

N. Y. Court of Errors & Appeals.

Between

MARTHA WILLIS,
Applt.

and

HENRY M. WILLIS,
Respt.

*Brief for Petitioner
and Appellant.*

This is an appeal from a decree of the Court of Chancery denying a petition for divorce for desertion. The petition was filed April 28, 1880.

According to the Master's report, which is fully sustained by the proofs, the defendant left the petitioner in July, 1876, and, with the exception of one or two visits the same month, has never returned to her. In all probability he left to avoid arrest by creditors, but that danger was speedily removed, and since then he has never seen her nor contributed to the support of her or her boy. The Master finds that the desertion was wilful and has been continued and obstinate. It is further in evidence in the case, that while they lived together, and almost up to the date of his desertion, he had

her entire confidence and abused it, to the extent of depriving her of her property, appropriating all he could turn into cash and leaving the rest heavily mortgaged, in aid of his speculations, for her to take care of, in addition to the support of herself and boy. As the principal of these mortgages falls due she can neither sell nor remortgage, and the result, when she cannot get indulgence, will be foreclosure, and unless this petition is speedily granted she must lose everything.

The desertion by the defendant has been :

1. Continued.
2. Wilful.
3. Obstinate.

1. It has been continued. It continues to this day. Its present continuance may not be entitled to be considered in itself ; and it is cited here only by way of corroboration.

2. It is wilful.

He left her first to avoid creditors from whom he feared arrest ; soon after all creditors from whom this was feared were settled with, and he was then in no danger had he returned ; but after that he never came back.

It seems to be on this point alone that the Vice-Chancellor is at variance with the conclusions of the Master. But for one letter from the defendant to the petitioner, in which he charges her with seeking, by the aid of detectives, to convict him of adultery, the Vice-Chancellor would evidently have concurred with the Master in his conclusions upon this case.

From this letter the Vice-Chancellor concludes that, until the defendant wrote it, he had no intent to desert, but "from that date, it may be, he is subject to the charge of being a deserter."

As to this—

1st. His conduct toward the petitioner, before and after that letter, was about the same.

He never came near her, though living only twenty miles away ; never did or offered to do anything for her or the boy, after he had squandered her property.

It was before and not after this letter, that he appropriated the money with which he had promised to pay the help at the hotel. Had he intended to return he would hardly have done that.

His intent should be judged by his *acts*, not from his words and professions, which good and reputable witnesses testify to be untrustworthy.

O'Neil *vs.* O'Neil, 3 Stew., 119.

The letter is not evidence of the truth of the detective story, and there is no evidence of it in the case. In fact it is not true.

It should be borne in mind that the letters were called for by the Vice Chancellor. They were not offered in evidence by the petitioner.

Mrs. Willis' character, as testified to by these witnesses, fully demonstrates the falsity of the charges in this letter.

It was not her duty under all the circumstances to go and live with him.

He never asked her to, and he had no place for her. He lived with his father.

Not a letter of his, nor any word from him, contains a suggestion that he will return, or that she should go to live with him.

3d. It is obstinate.

If not, what circumstance could be added to make it obstinate? She is tied to the spot where she is. Her property, which has been heavily mortgaged for his debts, requires care, attention and the presence of the owner to keep it from ruin and the grasp of mortgagees. He is within twenty miles of her and without incumbrance. He has not been near her since 1876. He has occasionally written letters which seem to manifest a desire for reunion. Nothing has hindered the reunion but his desertion. She has not left him. He was well and kindly received on his last return. She gave him all the money she had, after which he went to the clerk of the hotel and drained the cash box there.

Obstinate desertion doubtless consists of an intention not to return. His intentions are best gathered from his actions, not letters.

The letters are occasional. They evidently spring from sudden gusts of feeling and are hollow and insincere. They cannot break the force of *facts* proving desertion.

An intention to desert on his part is proved by the fact of his *going* and *remaining away*, she in no way consenting.

It is true their separation is not an angry one, such as the Court frequently has to deal with. She has not offended him. There was nothing in her character or disposition to complain of.

It is not probable that he hates her, or that he would be adverse to her society and that of the boy, so far as might be consistent with freedom from the restraint of married life and the burden of a family.

It is these cases of faithlessness, rather than cases of family quarrels, that the law of divorce for desertion was intended to meet. Such cases are the most wanton.

There is no desertion on her part, actual or constructive. She has never consented to the separation or done anything to cause it, or by any act or word failed in her duty towards him.

With all his professions of affection, it does not appear that there is any obstacle on her part in the way of his return. His last visit proves the contrary. It may be suggested that she should have done something to lure him back. What should she have done? If they had quarrelled; if there had been ill temper on her part; if her disposition had been the cause of his leaving, it might be her duty to relent and urge him to return, and he might yield to it, but he is simply floating around in the enjoyment of his freedom and independence. In such cases coaxing is not effectual.

If he should return, get all the money he could, perhaps also the boy, and go again, it would make matters worse than before. *She dreads this and justly.* In one of his letters he threatens to take the boy.

