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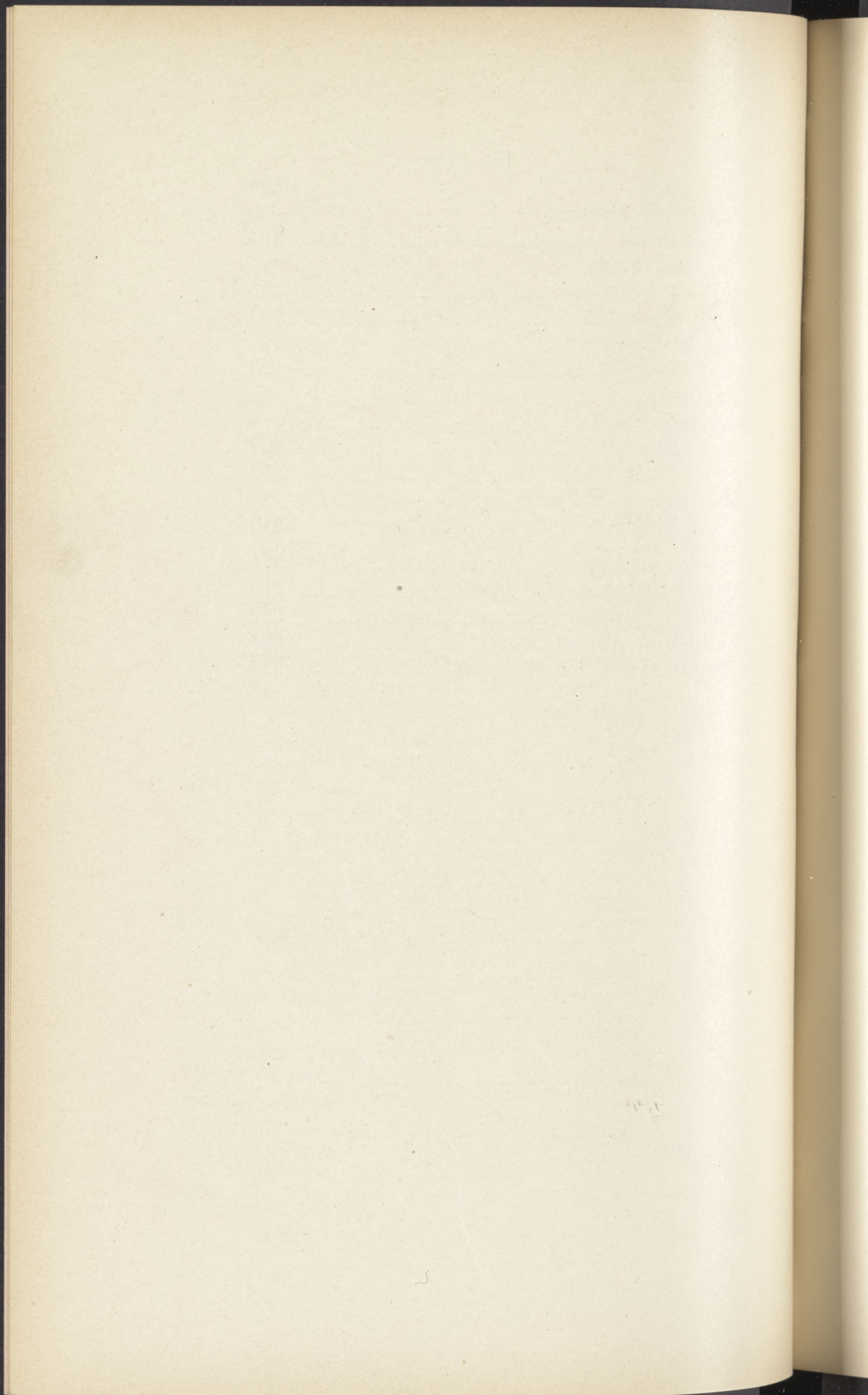
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Petition, Filed January 10, 1929.

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW JERSEY:

The petition of Giuseppe Pica of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows: 10

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Francesca Pica the defendant in this suit, on the 16th day of December, 1899, by Reverend Pasquale Manzelli, a Minister of the Gospel of St. Anthony's Roman Catholic Church in the City of New York and State of New York. 20

2. The defendant deserted petitioner on the 28th day of September, 1926, ever since which time and for more than two years last passed, said defendant has wilfully continually and obstinately deserted your petitioner.

3. Petitioner and defendant are bona fide residents of the said State of New Jersey, and have been bona fide residents of the said State of New Jersey, continuously since their said marriage, the petitioner residing at #585 Central Avenue, Jersey City, New Jersey, and the defendant residing at #75 Charles Street, Jersey City, New Jersey. 30

4. No children were born of the marriage.

5. Your petitioner therefore prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided and that he may have such further relief as may be just. 40

And your petitioner will ever pray, &c.

GIUSEPPE PICA,
Petitioner.

Anthony V. R. Avallone,
Solicitor of Petitioner.

Answer, Filed January 24, 1929.

IN CHANCERY OF NEW JERSEY.

Between

GIUSEPPE PICA,	}	72/21 On Petition, &c. Answer.	10
Petitioner,			
and			
FRANCESCA PICA,			
Defendant.			

The Answer of Francesca Pica, the defendant to the Petition of Giuseppe Pica, petitioner:

1. This defendant denies that she was lawfully joined in the bonds of matrimony to the petitioner as in Paragraph 1 is alleged, but admits she was lawfully married to the petitioner by an alderman in the City, County and State of New York, in the month of December, 1898, and thereafter and on or about the 16th day of December, 1899, a religious ceremony of marriage was performed by the Reverend Pasquale Manzelli, a Minister of the Gospel of St. Anthony's Roman Catholic Church of the City of New York as is alleged in Paragraph 1 of said Petition. 20 30

2. This defendant denies that she deserted the petitioner on the 28th day of September, 1926, and she denies that ever since that date and for more than two years last past has willfully, continued and obstinately deserted the petitioner, but on the contrary she says that the petitioner and defendant after their marriage lived together but a very short time, 40

Answer, Filed January 24, 1929

and petitioner absented himself from defendant for a period of eight months until the time of the religious marriage, to wit, December 16th, 1899, at which time they again
10 cohabited as man and wife.

3. That the petitioner and defendant lived together as man and wife up to and until the 28th day of September, 1926, at which time the petitioner without just cause or provocation left defendant, and has ever since lived separate and apart from defendant.

4. That by reason of the petitioner's neglect to provide and maintain the defendant and his persistency in wilfully deserting the defendant, she was obliged to cause a complaint to be filed in the Domestic Relations Court in the City of Jersey City, Hudson County, New Jersey, on June 1st, 1927, and as a result thereof, the petitioner was compelled by an order of the Honorable Thomas F. Meany, Judge of said Domestic Relations Court dated on or
20 about the 29th day of June, 1927, to pay the defendant Fifty Dollars per month for her
30 maintenance.

5. Defendant admits it to be true that she has been a bona fide resident of the State of New Jersey ever since July, 1900.

6. Defendant admits it to be true that there
40 were no children born of the marriage.

This defendant prays to be hence dismissed with her reasonable costs and charges in that behalf most wrongfully sustained.

FRANCESCA PICA,
Defendant.

I. ROSS McCOMBE,
Solicitor for Defendant.

Order of Reference, Filed February 20, 1929.

IN CHANCERY OF NEW JERSEY.

Between

GIUSEPPE PICA,
 Petitioner,
 and
 FRANCESCA PICA,
 Defendant.

On Petition 10
 for Divorce.
 Order of
 Reference.

This matter being opened to the Court by Anthony V. R. Avallone, solicitor for the petitioner and I. Ross McCombe, Solicitor for the defendant, upon reading the consent hereunder written, it is thereupon on this 20th day of Feb., 1929 20

Ordered that the above stated cause be referred to Hon. Marshall Van Winkle, one of the advisory masters of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made. 30

E. R. WALKER,
 Chancellor.

We consent to the making of the above order.
 ANTHONY V. R. AVALLONE,
 I. ROSS McCOMBE.

Testimony.

IN CHANCERY OF NEW JERSEY.

10

GIUSEPPE PICA,
Complainant,

vs.

FRANCESCA PICA,
Defendant.

Before Marshall Van Winkle, Esq., Advisory
Master.

20

1 Exchange Place, Jersey City, N. J.,
April 4th, 1929, at 10 A. M.

Appearances:

Anthony V. R. Avallone, Esq., solicitor for
the complainant; Thomas R. Armstrong, Esq.,
of counsel.

I. Ross McCombe, Esq., solicitor for the de-
fendant.

30

GIUSEPPE PICA, the petitioner, having
been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

Q. Mr. Pica, you are the petitioner in this
case? A. Yes.

Q. Where do you live? A. No. 10 Irving
Street.

Q. Jersey City? A. Jersey City.

40

Q. How long have you lived there? A. Well,
it is about five weeks.

Q. Where did you live before that time? A.
I have a store at 585 Central Avenue.

Petitioner's Witness, Giuseppe Pica, Direct

Q. Do you live there over the store? A. I live over the store, in the back of the store, for probably two months.

Q. Now, the defendant in this case is your wife, isn't she? A. Yes. 10

Q. When were you married? A. December 16, 1899.

Q. Where? A. In New York.

Q. By whom were you married? A. By the Catholic Church, Saint Ignatius Church.

Q. In New York? A. In New York.

Q. Do you remember the name of the clergyman who married you? A. Yes.

Q. What is his name? A. Well, I don't remember exactly these names. It is written there. 20

Q. When you were married, did you get a marriage certificate? A. Yes; that is the certificate (indicating paper).

Q. I show you what purports to be a marriage certificate and ask you if that is the certificate that you received at the time of your marriage? A. That is the copy of the receipt. I give the original to my wife; she has got it. 30

Q. This is a certified copy, under seal from the church? A. Yes.

Mr. Armstrong: You have no objection to this certificate? You admit the marriage, of course?

Mr. McCombe: Yes. 40

Q. Before you were married in church, had you been married to the same defendant at any other place? A. Yes; at City Hall.

Petitioner's Witness, Giuseppe Pica, Direct

Q. By whom? A. By who? The Judge.

Q. By the Judge of the court there? A. The Judge of the court, yes.

10 Q. How long before the ceremonial marriage were you married at City Hall? A. About eight months afterwards.

Q. About eight months before? A. The City Hall is eight months before.

Q. When you were married in City Hall by the Judge, where did you go to live? A. I went to my own home on Bleeker Street.

Q. Where did your wife go? A. 156 Prince Street.

20 Q. You did not live together? A. No.

Q. How long did the separation continue? A. About eight months.

Q. During that eight months you did not cohabit at all? A. That is right.

Q. At the time of the ceremonial marriage in the church did you go to live together? A. After the ceremony in the church, sure.

30 Q. Where did you go to live? A. 156 Spring Street.

Q. New York City? A. New York City.

Q. How long did you live there? A. About six months.

Q. And then from there where did you go? A. I bought a little home out in North Bergen—200 Columbia Street.

Q. You did come from New York, then, over to North Bergen? A. Yes.

40 Q. While you were still living in New York City during those six months, were you and your wife living together, or was anybody else living with you? A. Her mother.

Petitioner's Witness, Giuseppe Pica, Direct

Q. Her mother? A. Her mother, her two brothers, and her niece, a little girl by the name of Frances. She was eighteen months old.

Q. So that you had her mother, her two brothers, and the little girl, Frances, living with you, who were all her relatives? A. Yes. 10

Q. Were you providing for them? A. Yes, sure.

Q. Did any of them pay any board? A. Louis Ciruzzi was paying about five or six dollars, because he was working at the ferry house.

Q. He paid about five or six dollars? A. That is all. 20

Q. What was his business? A. Well, his business—he was down at the ferry—a shoeshiner—that is all.

Q. None of the others paid anything? A. Nothing else.

Q. And when you came to North Bergen, did the same people come with you and continue to live with you in North Bergen? A. The same people continued to live with me in North Bergen. 30

Q. How long did you live there? A. I lived there about a year and a half.

Q. From there where did you go? A. 155 1/2 North Street.

Q. How long did you live there? A. About eight or nine years.

Q. Did the same people come along? A. The same people came along and in the meantime, during this time, they were down to Hoboken to live for five or six months, and then they came down back to my house because 40

Petitioner's Witness, Giuseppe Pica, Direct

they were so far away and it cost so much to live up there; they wanted to save ten cents.

Q. They remained at Hoboken? A. Six or seven months. They then came back to my house.

Q. Did you continue to support and maintain the household? A. Certainly; the mamma, child and everything.

Q. That was on North Street? A. That was on North Street.

Q. How long did you live on North Street? A. Eight or nine years.

Q. Up to this time that you were living on North Street, you were getting along happily, weren't you? A. Mother was sick for probably two months and I have done everything for her that I could do, and the boy was there, and one Sunday it happened that mother was very sick and the boy went away and I have to run around to Doctor Quinn and get medicine and everything they need and I have to put everything in the house.

Q. Now, where did you move from North Street? A. 128 Congress Street.

Q. How long did you live there? A. Oh, two years.

Q. From there where did you go? A. 156 1/2 Congress Street.

Q. How long did you remain there? A. About a couple of years.

Q. Why did you move to Congress Street? A. Why did we move to Congress Street?

Q. Yes? A. Because the expense was a little too much and I was trying to save.

Petitioner's Witness, Giuseppe Pica, Direct

Q. You wanted to save some money and you moved to a smaller house? A. They went to New York—my brother-in-law went to New York and Louis Ciruzzi—he brought his sister, Violetta, and she was ill and she came to my house, and in the same way in six months they brought the baby to my house, and Doctor Galatta—he was there in the house to take care of the baby, and after they stayed there for a while, they even separate the three of us between one door and the other—they separate the three— 10

Q. (Interrupting.) I don't care anything about that. They simply came to your house with the baby. Who paid the doctor's bills? 20

A. The man who owns the house.

Q. They were relatives of your wife, weren't they? A. Yes.

Q. How long did they remain there in the house? A. About two years.

Q. Where did they go? A. 55 Charles Street—or 54. I don't remember exactly.

Q. How long did they remain there? A. 30
About a year.

Q. Then where did they move? A. Then they move to the Boulevard—always on the second floor—155 1/2 Boulevard—I don't remember exactly; North Street and Boulevard—I don't remember exactly where it was.

Q. You moved around to various places in Jersey City and North Bergen, and you finally moved to the last place—where was it? A. 40
55 Charles Street.

Q. When did you move? A. I bought the

Petitioner's Witness, Giuseppe Pica, Direct

house—my brother-in-law, Louis Ciruzzi, and I, bought the house.

Q. You and your brother-in-law—your wife's brother—bought the house in Charles Street?

10 A. Yes.

Q. When was that? A. I think it was in 1921.

Q. You all went there to live, did you? A. Yes.

Q. The same people that were with you before? A. Except one—except Vincent; I brought him up. He was eighteen months old—I brought him up to the house, too.

20 Q. What happened to the mother? A. His mother—she lived in Brooklyn. She married and could not get along with her husband in Brooklyn.

Q. How many were in the household in Brooklyn then that moved to Charles Street? A. Two nephews, a niece, my wife, my brother-in-law, and myself.

30 Q. All your wife's relatives? A. All my wife's relatives.

Q. Now, up to 1921, when you moved to Charles Street, you were getting along happily with your wife, were you not? A. For a couple of years, yes; and then began the arguments.

40 Q. What started the argument? A. The argument was always when I come into the house; they always started right off on me, telling me a lot of things about their doings and there they were, living in my house, and I told them that I was not interested in that and they said, "You are not good enough to

Petitioner's Witness, Giuseppe Pica, Direct

do with these people"—and I let them be quiet. One night when we were having the argument I told them that I did not want to hear it, and they said, "If you don't like it you can get out of here"—that I could go away. 10

Q. That was the beginning of the quarrel in 1921? A. 1921 or 1922.

Q. Did anything else happen between you? A. Well, in 1924, it did.

Q. In 1924? I mean around 1921, when this argument started? A. Always the same argument—the same argument every time; the same story. I could not go home; and one night after I worked all day hard and I went home and the argument started, I told my wife I did not want it, and she said, "I go out of here; I go into service before I will live with you." 20

Q. Did you and your wife occupy the same room? A. No.

Q. Why didn't you? A. Well, she said we give a scandal to the rest of them and I did not feel so good and I went to work and lived with the boy. 30

Q. Did you ever attempt to sleep in her room with her? A. Yes.

Q. What did she say? A. She said, "Get out of here. I haven't got no use for you."

Q. How long did that continue? A. Oh, that continued for seven or eight years.

Q. When was this next occurrence that you had any trouble about 1921? A. The next trouble was on the 25th or 26th of August, when I was in the house. 40

Petitioner's Witness, Giuseppe Pica, Direct

Q. How were you getting along with her in 1922? A. I didn't have nothing to do with her.

Q. What happened? A. The same thing.

10 Q. She annoyed you? A. She annoyed me all the time coming from work.

Q. At meals? A. At meals; and when I come at night she put my dinner on the table and walked out of the dining room and she said, "I will have nothing to do with you." She never talked to me. She would say, "I have got no use for you."

Q. She would say I have no use for you? A. 20 She would say, "Get out of here. I would rather be a servant than live with you."

Q. So that she was constantly asking you to get out, and you did not go? A. I did get out by force.

Q. You remained there from 1921 to 1926? A. I lived with her for twenty-six years.

Q. Now, what led up to the final break? How long did you stay in the house with her?

30 Q. How long did you live with her? A. With my wife in Charles Street?

Q. Yes? A. About four years.

Q. When did you leave? A. 1926.

Q. Now, from 1921 to 1926, how were you getting along with her? A. Always scrapping—always fighting.

Q. Would you have any words with the other 40 parties in the house? A. Yes, I have words with my brother-in-law, Mr. Ciruzzi. One night I sat on the stoop and I told him, "I know well enough that you are a good man—but the people around here—they make all the

Petitioner's Witness, Giuseppe Pica, Direct

trouble," and I say, "I want to go along once in a while without all this fighting and scrapping," and my brother-in-law, he say, "You deserve this," and I went to work and asked him what was the reason that I deserved it and I got a little excited, and he said, "I tell you some other time. I will tell you some other time about it," and I never got any answer. 10

Q. Did you go to your wife and complain to her about the way they were treating you?

A. Certainly.

Q. What did she say? A. "Get out of here."

Q. She would always say, "Get out of here"? 20

A. Always say, "Get out of here."

Q. Now, do you recall in 1925 having any trouble with your wife over the house on the opposite side of the street? A. Yes.

Q. Now, will you tell us about that? A. It happened that the first stoop on the house got spoiled, and so my brother-in-law—he wanted me to go to work and fix it or have somebody fix it and I didn't want to do it because of many things, and I never was consulted—what this man say and what that man say—and I never said that I would fix it, and I didn't have anything to do with it, and all at once I change my mind and I fix across the street, and I went there in the morning and asked the people to do this for me, and so they went to work and they tried to do it and they would not do it at all, and I went there, and I said, "This is not right. You were going to fix this." And I went to work and got brick downstairs and tried to straighten up as much as 30 40

Petitioner's Witness, Giuseppe Pica, Direct

I could and I went and got fixed and told Vincent, who is present here, to stay on the stoop and watch, and I went downstairs and when I got back he was not there, and I
 10 scolded him, and my wife—she was at the window and she saw everything, and my brother-in-law, Ciruzzi, and he said, “If you want a strong man, I will help you.”

Q. Was that in the presence of your wife?

A. In the presence of my wife, yes. And my wife's nephew; and so she said, “I will meet you in New York,” and I did not want to, so I put my hat and coat on to get out, and
 20 my wife's nephew said, “What are you going to do? Make scandal?”

Q. Did you speak to your wife then about this? A. She was present, certainly.

Q. Did she say anything further about it? A. Certainly.

Q. What did she say to you? A. She tried to make a fight. That is all she said.

Q. When was that? A. In 1925.

30 Q. Did you have any conversation with your wife respecting your brother-in-law getting out? A. Oh, yes—many times.

Q. What was that conversation? A. Well, I was telling him he better get out, because we get along much better with nobody.

Q. What did your wife say? A. “I rather see you get out, and not them get out,” and absolutely she put me out many times.

40 Q. That was in 1925? A. 1925 or 1926.

Q. When did you leave? A. I left in 1926.

Petitioner's Witness, Giuseppe Pica, Direct

Q. Why did you leave then? A. I built up a store in Grantwood, and I went to her and I told her that I wanted her to come and go out to this store with me; that I was getting old, and she said that she had two children and one got married and if she left, she wouldn't have anything left, and I built up a little business and I go to work in the meantime, and I tell her that, "Everything will be all right—you come up there and attend to the store for me," and she said she didn't have to have nothing to do with me so she quit, and I got robbed in 1927, in September, and the result was that I went home and they wanted to kill me altogether. 10 20

Q. Who wanted to kill you? A. The whole family.

Q. Why did they want to kill you? A. They didn't want to see me at all.

Q. Did they let you in the house? A. They let me in the house, yes.

Q. What happened? You say they wanted to kill you? A. Every time I opened my mouth, they say, "You better get out of here. Otherwise we will kill you." 30

Q. Just explain that? A. Pardon me—in 1925—the 4th of July, I told my wife not to go to Columbia Park with the children—that my condition was pretty bad, and she said, "You try to save all the money. That is much better for you—I can't afford to go—that is much better for you"—and she said, "No," and so I went out and naturally when I went out she went to Columbia Park with the two children, so when she came home about twelve 40

Petitioner's Witness, Giuseppe Pica, Direct

o'clock I waited for them and I said, "Didn't I tell you not to go? Can't I be obeyed once? Do you have to do everything that they tell you to do?" And all the time she went to
 10 work and took off her shoes and she wanted to hit me and I hit her nephew and niece and I hit her, too—I give them one slap—that is all—nothing else; and she said, "You better get out. I would rather be a servant and not have anything to do with you."

Q. Now, in 1926 when you did leave, what was the cause of your leaving then? A. Because they rob my store, and she did not
 20 come into the store to take care of it. She was not present at the store, and this thing would not have happened, because I had an intention of moving up there.

Q. Then you went home and told her about it? A. Yes.

Q. What did she say to you? A. She said I better get out altogether.

Q. Now, when you left there, where did you
 30 go? A. I went to my brother's, 600 North Sixth Street, Newark.

Q. You had no other home to go to? A. No; that is my relative—the only one I have got.

Q. How long did you stay there? A. I stayed there about two years.

Q. Now, during the two years that you were there, had you seen your wife? A. Yes.

40 Q. How many times? A. Twice.

Q. The first time, where did you see her? A. I went home and rang the bell and tried to

Petitioner's Witness, Giuseppe Pica, Direct

see her. I went upstairs and tried to talk to her, but she refused to open the door.

Q. She was in? A. Yes, she was.

Q. How do you know she was? A. She was peeking by the step and saw me.

10

Q. Did you have any talk with her? A. Nothing at all.

Q. How long did you stay there trying to get in? A. Oh, about five minutes; that is all.

Q. Did you go away then without seeing her? A. Go to work in New York—that is all.

Q. When did you go again? A. I went again in a short time—in about six months later, and I can't get in again.

20

Q. Where did you go? A. Charles Street.

Q. You tried to get in? A. I did; and she refused to see me.

Q. You saw her? A. Certainly. She peeked enough—the same thing.

Q. You never had any talk or conversation with her? A. No.

Q. Did you ever see her again after that? A. Never saw her again.

30

Q. Did you ever write to her? A. I wrote her three letters and about a half dozen other letters, and I have several copies of them, which counsel has got.

Mr. McCombe: I object to the admission of these letters on the ground that there is no notice served on me of the reception of the same and they are not competent evidence.

40

The Master: They have not been offered yet.

Petitioner's Witness, Giuseppe Pica, Direct

Mr. Armstrong: I realize—Mr. Avalone has told me that he served no notice to produce and I suppose they are not legal evidence.

10 Q. You sent two or three letters to her? When were those letters sent? After you were unsuccessful in getting in the house? A. I wanted to get in the house.

Q. How long after you went to see her twice? A. A week after.

Q. You addressed that letter to the Charles Street house? A. That is all.

20 Q. In that letter, what did you say? A. I say to come to a conclusion—what is the use of fighting all the time. It is a shame for us. We are old people—your family is a well family—it is not right to go further, and I tried always to go to the conclusion and she always refused.

Q. Did you send her any money? A. I sent her fifty dollars a month.

30 Q. Did you receive any word from her at all after you sent the first letter? A. No—nothing at all.

Q. When did you send the second letter? A. A month later, when I sent the next letter—pretty near every month I give her something.

Q. And you received no replies? A. No replies at all.

40 Q. Your address—did she know where you lived? A. She know where I worked—she know everything about it.

Q. Did you ever send anybody to see her? A. First I sent my brother. I told my brother to

Petitioner's Witness, Giuseppe Pica, Direct

go and see her to see if he could fix it up and my brother said that he went there and—

Q. (Interrupting.) No—I don't want you to tell what your brother said. Did you send your brother? A. Yes. 10

Q. When was that? A. In December.

Q. When? A. 1926.

Q. Did you send anybody else? A. My sister-in-law, Lina Pica, and her sister.

Mr. McCombe: Your wife's sister?

The Witness: Mrs. Pica's sister. I don't know what is her name.

Q. Did you send anybody else to see her besides this one? A. I sent Mr. Russo and Amoroso. 20

Q. You sent all those people to her for that purpose? A. Purpose? To settle—to get down to business—to have no argument.

Q. When was that? A. Mr. Rossi—they went 9th of December, 1928—last year.

Q. 1928? A. Yes; two went that day.

Q. Did you ever see your wife again after that? A. No. 30

Q. That was in the hospital? A. In the hospital, yes.

Q. I am asking you if you ever saw her again? A. I saw her in the hospital. Her nephew was sick, and I took him down to the hospital and I paid the expenses and I saw her with her sister-in-law, Mrs. Ciruzzi, the wife of Louis Ciruzzi, and I come in the room and I said, "How do you do," and she turned her back and she would not speak to me. 40

Petitioner's Witness, Giuseppe Pica, Cross

Q. She would not talk to you? Did you attempt to speak to her? A. When I say, "How do you do"—that was the time for her to say something.

10 Q. After you sent these people to her, did you receive any visits from the Domestic Relations Court in respect to paying her any money? A. What do you mean?

Q. Did you ever receive any notice from Judge Manny's court that— A. (Interrupting.) That was before I sent these people.

Q. When was that? A. That was in 1926.

Q. After you left? A. After I left.

20 Q. What did you do then? A. I went to work and hired a lawyer in Newark and told him and I told him to fight it—and to bring her up to court—and then I finally decided that I would give them fifty dollars a month not to have it said that her brother was supporting her, or her nephew was supporting her—that I would not support her myself.

30 Q. You never went into court? A. Never went into court, no.

Q. Did your wife go to court? A. No.

Q. There was no order, so far as you know, to pay \$50 a month? You paid that voluntarily? A. Voluntarily, yes.

CROSS-EXAMINATION by Mr. McCombe:

40 Q. Now, Mr. Pica, when you were first married, on December 16th, 1899, by the Alderman in New York, you went back to where you were always living before you were married, and

Petitioner's Witness, Giuseppe Pica, Cross

she went back to her home. Is that right? A. Yes.

Q. That was because you did not have any money to continue the married relationship. Is that right? A. That was not the cause. 10

Q. You did not have any money when you married her, did you? A. No.

Q. You did not have any money after you married her, did you? A. I worked all the time.

Q. That was the reason why you separated for eight months, was it? A. No, that was not the cause. We separate for eight months because we had not been married by the church, and then we get married by the church, and that settled it. 20

Q. After you were married by the Alderman in New York, that was your agreement—that you would stay separate and apart for eight months? A. Yes.

Q. Then you were married by the church? A. Yes.

Q. December 16, 1899? Is that right? A. Yes. 30

Q. Then you took up housekeeping. Is that right? A. Yes.

Q. Now, you didn't have any money then, did you? A. If I didn't have any, I borrowed the money, and I paid it back.

Q. Answer yes or no, Mr. Pica. You didn't have any money then, did you? A. Yes.

Q. Your wife is an educated lady and she was not earning any, was she? A. No. 40

Q. You and your brother-in-law bought the

Petitioner's Witness, Giuseppe Pica, Cross

house in Charles Street, did you not? A. Yes.

Q. And you lived together there for how many years? A. Four or five years about.

10 Q. During that time everything was perfectly all right, was it? A. Yes.

Q. And you had your work in New York? A. Yes.

Q. Now, when you left in September 28th, 1926, did you say anything to your wife that morning when you left? A. No—we have an argument, and she say to me, “Get out of the house,” and that is enough.

20 Q. Isn't it a fact that you had not spoken to your wife for at least eight months before? A. I spoke every time I have to speak to her—every time I want to speak to her, and she said that she never wanted to speak to me again and that I was to get out of the house.

Q. After you left in September, 1926, where did you go? A. I went to my brother's.

30 Q. And was anybody else living at your brother's? A. My brother, his wife, my step-mother, and a nephew of the family.

The Master: Do you remember the exact date that you left in September, 1926?

The Witness: The 26th.

Q. How long did you stay there? A. I stayed there for about two years—September the first, I think it was.

40 Q. After you left in September—September 28th, 1926, you stayed in Newark for more than two years? A. Stayed in Newark for more than two years.

Petitioner's Witness, Giuseppe Pica, Cross.

Q. And during that two years, you had not contributed to your wife's support? A. Yes, sir.

Q. How long was it before you started contributing to your wife's support, after you left there in September of 1926? A. July 1st, 1927. 10

Q. So that from September, 1926, to July, 1927, you did not contribute anything to your wife's support. Is that right, Mr. Pica? A. Yes.

Q. Now, in July, 1927—that was the time you were brought to the Domestic Relations Court, was it not? A. Yes.

Q. That was the time you and your Newark lawyer and the other lawyer who represented your wife agreed to pay—to have an order entered in the Domestic Relations Court by which you were to pay fifty dollars a month. Is that right? A. Voluntarily. 20

Q. But you did not pay that regularly? A. I pay everything regular. I got a check with me. Every check is here with me—regular I got all the checks. 30

Q. Then in December you stopped paying that fifty dollars a month, didn't you? A. According to my lawyer, I stopped in January—I did not pay.

Q. That is when you started divorce proceedings? A. That is it.

Q. Now, you remember taking your wife's brother's wife to Newark with you? A. No.

Q. You don't remember that? A. I don't know nothing about these things. 40

Q. You know it pretty well, don't you? A. I don't know nothing at all, because I always stay

Petitioner's Witness, Giuseppe Pica, Cross

in business and naturally I don't know nothing about what went on over in Newark.

Q. Who are you living with now? A. At 10 Irving Street, in a furnished room.

10 Q. Is your wife's brother's widow living there, too? A. No; nothing at all.

Q. Where is she living? A. She lives at Number 66 Plank Road.

Q. How long has she been living there? A. About ten years.

Q. Isn't it a fact that you were living with her in Palisades Avenue? A. Nothing doing; never such a thing.

20 Q. This is your card, isn't it? A. Where is Palisades Avenue on here?

Q. That is your card? A. 585 Central Avenue.

Q. That is where you had a store? A. That is where I had a store.

30 Q. That woman kept the store for you? A. No, not that woman; her daughter. Her crippled daughter—she can't find no work—she is crippled—she can't work no otherwise, and I put her in the store, and I think I done very good to help her own relatives.

Q. You did not help your wife, though? A. No.

Q. You did not care how your wife was living? A. I gave her \$50.

Q. You never went down to see your wife after that? A. She refused to let me in.

40 Q. Do you know whether or not she was in? A. She was in—and she would not see me.

Q. Did you see her? A. Certainly, I did.

Petitioner's Witness, Giuseppe Pica, Cross

Q. Why didn't you go in? A. I can't go in—she would lock me up—she would put me in jail. The conditions there were such that she would make trouble for me.

Q. Now, you say you sent two men to see your wife? A. Yes. 10

Q. That was just before you started a divorce action? A. That was just before, yes, sir.

Q. Those men were sent so as to get evidence or witnesses for your divorce action. That is right, isn't it? A. Yes.

Mr. Armstrong: Those two last witnesses?

The Witness: Amorosso, yes. 20

Q. And the same reason was when you sent this sister-in-law, wasn't it, and the other party—that was for the purpose of getting evidence for your divorce suit? A. No evidence for divorce. I sent them twice.

Q. You sent them to her and your wife told them that she did not want to see them? A. That she did not want to see them. 30

Q. You told them to go there to see your wife and your wife told them that she didn't want you any more? A. They went there two days, and she said, I don't want him.

Q. You didn't go with them? A. No, sir; I did not go with them.

Q. So that only once you went around to the house and that time you found the door locked. Is that right? A. Twice. 40

Q. The second time you did not see her? A. She did the same thing—she peeked out of the window and would not open the door.

Petitioner's Witness, Giuseppe Pica, Cross

Q. You did not see her to speak to her? A. Didn't see her to speak to her, no.

10 Q. Well, now, from the time you left in September, 1926, when was the first time you did see her after that? A. That was the time I saw her in the hospital.

Q. Now, will you tell us how you happened to go to the hospital? A. I happened to go to the hospital when my nephew got sick when her brother did—Vincent Ciruzzi—the 16th of September, 1927, and when it happened that boy got sick for appendicitis and so I happened to go there, and I see that he was sick and I told
20 her why didn't you call me—Doctor Quinn called me—

Q. (Interrupting.) Just a moment. I asked you how did you happen to go there? A. Told me to go myself, and I went to see the boy who was sick.

