

## New Jersey Court of Errors and Appeals

Between

AGNES LARKEY,  
*Petitioner-Appellant,*

*vs.*

BENJAMIN LARKEY,  
*Defendant-Respondent.*

*On Appeal.*

### **Brief of Harry Kalisch, Solicitor for and of Counsel with Petitioner-Appellant.**

This appeal brings up for review an order made by Vice-Chancellor Lane, on September twenty-fifth, nineteen hundred and seventeen, in which it was ordered that:

“ \* \* \* The said Agnes Larkey shall retain the custody of the said minor child, Louis Larkey, until the further order of this Court, but that pending the making of any such order, or modification thereof, the said Benjamin Larkey *shall have the right to call for the said Louis Larkey on Sunday morning of each and every week hereafter and to take said child with him to Newark, in the State of New Jersey, and to return said child to the residence of the said Agnes Larkey the same day. And it is further*

ORDERED, that either party be at liberty to apply upon a future change of circumstances of the parties for a modification of this order, or any part thereof.”

New Jersey State Library

The record in the case shows that the petitioner-appellant, Agnes Larkey, filed her petition for divorce against her husband on the ground of desertion, and at the hearing alleged, that because of her husband's ill treatment of her, it was impossible for her to live with him, and that the petitioner left her husband in the month of August, nineteen hundred and thirteen, and went to her mother's home, in Brooklyn, New York State, with their child, where she and the child have lived ever since. (See pp. 2, 3 and 37 of Case.) The defendant-respondent filed an answer, denying the charges, and also filed a cross-petition, praying for a divorce, alleging that the petitioner deserted him. (See p. 10 of Case.) The cause was referred for hearing to Honorable John Franklin Fort, one of the Advisory Masters, by an order of reference dated July seventeenth, nineteen hundred and sixteen. (See p. 1 of Case.) After hearing the evidence and argument of counsel, the Advisory Master filed his report advising the dismissal of petitioner's petition, but granting to defendant a decree for divorce against the petitioner, his wife. (See pp. 10, 11 of Case.) Before the Master's report was filed, application was made by the defendant to the Advisory Master for an order, awarding defendant the custody, for a portion of the time, of the child of the marriage. (See p. 12 of Case.) This application was denied, as will appear in the Advisory Master's report and the *Decree Nisi*; the Advisory Master awarding the custody of the child to the wife, until the further order of the court, reserving, however, the right of visitation to the husband on Sunday of each week, between the hours of two o'clock in the afternoon and five in the evening, at the home of the petitioner, in Brooklyn. (See p. 18 of Case.)

The *Decree Nisi* was made on July twenty-seventh, nineteen hundred and seventeen, and on September fourteenth, nineteen hundred and seventeen, solicitor for the defendant served upon the solicitor for the petitioner, a notice of an application to the Chancellor at Chancery Chambers, Newark, for an order varying and modifying the decree made by the Chancellor in so far as the same affected the support, custody and visitation of Louis Larkey, the child of the parties hereto. This second application, which was by petition (see p. 20 of Case) was not made to the Advisory Master who had heard the cause, but was made to Honorable Merritt Lane, Vice-Chancellor, and was heard by him on the twenty-fourth of September, nineteen hundred and seventeen; and on that day, counsel for the petitioner appeared and stated to Vice-Chancellor Lane that he appeared specially for the purpose of objecting to the making of *any* order, upon the ground that Vice-Chancellor Lane had no jurisdiction, and that the application should have been made to Advisory Master Fort. (See p. 38 of Case.) Notwithstanding these objections, Vice-Chancellor Lane made an order, granting the application prayed for by the defendant in his position. (See p. 25, Case.)

It is from this order that this appeal is taken.

It further appears, from the record, that an application was made to attach the petitioner for contempt, for refusing to obey this order, and that the same objections were made by solicitor for the petitioner, as were made to the making of the original order. Vice-Chancellor Lane refused to adjudge the petitioner guilty, for the reasons set forth by him in a letter to petitioner's solicitor, a copy of which may be found on page 36 of the State of the Case.

### Point I.

It is the contention of the petitioner, that any application which the defendant desired to make, modifying the *Decree Nisi*, should have been made to the Advisory Master, who heard the cause. Chancery Rule 121 provides:

“When a cause shall be referred to a Vice-Chancellor or Advisory Master, all proceedings in it to the final decree *shall* be had before him.”

Applying this rule, Vice-Chancellor Lane did not have authority to hear the application, in face of the objections made by the petitioner. The *Decree Nisi*, advised by the Advisory Master, included the disposition of the custody of the child, and the right of visitation, and any attempt to modify that decree before it became final should have been made before the Advisory Master, who advised the decree.