Cornish *vs.* Cornish, 8 C. E. G., 208.

Trall *vs.* Trall, 5 Stew., 231.

In *Cornish vs. Cornish* the duty of the petitioner to do something to put an end to the desertion is placed on the ground that the *petitioner's conduct* was the original cause of the defendant's leaving.

It has in no case been insisted upon as an independent duty, where the petitioner had not been in fault.

In *Schenck vs. Schenck*, 6 Stew., 363, the wife actually refused to live with her husband, and although she showed some signs of relenting and of a willingness to go and live with him, yet her character and conduct indicated that this willingness was exceedingly weak and would have been short-lived, unless her husband's means had been up to her

ideas, and she could have been gratified as to their mode of life. *Yet she was granted a divorce.*

Kennedy *vs.* Kennedy, 87 Ill., 250, 253.

In McKnight *vs.* McKnight there was an actual *agreement in writing* of the parties to live separate, the husband to pay the wife \$25 per month. She filed her bill after he ceased his payments, and was granted a divorce.

This case was some time in 1877. I do not find it reported.

GEORGE R. DUTTON,

Sol. for and of Counsel for Appellant.

In Chancery of New Jersey.

Between

MARTHA WILLIS,
Petitioner,

and

HENRY M. WILLIS,
Defendant.

1
On Petition, &c.

To the Honorable Theodore Runyon, Chancellor
of the State of New Jersey :

2
The petition of Martha Willis, of the Township of Englewood, in the County of Bergen and State of New Jersey, respectfully shows that your petitioner was married on the tenth day of October, 1866, at Hempstead, in the County of Queens and State of New York, to Henry M. Willis, her present husband, since which time she has resided, and still resides, at Englewood aforesaid.

And your petitioner further shows that her said husband lived with her nearly ten years after they were married, and until the month of August, 1876, when he deserted her and left the State of New Jersey, as she understands and believes, and that he now resides at Mineola, in the County of Queens and State of New York.

3
And your petitioner further shows, that for more than three years last past, her said husband has wilfully, continuedly and obstinately deserted her, and during all that time has wholly neglected to make any provision for her support.

And your petitioner further shows that she has one child by her said husband, viz , Harry H. Willis, aged seven years, who has lived with petitioner. That she has supported herself and said child since August, 1876.

4 That she has no means of support except her own exertions and an uncertain income from real estate which rarely exceeds the interest on the mortgages thereon. That her said husband never contributed to her support, but on the contrary involved her in obligations for his indebtedness in such manner that her property, which at the time of her marriage consisted of valuable unincumbered real estate in Bergen County, is now heavily mortgaged for his debts, and in danger of foreclosure and sacrifice.

5 Your petitioner, therefore, respectfully prays, that she may be divorced from her said husband, and that the care, custody and education of said child, until he shall be of age, be awarded to her, and that she may have such further or other relief as may be equitable and just.

And your petitioner will ever pray, &c.

GEORGE R. DUTTON,

Solicitor and of Counsel with Petitioner.

STATE OF NEW JERSEY, }
County of Bergen. } ss. :

6 MARTHA WILLIS, the petitioner in the foregoing petition, being duly sworn, says that her complaint in said petition is not made by any collusion between her and the defendant in said petition for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the petition.

MARTHA WILLIS.

Subscribed and sworn to before me }
this 27th day of April, A.D. 1880. }

W. M. JOHNSON,

Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY.

Between

MARTHA WILLIS,

Pet'r,

and

HENRY M. WILLIS,

*Deft.**On Petition, &c.*

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Upon opening this matter to the Court, by George R. Dutton, of counsel with the petitioner, and it appearing that due notice of the order of this Court, made on the first day of May, last past, directing the defendant to appear and answer the said petition on or before the second day of July, then next, has been duly, personally served on the defendant, as in said order, and by the rules of this Court, directed and prescribed; and that the said defendant has not answered the same within the time limited by law and the said order, but has wholly failed and neglected so to do. 8

It is, thereupon, on this seventeenth day of July, A. D. 1880, ordered, that it be referred to William M. Johnson, one of the Special Masters of this Court, to ascertain and report as to the truth of the allegations of the petitioner's petition, and his opinion thereon; and that the petitioner proceed to take depositions and other evidence before said Special Master to substantiate and prove the allegations in said petition and to bring on the hearing of the cause *ex parte*; and that the said Master do return, together with his report, and as part thereof, such depositions and other evidence as may be taken before him in pursuance of this order. 9

By the Statute,

A. V. VAN FLEET,

Master.

IN CHANCERY.

Between

MARTHA WILLIS,
Petitioner,

and

HENRY M. WILLIS,
Defendant.

10

*On Petition, &c.
Master's Report.*

11 In pursuance of an order of this court made in the above stated cause, bearing date the seventeenth day of July, eighteen hundred and eighty, whereby it was referred to the subscriber, one of the Special Masters of this Court, to ascertain and report as to the truth of the allegations of the petitioner's petition and his opinion thereon, and that the petitioner proceed to take depositions, &c.

