he meant outside of the State of New York. "Otherwise" he said "I will not do anything for her in the way of support."

Q. Did you tell this to Mrs. Flynn? A. No, sir.

Q. You did not? A. No, I never spoke to her about it at all; at that time I believe Mrs. Flynn was sick in bed.

Q. Who did you tell this too? A. To my sister.

Q. What is her name? A. Mrs. Hickey.

Q. When was the first time you told her this?

A. I told her about a month or six weeks ago, something like that.

Q. Was it before or after the time when Mrs. Flynn was here previously to give her testimony?

A. Well, it is six weeks ago, or a month ago, that is when I told her; now when the testimony was taken I don't know; I told her six weeks ago or a month, I couldn't say just the date, you know, but I know my sister visits Mrs. Flynn and then the conversation came up in the house in reference to this case, and I spoke about it.

Q. When you spoke to Mr. Flynn, that time you did so because you were interested in Mrs. Flynn?

A. Yes, the whole family, and I knew Mrs. Flynn and I knew she sewed for a living, and of course

Richard Cantwell—Direct

he seemed as if he had nothing whatsoever to do only spend his money, and work when he liked and loaf when he likes, that is all he done, he never seemed to do anything only spend his money over the bar, and nobody else could get anything only himself.

Q. Did he at that time seem to you to indicate any willingness to live with her, if she would go out of the State? A. No, in fact I don't think he ever thought of bringing it up until I broached the subject to him, it was me that brought the subject up, I spoke to him about support you know. 10

Q. Well, he said he would support her if she would leave the State? A. Yes, if she would get out of the State, I suppose he meant Connecticut or Germany of somewhere else, I couldn't say what, but outside of the State, that is what he said, that he would support her if she would go out of the State otherwise he wouldn't do anything. 20

Q. The time you fix as when? A. That was in the fall of 1908.

Q. Was that before she had moved from Brooklyn? A. No, I don't think so, in fact I never went to the house, you see, to find out where she was.

Q. Did you ever see her husband after she moved to New Jersey? A. No, I do not think I ever did. 30

RICHARD CANTWELL.

Sworn to before me this
19th day of July, 1913,
and subscribed this
23d day of July, 1913,
at Newark, N. J.
Thomas Anderson,
Special Master.

Special Master's Report

and Sixteenth Street, in the City of Brooklyn, and that on that occasion the defendant spoke to said petitioner, said "Good morning" to her and that he said further that if the said petitioner would come with him out of the City of Brooklyn, he would support her; that the petitioner explained why she did not recall this interview with her husband in the Spring of Nineteen hundred and eight, and did not testify to it at the original hearing, by saying that she was awfully upset, worried, bothered and nervous, referring to the time when she became hysterical at the said hearing. 10

My personal recollection of the petitioner on the occasion of said hearing is that she was in an hysterical state, owing to her excitement at her said examination before me.

And I do respectfully report that in my opinion 20
the explanation given by the petitioner on the nineteenth day of July, Nineteen hundred and thirteen, is an honest one, and that the interview with her husband in the Spring of Nineteen hundred and eight, in the City of Brooklyn, actually occurred, and that, in my opinion, the alleged desertion did not commence in the State of New York in August, Nineteen hundred and four. The petitioner was a *bona fide* resident of this State when the cause of action arose, having re- 30
moved to the State of New Jersey in August, Nineteen hundred and eight, as will appear by the testimony of the petitioner, filed with this my report.

Respectfully submitted this eighth day of August, Nineteen hundred and thirteen.

THOMAS ANDERSON,
Special Master in
Chancery of N. J. 40

Memorandum of Advisory Master

(Filed Oct. 27, 1913)

BARBARA A. FLYNN,

vs.

JOSEPH A. FLYNN.

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Mr. Milton M. Unger for the petitioner.