Chancery Rule 134 provides as follows:

“All applications to amend orders or decrees shall be made to the Chancellor, except where the order or decree was advised by a Vice-Chancellor or Advisory Master, in which case the application *shall* be made to the officer who advised the same.”

We contend that under this rule, Vice-Chancellor Lane had no authority to make the order, because it virtually amended the order previously made by Advisory Master Fort.

In the case of *Ogden v. Robertson*, 15 N. J. Law, page 126, appears the following:

“But I am not prepared to say, that it is not error in a court, to violate or disregard their own established and settled rules of practice. They may modify and rescind

them: But while in force, they are the law of the court, and as such, a part of the law of the land."

Certainly the rules promulgated by the Chancellor cannot be ignored by Vice-Chancellors at their pleasure. It is true that Rule Four of the Court of Chancery provides that the rules of that court may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work surprise or injustice, but any relaxation or dispensation of rules must be made by the Chancellor and not by a Vice-Chancellor. Besides, there is no contention in this case that there was any surprise or injustice such as would justify, under Rule Four, the relaxation or dispensation of the rules of court. It will be observed that Chancery Rules 121 and 134 are mandatory, since the word "shall" is used in each instance.

The sum and substance of the whole thing is, that the defendant was dissatisfied with that part of the decree advised by the Advisory Master which concerned the custody of the child and the right of visitation, and thought that by applying to another officer of the court he might get a more favorable decision, and it is just such practice that the rules above quoted are designed to prevent.

It is therefore contended that Vice-Chancellor Lane had no authority to hear the application and that the order made by him should be set aside.

## Point II.

It may be contended by the defendant that the application for the order could be treated by Vice-Chancellor Lane as an original application, and in nowise connected with the divorce proceedings, and hence that Chancery Rules 121 and 134 do not apply. In that view of the case it is to be remembered that the petitioner and the child, both of whom have resided in the State of New York since the separation of the parties, were not brought into court by proper judicial process. The only paper served was the notice of the intended application, which was served upon the solicitor for the petitioner, who appeared specially on the day the application was made, and made objection upon the ground that Vice-Chancellor Lane had no jurisdiction. (See p. 38 of Case.) No process issued out of the court; neither subpoena, writ of habeas corpus, or publication, so that there was no jurisdiction over the parties; and as was said in the case of *Hervey v. Hervey*, 56 N. J. Equit., page 427, quoting from the case of *Buckley v. Perrine*, 9 Dick. Ch. Rep. 285:

“Jurisdiction of the parties to a controversy, as well as of the subject matter thereof, is necessary to the validity of a judgment of a court therein.”

And at the bottom of page 427, same case, is the following:

“The defendant is not brought as yet in the jurisdiction of the court, and no decree against him can be made, or would have validity if made. It seems to follow from these considerations that service of process, or of substituted statutory notice, was necessary to give the court jurisdiction of the person of this defendant; and that because

such service was not made the orders and proceedings made and taken in this suit did not bind him."

Respectfully submitted,

KALISCH & KALISCH,  
*Solicitors of Appellant.*

HARRY KALISCH,  
*Of Counsel.*

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the same has been made in this and  
the other parts of the country

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PROCEEDINGS OF THE

COMMISSIONERS OF THE

LAND OFFICE  
OF CANADA

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# INDEX.

	PAGE.
Order of Reference .....	1
Master's Report .....	2
Notice of Application for Custody of Child.	12
Petition for Custody of Child .....	13
Decree Nisi.....	16
Notice of Application to Modify Decree....	19
Petition to Fix Time for Visitation .....	20
Order for Visitation .....	25
Notice of Appeal.....	27
Petition of Appeal.....	29
Affidavit of Benjamin Larkey .....	32
Affidavit of Barney Larkey .....	33
Order to Show Cause .....	34
Conclusions of Vice-Chancellor Lane.....	36
Stipulation .....	37

# INDEX

Order of Reference  
Master's Report  
Notice of Application for Custody of Child  
Petition for Custody of Child  
Petition for Appointment of Guardian  
Petition for Visitation  
Order for Visitation  
Notice of Appeal  
Petition of Appeal  
Affidavit of Benjamin Barney  
Affidavit of Barney Barney  
Affidavit of Visitation  
Substitution

Order of Reference.

In Chancery of New Jersey.

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<p><i>Between</i></p> <p>AGNES LARKEY, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BENJAMIN LARKEY, <i>Defendant.</i></p>	}	<p><i>On Petition for Divorce.</i></p> <p><i>Order of Ref- erence.</i></p>
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It is on this 17th day of July, nineteen hun- 20  
dred and sixteen,

ORDERED, that the above stated cause be re-  
ferred to Hon. John Franklin Fort, 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  
therein.

