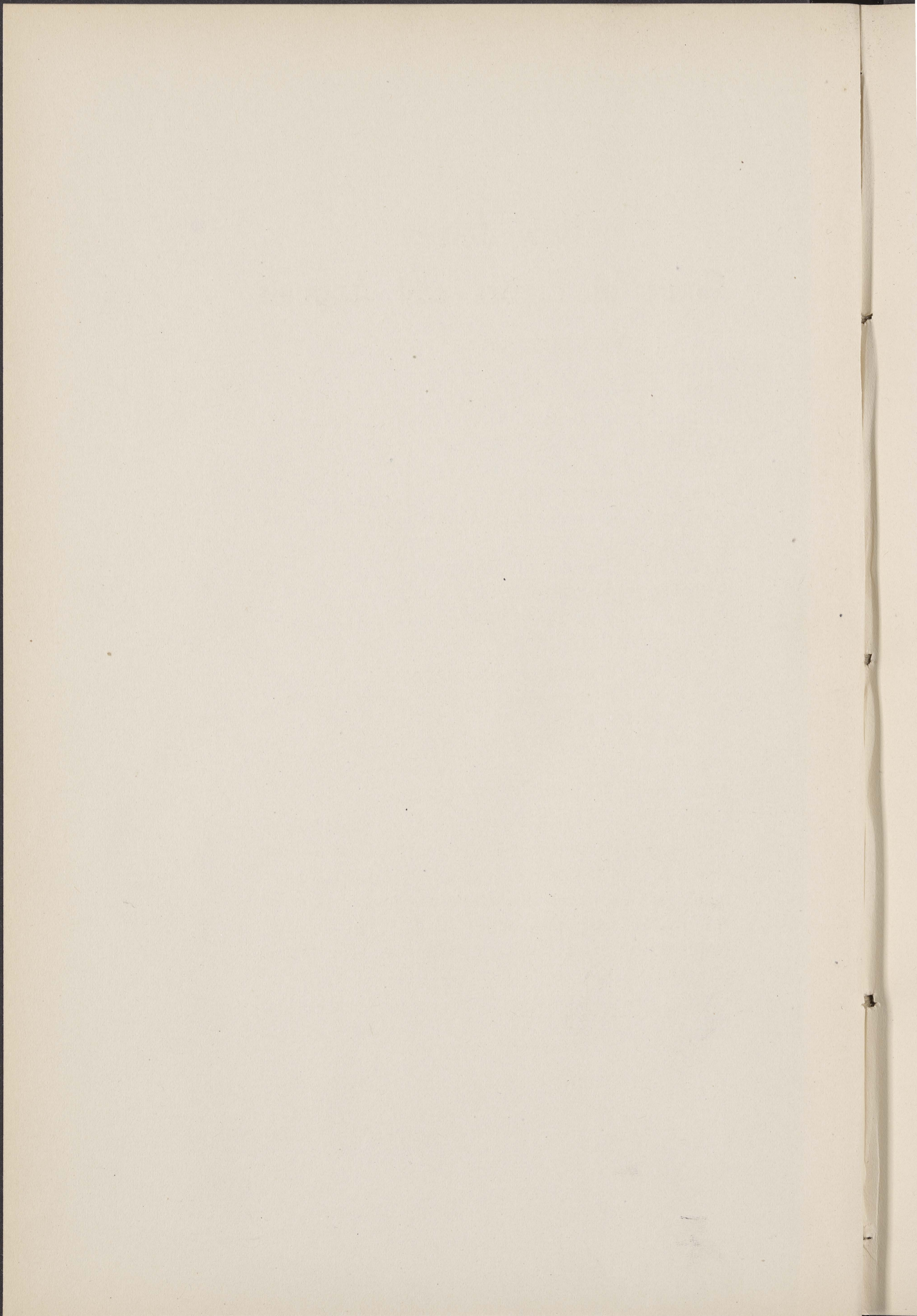


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New Jersey Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY

10

Between,	}	46/658
EVA P. CROPSEY,		
	Petitioner,	On Petition
	vs.	&c.
CHARLES D. CROPSEY,	}	20
Defendant.		

NOTICE OF APPEAL.

To—

Perkins & Drewen, Esqs.,
Solicitors for Eva P. Swanson,
formerly Eva P. Cropsey:

TAKE NOTICE that the defendant, Charles D. Cropsey, does hereby appeal to the New Jersey Court of Errors and Appeals, in the Last Resort in all causes, from the whole and every part of the order of the Chancellor dated June 25, 1928 (advised by Hon. James F. Fielder, Vice Chancellor).

Dated, July 12, 1928.

Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,
Solicitors for Charles D. Cropsey,
Defendant-Appellant.

Petition of Appeal

I conceive there are good grounds for appeal
in the above entitled cause.

JAMES D. CARPENTER, Jr.,
Of Counsel.

10

PETITION OF APPEAL.
**NEW JERSEY COURT OF ERRORS AND
APPEALS**

20	Between, EVA P. CROUSEY, Petitioner-Respondent, and CHARLES D. CROUSEY, Defendant-Appellant.	}	46/658 On Appeal from Chan- cery:
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30 The petition of Charles D. Crousey, the appel-
lant in the above entitled cause, respectfully
shows that your petitioner finds himself aggrieved
by an order made in the Court of Chancery by his
Honor Edwin Robert Walker, Chancellor of the
State of New Jersey (advised by Hon. James F.
Fielder,) bearing date the 25th day of June, 1928,
in the following respects, to wit:

40 (1) In that the Court of Chancery erred in dis-
missing the petition of the defendant-appellant,
which prayed that the alimony in favor of the
petitioner-respondent should be discontinued.

Petition of Appeal

(2) Because the Court of Chancery erred in not terminating all payments of alimony for the support and maintenance of the petitioner Eva P. Cropsey-Swanson since she had remarried subsequent to the final decree of divorce in her favor, and Axel Swanson, her second husband, was and is admittedly able to care and provide for her support and maintenance. 10

(3) Because the Court of Chancery should have taken jurisdiction of the said petition and should not have dismissed the same without at least a hearing thereon.

(4) Because the Court below erred in awarding a counsel fee on the dismissal of said petition to the solicitors of the said petitioner-respondent. 20

Your petitioner therefore prays that the said order or decree may be reversed, set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet.

McDERMOTT, ENRIGHT & CARPENTER, 30
Solicitors for Defendant-Appellant.

ORDER.

IN CHANCERY OF NEW JERSEY

10	Between, EVA P. CROPSEY, and CHARLES D. CROPSEY, Defendant.	}	Petitioner, Defendant.	On Petition &c.
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20 This matter being opened to the court upon re-
 turn of Order to Show Cause made herein on the
 26th day of April, 1928, in the presence of James
 D. Carpenter, Jr., solicitor of Charles D. Crop-
 sey, defendant, and of John Drewen of Perkins &
 Drewen, solicitors of the petitioner, Eva P. Crop-
 sey (now Eva P. Swanson); and the court hav-
 ing read the affidavit, submitted on behalf of the
 respective parties, and having heard the argu-
 ment of the respective counsel and considered the
 same;

30 It is, on this 25th day of June, 1928,
 ORDERED AND ADJUDGED that the said order to
 show cause be and the same is hereby dismissed,
 with costs, and without prejudice,

AND IT IS HEREBY FURTHER ORDERED that the
 said defendant, Charles D. Cropsey, do pay to the
 said Eva P. Swanson, or her solicitors, one hun-
 dred and fifty dollars as a counsel fee.

E. R. WALKER,
 C.

40 Respectfully advised,
 James F. Fielder,
 V. C.

PETITION.

IN CHANCERY OF NEW JERSEY

Between, EVA P. CROPSEY, and CHARLES D. CROPSEY, Defendant.	Petitioner, Defendant.	46/658 On Petition for Divorce:	10
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To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Charles D. Cropsey of the Borough of Rutherford, Bergen County, New Jersey, respectfully shows and charges as follows: 20

(1) That on the 29th day of June, 1920, the petitioner above named obtained a decree *nisi* for divorce in the above entitled cause because of defendant's desertion of the petitioner, the said decree providing:

“And it is further ordered, adjudged and decreed that the defendant do pay to the petitioner the sum of \$20.00 per week, at the termination of each and every week from the date of this decree and until the further order of the Court, for her maintenance and support, and that the defendant do give bond to the petitioner, within ten days after service of a copy of this decree upon him, to secure the payment thereof in the penal sum of \$1000, to be approved by one of the Special Masters of 30 40

Petition

this Court, and filed with the Clerk thereof, said approval to be by Randolph Perkins, Special Master;”

10 a true copy of said decree *nisi* being hereto annexed and marked Exhibit “A,” and hereby referred to for certainty.

(2) That thereafter and on the 10th day of January, 1921, a final decree was entered in the said cause in favor of the petitioner therein and against the defendant, which decree did provide that the said parties and each of them are and is hereby freed and discharged from the obligations of the bonds of matrimony theretofore existing
20 between them. Nothing was said in the said final decree concerning the subject of alimony.

(3) Thereafter and on March 15, 1924, the parties hereto did make and conclude an agreement between them, wherein the said alimony was increased from \$20.00 per week, as provided in the decree *nisi* aforesaid, to \$25.00 per week, and the defendant, your petitioner, did agree to pay to the said Eva P. Cropsey the sum of \$25.00 weekly
30 on the Monday of each and every week from the date thereof for her support and maintenance, a true copy of which agreement is hereto annexed and marked Exhibit “B,” and hereby referred to for certainty.

(4) Your petitioner further alleges that your petitioner has paid to the said Eva P. Cropsey all of the said alimony as provided both in the decree *nisi*, a copy of which is attached hereto
40 and marked Exhibit “A,” and in the agreement

Petition

of March 15, 1924, a copy of which is attached hereto and marked Exhibit "B," and is not in default in any respect.

(5) Your petitioner further shows that in the month of October, 1927, three of your petitioner's checks to the order of Eva Cropsey, each in the sum of \$25.00, were returned by your petitioner's bank, the Rutherford National Bank of Rutherford, New Jersey, endorsed as follows: 10

"Eva P. Cropsey

Credit Account of

Eva P. Swanson, #817 20

With

Commercial Trust Company of New Jersey

Bergen Avenue Office

Jersey City, N. J."

a true copy of one of said checks being hereto attached and marked Exhibit "C" and hereby referred to for certainty. 30

(6) That after the said checks were returned from the Bank aforesaid your petitioner caused inquiries to be made and learned that the said Eva P. Cropsey is now married to one Axel Swanson and lives with him at 19 Virginia Terrace Jersey City, New Jersey.

(7) Your petitioner further alleges that on May 27, 1926, the said Eva P. Cropsey Swanson purchased the property at #19 Virginia Terrace, Jer- 40

Petition

sey City, New Jersey, from Stephen W. Adams and wife, and that the deed for said lands and premises is made to Eva P. Swanson and is dated May 27, 1926, and was recorded May 27, 1926, in the Office of the Register of Hudson County in
10 Book 1601 of Deeds, page 500, and the said premises are free and clear.

(8) Your petitioner further alleges that after the checks mentioned in paragraph 5 hereof were returned from his Bank, with the notation thereon that they were credited to the account of Eva P. Swanson, your petitioner commenced making inquiries to determine whether the said Eva P. Cropsey had been married again or not. Your
20 petitioner heard rumors to the effect that she had been married, but was unable to get any evidence of the fact until he retained counsel to have an investigation made.

(9) Petitioner further alleges that after the receipt of information from Mr. O'Grady as contained in Mr. O'Grady's affidavit attached hereto, your petitioner procured a certified copy of the record of the marriage of the said Eva P. Cropsey, who was married as Miss Eva P. Sloan to
30 Axel T. Swanson at Rockford, Illinois, by Rev. John Gordon, on October 25, 1924, a true copy of the record of said marriage being hereto attached and marked Exhibit "D" and hereby referred to for certainty.

(10) Your petitioner charges that the said Eva P. Cropsey at the time she induced your petitioner to agree to an increase in her alimony from
40 \$20.00 to \$25.00 per week, as evidenced by the

Petition

agreement of March 15, 1924, knew that she was shortly thereafter to be married to the said Axel T. Swanson, was at the time engaged to be married to him, and that she fraudulently concealed her said engagement and her intention to marry from your petitioner, knowing that your petitioner would not have agreed to an increase in her alimony had he known of or suspected her intentions to remarry. 10

(11) Your petitioner further charges that the said Eva P. Cropsey Swanson has fraudulently concealed from your petitioner the fact of her marriage to the said Axel T. Swanson in order that your petitioner because of said concealment would not apply to your Honor for an order to terminate further payments of said alimony, and your petitioner charges that all of the payments of alimony that have been received by the said Eva P. Swanson from and after October 25, 1924, have constituted an unjust enrichment of the said Eva P. Swanson at the expense of your petitioner. 20

(12) Your petitioner further charges that the said Eva P. Swanson has had no actual need of the said payments of alimony from and after her marriage to the said Axel T. Swanson; that the said Axel T. Swanson is now and has for many years been employed by the Borden's Milk Company or Borden's Farm Products Company, in New York City, and that he is amply able to support his said wife, the said Eva P. Swanson, and that the said Eva P. Swanson is independently wealthy in her own name and right. Your peti- 30 40

Petition

tioner charges that the said Eva P. Swanson has large sums of money on deposit in banks, is the owner of corporate securities in her own name and right, and is the owner in her own name and right of her residence at #19 Virginia Terrace,
10 Jersey City, New Jersey, which is free and clear of all encumbrances.