I, WILLIAM M. JOHNSON, the said Master, do respectfully report that I have been attended by George R. Dutton, Solicitor of the Petitioner, and that in his presence I have examined the matters thereby referred to me.

12 And I find and report, that the said petitioner and defendant were lawfully married on the tenth day of October, 1866, at Hempstead, Long Island, and that the petitioner has lived at Englewood, in this State, for more than thirteen years last past, that the petitioner and defendant lived together as husband and wife from the time of their marriage aforesaid until the month of July, 1876, at which time both of said parties were residents of Englewood.

And I do further report that in the latter part of the month of July, eighteen hundred and seventy-six, the said defendant deserted the petitioner, and

has never since that time returned to her, and that in my opinion the said desertion was and is wilful, continued and obstinate. All of which will more fully appear by the testimony of the witnesses produced before me, whose depositions are annexed to this, my report.

And I do further report, that I have endeavored to ascertain the facts and circumstances under which the said desertion took place, and the reasons which caused it, and find that the defendant left of his own accord, but secretly and hastily to avoid arrest by his creditors, but I have been unable to find any sufficient reason to account for his continued desertion since that time. 13

I am of the opinion that all of the material facts charged in the said petition are true, and that a decree of divorce should be made in this cause for desertion pursuant to the prayer of said petition.

I further report that in my judgment the petitioner is a proper person to have the care and custody of her child, and on the other hand that the defendant is unfit to be trusted with the care of the child. 14

Respectfully submitted this fifteenth day of November, 1880.

WILLIAM M. JOHNSON,

Master in Chancery.

IN CHANCERY OF N. J.

Between

MARTHA WILLIS,
Petitioner,

and

HENRY M. WILLIS,
Defendant.

*On Petition. Depo-
sitions.*

15

Depositions taken in this cause *ex parte*, in the presence of George R. Dutton, Solicitor of Petitioner, at my office in Hackensack, before the subscriber, pursuant to an order for proofs, dated the seventeenth day of July, 1880.

WILLIAM M. JOHNSON,
Master in Chancery.

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MARTHA WILLIS, being duly sworn according to law, on her oath saith.

I am the petitioner in this cause, and reside at Englewood, Bergen County, New Jersey. I was married to Henry M. Willis, the defendant, on October 10th, 1866, at Hempstead, Long Island, by the Rev. Mr. Ferris, a minister of the Methodist Church at that place; I was married in the church, in public, in the evening; after our marriage we resided together at Mineola, Long Island, until the following Spring, at my husband's father's house; in the Spring of 1867 we moved to Englewood, in this County, and I have lived there ever since that time; I was eighteen years old at the time of my marriage; my husband lived with me at Englewood from 1867 to August, 1876, and at that time

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he left me, and has been living at Long Island most of the time since then ; he has not been back to me since he left, and I have not seen him during this time.

During the time we lived together Mr. Willis took entire charge of my property and business affairs ; he had no property of his own that I know of, except some lots at Englewood ; I was totally unfamiliar with business, and trusted him with everything ; I and my sister, Miss Van Nostrand, owned a tract of land near Englewood, of about a hundred acres or a little less ; it was unincumbered, I think it was valued at fifty or sixty thousand dollars during the time of high prices ; this was exchanged by Mr. Willis for a hotel known as the Englewood House, which was conveyed to me and my sister ; the hotel was mortgaged for, I think, \$15,000, and was considered to be worth at that time about \$70,000 ; the rear lots of the Englewood House property were afterwards exchanged for a house and lot on the corner of Palisade avenue and Dwight Place ; I think these lots were cleared of the mortgage ; the Dwight Place property had a mortgage on it for—I don't know how much ; my sister and I had also a house and lot at Hackensack which was sold for \$12,000 ; Mr. Willis took my share of the money, and I am told he bought with it a house on Palisade avenue, Englewood, subject to a mortgage for \$8,000. We also had a house in New York City, my sister bought out my share and Mr. Willis received the money from her. I don't know what he did with it. It is a valuable property and has rented for \$2,000 a year, now for \$1,500 ; I don't know what my sister paid me for it ; Dr. Currie bought the house on Dwight Place and Palisade avenue and Mr. Willis received whatever money was paid on it ; he promised with this money to pay a portion of the \$8,000 mortgage on the Palisade avenue house, and this I supposed was done, until afterwards I