E. R. WALKER,  
C. 30

I consent to the above order.

CHARLES M. MYERS,

*Solicitor for Defendant and Cross-Petitioner.*

A true copy,

ROBERT H. McADAMS,  
*Clerk.*

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*Master's Report.*

**Master's Report.**

IN CHANCERY OF NEW JERSEY.

<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">10 AGNES LARKEY,</p> <p style="margin: 0; padding-left: 100px;"><i>Petitioner,</i></p> <p style="margin: 0; padding-left: 100px;"><i>and</i></p> <p style="margin: 0;">BENJAMIN LARKEY,</p> <p style="margin: 0; padding-left: 100px;"><i>Defendant.</i></p>	}	<p style="margin: 0;"><i>On Petition for Divorce.</i></p> <p style="margin: 0;"><i>Master's Re- port.</i></p>
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Heard before John Franklin Fort, advisory master.

For the complainant, Harry Kalisch, Esquire,  
20 of the firm of Kalisch & Kalisch.

For the defendant, Charles M. Myers.

Conclusions of the Master:

The petitioner and defendant in this case were married on the 6th day of June, 1911, by the Reverend Nathan Krauss, a Rabbi of the City of Brooklyn. Subsequent to their marriage they lived on Thirteenth street in the City of Newark, and from thence went to Hillside ave-  
30 nue in the City of Newark. In both of these places, they occupied an apartment.

In July, 1913, they went to Bradley Beach, New Jersey, for the summer, and were boarding there with Mr. and Mrs. Bobker, Mrs. Bobker being a friend of the petitioner.

The petition of the petitioner was filed for divorce on the ground of desertion. There is no allegation of a positive desertion on the part of the defendant, but the charge is that the de-  
40 sertion by him was constructive, the petitioner

*Master's Report.*

claiming that he ill-treated her, and that the ill-treatment was of such a character that physical injuries were inflicted, and that it was not safe for her to live with the defendant, and that she left the Bobker house at Bradley Beach on the 17th of August, 1913, when the defendant was absent, and went to the home of her mother, and that she left on that day, because of said alleged cruelty and because she feared for her safety if she continued to live with her husband. 10

These people were living together between the 6th of June, 1911, and the 17th of August, 1913, the time when the petitioner left the Bobker residence and went to her mother in Brooklyn, a period of a little over two years. They were a newly married couple, and like all newly married people, had more or less to overcome in adjusting themselves to a new marital relation. 20

There were several incidents which occurred during their living together that may have been unpleasant, but there is no proof in the case of any serious conduct on the part of the defendant toward his wife. The petitioner had gone to her mother in Brooklyn once or twice during that period, but had returned to her husband under the advice of her mother, after his request that she should do so, after the little difficulty that had occurred which had caused the separation had been forgiven and forgotten. 30

The defendant is a man who is several years older than his wife—more mature in judgment. He had been a bachelor and a business man until his marriage, and was undoubtedly more or less set in his ways. In fact, it might be stated that he was probably stubborn and possibly at times sullen. But there is no proof in this case that I am willing to accept that up to this incident of 40

*Master's Report.*

August 17, he had ever done anything that would justify his wife in leaving him.

He had had some reverses in his business after his marriage, and was compelled to go into bankruptcy. There are some suggestions in the proof that there were difficulties about the petitioner getting money to pay her bills, but I am not  
 10 satisfied that this was at all serious, and there is no proof that when she and her husband went to Bradley Beach, that she left any bills behind unpaid.

There was some proof in the case with relation to the petitioner desiring that her husband should give her furs and a bird of paradise and other things, but there is nothing about that that would justify any trouble between them,  
 20 because he advised her that in his then financial condition, he did not feel justified in expending the necessary money. This refusal was no reason either for the petitioner's ill-will or for her leaving his home.

The incident at Bradley Beach is exaggerated, in my opinion, in the testimony. It occurred because of things which had been carried to the defendant by Mr. Bobker, one of his close  
 30 friends, and possibly others, with relation to the petitioner and Mrs. Bobker going out walking and standing on the street talking to men, but taking all of the incidents given in the testimony at their face value, they do not rise to even an imputation of any impropriety on the part of the petitioner, and to not furnish any justification for any act of ill-treatment on the part of the defendant toward the petitioner. I said the incident was no doubt exaggerated. I am convinced that the scene which occurred in the bed-  
 40 room of the Bobker house at Bradley Beach is