(13) Your petitioner is a Doctor of Medicine, engaged in general practice in the Borough of Rutherford, Bergen County, New Jersey, is past middle life, and has remarried since the making of the agreement hereto attached in 1924 for increase of Eva P. Cropsey's alimony, and has an
20 infant son of his said second marriage.

Your petitioner therefore prays that your Honor may make an order adjudging and decreeing:

(1) That the said Eva P. Cropsey fraudulently concealed from your petitioner all information concerning her remarriage on October 25, 1924, to Axel T. Swanson at Rockford, Illinois, for the purpose of inducing your petitioner to continue to
30 pay her alimony, without making any attempts to have said payments of alimony stopped.

(2) That your Honor may by appropriate order relieve your petitioner from making any further payments of alimony to said Eva P. Cropsey Swanson, either under the provisions of the decree *nisi* made in the above entitled cause, or under the provisions of the agreement made between the parties hereto March 15, 1924.

40 (3) That your Honor may be pleased to order and direct the said Eva P. Cropsey Swanson to re-

Charles D. Cropsey

fund to your petitioner all payments of alimony that have been received by her from your petitioner from and after the date of her remarriage to Axel T. Swanson on October 25, 1924, with interest on the several payments of alimony, and costs of this proceeding, and for such other and further relief in the premises as may be equitable and just. 10

And your petitioner will ever pray, &c.

CHARLES D. CROPSEY,
Petitioner.

AFFIDAVIT OF CHARLES D. CROPSEY. 20

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

Charles D. Cropsey, of full age, being duly sworn, according to law, upon his oath deposes and says: I am the petitioner named in the foregoing petition; I have read the same, know the contents thereof and the matters and things therein contained are true as I verily believe. 30

I have heard rumors from time to time during the past year that Mrs. Eva P. Cropsey had remarried. The first definite indication I had of it was contained in three checks for weekly alimony payments of \$25.00 each, drawn by me on the Rutherford National Bank and dated October 17, October 24 and October 31, 1927. Each of these checks when it came back from the Bank paid bore the endorsement: 40

Charles D. Cropsey

“Eva P. Cropsey

Credit Account of

Eva P. Swanson, #817

With

10

Commercial Trust Company of New Jersey

Bergen Avenue Office

Jersey City, N. J.”

I caused an investigation to be made and have been informed and believe that the husband of Eva P. Cropsey is now Axel T. Swanson, who has
20 been for many years employed by the Borden's Milk Company, whose correct corporate title now is, Borden's Farm Products Co., Inc. I am informed that Mr. Swanson's office is in the Marlbridge Building, New York City.

I have made all the payments of alimony to Mrs. Cropsey as provided in the decree *nisi* and also in the agreement that I made with Mrs. Cropsey dated March 15, 1924.

30 I verily believe that Mrs. Cropsey was engaged to be married to Mr. Swanson at the time she obtained from me the agreement of March 15, 1924, for an increase of alimony. I agreed to this increase at the time because I was very busy and did not wish to have a contest in Court over the question of the amount of alimony. Mrs. Cropsey at that time seemed to be very anxious to have the agreement speedily executed and I now
40 believe that her reason was that she was getting

John A. O'Grady

ready for her marriage which actually took place in the Fall of 1924. I have been informed and believe that Mrs. Cropsey and Mr. Swanson were extremely friendly in the spring and summer of 1924.

If I had known previously that Mrs. Cropsey had remarried and thought I could obtain proof of that fact I would have promptly made an application to the Court to stop further payments of alimony to her. I have had representatives at work for a number of months past getting evidence of Mrs. Cropsey's remarriage, but have been unable to get the evidence before receipt of the affidavit of Mr. O'Grady which is attached hereto.

10

20

CHARLES D. CROPSEY.

Subscribed and sworn to before me
this 21st day of April, 1928.

Miriam McCready,

Notary Public,

Bergen Co., New Jersey.

(Seal) My Comm. expires Sept. 26, 1932.

30

AFFIDAVIT OF JOHN A. O'GRADY.

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

John A. O'Grady, of full age, being duly sworn, according to law, upon his oath deposes and says, that on Tuesday, February 28, 1928, at the hour of 11:15 o'clock A. M. upon the instructions of James D. Carpenter, Jr., solicitor for Charles D.

40

John A. O'Grady

Cropsey, I called at the home of Mrs. Eva P. Cropsey Swanson at 19 Virginia Terrace, Jersey City, N. J., and told her that I was investigating a chattel mortgage that was executed by one "A. Swanson." Mrs. Eva P. Cropsey Swanson
10 told me that she had never executed a chattel mortgage and that neither had her husband, and that it must have been executed by some other persons. I then questioned Mrs. Swanson as to the identity of her husband, and she said that he was employed by the Borden Milk Company in New York City, and had been employed by them for many years. She also informed me that she was married to her present husband in
20 Rockford, Illinois; that she is the owner of the premises she lives in at 19 Virginia Terrace, Jersey City, and the title is in her name. She told me that she and her husband have plenty of money and that their circumstances did not require either of them to apply for a mortgage for any sum, as they were at the present time financially well off.

Mrs. Cropsey lives in a one family brick house,
30 in a very good neighborhood in the Greenville section, Jersey City, about one block west of the Boulevard. The house is very nicely furnished.

JOHN A. O'GRADY.

Subscribed and sworn to before me
this 11th day of March, A. D.
1928.

Elsie M. Heise,
40 (Seal) Notary Public of New Jersey.

AFFIDAVIT OF WILLIAM BYRNES.

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

William Byrnes, of full age, being duly sworn, according to law, upon his oath deposes and says: At the request of John A. O'Grady I accompanied 10
 him on Tuesday, February 28, 1928, at the hour of 11:15 o'clock A. M., to call upon Mrs. Eva P. Cropsey Swanson, at her home 19 Virginia Terrace, Jersey City, N. J. I heard Mrs. Swanson say at that time to Mr. O'Grady that her husband's name was Axel Swanson, and that he was employed by Borden's Milk Company, New York, and had been employed by them for many years. She also told Mr. O'Grady that this was her sec- 20
 ond marriage and that she was married to her present husband at Rockford, Illinois. Mrs. Swanson also told Mr. O'Grady that she owns the premises she lives in, #19 Virginia Terrace, Jersey City, and that title is in her name. Mrs. Swanson also said that her circumstances and her husband's did not require either of them to apply for a mortgage for any sum, as they were at the present time financially well off. Mrs. Swanson lives in a one family brick house in a very good 30
 neighborhood in the Greenville section, Jersey City, about one block west of the Boulevard. The house is very nicely furnished.

WILLIAM BYRNES.

Subscribed and sworn to before me
 this 18th day of April, A. D.
 1928.

Henry A. Oetjen,
 (Seal) Notary Public of New Jersey.

AFFIDAVIT OF VINCENT T. DEE.

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

Vincent T. Dee, of full age, being duly sworn, according to law, upon his oath deposes and says:
 10 At the request of James D. Carpenter, Jr., solicitor for Charles D. Cropsey, I searched the records at the Register's Office, Court House, Jersey City, and I found of record a deed from Stephen W. Adams, *et ux*, to Eva P. Swanson, dated May 27, 1926, recorded May 27, 1926, at 2:15 P. M., in the office of the Register of Hudson County, in Book 1601 of Deeds, page 500. This deed conveys to said Eva P. Swanson the premises known
 20 as 19 Virginia Terrace, Jersey City. The consideration for the said conveyance was One Dollar and other good and valuable consideration.

I have also searched the records for mortgages against the said property and can find no mortgage encumbering the same.

VINCENT T. DEE.

Subscribed and sworn to before me
 30 this 17th day of April, A. D. 1928.
 (Seal) Henry A. Oetjen,
 Notary Public of New Jersey.

EXHIBIT A.*Decree Nisi*

(Filed June 29, 1920)

IN CHANCERY OF NEW JERSEY

Between, EVA P. CROUSEY, and CHARLES D. CROUSEY, Defendant.	}	Petitioner, Defendant.	On Petition for Divorce.
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10

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This cause coming on to be heard in the presence of Ziegner & Lane, solicitors for and of counsel with the petitioner, no one appearing for the defendant, Whereupon, and upon reading the pleadings and proofs in this cause, and the report of Randolph Perkins, one of the Special Masters of this Court, to whom, by a previous order of the Court made in this cause, it was referred to take the depositions and other proofs offered by the said petitioner in support of the allegations of the petition, and to report the same, together with his opinion thereon; from all of which it now appears, to the satisfaction of the Chancellor, that the petitioner and the defendant were joined in the bonds of matrimony on or about the thirteenth day of March, A. D. one thousand eight hundred and ninety-two, and that the defendant has been guilty of willful, continued and obstinate desertion of the petitioner for the term of two years, as

30

40

Petition—Exhibit A

alleged in the said petition, and that at the time
the cause of action for divorce for the said de-
sertion arose the petitioner was a bona fide resi-
dent of this State, and that the said petitioner has
continued so to be down to time of the commence-
10 ment of this action, and that the petitioner has
been for the two years next preceding the com-
mencement of this action, a bona fide resident of
this State, and it further appearing that jurisdic-
tion herein has been acquired by personal service
of process upon the defendant within this State:

IT IS thereupon, on this 29th day of June, A. D.
nineteen hundred and twenty, by his Honor ED-
WIN ROBERT WALKER, Chancellor of the State of
20 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, doth
hereby order, adjudge and decree that the said
petitioner, Eva P. Cropsey, and the said defend-
ant, Charles D. Cropsey, be divorced from the
bond of matrimony for the cause aforesaid, and
the said parties, and each of them, be freed and
30 discharged from the obligations thereof, unless
sufficient cause be shown to the Court why this
decre should not be made absolute, within six
months from the date hereof.

And it is further ordered, adjudged and de-
creed that the said defendant do pay to the said
petitioner her costs of this suit, incurred and to
be incurred, to be taxed, and that the said peti-
tioner do have execution therefor, according to
40 the practice of this Court.

Petition—Exhibit B

And it is further ordered, adjudged and decreed that the defendant do pay to the petitioner the sum of \$20.00 per week, at the termination of each and every week from the date of this decree and until the further order of the Court, for her maintenance and support, and that the defendant do give bond to the petitioner, within ten days after service of a copy of this decree upon him to secure the payment thereof in the penal sum of \$1000 to be approved by one of the Special Masters of this Court, and filed with the clerk thereof, said approval to be by Randolph Perkins, Special Master. 10

And it is further ordered, adjudged and decreed that the defendant do also pay to the Counsel of the petitioner the sum of \$150. 20

Permission for the petitioner to resume her maiden name is reserved.

E. R. WALKER,
C.

Respectfully advised,
C. V. D. Joline,
A. M.

30

EXHIBIT B.

THIS AGREEMENT made and entered into this 15th day of March, one thousand nine hundred and twenty-four.

BETWEEN EVA P. CROUSEY, of Jersey City, New Jersey, party of the first part, and CHARLES D. 40

Petition—Exhibit B

CROPSEY, of Rutherford, New Jersey, party of the second part,

WITNESSETH, whereas, by an order of the Court of Chancery of New Jersey, bearing date the four-
10 teenth day of June, one thousand nine hundred and seventeen, in a certain cause pending in said Court, wherein the party of the first part was complainant, and the party of the second part was defendant, on bill for maintenance, it was ordered, adjudged and decreed that the said party of the second part should pay to the said party of the first part the sum of twenty (20.00) dollars weekly for her support and maintenance until the fur-
20 ther order of said Court; and

WHEREAS, the party of the first part has filed her petition in said Court bearing date the seventh day of December, one thousand nine hundred and twenty-one, praying that said alimony may be increased; and

WHEREAS, the parties hereto have agreed that said alimony shall be increased to Twenty-five (25.00) dollars per week.

30 NOW THIS AGREEMENT WITNESSETH, that the parties hereto, for and in consideration of the premises and of the mutual covenants herein contained, and of the sum of One Dollar (\$1.00) by each to the other in hand paid, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby mutually covenant and agree as follows:

40 1. Said Charles D. Cropsey agrees to pay to the said Eva P. Cropsey the sum of Twenty-five (25.-

Petition—Exhibit B

00) Dollars weekly on the Monday of each and every week from the date hereof for her support and maintenance.

2. Said Eva P. Cropsey agrees in consideration hereof that she will accept said sum in full 10 of any alimony or support and maintenance charges or claims against the said Charles D. Cropsey, and further that she will not apply to any court for the increase of said alimony over and above said sum at any time.

IN WITNESS WHEREOF the parties hereto have hereunto interchangeably set their hands and seals, the day and year first above written.

20

EVA P. CROPSEY (L. S.)
CHARLES D. CROPSEY (L. S.)

Signed, sealed and delivered
in the presence of
Charles A. Van Winkle
Witness as to Eva P. Cropsey

Charles A. Van Winkle
Witness as to Charles D. Cropsey.

30

Sworn & subscribed to before
me this 15th day of March, 1924.
Charles A. Van Winkle,
Notary Public,
(Seal) Rutherford, N. J.

40

EXHIBIT C.

RUTHERFORD NATIONAL BANK

No. 5485 Rutherford, N. J., Oct. 17, 1927.

10 Oct. 10-17-27

Pay to the Order of Eva P. Cropsey \$25 00/100
Twenty-five Dollars.

C. D. CROPSEY,
per A. Maxwell, Atty.

Endorsed:

20 Eva P. Cropsey
Credit Account of
Eva P. Swanson
#817
with
Commercial Trust Company of New Jersey
Bergen Avenue Office
Jersey City, N. J.
C. D. Cropsey, M. D.
C. D. Cropsey, M. D.

EXHIBIT D.