Q. How did you know the boy was sick in the hospital? A. Because I brought him in that hospital.

30 Q. You were very much interested in the family at that time? A. I was always interested in the family—even today.

Q. Very much interested in your wife's brother's widow, were you not? A. I was interested in the children.

Q. That is how you knew that the brother's wife's son was in the hospital sick? A. Yes.

40 Q. Do you know Pastele Pica? A. I don't know.

Q. I may have it wrong. Pasquarelle Pica? A. She is my sister-in-law.

Q. She is the one, is she, in court now?

Petitioner's Witness, Giuseppe Pica, Cross

Mr. McCombe (referring to a woman in court). Will you stand up?

Q. Is this the one now? A. Yes.

Q. Isn't it true, as a matter of fact, that she sent you a telegram and told you that the boy was sick in the hospital? A. No, she did not. She can't even write her own name—nothing at all—no telegram or nothing—know nothing about it. 10

Mr. McCombe: That is right; I take that back. I am mistaken. I got that wrong. That will come in later.

Q. Now, Mr. Pica, when you saw your wife in the hospital, isn't it a matter of fact that you went and spoke to her? A. I stepped up to her, and she would not speak to me. 20

Q. What did she say? A. She did not say; I said, "How do you do"—that is all.

Q. Didn't she ask you how long you were going to stay away? Did she ask you whether or not you were tired of the way you were living? A. She never said anything. She didn't even speak to me. She turned her back. She didn't say, "Will you come to see me?" 30

Q. You didn't have very much interest in the home, did you, when you were living with your wife in Charles Street? A. I have a whole lot of interest.

Q. When your wife wanted money? A. I always bring the envelope—whatever I make—I only take five dollars. 40

Q. Did you ever at any time during the time you lived at Charles Street actually hand your

Petitioner's Witness, Giuseppe Pica, Cross

wife all of the money you made? A. I hand her the envelope—whatever I make.

Q. All your pay? A. I only take five dollars out of it.

10 Q. When did you start your business in Newark? A. That is my brother's money.

Q. Whose money was it that you started business with in Palisade Avenue? A. I borrowed the money.

Q. From whom? A. From a man in New York.

Q. Who was the man? A. A man by the name of Da Costa.

20 Q. Now, this sister-in-law never stayed in the store? A. Never did.

Q. Never kept store at all for you? A. Never kept store, nor anybody else.

Q. Is she now in the court? A. She is not here; she would not come to be a witness against me or against my wife.

Q. Did you ever tell your wife on more than one occasion that you intended to leave her?

30 A. No, I never told her that.

Q. Did you ever tell her anything about leaving her to starve? A. Never told her anything of the kind, she being to blame all the time for the trouble we had.

Q. Did you ever tell her that the minister married her for five dollars and that she could get a divorce for five dollars? A. Nothing of the kind.

40 Q. Did you ever say anything to her about what the judge could do to you if you did not pay? A. Nothing at all. It is a shame to act such a thing.

Petitioner's Witness, Giuseppe Pica, Cross

Q. Do you remember when you sold the house—don't you—at 55 Charles Street? A. Yes.

Q. Did you tell the lawyer at that time that you did not want your wife to be present when you signed the deed? A. Yes.

10

Q. Why didn't you want your wife to be present? A. Because I would not like to feel my brother-in-law—that is the fellow who is behind all my troubles.

Q. How did you come to sell the house? A. Because I didn't want to have anything to do with him.

Q. As a matter of fact, you fell down on your payments, didn't you? A. He fell down on the payments for 1925 during the whole year. He didn't pay anything; and I fell down for six months.

20

Q. Do you remember sending a check for \$30 to the real estate man? A. Never sent a check for \$30 to the real estate man.

Q. Did you make any payment for the check of \$30? A. Never made any payment for a check of \$30.

30

Q. Whom did you pay the check to? A. No, one.

Q. Did you ever pay a check for any amount? A. Fifty dollars; I only give it to my wife.

Q. Is that the check that came back? A. Oh, now, you mean—that was a check of a laboring man. I didn't make no check; I received from one man working extra—a man who didn't have the money, and he gave me a check.

40

Q. Didn't that pay one of the instalments on the building? A. I don't know anything about the man making the check—not me.

Petitioner's Witness, Giuseppe Pica, Cross

Q. You didn't care? A. I did care; but I didn't have anything to do with it.

Q. Didn't you pay the installments? A. My wife—she got the money on that.

10 Q. Didn't they threaten foreclosure on you?
A. No foreclosure we had.

Q. How did you come to sell the house? A. Because I didn't want to have anything to do with my brother-in-law.

Q. You were in arrears, weren't you—back in payments? A. Back in pay—I can pay that money, too, if I wanted to.

20 Q. How long was it before they sold the house? A. I did not pay for six months.

Q. You were told about that, weren't you? A. Yes.

Q. You were told that your wife would be dispossessed—the house would be sold under her if she did not pay? A. Nothing at all.

30 Q. You knew that she would be, didn't you? A. Oh, no, nothing—she would not be dispossessed, because if anything happened, I know how to take the care of her.

Q. You did not pay? A. They never know how to find me—anything of the kind—they wanted it, everything—they never notified me—not even a button.

Q. You never paid? A. That has got nothing to do with it here—don't you think—ask her.

40 Q. You knew you had to pay these installments? A. Because I had advanced only then to my brother-in-law—he can advance it on the payment.

Q. To whom had you been paying before you stopped paying them?

Petitioner's Witness, Giuseppe Pica, Cross

The Master: To whom had you paid them before you stopped?

The Witness: The building and loan company.

Q. And as a business man you knew that if you did not continue to pay the building loan, it would be foreclosed, didn't you? A. You try to get me something that I told him when he was out of work I paid for him something and he paid for me—one brother-in-law help the other when they buy the house. 10

Q. You knew that if you did not pay the building loan it would be foreclosed, didn't you?

A. Yes.

Q. That wasn't any concern of yours, was it? 20

A. No.

Q. You did not care? A. Not because I did not care. They didn't write to me. If I did not know, they did not send me a little note that I should know about it.

Q. You always fight with your wife every time she asks you to give her money? A. I never fight with her when I give her money. I say, "Try to save as much as you can, because we are getting old"— 30

The Master (interrupting): Did you ever have any children?

Mr. McCombe: No children.

Q. Now, it was at your suggestion that those two children were brought to the house so as to keep your wife company when you were out? A. She brought them in. 40

Q. You brought them in? A. Only once; as I say, when they were there, all right, we keep them.

Petitioner's Witness, Giuseppe Pica, Cross

Q. Did you ever tell the girl working around the house that she should not do it? A. What is that?

10 Q. Did you ever tell the girl working around the house to make your wife do it? A. Nothing of the kind.

Q. Did you ever tell her that she was supporting your wife by doing so much work and making a slave of herself? A. Nothing at all.

Q. Did you ever try to poison her mind against your wife? A. No.

Q. You never said anything like that? A. Nothing of the kind.

20 Q. Did you ever swear at your wife? A. No.

Q. Did you ever use profane language? A. A. She used it. I did not.

Q. Did you ever call her a son-of-a-bitch? A. Never; she didn't deserve such a name.

Q. You say she was a good woman? A. Yes.

Q. As a matter of fact, you didn't find any fault with your wife at all? A. The fault is with the brother-in-law and the two nieces.

30 Q. Not your wife? That is why you left—your brother-in-law? A. He is the one that spoiled my family.

Q. It was always the same—you left that morning and you did not say anything to your wife going out? A. She put me out, and I say, all right.

40 Q. That particular morning—the morning of September 28th, 1926, you ate your breakfast, didn't you, and left the house without saying anything. Isn't that right? A. I don't believe I had breakfast. Every morning I fix my own breakfast and I left without saying anything

Petitioner's Witness, Giuseppe Pica, Cross

because she was lying in bed and I fixed my own coffee.

Q. Mr. Pica, that morning when you left, you ate your breakfast and went out without saying a word, didn't you? Is that right? A. Yes.

10

Q. You did not tell your wife that you were leaving? A. No.

Q. And the next time you saw your wife was in the fall, was it? A. Yes; so I didn't say nothing. I went to business and the girl went and opened the store at nine o'clock and she found the place had been robbed, and naturally I did not know myself what to say. I did not care to go home at all. It was all there— if they didn't help me in business, I didn't care to go home—if they had helped me I would not be robbed and everything would have been O K.

20

Q. When you left your wife that morning did you tell your wife that you were leaving for good? A. No.

Q. Did you say anything to her about intending to leave that day? A. No.

30

Q. You left without speaking to her. When did you next see her? A. What?

Q. After that September morning when you left, when did you next see her? A. I saw her at the hospital.

Q. That was in July, 1927, was it? A. Yes.

Q. And all during that time you did not make any effort to see her? A. I wrote a letter—many letters; I sent also these people, trying to do anything in order to come to a settlement, and you will find that I wrote one letter trying to make an appointment to look

40

Petitioner's Witness, Giuseppe Pica, Cross

for a room—we will move and get out and I will pay the rent and everything; here is the letter, right here.

10 Q. You did not tell her that yourself? A. I did not tell her—no; when I went to the house, that—

Q. (Interrupting.) Do you remember going home one morning and finding fault with her because the screen door was in trouble and you could not open it? A. Nothing at all.

Q. Tell us about that? A. I ain't got nothing to tell about it.

20 Q. As a matter of fact, you threw dishes at your wife because the door happened to be closed? A. Nothing at all.

Q. Didn't you—didn't you call her a son-of-a-bitch? A. She not deserve such a name.

Q. Didn't you find fault with the children because the screen door was closed? A. Nothing at all.

30 Q. Did you keep regular hours while you were staying with your wife in Charles Street? A. Yes.

Q. You were home every night? A. Ten o'clock to bed and everything.

Q. When was it that you were secretary and treasurer for the Foresters? A. That was ten years ago. I was not the secretary. I was treasurer.

40 Q. You had some trouble about money there? The Master: I don't see how that is important.

Mr. McCombe: That necessitated his keeping away nights.

Petitioner's Witness, Giuseppe Pica, Cross

The Master: What difference does that make?

A. Nothing at all—not such a thing.

Q. When you were secretary and treasurer of the Foresters, you stayed away nights, didn't you? A. When I was through the meeting I came home—at ten o'clock, eleven o'clock—twelve o'clock—you go home after the meeting. Everybody does that. 10

Q. That was the first time that you go out, and you never go home to supper? A. I never came home to supper. I went out to the meeting.

Q. And you left your wife home? A. She knew all about this thing. 20

The Master: After you left, did your brother-in-law still continue to live with them?

The Witness: He is still in the house now.

Q. How many were you after you left—how many people were there?

The Master: How many were you—how many people were there? 30

A. There were three—my wife, my nephew, my niece and my brother-in-law.

The Master: All living in the same house?

The Witness: All living in the same house, yes. Pardon me—my brother-in-law got married and he lives downstairs for eleven months that he has got trouble with his wife—I don't know what it is. I don't know that his wife is not living with him, but he got through my wife and went back to my home again. 40

Petitioner's Witness, Giuseppe Pica, Cross

The Master: That was all after you left?

The Witness: All after I left, this was.

Q. You never had any trouble with Frances?
Did you like her? A. When she was young,
10 I like; then she get to be bad. I come in
and she not look at me, and when she did
not help in the house I did not like her any
more. I used to like the girl and then they
say they have got their own mother and what
do they want to trouble me for.

Q. You liked the boy pretty well, didn't you?
A. I give all the education to the boy. My
20 wife was all the time saying to me, "You get
out of here," and I said to her, "As soon as
the boy grow up, I promise you I am going
to get out," and she said, "You are going
to get out now." And I said, "No, I am not
going to get out now. I will wait until the
boy grows up." And she says all the time,
"You are going to be all the trouble."

Q. They contributed to the house after they
were old enough to, didn't they? A. The boy
30 went to high school up until the time when I
left.

Q. Do you remember taking a Liberty Bond
from Frances and cashing it? A. I did not
cash it. I put it in the Peoples Savings Bank
on condition that every year I pay the interest
and so when I could not get any answer from
my letters and when they received the state-
40 ment that they sent them they did not notify
me and they simply dropped the Liberty Bond.

Q. You took the Liberty Bond from Frances
and sold it, didn't you? A. I didn't sell it.

Petitioner's Witness, Giuseppe Pica, Cross

I put it in the bank on condition that I pay the taxes—I put her Liberty Bond in the bank.

Q. Have you still got it? A. They didn't let me see the computation I remember.

Q. Where is it? A. I don't know that. The bank has it. 10

Q. Is it in your bank? A. I can take it back any time—you put a Liberty Bond in the bank they give you a computation that you can hold for five years, or ten years—as long as you want, and then as soon as I don't pay they send the computation to my home and I have that served for another year and the next year it is the same thing and when they get the computation they did not send it to me and they did not send it to the bank and the bank did not have nothing to do with it. 20

Q. You took the Liberty Bond, didn't you, Mr. Pica? A. Didn't I say yes?

Q. You took the Liberty Bond, didn't you? A. I took it to the bank.

Q. What was done with it after that? A. The bank has it—I don't know nothing after that. 30

Q. You have control over it, haven't you? A. Not sold—I borrowed money on it that I could get.

Q. You kept the money? A. No; I paid the taxes on the house. I did not keep a cent. I paid the taxes on the house.

The Master: Have you ever made an effort, Mr. Pica, to set up a home some other place for your wife? 40

The Witness: Any time I write her letters about it.

Petitioner's Witness, Giuseppe Pica, Cross

The Master: Before you left, did you ever try to arrange or suggest any other home?

The Witness: Because I bought the house that I find my place.

10 The Master: No—in September, 1926, when you left, who owned this house?

The Witness: I owned it myself, and my brother-in-law.

The Master: Everything was paid up to that time?

The Witness: Everything was paid up.

The Master: On the house?

The Witness: On the house.

20 Q. Where are you working now? A. Solomon Statts.

Q. New York City? A. Yes.

Q. What are you earning? A. I earn \$55.

Q. What is the most that you ever made?

A. The most I made is \$65, \$66, \$70—if I work Saturdays.

30 Q. What is the highest that you have ever made there? A. \$71. That is as high as I could have.

Q. \$71 a week? A. For Saturday and night work—I only work one night.

Q. Out of that \$71 or \$55, whatever it was, you paid your wife under the court order \$15?

A. What?

40 Q. Out of that \$71 or \$55 a week—whatever it was that you got, you paid your wife under the court order \$15? A. They figured over the average—when I took \$70—when I took \$50—\$40—\$15 or \$8—you have got it all.

Petitioner's Witness, Giuseppe Pica, Re-direct

The Master: There is here, Mr. McCombe, a schedule of the wages that the plaintiff has earned in an affidavit by the employers, if you will accept that.

Mr. McCombe: Yes, I will. 10

The Master: It shows the income for 1927—all of 1928 and 1927. That is a matter of importance, and you can accept these figures as his total income.

Mr. McCombe: Yes, I will, your Honor.

Q. Mr. Pica, at the sale of the house, you obtained \$1,000, didn't you? A. Yes.

Q. That was your part? A. A thousand dollars—I give it to my wife. 20

Q. You gave it to your wife? A. Oh, certainly.

Q. When was that? A. That was in June—I don't remember exactly—June of 1927 or 1928 that I got it, and I go at once when I signed and I gave a thousand dollars to my wife. I have got a witness to that.

Q. You have got a witness to it? A. When I signed a thousand dollars I gave her and I said, "Louis, I am going to give a thousand dollars to her"—that is witnessed right in her presence. 30

Mr. McCombe: That is all.

RE-DIRECT EXAMINATION by Mr. Armstrong:

Q. Mr. Pica, just one or two more questions. At the time you had the trouble with your wife, after that, while you were living with 40

Petitioner's Witness, Giuseppe Pica, Re-direct

her, what was the cause of it? What was the cause of all your trouble? A. Why, I left her?

10 Q. What caused the trouble between you and your wife while you were living there? A. Because they were there—she never wanted to be away from them.

Q. Did Aleggjo make any trouble? A. Oh, yes, he made trouble.

20 Q. Did you say at any time while you were living with them that you wanted her, your wife, to come and live with you alone—some place else, and leave the family alone? A. Oh, sure.

Q. How many times? A. Plenty—about six, seven, or eight.

Q. What did she say? A. She said she wanted nothing to do with me.

Q. Nothing to do with you? A. Nothing to do with me, yes.

30 Q. She would rather live with her family? A. Rather live with the family and go and be a servant and own their own business and pay her own board. She didn't want to have nothing to do with me.

Q. You repeatedly asked her to come along with you? A. All the time.

Q. And she refused? A. She refused all the time, yes, sir.

40 Q. You were asked on your cross-examination here about those witnesses? A. Yes.

Q. The witnesses that you sent—your brother and the others, and the letters. How long ago were they sent to the house? A. My brother went not even two months—he went there on

Petitioner's Witness, Giuseppe Pica, Re-cross

it and you know all the witnesses tried to make peace.

Q. Did you understand Mr. McCombe's question that he asked you if you sent these witnesses there merely to get evidence for a divorce? A. Not a divorce; evidence of peace. 10

The Master: He asked it both ways.

Mr. McCombe: I asked it both ways.

The Master: He also said that prior to that he sent them there not to get evidence in a divorce case but to try and fix it up with the wife.

RE-CROSS EXAMINATION by Mr. Mc- 20
Combe:

Q. Are you willing to take your wife now and live together at your own home? A. My wife only.

Q. Right now? A. Take her right now, yes; only my wife.

Q. Have you got a home now? A. She go out and look for rooms herself—wherever she like, I go. 30

The Master: In that state of affairs, I shall have to postpone the case.

Mr. McCombe: I am willing to have this case postponed for one week to permit the plaintiff and defendant to try and get together.

The Master: Now, the petitioner on the stand definitely announces his willingness to make a home for his wife. He has that right, free of any relatives. Of 40

course, he hasn't got a home right to-day—he did not expect your question. His counsel says he is willing. Why shouldn't we adjourn the case for that purpose? I think that would be the proper thing to do.

10

Mr. McCombe: Under the circumstances your Honor, I am perfectly willing to take an adjournment for that purpose.

The Master: You asked the question yourself, and I will still abide by it.

Mr. Armstrong: I believe that this case should be postponed for the purpose of his making an overture in order to effect a reconciliation.

20

The Master: Counsel in the presence of the wife and the husband has the right to make a sincere effort to establish a home for the wife without the relatives being in it, and if she refuses that home, then that refusal will naturally react against her.

30

Mr. Armstrong: Come up here, please, Mrs. Pica (beckoning to the defendant to advance to the stand).

40

The Master: Mrs. Pica, your husband on the stand has said that you are a good woman and that he has no complaint against you personally. You and he have been married a great many years and you have no children. That is very unfortunate. If you had, I think perhaps it would be different. You have got some of your relatives living with you, and he disagrees with them. Perhaps he did not like them as much as you do.

Your counsel asked him on the stand if he was willing to take you back as his wife, and he said, yes, and then your lawyer asked him if he had any home for you, and of course he has not, because he has been separated for more than two years, but he announces his willingness to take you and he is ready to take you back without your relatives and you and he live together and he must establish a reasonable home for you in accordance with his means—the best he can. What do you say to this situation? Do you accept and consent to the case being postponed for a week so that you can see if you can accomplish it? Take your time, now, and tell us. 10

Mrs. Pica (the defendant): I hate to take a chance—I hate to take a chance with that man. He has been treating me very mean.

The Master: So you say that you will not do it?

Mrs. Pica: I do not. I am not willing to go with him. I know what I went through for twenty-six years with that. 30

The Master: What did he do—try to strike you?

Mrs. Pica: Struck me and everything—mistreated me.

The Master: Well, we cannot impose any conditions. I think she refuses the offer. That is the way I would construe it. 40

Mr. McCombe: There isn't any doubt about this case, under the case of Hollins against Hollins.

Petitioner's Witness, Henry Amoroso, Direct

The Master: What is the Hollins case?

10 Mr. McCombe: I beg your pardon; in 133 Atlantic. Here it is, right here. I have looked it up. Do I understand from the record that there is a refusal on her part?

The Master: Yes; it will have to be in the evidence. She has not been sworn. There is an attempt made—made by the Court and made by the witness, to reach a reconciliation—but the record will speak for itself.

20

HENRY AMOROSO, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

30 Q. Mr. Amoroso, where do you live? A. 111 Erie Street, Jersey City.

Q. Do you know Mr. Pica, the petitioner in this case? A. I do.

Q. How long have you know him? A. I cannot say how long it is, but he is a brother member of my lodge.

Q. For a number of years you have known him? A. He knows me much longer than I know him.

40 Q. Do you know his wife, Ida? A. I saw her only once.

Q. Where was that? A. In her own home.

Petitioner's Witness, Henry Amoroso, Direct

Q. When was that? A. I can't give you the date, but the other gentleman with me can.

Q. Who was with you when you went there?
A. Salvatore Russo.

Q. Could you say how long ago was it? A. 10
Maybe three months—maybe more.

Q. Three or four months ago, was it? A.
Yes.

Q. You went down, didn't you, to see Mr.
Pica's wife? A. Yes.

Q. Where was that that you saw her? A.
I do not remember the number; on Charles
Street.

Q. Just tell us what conversation you had— 20
what conversation you had with Mrs. Pica?

A. Well, we went there with the understand-
ing to try and bring Mr. Pica and Mrs. Pica
a reconciliation, because Mr. Pica told me
about the condition with his wife—of course
he did not give me many particulars. I didn't
care myself to know the particulars—he made
me understand that he lived separated from
his wife, and he was willing to have his wife 30
with him again and he requested me to kindly
go—and requested Mr. Russo also to go—to
see her and try to convince her that she should
go back and live with him. That is what our
mission was.

Q. What did you say to Mrs. Pica? A. Of
course Mr. Russo was acquainted with Mrs.
Pica, and so he spoke to her much more than
I did. In fact, Mrs. Pica, when I saw her, 40
could not consider at all the idea of going
back to her husband, and I told her that I did
not care to know all about her troubles—that

Petitioner's Witness, Henry Amoroso, Cross

10 was not my business—I didn't care to listen attentively to all her troubles with her husband, and I stood there as a matter of courtesy and I was willing to go and that is why I can't repeat truthfully just what she said, word for word, but the idea I outlined just here that we wanted them to reach a reconciliation.

Q. You told her, or did Mr. Russo tell her in your presence, that Mr. Pica was anxious to come back and live with her, and she refused? A. She refused, yes.

Q. That was the only time that you were there? A. That was the only time.

20 Q. You went there at the request of Mr. Pica? A. I went there at the request of Mr. Pica.

Mr. Armstrong: That is all.

CROSS-EXAMINATION by Mr. McCombe:

Q. You say that you are a member of Mr. Pica's lodge? A. Yes.

30 Q. What lodge is that? A. The Julius Caesar Lodge.

Q. What is your business? A. I am an agent with the Prudential Life Insurance Company.

Q. You are an agent for what? Sort of an investigator? A. No; selling insurance.

40 Q. Where is your agency? What is your territory? A. Journal Square—that is where the office is. My territory is 45th and Brunswick Street.

Q. Have you testified in cases like this before? A. Never.

Petitioner's Witness, Henry Amoroso, Cross

Q. Have you ever gone into anyone's home to try to reconcile them before this? A. No, sir, I never have.

Q. Have you ever gone to anyone's home to try to effect a reconciliation with them? A. No, sir.

10

Q. You never saw Mrs. Pica before? A. No.

Q. How long were you in the house, all told? A. About an hour or an hour and a half.

Q. What was said during that hour or hour and a half? A. Well, we were trying to use a good many similes—referring often to our Christian religion—that we had of course to tolerate our own troubles once in a while and so forth and so on. In other words, it was in our mind to try to convince the woman that it would have been better for her to live with her husband and not to have any trouble.

20

Q. Did you speak to her yourself? A. Oh, yes.

Q. What did you say? A. That is what I said—what I told you.

Q. You never saw her before this occasion? A. No.

30

Q. You went right in the house and did what you told us—you said to her that you wanted to patch it up between her and her husband. Is that right? A. Yes.

Q. What did she tell you? A. She said that she would not consider that.

Q. Did she say anything to you as to why her husband did not come and talk it over with her? A. Yes, she was not home, she said. She said that to both of us—when we were sitting in the same room.

40

Petitioner's Witness, Henry Amoroso, Cross

Q. Didn't she say, "Why didn't my husband talk it over with me instead of you coming here and interceding for him? A. Nothing like that.

10 Q. Tell us what was said? A. I can't go into the particulars. She didn't want it. She began to say—tell about the different troubles she might have had and I didn't take any interest in that. All my interest was in a reconciliation.

The Master: I think I would assume that she said she did not want to go back, inasmuch as she has taken this attitude that she has this morning.

20

Q. Tell us what she said with reference to whether or not her husband did not come back to ask her to come back with him? A. She didn't say—didn't ask why her husband had not come. She didn't mention that.

Q. Did she mention her husband? A. We were talking about the husband all the while.

30 Q. Did she say, "Why didn't my husband ask me to come back?" A. Say, "Why didn't my husband ask me to come back?"

Q. Yes—did she say anything like that? A. She didn't, as far as I remember.

Q. You heard everything that was said, did you not? A. Why, yes.

Q. After that conversation with her, what did you do? A. We went away. I told her it was none of my business whether she wanted to join with her husband or not.

40 Q. Did Mr. Pica tell you that he wanted you to go down there as a witness? Did he say

Petitioner's Witness, Henry Amoroso, Cross

that before that—before you went down there?

A. She told me that she did not think it right for him to continue such a life—living separate from his wife.

Q. Did he tell you that he wanted you as a witness? A. I did not know that I was a witness until last night when Mr. Avallone telephoned. I didn't remember, and I was wondering what divorce case he could be talking about. 10

Q. Didn't you know, when you went down to Mrs. Pica's house, that you were going there as a witness in a divorce case? A. No, sir.

Q. When was this that you went down there? A. When? I cannot give you just the date. Maybe that might be a personal question. 20

Q. Was that after he started the divorce case, or before? A. When did the divorce case start?

The Master: You see, he does not know that. Do you remember what month it was, Mr. Amoroso, that you went?

The Witness: Maybe the other man who was with me can remember. I never thought I had to testify. If I knew that I would be called as a witness, I never would have gone there. 30

The Master: Can you remember now what month it was?

The Witness: It was about three months ago, I think. It was cold weather.

The Master: March, February, or January?

The Witness: That would be too far away.

The Master: Was it before Christmas?

The Witness: It was before Christmas, yes. 40

The Master: When was the petition filed? In January?

Petitioner's Witness, Henry Amoroso, Cross

Mr. Armstrong: January 10th, 1929.

The Master: That was the time the suit was started—then it was before Christmas.

10 The Witness: My God, I said I think so. But I say I never would have gone down there if I thought that I had to testify.

Q. That was the only time that you were down there? A. That was the only time that I was down there.

20 Q. During that conversation did you tell Mrs. Pica that if she did not do what you told her, you would send her to jail? A. Send her to jail? No, sir.

Q. You didn't say anything about that? A. I never said one word that could be morally or technically construed that way. I might merely have said a few words—that is all.

Q. Something about having to go to jail? A. No—no jail at all.

30 Q. Didn't you threaten her with what you would do, if she did not do what you wanted her to do? A. No; if I could have, I would have left the house much sooner than I did.

Q. Why didn't you leave sooner than you did? A. Because I went with the other friend and they were acquainted, and it would not be polite for me to go out of the house, especially when I was treated so kindly by them. We were very well treated by them.

40 Q. Just what do you mean by that? A. We were treated like two gentlemen, so I didn't want to leave before Russo did. I didn't want

Petitioner's Witness, Henry Amoroso, Cross

to leave Russo at the house, and I did not leave simply because I could not.

Q. Did Mrs. Pica appear to you like she was quite a lady? A. Oh, yes.

Q. You did not threaten her in any way? A. No. We tried to convince her that she was wrong. 10

Q. That is the only time that you ever saw Mrs. Pica? A. That is the only time.

Q. When did Mr. Pica ask you to go down there to this house? A. It was one night after we had a meeting of the lodge—

Q. (Interrupting.) How long after he told you to go down there did you go? A. How long after what? It was at the meeting that he told me to go. 20

Q. What? A. It was at the meeting that he told me to go.

Q. How long after that? A. The Sunday after, I think it was. The meeting we have on Thursday, and we went there on Sunday.

Q. Did you go back and tell Mr. Avallone? A. I never spoke to Mr. Avallone until last night when he called me on the phone. 30

Q. Did you speak to Mr. Armstrong about the case? A. No, sir; I did not even know the gentleman.

Q. So that you are down here speaking on the stand without counsel's even knowing what you are to say? A. Last night I telephoned to Mr. Avallone without knowing what he wanted, and when he asked me if I would come to court I said, "For heaven's sake, you call me to get in trouble." I don't remember about Pica—I don't remember about Russo—I don't remember about 40

Petitioner's Witness, Henry Amoroso, Cross

anything—and of course he asked me to appear here and tell what I knew about the visit and I agreed to do so.

Q. Did you ever do any detective work? A. No, sir.

10 By the Master:

Q. Mr. Amoroso, you say that you spoke to this woman about going back to Mr. Pica? A. Yes.

Q. Tell us in substance—tell us what you said about going back. A. Your Honor, it would be hard for me to repeat what I said.

20 Q. Just the substance. A. Yes—oh, I know—I used the language that usually is used by a friend when trying to bring about a reconciliation between two people. Of course that it was our duty in life to tolerate one another because of our own defects and so'on and so forth and of course I told her that men are brutes sometimes and sometimes they are not brutes and that women ought to try and tolerate men in this respect—something like that.
30 Of course the lady was willing to reason but still she remembered all the troubles she had with her husband and she would not take any more chances and that was all that I wanted to know.

The Master: That is not exactly what happened between the people. What was said about coming back? What did you say about that? You used those words yourself.

40 The Witness: Well, I tell you: when we went, we had to tell her why we paid her the visit, and we said that her husband was willing to take her back again.

Petitioner's Witness, Henry Amoroso, Cross

The Master: No—the husband had been living at the place and he left that place because of her relatives.

The Witness: I didn't want to say that. I knew why it was—that there was some misunderstanding not only with his wife—maybe not with his wife at all—some relatives. I didn't know the relatives— 10

The Master: He testified he left the place himself because he would not live with the relatives. Did you ask him to go back to that place where he would not live?

The Witness: Oh, now, the man at that time said that he had a store and he had rooms. Is that what you want to know? He said that he had rooms behind the store—in the rear—but of course, we did not go very far into that. Anyhow, I understand he had rooms in the rear of the store—a place where he would have his wife. 20

The Master: Was that said to her—if she went back she might go back to the other place behind the store?

The Witness: Well, I think we did tell her that he had rooms in the rear of the store, and she said that she would not consider it at all. 30

The Master: Then the time you went must have been when he had the rooms behind the store.

The Witness: Yes.

The Master: You do not remember when that was? 40

The Witness: It all happened in one day.

Mr. McCombe: That is all.

Mr. Armstrong: That is all.

Petitioner's Witness, Salvatore Russo, Direct

SALVATORE RUSSO, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

10 Q. Mr. Russo, where do you live? A. 427-28 Woodcliffe.

Q. You know the petitioner, Mr. Pica, in this case, don't you? A. I know Guiseppe Pica when he come to me in the lodge and ask me if I want to try to make peace between him and his wife.

Q. That was in the lodge room where you met Mr. Pica? A. Yes, it was.

20 Q. You are the gentleman who went with Mr. Amoroso? A. Yes.

Q. When you went to call on the wife in Charles Street? A. Yes, sir, at 55 Charles Street.

Q. Do you remember that occasion? A. It was the first Thursday of the month—it was the first of December, 1928—no—I go on a Sunday—it is the 3rd of December.

30 Q. You called on Mrs. Pica at her house on Charles Street? A. Yes.

Q. Just tell us what you did when you got there. A. I told her that Mr. Pica wanted peace; he has a store in Central Avenue. He said to me, "Wife live back of the store. Now, I got two rooms; maybe if she not like, I rent apartment for her."

Q. You explained that to Mrs. Pica? A. Yes.

40 Q. What did she say to you? A. She says she don't want it—don't want to see any more of the man because he is a trouble maker.

Petitioner's Witness, Salvatore Russo, Cross

Q. Did you say anything else to her? A. That is all.

Q. That is the only conversation that you had with her? A. That is all.

Q. Did you say anything at all to her about trying to be reconciled with her husband? A. 10
No.

Q. Those were the only words that she used here? A. Yes.

Q. Mr. Amoroso said that you were there about an hour and a half.

The Master: The word "reconcile" is a little long. What did you talk about? What did you say, and what did she say?

The Witness: She say she don't want man— 20
he is very cranky—make too much trouble in the house. She is a sick woman—to leave her to go—don't want trouble.

Q. Then what did you say when she told you all this? A. I said maybe the man knew all about this—all she had to do was to give him a chance—try him—man is all right—and she said, "No, it is no use." 30

The Master: If they went there, they called for that purpose, apparently.

Mr. Armstrong: All right—that is all.

CROSS-EXAMINATION by Mr. McCombe:

Q. How long have you known Mr. Pica? A. About ten years.

Q. How long have you know Mrs. Pica? A. 40
Well, Mrs. Pica—about two or three. That is, I saw her when her brother died.

Petitioner's Witness, Salvatore Russo, Cross

Q. You knew Mrs. Pica before you went to her house on December 3rd? A. Yes—I saw her before—Mrs. Pica.

Q. Did you know that Mr. Pica was about to start divorce proceedings against his wife?

10 A. I didn't know nothing.

Q. Did you do the talking when you were in the house with this other man with you—were you the one who did the talking? A. Yes.