*Master's Report.*

overdrawn; it was not serious. After it had occurred, Mr. and Mrs. Bobker and the petitioner and defendant all dined together, and the proof would indicate there was no unpleasantness at the table, although all the persons in the house were perfectly familiar with the fact that the incidents had occurred. The defendant gave too much importance to the petitioner's statement that she had come to Bradley Beach "for a good time," and that she proposed to have it. That is rather a natural statement for a young person to make, and does not necessarily imply any impropriety or intended impropriety on the part of the person making it. It was a foolish proceeding, and could have hardly occurred except between people not thoroughly understanding one another, or because of misapprehension of the fact. 10  
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After this scene and after the dinner, and after the men had been in bathing in the afternoon, the defendant returned to the house and stated that Mr. Bobker wished them to leave. Mr. Bobker says that he stated that to the defendant. The defendant then tried to get the petitioner to go home with him to their home in Newark. Mr. Bobker admits that he did say to the petitioner that he would like them to go. Mr. Bobker had a right to make this request. It was his house, and the defendant had also a right to make the request of his wife that she should return to Newark. The defendant had his home in Newark, and he had a right to have his wife go to it with him, unless there was some reason why she should not. It was her duty to comply with his request under these circumstances. She refused to go, but, according to his testimony, was willing to go to Asbury Park, provided he 30  
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*Master's Report.*

would furnish a room. He was not required to do this. The petitioner stated that Mrs. Bobker wished her to remain there, and she was going to do so. The defendant left the house that afternoon with Mr. Bobker, and they returned to Newark, not supposing the petitioner was going to remain there. When the defendant left to go home, he claims to have packed the petitioner's trunk, and he left three dollars for her to come home with. Instead of doing that, she went to Brooklyn where her mother resided, and stopped at the St. Mark's Hotel, sending her husband the following telegram: "I am stopping at St. Mark's Hotel, Brooklyn. Agnes." That was the first knowledge that he had that she was not coming to Newark.

On May 18th she sent the telegram. Then on May 19th, 1916, the day following the sending of the telegram, she wrote her husband a letter as follows:

"My dear Ben: I am stopping at mother's. Kindly send me money. The three dollars that you gave me has gone for milk for baby. Baby is well. Agnes."

This shows that he left her the money to come home with, and she went to Brooklyn instead, and on the day following, claims the three dollars had been spent for milk for the baby. This, of course, annoyed, if not angered, the defendant. This letter the defendant did not answer. The petitioner came to Newark with her father the latter part of the same week, or the following week, and consulted Mr. Bobker, who is a lawyer, and in that conversation, in the presence of Mr. Bobker, Mr. Bobker testifies that her father said, "What does Ben propose to do?" Mr. Bobker then testifies, "My answer was, 'as far as I

*Master's Report.*

know, he wants Agnes to come back to him.' His reply was, 'You can tell Ben that Agnes is through with him, but as far as I am concerned, I am not through with him.'"

In this case, a noted incident is that neither of the parties called the father of the petitioner to testify.

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While the conference was going on in Mr. Bobker's office, Mr. Bobker says that Mr. Barney Larkey came to his office and was in the ante-room, and when it was announced that he was there, the petitioner said: "If that is Ben Larkey, I don't want to see him; tell him I am not here."

The proof in this case clearly shows that after the petitioner had left the defendant and went to her mother, on the 18th of August, that she had made up her mind to leave the defendant. She does not claim to have done anything since to indicate her willingness to return to him.

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After this 18th of August, and up to the period of the time that she began suit for maintenance against the defendant, she did not show any contrition, or do any act that would justify the defendant in believing that she would return to him, and it is probably true under the proof, that the defendant did nothing to try to get her to return to him, although he says he did try to converse with her on the street in the City of Newark; that he kept his home open where she could return, and where she knew it was, is undoubtedly a fact, but that he closed his home on the second of September, about fourteen days after she went to Brooklyn, is also true. In the meantime, she had been to that home, and had taken articles of silver, and the child's wearing apparel, and some of her own—probably all of

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*Master's Report.*

her own—to her Brooklyn home. He stored his furniture and gave up his apartment September 2nd, in order to save rent, as he expressed it, in view of the statement which his wife had sent to him through Mr. Bobker; as the statement was made to Mr. Bobker in his office by her father, in her presence.

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After the maintenance suit was started against him and before it was finally tried, an adjustment was made between them by which eight dollars per week was to be paid toward the support of the wife and child. Subsequently, by voluntary act of the defendant, he raised the same to ten dollars. After this arrangement was made, an arrangement was also made for seeing the child by the defendant in the home of the petitioner's mother at stated periods. They would meet on these occasions. There is no doubt under the proof, that the defendant endeavored to get his wife to return to him, or that they remained friendly in their intercourse, but that she at all times refused to return to him.