learned from Mr. Vermilye, the mortgagee, that he had not paid it; the Englewood House was rented for several years, part of the time for \$3,000 a year and afterwards for \$4,000 a year; Mr. Willis always received the rent and used the money; I don't know of his paying any interest on any mortgages except the Vermilye mortgage and a small portion of the interest on the Englewood House mortgages; interest on these mortgages was largely in arrear when Mr. Willis went away, and I believe foreclosures of these mortgages had been commenced; in 1875, Mr. Willis took charge of the Englewood House and ran it as a hotel and carried on the hotel business until he left in 1876; Mr. Willis became heavily indebted to various parties; the receipts of the house were large and we had a very good season, but Mr. Willis left many bills unpaid; I don't know how he disposed of the money; about this time he also involved me in financial difficulties by getting me to endorse notes, and also used my name and credit in contracting other debts; for a long time I signed whatever notes or obligations he asked me to, without much inquiry; I then began to be annoyed by bills which were presented to me, and creditors demanding payment of me of debts which he had contracted; I became nervous and anxious in regard to my affairs so that my health was seriously affected; I frequently importuned Mr. Willis to explain matters and satisfy me about these things, but he would evade my questions and put me off, and sometimes made explanations which turned out to be false, and deceived me in regard to my affairs.

In our conversations in regard to my affairs he often used very harsh and unkind language, and I may say that in this respect during the last year he lived with me his disposition seemed to change and he did not treat me with consideration and kindness; this last year was almost intolerable to me, because I was so constantly harrassed by the

demands of creditors and by my money affairs ; I had never been used to anything of the kind and I was in great trouble because I was so in debt ; Mr. Willis would not give me any satisfactory explanations, and I discovered that he was deceiving me, and my confidence in his truth and integrity was lost; he also displayed a coarseness of manner with others that shocked and mortified me so that I became very unhappy during that time ; I did not know till afterwards how my affairs really stood, but I knew they were in a very bad condition ; I don't know to what extent I endorsed notes ; my uncle, Mr. Demarest, who afterwards acted for me, paid a number of notes for me after he went away; several judgments were obtained against me about 1876 on notes that I had endorsed; I did not know about the suits till after the judgments were entered; the summonses may have been left at the Englewood House but I never received them ; the affairs of the hotel became so bad and he was so involved that he had to give up the management of the house and my uncle, Thomas W. Demarest, took charge and managed the business for us; Mr. Willis consented to this arrangement ; about the early part of August, 1876. After Mr. Demarest had assumed charge, Mr. Willis went away and was gone a few days, and on his return he said he had been to Washington; I was informed that Mr. Monroe, who lived at Englewood, saw him at Long Branch; after his return he told me that he was in trouble and that he was liable to arrest and wanted to get away secretly; he came home that night about 12 o'clock and went very early in the morning before anyone in the house was up ; he came back again late at night, a few days after, and remained for a few hours and left in a carriage about daylight; he was driven away by Mr. Valentine, his cousin; I knew he was going, and before he left he said he did not know whether he would ever see me again. Before he went, he collected some money

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from the Englewood House, which he got from the clerk, and I gave him about \$40, which was all the money I had; he needed this to go away with; there was nothing which I did or Mr. Demarest did to drive him away from home; I think the reason he left at that time and in that manner was through fear of arrest by outside creditors; he was charged with passing worthless checks to Mr. Bakeman, a

27 butcher, but these I am told his father afterwards settled; there was also a creditor in New York city that he was apprehensive of; it was about the 19th of August, 1876, that Mr. Willis went away the last time, as I have mentioned; he has never been in Englewood since then to my knowledge; I have never seen him; he has contributed nothing to my support; he has no means that I know of and has never provided any home for me; I have lived at the Englewood House since he went away, and was living there at that time; he has never proposed to

28 come back, and although he wrote me occasionally up to last winter he has never made any arrangements for my support or to live with me again; he was living at Mineola, N. Y., with his father, the last time I heard from him; I wrote him two short letters soon after he left, not later than October, 1876; I said nothing in them to prevent his return, or to indicate that he would not be received; I soon after this, discovered more fully than ever before that he had greatly deceived me in the management of my affairs and was not to be trusted, and I also learned

29 of his immoralities and his unfaithfulness to me, and for these reasons I did not keep up the correspondence; there has been no communication or collusion by me with him in regard to these proceedings for divorce, and there has never been any arrangement or understanding, tacit or express, that we should agree to live apart; he left me voluntarily and has remained away of his own accord; we have one child, who is now living, Harry H. Willis; he is seven years old, and has always lived

with me, and has always been under my immediate care and charge; he is not very robust, but is improving every year; I am able to support him and myself, and wish to have the care and education of the child entrusted to me.

MARTHA WILLIS.

Sworn and subscribed to before }
me this 28th day of July, 1880. }

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M. W. JOHNSON,
M. C. C.