Q. The only thing you asked the wife was why she did not go back to live with her husband? A. Yes.

Q. Then what else was said after what you said? A. She said she didn't want to.

20 Q. Did she tell you why she did not want to? A. She say man is a crank and kill woman—want to leave quick.

Q. Did she tell you anything about her brother's wife who was there? A. She told me that I ought not to bother so much, because it is none of my business.

Q. You are not interested in this case at all? A. Nothing; I have no interest.

30 Q. That is the only time you saw Mrs. Pica, was it? A. Yes.

Q. Did Mr. Pica tell you that he wanted you as a witness? A. He told my lawyer, Avallone.

Q. Did he tell you why he wanted you to come and be his witness? A. You see, I know—because of Mr. Pica—Mr. Pica said you just came in the court and say what you know, and that is all.

40 Mr. McCombe: That is all.

Petitioner's Witness, Salvatore Russo, Re-direct

RE-DIRECT EXAMINATION by Mr. Armstrong:

Q. Mr. Russo, was there anyone else present there besides the wife when you were there?

A. Was anybody else there?

10

Q. Was anybody else in the room? A. The brother of Mrs. Pica, and the niece.

Q. Did the niece say anything when you were talking to the wife? A. Mr. Pica told me—he said, “You try to make peace—I don’t want anybody—just my wife”—and she wanted him to come to her, and I didn’t want to see the niece—and I say first, “Mrs. Pica, you want to make the peace and have Mr. Pica come back in the house just the same as before—and somebody come here and try to make the peace—but Mr. Pica don’t want the niece and nephew—he says the niece accuse him and the niece say she get out.”

20

Q. The niece said that if he came back she would get out? A. Yes—that is all.

Q. Did the brother say anything? A. The brother say, “Oh, no, the man is crank—he fight every day—I don’t like—sometimes he want to make up and then he want to fight and it is best that he stay out.”

30

Mr. Armstrong: That is all.

40

Petitioner's Witness, Lina Pica, Direct

LINA PICA, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

10 Q. Mrs. Pica, where do you live? A. Number 141 Thompson Street.

Q. You are related to Mr. Pica, the petitioner in this case? A. Yes, sister-in-law to him.

Q. Where do you live? A. 141 Thompson Street.

Q. Do you know Mrs. Pica, the defendant in this case? A. Know it?

20 Q. Mrs. Pica, the wife of Guiseppe Pica? A. Well, one day—

Q. (Interrupting.) No—do you know her? A. Yes.

Q. When did you last see her? A. Last year.

Q. What time last year? A. I think it was April or May—I don't remember exactly.

Q. Of last year? A. Over the house—I went to—

30 Q. (Interrupting.) Whereabouts? A. Over her house—I don't know the number—Charles Street.

Q. What did you go down there for? A. Make her to be happy with her husband.

Q. Did you have any conversation? A. There was a sister-in-law in there with her—

40 Q. (Interrupting.) Tell us what talk you had with her. A. We went over to get her to be happy with her husband, and I tell you it was a long time that I did not see her and she took me in the dining room and we had a talk, and I took my sister with me and I told her we came

Petitioner's Witness, Lina Pica, Direct

there to make her happy with her husband, so I told her first that it is a shame to make people to live that way—why don't you want to be happy with Joe, and she says, "I can't be happy with him. Don't talk about it—I don't care for him."

10

Q. Did you say anything else to her? A. So I said, "He is a nice man—he never done anything to you"—and she said, "Yes," and I said, "Well, he take you out of here—he is a nice man—he never done anything wrong," and she said, "Yes, but I cannot stand it any longer," and she shrugged her shoulders and I said, "All right, don't make people live that way," and she said, "I don't want him. I rather be a servant and not live with him," and so I said, "I come from him to make you to be happy, and if you won't take him, that is all"—and that is all I said.

20

The Master: When did you say this conversation was?

The Witness: Last year.

The Master: What time last year?

The Witness: The middle of April or May.

30

The Master: Either one of those two months?

The Witness: Either one of those two months.

Q. You have known Mrs. Pica for quite some time. You knew her when she lived in New York? You visited her over there? A. Certainly.

Q. Did she ever say anything to you about Mr. Pica's people? A. Didn't say anything.

40

Q. Did she ever belittle them in any way?

Petitioner's Witness, Lina Pica, Direct

A. She lived in New York then and she moved over to Jersey City.

Q. Did she ever talk about his people? A. Never talked about his people to me.

10 Q. Never said anything to you about them at all? A. No.

Q. Do you know where Mr. Pica lived after he left his wife in 1926? A. He went over to his mother's house.

Q. In Newark? A. In Newark.

Q. Do you know how long he lived there? A. About two years.

20 Q. Do you remember visiting him there? A. Certainly; it is my mother-in-law's house and I go there.

Q. Did you tell Mrs. Pica where Mr. Pica was living? A. Well, I did not say where he was living. I just went over to tell her to be happy with him. I didn't say any place—where he was living or not.

The Master: Did Mr. Pica ask you to go there?

30 The Witness: Yes, he told me if you make anything like that, I be too glad.

The Master: Where did you say he was living at that time?

The Witness: My mother-in-law's house—over at his mother's house.

Q. You did not say he was living at his mother's house? A. He said, "Any time I make a home for my wife."

40 The Master: Did you tell her that?

The Witness: "Any time I make home for my

Petitioner's Witness, Lina Pica, Cross

wife, but not to come with family," because it did not suit him. "If she come alone, yes."

Mr. Armstrong: That is all.

CROSS-EXAMINATION by Mr. McCombe:

10

Q. Have you ever had any trouble with Mrs. Pica? A. Never.

Q. Ever have any conversation with Mr. Pica about his wife? A. No conversation with Mr. Pica—never.

Q. When did Mr. Pica ask you to go to Mrs. Pica's house? A. When? Well, I went to visit my brother-in-law and I see he was there, so he told me the trouble they had and he then said that he would be too glad if I could fix it up.

20

Q. Did he want you to come over as a witness? A. Not as a witness; just to get them together.

Q. Where was this? A. Newark.

Q. Was Mr. Pica out there at that time? A. He was there at that time, yes.

Q. This occasion that you came to Mrs. Pica's house on Charles Street—is that when you go to see about the boy in the hospital? A. I didn't know the boy was in the hospital. I did not know about that.

30

Q. Did you tell Mrs. Pica that there was a telegram sent out by anyone to inform Mr. Pica that that boy was in the hospital sick? A. I don't remember that.

Q. You never said anything about that? A. I don't remember that.

40

Petitioner's Witness, Lina Pica, Re-direct

Q. You are Pastelle? A. No—Lina Pica.

Q. Did you know that Mrs. Pica was having trouble with her husband? A. Yes.

Q. You knew that they had had trouble for quite a while, didn't you? A. Well, I see my
10 brother-in-law, and that is what he told me.

Q. Were you ever present at any time when they had trouble in the house? A. No.

Mr. McCombe: That is all.

RE-DIRECT EXAMINATION by Mr. Armstrong:

Q. When you were there at the house in
20 Charles Street on this last visit that you made, was anybody else present? A. Just the sister-in-law and her niece.

Q. What was her name? A. I don't know the sister-in-law—her name—because that was the first time that I saw her.

Q. Who was the other one? A. I don't know the name of them—I knew it well, but I don't
30 know it right now.

Q. Ciruzzi? A. Yes, Ciruzzi.

The Master: Only one is the same person who was alleged to be there when the sister was there.

Mr. Armstrong: Yes. That is all.

Petitioner's Witness, Camilla Lombardi, Direct

CAMILLA LOMBARDI, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

Q. Mrs. Lombardi, do you understand English? A. Well, I can—I want somebody to talk to. 10

Q. Where do you live? A. 141 Thompson Street.

Q. Where? A. New York.

Q. Do you know Mrs. Pica, the defendant in this case? A. I know both Mrs. Pica and Joe Pica.

The Master: His wife—do you know his wife? 20
The Witness: Yes.

Q. When did you see her last? A. One year ago.

Q. Where did you see her? A. Her house.

Q. Where? A. Newark.

Q. Charles Street, Jersey City? A. Of course I never saw her any other place.

Q. Why did you go to see her? A. I go for company with my sister, Lina Pica. 30

Q. Who was present in the house when you got in to see Mrs. Pica? A. Who I found in the house?

Q. Whom did you see? A. The niece and the sister-in-law.

Q. And Mrs. Pica? A. And Mrs. Pica.

Q. Will you tell us what you said to Mrs. Pica? A. My sister sat there talking and then I said, "What is the matter? Why don't you like your husband? Your husband is a good 40

Petitioner's Witness, Camilla Lombardi, Direct

man. It is a shame to make other people talk about your husband—to make trouble for your husband." She said, "Oh, never mind—I don't like my husband. I don't want to be glad with my husband. Any time you want to come here, come, but don't bring my husband in here." So I go out in the kitchen and I see this girl—and I said, "You are the niece?" Of course I didn't know she was the niece. I said, "Why don't you tell your aunt to be glad to the husband, because he take you when you are small and he work that you could eat and everything," and she said, "No, I don't like him. I don't want him to come here."

20 The Master: The niece said that?
The Witness: The niece said that.

Q. Did Mrs. Pica say that, too? A. No; she was in the front room.

Q. When you were speaking with her before you saw the niece? A. She said she did not like her husband.

Q. Did you ever see her again after that?
30 A. No.

Q. Did you ever see her before? A. Just that day; never saw her there before.

Q. You knew that they had been having trouble before, did you? A. No.

Q. Did you know that they had been having trouble? A. Oh, yes—because my sister told me.

Mr. Armstrong: That is all.

Petitioner's Witness, Jemma Ciruzzi, Direct

CROSS-EXAMINATION by Mr. McCombe:

Q. Did you ever visit Mrs. Pica before? A. Never.

Q. The only time you ever went to Mrs. Pica's house was this time, when you went with your sister? A. Yes. 10

Q. And you went there purposely to ask her to make up with her husband. Is that right? A. Yes.

Q. Who asked you to do that? A. My sister.

Q. Did you go for a witness? A. No, I just went with my sister.

Mr. McCombe: That is all. 20

RE-DIRECT EXAMINATION by Mr. Armstrong:

Q. When your sister asked you to go, it was in the presence of Mr. Pica, wasn't it? A. Yes, Mr. Pica.

Q. The two together? A. The two together. 30

Mr. Armstrong: That is all.

JEMMA CIRUZZI, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

Q. You are the wife of Alegio Ciruzzi? A. Yes. 40

Petitioner's Witness, Jemma Ciruzzi, Direct

Q. Your husband is the brother of Mrs. Pica, the defendant in this case? A. Yes.

Q. You lived in the same house with them for some time? A. About eleven months.

Q. Where was that? A. 75 Charles Street.

10 Q. Do you remember about what time that was and about the month? A. Last year—we were married in September and he was separated in August—the 30th of August.

Q. You moved out in September of 1928? A. We got married and we took those rooms downstairs.

20 Q. In September? A. In September we were married and we lived together eleven months—until August 30th.

Q. In September? A. In September.

Q. Can you recall the time? A. Yes.

Q. How do you recall it? A. It was in September—September we left—I don't know—that is what he told me.

Q. When was it that you had this conversation with Mrs. Pica? A. When was it that I had this conversation?

30 Q. Before or after? A. Before and after.

Q. What conversation did you have that was before Mr. Pica left? A. Mr. Pica was still living in the home when she was gossiping about him.

Q. What was she saying? A. She didn't care to live with him—that he had better get out. She said, "I would rather be a servant than live with him."

40 Q. Did she say anything about cohabiting—sleeping with him? A. She told me that she did not sleep with him for more than a year.

Petitioner's Witness, Jemma Ciruzzi, Direct

Q. You lived downstairs? A. We lived downstairs.

Q. Mr. and Mrs. Pica lived upstairs? A. No—not Mr. Pica.

Q. Mrs. Pica lived downstairs? A. Mrs. Pica lived downstairs. 10

Q. And with her were all the others? A. The niece and nephew.

Q. Did you ever have any conversation with Mrs. Pica? A. She used to tell me about her husband. Of course I didn't know about it except what she told me. I didn't say anything to him—only what she said to me. She told me that she was afraid of her husband.

Q. Mrs. Pica told you that? A. Mrs. Pica told me that. She told me she would rather be a servant—she would not live with him. She told me that he treat her bad—she took a dress out of the closet to show me—the clothes he used to make her— 20

Q. (Interrupting.) Now, this was after he had left. Do you remember when he left the house? A. Well, my husband told me that they could not live together and he left the house. 30

Q. Did she give any reason why she did that? A. She only told me that she did not sleep with him for over a year.

The Master: That is one year back of September, 1926—only one year?

Mr. Armstrong: Yes—one year.

Q. Now, that was a conversation before Mr. Pica left, was it? A. Yes, that was before he left. 40

Petitioner's Witness, Jemma Ciruzzi, Direct

Q. Now, did she ever, before he left, say anything to you about him in reference to whether she had not lived with him? I did not get that. Did she ever make any conversation with you before Mr. Pica left about Mr. Pica? A. Yes, she did.

10 Q. I want you to tell us what that conversation was. A. I was telling you before.

Q. Was there anything more than what you have told us? A. Lots. I know she spoke lots of things against her husband.

Q. What were those things? A. That he mistreated her—that he was cruel to her; she did not care to live with him—she would rather be a servant. He started to holler in the house. Mr. Pica was not living in the house when I was there.

20 Q. I understand that; but I am speaking of the conversation that you had before Mr. Pica left—whether he was living in the house or not. Do you understand me? A. No, sir.

Q. Did you have any further conversation with her? A. No.

30 Q. Did you see her after Mr. Pica left? What conversation did you have with her then? A. She didn't say nothing at all for quite some time before we were married.

Q. Well, what did she say to you then? A. The things I am telling you now. She repeated them; she said that he was cruel to her—that he mistreated her and he was always hollering at her—and all of those things.

40 Q. Do you remember her ever showing you any letters that Mr. Pica sent to her? A. Yes, she did.

Petitioner's Witness, Jemma Ciruzzi, Direct

Q. How many letters? A. That was after I was living there.

Q. How many letters did she show you? A. One.

Q. Did she read the letter? A. Yes, sir, she read the letter. 10

Q. What did it say in the letter? A. He wanted to make an appointment for to meet at the hospital to see her sometimes, and he was surprised that she did not speak to him. "Can't we fix things up again and reconsider?"

Q. He said, "Can't we fix things up again"? A. Yes—to make an appointment so that they could talk things over.

Q. Were you present at the time a sister-in-law of Mr. Pica went and spoke to Mrs. Pica? 20

A. Yes, I was.

Q. Will you tell us about that conversation?

A. Well, Mr. Pica's sister-in-law came in and was introduced to me as Mr. Pica's sister-in-law, and she says, "Let us come in. Can I have a word with you?" And she took her in the dining room and next in the kitchen.

Q. What did she say? A. She was trying to make the peace, and Mrs. Pica said that she would not consider it. "I don't want to have anything more to do with it." And her sister—Mrs. Pica—Mrs. Lina Pica's sister came out in the kitchen and spoke to the niece and she said, "What do you say? Why don't you let Mr. Pica come back?" "No," she said, "we don't care to have anything more to do with him. We don't care for him." 30

Q. Did you ever hear Mrs. Pica or the niece 40

Petitioner's Witness, Jemma Ciruzzi, Cross

or nephew call Mr. Pica any names? A. No, I never heard anything from the nephew.

Q. Or from the niece? A. She called him a dirty bum and lots of other names.

Q. That was in the presence of Mr. Pica?

10 A. No; to me.

Q. Was Mrs. Pica there when these names were called? A. Oh, yes.

Q. Would she say anything? A. No, she didn't. She just let her niece tell me.

Mr. Armstrong: That is all.

CROSS-EXAMINATION by Mr. McCombe:

20 Q. Where are you living? A. With my mother.

Q. Where is that? A. Number 532 West 147th Street, Bronx, New York.

Q. You were not subpoenaed of course over here? A. What did you say?

30 Q. You are not under subpoena here? You were not subpoenaed to come? Did you get a paper telling you to come to court? A. No, I did not.

Q. How did you come over here this morning? A. Through Mr. Pica's lawyer. He let me know.

Q. You are not interested at all in any way in this case? A. No, I am not.

Q. Now, you are the wife of Mrs. Pica's brother, are you not? A. Yes.

40 Q. Now, when did you live—you are not living with him now? You are suing for a divorce? A. No—a separation.

Petitioner's Witness, Jemma Ciruzzi, Cross

- Q. And the case is still pending? A. Yes.
- Q. Did you ever have any trouble with Mrs. Pica? A. She caused all my trouble in my home, and the niece, also.
- Q. Did you ever have any fights or quarrels with her? A. Yes. 10
- Q. What about? A. These different cases.
- Q. What did you have a fight or a quarrel with her about? A. She made lots of trouble. She accused me of things I did not do, and my husband told of that, so he start his sister and his own niece—a woman that he had not seen since he was a child and he never like—he start them in to talk about me.
- Q. You met Mrs. Pica and her husband several times after you moved to the Charles Street house? A. No. 20
- Q. By the way, when did you leave the Charles Street house. A. The 30th of August.
- Q. What year? A. Last year.
- Q. When did you take up your home in Charles Street? A. In September.
- Q. What year? A. 1927.
- Q. Well, now, all the time that you were living in the home in Charles Street, Mr. Pica was not living there? A. No, he was not. 30
- Q. And you never at any time saw Mr. Pica in the Charles Street home, did you? A. No, I did not.
- Q. You have seen Mr. Pica since several times, have you not? A. Now, after I left the Charles Street house?
- Q. Yes; quite frequently, too, have you not? A. Yes. 40

Petitioner's Witness, James Pica, Direct

Q. You know Mrs. Pica's deceased brother's wife, do you not? A. Yes, I do.

Q. What is her name? A. Mary Ciruzzi.

Q. And you and Mary Ciruzzi and Mr. Pica have been out several times socially, haven't you? A. Never been out with Mary Ciruzzi.

Q. Did you ever call at Mary Ciruzzi's home? A. Once.

Q. At that time was Mr. Pica present? A. Never.

Q. You never have seen Mr. Pica at Mary's home? A. Never.

Mr. McCombe: That is all.

20

JAMES PICA, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Armstrong:

Q. Mr. Pica, where do you reside? A. You mean where I live? 600 North 6th Street, Newark.

Q. You are a brother of Guisepe Pica? A. Yes.

Q. The petitioner? A. Yes.

Q. Do you remember the time that Mr. and Mrs. Pica were living at Charles Street? A. Yes.

Q. How long did they live there? A. For six years.

Q. Did you ever visit them there? A. Quite often.

40

Petitioner's Witness, James Pica, Direct

Q. Well, how often? A. About three or four times a year.

Q. During your visits there, did you observe the manner in which they were living? A. Well, I tell you—they give me always a bad impression by her saying that he was treating her like a dog, and anything that he would say, why, they would make fun of him—his wife and all the rest, the niece and nephew, and sometimes—not all the time—the brother-in-law, Louis Ciruzzi. I remember once particular that he said, “You are a dope—you are stupid.” I say he said it—not to me, because I punch his jaw—he says it to my brother. 10

Q. Now, you say—when did that occur—this last happening here? A. The last time it happened I remember that particular—and I tell you—I swear I tell you the truth. The last time I saw that particularly I went to visit my brother—me and my brother went to see another brother. I mean Joe was in the hospital in New York and when we come back we have the wife with us and the table was still like poor people and we went in there and I said, “Well, that is the way you treat your husband all the time, anyhow,” and she did not give us anything to eat, and such a lovely faces the other girl make, too—the niece—and I say, “Whatever happens, I never say anything to my brother—to try to make him feel bad—just keep it to myself—not to try to make my brother feel bad, and I know he knows why I did not like to put any fight between them. 30

Q. Can you tell us any other things that 40

Petitioner's Witness, James Pica, Direct

happened during those visits? A. The last visit was this.

Q. When was this last visit? A. Well, a few weeks after the robbery in Grantwood. That was because he sent me there—he sent me for
10 the purpose of making the peace with her.

The Master: When was that?

The Witness: That was in 1926—around September or October. I cannot remember, because I only knew that I would come here—if I only knew, I would put it down on a piece of paper.

Q. And you say it was in September or October—around the time of the robbery of the
20 Grantwood store? A. Yes, it was the time of that.

Q. Where was Mr. Pica living then? A. At that time?

Q. Yes. A. He was living at my house.

Q. Did he have any place up in Grantwood then? A. Well, I tell you—about September, because I had a phone conversation from his shop to New York—he said to me I was to
30 come to see him in New York because his store was robbed. I know his store—I was there about two times before, and I was anxious to see the place and he told me that he was robbed—everything but the fixtures and the machines. That was about five or six o'clock, or half past five, that we go to the store, and we went over there and we find everything gone.

“Now,” he said, “I wish you to bring all these fixtures over to my home,” and he said,
40 “It is on account of my home that I was robbed.” “Why?” “Because my wife and

Petitioner's Witness, James Pica, Direct

my niece—that I have fed since she was little—
 if she had helped me out in the store I don't
 think this would happen while she was in the
 store," and I said, "Why don't you bring these
 fixtures home?" and he said, "If I bring this
 home, it will be where it will be trouble." I
 said, "Why?" and he said, "Well, I often told
 you what I am going to tell you now." "Are
 you ashamed of your brother?" "If I only tell
 you that for seven or eight years my wife would
 not let me sleep with her—" and I say, "You
 are a damn fool. If I have a wife and she would
 not let me sleep with her, I would very soon
 throw her out." 10

Mr. McCombe: I object to this line of
 testimony for the reason that it is not
 binding upon the defendant. 20

The Master: Yes—I sustain that ob-
 jection.

Q. You did not talk about that to Mr. Pica?

A. I don't know—anyhow, if I bring these things
 now, they will be a lot of trouble, and I say, "If
 you don't mind, bring these things to New-
 ark," and he says, "As long as I can avoid
 the trouble, I will do that, and I will take a
 wagon and I will bring those things to your
 home," and he finally left there with me and
 after a few weeks he said, "Well, I tell you.
 I can't sit here so far away from my wife, be-
 ing that I have been away now for a few weeks,
 and she will get a lawyer and get after me, and
 I think she will find out, anywhere, where I am." 30

The Master: Where was he living then? 40

Petitioner's Witness, James Pica, Direct

The Witness: He was living then in my mother's house.

The Master: How long did he live there together in your mother's house?

The Witness: About two years.

10 The Master: Can you tell us how long this was after September 26, 1926?

The Witness: As soon as they robbed him he went home, and he come right back.

The Master: Is the time of the robbery fixed in the previous testimony?

The Witness: I cannot understand.

Mr. Armstrong: September 27th, 1926.

20 The Master: September, 1926—it must have been after that. This may be very important.

Mr. Avallone: The 27th of September.

The Witness: The 26th of September.

Mr. Armstrong: That was the date of the desertion—the very next day.

30 The Master: Then he is testifying to a conversation in Newark when this man lived in the mother's house, and he said this was very close to the time of spring.

Mr. Avallone: All this happened in one week.

The Master: He said that the brother said to him that he had left his wife for a few weeks.

40 Mr. Avallone: What he is trying to bring out is a week or two later he went at the instigation of Mr. Pica for the purpose of making a reconciliation.

Petitioner's Witness, James Pica, Direct

The Master: When was it that you understand it was?

The Witness: About two or three weeks after he was with me there.

The Master: It must have been in October, 1926. 10

Mr. Avallone: Yes; that is what he was getting at. No more than about two weeks.

The Witness: I cannot remember the date. Just about two weeks.

The Master: You had a conversation with your brother while he was living at your mother's house in Newark, didn't you? You are testifying to that, are you? 20

The Witness: Yes.

The Master: Can you tell us about how long that was after your brother left his wife?

The Witness: Well, it was the same night—the very night that he came home talking about it.

The Master: As soon as he came there to your mother's house, he was always talking about leaving home and what the trouble was? 30

The Witness: Mother told him that it was a shame.

The Master: He talked it over with his mother and with you?

The Witness: Yes, and with my wife.

The Master: You say you had a conversation with him—I think you said a few weeks after that. 40

The Witness: After a few weeks, he decided to send me to his house.

Petitioner's Witness, James Pica, Direct

The Master: What did he say to you then about the instructions to go to some place?

10 The Witness: He instruct me—he send me there to his house and see his wife and ask her why she treat him always that way—what was the reason? He was good for years—support her family for twenty-five years and he told me a lot of things about the money that he spent for the family and then they treat him so bad.

The Master: Was anything said about his making a home for his wife?

The Witness: The home was right there.

The Master: How long after he left did you see the wife?

20 The Witness: Two or three weeks.

The Master: Were you there alone, or were you with someone?

The Witness: Alone.

The Master: Was any other person there?

The Witness: The niece.

The Master: Well, tell us what she said.

30 The Witness: The first thing I went over there I rang the bell. I thought it was going to be the same thing like all the other times, but it was not, so the niece came down to see who it was down there, so she asked me that I could be admitted. After I was there a few seconds or a few minutes, maybe—I can't remember just exactly—she said, "You can come in," and I asked to see the wife, and I said, "You know the reason I came here, and she said, "What?" And I said, "You know you are married to my brother and that is a very shame—it is a very
40 shame that you go and do this way—between the two families what happened," and she did

Petitioner's Witness, James Pica, Direct

not say anything except that she come from a very nice family—that I should realize that—that they were very educated people—and I just sat there and talked to her for two hours and a half or maybe three hours and I could not get at what was the reason, and the only reason I got was that he come there at times late home because of the work that he does—he is a presser and sometimes he had to stay away from home late, and she would get disgusted with waiting so long and the other worse thing was this—that on Sunday morning my brother would get up and go down in the cellar and clean his shoes and it would wake her up—the noise he would make, and I don't quite remember just the other things that she told me, but he made a noise stamping around, cleaning his shoes, and then she said, "He comes sometimes drunk," and I said, "Oh, no, he does not drink, ever"—and this is the worse thing—he goes every Sunday, pretty near, downstairs, and stamps around cleaning his shoes and making a noise and wakes her up, and I said, "Well, but that is not such a thing to separate about." 10

The Master: Was anything said about living together again? 20

The Witness: Of course, I said, "You know you have got to give up all these little foolish things between you and him and everything will be O K. It is only for the reason of your niece and nephew. He has supported them since they were a little child, and now they are big they can go to their own mother and you can be together with him in a nice home." And 30 40

Petitioner's Witness, James Pica, Direct

she said, "Oh, no, no—so long as he is away, I say that he is all right away."

The Master: What kind of a house was that? How many apartments was it? Upstairs or downstairs?

10 The Witness: A two-family house, and he lived upstairs.

The Master: Who lived upstairs—your brother and his wife?

The Witness: Yes.

The Master: How many rooms were up there?

The Witness: About five.

The Master: Where did the niece and nephew live? Did they live there?

20 The Witness: The same thing.

The Master: How old was the nephew then?

The Witness: I think he was about nineteen or twenty years old.

By the Master:

Q. How old was the girl then? A. Five or six years more.

Q. More than that? A. Yes.

30 Q. Was her niece working then? A. I don't know anything about that.

Q. Was the nephew working then? A. I think he went to school at that time.

Q. Are they brother and sister? A. Brother and sister, yes.

Q. Who lived downstairs before the brother left? A. Oh, downstairs? Strange people. He rented it to some strange people. Of course the brother wasn't married at that time, though.

40 Q. After your brother left, do you remember who continued to own the house, or share in

Petitioner's Witness, James Pica, Direct

the house? A. Oh, yes—I know that because from a letter that came over there—he gave it to me to read.

The Master: I think this is very important testimony. I am just indicating what I think is important, and you can pursue it if you wish. Under this case that I have read to you, you can only make out a case of desertion, I think, from the date of September 28, 1926. If this witness is to be believed, it seemed that she clearly did not want the man to come back when he left—right or wrong—and he had the right to take her to his own home. 10 20

Mr. McCombe: That is, if we believe the testimony that this witness has adduced.

The Master: The man repented after a week. He said, “I will live with you in a proper place”—and it will have to be a desertion after two years on the petitioner's part of the case. 30

By Mr. Armstrong:

Q. Now, Mr. Pica, what other conversation did you have with her respecting your brother?

A. With my sister-in-law? Oh, I told you I never saw her after that.

Q. I mean did you tell us all that she said to you then? A. Well, I think that is about all.

Q. Did you say anything to her about what your brother told you to say to her? A. I think I said that he sent me there to find out—to say 40

Petitioner's Witness, James Pica, Direct

that if she would let go the niece and nephew, he would be very glad to live with the wife—to live in peace, and she refused that. “No—he is gone now. Let him go.”

10 Mr. McCombe: When is this that you are talking about?

The Witness: After a few weeks that he came to live in my home.

The Master: It must be in October.

The Witness: I can't remember, because I never thought about being in court.

The Master: Two weeks the last part of October.

20 Q. There was nothing else said, then—now, Mr. Pica, was there, by your sister-in-law, Mrs. Pica, to you? You have told everything? A. I never saw her again after that.

Q. You never saw her again after that? A. I don't think I know anything more. The only thing I know is that my brother afterwards sent some men—he sent some people over to see her.

The Master: How do you know that?

30 The Witness: He told me many times that and that he wrote letters to her.

The Master: Did you see him write the letters?

The Witness: I saw him write the letters.

The Master: I consider the demand was made for the letters this morning.

Mr. McCombe: There is no demand made on me.

40

The Master: I think it is the defendant's duty to produce.

Petitioner's Witness, James Pica, Cross

Mr. McCombe: It is the first that I knew about it.

The Master: If you say that she has not got them—

Mr. Armstrong (interposing): I was going to prove that in her testimony. 10

Mr. McCombe: I didn't receive any letters from her.

The Master: I should judge from that that she got some letters in the customary way.

Mr. Armstrong: That is all.

CROSS-EXAMINATION by Mr. McCombe:

Q. Mr. Pica, did you ever have any trouble with Mrs. Pica, your sister-in-law? A. No, sir—I never did. 20

Q. You have always been on friendly terms with her? A. Sure.

Q. So that this time that you called was the only time that you have ever been in her house?

A. What is that?

Q. The time that you spoke about—sometime in October, that was the only time that you have ever been in her house, is it? A. That was the last time—it was not the only time, no. 30

Q. Were there any before October? A. Well, I can't remember just exactly. Of course a brother visits a brother many times before.

Q. I mean since your brother left her. This was the only time you were in her house? A. Yes—that was the only time. 40

Q. At that time did you tell her—after the conversation that you had, about her duty to

Petitioner's Witness, James Pica, Re-direct

return to her husband—when you went away, did you tell her, “Now, don’t tell my brother that I was here”? A. What?

Q. Did you tell her not to tell your brother that you came to see her? A. No.

10 Q. Are you quite sure about that? A. Why should I say that?

Mr. McCombe: All right—that is all.

Recess until 2:15 o’clock P. M.

After recess.

20

April 4, 1929, 2:15 P. M.

Present: The Master.

Appearances:

Same counsel as before.

JAMES PICA, recalled:

30

By Mr. Armstrong:

Q. Now, Mr. Pica, when you were on the stand this morning, I asked you if you went to see Mrs. Pica at any time after your brother left her, on Charles Street. Do you recollect the time that you went to see her? A. Certainly; as I said before, after two weeks—two or three weeks. I cannot remember just the exact time

40 I went to see Mrs. Pica—my sister-in-law, with the purpose to make them live together and be

Petitioner's Witness, James Pica, Re-direct

at peace, and at the same time I went up to try and get her to put this nephew and niece out—not out—but they can go to their mother and brothers—go some other place and there won't be any more trouble, and she said, Giuseppe, I won't live with him no more—I prefer to live with them. He is away now. Let him stay away. 10

The Master: This was the same conversation?

The Witness: Yes.

Q. Do you recollect when that was? A. I cannot say; two or three weeks after my brother came to my house—after he was robbed he came over to my house. 20

Q. Do you know when he left his wife? A. Well, I tell you—the same day they robbed her; he got so angry about it; he said that he was robbed, because if they had went with him and helped out in the store, he would not have been robbed.

The Master: As I remember it, he said that if she had been in the store to help out—if she had been there, the robbery would not have occurred. 30

The Witness: Yes.

The Master: How did you come to go to your sister-in-law?

The Witness: My brother Joseph got me to go there.

Mr. Armstrong: That is all. 40

Mr. McCombe: That is all.

Petitioner's Witness, Giuseppe Pica, Direct

The Master: Is there anything in the proposed petition about him sending this man, if you recall? I don't remember.

Mr. Armstrong: I think so.

10

GUISEPPE PICA, the petitioner, recalled:

Direct-examination by Mr. Armstrong:

Q. Mr. Pica, you left the house on Charles Street in September or October, 1926? A. Yes, sir—1926.

20 Q. A short time after you left, did you send anybody down to go and see your wife? A. I sent my brother.

The Master: How long after that?

The Witness: About three or four weeks. That is all.

Q. And you told your brother about your troubles? What conversation did you have with your brother about his going down there?

30 The Master: What did you tell him to do?

The Witness: I told my brother to go and see her—see my wife—and try to make the peace with her, because it is a shame that she treat me this way.