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In the summer of 1916, and just before this trial, she was in the Catskill Mountains with the baby. The defendant was there during the summer—took his vacation there, and was with the petitioner and their child. During that summer he gave to the petitioner one hundred dollars in money in excess of the ten dollars per week alimony he was paying, and, according to his testimony, he gave her a present. He claims that all that summer, he endeavored to persuade her to return to him, and she does not deny this in any serious way, but she continually and continuously, and it seems to me, obstinately refused to return to her husband.

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*Master's Report.*

I can find no authority under the decisions in this State, for holding that the going to Brooklyn by the petitioner and refusing to return to her husband, in August, 1913, was justified, or that after this conduct, prior to that time on the 17th day of August, there was anything done that would constitute a constructive desertion on his part. Nor was anything done subsequently which would justify the inference that he intended to desert his wife. They undoubtedly had unpleasant scenes, and he undoubtedly said improper things, but there was nothing that would, standing alone, justify the inference on the part of the petitioner that it was dangerous for her to live with the defendant, or that he would do her serious bodily harm, or that he would not treat her with the consideration that a husband should treat his wife, if she should return to him.

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The evidence taken as a whole, in my mind, seems to be conclusive, that he did want his wife to return; that he did subsequently, and for more than two years last past, treat her with kindness, and endeavored to prevail upon her to return to his home. That she was not afraid of him; that she had no cause to fear him, is indicated by her own conduct. When he was in the Catskills, she went about with him alone, or with her child; that they were friendly; that they passed as man and wife, and treated each other as husband and wife, to all outward appearances.

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All the allegations of the petitioner as to lack of help in her home, and other statements, were disproved by the maids who worked for her; by the evidence of the defendant and other persons who visited the home. It is not improbable

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*Master's Report.*

that the petitioner was moody, and given to excitement, with a possible tendency at times to hysteria. She is, however, a woman of strong purpose, and has without doubt made up her mind not to return to live with the defendant. The reason for this which the defendant gives is  
10 that she told him that she had married him because her mother wished her to—not because she loved him. This might be true, and it might not.

The rule of law applicable to this class of case puts the burden upon the husband to seek a reconciliation with and the return of his wife to his home. I cannot conclude from the proof that there is doubt about the attempt of the defendant in this case to seek his wife to return  
20 or of his sincere efforts to get her to return; or her universal refusal to return to him I have no doubt. On the witness stand on this proposition, she was evasive. It is difficult to say what a husband should do to seek the return of his wife which the defendant in this case did not do, after a period of three months had elapsed after the separation. I therefore conclude that there is no act of desertion under the decisions in this State by the defendant of the petitioner, and  
30 the petitioner's petition will be denied. No costs will be allowed to the defendant against the petitioner.

There is a cross petition filed in this case, seeking divorce on the grounds of desertion by the cross-petitioner against the petitioner and cross-defendant in this case. I have covered all the facts in the case, and it is not necessary to review them on the cross-petition. I am convinced that the whole conduct of the petitioner, the cross-defendant in the cross-petition has  
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*Master's Report.*

been a wilful, obstinate and continued determination not to return to the defendant, but to desert him, and that she never had any purpose or intention or willingness to return to him after August 18, 1913. I think upon the whole case, he is entitled to a decree against the petitioner and cross-defendant on his petition for a divorce on the ground of wilful, continued and obstinate desertion for a period of two years.

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I have not gone into the letters, but the letters and papers I think substantiate the conclusions arrived at.

In the decree to be made in this case, there will be an order continuing the arrangement as to seeing the child, as it now exists, but the right will be reserved to either party to apply at any time for a modification of the present arrangement, in whole or in part, or in any respect, as to such access. There are no reasons why the mother should not be left with the custody of the child, as at present.

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In view of the conclusion reached in this case, on the cross-petition, and the necessity for a defense thereof, by the petitioner and cross-defendant, the application of her counsel for counsel fee in this case will be allowed, and I will sign an order giving him one hundred dollars in that regard. The cross-petitioner will not be allowed costs against the defendant on the cross-petition.

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*Notice of Application for Custody of Child.***Notice.**

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>BENJAMIN LARKEY, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p>AGNES LARKEY, <i>Defendant.</i></p>	}	<i>Notice.</i>
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To Harry Kalisch, solicitor of Agnes Larkey:

20 TAKE NOTICE, That on Saturday, the ninth day  
of June, next, before Honorable J. Franklin  
Fort, advisory master in the above entitled  
cause, at his office, Essex Building, Newark,  
New Jersey, at the hour of 10 o'clock in the  
forenoon, or as soon thereafter as counsel can  
be heard, I will apply to the said Court for an  
order in this cause, awarding petitioner custody  
for a portion of the time, of the child of the  
marriage, now in the custody of Agnes Larkey,  
and annexed hereto is the petition upon which  
30 the said motion will be made.