State of Illinois, }
 Winnebago County. } ss:

Certificate of Record of Marriage

I, Howard W. Short, Clerk of the County Court 10
 of said County hereby certify that Mr. Axel T.
 Swanson was married to Miss Eva P. Sloan in
 said County on the twenty-fifth day of October,
 A. D. 1924 by John Gordon, a Minister duly au-
 thorized to solemnize marriages by the Statute
 of Illinois, as appears by his return and certificate
 of marriage attached to the license granted
 therefor by the Clerk of this Court, and now on
 file in my office. 20

IN WITNESS WHEREOF, I have hereunto sub-
 scribed my name and attached the seal
 (Seal) of said County Court, at my office in
 Rockford, this 13th day of April, A. D.
 1928.

HOWARD W. SHORT,
 Clerk of the County Court.

ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY

	Between		} 46/658 On Petition &c.
10	EVA P. CROPSEY,	Petitioner,	
	and		
	CHARLES D. CROPSEY,	Defendant.	

20 Upon reading and filing the verified petition of Charles D. Cropsey, and the exhibits and affidavits attached to the same:

It is on this 26th day of April, 1928, on motion of James D. Carpenter, Jr., solicitor of the defendant,

30 ORDERED that Eva P. Swanson show cause before the Chancellor, at the Chancery Chambers in Paterson, on Monday, the 7th day of May, 1928, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why the provision for the payment of alimony in the decree *nisi* made in the above entitled cause June 29, 1920, and why the agreement for the increase of alimony made between the parties and dated March 15, 1924, should not be cancelled and declared to be null and void, and why the said Charles D. Cropsey should not be relieved from the payment of any further sums of alimony for the maintenance and support of the said Eva P.

40 Swanson.

Order to Show Cause

FURTHER ORDERED that the said Eva P. Swanson should cause why she should not be ordered, adjudged and decreed to have received all payments of alimony fraudulently from and after the date of her marriage to Axel T. Swanson on October 25, 1924, and why she should not be decreed to have fraudulently concealed her said remarriage from the said Charles D. Cropsey, and why she should not be ordered, adjudged and decreed to repay to the said Charles D. Cropsey all sums received from him for alimony and support from and after October 25, 1924, with interest and costs. 10

FURTHER ORDERED that a true copy of this order and of the petition of the said defendant and the exhibits and affidavits verifying same, certified to be true copies by the solicitor of the defendant, be served upon the said Eva P. Swanson personally within four days from the date hereof. 20

E. R. WALKER,
C.

Respectfully advised:

John Bentley
V. C.

30

40

AFFIDAVIT OF EVA P. SWANSON.

IN CHANCERY OF NEW JERSEY

10	Between: EVA P. CROPSEY, <div style="text-align: right; padding-right: 20px;">Petitioner,</div> <div style="text-align: center; padding: 0 10px;">and</div> CHARLES D. CROPSEY, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	(46-658) On Petition for Divorce
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State of New Jersey, }
 County of Hudson. } ss:

20 Eva P. Swanson, of full age, being duly sworn according to law, upon her oath deposes and says:

1. I am the petitioner named in the above-entitled cause. I was married to Axel T. Swanson at Rockford, Illinois, October 25th, 1924.

2. At the time of the making of the decree of divorce in my favor in this cause, that is, on June 29th, 1920, I was residing in the house in Rutherford, New Jersey, that had been owned by the defendant and myself. The house consisted of
 30 about thirteen rooms. Three of these rooms were used by Dr. Cropsey as his offices and consulting rooms, and he boarded and roomed elsewhere in the Town of Rutherford. The remaining ten rooms were used by me for income. I took in boarders and roomers, and later on rented the remainder of the portion that was available to me, retaining only one room for my own personal living. The alimony of \$20.00 per week was fixed
 40 by this Court, upon making of the decree *nisi*, in

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consideration of the fact that I had available to me the income from the home in Rutherford, as just described. In this manner I had continued to live for a period of about seven years prior to the entry of the decree *nisi* in this cause, that is, from the time of the defendant's desertion of me in 1913. A few months after the entry of the final decree of divorce in this case, in December 1920, I found it impossible to continue longer the upkeep of the Rutherford house. Ever since 1913 all expenses for maintenance, repairs and upkeep of the premises, coal and light, were incumbent upon me, and after the entry of the final decree the defendant told me I would have to pay the taxes as well; that he would no longer do so; that he was withdrawing from the house entirely. And shortly after the entry of the final decree the defendant bought a home for himself at the corner of Chestnut Street and Passaic Avenue in Rutherford, where he has since resided. Under these circumstances I found it impossible to continue the use of the Rutherford house. I had been subject to a severe illness and felt again a marked decline in my physical condition. Under all these circumstances it was necessary for me to rid myself of the burden of the house, and I was advised by my attorney at that time, Mr. Pierre Cook of Jersey City, to file a bill for the partition of the property. I did so, and a decree for sale was made on May 23, 1921. Under this decree the property was sold. During the period that the sale was being advertised the defendant told a number of people in Rutherford not to bid at the sale of the property; that for a number

Eva P. Swanson

of reasons it was a complicated and troublesome thing and any person buying the property would have legal difficulties. At any rate, at the sale there were only three bidders, one in addition to the defendant and myself. The defendant bid for
10 the property \$10,750.00, and it was sold to him for that figure. The sum paid to me as representing my net share in the proceeds was \$4,307.52.

3. When the house in Rutherford was sold under the partition decree, I had been going to business daily. I was employed as a secretary to a physician in Brooklyn, a Dr. Higley, and this employment continued until I suffered a complete
20 failure of health in 1924. For a short time after I ended my employment with Dr. Higley I sought employment nearer home in Jersey City in the office of Dr. Stanley Woodruff, but all employment of this kind ended in the spring of 1924 for the reason above stated.

4. In addition to my own support and maintenance and the expense of my own illness, I had to provide for the support and maintenance of my mother, who was entirely dependent upon me
30 and continues now to be so. She is now 84 years of age. In July of 1922 I stated to my attorney, Mr. Pierre F. Cook, that I would simply have to have an increase in the alimony paid by Dr. Cropsey. I asked Mr. Cook to confer with Judge Carey, Dr. Cropsey's counsel, to see what arrangement he could make for an increase in the alimony. Mr. Cook informed me that Judge Carey had submitted a proposition of increasing
40 the alimony to \$25.00 per week. With Judge Car-

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ey's proposition of increase to \$25.00 per week, and at the same time, there was submitted to me by Mr. Cook a draft of agreement for my signature, and which I had been informed was drawn up by Judge Carey. This agreement contained the provision that in the event of my remarriage all alimony payments by the defendant were to entirely cease. I declined throughout all the negotiations that followed to accept any such terms. Dr. Cropsey was a wealthy man and a very prosperous physician. I had always felt that the alimony payments that he had been making bore no just relation to his income and what he was well able to pay. I knew Dr. Cropsey's income and of what it ordinarily consisted. I had kept his books through the years of my life with him, and I knew that his statements to the Court upon the fixing of the alimony were not true statements of his wealth and his income. I have in my possession records now, which I recovered at the time of my removal of belongings from the Rutherford house, which show that as early as the month of March, 1909, his income from professional visits alone for the month amounted to approximately \$1,024.00. And I knew also that the defendant's income had shown a rapid and substantial increase from then on. In the meantime he had acquired property, had invested money, and from these sources had also realized an income in addition to that from his professional work. So, that for all these reasons I would not agree to sign any contract that would in the event of my remarriage release the defendant from his obligation to pay me alimony.

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Eva P. Swanson

5. The negotiations between myself and Mr. Cook and between Mr. Cook and Judge Carey with regard to my signing the agreement just mentioned continued from the month of July 1922 until the month of November 1922, and is substantiated by letters which were written to me by Mr. Cook and to Mr. Cook by Judge Carey. The letters I refer to are now in my possession and copies of them are attached hereto and marked Exhibits "A" to "F" inclusive, and made a part hereof. Because of the appearance of the name Eva P. Sloan in the exhibits I do depose that the same is my maiden name.

6. From the time of the original proposition of the increase to \$25.00 per week, made as above stated, through Judge Carey in July of 1922, the defendant made increased payments accordingly, and from July 1922 his remittance each week was in the sum of \$25.00. In November 1922, when the effort to induce me to sign the agreement proposed had stopped, the defendant deducted from future payments the excess of \$5.00 each week that he had been making.

7. During this time I was living on Duncan Avenue and was going to my daily employment with Dr. Higley in Brooklyn; I was supporting my mother at my home and paying a servant to care for her during my absence. My only other means of income was the board paid by a boarder that we had at the house at the time. It was during this time also that my health grew constantly worse until I had to quit employment altogether in 1924. I communicated with the defendant and told him that I would simply have to have an

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increase in the alimony payments. My recollection is that I wrote the defendant a letter, but at any rate the response came to me from Miss Maxwell who was his secretary in Rutherford. She called me on the telephone and stated that the Doctor had received my letter and that he would confer with me on the subject of more alimony. I had stated in the letter that if I could not negotiate on the subject with Dr. Cropsey that I would have to bring the matter to Court. A part of Miss Maxwell's message to me was that the Doctor did not want me to go to Court about it. From then on Dr. Cropsey began to make appointments with me through Miss Maxwell. There were a number of appointments made and each appointment was cancelled for the reason, as stated to me by Miss Maxwell, that on each occasion the Doctor was too busy to see me at the time in question. Finally the defendant and I did meet by appointment. It was early in March 1924 that we met at the Robert Treat Hotel in Newark for the purpose of discussing an increase in the alimony payments to me. Our meeting was pleasant. The fore part of our conversation was taken up with the discussion of my health and of the defendant's health. He said that he was in poor health and that he, too, had been suffering from high blood pressure. That was, and still is, my ailment, and he knew it and naturally the discussion went on to ways and means of palliating this illness. Dr. Cropsey also knew that I had been suffering from a tumorous growth, and that, too, he discussed with me at some length. Finally he said to me, "Well, Eva, let us get down to the business we came for", and that started the discussion concerning

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the increase in the alimony. He then produced a paper from his pocket. He handed it to me. I read it, and upon reading it, found it to be exactly the agreement that was proposed through Judge Carey in July 1922, as above stated. I told the
10 defendant that I had once refused to sign such an agreement and would not consent to it now. I told him also that he knew perfectly well that I would not sign such an agreement nor any other agreement that would relieve him from payments altogether in the event of my remarriage, and I told him that he knew perfectly well why I would not agree to any such thing. I told him he was a man of wealth and large income and as far as
20 this divorce and alimony was concerned that he had gotten off very easy. When I said this the defendant laughed and said, "Well, if I have to pay any more money I would rather pay it to you than to my lawyer"; that the whole divorce trouble had cost him a great deal of money. There was more discussion. We talked for quite a long time and always about the proposition of my remarriage. Finally he said to me, "Eva,
30 if I omit the marriage clause, will you sign an agreement agreeing never to go to Court and ask for any increase of alimony over the \$25.00 per week as long as I live, no matter what money I may have or what my financial standing may be in the future," At first I hesitated. The sum seemed so small according to his means and income, and knowing I could never go to Court and ask for more, but upon considering my health, I asked him if he meant what he said—as long
40 as he lived or for life—and he said, "Yes, as long as I would never take him to Court and never

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asked for an increase over the \$25.00 per week." I said, "Very well then; if you will have the marriage clause omitted from the agreement and will increase the payments to \$25.00 per week, to last during my life, I will sign it." He then said that he would have a new agreement drawn up and would have the marriage clause left out. The defendant said he would let me know when the new agreement had been drawn up and was ready for signing, and he asked me to come to Rutherford to sign as Rutherford was very much more convenient for him than Newark. I agreed to go to Rutherford when he would let me know. The defendant seemed very happy and very well satisfied with the agreement. He asked me a number of times if I surely understood that I had agreed that I would never apply to the Court for any addition whatever to the \$25.00 per week, no matter what the change in his circumstances were, and no matter how much money he would acquire. I told him that I understood and that I agreed.

8. It was about 6:30 in the evening when our conference ended. When we arose to go the defendant remarked that it was dinner time and he offered me \$2.00 with which to go and have my dinner. I declined. I said I would return home to dinner. He then wanted to know if I had an objection to his escorting me to the Park Place Station. I had no objection to that and he walked to the corner with me. About two weeks after the meeting at the Robert Treat Hotel I received a telephone message from Miss Maxwell, the defendant's secretary, asking me to come to Ruth-

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erford and sign the agreement. I was to meet the defendant at the office of Charles A. Van Winkle, a Notary Public in Rutherford. The date fixed was March 15, 1924. I went to Mr. Van Winkle's office and there saw the defendant. I
10 do not know by whom the paper had been drawn, but Dr. Cropsey had the paper with him ready for signing by us and for witnessing by Mr. Van Winkle. The new paper, as drawn, contained no reference whatever to my remarriage, but did contain a very specific agreement on my part that I would not apply to any Court for an increase of alimony over and above the sum of \$25.00 per week at any time. I signed the agreement and
20 shortly thereafter we parted. Had there been any doubt in my mind that the agreement as signed by me was drawn up in such a way as to not express and carry out the understanding that we had reached at our conference at the Robert Treat Hotel, as herein-above set forth, I would never have signed it. A copy of the agreement of March 15th is attached to the petition on the present order to show cause.

30 9. It is true that I purchased the property at No. 19 Virginia Terrace. This purchase was made by me with the money of my present husband together with some of my own. The title was taken in my name; and it is not true that the premises are free and clear. There is a mortgage on the property in the sum of \$4,250.00 held by The Trust Company of New Jersey.