By the Master:

Q. Did you still own the Charles Street house?
A. Yes.

40 Q. Who owns the rest of it? A. The rest of it, my brother-in-law.

Petitioner's Witness, Giuseppe Pica, Direct

Q. You two together owned it? A. Yes.

Q. Did you have a building and loan mortgage on it? A. Yes.

Q. Which was afterwards was foreclosed? A. Nothing of the kind. I didn't say nothing about it being foreclosed.

10

Q. How long after you left was the house sold? A. It was not foreclosed.

Q. How long after was it sold? A. It was not sold.

Q. Then what became of it? A. My brother-in-law wrote me, "What are you going to do with the house?" and I wrote him not to have any trouble, "I will make a sale to you, and that is all."

20

Q. How long was that after you left? A. It was May—I went away in September. It was the next year—1927.

By Mr. Armstrong:

Q. Do you remember when it was—do you remember when it was that Mr. Amoroso and Mr. Russo went to see your wife? A. Yes.

Q. When was it? A. In September—either the 9th or 10th.

30

The Master: Which year?

The Witness: 1928.

The Master: Shortly before.

The Witness: I sent them for the purpose to make the peace, because Christmas was coming—the 16th of December was when I got married, and because near the 16th was Christmas, and we should settle all things.

40

The Master: Did you write any letters to your wife after you left?

Petitioner's Witness, Giuseppe Pica, Direct

The Witness: I wrote about seven or eight letters.

The Master: You say you kept a copy of a few?

The Witness: I kept a copy of three of them.

10 Q. Now, Mr. Pica, when you sold the property, did your brother-in-law sell it, or did you sell it and negotiate it with your brother-in-law? A. He wanted me to sell, and I sold to him.

Q. Did you receive any money from him? A. I received from him a thousand dollars, and I gave it over to my wife.

20 The Master: Although your wife was still living in the house?

The Witness: Yes.

The Master: With the niece and nephew?

The Witness: Yes, with the niece and the nephew.

30 Q. That was money that you received for the sale of this property? A. I gave a thousand dollars to my wife and the rest of the money I pay out—two hundred dollars to my sister-in-law for a loan to pay the taxes on the house, and \$100 I give to my nephew—the wife is here in Brooklyn—all the money I got I pay out.

The Master: I was trying to find if the house was there after he left—for occupation by him with her.

40 Q. These are copies of the three letters, Mr. Pica, that you sent your wife? A. Yes, I sent all of them.

Petitioner's Witness, Giuseppe Pica, Cross

Q. You sent them? A. Yes—do you want the checks?

Q. You enclosed the checks in these letters when you sent them? A. I got the checks with me—if you need them—one, two, three.

Q. Where were you living at the time Am- 10
 oroso and Russo went to see your wife? A. I
 lived back of the store—I made a partition.
 I made a room in the back of the store.

The Master: What kind of rooms were they?
 Living rooms?

The Witness: No living room—just back of
 the store.

The Master: Could they be lived in?

The Witness: If my wife would come to me, 20
 I would furnish anything.

The Master: I want to find out, were they
 living quarters, in case she came back?

The Witness: Not my wife to live in there.

The Master: Could your wife live there if
 she wanted to?

The Witness: If she wanted to, certainly she
 could live there. 30

Q. There were rooms there? A. If she wants
 to she could live there. It was a matter of sav-
 ing money. Possibly she can—possibly she can
 do anything.

CROSS-EXAMINATION by Mr. McCombe:

Q. Mr. Pica, when did you buy the house?
 A. I think it was in 1921 or 1922. 40

Q. And at that time you were on good terms
 with your brother-in-law? A. Oh, certainly.

Petitioner's Witness, Giuseppe Pica, Cross

Q. And you continued to be on good terms with your brother-in-law until the time when you left your wife. Is that right? A. A couple of years before.

10 Q. Two years before. After you left, you did not pay all the interest that was due, did you—at the time you left? A. No—didn't pay nothing.

Q. There were some debts left behind, were there not—for coal? You did not pay the coal bill when you left? A. Nothing at all. I pay every penny.

20 Q. Weren't there some debts due for coal? A. Nothing at all—I don't know nothing about this coal. When I left I pay—together she get all the money. She get all the money in her hands. She was doing all the paying out for everything. I only have five dollars out of my own money.

Q. At the time you sold the house because it was going to be foreclosed, didn't you? A. No foreclosed.

30 Q. The building and loan was past due? A. Even if it was past due—

The Master (interrupting): Does that make any difference? What is the point?

Mr. McCombe: I wanted to show that it was due. That is all.

The Master: I think the only relevant thing is, there is a house that was owned by him when he left there, and he or she or both could have lived there.

40 Q. Coming back to this place on Palisades Avenue, Mr. Pica, isn't it a fact that Mary

Petitioner's Witness, Giuseppe Pica, Cross

Pica stayed in the store during the daytime?

A. Nothing doing; no such a thing.

Q. Do you want to tell us now that she was never in the store? A. She would come in, being busy around with the supper.

Q. Was she ever doing anything in the store? 10

A. Nothing of the kind.

Q. What did you pay for rent on that store?

A. \$35 a month.

Q. What was in the rear of that store? A. Room.

Q. One room? A. One room.

Q. Was there anybody living there in that room? A. I lived there myself. The machine was there—my ironing board was there—my press board was there—a folding bed. At night I pulled it out to sleep on it. I was trying to save expenses and trying to accumulate some money. 20

Q. Did you keep an old man there? A. Yes, I kept an old man there.

Q. Where did he live? A. He lived at 66 Plank Road.

Q. Who was this old man? A. That is an uncle of my sister-in-law. 30

Q. The father of Mary, wasn't he? A. Not her father; her uncle.

The Master: When did you open the store in Palisades Avenue?

The Witness: It was Central Avenue. I wasn't in Palisades. It was in Central Avenue, between Sixth and Seventh. 40

The Master: What year?

The Witness: 1928.

Mr. McCombe: That is all.

Petitioner's Witness, Jemma Ciruzzi, Direct

JEMMA CIRUZZI, recalled:

Direct-examination by Mr. Armstrong:

- Q. Do you remember Mrs. Ciruzzi visiting the hospital? A. Yes, I do.
- 10 Q. What hospital was that? A. St. Francis Hospital.
- Q. Jersey City? A. Jersey City.
- Q. You remember about what time that was? A. I think it was about May.
- Q. What year? A. Last year.
- Q. Did you see anybody there? A. Yes.
- Q. Whom? A. We went to see the nephew who was sick in bed.
- 20 Q. Was anybody else present there when you were there? A. Yes; Mary Gelessi and her sister.
- Q. Mary is the niece? A. No; that is the sister-in-law.
- Q. That is the wife's sister? A. That is the dead brother's wife.
- Q. Was Mrs. Pica there? A. Mrs. Pica was there, yes. I went along with Mrs. Pica.
- 30 Q. You went there along with Mrs. Pica? A. Mrs. Pica.
- Q. Did you see Mr. Pica there, too? A. Not when we went in.
- Q. But after? A. Not in the room where I was—near the door. As I turned round, I saw that he was trying to enter the room, and when he saw us there, he said, "How do you do?"
- 40 Q. Did you see him make any attempt to speak to his wife?

Petitioner's Witness, Jemma Ciruzzi, Direct

Mr. McCombe: I object. She said she did not see him in the room.

Mr. Armstrong: I don't think that is quite right—because I am asking a direct question whether or not she saw him there.

The Master: Did she say that she saw him? 10

Mr. McCombe: She said that she did not see him there in the same room with the wife.

The Master: It is conceded that he might have walked from one room to the other.

The Witness: Here is the way it is— 20

Q. (Interrupting.) Just answer my questions, please. When you arrived at the hospital—you went there with Mrs. Pica, didn't you? A. Yes.

Q. And when you got there, you saw Mr. Pica there? A. No, I didn't see Mr. Pica there then.

Q. Was he there at any time when you were there? A. After a while. 30

Q. Was he in the same room with you? A. Yes.

Q. Where was he? A. Out in the vestibule.

Q. Will you tell us about that? A. He was trying to get into the same room where we were.

Mr. McCombe: He was in the next room—and I object to that.

The Master: You may ask her if he was in the same room. 40

Petitioner's Witness, Jemma Ciruzzi, Direct

Q. Was he in the same room with his wife at any time? A. No.

The Master: Did he speak to her at all while he was there?

10 The Witness: No; he attempted to.

The Master: That is right; you had better strike that out.

Q. Just tell us what he actually did, Mrs. Ciruzzi. A. We were there in the room and he tried to enter, and I saw him right near the door, and I turned around and he said, "How do you do," so he is standing and he
20 walked out and stood right in the vestibule, and when we left, he stood right near the landing and attempted to talk to her when we left.

The Master: What did he do?

The Witness: He tried to talk. He said, "How do you do," and made a motion to talk to her, and she just turned her face right around the other way.

30 The Master: She was passing him at the time?

The Witness: Yes.

The Master: In the vestibule?

The Witness: As we left.

The Master: Tell us what he did.

The Witness: He said, "How do you do," to me, and made a motion to talk to her.

The Master: What did she do?

The Witness: She just turned her face the other way.

40 The Master: Did you stay there at all?

The Witness: No; we just walked right out.

Petitioner's Witness, Jemma Ciruzzi, Cross

CROSS-EXAMINATION by Mr. McCombe:

Q. Will you please tell us just how you happened to know that Mrs. Pica did not speak to her husband when he was in the other room, and you were in one room and he in another? Could you see him in the other room? A. I was right near the door. He was the bed, and I could see Mr. Pica out in the vestibule, and he come near the door, and she is in there, and he said, "How do you do," and I answered him at once, and he come in there and then he walked right out again. 10

Q. You are not on very good terms with Mrs. Pica, are you? A. What? 20

Q. You had trouble with Mrs. Pica, didn't you? A. Yes.

Q. You are interested in the outcome of this case, are you not? A. No.

Q. You are interested in seeing Mr. Pica get a divorce from his wife, aren't you? A. No; it is not of any interest to me.

Mr. McCombe: That is all.

Mr. Armstrong: The petitioner's case is closed. 30

The Master: On your part of the case, before you close, I will receive these letters, or copies of these letters, if they are introduced.

Mr. Armstrong: We have copies, but not the originals. Mr. McCombe has the originals.

Mr. McCombe: In justice to the Court, I want to say now that I never knew of the letters. 40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

10 The Master: I believe that, Mr. McCombe. The letters are offered in evidence by the petitioner and received in evidence as copies on the basis of the demand made on you which you say you have not received, and I believe you say that you have not got them—subject to your proof. You can produce the letters and disprove them, if you want to.

Mr. McCombe: No demand has ever been served upon me.

The Master: In this kind of a case, you can serve it any time.

20 Mr. Armstrong: We made it this morning.

The Master: I think it is the duty of the defendant to produce all she has got, and it is the petitioner's place to produce all that he has got. They are received, under the circumstances.

Letters referred to marked in evidence

30 Letters referred to marked in evidence
Exhibit 2 and Petitioner's Exhibit 3, April 4th, 1929.

Defendant's Case.

MRS. GIUSEPPE PICA, the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

40 Mr. McCombe: Mrs. Pica, I want you to speak out loud so that I can hear you—hear

Defendant's Witness, Mrs. Giuseppe Pica, Direct

what you say, and anything you don't understand, be kind enough—be patient, and ask it over, as we want to understand what you say.

Q. Mrs. Pica, when you were first married in the City Hall to your husband, who is the petitioner in this action, did you live together right after that? A. No. 10

Q. How long were you separated? A. About a year—just a year.

Q. Right after the first marriage in the City Hall? A. Yes.

The Master (looking at certificate): Is there any signature on this? If so, show it to me. 20

Mr. McCombe: Yes, here it is.

The Master: I understand it was a civil marriage, and there are copies, I assume?

Mr. Armstrong: They had two marriages.

Q. After the marriage, you were separated for eight months, did you say? A. One year. 30

Q. At whose suggestion were you living apart? A. Well, because—whatever he says wasn't true. He hasn't enough money, so we could not go ahead and get married in the church.

The Master: Does that make any difference—that he had no money? Does it make any real difference here?

Mr. McCombe: No.

Q. Was it his idea to live separate and apart until he got some money? A. Yes. 40

Speak out loud so

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Then, after the expiration of eight months you got married in the church? A. Yes.

Q. And you went to live together? A. Yes.

Q. How long did you live together after that second marriage? A. Twenty-six years.

10 Q. Where were you living all this time, Mrs. Pica? Where? A. Well, we lived at different places.

Q. Was everything all right? A. Not all right.

Q. Now, when did it first start off—anything between you? A. Fifteen years after I was married.

20 Q. What happened fifteen years after you were married? A. He wants to take me out, and I wasn't a fool, and I said that I object, and he took me by the arm.

The Master: That is too far back—twenty-six years. You must come down to date. There may have been trouble—these twenty-six years are all behind us.

30 Q. When did you come over to Jersey to live? A. Seven months after we got married—December to July; we came here the 10th of July, 1899—the same year we got married.

Q. When did your trouble start? When did your trouble start between you? A. It was hell all the time between me and him.

40 Q. What was the reason, if you know? A. Come home, he brings some reason to fight—find some excuse for anything—anything was wrong—everything was not satisfactory with him.

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. How did you treat your husband? A. I tried everything I could to calm down. It seems I could not do anything for him.

Q. Anything you would do to please him would not please him? A. Never was pleased.

Q. How was he with respect to supporting you during all this time? A. He gave me as much as he liked. Just as much as he like.

Q. Did he ever threaten to leave you? A. Yes.

Q. When? A. Three years before he left.

Q. And what was said then? A. He always said he was going to leave. He did not want to stay. We eat his blood, he says—"I am going to go."

The Master: What do you mean by "We eat his blood"?

The Witness: My children was there.

The Master: Which children?

The Witness: The girl and the boy.

The Master: How old was the girl?

The Witness: The girl was going to business.

The Master: How old is she now?

The Witness: She is twenty-eight.

The Master: That is four or five years ago. She must have been twenty-three years old then. Is that so?

The Witness: I could not say.

The Master: How old was the boy then?

The Witness: The boy was about seventeen.

The Master: How old is he now?

The Witness: He is now going on twenty-two.

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20

30

40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Now, when you had these quarrels, Mrs. Pica, what, if anything, did he do to you? A. Well, he struck me and he called me names.

Q. What did he call you? A. All bad names.

10 Q. Tell us just what. A. Son of a bitch—that I was not good to him—now, whatever he could, he had in his mouth to say that all the time—every little thing.

Q. Did you always take care of him to the best of your ability? A. Sure. He was everything in my life.

Q. Now, when he left you on that 28th day of September, 1926, who was present? A. The boy, the girl, and my brother.

20 Q. Was there anything said? A. Not a word.

Q. Did he tell you that he was going to leave that day? A. No, sir.

Q. Did you have any quarrel on that day? A. What is that?

Q. Did you have any quarrel that day? A. No, sir.

Q. After he left you, did he contribute to your support? A. After nine months that he left.

30 Q. For the whole nine months after he left he never contributed anything to your support? A. No, sir.

Q. At that time your brother and he owned the house, didn't they? A. Yes.

Q. Was it sold? A. Yes.

Q. Do you know why the house was sold? A. Couldn't pay to keep it up.

40 Q. Who was keeping it up while he was away? A. My brother helped out, and a friend or two—they helped me out.

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. What arrangement was made at the time you sold the house, if any? A. Well, they decided—the lawyer—to ask him if he wants to sell the house, and so he says, “Yes,” and he sold it, and I did not get nothing out of it. 10

Q. Did you get any money out of that? A. Nothing; not a cent.

Q. Did you hear your husband say he gave you a thousand dollars? A. Yes.

Q. Is that true? A. No, sir.

Q. Were you obliged in June, 1927, to take him to the Domestic Relations Court? A. Yes.

Q. What was done then? A. Well, I was not present there.

The Master: The records speak for themselves. 20

Mr. McCombe: I thought there was a denial of the order being entered?

Mr. Armstrong: It is incumbent upon you to produce the order.

Q. You did take him to the Domestic Relations Court? A. Yes, sir.

Q. As a result of what happened at the Domestic Relations Court, did you get any money? A. Yes. 30

Q. What money did you get? A. Fifty dollars.

Q. How long did that continue? A. Until December.

Q. Did he pay it regularly? A. Yes.

Q. Do you know what I mean by “regularly”? Every time it came due, did he pay it? A. Well, he stopped—I had to send him a letter all the time. 40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Now, after the 28th day of September—1926—is that right—when did you next see him? That is the day he left. When did you next see him? A. In the hospital.

10 Q. Was that the very first time you saw him? A. The first time.

Q. How did you happen to be in the hospital? A. I went to see my nephew.

Q. Yes. Who went there with you? A. I went myself and my sister-in-law.

Q. With whom? A. With my sister-in-law.

Q. One of those ladies who testified here? A. Yes.

20 Q. Did you have a conversation with your husband at that time? A. No, sir.

Q. Did you try to talk to him? A. No, he did not come where I was.

Q. He did not come in to where you were? A. No.

Q. Do you know whether or not he saw you in there? A. I don't know whether he saw me or not.

30 Q. Did you at any time pass from one room into another? Did you pass him? A. Yes.

The Master: The vestibule, I think it was—coming out of the vestibule he tried to go in and then he went back.

40 Q. Do you recall him saying—one of the witnesses saying that she saw him pass you in the vestibule? A. No. We were standing near the bannisters in the hall—standing in the hall near the bannisters—coming down the steps—and there was where he was standing.

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Did he make any attempt to speak to you?

A. I didn't see him say nothing.

Q. Did he say anything to you? A. No.

Q. Did you say anything to him? A. No.

Q. Did he ever come over to your house and ask you to make up—come together again—live with you again as man and wife? A. No. 10

Q. So that from September, 1926, until the time when you saw him in the hospital in May, 1927, that was the first time you saw him? A. Yes.

Q. Did you see him again after that? A. No.

Q. At no time? A. No. 20

Q. Now, did you receive any letters from him since he left you? A. I did not receive any letters; only when he sent a check he put a few words.

The Master: Didn't receive any letters of any kind?

The Witness: No.

The Master: With checks or without checks?

The Witness: With the checks—he wanted me not to let my brother cash the checks and I did not see why. 30

Q. Is that all? A. That is all.

Q. Was there anything in those letters that asked you to come back to him? A. I haven't got no letters.

The Master: Did you save them—keep them?

The Witness: The lawyer had everything. I would have to go and ask him. 40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Which lawyer? A. Anthony Botti.

Q. That is the lawyer that you had before?

A. Yes.

10 The Master: You gave the letters to him, did you?

The Witness: I didn't give any. He corresponded with his lawyer—not with me.

Q. That is what his Honor is asking you. He asked you if you ever got any letters from your husband. A. The lawyers did not give them to me.

Q. Did your husband ever send you any letters? A. Not to me directly.

20 Q. Yes—that is what I am asking you. A. Not to me direct.

The Master: I haven't looked at these yet (referring to letters). They must be true copies, too, and they are addressed to her.

30 Q. I am going to show you three letters that have been marked for identification here, and ask you if you ever saw those letters, or letters similar to them or anything like the wording contained in those letters?

The Master: Do you read English, Mrs. Pica?

The Witness: Yes; but I have not got my glasses.

Q. Where are your glasses? A. I left them at home.

40 The Master: Let me look at one. Maybe I

Defendant's Witness, Mrs. Giuseppe Pica, Direct

can read it to you. March 31st, 1928—who is Vincent?

The Witness: Vincent Pica, my nephew.

Q. Did you ever see any of these letters before?

10

The Master: Here is one: "Dear Vincent: Enclosed find check for the month of April. I hope you receive it in the best of health. Let me hear how you are getting along. Please send me your sister's address." That is dated March 31st. Did you ever get that letter?

The Witness: No.

The Master: Here is another, marked P-1: "Dear Francesco: Enclosed find check for the month of—why don't you answer my first letter? Are you so mad you never—at least you may have spoken. Don't be so foolish. Why should we not make an appointment? I am interested in your welfare. That is we all make mistakes." Did you get that letter?

20

The Witness: I did not get that letter.

Q. Did you ever see any letters that he may have written to Vincent? A. No.

30

The Master: Vincent would know if he got the check.

Mr. McCombe: Yes; I will speak to Vincent about that.

Q. After he left, Mrs. Pica, did he ever at any time let you know, either directly or indirectly where he lived? A. No.

Q. Do you know where he went to live after he left you? A. No, I don't know until his

40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

brother came to my house and says that he is going to go in business with him.

Q. When did the brother come to your house, Mrs. Pica? A. He came the day after New Year's.

10 Q. What New Year's was that? A. That was New Year's—it was on a Sunday—and that was in 1926.

Q. That was the first New Year's after he left? A. Yes.

Q. That would be about—if he left in September—that would be about four months after he left? A. Yes.

Q. That is his brother came to you? A. Yes.

20 Q. Did he say anything as to why he came? A. He just wanted to know why I was blaming him for it.

Q. Yes? A. He says, "Why you are blaming me for all this?" I said, "Certainly, because your people never did like me.

Q. What people? A. His people—mostly his brother—they like him. They put what trouble there is between us and for twenty-seven years I never saw them until they came over to my house, and I never was over to their place. I always was nice to them, on account of my husband, and he came and told me everything that they say about me—my own man that I married and he married this and that and they did not want to have anything to do with me.

30 Q. Now, this brother—did he ask you to make up with your husband? A. He didn't say nothing; only asked me why I blamed him for it, and I have reason to blame him, and, "You

40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

are the cause of it all," I say—and they objected to me—to me marrying him, because I was more higher than them and they thought that he could not afford to keep me, but we got along, no matter what they say—we got along together—but he done everything that I could not stand for, and I put up with it for twenty-six years. 10

Q. How long did the brother stay at that time? A. About a half hour. I was sick when he came, and I thought, "Will he go and tell his brother," I say he was to come to me—but he never did.

Q. Did you tell him to tell his brother? A. I did not tell him to tell his brother that he was here, but I was sick with the grippe and I had blankets around me and I was standing near the stove. 20

Q. Did his brother tell you not to let your husband know that he called to see you? A. He told me, "Don't tell him I was here," and I said, "I don't know whether I will ever see him," and that is all I say.

Q. Now, Mrs. Pica, did your husband ever threaten to leave you, before he actually did leave? A. Yes. 30

Q. Tell us about that? A. He always says I was eating his blood and he was going to leave us. He didn't want to feed us any more, and I said that I was going to leave—that he wanted us to starve.

Q. Did he give you money while you were living together? A. He gave me as much as he had left. For five months he didn't have no money. He didn't have no store, and I told 40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

10 him to get an independent business—"I would like to see you in an independent business"—and he said, "I will do what I can. There is not much money in the neighborhood," and he went to Grantwood, and he never talked to me after that.

Q. Was that quite a while before he left you that he refused to talk to you? A. There was quite a while before he left me that he refused to talk to me.

Q. How long did that keep up? A. Five months.

20 Q. Then what, if anything, happened, about two months before he left? Did you have any quarrel? A. Well, he—before he left—one night he came to me—that was two weeks after my brother died and my niece was there and we had company—it was not such particular company—it was a family that came in right after dinner and he left and went out—he went over to my sister-in-law, see—and I felt just as bad, for my brother was my flesh and blood—he left me there and never gave me a word
30 or anything—he went to keep company with the other woman—he was more interested in her than he was in me.

Q. Whom do you mean by "the other woman"? A. My sister-in-law.

Q. Mary? A. Yes.

40 Q. Did you know that he went to live there with her after? A. He went to stay there all the afternoon and he came home at nine o'clock that night and found the door was latched and he raised a rumpus. He rang the bell and the boy went down to open and he come up

Defendant's Witness, Mrs. Giuseppe Pica, Direct

and he was wild. He says, "Who is boss here? Who has got the say here? Is your being boss to close the door at nine o'clock at night in a week night?" There was children there and nobody had come and he pound on the table and let all the dishes and cups go and everything, and I was there, all nervous and sick, and you know I had a feeling for my brother, just the same, and he never did say one word to me, and I told him, "What do you do this for in the presence of strange people?" I told him, "That is not nice," and the children started to scream and they didn't know what happened, and there was a little boy there with a hot chocolate and he started to holler, "Uncle Joe, what is the matter? Why don't you wait till she tells you?" And he told me I wasn't his wife—"You are nothing to me—you are not my wife."

Q. To whom did he say that? A. He hollered that out so that everybody could hear it all over the neighborhood.

Q. Was anybody present at that time? A. My niece—she was there.

Q. And the children? A. Yes.

Q. Was anybody else there? A. Vincent and Frances was there.

Q. Now, did he at any time threaten your life with a revolver? A. Yes.

Q. When was that? How did that come about? A. Well, I just can't remember the date, but it was long ago, I think.

The Master: How long ago was it? 40

The Witness: Well, from now on about fifteen years.

The Master: I don't want to hear it, then.

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Did he ever strike you? A. Yes—when he says when we went to Coney Island, that not the truth. I did not go to Columbia Park, I went to see my sick brother and it started to rain when we came back and of course we had to hide under the awnings and we came home and it was 11 o'clock, and no more, and we got in the house and my feet was wet and I tried to make myself comfortable to go to bed and he come out in his underwear in the hall and he tried to beat with his fist, and he says, "Who is boss, who told you to go there," and I said I had permission before I went and the boy he had heart trouble so he started to beat me, the way he says I struck him—I had in my hands an umbrella, hanging in my hand and went this way to hide myself and he strikes me right in the face and makes it black and blue, so the girl came and she was in bed and she came in the room and said, "Don't hit Mama because she is sick, hit me instead of her," and he says, "You get out of here"—she works for me like a slave, she is the only one that makes me rest my bones, she is the best girl in the world and I can prove that to any that I say it myself.

Q. Was there any time that he threw a piece of bread at you? A. Yes.

Mr. Armstrong: Don't let her tell that.
The Master: It is objected to.

Q. Tell us about that incident? A. About what?

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. About the time, if at all, that he threw a piece of bread at you? A. Every time he talk he says he is going to town right off, and I didn't object and I told him to go, and he says, "I am going to cut in your throat, that is the only way you shut up." 10

Q. Did he ever at any time cause you to be sick? A. Did he cause me to be sick?

Q. Yes, tell us about that? A. He was sick first and then I told him to be careful because I say he would not tell me only when he had his mouth all sore like he had double lips you know what all the corners were sore, and I said, "What is the matter with you," and of course, he wouldn't say, and I say of course you ruin all the rest at least for the conscience for the children they are here and I say, "You tell the truth I go keep everything separate from you," so he didn't say yes and he didn't say no, he must have the truth. When he had the doctor, he wouldn't call on me, he was there five or six months in bed, and he was living in the back of the store, and he wouldn't have him when I was sick, he didn't want to know if I didn't have a fever I was not sick for the trouble he give me, and after that he give it to me. 20 30

Q. He gave you what? A. He gave me his sickness.

Q. Gave you disease? A. Yes.

The Master: Is there any proof outside of her story?

Mr. McCombe: I don't know. 40

The Master: He will deny it, I suppose. How long ago was it?

Defendant's Witness, Mrs. Giuseppe Pica, Direct

The Witness: It was the year of the armistice.

10 The Master: That is away back. If you mean nothing was done about it and then they lived together long after that?

Q. After that, Mrs. Pica, did you have any trouble? A. Every day, in God's sight, for 26 years. That is the story every day.

Q. Now, did you at any time refuse to be a wife to him? A. No, I never refuse.

Q. Were you always willing to have the meals cooked? A. Yes.

20 Q. And do everything a wife should do for a husband? A. Yes, his clothes cleaned and everything.

Q. Do you recollect the time these two men called at your house that have testified here? A. Yes.

30 Q. Will you tell us about that? A. Well, I wasn't feeling well, I had the grip the day they come and because I wasn't better at all to let them in I wasn't in condition to talk to them and I see one of the men I know and he says all right, and I told them to come in and they didn't say nothing to me, and, now, I was kind of nervous and sick, and I didn't want to hear nothing and they didn't say nothing—"We came here of course for Mr. Pica," and I said, "Yes, it is not you I want, I want him," and they said, "He has done nothing, he is a good man and he wants you to apologize
40 to him," and I said, "I have done nothing to him, I have been for him the best wife, and

Defendant's Witness, Mrs. Giuseppe Pica, Direct

I don't do nothing to him and he leaves me and go away just because he wanted to."

Q. Did they ask you to go back to him?

A. They say they want me to apologize to him and that he would come back to me.

Q. Tell us about it, tell us just what your Honor wants to hear, you tell us? A. Why, strange people don't know nothing, why didn't he come, I always want to see him, the lawyers tell me when I go to sign the paper he didn't want to see me at all. 10

Q. Who said that? A. Mr. Messani.

Q. Mr. Messani, the lawyer at the time you signed the deed? A. Yes.

Q. I am referring to the time that these two men called and said they asked you to go back with them to your husband, is that true? A. They didn't say nothing, they said, "We came here for Mr. Pica, I think you know what it is," and I said, "It is no use—I want my brother to tell something here, you are strangers, and strangers don't know anything about it." 20

Q. You didn't know these men before, did you? A. I know one, just to be introduced. 30

Q. Had he ever been to your house before that time? A. No.

Q. And he has not been there since? How long did they stay? A. They didn't sit down, just stand up.

Q. Now, who is this one they call Pastelle? A. Her real name is Pasterelle—of course, she call herself in English, Lina.

Q. Did she ever come to your house? A. In the month of May. 40

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. What year? A. Last year.

10 Q. Last year, 1928? A. Yes, and the first thing she asked me how was the boy, "What is the matter with the boy, you sent a telegram to Joe that the boy is ill," and I said, "The boy, thank God, is in good health, but he is not interested in the boy, that he brought the boy up and he wanted to adopt him as his own son, he was not interested in the boy, he is interested in the other people's boy," and I say, "Was he interested in me when I was sick, he never wanted to hear how I was, he didn't believe in the doctor, and he did not think that I was sick, I didn't have no fever and he says I don't believe you were sick, and many times he told me, he come before me when I wanted to be treated, he would say, 'I don't care what you do with the other people's money, whether it is a relative or not.'"

20

Q. Did she ask you to make up with him?

30 A. "He used to pay you money and if he did not like you he would not do that," and I said, "He is my husband, and I demand money."

Q. Did she ask you to make up with your husband? A. She says look at all the trouble I had with her, the trouble she had with her husband, and I said, "They are all wonderful, but I don't put up with them," and I said, "All right, there is nobody I want, I want him to come to my house."

40 Q. You wanted him to come to your house, did you tell her that? A. They came to her house, her and her sister.

Defendant's Witness, Mrs. Giuseppe Pica, Direct

Q. Did she at any time during the conversation you had with her asked you to make up with your husband, yes or no? A. She said, "Why don't you come together?" I said, "I am sick, I can't keep myself, I don't why he leave me, why he want to come back now, he said himself he didn't care for me, he didn't love me no more—men they love when he lives with wife, and he has nothing to do with her when she is sick." 10

Q. Did your husband ever tell you that he loves you? A. He never told me as long as we were married that he loves me.

Q. Did he ever tell you that he didn't love you? A. He never told me that he didn't love me neither—he didn't say that. 20

Q. Now, your brother's wife, she lives downstairs? A. Yes.

Q. Did you ever have any trouble with her? A. Well, she blamed me for it.

Mr. Armstrong: I object to that as being immaterial.

Mr. McCombe: I withdraw that. 30

Q. She was living there at the time your husband lived there? A. No.

Q. Did you ever show her any letters that was supposed to come from your husband? A. Not me, I didn't show her any letters to her.

Q. Did you ever have any conversation with her about your husband?

Mr. Armstrong: I object to that as immaterial. 40

Mr. McCombe: If your Honor please,

Defendant's Witness, Mrs. Giuseppe Pica, Direct

it came out that this lady said that she had said lots about her husband, I think your Honor will recall that testimony.

The Master: There is testimony in the case to that effect.

10

Mr. McCombe: This lady, his brother's wife, testified on the stand in the direct-examination that Mrs. Pica was always criticizing her husband.

Mr. Armstrong: In the defense of the husband's witnesses, you are asking her now only where they were present.

20

Mr. McCombe: Mr. Armstrong, at no time was this brother's wife living in the house while Mrs. Pica was there, so that he could not possibly have been there during the conversations that she says she had.

The Master: All right, I will admit it.

Q. Did you at any time have a conversation with the brother's wife with respect to your husband?

30

The Master: If so, when—

Q. If you remember when, state when it was?

A. I never criticized my husband—the fact that he left me and I did not deserve it.

Q. That answers the question? A. She is my enemy, I don't know her, she is out for my husband.

Q. Did you ever tell her that you didn't want to have anything more to do with your husband? A. I tell her that? Never.

40

Mr. McCombe: That's all.

Defendant's Witness, Mrs. Giuseppe Pica, Cross

CROSS-EXAMINATION by Mr. Armstrong:

Q. Mrs. Pica, when you were married to your husband, in addition to your husband living in the house at Spring Street, you had other members of your family living with you, did you not? A. Yes. 10

Q. What was the other names? A. Well, my two brothers, one is dead and this one that I have got here.

Q. Did you have anyone else? A. Louis.

Q. They continued to live under the same roof with you and your husband in New York? A. He wanted them to.

Q. I am asking you? A. Yes. 20

Q. When you came to Jersey City, they came along with you? A. Yes.

Q. Who supported them? A. They supported themselves.

Q. How old was Louis? A. Louis was working.

Q. How old was he when you were married? A. He was 16.

Q. How old was the niece? A. My niece? 30

Q. The girl that lived with you, Fannie or Frances? A. I don't get you right, I don't know if you mean my brother, but the girl she was only a child, yes.