CHARLES M. MYERS,  
*Solicitor for and of Counsel with Petitioner.*

*Petition for Custody of Child.***Petition.**

## IN CHANCERY OF NEW JERSEY.

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

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The petition of Benjamin Larkey, of the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was married to Agnes Larkey on the sixth day of June, nineteen hundred and eleven, in the Borough of Brooklyn, City and State of New York. Your petitioner's present age is thirty-seven and his wife's age is twenty-four.

2. After said marriage and up to the seventeenth day of August, nineteen hundred and thirteen, your petitioner and his said wife lived together as husband and wife in the City of Newark, and had born to them as the fruit of said marriage one child, Louis, born September, nineteen hundred and twelve.

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3. On the said seventeenth day of August, nineteen hundred and thirteen, your petitioner's said wife, without any reasonable or just cause, deserted him, and left his residence, No. 64 Hillside avenue, in the City of Newark, and went to live at the residence of her mother in the Borough of Brooklyn, City and State of New York, and took with her the said child of the marriage, to which place she has continued to reside with said child, separate and apart from your petitioner.

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4. Since his said wife deserted him, as aforesaid, and on the 28th day of April, nineteen hun-

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*Petition for Custody of Child.*

dred and sixteen, she instituted divorce proceedings against your petitioner and your petitioner has filed an answer and cross-petition and the matter has been referred to the Honorable J. Franklin Fort, as advisory master; that testimony has been taken and the case has been  
10 closed, but that the said advisory master has not, as yet, rendered his opinion.

5. Since the taking of testimony in this cause, your petitioner has applied to his said wife to give him the custody of the said child for a portion of the time, or to permit him to have access to said child other than at the residence of his said wife, but your petitioner's said wife has refused and now refuses to allow him either  
20 actual temporary control of, or access to, the said child, except to allow him to see the child at her residence and then only in the presence of her brother.

6. Your petitioner further shows that she has made it so difficult for him to gain access to said child, and has made it so unpleasant for him that he is unable to visit the child in the residence aforesaid, and that if continued will necessarily result in its growing up in complete estrange-  
30 ment from him.

7. Your petitioner further shows that he has been paying his said wife the sum of eight dollars per week for support, and is paying her that sum at the present time in accordance with the order of the Court.

8. Your petitioner is able to take care of said child in every proper way while in his custody, and will safely return him to your petitioner's wife at the expiration of the time allowed your  
40 petitioner for the custody of said child.

*Petition for Custody of Child.*

9. Your petitioner shows that the happiness and welfare of said child will be promoted by awarding to your petitioner its custody for a portion of the time.

Your petitioner, therefore, prays that this Honorable Court make an order awarding to your petitioner the custody of his said child for a portion of the time or that such order may be made with respect to its care and custody as shall be just as between him and his wife, and as shall most conduce to the welfare and happiness of said child. 10

And your petitioner will ever pray, etc.

CHARLES M. MYERS,  
*Solicitor for and of Counsel with Petitioner.*

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

BENJAMIN LARKEY, being duly sworn according to law on his oath, says:

I am the petitioner named in the foregoing petition. The matters and things set forth in said petition so far as they relate to my acts and deeds are true; and so far as they relate to the acts and deeds of others, I believe them to be true. 30

BENJAMIN LARKEY.

Sworn and subscribed to before  
me this 7th day of June, A. D.,  
1917.

JULIUS GORDON,  
*Notary Public of N. J.*

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*Decree Nisi.***Decree Nisi.**

IN CHANCERY OF NEW JERSEY.

*Between*

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AGNES LARKEY,  
*Petitioner and Cross-Def't,**and*BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r.**Decree Nisi.*

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This cause coming on to be heard in the presence of Harry Kalisch, of counsel with the petitioner and Charles M. Myers, of counsel with the defendant, upon the petition, answer and cross-petition and answer thereto, and upon proofs taken in open court and the Court having read, heard and considered the pleadings and proofs in the cause and the arguments of counsel; and it appearing that the petitioner and defendant were joined in the bonds of matrimony on or about the 6th day of June, 1911, and that the petitioner had failed by her proofs to sustain the allegations of her petition and that the same should be dismissed; and it further appearing that the petitioner has been guilty of wilful, continued and obstinate desertion of the defendant for the period of two years, as alleged in the said cross-petition, and that at the time the case of action for divorce for the said desertion arose the defendant and cross-petitioner was a *bona fide* resident of this State and has continued so to be down to the time of the commencement of this action; and it further appearing that jurisdiction herein for the purpose of divorce