40 10. The statement contained in the petition and in the affidavit of the defendant that after the return of the checks referred to in his affidavit,

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he began to make inquiries as to my remarriage, is unqualifiedly false. The defendant knew very soon after the remarriage of the fact and knew it authentically. He discussed it freely, as appears from the accompanying affidavit of Mrs. Mary A. Leader. I deny that there was any misrepresentation or any suppression of fact or truth concerning my remarriage in any negotiations that I ever had with the defendant concerning the alimony or any increase of alimony. I had no purpose and could have none in misrepresenting any fact as to my remarriage, as it was clearly my understanding that such an event would have nothing to do with or affect the alimony which the defendant had contracted to pay in consideration of the terms and provisions that he had exacted from me. The fact is that at the time of my conference with the defendant in Newark, March 15, 1924, I did not know I was to be married to Mr. Swanson, and at that time had no intention of it.

11. It is also untrue that at any time subsequent to my remarriage I have done anything to conceal that fact from either the defendant or from any other person. Ever since my remarriage I have lived with my present husband in the City of Jersey City. I have joined a number of clubs in Jersey City as Mrs. Swanson; I have been and am an active member of the Ladies' Aid Society of the First Congregational Church in Jersey City, prior to and since my remarriage. Mr. Swanson is likewise a member of the Congregational Church and has been since 1926.

12. All the allegations contained in paragraph 12 of the petition and in the supporting affidavit

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as to my wealth and property, I emphatically deny.

13. The last payment of any alimony whatever that I received from the defendant was on April 16th, 1928, which paid alimony up to the date of payment, April 16th. There were no papers served upon me in the present proceeding in this cause until April 27th.

14. Concerning the affidavits of John A. O'Grady and William Burns, I depose that all I know of any such happenings is that upon one occasion two men, strangers to me, came to the door of my home. One of them impersonated a police officer and showed me what looked like a policeman's badge. He said that he was looking for A. Swanson, who had moved to Jersey City from Union City. I told him that Mr. Swanson had never resided in Union City. He said they were looking for a man who had a chattel mortgage on some furniture. I told him we had given no mortgage on any furniture. I freely gave him my husband's name and answered his questions. I told him nothing about having plenty of money or about our being financially well off and had no occasion to make any such reference whatever in my talk with these total strangers. Neither of them were in my home and neither of them can say truthfully how it is furnished.

EVA P. SWANSON.

Subscribed and sworn to
before me this 1st
day of June, 1928.

40 Edward Claxton,
Attorney at Law of N. J.

EXHIBIT A.

Pierre F. Cook
 Counsellor at Law
 No. 1 Exchange Place
 Jersey City, N. J.

July 26, 1922.

Miss Eva P. Sloan,
 The Brentwood,
 300 First Avenue,
 Ashbury Park, N. J.

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Dear Mrs. Sloan:

I have your letter of the 25th inst. enclosing only one copy of the agreement with Dr. Cropsey. Please sign the other copy, have your signature 20 witnessed and send to me at the earliest possible moment, in order that I may have the Dr. sign both copies, and give one back to you and he retaining one himself.

Yours very truly,

PIERRE F. COOK.

P. S. At your convenience you might let me 30 know if you prefer to pay my fee in the matter as agreed upon, in installments or to make a lump payment for a reduction of \$25.00.

P. F. C.

EXHIBIT B.

Robert Carey
Counsellor at Law
75 Montgomery Street, Jersey City, N. J.
Union Trust Co. Building.

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Sept. 21, 1922.

Mr. Pierre Cook,
1 Exchange Pl.,
Jersey City, N. J.

My dear Pierre:

I received your letter in the Cropsey matter.
I cannot see why she objects to this agreement.
20 Certainly Mrs. Cropsey would not want to accept
any money from the doctor in the event of her
re-marriage and certainly we would want to be in
a position clearly to oppose the payment of any
such moneys, as I am personally opposed to the
doctrine that one man should be permitted or
obliged to support another man's wife. Talk it
over with her again. In the meantime, I have
instructed the doctor to forward checks to meet
the agreement. I am

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Very truly yours,

ROBERT CAREY.

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EXHIBIT C.

Pierre F. Cook
Counsellor at Law
No. 1 Exchange Place
Jersey City, N. J.

September 22, 1922. 10

Mrs. Eva P. Sloan,
125 Duncan Avenue,
Jersey City, N. J.

Dear Mrs. Sloan:

I enclose herewith letter from Judge Carey of
the 21st inst. Please return it to me when you 20
have read it.

Yours very truly,

PIERRE F. COOK.

EXHIBIT D.

Robert Carey
Counsellor at Law
75 Montgomery Street, Jersey City, N. J.
Union Trust Company Building.

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Oct. 10, 1922.

Mr. Pierre Cook,
1 Montgomery St.,
Jersey City, N. J.

Dear Pierre:

Did you get the Cropsey agreement signed yet?
20 The doctor advises me that he is making pay-
ments in accordance with the new agreement, but
if it is not to be signed, of course he will want
credit for the excess paid. Push this through.

Very truly yours,

ROBERT CAREY.

EXHIBIT E.

Pierre F. Cook
Counsellor at Law
No. 1 Exchange Place
Jersey City, N. J.

October 11, 1922. 10

Mrs. Eva P. Sloan,
125 Duncan Avenue,
Jersey City, N. J.

Dear Mrs. Sloan:

I enclose herewith letter from Judge Carey
from which you will observe that Dr. Cropsey 20
intends to claim credit for the excess \$5.00 weekly
that he is paying unless the agreement is signed.
Please think the matter over again and let me
know as soon as possible if you still do not care
to sign it.

Yours very truly,

PIERRE F. COOK.

EXHIBIT F.

Pierre F. Cook
Counsellor at Law
No. 1 Exchange Place
Jersey City, N. J.

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November 6, 1922.

Mrs. Eva P. Sloan,
125 Duncan Avenue,
Jersey City, N. J.

Dear Mrs. Sloan:

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I have your letter of the 4th inst. The alimony matter has been definitely closed by Judge Carey. The clause as to re-marriage was insisted on by Dr. Cropsey when the agreement was submitted to him, and I see nothing to be gained by further correspondence with him or his counsel.

In regard to your request for a receipted bill, I find that the only payment I have received on account of my bill of July 31, 1922, \$156.94, was
30 \$6.94 disbursements paid by you on October 7th.

Yours very truly,

- PIERRE F. COOK.

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AFFIDAVIT OF MARY E. SLOAN.

IN CHANCERY OF NEW JERSEY

Between, EVA P. CROPSEY, and CHARLES D. CROPSEY, Defendant.	}	(46-658) On Petition for Divorce Affidavit	10
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State of New Jersey, }
 County of Somerset. }^{ss}:

Mary E. Sloan, of full age, being duly sworn 20
 according to law, upon her oath deposes and says:

1. I am the mother of Eva P. Cropsey (now
 Eva P. Swanson), the petitioner in the above en-
 titled cause.

2. Early in the spring of 1927—it was some
 time in the month of March—the defendant,
 Charles D. Cropsey, visited me while I was resid-
 ing in Asbury Park, New Jersey. With him at
 the time was his wife. I was then living at a 30
 private boarding house with a family named Silk-
 worth, on Second Avenue. At the time Dr.
 Cropsey arrived, Dr. Beveridge of Asbury Park,
 who is my physician, was there calling on me as
 I was not feeling well at the time. The Doctors
 became quite friendly and had a rather lengthy
 chat. After Dr. Beveridge left, Dr. Cropsey
 spoke to me. After we had been conversing for
 a few minutes, he handed me \$10.00. I asked him 40

Mary E. Sloan

what that was for and he said it was a little present for me. I told him that I did not wish it, but he insisted that I take it. I did so and thanked him for it. He then asked me if my daughter, the above named petitioner, was married. I told
10 him that she was. He asked me if I was sure. I responded that I was certainly sure and that there was no doubt about it, and that I thought that he knew it. I then told him also that my daughter and Mr. Swanson were married out West, and that Mr. Swanson's sister and brother-in-law were the witnesses to the marriage. I tried to tell Dr. Cropsey the name of the town in Illinois where the marriage was performed, but
20 I could not recall it.

MARY E. SLOAN.

Subscribed and sworn to before me
the 25th day of May, 1928.

Jennie V. A. Kline,
Notary Public of N. J.

(Seal)

AFFIDAVIT OF MARY A. LEADER.

IN CHANCERY OF NEW JERSEY

Between, EVA P. CROPSEY, and CHARLES D. CROPSEY, Defendant.	}	Petitioner, Defendant.	(46-658) On Petition for Divorce Affidavit.	10
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State of New Jersey, } ss:
 County of Hudson.

Mary A. Leader, of full age, being duly sworn 20
 according to law, upon her oath deposes and
 says:

1. I am the widow of Henry N. Leader and re-
 side in the Borough of Rutherford, Bergen
 County, New Jersey, where I have lived for the
 past twenty-four years.

2. I am intimately acquainted with Eva P.
 Cropsey (now Eva P. Swanson) and Charles D.
 Cropsey, the parties to the above entitled cause, 30
 and have known them for twenty-four years last
 past.

3. My late husband died on the 29th day of
 January 1928, and Charles D. Cropsey, who is a
 physician, attended my husband in his illness and
 had been our family physician for twenty-four
 years. On January 1, 1925, my husband suffered
 a broken ankle and Dr. Cropsey attended through- 40
 out the period for which my husband suffered

Mary A. Leader

from that injury, which lasted for something more than three months. Again in the fall of 1927, Dr. Cropsey called to attend my husband in an illness which lasted for a week or more, during which period the Doctor called on him two or
10 three times.

4. In addition to these particular illnesses mentioned, Mr. Leader occasionally called in Dr. Cropsey and went to his office for professional advise and treatment.

5. Dr. Cropsey was and is acquainted with me and with my family upon cordial and intimate terms, and almost without exception when he
20 called to see my late husband throughout the period subsequent to the beginning of the litigation between Dr. Cropsey and his wife, Dr. Cropsey would mention his former wife, the above named petitioner. On these occasions he always spoke to me concerning her.

6. On one or more of the occasions when Dr. Cropsey called on Mr. Leader, during the latter's illness from the broken ankle, Dr. Cropsey
30 mentioned to me and to my husband, when the three of us were together, that his former wife had remarried. He stated that the former Mrs. Cropsey had married a man who was in the milk business, and Dr. Cropsey on many occasions, in fact whenever he referred to his former wife's marriage, always mentioned Mr. Swanson as, "her milk man."

7. I am also very well acquainted with Mrs.
40 Sloan, who is the mother of the above named pe-

Mary A. Leader

titioner, and have known her for upwards of twenty years last past. Last fall when Dr. Cropsey called at our home he mentioned to me that he had shortly before visited Mrs. Sloan at Asbury Park, New Jersey, and had taken with him on the visit his then wife. Dr. Cropsey made no extended remarks as to the purpose of the details of his visit to Mrs. Sloan, but he did take occasion to say that when there he left Mrs. Sloan a little present of \$10.00. Why he mentioned that, I do not know. 10

8. Very frequently on the occasions of Dr. Cropsey's visits to our home he mentioned the fact that he was paying \$25.00 per week as alimony to his former wife. The last time I heard Dr. Cropsey mention this was during the calls on upon my husband in the fall of 1927. I asked Dr. Cropsey, and so did my husband, if it was a fact that he would have to continue paying alimony in spite of the remarriage of his former wife, and Dr. Cropsey said that he expected to pay it as long as his former wife lived, and he stated, too, that he would do it for old time's sake, even if he did not have to do it. 20 30

9. Three years ago, during the time my husband was confined at home with a broken ankle, I recall distinctly that on one or more occasions while I was present my husband and Dr. Cropsey discussed their respective opinions as to the fairness of alimony under various circumstances. And during these discussions my husband asked Dr. Cropsey if he would have to continue his payments of alimony to his former wife indefinitely; 40

Mary A. Leader

and my husband would ask Dr. Cropsey if the Doctor really meant that that was strictly true. The Doctor stated in response to my husband that he was obliged to continue the payments of alimony during the life of his former wife. And
10 the Doctor made the same statement when, as I distinctly recall, my husband asked him what the effect upon the alimony would be if the Doctor's former wife remarried. The Doctor stated he had agreed to continue the payments throughout the life of his former wife, and that he would do so.

MARY A. LEADER.

20 Sworn and subscribed to
before me this 23d day of
May, A. D. 1928.
John P. Nugent,
Attorney-at-Law of New Jersey.

REPLY AFFIDAVITS.

AFFIDAVIT OF CHARLES D. CROPSEY.

IN CHANCERY OF NEW JERSEY

Between, EVA P. CROPSEY, <div style="text-align: right; padding-right: 20px;">Petitioner,</div> and CHARLES D. CROPSEY, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	46/658 On Petition &c.	10
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State of New Jersey, County of Bergen.	}	ss:	20
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Charles D. Cropsey, the above named defendant, being duly sworn, according to law, upon his oath deposes and says:

I have read the answering affidavit of Eva P. Swanson in this case, verified June 1, 1928, and I am only answering such part thereof as seems to be material.