Q. How old was she? A. About two and a half years old.

Q. How old was the other? A. It was not born yet.

Q. How many were there altogether, your mother was also there, wasn't she? A. Yes, my mother. 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. How old was your mother? A. About 55 or something like that.

Q. Your mother didn't work, did she? A. No, sir.

10 Q. And the two and a half year old baby didn't work? A. No, sir.

Q. Who supported them? A. My brother supported my mother.

Q. He gave enough money to support your mother? What does he do? A. Well, he work, he had a truck, he was working on a truck.

Q. He was working on a truck? A. Yes, and the other one, runners boy in the shop where he was working.

20 Q. You got along happily with your husband then in your New York home? A. Not so well.

Q. Didn't he contribute the money to your support? A. As much as he liked.

Q. He gave you money, didn't he? A. Yes.

30 Q. When you came over to Jersey City and lived in various places in Jersey City with him and they still lived with you until your mother died and then Vincent came to live with you and they came to live with him up until the time that your husband left you, isn't that so, they all lived there in the same house with you? A. Yes.

Q. And up to that time your husband continued right along to give you money, didn't he? A. Yes, he supported me.

40 Q. He gave you money to support the house? A. Just enough to feed us and he was trusting all the time.

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. He paid the rent on the house, didn't he? A. He paid the rent.

Q. He paid the bills of the house? A. I never make bills.

Q. Did he? A. Always what I had I paid for. 10

Q. Where did you get the money? A. He gave me the money.

Q. He paid it? A. Yes.

Q. Now, Mrs. Pica, you remember the time that the house was sold? A. Yes.

Q. Do you know how much money your husband received? A. \$1,000.

Q. Do you know what he did with that thousand dollars? A. I don't know. 20

Q. You don't know what he did with it? A. No.

Q. You are sure he didn't give it to you? A. No.

Q. You are certain of that? A. Surely.

Q. Do you know that gentleman (pointing to man in court room)? A. No, sir.

Q. You never saw him before? A. Never saw him in my life. 30

The Master: Who is the man?

Mr. Armstrong: Joseph Teese.

Q. So you are sure he never paid you that thousand dollars? A. No, sir.

Q. Now, you got checks right along from your husband after he left you, didn't you? A. Yes.

Q. And you got the checks paid to you in the bank? A. Yes, sir. 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. When those checks were sent to you was there any letter? A. Just a few.

Q. There was a letter? A. Not a letter like a few words—

10 Q. Was it typewritten? A. Just two words, he doesn't want my brother to cash the check.

Q. Was the letter typewritten or was it in his own handwriting? A. It was typewritten.

Q. What did you do with that letter—what did that letter say, do you remember? A. That is all he says, he says, "I want you to have the check cashed, I rather have an endorsement and I also need it not from my brother."

20 Q. Not from your brother? A. Yes.

Q. Was that in the same letters all time? A. No, one letter.

Q. You only got one letter? A. Otherwise I got a blank with the check in it, a few words, this month for the June, this month for the April, that is all he says.

Q. That was all that was in the letter? A. Nothing else in the letter.

30 Q. They were all typewritten like that? A. They were all typewritten like that.

Q. Was there as much written as that? A. Never saw a letter like that (indicating).

Q. You never saw that letter? A. No.

Q. Did you ever see the letter from him wherein he asked you to be so foolish to listen to other people, did he ever ask you not to listen to other people but to listen to him? A. I don't listen to nobody.

40 Q. Did he say that to you? A. I never see the letter like that.

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. Do you remember his writing that to you?

A. I do not.

Q. Would you say that he never wrote it to you? A. Not that I know of.

Q. Did anybody else receive the letters but you when they were sent to the house? A. I just know when he sent it, the mail man always to handed it to me. 10

The Master: He always handed it to you and he never gave them to your niece?

The Witness: No, sir.

Q. Now, you said something sometime ago that he gave you a sickness? A. Yes.

Q. How long ago was that? A. I told you that was in August. 20

Q. About fifteen years ago? A. Armistice day.

Q. Eleven years ago? A. Yes.

Q. Did you have a doctor? A. Sure I had a doctor.

Q. What doctor did you have? A. I never told the doctor what he gave me.

Q. Nobody ever knew it? A. No, nobody ever knew that I was sick. 30

Q. You never told anybody about it? A. Yes, I told it in the family.

Q. Oh, you didn't say anything about it to them, you didn't tell the doctor? A. He didn't want me to go to the doctor, and I went to the doctor and he saw what was wrong.

Q. Why didn't he want you to tell the doctor? A. The doctor says he wants him to come when he is curing me, unless he was present 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

there, he had to see what was the matter with me, too.

Q. Now, you knew Mr. Russo? A. Yes.

10 Q. And you know Mr. Amroso? A. I only knew him, I was introduced to him when my brother died.

Q. You only know them from having met them once? A. From having met them once.

Q. And you know Mr. Russo, your husband introduced you to Mr. Russo? A. My husband introduced me to Mr. Russo.

Q. Do you know anything about their reputation? A. I did not give any conversation with the men.

20 Q. You remember they calling upon you at the house? A. Yes.

Q. They were both together, weren't they? A. Yes.

Q. What did they say to you, and how long were they there? A. They stayed about a half an hour, they didn't sit down.

Q. They were standing up for half an hour? A. They stood there talking, you know.

30 Q. Did you ask them to sit down? A. Surely, I just said sit down, of course, I can't be sure about it, because I am sick at the time.

Q. How did you know what they were talking to you about? A. They said they came on account of my husband.

Q. They said they came for your husband? A. They came from Mr. Pica and I says, please don't go any further, I don't want to hear about it.

40 Q. You didn't want to hear them? A. I was sick, I was too nervous.

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. Did you know that they came there to ask you to make up with your husband? A. I tell you I smiled and I say please don't go any further, that is all.

Q. What did they say to that? A. They didn't say nothing. 10

Q. They didn't ask you, those two men, didn't ask you, to make up with your husband, to make peace with him? A. Mr. Russo says to me we want to be (he uses an Italian word).

Q. Peace, is that the word, the Italian word that they used, to make peace? A. I remember that they mentioned in the hamer, and I am so sick if I didn't know it was you I wouldn't have asked you in. 20

Q. Now, Mrs. Pica, is it a fact you didn't want to live with your husband? A. I always wanted to live with him, I always wanted him to ask for my forgiveness.

Q. Didn't you many times tell him to get out? A. Never in my life.

Q. Did you hear your niece say to him to get out? A. Never, she had no business to say that, not in front of me. 30

Q. You say that you never at any time when he was there told him to get out of the house? A. I never did.

Q. Now, why didn't you speak to him in the hospital? A. It was not my place, he left me.

Q. Did you love your husband? A. Did I love my husband? Yes.

Q. Yet you wouldn't talk to him in the hospital? A. Well, I couldn't do it.

Q. You were anxious for him to come back and tell you that he was sorry he went away? 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

A. Yes, he had to apologize for what he done, that is not nice leaving a woman that hadn't done anything to him, and not to come back to me and apologize.

10 Q. Don't you know that the cause of all the trouble between you and your husband is by your own family? A. No, sir, my family all liked him, and I never could say once that they mistreated him.

Q. Did anyone ever come to visit you after he left and you refused to let him in? A. Yes.

20 Q. You knew then where he was, you saw him right there? A. That would not help me.

Q. You say you still love your husband? A. I do.

Q. Yet you said this morning that you would not go back to live with him? A. I am afraid to take a chance, I cannot stand it any more this treatment, like he did treat me before, I am sick with him.

30 Q. Do you ever remember seeing your husband call at your house twice? A. Called to see me, no.

Q. After he left? A. He has got a key, he could have come in if he had wanted to.

Q. Didn't you open the door and close it in his face? A. No, sir.

Q. Didn't you hear him testify this morning that you wouldn't let him in the house? A. He never come.

Q. Are you sure about that? A. I am sure.

40 Q. Now, when Lina Pica came to see you, when was that? A. That was in May.

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. How long did she stay? A. Well, she stayed—she was sort of excited because her husband was downstairs in the automobile waiting for her and they didn't stay very long—you couldn't talk things to them and I say just what I wanted to. 10

Q. What did you say to her? A. She come in and says, "How is the boy," and said, "You sent a telegram to Joe why he is sick in the hospital," and I said, "They heard my Vincent was sick."

Q. What else did she say? A. Being an excuse for Joe to give you money.

Q. Did she say anything about peace also? A. She just said I ought to make peace with Joe and I says, "Your people they never come to my house only when they are full of trouble." 20

Q. You didn't want to answer Lina? A. She never came to my house except when she was full of trouble.

Q. You wouldn't talk to Lina there, would you? A. Why wouldn't I talk to her.

Q. Did you tell Lina you would be glad to make peace with them? A. No, I didn't, I felt sick inside. 30

Q. You didn't feel well that day? A. No, I was sick all the time.

Q. Anybody tell you about your husband and make you sick at once? A. Is that so.

Q. Isn't that so? A. I love my husband, I give respect to him all the time.

Q. Now, before he left you, Mrs. Pica, you did not occupy the same room, did you? A. It didn't make any difference, I never refused him. 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. Will you answer my question? A. No, I did not occupy the same room with him.

Q. How long was it you did not occupy the same room? A. I couldn't tell you that, because
10 he was sick, he had a sore arm, and he used to sleep alone to himself.

Q. How long was that, two years? A. I don't know how long he was sick.

Q. How long since he occupied the same room with you, how long did you live apart in different rooms? A. I couldn't tell you.

Q. Was it a year, five years or ten years? A. Oh, not a year, it didn't make any difference, I was his wife all the time.

20 Q. Will you answer my questions, Mrs. Pica, how long did you occupy separate rooms? A. Since we were in this house he lived in a separate room.

Q. Ten years? A. Four or five years.

Q. So for four or five years neither of you occupied the same room where you slept, is that so? A. Yes.

30 Q. Yet you say you loved your husband? A. Yes, he was my husband, too.

Q. Did you ever say anything to him about it, about living apart in the same house? A. I did not tell him not to live with me—we didn't have enough room, so we divided it by a door.

Q. Were you satisfied? A. Whatever he said.

Q. You were perfectly satisfied for five years to go on that way? A. He was my husband all the time.

40 The Master: Did you tell this witness—I have

Defendant's Witness, Mrs. Giuseppe Pica, Cross

forgotten her name—that you didn't sleep with your husband a year before he left?

The Witness: I did not tell that—what is between husband and wife—he was satisfied.

The Master: That isn't the question—I have forgotten the witness's name—you told her you didn't sleep with your husband for a year before he left, did you say that to her? 10

The Witness: I didn't say it to nobody.

Q. You testified on direct-examination, Mrs Pica, that you went to court and that the Court made your husband pay you \$50? A. I did not went to court, I left it to the lawyer.

Q. You did not go to court at all? A. They did not call me. 20

Q. You were never in a court room? A. No.

Q. Your husband voluntarily paid to you \$50 a month? A. He got a summons after nine months.

Q. Now, you remember the brother that was going to see you, Mr. Pica's brother, your husband's brother, don't you remember his coming to see you? A. I see him, sure.

Q. When was that? A. I told you it was the day after New Years. 30

Q. When? A. The same year he left.

Q. He left on September 28th, 1926, and on January 1st or January the 2nd he came to see you? A. Yes.

Q. What did he come to see you for? A. He came there and he says he wants to know why I blame him for it.

Q. Did you blame him? A. Surely, I blame him. 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. Why did you blame him? A. I blame him and the rest of his family.

Q. Who did you tell that to? A. I tell it to, I tell him.

10 Q. You told the brother? A. Surely.

Q. When had you seen the brother before that? A. The day after New Years.

Q. That is the time I am speaking about, you saw him, you blamed your husband's brother, he didn't know that you blamed him, did he? A. He did know everything.

Q. How did he find it out? A. I don't know, he must have blamed himself.

20 Q. He stays with you about an hour? A. I don't know, I didn't time it.

Q. Wasn't it a very long visit? A. I didn't time him.

Q. You know, Mrs. Pica, whether he stayed five minutes or whether he stayed an hour? A. He stayed quite a while, I said.

Q. He sat down and stayed quite a while with you and talked over things to you? A. So I did talk to him nice.

30 Q. He said to you, didn't he, that he came about his brother? A. He came about his brother, and he came about seeing why I had blamed him.

Q. On your direct-examination you said that he only came there to see you, why you blame him, so you did talk about his brother? A. He did. He stands at the door and he said, "Don't tell my brother that I was in to see you."

40 Q. You didn't see any reason why that would cause any trouble? A. That is what I thought,

Defendant's Witness, Mrs. Giuseppe Pica, Cross

I thought he merely came there to say something.

By the Master:

Q. Did he tell you where your husband was?

A. He didn't tell me where he lived, he says he is going into business with him. 10

Q. Did you ask him where your husband was living? A. He says, "I didn't see him, I don't know where he is, he is coming to live with me, I am about to buy a business with him."

Q. Did you know where your husband was?

A. No.

Q. Did you know where his mother was? A. His stepmother lives with his brother. 20

Q. You didn't know where she lived? A. I did not, my husband was fighting all the time, and I only knew they were together in the business.

Q. Did you then know where the mother or stepmother lived? A. I found in a letter—he sent a letter to me, so I looked all over and I found a letter and that is how I knew it.

Q. What letter was that, did he tell you where he was living? A. She sent it to my husband, his brother sent it to my husband. 30

Q. When was that? A. A year ago.

Q. A year before? A. I looked in his paper and I found it.

Q. A year before he left or a year after he left? A. Well, it was three months after he left.

Q. Is it three months after he left? A. It was more than that. 40

Defendant's Witness, Mrs. Giuseppe Pica, Cross

Q. Do you know where your husband was living at the time his brother came to see you?

A. I don't know.

10 Q. Did the brother tell you? A. He says he is coming to live with me and that he was living with him.

Q. Did you then know where the mother lived? A. I did not know that, I did not know except the address, and I had to find it out.

By Mr. Armstrong:

20 Q. Now your brother-in-law you say was there for about an hour; tell us what you talked about at the time you blaming him? A. We didn't say nothing about that.

30 Q. What else did you say to him? A. He says he comes to live with him, they are going to try a business. "Well," I says, "it is all right— Well," I says, "the way he leave I didn't do nothing, I got up that morning and I saw him eating his breakfast, and he saw me and everything and he would not find out whether I died or lived—a dog gets treated better—he was eating there and I looked at him and he looked at me and it seems that I will never forget that morning, he left, and I have never seen him since.

Q. He didn't talk about his brother at all? A. He says I don't know what to make of him—it must be his old age, he says he must have been a fool in his old age doing those things.

Q. That is all he said about his brother? A. That is all he said about his brother.

40 Q. Did you say anything to him about your

Defendant's Witness, Mrs. Giuseppe Pica, Cross

husband? A. I told him about my husband going away.

Q. Did you ask him where he was and you said that he left you? A. I asked him where he was and he said he was going to live with him. 10

Q. Did you ask him where he was living, ask whether he was going back, did you ask him that? A. It was no use for me to go along talking about that.

Q. Were you sorry he had gone? A. No, he says, don't say nothing to him.

Q. Were you sorry that your husband was gone? A. Sure, I looked for my husband, I went all over. 20

Q. And yet you had an opportunity in the hospital to talk to him? A. After a year and a half, he ought to have come to me, not me go to him, you see, that was a year and a half after.

The Master: You knew where your husband worked?

The Witness: No, I know where he was working by his stepmother, told a friend of my brother, that is how I know—he never told me where he was working, and I went to the gas company to make an application and I suppose they all laughed at me that I couldn't tell where he worked—they never told me anything where he was working. 30

Q. Didn't you make an affidavit in this case that you knew where he was working, knew what his wages were, and didn't you swear to 40

*Defendant's Witness, Mrs. Giuseppe Pica,
Re-direct*

such an affidavit? A. On the check that he sent me I found out where he was working.

The Master: Answer.

10 The Witness: Yes, on the check.

Mr. Armstrong: That is all.

*RE-DIRECT EXAMINATION by Mr. Mc-
Combe:*

Q. Mrs. Pica, when he left you do you know whether or not he took the keys with him? A. Yes, he took the key.

20 Q. Has the same lock been on the door ever since? A. Yes.

Q. And is still on it? A. Yes, sir.

Q. Hasn't been changed? A. No.

Q. And now you spoke—I may have misunderstood about that—the disease your husband gave you, did you doctor for it? A. Yes, I went to the doctor.

Q. Went to the doctor? A. Yes.

30 Q. And the doctor treated you for it? A. He treated—he would not help me, he says I must have him to the doctor. It would not do me any good to get treated without him.

Q. Something was said about your not occupying the same room for several years before he left; was that at your suggestion or your husband's suggestion? A. Yes, we had no room together, and it was agreed together that that should be the way it would be.

40 Q. Did he refuse to sleep with you or did you refuse to sleep with him? A. Nobody refused

*Defendant's Witness, Mrs. Giuseppe Pica,
Re-direct*

to sleep with anyone. No matter when I had this because we had never lived apart, he was always my husband.

Q. Did you ever refuse to be a wife to him?

A. No, sir.

10

Mr. McCombe: That is all.

RE-CROSS EXAMINATION by Mr. Armstrong:

Q. Did your husband ever say to you, Mrs. Pica, that he thought you and he could get along better if the niece and nephew were not with you? A. Never, he said he wanted the control and he wanted to live the same way—somebody must have put something in his ear, that is all.

20

RE-DIRECT EXAMINATION by Mr. McCombe:

Q. How did the niece and nephew ever come to live at your house? Who brought them there, who suggested they come in there? A. Because my sister visited me with the boy—my sister visited me and she said if he wants the boy to live with you he should take the boy away from me—so he took the boy away from my sister—she had a good boy and he leads a good life.

30

Q. So it was through your husband that the boy and girl came to live with you? A. It was him, yes.

Q. They made no trouble? A. The children never make any trouble, the best children anybody could have.

40

*Defendant's Witness, Mrs. Giuseppe Pica,
Re-direct*

By the Master:

Q. How old is your husband, Mrs. Pica? A. About 53.

10 Q. How old are you? A. About 52, going on 53 in June.

Q. You spoke of being sick? A. Yes.

Q. You are sick all the time? A. I believe I have high blood pressure.

Q. What else is the matter with you? A. Neuritis.

Q. What time was it, what time of the day was it your husband left? A. About half past six in the morning.

20 Q. When he left was the niece there and the nephew there? A. Yes.

Q. Were they working at that time? A. The boy did.

Q. The girl she did not work? A. She did not work, she take care of me.

Q. She worked in the house for you? A. Yes, for her support, that is all, got nothing for it, just her support, she is a slave, she is.

30 Q. When the husband's brother came to see you you say it was the day after New Years in 1927 and your idea was that your husband should apologize to you? A. Yes.

Q. He should come there and should apologize? A. That is all that I was waiting for all the time—I didn't want nobody else—there was nobody between me and him.

By Mr. McCombe:

40 Q. Mrs. Pica, you are still doctoring for nervous trouble? A. Yes.

Defendant's Witness, Charles Guerrieri, Direct

Q. How long have you been doctoring? A. Since I have been treated for this high blood pressure about six years.

Q. You are still under the doctor's care?
A. Yes, from January to a couple of weeks ago I have been in the bed all the time.

10

The Master: Does the niece still live with you, Mrs. Pica?

The Witness: Yes.

The Master: And the nephew still lives with you?

The Witness: Yes.

Mr. McCombe: That is all.

Mr. Armstrong: That is all.

20

CHARLES GUERRIERI, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

Q. What relation are you to Mrs. Pica? A. I am her nephew.

30

Q. How long have you been stopping at that house? A. How long I have been there?

Q. Yes? A. Since I was two months old.

Q. Your uncle—you call him your uncle, is the petitioner in this case? A. Yes.

Q. Have you at any time had any trouble with him? A. Well, I didn't have any trouble with him.

Q. You never had any trouble with him? A. Never had any trouble with him.

40

Defendant's Witness, Charles Guerrieri, Direct

Q. Always been on friendly terms? A. Yes.

Q. Have you had occasion to observe how he treated his wife? A. She is just like a mother to me.

10 Q. Have you had occasion to notice how he treated her, whether he treated her respectfully or disrespectfully? A. He didn't treat her at all, he was just rude to her.

Q. Tell us only what you actually know about their relationship as man and wife while you were living there? A. There is plenty of times he claims that he gave my mother his full pay envelope on Saturday night and when my mother used to go out to the stores my sister used to
20 know his pay and he never gave her his full pay.

Q. He never gave her his pay? A. He handed it to her.

Mr. McCombe: The petitioner and defendant are called mother and father by this boy.

The Master: Yes.

30 The Witness: He always had a sneaky way of talking, he never would talk right. He always would make dresses for mother, just for her, and he would work them the way that he wanted to, and if my mother wanted them fixed her way he would raise hell. Just like when he opened that store in Grantwood he would come home any time he wanted to, he never would say a word to her how he was getting along, if he needed her or anything, and
40 sometimes he gave her \$20 and wanted her to get along on \$20 for the week, and another

Defendant's Witness, Charles Guerrieri, Direct

thing—all right, he did give me an education, but he left the debt there that I had to pay \$15 to Egan's Business School in Hoboken—he left that money behind him and he still doesn't pay on it.

Another thing on the Fourth of July there when he claims when we went to Columbia Park, that is my mother and sister, I went down—we have a French poodle and I went down and told him, that is my father that we were going up to see Uncle Jim and we would take the French poodle with us, and I will leave "dad" down there so he didn't just exactly answer me but I can tell by his face that he didn't like the idea.

10

20

The Master: That is inconsequential. Of course this young man does understand he is telling the truth, and I have no doubt that it doesn't help at all.

Q. Now, what if anything, did you ever hear your mother being called—how did he address your mother? A. There is plenty of times he would say something to her, call her names—

30

Q. What do you mean? A. Call her names in Italian, he would call her vulgar names.

Q. Tell us one of the names, one of these vulgar names, were there words you do not feel like repeating? A. Yes.

Q. Curse words? A. Yes.

Q. What do you mean to say, what were they? A. Son of a bitch and everything.

Q. Was that more than once? A. He would say that plenty of times, every time he would begin to eat that was all he would say.

40

Defendant's Witness, Charles Guerrieri, Direct

Q. Was that more than once? A. He used to have fights on everything that she cooked, he would find fault with everything that she cooked.

10 Q. What do you mean finding fault? A. He would find fault with everything that she gave him, say they are not cooked right, and start in to fight about it.

Q. Did you ever see him strike your mother?
A. Yes.

Q. More than once? A. I never saw him strike her more than about twice.

20 Q. When was that? A. That was on the Fourth of July, when we went up to see my uncle when he was sick—I know that we went up to my uncle's, he had been sick, he had heart trouble.

The Master: How long ago was that?

The Witness: That was the Fourth of July.

Q. How long before he left, July of the year he left? A. That was around the year he left.

30 Q. What did you see him do? A. Well, I know that I was in the bed and heard him hollering at my mother and I got up and just as I got up I saw him hit my mother, so my sister came out and stepped in between them and told him not to hit my mother that she was ill, and he says if she didn't keep still he would hit her.

The Master: What was your mother doing?

The Witness: I was pulling them by the arm and telling him not to strike my mother.

40 Q. Did he call her any names at that time? A. I don't remember that.

Defendant's Witness, Charles Guerrieri, Direct

Q. When was the next time, if any, that you saw him strike your mother or call her names?

A. That is all I can remember.

Q. Do you remember anything about a door?

Mr. Armstrong: Don't lead, Mr. Mc- 10
Combe.

The Witness: Oh, about that screen door?

Q. Yes? A. It was right after dinner, that was around 3 o'clock—he left the house and went up to my aunt's house in Union City, and at that time my married sister and brother-in-law came over with the children and so he comes home about 9 o'clock and he found the screen door locked. We always kept that screen door locked in case it is open and nobody can walk up so he rings the bell and I go down and he started in hollering on the porch, "What have you got the screen door locked for," and I didn't answer him and so I went upstairs and he came up and goes into the dining room and he started to bang his fist on the table, saying, "Who is the boss here, why was that screen door locked," so my mother answered him in a nice way and she says, "The screen door is supposed to be locked because anybody could come up," and he was screaming and hollering around just like a wild beast and we couldn't keep him down. 20

Q. How was your mother treating him? A. My mother treated him like a king, a king could not be treated better. 30

Mr. McCombe: That is all. 40

Defendant's Witness, Charles Guerrieri, Cross

CROSS-EXAMINATION by Mr. Armstrong:

Q. How old are you? A. I will be 22 next month.

10 Q. You lived with your father all your lifetime? A. Yes.

Q. You were practically brought up by him? A. Yes.

Q. For those 22 years? A. Yes.

Q. And that was the only time you ever saw him strike your mother, that once in the 22 years as far as you can remember? A. Yes, but I may say that I was a young baby and he may have struck her and I didn't notice it.

20 Q. You don't know whether he ever struck your mother or not? A. Not except that time.

Q. The one occurrence you spoke of was the only time in your whole lifetime that you ever saw him strike her? A. There is plenty of times he tried to do it.

Q. Now you testified that he always gave you the pay envelope? A. Every week he gave me the pay envelope.

30 Q. He never give it to your mother? A. No, sir.

Q. Every Saturday night he gave you the pay envelope? A. He always told me to turn it over to my mother.

Q. You know that he kept on doing that? A. I can't just remember when he started doing that.

Q. A good many weeks as you remember? A. Quite often.

40 Q. For how far back? A. Well, it is about—

Defendant's Witness, Charles Guerrieri, Cross

Q. (Interrupting.) Before he left I mean, from that time did he keep giving you the envelope? A. About a year back.

Q. Every Saturday night he came in and gave it to you? A. No matter what it was, how much it was he always gave it to me. 10

Q. And you turned it over to your mother? A. Sure.

Q. Was the envelope open? A. Never, no, the envelope was always folded and he handed it to me that way.

Q. He gave you the money? A. He just gave it to me that way.

Q. I understood you to testify that he always handed you the money? A. He just gave me the money that way. 20

Q. Every week? A. Yes.

Q. How much was it that he gave you, do you know? A. One week \$33, another week \$45—just what he was making.

Q. What he was making he gave to you? A. Yes.

Q. Did you hear your mother testify that he never gave her any money except two or three dollars, that he kept his own money—did you hear her say that on the stand? Did you or didn't you? A. Well. 30

Q. Did you hear your mother say that he gave her two or three dollars at a time and that she had no money to run the house on? A. Yes.

Q. How do you reconcile that with what you say? A. He would give me \$32, \$42— 40

Q. And sometimes \$50? A. Yes, that was a matter of two or three years.

Defendant's Witness, Charles Guerrieri, Cross

Q. I ask you to state if it was his practice to leave his pay envelope with you Saturday and you said it was and your mother said that he never left any money for her but two or three dollars, now are you lying or was your
 10 mother lying? A. I guess I made a slip on it, that is all.

The Master: What is the slip that you made?

The Witness: It was just about two or three years that he has done that, it could not be a year ago.

The Master: Two or three years before he left he turned the money over to you?

20 The Witness: Yes.

The Master: Turned it over in the amounts that you just testified to, \$32, \$42 and \$50?

The Witness: Sometimes.

The Master: Each Saturday?

Mr. Armstrong: It was in fact two or three years back, was it?

The Witness: Well, I don't know.

30 The Master: He says two or three years back.

Q. Now you remember when he had a store up in Grantwood? A. Yes, I remember that.

Q. Did you ever go up there? A. No, sir.

Q. Did you know that he was trying to build up a business up there? A. He never gave us any account of what he was trying to do.

Q. You didn't care what business he was in, did you? A. He never came home to tell us.

40 Q. You never was interested to find out what he was doing? A. If he would speak in the

Defendant's Witness, Charles Guerrieri, Cross

right way and tell us I would, but not to do everything on the blind.

Q. You were a young man and he was an old man, wasn't you? A. He done everything out of his head.

Q. He took care of you when you were young, didn't he? A. All right. 10

Q. Why didn't you interest yourself to find out what he was doing and ask him what he was doing? A. Why, he never came over to me.

Q. Why didn't you go over to him? A. Well, he wanted to do everything his way, and I couldn't go right near him.

Q. Did you always like your father? A. Well, I didn't for a few years back. 20

Q. You had nothing against him up to the trouble? A. I like him once in a while except when he was acting like a beast.

Q. You had a feeling for your father? A. Just up until about ten years ago when he began acting that way to my mother.

Q. When he left, did you feel bad about it? A. No one did in the house.

Q. You felt bad when he went away, didn't you? A. Sure. 30

Q. Did you do anything to try to get him to come back to your mother? A. No, sir.

Q. Did you care whether he came back? A. I wasn't chasing him, he was to come back and apologize himself.

Mr. Armstrong: That is all.

*Defendant's Witness, Charles Guerrieri,
Re-direct*

*RE-DIRECT EXAMINATION by Mr. Mc-
Combe:*

10 Q. Did he ever write you any letter asking you if you could get your mother to come back to him and live together? A. No letters, not about getting my mother back.

Q. I show you a letter dated March 31st, 1928, addressed to Dear Vincent, and I ask you if you ever saw anything like that before? A. Yes, I saw that.

Q. You have seen that before? A. Yes.

20 The Master: Dear Vincent: Enclose find a check for \$50—the letter is dated March 31st, 1928—I hope you will receive it in good health. I am sorry that you were sick and I am also sorry that you have not written to me. I hope you still remember all that I have done for you. Why don't you write or come to see me. I trust to hear from you soon.

30 Q. Did you show that to your mother? A. My mother saw that.

Q. You showed it to her? A. Yes.

Q. Did you answer that letter? A. No, sir.

Q. Why? A. Well, just because he left on his own accord. I was not going to answer him back. If he wanted to get in touch with me he could come right to me and apologize, and make up.

40 Q. That is the only reason that you refused to write to him? A. Yes, because he left on his

*Defendants' Witness, Charles Guerrieri,
Re-cross*

own head—no one done him any harm, we treated him like a king and he knows it.

Mr. McCombe: That is all.

RE-CROSS EXAMINATION by Mr. Armstrong:

10

Q. Did you show that letter to your mother?

A. Yes.

Q. You heard her testify this morning the only letter she ever received was just a few lines across the check, did you hear her say that? A. Yes.

Q. I show you the other letters here and ask you if you ever saw them? A. I never saw them, no. I don't have to look at them, I know that I never saw them.

20

Q. Look at them? A. I don't have to read them, I never saw them.

Q. This one looks almost like the other one?

A. That is the only one I saw (indicating)—I didn't say I received this one (indicating).

Q. You are sure you never saw any of those letters? A. No, sir.

30

Q. The writing is the same typewriting as that letter? A. All right, I never saw that, that is all.

Q. That is the one dated March, 1928, that is the month after, the same typewriting? A. I never saw that.

Q. Did your mother ever tell you that she received any letters from your father? A. I never was told.

40

*Defendants' Witness, Charles Guerrieri,
Re-cross*

- Q. You don't know whether she got any letters or not? A. No, sir.
- Q. Do you know whether she received any checks from him? A. That I know.
- 10 Q. You know she got checks? A. Yes.
- Q. How do you know she got checks? A. I say she just told me, that's all.
- Q. You didn't see the envelope they came in? A. I didn't see anything.
- Q. Who told you? A. I was told by my sister.
- Q. By your sister, that he sent a check? A. Yes.
- Q. Did you ask to see any letter in which he sent a check? A. No, sir.
- 20 Q. You weren't interested, were you? A. No, sir.
- Q. Now, in one of those letters that you received your uncle sent you \$10, did he? A. Yes.
- Q. That was for you. Did he ever give you any other money? A. That is the only \$10 he ever gave me.
- 30 Q. He never gave you no amount of money? A. Since he is gone, no.
- Q. While he was living home did he ever give you any money? A. Not that I know of.
- Q. You don't remember that? A. No, sir.
- Q. You went to business, too, didn't you? A. Yes, sir.
- Q. Was money given to you to go to business—ever get any money to go to business, carfares, luncheon and so forth? A. Yes.
- 40 Q. Who gave you that money? A. I used to get that from my mother.

*Defendant's Witness, Charles Guerrieri,
Re-direct*

Q. Always? A. Always.

Q. Did your father ever give you any money to go to business? A. I got all of my money from my mother.

10

Q. I mean while your father was living home with your mother, did your father ever give you money to come to New York and buy your lunch and pay your carfare? A. No.

Q. You are sure of that? A. The only money I received from my mother.

The Master: When did you start to go to work, about when?

The Witness: When I was 19.

20

The Master: Then you work right straight from that time down to the present?

The Witness: Right straight.

The Master: You went to school up to that time?

The Witness: Went to school until I was around—I finished Eagan's Business School when I was 19 and then I waited for a while until I got my position—I waited for three or four months.

30

Mr. Armstrong: That is all.

RE-DIRECT EXAMINATION by Mr. Mc-Combe:

Q. In any letter that you may have received from your father did he make any mention of your mother in it? A. That is the only one I received with this check, nothing is mentioned about my mother.

40

*Defendant's Witness, Charles Guerrieri,
Re-direct*

Q. No mention about your mother? A. No, sir.

10 Q. Did you see your father after September, 1926? A. Yes, sir.

Q. Where did you first see him? A. I am an usher in the Roosevelt Theatre in Union City and I was standing in one of the loges Sunday and all of a sudden I looked down and I saw some man calling me, and I didn't just exactly get him, I didn't know that it was my father who was calling me so I bent over and I saw that it was my father and he said, "Sit
20 down here, I want to speak to you." Well, you know, I couldn't go off duty and sit down, in case the manager would come in he would scold me, and I knew that I should not sit down, and I got all excited being that I saw him and I went outside and he claims—he says, "Get off now," it was half past four that Sunday, "Get off and I will wait for you," and I went to speak to the manager, and I
30 couldn't get off and I went upstairs, and he came up and started speaking to me in Italian and he said, "If you don't get off now will you meet me down in Journal Square," that was the following Sunday morning that he wanted to tell me something he gave to my uncle and mother and so I told him I didn't have any time.