*Decree Nisi.*

has been acquired by personal service of process upon the defendant within this State, as well as by the appearance and answer of the defendant and his cross-petition filed against the petitioner, it is thereupon on this twenty-seventh day of July, nineteen hundred and seventeen, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, hereby 10

ORDERED, ADJUDGED and DECREED that the petitioner's petition be dismissed and that the said petitioner, Agnes Larkey, and the said defendant, Benjamin Larkey, be divorced from the bond of matrimony for the cause aforesaid, as charged in the cross-petition of the said Benjamin Larkey and that 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 six months from the date hereof, and it is further 20

ORDERED, that the petitioner, who now has the custody of the minor child, the issue of the marriage between the petitioner and the cross-petitioner, shall retain the said custody of said child until further order may be made in this behalf by this Court, but that pending the making of any such order or modification hereof, the cross-petitioner shall have the right to visit and see the said child at the home of the petitioner, or at such place as the said petitioner may be with the said child, as heretofore by mutual arrangement, on Sunday of each week, between the hours of two o'clock in the afternoon and five o'clock in the evening of said day, and it is further 30

ORDERED, that the defendant and cross-petitioner pay to the petitioner and cross-defendant 40

*Decree Nisi.*

the sum of five dollars each week for the support and maintenance of said child until the further order of this Court, and it is further

10 ORDERED, ADJUDGED and DECREED that either party be at liberty to apply upon a future change of circumstances of the parties, for a variance or modification of this decree touching said support and custody as shall be just and equitable. And it is further

ORDERED, that the defendant and cross-petitioner pay to Harry Kalisch, solicitor of the petitioner, a counsel fee of one hundred dollars.

Neither party will be allowed costs in this suit against the other.

Respectfully advised,

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JOHN FRANKLIN FORT,  
*Advisory Master.*

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*Notice of Application to Modify Decree.*

**Notice.**

IN CHANCERY OF NEW JERSEY.

*Between*

AGNES LARKEY,

*Petitioner and Cross-Def't,*

*and*

BENJAMIN LARKEY,

*Defendant and Cross-Pet'r.*

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*On Bill, &c.*

*Notice.*

To Harry Kalisch, Esq., solicitor for petitioner and cross-defendant:

PLEASE TAKE NOTICE that I will apply to the Chancellor at the Chancery Chambers in the Prudential Building in the City of Newark, New Jersey, on Tuesday, the eighteenth day of September, nineteen hundred and seventeen, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order varying and modifying the decree made by this Court on the third day of August, nineteen hundred and seventeen, in so far as the same affects the support, custody and visitation of Louis Larkey, the child of the parties hereto.

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Yours respectfully,

CHARLES M. MYERS,

*Solicitor for Defendant and Cross-Petitioner.*

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*Petition to Fix Time for Visitation.***Petition.**

## IN CHANCERY OF NEW JERSEY.

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

10 The petition of Benjamin Larkey of the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. That on or about the 17th day of August, 1913, Agnes Larkey, wife of the defendant, deserted your petitioner and went to the home of her mother in the City of Brooklyn and State of New York, taking with her the child of said marriage, a boy named Louis Larkey then one year old; that shortly thereafter the said Agnes  
20 Larkey filed a bill in this court for maintenance, upon which this Court made an order for temporary alimony for the support of said wife and child in the sum of eight dollars per week, which said order provided among other things that the said Benjamin Larkey should have the right to apply for an order for visiting or access to the child, and the order for said alimony was made subject to the said Agnes Larkey's complying with said order; that there-  
30 after the parties hereto entered into an arrangement by which your petitioner should visit said child once each week at the home of the mother of said Agnes Larkey; that your petitioner entered into such arrangement so that he might be enabled to see his wife for the purpose of endeavoring to persuade her to return to his home; that this arrangement continued until testimony was taken in a divorce suit brought during the month of April, 1916,  
40 and that the last time your said petitioner visited

*Petition to Fix Time for Visitation.*

said child at the home of its grandmother in Brooklyn was sometime in the fall of 1916, at which time the brother of said Agnes Larkey and the said Agnes Larkey made every effort to interfere with the opportunity given by this Court for your petitioner to visit said child and embarrassed and annoyed him during said visit and followed him continually from room to room in the flat which they occupied; that they made matters so unpleasant for your petitioner that it was then and is now impossible for him to visit said child at the home of the said Agnes Larkey, with comfort to your petitioner. That your petitioner filed an answer and cross-petition in said suit and after hearing before Honorable J. Franklin Fort, one of the advisory masters of the Court of Chancery of New Jersey, the said advisory master advised a decree *nisi* in favor of your petitioner, and ordered that said Agnes Larkey, then having the custody of said child, should retain the custody thereof until further order by this Court, "But that pending the making of any such order or modification hereof, the cross-petitioner shall have the right to visit and see the said child at the home of the petitioner, or at such place as the said petitioner may be with the said child, as heretofore by mutual arrangement, on Sunday of each week, between the hours of two o'clock in the afternoon and five o'clock in the evening of said day," and it was further therein ordered that your petitioner should pay the sum of Five Dollars each week for the support and maintenance of said child, and that application might be made for a variance or modification of the decree touching the support and custody as might be just and equitable.