MARY A. VAN NOSTRAND, of full age, being duly sworn on the part of the petitioner, on her oath, saith :

I am the sister of Martha Willis, the petitioner in this suit ; I reside at Englewood, New Jersey ; I have resided in the same house with my sister for the last seven years, two years in the house on Palisade avenue, and five years at the Englewood House. I was present at my sister's marriage with Henry M. Willis, at Hempstead, Long Island, in October, 1866 ; they were married by Rev. D. O. Ferris, minister of the Methodist church there ; my sister and I owned a farm near Englewood, of about 100 acres ; this was exchanged for the Englewood House ; Mr. Willis effected the exchange ; the hotel was then mortgaged for about \$15,000 ; Mr. Willis always had charge of Mrs. Willis' property, and in many cases where my sister and I owned property together, he had charge of my interests also, although I never had a great deal of confidence in him ; Mrs. Willis had complete confidence in him, and of course I never said anything to her about it, enough to change her mind ; in 1875 Mr. Willis took charge of the Englewood House, and conducted it till the summer of 1876 ; the receipts of the house were large, as we had a great many

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people ; when he went away he left a number of bills unpaid ; he was very much embarrassed financially ; he gave several checks on banks where he had no money, and went away through fear of arrest. While he was carrying on the Englewood House he got Mrs. Willis to sign and endorse a number of notes, which he left unpaid ; she signed whatever he asked her to, so far as I know ; she became very anxious, and wanted him to explain things, but he never made satisfactory explanations ; he would deceive her and misrepresent the condition of her affairs. Mr. Willis' treatment of his wife during the last year he was at home was a good deal changed ; he was unwilling or unable to satisfy her in regard to his management of her affairs, and when she would seek an explanation he would become very angry and harsh. She was annoyed a great deal by persons calling upon her for payment of bills that he had contracted, and became very nervous, so that her health was much impaired.

He went away in August, 1876 ; he came back twice, at night, I believe, but I did not see him ; he left finally in August of that year, and has never been back since ; I understand that he got some money from the clerk of the Englewood House before he went ; he went away because he feared arrest by his creditors ; I am sure that Mrs. Willis never gave him any reason for leaving ; she always treated him very well. I have never seen him since August, 1876. Mr. Willis has never provided for his wife or his boy since he went away ; my sister and I and her child have lived together at the Englewood House ever since ; Mrs. Willis has always supported and taken care of Harry, her son, bringing him up properly and carefully. From what I know of Mr. Willis' character, I do not think he is a proper person to bring up a child ; his conduct is coarse, and he does not speak the truth ; his language is frequently coarse, and often unfit for a boy

to hear. Harry is not very strong; his health is good, but he inherits his mother's constitution and is rather delicate. I have heard that Mr. Willis is living at Mineola with his father.

MARY A. VAN NOSTRAND.

Sworn and subscribed to be- }
fore me September 9, 1880. }

W. M. JOHNSON,
M. C. C.

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GARRET A. LYDECKER, being duly sworn, according to law, on his oath, saith :

I reside at Englewood ; I am an uncle of Martha Willis ; I was her guardian before she became of age ; I did business for her for a short time after that.

I am acquainted with Henry M. Willis ; I have known him from the time they were married ; I have had dealings with him ; his general character is that of a very untruthful man ; I have found him so in business transactions ; I consider him a very dishonest man ; his conversation was coarse and low ; he seemed to delight in telling low and obscene stories, and in my opinion he is a very unfit man to have charge of a young boy. Mrs. Willis is a refined and intelligent woman, and very competent to bring up and educate a child. Mr. Willis has not lived with his wife for four years, at least ; he ran away to get clear of his debts, so I am told ; I have not seen him in all that time ; I would have known it if he had been home.

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GARRET A. LYDECKER.

Sworn and subscribed to be- }
fore me, Oct. 21, 1880. }

W. M. JOHNSON,
M. C. C.

GEORGE R. DUTTON, being duly sworn according to law, on his oath saith :

I reside at the Englewood House, Englewood ; I have resided there since 1874 ; the property is owned by Mrs. Willis and her sister, Miss Van Nostrand. Mr. and Mrs. Willis came there in 1875 ; and he undertook to run the house ; he remained there till July or August, 1876 ; and then left without
 39 any previous intimation to any one in the house, so far as I have been able to learn ; I have not heard of his being there since, except on two occasions, during the following month or two, and then only for a few minutes. I have found Mr. Willis dishonest and fraudulent in business transactions ; his moral character is bad ; his conversation is frequently coarse, vulgar and licentious ; he is an unfit person to have control of a boy ; a boy under his influence would be very apt to grow up to be like him. Mrs. Willis is a lady of culture and refinement, perfectly exemplary in her
 4) conduct, amiable and gentle in her disposition, and devotedly attached to her boy, and fully able to bring him up and educate him as he should be ; she has had entire control of him since Mr. Willis left, at which time he was almost an infant. I have seen them almost daily, living in the same house with them, and know that it would be highly injurious to him to remove him from her control. He is a delicate child, and for that reason particularly needs his mother's care and watchfulness.

GEORGE R. DUTTON.