40 The Master: When was this?

The Witness: What do you mean, the exact date?

The Master: About that—what month it was, what day?

*Defendant's Witness, Charles Guerrieri,
Re-direct*

The Witness: Oh, I can't just exactly remember.

The Master: How long ago was it?

The Witness: That was last year. 10

The Master: Do you know what signature this is?

Mr. McCombe: No, I am just trying this case on its merits—I asked him if he had ever seen his father after September and he said, "Yes."

The Witness: I said, "Yes, he came up to the show." 20

Q. Did you ever have any conversation with him? A. I don't know what he wanted to see me about.

Q. Did you see him after that? A. I only saw him, when he was coming up to the show that afternoon he was in the trolley car and he came back and he just dropped a card in my lap and he told me to come up and see him. 30

The Master: Did you ever go around to see him after that?

The Witness: No.

The Master: I think we will take an adjournment now—

Adjourned to Thursday, April 18th, at 10 A. M. 40

IN CHANCERY OF NEW JERSEY.

10	GUISEPPE PICA, Complainant, vs. FRANCESCA PICA, Defendant.	}	Before Mar- shal Van Winkle, Esq., Advis- ory Master.
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1 Exchange Place, Jersey City, N. J.
 April 18th, 1929, at

Met pursuant to adjournment.

Present:

20 The Advisory Master.

Appearances:

Anthony V. R. Avallone, Esq., Solicitor for
 the Complainant, Thomas R. Armstrong, Esq.,
 of Counsel.

I. Ross McCombe, Esq., Solicitor for the De-
 fendant.

30 Samuel Harber, Esq.

Mr. McCombe: I might say, your
 Honor, that Mr. Harber has been re-
 quested to come in and be associate
 counsel. I don't know whether he is go-
 ing to do the examining or not.

40 Mr. Harber: I have asked both coun-
 sel whether they had any objection to
 my being here this morning and par-
 ticipating. I have been called in the
 other day by some friends of the family

Defendant's Witness, Frances Guerrieri, Direct

who have been clients of my office for some time. I asked Mr. McCombe about it, and Mr. McCombe said that he was perfectly happy for me to sit in with him.

The Master: I see no objection.

The appearance of Mr. Samuel Harber, is noted at this time.

10

FRANCES GUERRIERI, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

Q. You are the sister of the young man who preceded you, in other words, Charley is your brother? A. Yes.

20

Q. You have been living with the petitioner and the defendant pretty nearly all your life? A. Yes, sir.

Q. And you call them father and mother? A. Yes.

Q. So when you refer to father and mother, you refer to either the petitioner or the defendant, is that right? A. Yes.

30

Q. Where are you living now? A. At 75 Charles Street, Jersey City.

Q. Who are you living with? A. With my aunt.

Q. How long have you been living there? A. Going on eight years.

Q. You have been employed, have you, and earned wages? A. Yes, I did.

40

Q. What did you do with your wages while you were employed? A. I gave them to my aunt.

Defendant's Witness, Frances Guerrieri, Direct

Q. It went into the household? A. Yes.

Q. Are you working now? A. No.

10 Q. Why are you not working now? A. Because my aunt has very poor health, and I have to stay home to do the housework for her.

Q. Are you staying home because you want to stay home? A. No, not because I want to, I am staying home for my aunt's sake.

20 Q. During the time that you have been living at the house what have you got to say with respect to your father's attitude towards your mother? A. Well, he was very disagreeable to her, he was very nasty at times, he never had a nice word for her, he would beat her and do everything to her, he would never give her enough money to cover her expenses in the house.

Q. You are talking of your own knowledge? A. Yes.

Q. That is, you actually know that? A. Yes, I do.

30 Q. What did you say with respect to how he treated your mother? A. He used to come home at night and find fault with the supper, and he called her vulgar names, and sometimes my mother would walk into another room, he would come and get hold of her and pull her hair and he treated her terribly.

40 Q. Was your mother always kind to him in taking care of him? A. I should say so, she was too good to him.

Q. Did he come regularly, or irregularly? A. Never came home any time much since he had

Defendant's Witness, Frances Guerrieri, Direct

the business in Grantwood, I wouldn't see him much at all.

Q. Do you recall any instances where your father had abused your mother? A. Yes, I do.

Q. Will you relate in your own words about the time and the place. A. Well, the time I don't recall, but I know it was not a month or a week—that he didn't get hold of her and strike her just for nothing at all. 10

Q. Do you recall anything happening particularly on the 4th of July, 1925?

Mr. Armstrong: I object to that.

The Master: Have these incidents been testified to by the defense—this constant striking? 20

Mr. McCombe: Yes, your Honor.

The Master: You have had a postponement and now there is a new witness on the stand, and I cannot recall the defendant so testifying, and if the defendant did not cover these acts of violence, if you put her on the stand I shall be suspicious. 30

Mr. Armstrong: There is no such testimony before the Court.

The Master: I remember an affair that occurred on Armistice Day and the testimony of the nephew, and he didn't testify to but one affair. I am constrained to say, that after the long postponement, and with a new witness on the stand, if the defendant did not testify to it herself, I am suspicious of it. 40

The Witness: It is true.

Defendant's Witness, Frances Guerrieri, Direct

Mr. McCombe: If your Honor prefers, I will recall the defendant.

10 The Master: She has been on the stand and has testified fully. Now, there is a new counsel in the case and a new setup, you see.

By Mr. Harber:

Q. Do you remember—

20 Mr. Armstrong (interrupting): I object. One counsel has elected to do the examining, and I certainly object to two counsel examining one witness.

(Discussion off the record.)

30 The Master: Mr. McCombe has examined very fully and has covered the case as fully as a lawyer could in a case like this, and as I remember the defendant did not testify to all this line of beating and cruelty. If the defendant could testify she should have testified when she was on the stand. I think I would be inclined to disbelieve testimony when it comes up this way, where a witness on the stand testifies after a long postponement, and testified to acts of violence to which the defendant has not testified at all, then to allow the defendant to take the stand, and bolster her up—

40 Mr. Harber (interrupting): My idea is not to go into that line of testimony at all. The answer seems to be a charge of desertion under the statute.

The Master: This testimony, if admis-

Defendant's Witness, Frances Guerrieri, Direct

sible under this answer, is admissible as bearing on the petitioner's case, whether he is telling the truth or not.

Mr. Harber: I am not going to examine her on that line. 10

The Master: I don't want to restrict your examination.

Mr. Harber: I understand your Honor's position, and I want to eliminate that.

The Master: Which one of you want to examine?

Mr. McCombe: I don't know—I think I will withdraw from the case right now, if your Honor will permit me. 20

The Master: I think I should allow you. If you desire to withdraw, I suppose you will sit in the court room and stay here.

Mr. McCombe: Yes.

Mr. Harber: I could not assume that position of having my associate retire at this stage of the case, that is not my object in coming here at all. My object is to collaborate with my associate, because he is more familiar with the issue down to this stage of the case. All I ask is permission to examine certain witnesses as the proceeding may continue and not for any other purpose. I do not desire, and do not want my associate to retire from the case under any circumstances. I happened to question this young lady this morning along different lines as far as the answer is concerned, 30
40

Defendant's Witness, Frances Guerrieri, Direct

10 and I know what she knows about some of the facts, as to which, possibly my associate does know, or does not know—but that is the reason I interjected—it was for the purpose of being given an opportunity to examine her along those lines, but I certainly will not assume the responsibility of continuing with a case I know nothing about, except what I have gleaned in the last day or two, particularly as my associate has done so well up to this stage of the case. I can do this and my associate counsel proceed with the examination—without my examining the witness. I wanted to help.

20 The Master: We had a very long day and a full day, and matters were contested vigorously on both sides, and I am satisfied that the case was thoroughly tried on the part of the defendant up to the time of the adjournment. Mr. McCombe made all possible objections and examined very fully. In this situation, why should you be allowed to go into this recrimination? That is what it is.

30 Mr. Harber: It is not my object to question this young lady about acts of cruelty.

40 The Master: I don't foreclose you on any acts of cruelty you have a right to go into, and the matter will be decided on the pleadings. That puts the petitioner to proof as to the desertion taking place. It has turned out that he left the defendant. The physical desertion

Defendant's Witness, Frances Guerrieri, Direct

was his. Now, it may be that acts of cruelty will bear on his desertion story, but so far as you set up the matrimonial defense of extreme cruelty, you have two obstacles. The one is the answer, 10
and the second has been fully stated. In this kind of case the parties are hard put to it and the contest is keen and acute, but I don't think I would sanction a new setup after a long postponement, no matter who sets it up.

Mr. McCombe: The object of bringing this testimony out is not that of predi- 20
cating a defense; it is to show that there was no cause for the desertion, pure and simple—and not as a defense. But I really take the stand—if your Honor will so permit me, that I sit here and give any assistance that I can give to Mr. Harber, or I will keep quiet and he will do the examining.

Mr. Harber: I prefer to yield to my 30
associate.

Mr. McCombe: My sole object is the best interest of my client, which I have had in mind from the start up to this time.

The Master: You have tried hundreds of divorce cases and understand the law thoroughly.

Mr. McCombe: I wanted to try the 40
case on the merits, purely.

The Master: My difficulty is that I find here a witness on the stand testify-

Defendant's Witness, Frances Guerrieri, Direct

ing to facts that the defendant did not testify to during a long examination.

Mr. McCombe: Then I may be permitted?

10 The Master: You may go fully into anything you want to.

Mr. McCombe: I am asking her what she knows, and nothing more.

By Mr. McCombe:

Q. Now, you will proceed and tell us what you recall, any special instance with respect to your mother and father. A. As I told you
20 before that every time he would start an argument just for nothing. Mother would come into the kitchen and he was from work, and he would commence to argue about his food, that was just an excuse to argue with mother. My mother would never answer him, she would let him just be as he wanted to, and he always used his hands and he never had a nice word in talking to her, always beating her. That
30 Fourth of July when we came home from my sick uncle's, he simply struck my mother and made a blue mark all over her face and arm, and I said, "Don't strike mother, I would rather you hit me, you know she is sick."

By the Master:

Q. Was your brother there? A. Yes, but he just came out there when he stopped hitting
40 her—

Q. Did he see it? A. No, he didn't see it, but I heard the argument, and I seen it and I said, "What is the matter, don't hit her, hit

Defendant's Witness, Frances Guerrieri, Direct

me," and he said, "If you don't shut up, I will throw you downstairs."

By Mr. McCombe:

Q. During any of this time did you hear him tell your mother any reason why he was doing this? A. He said that he was going to get her away, drive her away, that she would get out of the house. 10

Q. That he wanted her to get out? A. Yes, that he wanted her to get out.

Q. Do you know anything about his contributing to the home financially? A. Well, he never gave us enough money to cover our expenses, we always had to borrow money from friends and from my uncle Louis, he loaned us money. 20

Q. When he did give her money, how did he give it to her? A. He used to throw it on the table, or on the chiffonier, and there he left the money.

Q. Going back to these quarrels, did you ever hear your father call your mother anything? A. Yes, he always had a nasty mouth, and he called her names, of course. 30

Q. Tell us what he called her? A. He called her an S. B. and said she was a big fat pig, and he called her a lot of names in Italian—I can't explain in English.

Q. Go on. A. Well, that is what he would say. On the Sunday morning and I used to go up to do the work in the house—

Q. (Interrupting.) We were speaking about the names. A. That is all I know, that is all the names, S. B., and big fat pig, and he said names in Italian that I didn't understand. 40

Defendant's Witness, Frances Guerrieri, Direct

Q. You know them in Italian, but you don't know them in English? A. Yes.

Q. Are they vile names? A. Yes.

Q. And he said them in your presence? A. Oh, yes.

10 Q. Was any one else present? A. No, it was when I was around the house.

Q. You were mostly around there? A. Yes.

Q. Do you recall what your father's brother Jackman—he is in the court now? A. Yes, he is right down in the back there.

Q. This gentleman in the rear? A. Yes.

Q. Do you recall when he came to the house? A. Yes.

20 Q. When did he come to the house? A. On January 2nd, 1927.

Q. Were you present at the conversation? A. Yes, I was.

30 Q. Give us in your own words just what happened when he called? A. As soon as he came in, of course, he said, "Hello," and then he said to my mother, "I heard about a friend of ours that died in Newark," and my mother said, "Yes," and he said, "Well, what happened between you and Joe," and she said, "I don't know, he left the house here without any reason at all," and then he got up and said, "I think I will be going, but don't let on that I have been here," and he said, "Good-bye," and he went out.

40 Q. Did you see your uncle there before that time? A. Oh, yes, he came to visit us, yes.

Q. Frequently? A. Well, he came once when my father had to go and see a sick brother in the hospital.

Defendant's Witness, Frances Guerrieri, Direct

By the Master:

Q. How soon was that before your father left? A. Two or three years ago.

Q. Two or three, or two years before—how long? A. I don't exactly remember. 10

Q. You mean two or three years previous to that time? A. My mother used to be home and he would call for my father to go to the hospital to see the sick brother.

Q. Can you say how long it was before your father left that his brother came there? A. It was four or five years, yes.

By Mr. McCombe: 20

Q. During these four or five years do you know whether your father and mother were on good terms? A. I don't know, he always used to come home and tell us that they put things into his head—it is his brother that causes all of the trouble in our home—they turned him against us, that is what they did.

Q. Now, at the time that he called, was there anything said to your mother about trying to get your mother and father together? A. No, sir. 30

Q. Did he mention that at all? A. No, sir, he didn't.

Q. What did he say when he was leaving? A. He said, "Don't let on that I was here," and "Good-bye," and he went out.

Q. Did you understand by that that he meant not to tell your father? A. Yes, not to tell my father that he was there. 40

Q. How long did he stay, all told? A. He stayed there about half an hour.

Defendant's Witness, Frances Guerrieri, Direct

Q. Did you see your uncle again after that in your home? A. No, I did not.

Q. He never came after that? A. Never came to the house.

10 Q. Going back to the other two gentlemen, do you remember them testifying in court about having visited your home? A. Mr. Rossi and the other one?

Q. Yes, sometime in December, 1928. Do you recall that? A. Yes.

Q. You were present then, were you? A. Yes.

20 Q. How long did they stay while they were there? A. I couldn't exactly tell you how long, I know they didn't stay very long—they stayed all the time they were speaking—

Q. Do you recall the conversation that was had between your mother and these two men? A. Yes, I do.

30 Q. Can you tell us in your own words what you remember and as near as you can recall. A. They came in and said, "Do you know who sent us here?" And my mother said, "No," and after that he said, "Mr. Pica sent us here." So they started in talking, and he says to my mother, "What happened with your husband, he sent us here," and my mother said, "Why didn't he come here himself personally, why did he send you here, he has his keys to come in the house, and he should have come himself," and so my mother didn't say
40 any more, and they stood there, and my mother said, "If he wants to come, he should come himself and ask for forgiveness, he shouldn't send strangers to the house."

Defendant's Witness, Frances Guerrieri, Direct

Q. And then went out? A. Yes.

Q. Had you seen them before? A. Well, Rossi, one of the men—

Q. Had you ever seen the other gentleman before? A. No.

Q. Had your mother at any time refused to go back with your father after your father came to live with her? A. No, not that I know of.

Q. Now, on either of these visits, the visit of your uncle, or the visit of these two gentlemen, the alleged brothers, did she say that she wouldn't have him come back?

The Master: What did she say?

Q. (Continued.) What did she say in respect to wanting him to come? A. She said it was his place to come home, and not send others to her, if he wanted to be forgiven.

Q. Do you recall the morning of December 28th, 1926? A. Yes, I do.

Q. Tell us about that. A. I was in bed at that time, and my father left without any reason at all, he didn't say a word to us, he just walked out like he usually done to go to work, and he never came back since then.

Q. Did you hear him say anything about leaving? A. No, he never said anything, he just walked out on his own accord without saying a word to anybody.

Q. When did you next see him after that? A. I never seen my father after that.

Q. Didn't you see him come to the house? A. No, I did not.

Q. Had he come to the house, would you have known about it? A. Sure.

Defendant's Witness, Frances Guerrieri, Cross

10 Q. Why would you have known about it? A. Because, in the first place, I am always in the house, I never leave my mother's side, and even if I would have to go to the store my mother goes with me, and furthermore, he has the keys to come in the house any time, he has the keys in his pocket.

Q. You say he has the keys? A. Yes, he has the keys.

Q. Has the same lock been on the door all the time? A. Surely, that lock was not touched, he can come in any time.

20 Q. Prior to his leaving would he come in and out of the house? A. Since he took the store in Grantwood, we never saw him at all—

Q. No, when he used to come in the house, did he come with his own key, or did you have to let him in? A. He always had his own key and walked right upstairs.

Q. You have been living in the same house ever since? A. Yes.

30 Q. Do you recall when the house was sold? A. Do I recall? No, I don't recall.

The Master: It was in May, 1927.

Mr. McCombe: Yes.

The Witness: I don't recall.

CROSS-EXAMINATION by Mr. Armstrong:

40 Q. You say that in 1926 your father walked out of the house and that you were in bed at the time? A. Yes.

Q. So you don't know what transpired when he walked out of the house? A. Well, you

Defendant's Witness, Frances Guerrieri, Cross

could hear, the bedroom was right near the kitchen, and if he said a word you could hear. I was awake.

Q. You didn't see him walk out? A. No.

Q. You don't know the circumstances— A. 10
He didn't say a word to anybody—

Q. You didn't see him, you said you were in bed. A. Yes.

By the Master:

Q. What time was it? A. He always left the house at 6:30 in the morning.

Q. In what bedroom were you sleeping? A. 20
In the bedroom next to the kitchen—I was alone at that time.

Q. Where did your mother sleep—where was her room? A. In the room next to the kitchen.

Q. Is that the same room you occupy? A. Yes.

Q. What room did your father occupy? A. He had the other room.

Q. Did anybody sleep with him? A. Well, 30
he used to sleep with my brother, because he had a sore leg, and he never wanted to sleep with my mother.

Q. That was in the early morning? A. Yes.

By Mr. Armstrong:

Q. Do you recall the time that you testified when your brother came to see your mother? A. Yes. 40

Q. And you said on your direct-examination that he came in and said some relative had died in Newark? A. Yes.

Defendant's Witness, Frances Guerrieri, Cross

Q. That is the first thing he said? A. Yes.

Q. And then he said, "What is the matter between you and him"? A. Yes.

10 Q. And then what else did he say to you?
A. After that he got up and he said, "I think I had better be going now, and don't let on that I was here."

Q. That was all that was said? A. Yes.

Q. How long did he stay in the house? A. I didn't time him.

Q. You testified to Mr. McCombe and said about a half an hour. A. Yes.

20 Q. In that half hour the only thing he said was that a friend had died in Newark, and what is the matter between you and Joe and I guess I won't stay any longer, I am going, and with that he went away. A. Oh, he was telling something about his own business.

Q. You didn't say that, you said that is all that happened, and now you say he said something. A. We didn't bother about his business—

30 Q. (Interrupting.) You said with reference to your father's leaving, that your mother didn't bother about it— A. Of course, I always like my father—

Q. And that was all that took place in a half an hour, your mother said three-quarters of an hour, and you said half an hour. What else was said in the half hour? A. That is all I said he said.

40 Q. Do you know whether he said anything else in that half hour? A. No, I was there all the while, and he didn't talk much at all, he

Defendant's Witness, Frances Guerrieri, Cross

just sat there and said, hello, and he just sat with his two hands, that way (indicating).

Q. How long did he stay with his two hands that way? A. About five or ten minutes, and then he started in talking.

10

Q. What did he start in talking about? A. He talked about his own affairs and the business in Newark, and that is all I know.

Q. And that is all in the half hour that he said? A. Yes.

Q. He said nothing else? A. No.

Q. And he took a half an hour to do that? A. He sat there—you couldn't put him out.

Q. You testified on your direct-examination, you said that he said nothing else, and you said that he got up and went out? A. Yes.

20

Q. And yet you say he was there a half an hour, and your mother says it was three-quarters of an hour. A. We don't exactly keep time on people that come in our home, they can stay as long as they want to.

Q. You were always present around the house? A. Yes.

30

Q. And from 1926 you say you were present and you would know if your father called there? A. Yes.

Q. You worked in 1926? A. 1926?

Q. Yes. A. No, I didn't, I was home.

Q. When did you work in Gimbel's? A. I was 24 when I worked in Gimbel's.

Q. How long did you work in Gimbel's? A. I worked there just for the holidays, Christmas.

40

Q. Haven't you worked there since that time

Defendant's Witness, Frances Guerrieri, Cross

for the holidays, didn't you get another position? A. No.

Q. So you didn't do any work from when, 1926? A. No, 1924.

10 Q. Did you, from 1924 up to the present time go out to business at any time? A. No.

Q. You were always at home in the house? A. Yes.

Q. And you are sure it was 1924 that you worked at Gimbel's? A. Yes.

Q. Not 1926, you are sure? A. Yes.

Q. You say you were present when the two brothers came to the house? A. Yes, I was
20 there.

Q. You were there then, too? A. Yes.

Q. How long did they stay? A. I didn't time them at all.

Q. You didn't time them at all? A. No.

Q. So when you said they were there only about five minutes, you guessed at that? A. No, they came in and stood up, and they didn't even come in the room, they were in the door like,
30 from the hall to the parlor, and they started to say something, and my mother said that he should come here like a gentleman himself, and he shouldn't send you here, and then they said goodbye and went off.

Q. You never heard them say anything at all about your mother and father living apart? A. No.

40 Q. You didn't hear them say one word about your mother and father living apart? A. No.

Q. What do you suppose they called there for? A. I don't know.

Defendant's Witness, Frances Guerrieri, Cross

Q. Didn't you question why these two men walked into your house? A. I didn't question them.

Q. Had you any idea why these two men came to see your mother? A. No. 10

Q. You didn't think about that, that didn't impress your mind at all, why these two men came to your house? A. It came to my mind that maybe they came to the house just to get things out from my mother, and my mother never opened her mouth, and they said, "Mrs. Pica, we were sent here from your husband."

Q. Didn't you hear either of these men ask if your mother would take up the question of living with your father? A. No. 20

Q. You heard them testify in court? A. I didn't hear them say that they said at that time that they wanted my mother to go back to him.

Q. You say your father treated your mother very mean, do you mean that? A. I sure do mean it.

Q. You have lived with your father and your mother since you were a little girl? A. Since I am a little baby. 30

By the Master:

Q. How old are you now? A. 28.

Q. And your brother is 22? A. Yes.

By Mr. Armstrong:

Q. When did all this trouble start? A. Three 40 years before he left he always kept nagging at my mother, as soon as he came in the kitchen he would find fault with his supper, and at the

Defendant's Witness, Frances Guerrieri, Cross

table he never could eat, he would get up all of the bread and throw it at my mother.

Q. Do you remember back 15 years? A. I think so.

10 Q. Prior to three years ago, all of his life everything was very nice? A. No, he was always picking on my mother.

Q. So the trouble started longer than three years ago? A. He always had a nasty way about him, he never had a nice way of talking to her, if she said something he was always beginning an argument, and he would get her by the hair and pull her hair and beat her, and he did that all the time I was there.

20 Q. Did he support your mother at all? A. He never gave her enough money to pay her expenses.

Q. Did he contribute to the household? A. We had to borrow from friends.

Q. Did you help to support your mother? A. No, I could not, when I had to stay home to help her.

30 Q. And did your mother work? A. Yes.

Q. And your father never gave your mother hardly any money? A. No.

Q. How long did he keep on doing that? A. He did that all the time.

Q. Did you hear your brother testify that your father always gave him the money? A. Yes, he did, and that was a slip out of his own mouth.

40 Q. You heard him say he always gave him the money, the envelope, and that it sometimes contained \$30 and sometimes \$40? A. He might have made a mistake.

Defendant's Witness, Frances Guerrieri, Cross

Q. He is mistaken about a man giving him money? A. Well, I was around, and I know more about it than he does, I was always in the house, and I seen just what was going on.

10

Q. Did you ever see your brother take the money from your father? A. No, I did not.

Q. You never saw him do that? A. No.

Q. Do you know whether your brother ever got any money from your father? A. That is what I couldn't tell you.

Q. You don't know that? A. No, I don't.

Q. You heard your father say that he gave her three or four dollars now and then? A. Yes.

20

Q. And the testimony of your brother is untrue? A. Well, I don't know about—

Q. (Interrupting.) I am asking you whether your brother's testimony that your father gave him an envelope with the money in it is true or untrue? A. It is untrue.

Q. Did you hear your brother testify that he only saw your mother struck once by your father? A. He did it all the time.

30

Q. And your mother only testified that she was struck once, and you said she was being struck all the time for the last year or two. Now, is your mother right or are you right? A. I am right.

Q. So they two are lying, both your mother and your brother, and you are still right? A. Yes.

40

Q. And you want us to accept that statement that you are right, and your brother and your mother made false statement—

Defendant's Witness, Louis Ciruzzi, Direct

The Master: I think it is right, Mr. Armstrong, without characterizing it.

Mr. Armstrong: That is all.

10

LOUIS CIRUZZI, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

Q. You are the brother to the defendant in this action? A. Yes, sir.

20 Q. You have known her husband for quite a while, haven't you? A. All my life, about 40 years.

Q. And have always been on good terms with her? A. Always.

Q. Did you live with him prior to November, 1921? A. Yes.

Q. How long had you been living at the house prior to November, 1921? A. Before.

30 Q. Yes. A. About four years before, I think.

Q. And during those four years you were boarding there? A. Yes, sir.

Q. Did you pay your board? A. Yes, sir.

Q. Was there any friction between you and your brother-in-law during those four years? A. No.

40 Q. What happened around about the 15th of November, 1921.

Mr. Armstrong: Just a minute, please, I object to that. As I understand it, he left there in 1921.

Defendant's Witness, Louis Ciruzzi, Direct

Mr. McCombe: No, I am getting to that.

Mr. Armstrong: Oh, excuse me.

Q. Did you buy a house in conjunction with your brother on November 15th, 1921? A. Yes. 10

Q. Up until that time you were on good terms? A. Yes.

Q. Just what arrangement did you and your brother-in-law have with respect to the ownership of that house.

Mr. Armstrong: Objected to as absolutely immaterial. 20

Mr. McCombe: We will connect it up and show the mode of life, and what arrangement they had up to September 28th, 1921.

The Master: On your statement, go ahead.

Q. Proceed. A. Well, at that time the rents were very high and we couldn't meet his rent—and I had a few dollars in the bank— 30

By the Master (interrupting):

Q. Just tell us what happened? A. We bought the house in 75 Charles Street.

Q. What kind of a house? A. A Two-family frame house.

Q. Was it taken in your name or his? A. No, his name—my sister's name and mine—I owned half of it. 40

Q. He didn't own any of it then? A. He and my sister was the other half.

Defendant's Witness, Louis Ciruzzi, Direct

Q. You one-half, and he and your sister the other half? A. Yes.

By Mr. McCombe:

10 Q. Proceed. A. Well, the thing is that every time we had to pay the building and loan, or any bills that came due, he always was behind, and he used to do things without our knowing anything about it, and he was the whole boss there, and I knowing the kind of man he is—

The Master (interrupting): How is that important? Tell us about the house.

The Witness: That is all about the house—

20

By the Master:

Q. When was the house sold? A. The house was sold in 1925.

Q. 1927, was it not? A. 1927, in May.

By Mr. Armstrong: |

Q. The house was sold in May, 1927? A. Yes.

30

Q. Why was it sold in May, 1927? A. Because Mr. Pica didn't want to meet the building and loan.

By the Master:

Q. He living separate from his wife at that time? A. Yes.

By Mr. McCombe:

40

Q. Now, just prior to the selling of this house, while he was living at your place with his wife, what, if anything, did you notice with respect to how he treated his wife? A. He used to,

Defendant's Witness, Louis Ciruzzi, Direct

if I have to say all he said and done to my sister, he should be hung, to my estimation.

Q. Tell us what you saw? A. He kept on beating her and calling her names in the worst sort that there is, I never heard anything like it. I had always liked him and been friendly with him and helped him out as much as I possibly could at all times, because I knew I was doing it for my sister and him, but at the same time he was benefitting by it. 10

Q. When you saw him strike your sister and heard him call her these vile names, what did you do? A. I simply took my hat and walked out. I didn't want to get into any scrap with him, because I knew he would go too far. At any time that I would get him and talk with him in a nice way, he would go in a rage, he would get wild, just like a wild man. 20

Q. That time in December, 1926, when he left, what happened? A. Just we had breakfast together on the table there—

Q. Was there anything said about his leaving? A. Not a word. 30

Q. Did he say anything about his leaving? A. Not a thing, he just walked out as usual.

Q. Did you know he was going to leave? A. Not a thing, he walked out of the house as usual.

By the Master:

Q. Did you live in the same apartment when he left? A. Yes, I have a hall room there, that is all I know, a hall room. 40

Defendant's Witness, Louis Ciruzzi, Direct

By Mr. McCombe:

10 Q. Prior to the date he left, on September 28th, 1926, was there dissension between you and Mr. Pica, or between your sister and Mr. Pica? A. Well, that was one continuous thing between him and my sister, but with me, I never had any argument with him at all. The only thing is that at times I used to ask him not to get in any argument—I didn't want to get into any argument with him, because it was one continuous thing as long as I know him, and I even told my sister then that ever since his brother from Newark—

20 The Master (interrupting): Just answer questions.

The Witness: Well, I have to say—

By Mr. McCombe:

Q. You were going to say what you said to your sister—was he present? A. Yes.

30 Q. Proceed. A. Ever since his brother had had—they sent him around—

The Master (interrupting): You are not answering the question. You don't want all this?

40 Q. Answer the question, you were about to tell the Court that you told your sister something, and I ask you whether or not you told your sister that in the presence of Mr. Pica, and you said yes. Now, tell us what you told your sister in the presence of Mr. Pica? A. I told my sister that ever since his brother from Newark came over to the house everything is changed and I don't see what the matter is with them,

Defendant's Witness, Louis Ciruzzi, Direct

and she would say, you know that that man has always been accusing us, and always trying to work his brother up against us.

By the Master:

Q. How long had the brother from Newark been coming to the house? A. That is the only time I seen him for 20 years when one night I happened to come home at 10 o'clock at night, and he was there.

10

Q. How long before this man left? A. From two and a half to three years.

Q. About three years ago? A. Yes, something like that.

20

By Mr. McCombe:

Q. Now, Louis, about the time you sold the house you said you come to sell the house because he was not paying his half of the interest? A. Yes.

Q. Do you recall what arrangement he made with respect to selling the house? A. The arrangement was—there was no arrangement made—

30

Q. No—did you offer to sell it for him? A. Yes, when I seen that the man did not produce anything, did not care for his family any more, did not care for his wife any more, I went to counselor, Messano, in fact I think my sister had been there previous to that, and I went to counselor, Messano—

40

The Master: Is that important?

Mr. McCombe: Just a minute, Mr. Messano was expected to be present, he was subpoenaed, so that will be connected.

Defendant's Witness, Louis Ciruzzi, Direct

The Master: The house was sold, and he was away from his wife, and I suppose he wanted to sell the house.

10 Mr. McCombe: There was some arrangement as to whether he would permit his wife to be present—

The Master: That may be important.

Q. Proceed. A. I went to counselor, Messano, and he wrote a letter to him to find out whether he wanted to buy the house or not, to take the house, one way or the other, as the building and loan had to be met, you know.

20 The Master: I don't think that disagrees with the petitioner, he said about the same thing. Is not that your recollection of the testimony?

Mr. McCombe: Yes, I will bring that out later.

The Witness: Can I proceed?

30 The Master: No, just answer the lawyer's question.

Q. Mr. Ciruzzi, can you recall any particular instance prior to the time he left that he had a quarrel with his wife when you were present?

A. Well, I said—

40 Q. (Interrupting.) State the date, the time, as near as you can. A. One Sunday, I guess about two weeks after my brother died, he picked up an argument with her, he didn't know which way to pick up an argument with his wife, and he used to find the most foolish things to pick up an argument, and he wanted my sister to come up and pay a visit to my other sister-in-law, and

Defendant's Witness, Louis Ciruzzi, Direct

my sister was in mourning and so he picked up an argument on account of that, and he says if you don't go, I will go, and he started to argue and say things, and he started to knock on the table, and the dishes will fly right and left—

Q. What did he say with respect to his temperament—

10

Mr. Armstrong: I object to his temperament—let us have facts.

The Witness: His temper was terrible.

Q. After September 28th, 1926, did you ever see him after that—after he left? A. After he left?

20

Q. Yes, did you see him? A. About a year ago, in March I met him in the Hudson tube, at 31st Street, and I stopped him—you know, after a year and half, I wanted to say, "Well, Joe, what is the matter, what is it all about," and he says, "Oh, I don't want to have to do with your sister, or none of you," and he left me flat and went away.

Q. Just what do you mean by that? A. I mean that he just left me there and he walked away and went about his business, I suppose, and he wouldn't answer where he was living.