MEMORANDUM

The additional testimony is to the effect that shortly before the petitioner became a resident of this State the defendant said that if the petitioner would leave her folks and live elsewhere than in the City of Brooklyn, or would live "out of the State," he would support her. I do not understand that the husband and wife agreed to live separate until the wife got ready to live out of the State of New York; and there is no indication that the wife gave assent to the husband's previous desertion, and after taking up her residence in this State, notified him of that fact and called upon him to fulfill his part of the agreement. The most favorable light in which the situation can be viewed from the wife's standpoint (and I think the true one) is, that the husband did not arrest the period of desertion by such display of mental attitude.

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It is clear to me that the solicitor is dissatisfied with *Koch v. Koch*, 79 N. J. Eq., 24. Since the former memorandum in this case, the Court has decided *Getz, v. Getz* 81 N. J. Eq., 465. It does not appear to me to be becoming to further agitate

Decree of Dismissal

the point in this Court; but the petitioner if aggrieved must resort to her appeal.

The clerk is directed to dismiss this petition at once.

C. S. BIDDLE,
Advisory Master.

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Decree of Dismissal

(Filed Oct. 27, 1913)

IN CHANCERY OF NEW JERSEY

BARBARA A. FLYNN,
Between

Petitioner,

and

JOSEPH A. FLYNN,

Defendant.

Decree of
Dismissal, 20
under rule
165, (*non*
obstante)

This cause coming on to be heard pursuant to the rules and practice of this Court, upon the petition, proofs and the report of Thomas Anderson, the Special Master to whom it had been referred to ascertain the truth of the allegations of the 30
petition, and to report, together with his opinion thereon; Now upon reading and duly considering the same, and the Court being of the opinion (the report of the Special Master to the contrary notwithstanding) that the petitioner has not sustained the truth of the material allegations contained in her said petition respecting the cause for divorce, and is not entitled to the relief therein prayed: 40

Notice of Appeal

IT IS THEREUPON, on this twenty seventh day of October, Nineteen hundred and thirteen, upon the Court's own motion, ORDERED, ADJUDGED and DECREED, that the petitioner's petition be, and the same is, hereby dismissed.

E. R. WALKER,
C.

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Notice of Appeal

(Filed Nov. 12, 1913)

IN CHANCERY OF NEW JERSEY

20	Between BARBARA A. FLYNN, and JOSEPH A. FLYNN, JR., Defendant.	}	On Petition for Divorce Notice of Appeal.
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BARBARA A. FLYNN, the above named petitioner, hereby appeals from the decree filed in this cause and dated October 27, Nineteen Hundred Thir-

30 teen, and from every part thereof to the Court of Errors and Appeals in the last resort in all causes.

IRVING W. TEEPLE,
Solicitor for and of Counsel
with Petitioner.

Dated, November 10, 1913.

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

MILTON M. UNGER,
Of Counsel.

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Petition of Appeal

(Filed Nov. 12, 1913)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between BARBARA A. FLYNN, <div style="text-align: right; padding-right: 20px;">Appellant,</div> and JOSEPH A. FLYNN, JR., <div style="text-align: right; padding-right: 20px;">Respondent.</div>	} On Appeal } from Chan- } cery. } Petition of } Appeal.	10
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Barbara A. Flynn, appellant, respectfully shows, that your petitioner finds her- 20
 self aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 27th day of October, Nineteen Hundred and Thirteen, in that the said decree recites and adjudges that your petitioner has not sustained the allegations of her petition, and is not entitled to the relief therein prayed; and doth decree that your petitioner's said petition be dismissed. And your 30
 petitioner appeals from said decree and from every part thereof, on the ground that the same is erroneous, and that the Chancellor should have found and adjudged the several allegations of your petitioner's petition to have been proved, and the respondent to have been guilty of willful, continued and obstinate desertion by him of your petitioner for the term alleged in your petitioner's

Petition of Appeal

petition, and should have ordered, adjudged and decreed, that your petitioner be divorced from the bonds of matrimony with the respondent for the cause aforesaid, and that your petitioner should have the other relief prayed in and by her said petition.

10 Your petitioner therefore prays that the said decree may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet.

TEEPLE & UNGER,
Solicitors of and counsel
for Appellant.