The house in Rutherford, which Mrs. Swanson refers to in paragraph 2 of her affidavit, was one which I had built and in which I had my offices. Petitioner was allowed by this Court to have possession and occupancy of all of the house, except the offices which I used. I paid for all the coal, light and all that was spent for the upkeep of said premises as long as the petitioner lived there. 30

The negotiations between my solicitor, former Judge Robert Carey, and Mr. Cook, that took place in 1922 fell through, and no agreement was 40

Reply Affidavits—Charles D. Cropsey

made as is indicated by Mr. Cook's letter to the petitioner dated November 6, 1922, attached to petitioner's affidavit and marked Exhibit "F." After November 1922 I did not hear anything further from Mrs. Cropsey, according to my present
10 recollection and my records, until December 11, 1923, when I received a letter from the petitioner, dated December 10, 1923, a true copy of which is attached hereto and marked Exhibit "A." This letter was sent to me by registered mail and in it petitioner asks me to increase her alimony, which was then \$20.00 per week, and she ends said letter with the statement: "am leaving the question
entirely in your hands."

20 I am informed that the boarder who was living at petitioner's home in Jersey City in 1922 and 1923 was none other than the said Axel Swanson, who is now her husband.

After the receipt of Mrs. Cropsey's letter of December 10, 1923, above mentioned, I made an appointment with her by letter and met her in the spring of 1924, I think early in March, at the Robert Treat Hotel in Newark. I deny the statement
30 on page 6 of petitioner's affidavit where she speaks about her suffering from an alleged tumorous growth. When petitioner asked me if I was willing to increase her alimony I handed her the draft of agreement Judge Carey had prepared in 1922, which contained a clause reading:

40 "Said Charles D. Cropsey agrees to pay to the said Eva P. Cropsey the sum of Twenty-Five (\$25.00) Dollars weekly on the Monday of each and every week from

Reply Affidavits—Charles D. Cropsey

the date hereof for her support and maintenance, so long as she remains unmarried.”

Mrs. Cropsey looked at this agreement and said:
“I will not sign it.”

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I then handed her another agreement (I had copies of two with me). The other agreement was substantially identical with the one which she later signed, a copy of which is attached to my petition herein and marked Exhibit “B.” This copy of agreement was also prepared in 1922 and was dated July 21, 1922, but I am not sure who prepared it. Mrs. Cropsey read this agreement through and said she would sign it. I then told her that it would be necessary to write it over again and that if she would meet me at the office of Charles A. Van Winkle in Rutherford at a later date I would have it ready and we would both sign it.

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I deny the statement on page 6 of petitioner’s affidavit where she says:

“I told the defendant that I had once refused to sign such an agreement and would not consent to it now. I told him also that he knew perfectly well that I would not sign such an agreement nor any other agreement that would relieve him from payments altogether in the event of my remarriage.”

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I deny that petitioner said:

“I told him that he knew perfectly well why I would not agree to any such thing.”

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Reply Affidavits—Charles D. Cropsey

I deny all the remaining allegations in paragraph 7 that are contained on pages 6 and 7 of petitioner's affidavit. I deny that I ever said to Mrs. Cropsey that I would pay her \$25.00 per week to last during her life, and I deny that I
10 ever said anything that would lead her to believe that I ever had such an intention. I simply showed her the one agreement, which she declined to sign, and then I showed her the other which she said she would sign and there was no other discussion. She did ask me to make the amount \$30.00 instead of \$20.00, but I refused to pay her more than \$25.00 a week and she said that would be satisfactory.

20 Deponent further says that the agreement that was signed by Mrs. Eva P. Cropsey under date of March 15, 1924, is precisely what was agreed upon between the parties thereto.

I further deny the allegations in petitioner's affidavit that I "knew very soon after the remarriage of the fact and knew it authentically." As stated in my affidavit I heard rumors from time to time that Mrs. Cropsey had been remarried. I
30 tried constantly to learn what the facts were.

Sometime in the spring of 1927 I received a letter from Mrs. Sloan, Mrs. Cropsey's mother, from Ocean Grove, asking me to call on her and bring my wife along. I had received a number of letters from Mrs. Sloan, all in a very friendly tone, and the one in particular was so pathetic that at the first opportunity I drove to Asbury Park with my wife, Edith M. Cropsey. Mrs.
40 Sloan told me at that time that Eva (the peti-

Reply Affidavits—Charles D. Cropsey

tioner) had told her she was not getting any money from me, and she asked me if that were so would I give her one-half of what I had previously been giving Eva for her support. She said that Mrs. Cropsey had told her that she could no longer give her mother \$5.00 a week. Mrs. Sloan told us at that time that she had heard that Eva was married again and had asked her about it, and that Eva had given an evasive reply. Mrs. Sloan said that she had said to her, "If you are married why don't you come out and say so and tell everybody." She told us that Eva replied, "It's nobody's business what I do and I will tell when I get good and ready." I asked Mrs. Sloan if she really thought that Eva was married. Mrs. Sloan said that she thought that Eva and Mr. Swanson, her boarder, were married out West. I asked her if she was sure that she was married and Mrs. Sloan replied, "Well they are living together. I think they are married but I really don't know." As I was leaving the house at the end of my visit to Mrs. Sloan I put a \$10.00 bill in her hand and she appeared to be very grateful.

A copy of Mrs. Sloan's letter to me asking me to call on her is hereto attached and marked Exhibit "B." It was postmarked "Asbury Park, April 29, 1927."

I deny the statement in Mrs. Leader's affidavit that prior to the year 1928 I ever made the statement that Mrs. Cropsey had remarried. I knew that the Leader family were quite friendly with Mrs. Cropsey. I never said that Mrs. Cropsey had remarried because I did not know the fact.

Reply Affidavits—Charles D. Cropsey

I had heard rumors and I was trying to get the members of the Leader family to say something. I was of the impression that the Leader family could perhaps tell me something about the matter, but none of them ever said that Mrs. Cropsey had
10 remarried until a few days prior to the death of Mr. Leader, which was late in January, 1928. A few days prior to his death their daughter, Minnie Leader, said to me something to this effect: "How do you like it to have your first wife married again." I said, "Is it a fact that she has remarried." Miss Leader replied that she was married in some Town about ninety miles from Chicago and she supposed that she was married
20 in Mr. Swanson's sister's home. Miss Leader said that she did not know the name of the Town where the marriage had taken place.

A few days later, after the date of the burial of Mr. Arthur Jones of Rutherford, which was about the first of February, I heard for the first time that Mrs. Cropsey was introduced at Mr. Jones' funeral as Mrs. Swanson. I heard this from several people.

30 Immediately after Miss Leader told me what she did about Mrs. Cropsey's remarriage, I had my secretary, Miss Maxwell, write letters to County Clerks in a number of counties in Illinois, and the certificate of marriage dated April 13, 1928, which is attached to my petition and marked Exhibit "D," came as a result of one of these letters.

40 As soon as I heard late in January, 1928, that Mrs. Cropsey was introduced in Rutherford as

Reply Affidavits—Charles D. Cropsey

Mrs. Swanson, I retained Mr. Carpenter of McDermott, Enright & Carpenter, to get the evidence and to take necessary steps not only to have further payments of alimony to Mrs. Swanson stopped, but to recover, if possible, the alimony I had paid her since her remarriage. Before that date I did not have any evidence that I thought would be accepted in Court as proof of Mrs. Cropsey's remarriage. 10

I deny the allegations in Mrs. Swanson's affidavit that she made no secret of her remarriage.

Every month I was sending her alimony checks in envelopes addressed, Eva P. Cropsey, and she at no time notified me of her remarriage and requested me to address the envelopes or to make the checks payable to Eva P. Swanson. The checks that I sent to her were endorsed "Eva P. Cropsey" in every instance. The three checks which had endorsed on them: "Credit Account of Eva P. Swanson, #817," were all endorsed "Eva P. Cropsey," and the endorsement: 20

"Credit Account of
Eva P. Swanson
#817 30

With

Commercial Trust Company of New Jersey
Bergen Avenue Office
Jersey City, N. J.

Teller." 40

Reply Affidavits—Ada Maxwell

was undoubtedly put on the back after the checks had been deposited.

10 After moving to Jersey City several years ago Mrs. Eva P. Cropsey changed her address several times, each time writing me letters requesting that I send the check to her new address, but after being remarried four years ago she never once communicated with me, directly or indirectly, asking me to draw the checks payable to "Eva P. Swanson," or to mail communications to her addressed to that name.

CHARLES D. CROPSEY.

20 Subscribed and sworn to before me this 13th day of June, 1928.

Miriam McCready,

Notary Public of New Jersey.

AFFIDAVIT OF ADA MAXWELL.

30 State of New Jersey, }
County of Bergen. } ss:

Ada Maxwell, of full age, being duly sworn, according to law, upon her oath deposes and says: I am Secretary to Dr. Charles D. Cropsey, the defendant in this cause, and have been such for a number of years.

40 I deny the statement contained in Mrs. Swanson's affidavit that I made an appointment by telephone for her to meet Dr. Cropsey at the Rob-

Reply Affidavits—Ada Maxwell

ert Treat Hotel, Newark. I did write her letters, but I did not telephone her.

Commencing the latter part of January, 1928, I wrote to the County Clerk in a large number of counties in Illinois inquiring whether a marriage license had been issued to Mrs. Eva P. Sloan Cropsey and anyone else in the last four years. I wrote to almost every county in the State. I had heard rumors in 1927 from people in Rutherford that Mrs. Cropsey had remarried and I made a number of diligent inquiries to ascertain if that were true, but I did not receive any statements of fact until people told me early in February, 1928, that at the funeral of Mr. Arthur Jones the former Mrs. Cropsey had been introduced as Mrs. Swanson. A day or two before that Dr. Cropsey had told me of his conversation with Miss Minnie Leader referred to in his affidavit, and I had commenced writing to Illinois to secure evidence of the remarriage.

ADA MAXWELL.

Subscribed and sworn to before me this
12th day of June, 1928.

(Seal) Miriam McCready,
Notary Public of New Jersey.

AFFIDAVIT OF EDITH M. CROPSEY.

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

Edith M. Cropsey, of full age, being duly sworn, according to law upon her oath deposes and says:
10 In the Spring of 1927, I accompanied Dr. Cropsey to visit Mrs. Sloan in response to a letter which Dr. Cropsey showed me from her. I was introduced to Mrs. Sloan and she said that Dr. Cropsey was the only one in the World whom she could look to for a kindness. She said that Eva had told her that she was not getting any more money from the Doctor and she asked him to give her for her support one-half of what he had been
20 giving Eva for alimony. She said that Eva had told her she could not give her mother \$5.00 a week any longer and she had urged her mother to go into a home.

Mrs. Sloan at that time told us that she had heard that Eva was married and had asked her about it, and that Eva had given her an evasive reply. Mrs. Sloan said in my presence to Dr. Cropsey that she said to Eva: "If you are married why don't you come out and say so and tell
30 everybody." She said that Eva replied: "It's nobody's business but my own and I'll tell when I get good and ready." Dr. Cropsey asked Mrs. Sloan: "Do you really think she is married?" Mrs. Sloan replied: "I think they were married out West." Dr. Cropsey said: "Are you sure that she has remarried," and Mrs. Sloan replied, "Well, Eva and Mr. Sawnsen are living together. I think they are married, but I don't really
40 know."

Exhibit A

The above is as near as I can recall the words of the conversation.

As we were leaving the house I saw Dr. Cropsey put a bill in Mrs. Sloan's hand and say, "That's for you." Mrs. Sloan seemed very grateful and kissed the Doctor. 10

The first authentic information I ever had indicating that Mrs. Cropsey had remarried was the latter part of January or the first part of February, 1928, when I was informed that Miss Minnie Leader had told Dr. Cropsey that Mrs. Cropsey had married Mr. Swanson somewhere near Chicago, and a few days later I heard that Mrs. Cropsey had been introduced in Rutherford as Mrs. Swanson. 20

EDITH M. CROPSEY.

Subscribed and sworn to before me this
12th day of June, 1928.

(Seal) Miriam McCready,
Notary Public of New Jersey.

EXHIBIT A.

30

Dr. C. D. Cropsey,
Rutherford, N. J.

My dear Doctor Cropsey:

On September 21st inst. I wrote you a letter explaining to you my situation, and asked you if you would agree to give me a more substantial 40

Exhibit A

sum of alimony each week, without my taking the matter up with lawyers and the courts—as I did not care for any more notoriety, and thought possibly you might feel the same way.

10 I considered that we could handle this matter in a satisfactory manner—providing you were willing to meet me part of the way.

A letter written and signed by Miss Maxwell, saying you desired to know what increase in alimony I desired was answered October 29th—saying I would leave this matter up to you to decide, hoping that I would hear from you, and that you would be considerate and make me an offer such
20 as you felt you could do, according to your circumstances.

I assure you I am not looking for anything unreasonable—but the twenty dollars per week is entirely inadequate to meet my expenses, or the necessities of life—again my health is none the best, and I have been advised by my physician that I am working now, when I am in no condition to do so, but should give up all business, but I
30 feel I must as long as I can possibly do so.

Not receiving any response to my letter of a recent date, I am again writing you, and would greatly appreciate it if you would advise me if you are willing to increase my alimony, if so—how much—also if you do not care to give me any more, and wish me to proceed along the other lines.

40 Please write me your decision in either case before December 31st.

Exhibit B

I assure you I would be willing to take less by arranging this matter among our-selves than I would be willing to take if you compel me to take the matter up with lawyers and court. This you know would involve considerable expense, and it is this I am trying to avoid. So I hope that you will give this matter your kind and thoughtful consideration and will advise me immediately of your decision. 10

In closing, I wish you to know that I have consulted no one concerning this matter and am leaving the question entirely in your hands.

Very truly yours,

EVA P. CROPSEY. 20

125 Duncan Ave.
Jersey City, N. J.
December 10, 1923.

EXHIBIT B.