41 Sworn and subscribed to before me, October 21, 1880. {

W. M. JOHNSON,
Master in Chancery.

THOMAS W. DEMAREST, being duly sworn according to law on his oath, saith : I am County

Clerk of Bergen County ; I reside at Englewood ;
 I am an uncle of Martha Willis, the petitioner ; I
 have known Henry M. Willis since they were mar-
 ried ; they lived in my family for two or three
 years ; in 1876 Mr. Willis was running the Engle-
 wood House. At the earnest solicitation of Mrs.
 Willis and Miss Van Nostrand, and with Mr. Wil-
 lis' consent, I took charge of the hotel on Monday, 42
 July 24, 1876, and have continued in charge till the
 present year ; the reason was that the property was
 so involved, and it was under foreclosure and ad-
 vertised to be sold ; I took charge for the purpose
 of trying to save the property ; the real estate was
 mortgaged for \$16,000, and the interest was largely
 in arrears ; Willis had received the profits of the
 house ; he collected, while he had charge of the
 house, about \$15,000, but paid no interest, and paid
 no bills that he could possibly avoid paying ; the
 furniture was mortgaged for \$5,000 ; I had been re-
 quested to take charge the week previous to the 43
 24th, but Willis desired to keep control till the
 24th, so that he could collect the receipts of the
 house to pay off the help, as he alleged ; he collect-
 ed about \$500 during this time, and left on the mor-
 ning of the 24th before I arrived, without paying
 the help, and taking what he had collected with
 him ; I understood he came back the second night
 after that, in the night, and again the following
 night, but he has never been there since, as I be-
 lieve ; I have not seen him, and have never heard of
 his being there since then ; I at once paid off the
 help, and all the pressing claims, and paid off the 44
 chattel mortgage of \$5,000 ; I also paid \$1,000 on
 the real estate mortgage and all the interest and
 costs, and paid a large number of other matters
 and claims : I paid at least \$8,000 of Mrs. Willis'
 indebtedness, incurred by him ; there was no diffi-
 culty between Mr. Willis and me ; I assumed charge
 of the property with his consent, nothing was said
 or done by me to cause him to leave, or to prevent

his return if he so desired ; he has not provided for his wife or child, to my knowledge, since he left ; I am confident that Mrs. Willis never gave him any cause to leave her ; I know she felt at first grieved at his leaving her in that way, and absenting himself from her, until she learned more about his transactions and character.

45 Mr. Willis' general character was bad, he was untruthful, you could not believe any statement that he made ; he has repeatedly deceived me in business transactions during several years previous to my taking charge of the hotel ; his reputation in Englewood for honesty and truthfulness is very bad : I have heard many persons speak on that subject ; his conversation was generally very coarse, and frequently obscene and smutty ; Mrs. Willis is a refined lady in every respect, and amiable in her disposition, and is esteemed as such by all who know her.

46 I do not consider Mr. Willis a fit person to have the charge and custody of a boy. A boy older than Harry, who died some years ago, about seven years old, had already acquired some of Mr. Willis' habits, in the use of profane and vulgar language ; I am satisfied he acquired such language from contact with his father.

I have been credibly informed and believe that Mr. Willis has been accustomed to frequent houses of prostitution, and from what I know of him I believe he has been guilty of immoralities of that kind.

47 During the last few months that Willis lived in Englewood he was very rude and unkind to his wife, and was frequently intoxicated.

THOS. W. DEMAREST.

Sworn and subscribed to before }
me, October 21, 1880. }

W. M. JOHNSON,
Master in Chancery.

FRANCIS L. BROWN, being duly sworn on his oath, saith :

I reside in Englewood, and am clerk and general manager of the Englewood House, and have been for the last eight years. I know Mr. and Mrs. Willis; they came to the house to board in the spring of 1875, and Mr. Willis took charge September, 1875; he continued in charge till the latter part of July, 1876; he collected bills from the boarders to a large amount: some bills of the house he paid and some he did not; he was not prompt in his payments; I think he went away Monday morning, in the latter part of July. Just before he went away he collected a number of bills; I made out the bills on Friday night, and he collected something like \$400; I paid him some of it; I think he paid one bill either Saturday or Monday, of about \$30; I don't know of his paying any other bills; he came back the next Saturday night and remained a short time; he left on Sunday morning about daylight, and he came back again that Sunday night and left Monday morning about daylight; he has never been back since; I have never seen him since that time; his character for truth is not good; he left of his own accord; he said nothing about coming back. That Monday night he telegraphed that he was too late for the cars; he never came back again except as I have stated: he was a man of low tastes, and of obscene and rough conversation; I think he is not a fit man to have the care and training of a young child; Mrs. Willis is a refined lady, an exemplary Christian woman; she has trained and is competent to train her child properly.

F. L. BROWN.

Sworn and subscribed to before }
me, October 29, 1880. }

W. M. JOHNSON,

M. C. C.

Feb 29 11, 1881. by the Vice-Chancellor

Further depositions taken in the above cause before me in the presence of George R. Dutton, solicitor of petitioner, March 9th, 1881.