30

Q. Was that the first time you saw him after that? A. That is the only time I seen him since he left.

Q. Have you seen him after that? A. No, sir, the next time I seen him was two weeks ago here in court.

40

Q. After he left, do you know whether or not he contributed to your sister's support? A.

Defendant's Witness, Louis Ciruzzi, Direct

Well, I think he did, \$50 a month or something, after he had a court decree, he was subpoenaed, counsel, Messano, had the transaction on hand.

10 Q. Do you know whether or not he contributed to her support before your sister brought him to the Domestic Relations Court? A. He would give her a few dollars one week, and the following week he wouldn't give her anything.

Q. And was that the reason that she brought him to the Domestic Relations Court? A. Yes.

Q. Did you have to support her prior to her taking him to the Domestic Relations Court? A. I helped her a little, I would give her \$30—
20 I would give her a little all the time he was away.

Q. Do you recall your wife testifying in court about seeing him in the hospital? A. Yes.

Q. Did your wife tell you about that incident? A. Yes.

Q. Just what did she tell you about that?

Mr. Armstrong: I object to that.

30 The Master: Is the wife unfriendly to the defendant—yes, that is the question?

Mr. McCombe: This witness had something told him about seeing Mr. Pica in the hospital—

The Master: Any testimony which may contradict her testimony is admissible. If she is a witness and that may be a statement to the contrary.

40 Mr. McCombe: Yes.

Mr. Armstrong: I understand the question to be what the wife told him.

Defendant's Witness, Louis Ciruzzi, Direct

Mr. McCombe: Yes, after coming back, which is contrary to what she said on the stand.

The Witness: That very night I was to the hospital myself— 10

The Master: No, the question is what did your wife tell you.

The Witness: My wife told me that she had seen Mr. Pica there and walking out, and at the time my sister had not known he was there at all, and walking out he said that she didn't even look at him, they walked by without saying a thing, and after they got outside she heard my sister say, "Did you see your husband?" and she said, "No, I didn't see my husband." 20

The Master: She told us she did.

The Witness: My sister did not see him.

The Master: The defendant said she saw him in the vestibule—the defendant, if I remember correctly, I think sometime ago was taken on that, that the defendant said that she did see her husband at the hospital, but she didn't speak to him, or he didn't speak to her, I think she said that she saw him there. 30

By the Master:

Q. Are you living with your wife? A. No, sir.

(Discussion off the record.) 40

By Mr. McCombe:

Q. Is that all you can say about it? A. Oh, that is all I can say that is all she said.

Defendant's Witness, Louis Ciruzzi, Cross

By the Master:

Q. Were you and your wife living together at the time she went to the hospital? A. Yes.

10 Q. How long was it after that that you and she separated? A. Well, we separated after—

Q. (Interrupting.) No—how long was it, a month? A. No, longer than that, four or five months.

Mr. McCombe: That is all.

CROSS-EXAMINATION by Mr. Armstrong:

20 Q. Prior to 1926, did Mr. Pica support your sister? A. Well, as usual, on and off, working one week and not working the following week, and that is all he was doing, she always just had to scrape along.

Q. Would he give her more than two or three dollars a week? A. Before—two or three years before he left, he used to give her—

30 Q. (Interrupting.) I am asking you about just about two or three years before he left. A. Well, I don't know those transactions.

Q. You don't know what he contributed to the support of your sister? A. No.

Q. So that when you said here on your direct-examination did he support your sister, you don't know whether that is so or not, do you? A. I know, yes, sure.

40 Q. Well, then, do you know whether he did or did not? A. Well, I say he was giving her now and then a few dollars.

Q. But you don't know actually what he did

Defendant's Witness, Louis Ciruzzi, Cross

give her? A. That I can't tell you, I know they were in misery all the time.

Q. Now, you say you were there one time when Mr. Pica beat your sister? A. I didn't say that I was there. 10

Q. I said you said you were present when he beat her. A. When he made an attempt, I didn't say I was present.

Q. Didn't you say on your direct-examination that you saw Mr. Pica attempt to strike your sister and you walked away and did not want to be concerned in it? A. Yes, I said that.

Q. And when you saw him attempt, made an attempt to beat your sister, you walked out of the door? A. Well, what was I to do, strike him? 20

Q. If your sister had been struck by him, then wouldn't you go to the defense of your sister? A. I would say, I probably would.

Q. But you didn't? A. He didn't strike her in front of me.

Q. But you say he made the attempt, and you walked out? A. Yes. 30

Q. You didn't want to see him strike her, did you? A. Well, at the moment he was furious—

Q. And what was in your mind when you walked out the door, did you think he was going to strike her? A. I suppose I thought he was going to strike her.

Q. And you didn't want to see the husband strike the wife? A. No, for reasons. 40

Q. And you walked away to get out? A. Yes —for reasons.

Defendant's Witness, Louis Ciruzzi, Cross

Q. In other words, you didn't care whether your sister was struck or not? A. I did care.

Q. Then why didn't you go to her rescue?
 10 A. It was over, bad as he is, he is not going to stay all day and argue with her and try to beat her.

Q. At the time of the sale of this house, Messano & Messano represented who? A. Represented me.

Q. And your testimony is that Messano sent a letter regarding the money and shares to be paid out of the sale? A. Yes, sir.

Q. Did you see that letter? A. Yes, sir.
 20 Q. I will ask you to look at this letter from Messano & Messano, and I ask you if that was the letter which was sent to Mr. Pica? A. Oh, to Mr. Pica, no—the communication that arose between and Messano I don't know about.

Q. Will you look at it and see if you authorized Messano & Messano to send that letter to Mr. Pica? A. Well, I suppose that is a kind of communication they have with lawyers,
 30 I don't know anything about that.

Q. You told Mr. Messano to send a letter to Mr. Pica? A. Yes.

Q. What does it mean in this letter here where it states "because of the fact that the market value placed upon the house is very high and we have been authorized to submit to you and your wife an offer—" and so forth—
 40 what does that mean, an offer to the husband and wife of \$1,000 each? A. The offer I made—
 —which he—

Q. (Interrupting.) So out of the proceeds of

Defendant's Witness, Louis Ciruzzi, Cross

the sale of this property Mrs. Pica was to receive \$1,000? A. Yes, sir.

Q. And Mr. Pica was to receive a thousand dollars? A. Yes.

Q. And you would receive the other half? A. 10
Yes.

By the Master:

Q. Did Mrs. Pica receive the thousand dollars? A. She didn't receive all the thousand dollars, because I had to deduct what I had paid before that.

By Mr. Armstrong:

Q. How much of the thousand dollars did she receive? A. She got about \$700. 20

Q. About \$700 she received out of the proceeds to this property? A. Yes, and out of that she had to pay out quite some, and she owed me besides, I laid out money at the time we bought the house, he didn't have a nickel, and even I had to go and borrow \$400.

Q. Where was the division of this money made? A. Up at Messano's. 30

Q. Was he the one that made the division—
A. No, except the one thousand dollars, he didn't want to know a darn thing about anybody else—he was subpoenaed to come over and show you the letter, I don't know what you are bringing here—Messano is subpoenaed to come over—

Q. I am asking you a question, if you don't know say that you don't know. 40

The Master: As to this part of the case, the defendant denied that she re-

Defendant's Witness, Louis Ciruzzi, Cross

10 ceived a thousand dollars—he didn't say that he received a thousand, and I don't think she said anything. Do you say she said she didn't receive anything at all?

 Mr. McCombe: Nothing at all.

 The Witness: I was present when he testified he gave her a thousand dollars. Where did he get the thousand dollars that he gave her?

 The Master: It was a settlement of some kind.

By Mr. McCombe:

20 Q. Do you know whether or not Mr. Pica got a thousand dollars from that sale? A. He certainly has.

 Mr. McCombe: He denies it on the stand.

 The Witness: They both got a thousand dollars.

(Discussion off the record.)

30 Mr. Armstrong: She denies that she received anything. She denied the receipt of a thousand dollars.

 Mr. McCombe: It goes to the veracity of the petitioner, that is all.

 The Master: It goes to the veracity of the defendant too.

 Mr. McCombe: Yes.

40 By Mr. Armstrong:

 Q. You testified this morning that the brother seemed to be the trouble in the whole case? A. Yes.

Defendant's Witness, August H. Luders, Direct

Q. And you blame him and the other members of the family? A. I don't exactly blame him, but this man never comes to the house except there is something going on between them. I only met him once in 20 years—and I know him for years. 10

Q. How long since he has been at the house and caused this trouble? A. I was not at home.

Q. How do you blame him? A. Because I can see the action of his brother.

Q. How did he cause the trouble? A. I suppose he was consulting him and telling him stories and lies.

Q. Did he come around to the house very often? A. No, he never came around, I am telling you that I only seen him once in 20 years. 20

Q. You say he has only been there once in 20 years? A. If he has been there I don't know—they don't tell me what happens—I mind my own business.

 30

AUGUST H. LUDERS, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

Q. Are you subpoenaed to come here this morning? A. Yes.

Q. Do you know Mr. Pica, the petitioner in this case? A. Yes. 40

Q. How long have you known him? A. About

Defendant's Witness, August H. Luders, Direct

two or three years, since he had a store next to my office.

Q. Do you know Mrs. Pica, the defendant, his wife? A. Yes.

10 Q. How long have you known her? A. Shortly after a robbery took place in Mr. Pica's store, she came to the place, and that is the time I saw her.

Q. Did you know her as the wife of Mr. Pica? A. She came and introduced herself as the wife.

Q. Had you had any business relations with Mr. Pica? A. Yes.

20 Q. Where, first? A. In Grantwood, next to my office, where I have a real estate office, he wanted a store for a tailor shop.

Q. Do you recall any instance where you had a conversation with Mr. Pica with reference to his wife? A. I had to stay there quite late evenings, and my wife asked him one night, "How is it, Mr. Pica, that you don't go home," and he said, "Well, what is the use to go home," and she said, "What is the trouble," and he said something like might as well put a bottle here on the floor—and she said, "Why," and he said, "I have got no wife," and she said, "Are you married," and he said, "Yes," and she said, "Why don't you go home," and he said, "What is the use to go home to that old woman." That was one occasion, and on other occasions I asked him why he didn't go home, and he would say, "What is the use, that old woman, and there are plenty of young chickens around."

30
40

Q. Did he say anything to you about whether he cared anything about his wife?

Defendant's Witness, Grace Dellasalla, Direct

Mr. Armstrong: Objected to as leading.

The Master: Objection sustained.

Q. Did you ever see any women folks around his store while he was your tenant? 10

Mr. Armstrong: I object to that, there is no charge of recrimination being made in this case.

Mr. McCombe: That is all.
(No cross-examination.)

MRS. GRACE DELLASALLA, a witness called on behalf of the defendant, having been first duly sworn, testified as follows: 20

Direct-examination by Mr. McCombe:

Q. Where do you live? A. In Brooklyn.

Q. Did you live at 75 Charles Street? A. No.

Q. What relation are you to Mr. Pica? A. I am his niece. 30

Q. Were you at their home any time while Mr. and Mrs. Pica were there? A. Yes.

Q. Did you hear any conversation at any time? A. Yes, sir, I was there two weeks after my uncle died, and we at the supper table, and he had gone up to pay a visit to the widow, my uncle's wife, so when he came back to the house the screen door was locked, and of course, he was furious about it, but at 9 o'clock in the evening no one wants the door open for anyone to come into the house, and my brother went 40

Defendant's Witness, Grace Dellasalla, Direct

down to open the screen door, and he said, "I told you to open the screen door," and he was mad about it, and he knocked on the table, and when she spoke to him, he said to her, "Shut
 10 up, you cabbage head, you are not my wife anyway."

Q. Did you ever hear him call Mrs. Pica any names? A. Of course, in Italian he would call her vulgar names, and of course, I lived in Brooklyn and—

Q. (Interrupting.) I mean when you were in the house? A. I was there—

Q. What did he call her? A. Well, a cabbage
 20 head, that means she is nothing—you throw a head of cabbage away, don't you?

Q. Did he call her anything else? A. He said she was not his wife.

Q. Did you ever hear say anything else about his wife, that he cared for? A. He never did care for her.

Mr. Armstrong: These are leading questions.

30 The Master: Yes.

Q. Did you ever hear any conversation with reference to whether or not he cared for his wife? A. He did not care for her.

Q. Please answer my question, did you or did you not ever hear him say anything with respect to that? A. I didn't hear him say it, but anybody can notice it.

40 (No cross-examination.)

Defendant's Witness, Robert Sabbatine, Direct

ROBERT SABBATINE, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

Q. Were you subpoenaed to come here this morning? A. No, I simply came voluntarily, I was asked, being that I happened to mention what I saw. 10

Q. As the result of the conversation with Mr. Harber, you are here? A. No, Mr. Ciruzzi.

Q. Do you know Mr. Pica? A. I do.

Q. Have you ever had any conversation with him? A. Not personal matters, simply business —but not family affairs. 20

Q. Nothing about his wife? A. No.

Q. Do you recall anything having been said in any conversation with him about six months ago with reference to his wife?

Mr. Armstrong: I object to that, he has said that he had no conversation with regard to any matrimonial trouble.

The Master: He did say so. 30

Q. Have you seen Mr. Pica lately? A. No, I saw him six months ago, six months ago I happened to be in a Broadway theater and I saw him in company with a woman, embracing her and holding her hand, but he didn't see me, and I happened to walk out and I saw Louis Cirruzi and I said I saw your brother-in-law at the theater, and that is all I seen and all I know. 40

Q. This woman that you saw him holding her hand—

*Defendant's Witness, Antoinette Zinzanzo,
Direct*

Mr. Armstrong: I object to the use of any such term.

10 Q. (Continued.) Holding her hands in the theater, was that his wife? A. No.

CROSS-EXAMINATION by Mr. Armstrong:

Q. Do you know who it was? A. No.

By the Master:

20 Q. What theater was this? A. It was Al Jolson in the "Singing Fool," Warner Brothers' Theater.

Q. Where was it located? A. 57th Street and Seventh Avenue and Broadway.

(At this point Mr. Robert Sabbatino was sworn in to act as interpreter.)

30 ANTOINETTE ZINZANZO, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe:

(This witness was examined through the interpreter.)

40 Q. Where do you live? A. 79 New Utrecht Avenue, Brooklyn.

Q. How long have you known Mr. and Mrs. Pica? A. Since they were married.

Q. Are you any relation to either of them? A.

*Defendant's Witness, Antoinette Zinzanço,
Direct*

She is his sister, and Mr. Pica is her brother-in-law.

(The answers are transcribed as given
by the interpreter.) 10

Q. Do you know the time of their marriage, have you had occasion to visit their home and be in their presence? A. Always came to visit them.

Q. And during these visits that you made did you notice Mr. Pica's demeanor towards Mrs. Pica, and if so, what was it? A. She claims that every time she has been there she has always been looking on at their quarreling at all times; she claims he has been in her house a few months ago, and she noticed he has got very fat now since he has been away from his wife, and he drinks badly of liquors or wine, in other words, he is having a good time. 20

Mr. Harber: Just translate what she says.

Mr. Armstrong: Yes, just repeat in English what she says in Italian, don't give your own interpretation. 30

The Master: Now he drinks wine when he wants it and he is getting fat when he was away from his wife. Go ahead.

Q. Did you at any time ever hear him say anything as to whether he was living with his wife or would not live with his wife? A. She claims that he didn't care to be with her, that he got fat, and didn't care to be with her any more. 40

*Defendant's Witness, Antoinette Zinzanzo,
Direct*

Q. Did he tell you that he didn't care to be with his wife any more? A. Sure, he says, "I don't care no more."

10 The Master: Did she say when these conversations were had?

Q. When was this said? A. Last summer, in the month of—last summer.

Q. About a year ago.

Mr. Harber: Last summer.

The Master: About a year ago.

20 The Interpreter: It would be nine months ago.

The Master: Did she say summer?

The Interpreter: She said during the summer months of last year.

Mr. Harber: She just answered when these conversations took place.

Q. You are the mother of Frances and young Charley, aren't you? A. Yes.

30 Q. Will you tell us how they happened to live with your sister, Mrs. Pica? A. Well, she claims that Mr. Pica wanted the children.

Q. How many years ago?

The Master: That is a great many years ago.

Mr. Harber: The point is that she don't recall how many years ago she gave these children to Mr. Pica.

40 The Master: How many years ago?

The Witness: The children were about two or three years old at the time.

Defendant's Witness, Caroline Curtis, Direct

Q. They are your children? A. Yes.

Q. And they left you when they were very young? A. She claims that they always lived together on one floor, and they used to go in next door—that is the way she is making it to me, and counsel here can verify it. 10

Q. You didn't want your own children home with you? A. No, all the time, me no give them to her.

The Interpreter: She says that he wanted the children, they claimed that they couldn't have no children, and that is why they wanted them. 20

Q. And you were willing to let your children go with them? A. He said to her that he could support them better than she could, and she let them go.

Q. Where is your husband?

Mr. Armstrong: I object to that as immaterial.

The Master: It is questionable whether any of this is material. 30

CAROLINE CURTIS, of No. 78 Charles Street, Jersey City, New Jersey, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. McCombe: 40

Q. Where do you live? A. 78 Charles Street, Jersey City.

Defendant's Witness, Caroline Curtis, Direct

Q. Is that opposite 75 Charles Street, where Mr. and Mrs. Pica live? A. Yes.

Q. Do you know Mr. Pica? A. By sight, I do.

10 Q. How many years have you known him, about? A. About six years that I am living there.

Q. And how long have you known Mrs. Pica? A. Six years, since I am living there.

Q. Are you interested in any way in this case? A. No.

Q. Have you had occasion to visit Mrs. Pica? A. Why, yes, we were always good friends, but
20 of course I didn't go over there while Mr. Pica was at home, because he didn't like me to go.

Q. Have you heard noises or altercations in the house? A. Many times, because I live right opposite, and in the summer when I would be sitting on the porch I would hear them hollering and fighting.

Q. What do you mean? A. Mr. Pica—I never heard her—

30 Q. Describe what you heard and saw. A. On the Fourth of July I was sitting on my porch.

Q. What year? A. 1925, and I was sitting on my front porch, and I heard a lot of hollering and fighting going on, and it was late in the evening, so I didn't go over; but next day I went over to Mrs. Pica, and I said, "What is the matter with you," and she said, "Look," and I looked, and
40 I saw a spot on the left side of her shoulder, and arm was all black and blue, and all that whole week I went over to see her to help her and to see what I could do, because she was lying around all week. I have always admired Mrs. Pica, that

Defendant's Witness, Caroline Curtis, Cross

she was a very nice woman, and no one else can say anything different, in the whole family, as much as I know of them.

CROSS-EXAMINATION by Mr. Armstrong: 10

Q. You leave Pica out of it? A. Yes.

Q. Everybody else was very nice but Mr. Pica? A. Yes.

Q. Did you ever talk with Mr. Pica? A. No.

Q. You never had a conversation with him in your life? A. No.

Q. How do you know he is not a very nice man? A. Well, from all I know—

Q. What do you know is what you heard? A. We lived across the way and I could hear.

Q. But you never had a conversation with him during the six years that they lived there? A. No, but I have seen evidences of things occurring.

Q. While Mr. Pica was there? A. While he was living there in the six years.

Q. Your opinion of Mr. Pica is based on what other people have told you? A. No, what I have heard myself.

Q. I am asking you what you ever heard. A. From what I heard on my front porch.

Q. How do you know what was going on? A. You can tell when you hear quarrels.

Q. How do you know it was Mr. Pica? A. I know it was a man's voice.

Q. Only a man's voice, that is all you heard? A. Yes.

Q. No other voice? A. No.

Defendant's Witness, Ralph Messano, Direct

Q. And you judge he was a bad man because you heard his voice? A. Well, yes—

10 Q. (Interrupting.) Your judgment is based purely on Mr. Pica's voice and what you heard in the neighborhood? A. No, not what I heard in the neighborhood.

Q. So far as the neighborhood is concerned, you didn't hear about Mr. Pica? A. Well, nobody can say anything about Mrs. Pica—

Q. I am asking you about Mr. Pica. A. I don't answer about Mr. Pica—

20 Q. (Interrupting.) And your opinion is based on what you heard in the neighborhood? A. No, on what I heard from my front porch, I heard his voice outside.

Q. You were never in the house? A. Yes, I was in the house, I was always going over and I visited them then, but Mr. Pica never wanted me to come in the home.

Q. Did he tell you? A. Well, I would never have come there—

Q. Did he tell you? A. I heard it.

30 Q. He never told you that? A. Well, I heard him say it to the family.

RALPH MESSANO, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

40 *Direct-examination by Mr. McCombe:*

Q. You are an attorney and counselor at law and admitted to practice in the State of New Jersey? A. I am.

Defendant's Witness, Ralph Messano, Direct

Q. And you are still practicing as such? A. Yes, sir.

Q. Where is your office? A. 591 Summit Avenue, Jersey City.

Q. Did you have occasion to represent anyone on the premises No. 75 Charles Street, in May, 1927? Some time in May, 1927? A. Yes. 10

Q. Are you subpoenaed to bring your files down here? A. Yes.

Q. Will you open your files and inspect them? A. Not without getting Mrs. Pica's consent. I think it is a privileged communication, and I won't divulge the contents without her consent. If she is willing, it is all right with me.

The Master: The understanding is that Mrs. Pica's counsel is asking Mr. Messano this question and she desires him to reveal all that he knows. 20

Q. Now, Mr. Messano, to lead up to the sale—will you tell us whether or not you had any correspondence with Mr. Pica? A. Yes, sir.

Q. Did you receive any correspondence in March from Mr. Pica? A. Yes, sir. 30

Q. Will you kindly let the Court know just what the correspondence consisted of? A. Do you mean what correspondence went on between us, or just what letters I received from him?

Q. The letters you received from him with respect to his wife. A. There is one dated—

The Master (interrupting): Wouldn't it be a good thing—Mr. Messano is a lawyer—wouldn't it be a good thing for him to tell—the transaction, and if you need 40

Defendant's Witness, Ralph Messano, Direct

his files; he will leave them. That will settle the matter.

(Consented to.)

The Witness: Mrs. Pica came into my office—

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By the Master:

Q. (Interrupting.) She was your client? A. Yes, sir—in the early part of 1926—and stated that her husband had left her, and that she believed he was in Newark somewhere and that as I knew the house at No. 75 Charles Street was in the names of Mr. and Mrs. Pica and Mr. Ciruzzi and probably of Mr. Pica—

20

Q. (Interrupting.) He had an undivided half, and they had an undivided half—as I understand. A. That is right. And that, because of her husband being away, her brother Louis was shouldering the burden of paying the building and loan and paying for repairs, and so on, and she wanted to find out from her husband just what he intended to do.

30

Q. When was this? A. This was in the early part of 1926—1927—pardon me—around April, 1927.

40

Q. They separated in 1926. A. This was April, 1927. I then suggested to Mrs. Pica that she have her brother Louis come to see me. I wanted to find out just what his attitude in the matter was. Louis came down and I had a conference with him, and we figured out that the best thing to do would be to write Mr. Pica and find out just what his attitude in the matter was.

Defendant's Witness, Ralph Messano, Direct

By Mr. McCombe:

Q. His attitude as to what? A. As to what he wanted to do with the house. I wrote to Pica on April 8th, 1927—at 600 North Sixth Street, Newark, and I said, “Dear Mr. Pica: Your brother-in-law, Mr. Louis Ciruzzi, co-owner of the above named premises, called here about five days ago and requested us to write you for the purpose of ascertaining what you intended to do about making payments of your share of the taxes, water rents, repair bills, building and loan dues, and so forth. Mr. Ciruzzi states that he no longer desires to carry this burden alone, hence this letter. Kindly let us hear from you by return mail and oblige.”

Q. Did you get any answer to that letter? A. Yes; on April 11th, 1927, I received a letter from Joseph Pica, wherein he says: “Gentlemen”—this was addressed to Messano & Messano—“Replying to your letter of April 8th, I am pleased to inform you that I do not intend to pay anything as my part for the bills that my brother-in-law or my wife is claiming. The said property they have been possessing all the time in their own way, I could never suggest anything and for their incompetence the first floor of said house was vacant most of the time. Furthermore, I can show plenty of bills I have paid and never got his share due to me. For further information you can write to me. For the above mentioned reasons and to avoid consequences I have decided to leave the house and let them administer the property in their own way. The conclusion is that I only intend to sell my por-

Defendant's Witness, Ralph Messano, Direct

tion and be done with it and be done with him. Respectfully, Joseph Pica."

On April 13, 1927, I wrote Mr. Pica the following letter:

10 "This is to acknowledge receipt of yours of yesterday; contents duly noted. As you know, the real estate market in Jersey City at the present time is very slow, and for that reason we doubt very much if your brother-in-law would buy you out. However, if you will fix the fair market value of the house and submit this figure to us, we will take the matter up with our client and let you know his intentions in the matter within the next few days."

20 Up until the 20th of April we received no reply, and on that day again wrote Mr. Pica:

"Won't you please refer to ours of the 13th instant written to you relative to premises No. 75 Charles Street, this city, owned by you and your wife and brother-in-law and submit to us a fair market value for the house so that we may take this matter up with our client for the purpose of arriving at an amicable adjustment of this matter."

30 A day or two prior to April 21st, 1927, we received a letter from Mr. Pica reading as follows, this was addressed to Messano & Messano:

"Received your letter of the 13th. I send the following conditions to you, desiring, however, first and last to settle completely this matter. The price offered to us by the Garibaldi Real Estate Company in August 1926 was for \$13,000 and less \$300 for his agreed condition would
40 leave a net amount of \$12,700. Now, not

Defendant's Witness, Ralph Messano, Direct

because the real estate market is down, but to show my good disposition to sell, I ask net of any commission, \$12,000, divided, \$6,000 to my brother-in-law, \$3,000 to my wife, and \$3,000 to me. Understand that a reduction will be made of standing mortgage on said property. All the above expose is the best I can do and if for any reason this condition will not be acceptable, leave things go the way they are, having no intention to continue correspondence or to accept any less than what I have asked." 10

On April 21st, 1927, I wrote to Ciruzzi that we had received this letter where Mr. Pica stated that \$12,000 is a fair market value and we wanted to see him. 20

On April 25th, 1927, we wrote to Mr. Pica and we set out the details of the transaction. We say:

"This is to acknowledge receipt of yours received (date) contents duly noted. In answer thereto we took this matter up with your brother-in-law and came to the following conclusion, viz: \$12,000, amount now due Building & Loan Association, \$4,885; balance \$7,115. One-fourth of \$7,115 equals \$1,779, your share, and one-fourth of \$7,115, \$1,779, your wife's share. One-half of \$7,115 equals \$3,558, your brother-in-law's share. However, from your and your wife's share certain deductions must be made for money paid out by your brother-in-law for 1926 taxes, \$225, Building & Loan dues, since October 26, \$504, 1925 water and insurance, \$75; first floor vacant for a period of twenty months at the rate of \$50 a month, \$1,000; plumbing, \$196; making a total of \$2,000. Your share of 30 40

Defendant's Witness, Ralph Messano, Direct

\$1,779 less your share of the expenses of about \$500, leaves a balance to you of \$1,279 due upon the value placed by you upon the house."

By the Master:

10 Q. Why was the rent taken out for the vacant premises? A. It was an arrangement between the parties that this first floor rent was to go to Mr. Ciruzzi, the family occupying the other.

Q. Then he was charged with a share of the rent? A. Yes.

20 "These figures also apply to your wife. Because of the fact that the market value placed on the house is very high, we have been authorized to submit to you and your wife an offer of \$1,000 each cash for your respective interests in the property, which we think is very reasonable.

Will you advise us by return mail if said offer is acceptable, and, if it is, when it will be convenient for you to call here for the purpose of signing the contract, and oblige."

30 Mr. Pica:

40 "Gentlemen: In answer to your last of April 25th I will inform you that for the only reason to settle this matter once and forever, I accept the offer representing the money you mention that I could get as my share, at the following conditions: First, as soon as I post my signature releasing said property, I intend to get my money. Secondly, by doing the above mentioned operation, I only intend to meet you and no others. Third, reception of the following documents: Citizen's paper, book of the Lodge of

Defendant's Witness, Ralph Messano, Direct

the Sons of Italy, deed of the lot and others belonging to me. Obtaining the above mentioned, and when everything is ready, by getting your notice I will be there to sign the papers for the final settlement. Respectfully yours."

By the Master:

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Q. Now, will you summarize it, as briefly as you can? A. There is one letter here I want to find. On May 26th, 1927, I wrote to Mr. Pica that we were ready to pass title to the premises No. 75 Charles Street and that he should advise us what time Wednesday morning or Thursday afternoon of the following week we could close the matter. Mr. Pica then telephoned me and we arranged to close this on the first of June, 1927.

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When he called up, he said to me that he wanted to make sure that the other people would not be at my office—that he did not want to see his brother-in-law and that he did not want to see his wife; that when he came there he would sign the deed and I would give him the check and that was to be the end of it.

30

On June 1st, Mr. Pica called at my office with another gentleman, who he said was a very close friend of his. He signed the deed and I gave him a check for \$1,000 dated June 1st, 1927, for his share of the money. While at the office we struck up a general conversation, and I asked him if there was not any chance of him and his wife getting together, and he said, "Now, I tell you, when I came in here today the only thing I wanted was my check for \$1,000, and I would give you the deed. I

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Defendant's Witness, Ralph Messano, Direct

don't want to see my wife and I don't want anything to do with her; as far as I am concerned, she is dead." We then closed the conversation, and I took the deed and he took the check and that was the end of it.

10 By Mr. McCombe:

Q. Have you the check with you? A. Yes.

Q. To whose order is that made? A. To the order of Joseph Pica.

Q. By whom is it endorsed? A. Joseph Pica, in payment of his right, title and interest in 75 Charles Street.

20 The Master: I understand there is no contest over that—or is there, Mr. McCombe?

Mr. McCombe: Your Honor will remember that in answer to my question whether he received any money he said absolutely none; he denied getting a thousand dollars.

Mr. Armstrong: He did nothing of the kind.

30 The Master: My notes indicate that he received a thousand dollars and she denied receiving a thousand dollars. I don't remember what she was asked.

Mr. Armstrong: She denied receiving anything out of this property.

40 Q. Was there anything else said with regard to his wife, other than what you have already told us, that he did not want to see her, and she was dead as far as he was concerned? A. That is all; he said that he did not want to have

Petitioner's Witness, Giuseppe Pica, Direct

anything to do with her and that as far as he was concerned, she was dead.

Q. And he did not want to see the brother?

A. He did not want to see the brother, or to see the sister. He did not want to see anybody.

By Mr. Armstrong:

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Q. You are the attorney for Mr. Ciruzzi? A. For Mr. Ciruzzi and Mrs. Pica.

Q. And you represented Mrs. Pica too? A. Yes.

GUISEPPE PICA, the petitioner, called in rebuttal: 20

By Mr. Armstrong:

Q. In the direct-examination of your wife, she stated that you gave her a disease; is that true? A. I never gave her no disease.

The Master: When was it? A long time ago?

Mr. Armstrong: Yes, some years ago. 30

The Master: That is ruled out.

Q. It is also testified by your wife that you beat her. A. I never beat her.

Q. Did you ever put your wife on the floor?

A. On the 4th I told her not to go away and she disobeyed and she tried to go and I hit her just like this (indicating a little tap).

The Master: There has been testimony 40 here that there was beating all the time. I am not going to receive that testimony, under the circumstances.

Defendant's Witness, Francesca Pica, Direct

CROSS-EXAMINATION by Mr. McCombe:

Q. Mr. Pica, do you recall when you had the sore leg? A. I got a sore leg, yes.

10 Q. At that time did your wife take care of you? A. Never; the boy would give my clothes to her and he gave me the medicine—that is all. She never came to my bed.

MRS. FRANCESCA PICA, the defendant, recalled:

20 *By Mr. McCombe:*

Q. Do you recall when your husband had a sore leg? A. Yes, sir.

Q. Who took care of your husband at that time? A. I did.

Q. And would you do things for him? A. I would—like it was on my body.

Q. And would you, as much as you could, be near him? A. Yes.

30 The Master: When was this sore leg affair?

Mr. McCombe: About a year and a half or a year before he left, he was sick—not when he left.

Q. Mrs. Pica, did you ever tell anyone that you never wanted anything to do with your husband? A. No, sir.

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TESTIMONY CLOSED.

Opinion.

The Master (orally): It seems to me that Mr. McCombe has a kind of responsibility here that should be adverted to. This case came on for final hearing and went along with the taking of testimony, and I am constrained to state that Mr. McCombe tried his case with ability and faithfulness all the way through. He introduced objections when he thought that they were proper in the conduct of the case, and some of the questions objected to were ruled out. On the hearing, the first day, the defendant took the stand, and she did not claim, when testifying in a very full examination, that the petitioner had been cruel to her, except as to one occasion, and that was the occasion that Mr. McCombe referred to in his summing up. I think he referred to it because it is the only occasion of violence in the whole case. That was the 4th of July. Mrs. Curtis also refers to that act of cruelty and her testimony is corroborative, but it is an isolated act of cruelty, unless we have some other testimony.

We find that the hearing is resumed today with Mr. Harber associated with Mr. McCombe, and explanations were made for the record, and I was constrained then to state, and I now repeat, that apparently the defendant sensed the situation, and felt that the case was going against her, whereupon the method of trial changed, and we had witnesses produced to testify to acts of cruelty extending over a long period of time.

That brings us back to the pleadings. The petition sets up a straight desertion case. The

Opinion

answer is as full as it should be, from my point of view. Mr. McCombe has drawn hundreds of answers in these cases and would have specially pleaded anything that was required. The answer denies the desertion alleged in the
10 petition and sets up that the petitioner left the defendant without just cause or provocation. That is the usual answer in such cases and he adds something to that to the effect that the petitioner had not supported the defendant and that she had been obliged to have recourse to the Domestic Relations Court.