Thursday
1105, 2nd Ave
Asbury Park 30

My dear Dr. Cropsey:

I am getting out of my bed to thank you for medicine that you sent me but I don't know how to thank you enough for it is perfectly lovely in you and my God bless you and keep your dear wife and may you live to see many years together 40 is my prayer—but oh my dear Dr. I cannot begin

Exhibit B

to tell you how I have been treated and that is
the cause I am where I am. I have no home and
every little money and have to pay my board and
the little I have will not last long. Now will you
please see if you can get me in the Home at Hack-
10 ensack I got an application from there and I an-
swered it the best I could and have not got any
answer as yet and that was three weeks ago I
did not tell them that I was sick for my Dr. here
says that I am not sick but that the trouble that
I have had at 83 years Oh and no home to go to
he says it is a wonder I am not dead I have had
three Drs. and they all say that the home was not
the place for me here with my *dease* and told me
20 to get out but I had no place to go and had to stay
O my dear Charly you don't know what I have
had to go through taking thought I did all I could
for everybody at least as far as I could. I shall
never forget what your last words was to me after
your trial when you bid me good by you said it
will be your turn next and you was right for it
has been Oh if my Heavenly Father would only
take me home I don't see what I am left for only
trouble. Now this dear woman that I am with is
30 lovely and kind but she goes to business every
day and cannot keep me as she thinks she will
go to Reading and what will become of me. Oh
if I had only stayed in Jersey City where I did
have some to care for me but here I am all alone
I don't know anybody it is awful I lived in Jer-
sey City 50 years and went to my Church 45 and
never had an enemy and had Eliza 20 years and
we never had a word with any one in my life. I
40 have seen nothing but trouble since I left my

Exhibit B

home but not with you you was always kind to me and so was poor Sam he has always been good and I would not be as I am now if he had money but he is sick poor feller and it is trouble that has put him there he had to leave his business as his Dr. told him he must and he has been trying to help pay my board which Eva told him he must she does do a little but does not want to and poor Sam is now down sick and if I should go I always want you to be kind to him for he would never say a word about you. When I was over to the Home he came over every week to see me and always if he had a few cts. would put his hand in his pocket and give it to me but I never got any other money he is good and I want you all to think so when I am gone and now with much love to you and your dear wife I do wish I could see you I could tell you a lot from one that loves you
Mary E. Sloan

Please don't tell Sam as it would worry him and his Dr. says he must not be upset so this is for you only but I can look my God in the face and it is all true I only wish you could come down and see me I don't think I can live much longer with my trouble on me. I tell you it is hard do please see if there is any home anywhere that I can get in I have some money to put me in now but it will soon be gone and then what will become of me.

Your dear friend

M E SLOAN

My Dr. thinks it is awful the way I have been talked to.

AFFIDAVIT OF MINNIE LEADER.

IN CHANCERY OF NEW JERSEY

 Between:

10	EVA P. CROPSEY,	Petitioner,	}	(46-658) On Petition, etc. Affidavit
	and			
	CHARLES D. CROPSEY,	Defendant.		

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

20 Minnie Leader, being duly sworn according to law, upon her oath deposes and says:

I reside in Rutherford, New Jersey, and have practically all my life been acquainted with the parties to the above entitled cause. I have been shown a copy of what purports to be a reply affidavit made by the defendant, Charles D. Cropsey, and sworn to in this cause on June 13th, 1928. I am the person referred to in the said affidavit, on page 5 thereof, as having had a con-

30 versation with the said Charles D. Cropsey relative to the remarriage of his first wife, the above named petitioner, which conversation is stated as having taken place a few days prior to the death of my father, late in January, 1928.

It is not true that such conversation took place at the time when Dr. Cropsey's affidavit says that it did. That conversation occurred on October 12, 1927. I distinctly recall the date. It was on

40 Columbus Day. I do not recall that Dr. Cropsey

Reply Affidavits—Minnie Leader

in any way indicated to me that my reference in the conversation of October 12th, 1927, to his former wife's remarriage, was information to him.

MINNIE LEADER.

10

Subscribed and sworn to before me
this 15th day of June, 1928.

Edward Claxton,
Attorney at Law of New Jersey.

20

Handwritten text, possibly a signature or date, located at the bottom center of the page.

127

New Jersey Court of Errors and Appeals

(No. 124, OCTOBER TERM, 1928.)

Between

EVA P. CROPSEY,
Petitioner-Respondent,

and

CHARLES D. CROPSEY,
Defendant-Appellant.

ON APPEAL
FROM
CHANCERY.

BRIEF FOR DEFENDANT-APPELLANT.

This appeal is from an order of the Chancellor, advised by Vice-Chancellor Fielder, dated June 25, 1928, which dismissed a petition filed by the defendant, Dr. Cropsey, in which he prayed that alimony in favor of the petitioner, his first wife, might be discontinued because of her subsequent remarriage to a man who was well able to support her (see Order, Record, p. 4).

The learned Vice-Chancellor filed no memorandum of his conclusions before sailing for Europe and since he is confined there by illness the Court will probably not have the benefit of his views.

Statement of the Facts.

Petitioner and defendant were married March 13, 1892. On June 29, 1920, a divorce was granted to petitioner on the ground of defendant's desertion (Decree *Nisi*, Record, p. 17). In this decree

it was ordered that the defendant "do pay to the petitioner the sum of \$20.00 per week, at the termination of each and every week from the date of this decree and until the further order of the Court, for her maintenance and support, and that the defendant do give bond to the petitioner, within ten days after service of a copy of this decree upon him to secure the payment thereof in the penal sum of \$1000", etc. (Record, p. 19).

On March 15, 1924, an agreement in writing was made between the petitioner and defendant reciting the above decree and that the petitioner has filed a petition in Court praying for an increase in alimony (which petition was never in fact filed), and also providing:

"And whereas, the parties hereto have agreed that said alimony shall be increased to Twenty-Five (25.00) Dollars per week:

Now this Agreement Witnesseth, . . .

1. Said Charles D. Cropsey agrees to pay to the said Eva P. Cropsey the sum of Twenty-Five (25.00) Dollars weekly on the Monday of each and every week from the date hereof for her support and maintenance.

2. Said Eva P. Cropsey agrees in consideration hereof that she will accept said sum in full of any alimony or support and maintenance charges or claims against the said Charles D. Cropsey, and further that she will not apply to any court for the increase of said alimony over and above the said sum at any time" (Record, pp. 20-21).

On April 26, 1928, defendant, Dr. Cropsey, filed in the Court of Chancery a petition alleging that he had recently learned that the petitioner was married to one Axel T. Swanson at Rockford, Illinois, on October 25, 1924, and annexed a certified copy of the record of said marriage to his petition (Record, p. 8). He charged that Mrs. Cropsey,

the petitioner, knew at the time the agreement of March 25, 1924, was executed that she was shortly thereafter to be married to Mr. Swanson; that she was at the time engaged to him and that she fraudulently concealed her engagement and her intention to marry from the defendant, knowing that the defendant would not have agreed to an increase in her alimony had he known of or suspected her intention to remarry (Record, p. 9). He also charged that the petitioner fraudulently concealed the fact of her marriage to the said Swanson in order that the defendant would not apply to the Court for an order to terminate further payments of alimony, and he charged that all payments received by the petitioner after October 25, 1924, have constituted an unjust enrichment of the said Eva P. Swanson at the expense of the defendant (Record, p. 9).

The defendant further alleged that Mrs. Swanson has had no actual need of said payments of alimony after her marriage to Swanson; that Swanson is now and for many years has been employed by Borden's Milk Company in New York City and that he is amply able to support the petitioner, and that the petitioner is independently wealthy in her own name and right (Record, p. 9).

This petition was verified by affidavits proving that the petitioner had admitted her remarriage to Swanson, and that she and her second husband were financially well off.

By way of answer to this petition, the petitioner, Mrs. Swanson, admitted her remarriage to Mr. Swanson on October 25, 1924 (Record, p. 26, par. 1); she admitted that she had purchased the property, 19 Virginia Terrace, Jersey City, in her own name, with money of her present husband and her own (Record, p. 34, par. 9); she denied that Dr.

Cropsey had recently learned of her remarriage (Record, p. 34, par. 10); denied that she concealed her remarriage (Record, p. 35, par. 11), and contended that the agreement increasing the alimony from \$20 to \$25 per week was made pursuant to a verbal understanding that the defendant would pay the petitioner \$25 per week as long as she should live (Record, p. 32).

This was denied by Dr. Cropsey in a reply affidavit (Record, pp. 51, 52 and 53), and by the terms of the agreement itself (Exhibit "B", Record, p. 19).

The defendant alleged that he had fully performed the agreement on his part to be performed and had paid the petitioner all of the alimony that had accrued for her support and maintenance up to the time of the filing of his said petition (Record, p. 6, par. 4).

Mrs. Swanson in her reply affidavit admitted that Dr. Cropsey had paid her all of the alimony to April 16, 1928, which was eleven days before she was served with the order to show cause (Record, p. 36, par. 13).

The only controverted facts were as to the date Dr. Cropsey first learned of the petitioner's remarriage and whether at the time the agreement was negotiated the Doctor had stated that he would pay the \$25 per week to his wife as long as she should live.

No contest was raised on the questions whether the petitioner had remarried or whether her second husband was able to support her in the station to which she was accustomed.

Upon the filing of the Doctor's petition Vice-Chancellor Bentley made an order requiring the petitioner to show cause why Dr. Cropsey should not be relieved from the payment of any further sums of alimony for the maintenance and support of Eva P. Swanson, and why she should not

be ordered and decreed to have received all payments of alimony fraudulently from and after the date of her marriage to Swanson on October 25, 1924, and why she should not be decreed to repay to Dr. Cropsey all sums received from him from and after October 25, 1924 (Record, pp. 24-25).

On the hearing of this rule before Vice-Chancellor Fielder, he dismissed Dr. Cropsey's petition and directed him to pay Mrs. Swanson or her solicitors \$150 as a counsel fee (Record, p. 4).

Grounds of Appeal.

The grounds of appeal urged and relied upon are:

(1) That the Court below erred in dismissing the defendant's said petition.

(2) Because the Court below erred in not terminating all payments of alimony to the petitioner, Mrs. Swanson, since she had remarried subsequent to the final decree of divorce, and her second husband was admittedly able to care and provide for her support and maintenance.

(3) Because the Court below should have taken jurisdiction of the petition and should not have dismissed the same without at least a hearing thereon.

(4) Because the Court below erred in awarding a counsel fee to solicitors of the petitioner-respondent (Record, pp. 2 and 3).

POINT I.

The petitioner has, since her divorce from the defendant, remarried with one Axel T. Swanson, with whom she is now living and who is capable of properly supporting her.

The petitioner in her affidavit of June 1, 1928, specifically admits that on October 25, 1924, she was married to one Axel T. Swanson (Record, p. 26, line 23). The said petitioner further admits in the same affidavit that ever since her remarriage she has lived with her present husband, Axel T. Swanson, in the City of Jersey City (Record, p. 35, line 29).

The defendant in his petition to have further payments of alimony by him to the petitioner cancelled alleges that the said petitioner has had no actual need of the said payments of alimony from and after her marriage to the said Axel T. Swanson; that the said Axel T. Swanson is now and has for many years been employed by the Borden's Milk Company or Borden's Farm Products Company, in New York City, and that he is amply able to support his wife, the said petitioner (Record, p. 9, line 29). These allegations are nowhere denied by the petitioner, or by any one else. Clearly in such a case it would seem contrary to all standards of justice and morals to compel the divorced husband, the appellant herein, to continue the payment of alimony.

POINT II.

Even should it be considered that the remarriage of petitioner could not of itself terminate the obligation to pay alimony, nevertheless, it puts the burden upon the divorced wife to show why alimony could not be terminated.

In *Rigney vs. Rigney* (1901), 62 N. J. Eq. 8, the Court, while refusing to allow the relief applied for, indicated in its opinion that in a proper case and in the event of the petitioner's equitable conduct, relief in the form of a reduction or cancellation of alimony would be granted. In this case there was a petition by the executrix of the last will of Thomas G. Rigney. The prayer of said petition was for an order varying or modifying the former decree in the said cause.

The decree of divorce was made in 1887 and the defendant was decreed to pay to the complainant alimony from the date of the decree at the rate of \$45 per week. No part of the alimony had been paid since August, 1887.

The petition further asserts that the complainant in this cause intermarried with one Edgar L. Laing, in June, 1889, and lived with him until his death in the latter part of the year 1899, and that the two children of the complainant had resided with the said Laing during that time, and it is asserted (upon the belief of the petitioner) that Laing was, during the continuance of his marriage relation with the complainant, able to support and maintain, and did support and maintain, complainant as his wife. Chancellor Magie refused to allow the relief applied for, saying:

“The claim of petitioner is, that upon complainant's marriage to Laing the defendant could have so applied, and upon proof of such marriage this Court would have diminished

the amount allowed by so much as was included therein for complainant's support and maintenance. What this reduction would have been, if any was proper to be made, does not appear. It is not claimed in the petition, but yet it is obvious, that the defendant might have also applied for a reduction of the amount allowed by the decree when the children for whose support and maintenance the decree was in part made came to years when they became self-supporting, or at least when they became of age. In *Snover v. Snover, supra*, the Chancellor suggested that a defendant in similar circumstances might apply for a reduction of the allowance made in respect to a female child when the child had attained the age of eighteen years.