EBENEZER B. CONVERSE, being duly sworn, according to law, on his oath, saith :

51 I reside at Englewood, New Jersey, and have lived there since July, 1872; I am a counsellor at law, doing business at No. 20 Nassau Street, New York; I know Henry M. Willis, the defendant; have known him since the early part of 1871; he resided at Englewood, to the best of my recollection, till the year 1876, when he was compelled to leave the place by the importunity of his creditors and their threats of arrest for fraud and dishonest practices; I have never seen him since that time at Englewood or elsewhere, and have never heard of his being there since.

52 Q. What was his general character for truthfulness and honesty?

A. He was a man who was well known to many persons in the place, as he had been a real estate broker and speculator and negotiator of loans, and conducted a sort of insurance agency. His general character and reputation as early as the year 1873 was that of a thoroughly unreliable and untruthful man. Those who knew him considered him a tricky and wholly irresponsible person—one whose word could not be relied upon, neither when he pretended to state a fact or make a promise; no confidence could be placed in the sincerity or truth of any statement, profession or promise that he might make. My opinion of the man's character is based upon his common reputation among his neighbors and those who had occasion to do business with him, and also upon my personal knowledge of his readiness to make the most solemn promise and

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profession without the slightest intention of fulfilling the one or any sincerity as regards the other; he was a man adroit and accomplished in all the arts of deception within the range of his experience. He was one of the most plausible-talking and appearing men I ever met; I do not mean to say that he was the most accomplished of rogues, but he had an air of sincerity and an apparently truthful and honest way about him which enabled him to im-
 pose not only upon those who knew him but slightly,
 but he possessed these qualities to such a degree
 that he found it easy to accomplish his frauds and
 deceits more than once on the same person and on
 those who well knew his general reputation. 54

I do not think that he would hesitate to resort to any scheme or device which his fertile ingenuity could suggest for the purpose of accomplishing any object he might have in view.

I should believe nothing that he might say concerning his feelings or proposed actions, plans or purposes. 55

Mrs. Willis is a person who has, as far as I know, the respect and, I am sure, the sympathy not only of those who are personally acquainted with her in Englewood, but also of those who know her by reputation only; her deportment is always ladylike and proper, and her character for truthfulness unquestioned; in my judgment, she is a woman well qualified in every respect to attend to the moral training of her child; but should Mr. Willis have the custody or control of the boy, or a large share of it, I think it would be a disastrous thing to the
 child; his example and influence would have a
 tendency to ruin the boy's moral character. 56

EBENEZER B. CONVERSE.

Sworn and subscribed to before me }
 this ninth day of March, 1881. }

W. M. JOHNSON,
 M. C. C.

March 18, 1881.

Examination resumed.

MARTHA WILLIS, the petitioner, being recalled, further deposes and says :

Q. Have you here the letters written by Mr. Willis to you since he left in 1876 ?

57 A. Yes, all that I can find ; here are sixteen of them ; I have looked carefully, and have not been able to find any others ; I am positive that I have no more ; these letters were received about the days they bear date ; those without dates were written in the latter part of 1876 ; I am quite confident, with the exception of the one in envelope, marked " A " ; I cannot say when this was received ; it may have been in 1878 or 1879.

(Witness produces sixteen letters, which she desires enclosed in a sealed package, and delivered 58 to the Vice Chancellor, without being examined by the Master or any other person. This is done at her request, and the package endorsed Exhibit " A. ") The letters in this package are the sixteen letters that I referred to.

Q. Did you receive any other letters from Mr. Willis ?

A. Yes, a few, which have been destroyed ; I think they were all destroyed before this suit commenced, but I cannot say positively.

Q. Why were they destroyed ?

59 A. I think my principal motive for destroying them was to get them out of the way so that nobody would get a chance to read them ; I was afraid the servants might see them ; I was especially anxious that these letters should not be seen ; I can't say how many letters were destroyed ; I don't think half as many as I have here ; they were all destroyed at one time I think ; I may have destroyed one or two before, but I don't remember.

Q. Why did you save these letters and destroy the others ?

A. I wanted to destroy them all, but I thought best to save some in case there should be a suit.

Q. Did you destroy those you thought would be most damaging in case of a suit ?

A. I think those I destroyed were of no different character from those I preserved ; his letters were all about the same style.

60

Q. What were the dates of the letters you destroyed ?

A. I don't remember ; some of them were after the letters I have kept, but I do not think all were ; I think some were in 1878 or 1879, and some earlier.

Q. What did these letters contain ?

A. I don't know, except they were about like those in the package.

Q. Were you ever advised to destroy these letters or any of them ?

A. Not that I know of ; on the contrary, I was advised not to.

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Q. Was not this advice, not to destroy letters, given you before this suit commenced ?

A. I think it was.

Q. Did you destroy any after that ?

A. I don't remember ; I have not the remotest idea when it was.

Q. Have you destroyed any letters since last January ?

A. No.

Q. Have you destroyed any since the commencement of taking testimony in this suit.

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A. No.

Q. Did you destroy the letters for the purpose of influencing or affecting this suit ?

A. I don't think I did ; I think my main purpose was to get them out of the way.

Q. Why did you want to get them out of the way ?

A. Because I did not want any one to see them ; I am very sorry, indeed, that I destroyed them ; I would have destroyed the rest of them if I had not been told not to.