Now, it seems to me that when Mr. McCombe drew that answer he knew the whole case, and
20 that the case of the defendant appears in the answer. At all events, whether it does or not, it is my duty to try the case within the scope of the pleadings.

The petition sets up a case of straight desertion. The answer denies that desertion and sets up the facts I have referred to. It does not set up any situation expressly based on extreme cruelty. These parties were married
30 many, many years ago, and they are old enough to know better, both of them, each being about fifty-three years of age. They never had any children, and that is perhaps the reason that we have this situation in court today.

From the time that the nephew and the niece of the wife, the defendant, were very young children, three or four years of age, this husband and wife took them into their home, and that was, of course, with the petitioner's con-
40 sent. It was his wish, as the mother of these two children states. Now, he cannot be, and

Opinion

could not have been over all these years a very bad kind of man, for he has brought up these children, a boy, now twenty-two years of age, and a girl, now twenty-eight years of age. The boy has been educated by the petitioner—I think at Egan's school—and did not go to work until he was nineteen years of age. It would appear that he is bitter against his father, as he calls him, and I think without adequate reason—he calls him "a beast." Now, assuming the worst, the petitioner is not a beast. He is a high-tempered man, and has been so for all these years, like his wife, but he is not a beast. I mention this to show this young man's attitude towards the petitioner, and I judge from the niece's attitude on the stand that she is really not in love with her father, so-called. I mention these things because the defendant insists upon having this nephew and niece live with her, and seems to have their love—a grown man and a grown woman.

Assuming that the petitioner had any obligation towards this nephew and this niece as young children, it disappeared when they became grown. While it is true that the girl may be "the best girl in the world," and she probably is, from the defendant's point of view, that very expression shows that while the girl to the defendant is the best girl in the world, the husband is not so good; he suffers by comparison; and so we have a situation at this time where the wife apparently desires to live with the nephew and niece, and, I am going to say, likes them more than she does the husband. Now, if she chooses to take that view, she cannot call

Opinion

upon the husband to support a home organized in that way. From the very beginning the relatives of the wife fastened down on this man.

10 I don't think anything adverse to him appears from their relations for some months after the civil marriage, many years ago. That is the usual situation during the time between a civil and a religious marriage. Something happened on Armistice Day, but that is too remote to be considered in this case.

20 Now, then, a house was purchased by the brother-in-law and the husband. The brother-in-law owned a half and the husband owned the other half in an estate by the entirety. A floor was used for the wife and the husband, who with these two grown-up children, a grown man and a grown woman, lived there in the upper part of the house. I don't believe that the husband did not support the wife. He did not give her all that she desired, but the house was supported and up to the time the boy was
30 nineteen years of age and before he went to work he contributed nothing at all to the house, apparently. The girl was excused because she says she did not work for the reason that her mother was sick. That is the situation. The wife slept with the niece in one room and the husband in another with the nephew, and he testifies that there had been no cohabitation for some years. The wife denies this, and in her testimony assumed that she had been a real
40 wife to him. But they were living in separate rooms, so far as cohabitation was concerned. Quarrels arose. He is a high-tempered man, Italian by birth—a national characteristic.

Opinion

She has been sick for years with neuritis and high blood pressure and she has been nervous for years, and in that situation quarrels naturally arose.

It seems to me that the case is quite clear, that when the husband left that home in September, 1926, no matrimonial offense had then been committed. Neither had a right to leave the other and stay away, but after he had been away a few weeks, and in October, if we are to believe the testimony of his brother, and I do believe it, the petitioner went to live with his brother, and the brother testifies that the petitioner lived with him in Newark after petitioner left his wife in the Charles Street house, for cause, as he saw it, and after a few weeks had gone past he thought, "perhaps my wife will think better of this," and at the request of the petitioner, so the brother says, he went to the Charles Street house and the defendant admits that he came there. Now, it is very significant, that on each occasion that anybody sought a reconciliation the niece was present. Here the brother, if I assume this to be true— the brother goes there with the idea of making peace—he goes to the Charles Street house with a commission from his brother, the petitioner, to make peace and get the parties together again. Whom does he find there? He finds the petitioner's wife and the niece together, which was quite all right; she is the "daughter" and she is her "mother." The brother says that he endeavored to make peace, but that he got no encouragement at all, and the answer made to him was, "Let him come

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Opinion

here and apologize"—I don't know what for, except that he had committed an act of violence on the 4th of July—that is when the niece and nephew wanted to leave for Columbia Park, You will observe from all the testimony of the defendant and the niece that the plural is used. The defendant says, he didn't give "us" enough money to support "us," and "we" this and "we" that, and the niece does the very same thing, on the stand, so that it is evident that the niece and the nephew regarded themselves as a part of this household, and so did the defendant.

Now, the petitioner had the legal right after he left—the leaving was only a circumstance—it was not a desertion on his part—after he left in December, 1926—he had a right to try by making overtures to his wife to set up a home from which this nephew and niece should be excluded. It is entirely clear to me from all the testimony that his wife has never intended, and does not now intend, to allow him to set up a home from which these persons shall be excluded. That is not in her contemplation at all.

The brother of the petitioner was unsuccessful when he made this attempt at reconciliation, which he says was in October, 1926, and the wife says that the brother came in January, 1927—January 2nd. Either date may be adopted as identifying a desertion date—if we adopt the date of January 2nd, 1927, then two years elapsed before the filing of the petition, assuming that the wife gives the correct date. I hold

Opinion

that the wife deserted the petitioner on the 2nd of January, 1927.

I think under the doctrine of the decided cases, that the petitioner made sincere efforts and met all the legal requirements in endeavoring to establish a home for his wife, from which home should be excluded this nephew and niece whom the defendant will not exclude; and all these things have a bearing on the sincerity of the overtures he has made. 10

In 1928, again, this petitioner solicited the aid of two of his lodge brothers in some Italian lodge—and, I should say from their appearance and testimony, men very well selected for that kind of mission. They were intelligent men, and spoke both Italian and English, and they testified on the stand that they went, under the commission of the petitioner, for the purpose of endeavoring to make peace between the husband and wife and to again establish a home for them; and the niece again was there; she was never excluded, and she was the bone of contention—she and her brother. The wife does not agree with the story told by those two lodge brothers, but I believe it; their story is reasonable, and they gave details, and they left with the same message that she gave to the brother when he called—“let him come home and apologize himself—let him come back and say that he is wrong and apologize before I will discuss living with him.” 20 30

I hold that his overtures were sincere and they meet the requirements of the cases, and 40

Opinion

that from January 2nd, 1927, the defendant deserted the petitioner.

10 There was testimony with respect to what the petitioner said about his wife between the two overture dates, with reference to his views about his wife, but it seems to me that the petitioner had a right to have that attitude, under the circumstances. The petitioner had the right to endeavor to set up a home, and if the defendant resisted, and I think she did, his proper overtures, why then desertion has taken place.

Now, Mr. Armstrong, I think Mr. McCombe is entitled to some additional counsel fee in view of the work that has been done.

20 (\$100 additional counsel fee is to be paid to Mr. McCombe.)

You will present the decree, Mr. Armstrong, and there is to be \$100 for Mr. McCombe.

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Decree Nisi.

Filed April 27/29.

IN CHANCERY OF NEW JERSEY.

Between

GIUSSEPE PICA,

Petitioner,

and

FRANCESCA PICA,

Defendant.

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On Petition.
Decree Nisi.

This cause coming on to be heard in the presence of Anthony V. R. Avallone, of counsel with the petitioner and I. Ross McCombe, with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 16th day of December, 1889, and that the defendant has been guilty of willful, continued and obstinate desertion of the petitioner for the term of two years as alleged in said petition and that at the time the cause of action for divorce for the said desertion arose, the petitioner and the defendant were bona fide residents of this State, and that the said petitioner and defendant have continued so to be down to the time of the commencement of this action, and that the peti-

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Decree Nisi

10 tioner and defendant have been for two years last preceding the commencement of this action, bona fide residents of this State, and it further appearing that jurisdiction has been acquired by personal service of process upon the defendant within this State

It is, thereupon on this 27th day of April, 1929, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed and the said Chancellor by virtue of the power and authority of this Court and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, Giuseppe Pica, and the said defendant, Francesca Pica, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the court why this decree should not be made absolute, within three months from the date hereof.

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It is further Ordered, that the petitioner pay the sum of One Hundred Dollars (\$100.00) as counsel fee to I. Ross McCombe, solicitor for the defendant.

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Respectfully advised
E. R. WALKER,
C.

Marshall Van Winkle,
Advisory Master.

A true copy.

40

FERD GARRETSON,
Clerk.

Decree Nisi

I, Ferd Garretson, Clerk of the Court
of Chancery of the State of New
Jersey, the same being a Court of
Record, do hereby certify that the
(L. S.) foregoing is a true copy of the
Decree Nisi in the cause wherein
Giuseppe Pica is petitioner, and
Francesca Pica is defendant, now
on the files of my office. 10

In Testimony Whereof, I have hereto set my
hand and affixed the seal of said Court, at
Trenton, this 15th day of May, A. D. nineteen
hundred and twenty-nine.

FERD GARRETSON,
Clerk. 20

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Petition of Appeal.

Filed July 8/29.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

GIUSEPPE PICA,
Petitioner-Appellee,

and

FRANCESCA PICA,
Defendant-Appellant.On Appeal
from the
Court of
Chancery.
Petition of
Appeal.

10

To the Honorable Court of Errors and Ap- 20
peals in the Last Resort in all causes.The petition of appeal of Francesca Pica,
appellant in this cause, respectfully shows:

1. Your petitioner finds herself aggrieved by
a Decree Nisi made in the Court of Chancery
by his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey, bearing date the 27th
day of April, 1929, which said Decree Nisi was
advised by Marshal Van Winkle, Advisory Master
in a cause wherein Giuseppe Pica was petitioner
and your petitioner Francesca Pica was defendant,
in this respect, to wit: 30

That the said Decree ordered, adjudged and
decreed that the said Giuseppe Pica and the said
Francesca Pica be divorced from the bonds of
matrimony for the cause of desertion. 40

2. Your petitioner, therefore, appeals from the

Petition of Appeal

said Decree Nisi of the said Chancellor, which decrees a divorce as aforesaid upon the ground that the same is erroneous for the following reasons:

- 10 (a) There was no evidence at the hearing of said cause in the Court of Chancery to justify the making of said Decree.
- (b) The evidence upon the hearing of the said cause in the Court of Chancery was that the said Giuseppe Pica deserted the defendant in that cause, who is your petitioner here.
- 20 (c) The evidence upon the hearing of the said cause in the Court of Chancery is insufficient to establish the allegations of the petition for divorce.
- (d) Because evidence was taken and received bearing upon alleged constructive desertion, whereas the petition for divorce contained no allegations of constructive desertion, but alleged actual desertion.
- 30 (e) Because the evidence disclosed that the petitioner below left and abandoned defendant below without cause.
- (f) Because the evidence established that the petitioner below had failed to make bona fide overtures to end the existing separation between he and his wife during the two year period immediately following the date of the alleged desertion.
- 40 (g) Because the evidence established that the petitioner below had failed to provide for and

Petition of Appeal

support his wife, the defendant below, who is the petitioner here, and also failed to provide her with a proper home, and failed to make any bona fide offer to provide such a home within the aforesaid period.

(h) Because the evidence established that the petitioner below, had insisted relatives live with he and his wife against her wishes, and without right on his part to so insist. 10

(i) Because the evidence established that the defendant below, who is the petitioner here, is entitled to a decree dismissing the petition for divorce.

2. Your petitioner, therefore, prays that the said Decree Nisi of the said Chancellor may be in all things reversed and set aside and that your petitioner may have alimony *pendente lite* pending this appeal, and a counsel fee for prosecuting the same, and may have such other and further relief in the premises as to this Honorable Court shall deem meet and proper. 20

SAMUEL HARBER, 30
Solicitor for and of Counsel
with Petitioner.

Answer to Petition of Appeal.

Filed July 26/29.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	Between GIUSEPPE PICA, Petitioner-Appellee, and FRANCESCA PICA, Defendant-Appellant.	}	On Appeal From the Court of Chancery. Answer to Petition of Appeal.
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20 The answer of Giuseppe Pica the above named Appellee to the petition of appeal of Francesca Pica, the above named appellant:

30 This Appellee not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was on the 27th day of April, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but that the substance and order of said decree this appellee begs leave to refer to when the same shall be produced;

40 This Appellee is advised and believes that the said decree is agreeable to equity; and he prays that the same may be affirmed, with costs to be taxed, in favor of this Appellee.

ANTHONY V. R. AVALLONE,
Solicitor for Appellee.

THOMAS R. ARMSTRONG,
Of Counsel with Appellee.

New Jersey Court of Errors and Appeals

Between

GIUSEPPE PICA,

Petitioner-Appellee,

and

FRANCESCA PICA,

Defendant-Appellant.

On Appeal
From the
Court of
Chancery of
New Jersey.

BRIEF FOR DEFENDANT-APPELLANT

Statement

This action was brought in the Court of Chancery of New Jersey for divorce on the ground of desertion. The petition for divorce, which is printed on page one of the case, gives as the ground for divorce that the defendant deserted petitioner on September 28th, 1926, ever since which time and for more than two years last past, said defendant has wilfully, continuedly and obstinately deserted petitioner. A hearing was held before Advisory Master Van Winkle, who advised a decree in favor of petitioner. The decree is printed on pages 219 and 220 of the case. An appeal from this decree is before the court here for determination.

Facts

Petitioner, Guiseppe Pica, was married to defendant, Francesca Pica, in December, 1899. They lived together as husband and wife at various places in New York and New Jersey for twenty-seven years. Both parties are over fifty years of age. There were no children born of the marriage. Several years after their marriage, petitioner and defendant took into their household a nephew and niece of defendant, children of tender age, and raised these children. The parties together with the two children were living in the top floor of a two-family house at 75 Charles Street, Jersey City. Petitioner and defendant owned a one-half interest in the property, and defendant's brother owned the other one-half interest. The petitioner left his home on the morning of September 28th, 1926, under circumstances which are in dispute. He went to live with his brother in Newark and absented himself from his wife and home in Charles Street from that time until the trial of the case, which was in April, 1929. He is still living away from his wife and home in Jersey City. From the time he left in September, 1926, until July 1st, 1927, he contributed nothing toward the support of his wife, who, as the undisputed testimony discloses, is a sick woman under the doctor's care and unable to support herself. In June, 1927, an order was entered in the Domestic Relations Court in Hudson County, which required petitioner to pay to defendant \$50 a month for her support. These monthly payments continued until just before the petition for divorce was filed in this case in January, 1929.

The petitioner testified that he left his wife because he would not live with her relatives. The fact is undisputed that the relatives went to live with petitioner and defendant with the consent and entire approval of petitioner, and they lived together in this manner for a great many years. There were no circumstances shown which would justify petitioner's withdrawing from the home.

Shortly before this action for divorce was instituted, petitioner sent two lodge brothers to see his wife, which he says was to effect a reconciliation. Defendant told these emissaries that she thought they were not concerned in the matter, and that if her husband wanted to come back to her it was up to him to apologize to her for leaving, and to personally make overtures to come back to his wife. Petitioner sent members of the family to see his wife for the same purpose, and he said that they were told about the same thing.

Argument:

The petition should be dismissed. The Court of Chancery erred in entering a decree in favor of petitioner.

This action, as above stated, is for divorce under the Statute, which provides that the desertion must be for two years and must be wilful, continued and obstinate on the part of defendant. No testimony has been adduced anywhere in this case on behalf of petitioner to establish such desertion. Let us see what petitioner says about his leaving; on direct examination (Case p. 18 lines 16 to 38):

“Q. Now in 1926 when you did leave, what was the cause of your leaving then?

A. Because they rob my store and she did

not come into the store to take care of it. She was not present at the store, and this thing would not have happened, because I had an intention of moving up there.

“Q. Then you went home and told her about it? A. Yes.

“Q. What did she say to you? A. She said I better get out altogether.

“Q. Now, when you left there, where did you go? A. I went to my brother's, 600 North Sixth Street, Newark.

“Q. You had no other home to go to? A. No; that is my relative—the only one I have got.

“Q. How long did you stay there? A. I stayed there about two years.”

On cross examination (Case p. 23 line 42 to bottom of page 24):

“Q. You and your brother-in-law bought the house in Charles Street, did you not? A. Yes.

“Q. And you lived together there for many years? A. Four or five years about.

“Q. During that time everything was perfectly all right, was it? A. Yes.

“Q. And you had your work in New York? A. Yes.

“Q. Now, when you left in September 28th, 1926, did you say anything to your wife that morning when you left? A. No—we have an argument, and she say to me, ‘Get out of the House’ and that is enough.

“Q. Isn't it a fact that you had not spoken to your wife for at least eight

months before? A. I spoke every time I have to speak to her—every time I want to speak to her, and she said that she never wanted to speak to me again and that I was to get out of the house.

“Q. After you left in September, 1926, where did you go? A. I went to my brother’s.

“Q. And was anybody else living at your brother’s? A. My brother, his wife, my step-mother and a nephew of the family.

“The Master: Do you remember the exact date that you left in September, 1926?

“The Witness: The 26th.

“Q. How long did you stay there? A. I stayed there about two years—September the first I think it was.

“Q. After you left in September—September 28th, 1928, you stayed in Newark for more than two years? A. Stayed in Newark for more than two years.”

Again on cross examination petitioner gives a different version of his leaving (Case p. 35 lines 8 to 38):

“Q. Mr. Pica, that morning when you left, you ate breakfast and went out without saying a word, didn’t you? Is that right? A. Yes.

“Q. You did not tell your wife that you were leaving? A. No.

“Q. And the next time you saw your wife was in the fall, was it? A. Yes; so I didn’t say nothing. I went to business and the girl went and opened the store at nine o’clock and she found the place had

been robbed, and naturally I did not know myself what to say. I did not care to go home at all. It was all there—if they didn't help me in business, I didn't care to go home—if they had helped me I would not be robbed and everything would have been O. K.

“Q. When you left your wife that morning did you tell your wife that you were leaving for good? A. No.

“Q. Did you say anything to her about intending to leave that day? A. No.

“Q. You left without speaking to her. When did you next see her? A. What?

“Q. After that September morning when you left, when did you next see her? A. I saw her at the hospital.”

The defendant's story as to her husband's leaving is found on Case p. 102 lines 17 to 27:

“Q. Now, when he left you on that 28th day of September, 1926, who was present? A. The boy, the girl and my brother.

“Q. Was there anything said? A. Not a word.

“Q. Did he tell you that he was going to leave that day? A. No sir.

“Q. Did you have any quarrel on that day? A. No sir.”

There is much testimony in the case by defendant's witnesses that the petitioner was very cruel to defendant; that he often struck her and called her vile names. Petitioner admits in his own direct examination that he struck defendant on

one occasion. All this testimony, of course, is immaterial as neither of the parties claims constructive desertion and cruelty is not an issue in this case.

Schmidt v. Schmidt, 117 Atl. 400, (not in State reports) would seem to be a case particularly in point here. There the Court of Chancery held that the husband was not entitled to a divorce where he left home after a quarrel with his wife in which she told him to "get out." From the opinion we quote the following:

"In this divorce suit for desertion the master reported adversely, and I think correctly. The parties lived together 28 years and have grown-up children. On September 11, 1919, the couple had a quarrel over the conduct of one of their daughters, and in anger the wife told the husband to 'get out' and he left and never returned. Obedience to his wife's outburst, in a fit of temper, was not compulsory, nor was his 2 years' absence from home inevitable. Her direction in whatever language it may have been couched, in the circumstances, was neither justification nor excuse for quitting. He either tamely submitted or the going was to his liking, and he availed himself of the chance remark. It does not appear but that he could have at any time returned and resumed his position in the household, and by effort and tact possibly restored connubial relations with his wife. Did he make reasonable effort towards reconciliation? He says he wrote a number of letters to her, asking that he be taken

back, only one of which was answered, and that one he does not produce, and after a lapse of time sent two women acquaintances to solicit her to do so, and that she refused. Letter writing was not the way. Personal communication—heart to heart talk—might have brought favorable results. The use of women missionaries was tactless, and an affront which any spirited wife would resent, as this one undoubtedly did. The separation was largely of the petitioner's own making due to his indefensible attitude of meek submission and complacent acquiescence to his wife's. His right and duty was to stay at home. Leaving spontaneously and in ill temper, it was his privilege and obligation to return. His departure, and absence, under the circumstances, cannot be construed into wilful, continued and obstinate desertion upon the part of his wife.

“The exception will be overruled, and divorce denied.”

The facts in the above case were somewhat similar to those in the case at bar. There the husband left his wife and stayed away for 2 years. He then wrote a number of letters asking that they become reconciled. He also sent women to bring about a reconciliation. The court rightly held that there was no desertion, and that the husband did not make the reasonable effort towards a reconciliation.

Another case, *Light v. Light*, 95 N. J. E 779 S. C., 124 Atl. 359 is in some degree similar to this case under appeal. We take the following from the

opinion of the Advisory Master in that case (later affirmed by the Court of Errors and Appeals, 95 N. J. E. 779) :

“If I am wrong in this conclusion, still I think that the means adopted by the husband to induce his wife to return to him were not sufficient. He evidently wanted to get a divorce from her. The evidence shows that, after the previous suit was decided adversely to him, he sent his son to see the wife, evidently to lay a foundation for a new suit. I do not think his attempt to have her return to him was sincere and made in good faith.”

Holst v. Holst, 101 N. J. E. 682, 139 Atl. 333, states the well known rule that in order for a desertion to be obstinate, the party who sues because of the desertion must show a sincere and genuine effort to become reunited. The court in this case says :

“It appears to me that, if the petitioner was sincerely desirous of having his wife reunited with him, he might reasonably be expected to have made personal appeal to her, particularly inasmuch as he deserted her. If he was sincere, he should also have indicated to his wife that he had in contemplation the reestablishment of a home for himself and her, yet he made no reference whatever thereto. I am convinced that the sole purpose of his meager attempt at effecting a reconciliation with his wife, if given the benefit of his alleged attempts so to do, was to found cause for a suit for di-

voice on the ground of her alleged desertion of him.

“The petitioner’s alleged requests for his wife to return to live with him were not such, in my judgment, as might reasonably be calculated to influence her. If he sincerely desired to resume marital relations and live with his wife, something more was necessary to be done by him to accomplish that result than the efforts which he claims to have put forth. The petitioner contributed nothing to his wife’s support after his desertion of her, except under the compulsory order of the court, and his payments thereunder were not only irregular, but so much in arrear as to make it necessary for the wife to apply to this court to have him show cause why he should not be adjudged in contempt of the court’s order requiring payment to her.”

In connection with the above facts and in order to show the state of mind of the petitioner, the testimony of Mr. Messano in whose office petitioner passed title to his interest in the Charles Street property, is helpful. (Case p. 207 line 40 to line 10 p. 208):

“A. ‘Now, I tell you, when I came in here today the only thing I wanted was my check for \$1,000, and I would give you the deed, I don’t want to see my wife and I don’t want anything to do with her; as far as I am concerned, she is dead.’ We then closed the conversation, and I took the deed and he took the check and that was the end of it.”

From all the foregoing it is evident that the deserting party was the petitioner and not the defendant; and that the petitioner left his home in Jersey City on September 28th, 1926. He had no just cause for leaving and it was his duty to return to his home. If, as he says, he did not want his relatives living in the house, he could have kept them out. It was his home and he was master of it. It would have been much easier for him to refuse the hospitality of his home to his wife's relatives than it was to start this family row.

The petitioner made an offer during the progress of the case, to take his wife back, which offer was refused, because the wife said that she was afraid of petitioner. This action by the petitioner is the first indication by him of a sincere proposal toward effecting a reconciliation. It certainly should not be considered as the basis for finding desertion in this case, because under the law, desertion had to be proven to begin as of September, 1926, or thereabouts. The fact that defendant did not want to accept the petitioner's proposal to come back in 1929, has no bearing in the decision of this case. If petitioner was unjustified in leaving defendant in 1926, then she has a cause for divorce on the ground of desertion, and it may be that she refused his offer made at the time of the trial because she contemplated a divorce.

The Advisory Master decided that petitioner had no right to leave defendant in September, 1926, and his leaving was only a circumstance; that his obligation to make overtures to defendant in order to return to her was accomplished by sending his two lodge brothers and his relatives,

and that these overtures were sincere and were within the requirements of the cases. In this the Advisory Master was in error, because the cases hold quite the contrary. The decisions are to the effect that a duty is imposed on the party who claims desertion to prove that it is wilful, obstinate and continued, and even where the party making the claim for desertion is the one not at fault, he still must personally solicit a reconciliation.

Applying the rule as laid down in the cases above cited, it was incumbent on the petitioner in this case to return to his home and to try to effect a reconciliation. This was not done here. Emis-saries were sent and from the way they testified in court, it is manifest that their purpose was not for reconciliation, but to obtain evidence for the petitioner in aid of his action for divorce.

For the foregoing reasons, it is respectfully submitted that the decree of the Court of Chancery should be reversed and that the petition should be dismissed.

JOHN W. OCKFORD,
*Solicitor for and of Counsel with
Defendant-Appellant.*

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New Jersey

COURT OF ERRORS AND APPEALS

Between

GIUSEPPE PICA,
Petitioner-Appellee,

and

FRANCESCA PICA,
Defendant-Appellant.

BRIEF OF PETITIONER-APPELLEE

Prefatory Statement of Facts.

To enlighten the Court on the material facts of the case the Petitioner-Appellee presents these facts not touched upon in the brief of the Defendant-Appellant.

On two occasions the Petitioner-Appellee visited his former home for the purpose of seeing his wife. On both occasions, he testifies, that though he tried to get in, both times she refused to open the door to him, that on both occasions she saw it was he at the door and still refused to open it. There is also testimony that he attempted to speak to her while visiting a hospital in which his nephew was confined, and she refused to answer him. There were also several letters which the petitioner wrote to the defendant seeking to effect a reconciliation which letters were admitted into evidence and marked Exhibits 1 and 2 and Petitioner's Exhibit 3 (State of the Case, page 98, lines 27 to 31 inclusive).

The exhibits were omitted from the state of the case by the Defendant-Appellant but they were read into the testimony by the Master and are set out on page 107, lines 11 to 26 inclusive of the state of the case.

Argument.

“The Decree should be sustained.”

There was no error in the action of the Court of Chancery in entering said decree.

POINT ONE

The Defendant deserted the Petitioner.

(A)

This action is for divorce under the Statutes which provides for divorce where either spouse has wilfully, continuously and obstinately deserted the other for a period of two years previous to the bringing of the action.

Here the Petitioner-Appellee left his home on the 26th day of September, 1926. The facts as to his leaving are in dispute. He went to live with his brother in Newark where he resided for the next two years. He testified that it was in October 1926 (State of the Case page 88, lines 16 to 34 inclusive, page 20, lines 42 to 43 inclusive, page 21, lines 6 and 7 inclusive) that he sent his brother to his wife for the purpose of making

"peace with them." In this he is corroborated by his brother. The wife's testimony was, that it was January 2, 1927 (State of the Case page 108, lines 10 to 18 inclusive). A reference to the brother's testimony on direct examination (State of the Case, page 80, lines 28 to 41 inclusive, page 81, lines 1 to 41 inclusive, page 82, lines 1 and 2 inclusive, page 83, lines 40 and 41 inclusive, page 84, lines 1 to 7 inclusive, page 86, lines 32 to 41 inclusive, page 87, lines 5 to 12 inclusive), discloses, in effect, the following:

He called on the defendant at her home on Charles Street, Jersey City, N. J., and attempted to straighten the trouble between them. He explained his regret over their separation and listened to a recital of the wife to a lot of little annoyances—he suggested that his niece and nephew were grown up they could go to their own mother and the petitioner and wife could live together in a nice home. To which she replied: "Oh No, No, so long as he is away, I say that he is alright away."

The purpose of the setting out of all the above testimony at length has been, to show, that it was at this time that the desertion period commenced. The Petitioner-Appellee had left the defendant on September 26, 1926, but after a short period of time, he attempted to bring about a reconciliation between himself and his wife.

In the case of *Hague v. Hague*, reported in 85 N. J. Equity, page 537, the Court of Errors and Appeals passed on the question involved here. That was a case similar to the present case. The petitioner had left the husband, but subsequently made overtures towards a reconciliation. The

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Court of Errors and Appeals in reversing the decree of the Court of Chancery and awarding a decree to the Petitioner-Appellant laid down this rule :

“Where the separation is shown or may be inferred to have arisen with the wife’s consent, it will become desertion from the time the complaining party makes sincere overtures to terminate it” *Hague v. Hague*, 85 N. J. Equity, page 537.

The Court of Chancery in an earlier decision in the case of *Hankinson v. Hankinson*, 33 N. J. Equity, page 66, laid down the same principle :

“The separation of the husband and wife, acquiescent by the wife and which she did much to bring about, however long continued, does not constitute desertion to authorize a divorce on her petition. Such a separation however would become desertion from the time the complaining party makes sincere overtures to terminate it” *Hankinson v. Hankinson*, 33 N. J. Equity, page 66.

Again in the later decision of *McCauley v. McCauley*, 88 N. J. Equity, page 392, lines page 394, the present Chancellor has this to say :

“Assuming that the separation was more the fault of the petitioner than of the defendant, that does not prevent the desertion becoming one against the will of the petitioner, and therefore obstinate.”

(B)

In view of the above decisions, did the petitioner make those sincere overtures to terminate the separation, so that if these overtures were refused, the separation would become desertion?

The means that he used to try and effect a reconciliation, were those means a reasonably kind and just man would use in the circumstances to bring this about and the means under the circumstances were those means that he used after calculating what efforts would best bring he and his wife together. Having some knowledge of the attitude of his wife in regards to a personal visit from him (which knowledge was justified in light of later events, as disclosed by her refusal to see him, when twice he called at the house she was residing in, and her refusal to speak to him when he addressed her in the hospital) he sent his brother to "make peace" with her.

The brother went and visited the wife and as set out in the State of the Case (page 80, lines 28 to 41 inclusive, page 81, lines 1 to 41 inclusive, page 82, lines 1 and 2 inclusive, page 83, lines 40 and 41 inclusive page 84, lines 1 to 7 inclusive, page 86, lines 32 to 41 inclusive, page 87, lines 5 to 12 inclusive), and in the prefatory statement of facts in this brief he sought to bring about a reconciliation, to which the wife made this reply (State of the Case page 82, lines 5 and 6 inclusive) "Oh No, No,—so long as he is away, I say that he is alright away."

She refused and repulsed this offer. While in

her testimony she denies this, the Master, as part of his findings, found this as a fact and the fact on which he based his advisory opinion.

In passing upon the duty of the husband to attempt a reconciliation the Courts have not laid down any hard and fast rule as to what means must be pursued by the husband to bring about a reconciliation.

In the case of *Rogers v. Rogers*, 81 N. J. Equity, page 331, it states the rule that must apply in the majority of cases in the following decisions:

“Our law has refrained from laying down any hard and fast rule in regard to the duty which is imposed on a husband whose wife is separated from him, where she is to blame, of inviting her to remain. It would be difficult to frame any hard and fast rule * * * the only test of any practical value in a large number of cases is the test of a reasonably kind and just man. *Taking all the conditions and all the circumstances into consideration, the question is, has this man acted like a just man?*” (Italics ours.)

This in view of the circumstances, it is submitted, the husband did.

POINT TWO

Said desertion of the wife was obstinate.

Taking together the facts already set forth above as to the wife's refusal to be reconciled to the husband on the occasion of the brother's visit, and again on the occasion of the visit of Mrs. Lena Pica (State of the Case, page 71, lines 20 to 40 inclusive), and the further circumstances of the case as referred to in the Advisory Master's opinion, her obstinate and unyielding stand is clearly shown. Her refusal to see the petitioner on each occasion when he called at the house where she was residing and her failure to answer or in any way respond to his letters and her attitude as disclosed to the witnesses, Amoroso and Rosso who called on the wife on behalf of the petitioner when he himself could not gain a personal interview with her (State of the Case, page 48, lines 11 to 15 inclusive, page 56, lines 31 to 40 inclusive, page 57, lines 27 to 30 inclusive), are all indicative of a determined stand against the husband's overtures towards a reconciliation. Her unwillingness to be reconciled to the petitioner, when during the course of examination of the petitioner, during the course of the hearing before the Advisory Master, the petitioner professed his willingness and desire to live again with her and establish a home for her and her absolute rejection of the Master's proposal to postpone the hearing to give them an opportunity to come together may again be said to be indicative of her wilful obstinate intention to desert the

petitioner (State of the Case page 43 lines 24 to 43 inclusive, pages 44, lines 1 to 43 inclusive, page 45, lines 1 to 40 inclusive).

CONCLUSION.

For the reasons alleged the Petitioner-Appellee submits that the petitioner made sincere overtures towards reconciliation. That under the cases cited and the circumstances of this case, these overtures were such that a reasonably kind and just man would make to bring about a reconciliation between himself and his wife. That the defendant in refusing these overtures was guilty of desertion. That in view of her unwillingness at any time to be reconciled to the petitioner, that desertion was obstinate. That it continued for a period of two years prior to the filing of this petition.

For the reasons herein stated the Petitioner-Appellee submits that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

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THOMAS R. ARMSTRONG,
of Counsel.