The defendant in the action neglected to present to the Court the suggested changes of circumstances or to ask the variation or modification of the decree on either ground. The petitioner discloses no reason for such neglect, but on the facts disclosed by the answer it is apparent that the cause was his continued and obstinate resistance of the decree, and his purpose not to perform it by paying the alimony. An application on his part would not have moved this court to give him relief by reducing the alimony, except upon condition that he should obey the decree at least by payment of the alimony up to the time when the changed circumstances were shown to exist and to justify the reduction. While resisting the decree (and, according to the answer, his resistance continued until his death), he manifestly had no right to relief" (at pages 13-14).

Warren vs. Warren (1921), 92 N. J. Eq. 334, also indicates that if the divorced husband properly conducts himself and complies with the order of the Court, the Court will subsequently take into consideration the remarriage of the divorced wife in deciding the question of a reduction or cancellation of alimony. In this case the divorced wife

of the complainant sought to recover the amount due her from the complainant for alimony out of the complainant's distributive share of the proceeds for a partition suit. The divorce was granted in 1895, the alimony being \$5 a week. No part of this alimony was paid. The husband disappeared and was not located by the wife until 1915, at which time he induced her not to prosecute her claim for payment of arrears by a promise that upon the settlement of the estate he would give his daughter \$10,000. The wife remarried in 1901. The Court in upholding the divorced wife's claim under the facts in this case said at page 338:

“ . . . The second marriage of a divorced wife does not *ipso facto* terminate the alimony. 2 Bish. M. D. & S. 418; *Gordon v. Baker*, 182 Ill. App., 587; *Casteel v. Casteel*, 38 Ark., 477; *Montgomery v. Offutt*, 136 Ky., 157; *Linton v. Hall*, 149 N. Y. Supp., 385; *Cohen v. Cohen*, 150 Cal., 99.”

Also

“I am referred by complainant's counsel to *Franck v. Franck*, 107 Ky., 362, as a case 'on all fours' with the one at bar, and an authority for his contention that the petitioner should not be allowed alimony after her remarriage. The wife there obtained a decree in 1879; she remarried ten years later. In 1896 she applied to the chancellor, who determined the amount due at the time, but refused to enforce the decree beyond the second marriage. The facts in that case show that the husband was at all times accessible. The chancellor refrained from following the practice of the ecclesiastical courts of England, allowing one year's arrears only, but refused to go beyond the date of the second marriage because of the wife's delay, and the appellate court rested its affirming judgment, in a measure, upon the theory that had the husband applied to the chancellor, at the time of his wife's second marriage, to terminate

the alimony, the chancellor would have sustained his motion—a theory that seems to me to be wholly inadmissible where the husband is contumacious.”

And at page 339:

“ . . . Had he obediently complied with the alimony decree, and then upon his wife's second marriage, applied for a modification, it would have been disposed of on its merits as to amount; or, if then, had he shown an honest desire and inability to comply with the alimony decree, his plea would have been received with at least some degree of sympathy. But, as he has spurned the decree and defied the power and authority of the court throughout, his supplications would fall on deaf ears and relief would be withheld.”

In *Dietrick vs. Dietrick*, 99 N. J. Eq., 711, precisely the same situation arose as is presented in this case. In that case a husband sought to be relieved from further payments of alimony to his wife, the petitioner, who had remarried, and the matter coming on to be heard before Vice-Chancellor Bentley on petition he held that where a divorced woman remarries a presumption arises that the necessity for alimony no longer exists, but is subject to be rebutted upon a showing that her second husband will be unable to support her in anything like the station in life of the man she divorced, in which event the alimony should either be continued without change, or modified according to the circumstances of each individual case. Vice-Chancellor Bentley in his opinion said, at page 712:

“There is thus presented for the first time in this State, so far as I know, the question of the effect of a woman's remarriage upon her right to alimony from her former husband. It is true that Vice Chancellor Grey said, in *Abele v. Abele*, 62 N. J. Eq., 644, that because the successful wife was quite young

enough to expect to be married again he would now allow permanent alimony. I do not conceive, however, for obvious reasons, that this was any adjudication on the subject now being considered. *Warren v. Warren*, 92 N. J. Eq., 334, is authority to the effect that such a motion as the one under consideration will not be allowed where the man is in contempt for failure to obey the alimony order. Vice Chancellor Backes says: 'The second marriage . . . does not, *ipso facto*, terminate the alimony'. This is far from meaning that it never will have that effect. This question has been passed upon by the courts of a number of our sister states and those of England. In some of the jurisdictions, such as New York, in the case of *Shepherd v. Shepherd*, 1 Hun, 240, affirmed in 58 N. Y., 644, and in Indiana in the case of *Miller v. Clark*, 23 Ind., 370, the subsequent marriage has been declared to have no effect upon the previous allowance, although the New York rule has been considerably weakened by the later opinion in *Karalfy v. Kiralfy*, 73 N. Y. Supp., 708, where the earlier opinion is examined and distinguished, almost to the vanishing point. On the other hand, the authorities in Massachusetts, from *Albee v. Wyman*, 10 Gray, 222, to the present time, are to the effect that the remarriage throws upon the former wife the burden of establishing *prima facie* proof that the support afforded by her second husband is inadequate. This was expressly held in *Southworth vs. Treadwell*, 168 Mass., 511, and was followed by the Supreme Court of California in *Cohen vs. Cohen*, 150 Cal., 99, where the court says 'we think this rule is just and equitable'."

And at page 715:

" . . . Upon consideration of these principles it would seem clear that the fair and just rule to be deduced is, that the remarriage of the wife who has divorced her husband ought to raise a presumption that the necessity for alimony no longer exists, but it is subject to

be rebutted upon a showing that her second husband will be unable to support her in anything like the station in life of the man whom she has divorced, in which event the alimony should either be continued without change, or modified according to the circumstances of each individual case."

Cases from other States in which this question has come up are almost uniformly to the effect that the divorced wife's subsequent remarriage terminates alimony or at least throws the burden upon the divorced wife so remarried to show why alimony should not be terminated.

In *Southworth vs. Southworth*, 168 Mass., 511, 47 N. E. 93, the Court reduced the alimony to a nominal sum upon remarriage of the divorced wife. The Court said:

"The remarriage was a material change in the circumstances of respondent, giving her the right to be supported by another man. In the absence of proof that this right was not adequate to all her needs, the court might well deem it sufficient cause for revising the former decree, and for reducing the alimony to a nominal sum, and was right in ruling that *prima facie* it was such cause."

In *Emerson v. Emerson* (Md.), 87 Atl., 1033, the Court in speaking about the reduction or termination of the alimony upon the divorced wife's subsequent remarriage says:

"Now, does the remarriage of the wife present such a circumstance as should cause a court of equity to modify that part of a decree providing for alimony? Should it be entirely rescinded or only modified? The authorities are almost unanimous that in event of remarriage the decree should be modified; but there is a wide difference between them as to the absolute annulment of the alimony provision. The rule, as stated in 14 Cyc., 787, is: 'Where a wife has obtained an absolute

divorce, carrying with it the privilege of a remarriage, and alimony is decreed to her, it is generally held that the husband upon her subsequent remarriage may secure an order vacating the decree as to alimony'. A reading of the cases in the note to the above text shows that some of the cases have held that remarriage should cause the court to entirely revoke the alimony provision, while others hold that remarriage presents a strong reason for modification and perhaps entire rescission. For instance, in *Brandt v. Brandt*, 40 Or., 477, 67 Pac., 508: 'We do not mean to be understood as holding that the subsequent marriage will *ipso facto* dissolve the obligation of the former husband to continue the payment of the allowance, for the authorities do not seem to go so far; but we mean to say that it affords a cogent reason and convincing reason for the court to modify or cut off the allowance altogether'.

If we treat alimony, as we must do under the Maryland decisions, as a provision made by the court to compel a husband to perform his common-law obligation of support, then it seems clear that when a woman remarries the new husband has cast upon him the duty of support, and it would seem, in all reason, that the man who was performing this duty under the order of a court should be relieved. Although by the divorce they are no longer husband and wife, the statute requires that the former husband should still perform the duty of support; but, where another man assumes this duty of maintenance, it cannot be the intent of the law that the former obligation should remain, and that a woman should thus be entitled to the same support from two men. 'The divorced wife abandons the provision made for her support out of the estate of her former husband by the decree of the court, for that adequate support which she contracts for by the subsequent marriage. It is a matter that affects her own happiness, and about which she is perfectly free and competent to make a choice. Whether she

acts wisely in her election, and whether in every instance she obtains as good and as adequate support by her marriage as that which she abandoned, are questions about which courts can have no concern. It is a matter of her own voluntary election.' *Stillman vs. Stillman*, 99 Ill. 196, 39 Am. Rep. 21."

In *Cohen vs. Cohen*, 160 Cal. 99, 88 Pac. 267, the Court, in discussing the subject, says:

"We believe that the cases wherein the alimony should be continued after the remarriage are extremely rare and exceptional, particularly where there are no children of the former marriage. Good public policy would not compel a divorced husband to support his former wife after she has become another man's wife, except under extraordinary conditions, which she should be required to prove. Unless such conditions are shown by her to exist, the court should, on the former husband's motion, cancel all payments accruing after the remarriage, in all cases where, as here, there are no children and the allowance is based solely upon the husband's probable earning capacity, or upon his breach of the marriage vows, and not upon existing property rights."

In *Morgan vs. Lowman*, 80 Ill. App. 557, it was held that when a divorced wife remarries the husband is absolved from the burden of a decree requiring him to pay alimony; that she has a vested right only in that which has accrued up to the date of the second marriage.

In *Brandt vs. Brandt* (1902), 40 Ore. 477, 67 Pac. 508, the wife was allowed permanent alimony and subsequently remarried. It was held that an order releasing defendant from payment of alimony

which had accrued subsequent to such remarriage and from further payment of alimony, was proper.

See also:

Skidmore vs. Skidmore, 145 N. Y. S. 939;
Baker vs. Baker, 4 Ohio App. 17;
Franck vs. Franck, 107 Ky. 362, 54 S. W.
195.

We have found no case where this Court has passed upon the question. We urge that the rule in other jurisdictions, namely, that in the Western and Central States, is the better, to wit, that where a wife remarries and the husband has paid all of the alimony to the date of filing his petition, alimony should be permanently terminated because of good morals and public policy.

Where a divorced woman takes unto herself a new husband, she should be obliged to look to him for future support, in the absence of proof that there are no children of the first marriage dependent upon her for support. Even in the latter case, the children being those of the divorced husband, he is in law responsible for their support until they become able to support themselves. It is shocking to think that a woman might go through several divorces and be entitled to a continuance of alimony from each of her divorced husbands. That is the effect of the order under review in this case. It would seem that the same reason that leads to the granting of alimony to a woman who secures a divorce from her husband should lead to the termination of such alimony when she remarries. By this act the woman secures the support of another husband which she has lost by the divorce of the first husband through his desertion or other misconduct. Having secured by remarriage that which she lost by the Court's decree in her favor, she cannot com-

plain if the Court says that by her second marriage she has deprived herself of the right longer to compel her first husband to support her. The continuance of alimony should not be made a matter of bargain and sale. It should not be decreased if she marries a rich man nor increased or continued if she marries a poor man. In remarrying the divorcee naturally takes the same chances the second time as to her second husband's ability to maintain and support her that she took when she first married.

POINT III.

There being evidence that the petitioner intentionally concealed her remarriage from the defendant, there should at least have been a hearing to determine whether there was a fraudulent concealment of this fact, and if so, the petitioner should be decreed to return the money received after her remarriage as an unjust enrichment.

The facts as to whether she intentionally concealed her remarriage to Mr. Swanson were disputed. Dr. Cropsey alleged that he did not hear of the petitioner's remarriage until shortly before filing his petition, and in this he is corroborated by the checks which he sent the petitioner for her support, and the fact that she did not request the checks drawn to her new name, and did not communicate her remarriage directly to the defendant.

Mrs. Swanson does not allege that she communicated her remarriage to the defendant, but simply contends that he heard of that fact through friends and patients.

It would seem that if the petitioner did conceal from her first husband the fact of her remarriage, and did receive alimony from him for nearly four

years, during which time she was married to another man who was well able to support her, and if the first husband did not know of such remarriage so that he could come into Court and ask to have the alimony terminated, the petitioner has been guilty of the fraudulent concealment of a material fact which has led to her receiving approximately \$4,000. which she should not have received and that she should be decreed to pay it back. At any rate there is an issue of fact on this subject on which the Court should have taken testimony and decided according to the weight of the evidence.