Q. Did you destroy those which you did destroy with the intent to suppress evidence against you ?

63 A. My principal object in destroying the letters was to get them out of the way, not because of this suit, but because I did not want to keep them ; I had an idea that I must keep some ; I did not think it a matter of importance to save all the letters ; I thought if I kept a few it would be all that was necessary ; so I read them over, or some of them, and destroyed a few and saved some ; I saved all I thought would be necessary for the suit ; the general character of those destroyed was very much like those I kept, but I cannot recall their contents otherwise.

Q. Why did you not put the letters in evidence before ?

64 A. I did not think it was necessary to have them ; I felt a great delicacy about them and did not want any one else to see them.

MARTHA WILLIS.

Sworn and subscribed to before)
me March 18, 1881. }

W. M. JOHNSON,
M. C. C.

April 13, 1881.

65 The petitioner, MARTHA WILLIS, is recalled, for the purpose of testifying further in regard to the letters received from her husband.

The letter of August 13, 1879 (No. 15), being shown to Mrs. Willis, she further deposes and says :

I did not answer this letter ; it did not impress me specially ; I could not believe what he said there unless I had other evidence ; I had no reason

to suppose he could do what he said in the letter, because he was still living with his father from all I could learn ; my interests were in Englewood, and I could not leave my property here without sacrificing my interests ; I did not attach importance enough to his offer to give it any serious consideration ; he never gave me any more definite statement of his plans or prospects since receiving that letter ; I have no confidence in his professions and promises ; I did not feel that I was under obligations to leave my home and property and go away on the strength of his professions in these letters ; Mr. Willis has made threats that he would have my son Harry after he was seven years old, and I have been and am reluctant to allow my husband to see him away from Englewood, because I am afraid that he may attempt to get possession of the boy, and that I may be unable to get him back without a great deal of trouble. My husband has never been to see me or the boy since 1876. 66

MARTHA WILLIS. 67

Sworn and subscribed to before
me April 13, 1881. }

W. M. JOHNSON,
Master in Chancery.

Opinion of the Vice Chancellor.

I have given the case of Willis *vs.* Willis much patient thought and am compelled to say, I cannot advise a decree of divorce in this case except by a plain disregard of well established legal rules. 68

To establish a case of desertion three facts must be proven: First, Cessation of cohabitation. Second, An intent in the mind of the defendant to desert. And third, That the desertion was against the will of the complaining party.

The main difficulty in this case is as to the intent to desert. The proofs convince me strongly that

until the defendant discovered that his wife was seeking, by the aid of detectives, to convict him of adultery, no thought ever entered his mind of separating himself from her finally ; on the contrary, I believe up to that time he loved his wife as loyally as it was possible for him to love any woman.

69 Since then I think it is quite probable his feelings have undergone a marked change, and it may be that from that date he is subject to the charge of being a deserter. But that period is not long enough prior to the institution of this suit to entitle his wife to a divorce on the ground of desertion.

The present application must be denied and the petition dismissed.

A. V. VAN FLEET,

C.

70 IN CHANCERY OF NEW JERSEY

Between

MARTHA WILLIS,
Petitioner,

and

HENRY M. WILLIS,
Defendant.

*On Petition, &c.
Decree.*

71 This cause being opened to the Court by George R. Dutton, of Counsel, with the Petitioner, and no cause appearing to the contrary :

It is on this eleventh day of November, eighteen hundred and eighty-one, ordered that the petition of complaint herein be and the same is hereby dismissed.

THEODORE RUNYON,

C.

IN CHANCERY OF NEW JERSEY.

 Between

 MARTHA WILLIS,
Petitioner,

and

 HENRY M. WILLIS,
Defendant.

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On Petition, &c.
Notice of Appeal.

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The petitioner hereby appeals to the Court of Errors and Appeals in the last resort in all causes, from the decree made in this court, in this cause, on the eleventh day of November, 1881, dismissing petitioner's petition.

October 7th, 1882.

GEORGE R. DUTTON,

Solicitor and of Counsel with Petitioner.

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

GEORGE R. DUTTON,

Of Counsel.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MARTHA WILLIS,
Appellant.

and

HENRY M. WILLIS,
Respondent.

*On Petition, &c.
Petition of Appeal.*

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

75 The humble petition of Martha Willis, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree, made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor, &c., on the eleventh day of November, 1881, wherein the said Martha Willis was petitioner, and the said Henry M. Willis, was defendant, in this respect, to wit, that the said decree dismisses petitioner's petition in said cause. And your petitioner humbly appeals from the said decree upon the ground that the same is erroneous, for that the petitioner ought to have been granted a divorce from the defendant, her husband ; and the care, custody and education of her child, until he be of age, should have been awarded to her as prayed in her petition in said
76 cause.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

GEORGE R. DUTTON,

Solicitor and of Counsel with Appellant.