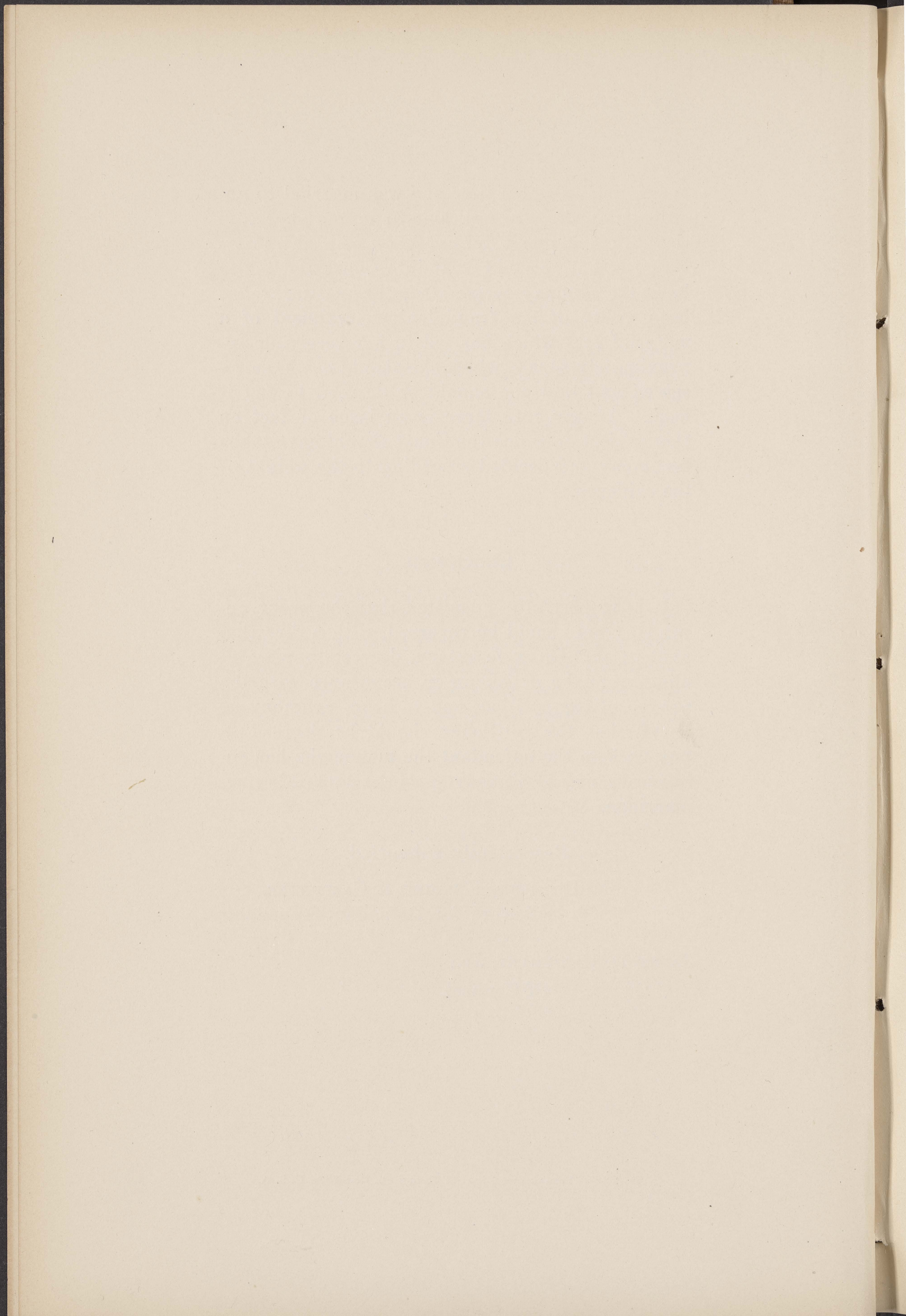
Conclusion.

It is respectfully submitted that the order appealed from should be reversed, with a direction to the Court below to enter a decree stopping all alimony to the petitioner in accordance with the prayer of the petition, and to hear testimony as to whether the petitioner should be decreed to pay back to the defendant the money she has received by way of alimony since the date of her remarriage.

Respectfully submitted,

McDERMOTT, ENRIGHT & CARPENTER,
Solicitors for Defendant-Appellant.

JAMES D. CARPENTER, JR.,
Of Counsel.



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New Jersey Court of Errors and Appeals

OCTOBER TERM, 1928.

Between

EVA P. CROPSEY,
Petitioner-Respondent,

and

CHARLES D. CROPSEY,
Defendant-Appellant.

ON APPEAL
FROM
CHANCERY.

BRIEF FOR PETITIONER-RESPONDENT.

The statement of facts in defendant's brief is misleading.

The crux of this case is the contract that defendant concluded with the petitioner on March 15th, 1924, after the final decree of divorce, including the award of alimony, had been in force two years. Concerning that contract defendant says that petitioner:

“Contends that the agreement increasing the alimony from Twenty dollars to Twenty-five dollars per week was made pursuant to a *verbal* understanding that the defendant would pay the petitioner Twenty-five dollars per week as long as she should live.”

That is not so. Petitioner makes no such weak contention. Her proofs submitted in the affidavits that were filed upon the return of the order to show cause were:

That in 1922 the Twenty dollars per week which the defendant had been paying to her

under the decree had become inadequate for her support. Circumstances explaining this were fully set forth.

In the fall of 1922—two years after the decree for alimony had become effective, and two years before the making of the contract in question—petitioner attempted through her solicitor to get the defendant to increase the payment to Twenty-five dollars per week.

The defendant did agree to the increase, *but only upon condition that alimony should cease entirely in the event of petitioner's remarriage.*

Petitioner dissented and could not be moved, and submitted to payments at the Twenty dollar rate for two years longer.

Then necessity pressed again and this time the appeal was to the defendant personally. They met to discuss the subject at the Robert Treat Hotel in Newark. At that meeting defendant had with him a draft of the agreement that he had proposed thru his solicitor two years earlier, and *containing the provision for the abatement of all alimony upon petitioner's remarriage.* Again petitioner declined *to make any such agreement.* The defendant talked of a compromise, and a compromise was reached at this meeting in Newark in the form of an undertaking on petitioner's part that she would *bind herself never thereafter to make any application to any court for further increase, notwithstanding whatever prosperity of fortune should come to the defendant.* To carry out this understanding a contract was signed. It is the contract in issue in this case.

Petitioner's version of the facts as thus stated was amply corroborated by documentary evidence and other proof, submitted not only by herself, but by other disinterested persons as well (Petitioner's affidavits, Case, pp. 26-48; p. 64).

Now, what does defendant offer in contradiction? His own reply affidavit denies the petition-

er's statement of the facts in certain details. But, in place of these contradicted details, he gives us others that put the truth more convincingly on her side than anything she presents herself. Defendant's reply affidavit makes petitioner's story in its essence just about conclusive.

What does he say?

He admits that he had with him at the Robert Treat Hotel meeting a draft of the contract drawn by his solicitor in 1922. And he admits that this draft contained the provision that Twenty-five dollars per week should be paid to petitioner "so long as she remains unmarried." He admits that the first thing that he did at this meeting in Newark was to offer this contract for petitioner's acceptance. He says that upon reading it she declined, with the statement, "I will not sign it." (Case, p. 50, line 32, *et seq.*)

But this draft is not the only one that he had with him. He evidently went prepared for bargaining. When petitioner refused to sign the draft containing the objectionable provision relating to her remarriage, the defendant drew from his pocket a draft of a different agreement, which he then proposed that she accept. *This second draft does not contain the condition that she had already rejected.* But it does contain *an alternative proposition also of advantage to the defendant.* It is the proposition by which the petitioner renounced her right to apply for any further increase under any circumstances whatever. This agreement the petitioner accepted and the parties signed it (Case, p. 19, line 35).

It needs no argument upon the law of contracts to show with these averments and admissions by the contracting parties, that what their minds met on was the proposition that the petitioner should have Twenty-five dollars per week *regardless of the event of remarriage*, and that under no cir-

cumstances whatever was she at any time to make any application for more. A plain *quid pro quo*.

So far as we can learn this is a case of novel impression. The precedents cited in defendant's brief are of no help here. They deal with the ordinary situation of remarriage of the divorced wife as related to the question of the divorced husband's record of obedience to the decree as entitling him to a standing in Court on an application for abatement; or as related to the question of the wife's continued need for alimony regardless of her remarriage. This is far other than such a case.

Defendant's brief quotes the California case of *Cohen vs. Cohen* as saying:

“Good public policy would not compel a divorced husband to support his former wife after she has become another man's wife, except under extraordinary conditions, which she should be required to prove.”

There are extraordinary conditions in this case and the wife has proved them. So has the husband.

Let us consider what this defendant is asking the Court to do. In a summary proceeding under an order to show cause he asks that petitioner's property in a valid contract be destroyed. He asks the same thing as to the decree. The order is that the defendant show cause—

“why the provision for the payment of alimony in the decree *nisi* made in the above entitled cause on June 29, 1920, and why the agreement for the increase of alimony made between the parties and dated March 15, 1924, should not be cancelled and declared to be null and void.” (Case, p. 24, line 30.)

And the prayer in the petition for the order to show cause is to the like effect. (Case, p. 10, line 32.)

The decree *nisi* is recited in the contract itself. (Case, p. 20, lines 10-30.)

There is another thing that strengthens the validity of this contract to which we have not yet referred. Some time prior to the first negotiations for an increase in 1922, a petition in this cause had been made to the Court of Chancery for an order increasing the alimony. That petition was still pending and undetermined at the time of the making of the contract in question. Its pendency is recited in the contract. (Case, p. 20, line 21.) As consideration for defendant's agreement to continue payments of alimony free from any limitation contingent upon the event of petitioner's remarriage, she surrendered her right not only to apply for any increase in the future regardless of defendant's wealth, but she abandoned also her petition for increase pending at the time.

Both parties were dealing with the future. The one no less than the other.

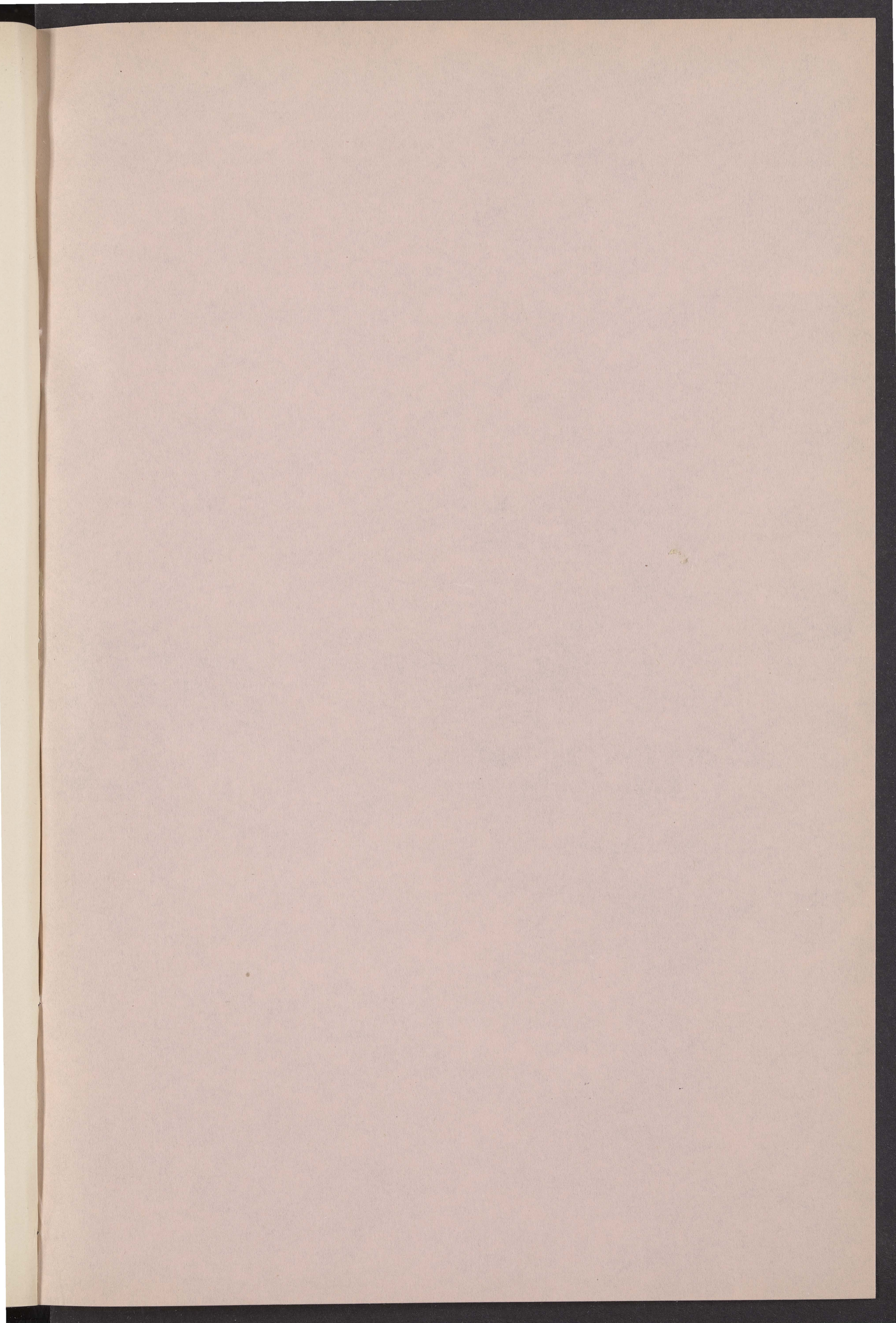
Defendant's order to show cause has elicited clear and convincing legal proof from *both sides* that establishes the contract as an understanding that contemplated the wife's remarriage and one that it was intended should not be terminated by such an event. A PROVISION FOR SUCH TERMINATION HAD BEEN REJECTED. THEY BOTH SAY SO. The result is that a situation confronts this Court that is made up not simply of a decree for alimony and the remarriage of the wife, but of *independent* contractual rights as well.

Certainly the defendant will not be permitted to destroy these rights in a summary proceeding.

The proofs concerning the real nature of this contract make the essence of this case. But as to the other incidental matters in controversy, such as the petitioner's concealment of her remarriage and her engagement at the time of the contract, etc., the evidence submitted by petitioner—most of it from disinterested sources—more than overcomes the total effect, including the "charges" and the hearsay, of the affidavits of the defense. (Case, pp. 26-48; p. 64.)

The order of the Court of Chancery advised by Vice-Chancellor Fielder should be affirmed.

PERKINS & DREWEN,
Counsel for Eva P. Cropsey,
Petitioner-Respondent.



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Parkes & Dawson,
Counsel for Eva P. Crosey,
Petitioner-Respondent.