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*Petition to Fix Time for Visitation.*

Your petitioner further shows that within a week or ten days after said decree was filed by said Advisory Master, your petitioner called the home of said Agnes Larkey on the telephone, for the purpose of inquiring when he might see the said child under the order of said Court. That the telephone was answered  
10 by the mother of said Agnes Larkey, who replied: "Agnes and the boy are away" and upon your petitioner inquiring where they were, she answered, "I don't know." That a few days later, your petitioner again called on the telephone and again asked the mother of said Agnes Larkey where the boy was and she again answered that she didn't know, and your petitioner asked her why she answered that she did not  
20 know when she did know, and she hung up the receiver; that a few days later the same performance was repeated; that it is quite evident that the said Agnes Larkey and her mother are placing every obstacle in the way of your petitioner's visiting said child under the order of this Court.

3. Your petitioner further shows that he has not paid the sum of Five Dollars each week because he has been unable to visit said child in pursuance of the terms of said order, but that he  
30 is willing to make said payments at any time in accordance with the terms of said order.

4. Your petitioner further shows that he is living at No. 11 Sidney Place, in the City of Newark, New Jersey, with his brother, Aaron Larkey, who is married and who has four children, who are from four to thirteen years of age; that if he is permitted to have the custody of his said boy for one day in each week, he will call at the home of the said Agnes Larkey in the City of  
40 Brooklyn, on Sunday morning and will bring said

*Petition to Fix Time for Visitation.*

child to the home of his brother in Newark and will return said child to said Agnes Larkey before dark on the same day; that he has the same affection for said child as any father would have and feels that he should be permitted to have the custody thereof at least one day out of seven; that said Agnes Larkey, is a school teacher in the City of Brooklyn and is earning at least Twenty Dollars each week, and is away from home from about half-past eight in the morning until four or five o'clock in the afternoon, during which time it is assumed that said child is cared for by the mother of said Agnes Larkey. 10

5. Your petitioner further shows that the attitude of said Agnes Larkey, her mother and brother when he calls at the house, as heretofore shown, has greatly increased in bitterness against your petitioner since your petitioner was successful on the cross-petition which he filed, and, therefore, your petitioner feels that it will be made very much more unpleasant for him if he shall be required to visit said child at the home of its mother. 20

6. And your petitioner, therefore, prays that an order may be made permitting your petitioner to take said child on Sunday of each week from the home of its mother, bring it to Newark, and return it before dark on the evening of the same day. 30

7. Your petitioner further begs leave to present as additional reasons for the foregoing statement the opinion of the Advisory Master in this case.

BENJAMIN LARKEY,  
*Petitioner.*

CHARLES M. MYERS,  
*Solicitor for and of Counsel with Petitioner.* 40

*Petition to Fix Time for Visitation.*

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

BENJAMIN LARKEY, being duly sworn according to law on his oath deposes and says:

10 I am the petitioner in the foregoing petition named; I have read the said petition and know the contents thereof and that the same are true to the best of my knowledge, information and belief.

BENJAMIN LARKEY.

Sworn and subscribed to before  
 me this 18th day of September,  
 A. D. 1917.

20 BARNEY LARKEY,  
*Master in Chancery of New Jersey.*

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*Order for Visitation.*

**Order for Visitation.**

IN CHANCERY OF NEW JERSEY.

*Between*

AGNES LARKEY,  
*Petitioner and Cross-Def't,*

*and*

BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r.*

*On Petition  
to Change  
Visitation.*

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This matter coming on to be heard in the presence of Harry Kalisch, of counsel with the petitioner and cross-defendant, and Charles M. Myers, of counsel with the defendant and cross-petitioner and the petitioner in this application, upon the petition, affidavits and arguments heard and considered in open Court, and it appearing that by a decree made and entered in the above entitled cause on the third day of August, nineteen hundred and seventeen, it was ordered, among other things, that the petitioner, Agnes Larkey, who then had the custody of the minor child, Louis Larkey, the issue of the marriage between the parties hereto, should retain the said custody of said child until further order might be made in this behalf by this Court, but that pending the making of said order, or modification thereof, the said Benjamin Larkey should have the right to visit and see the said child at the home of said Agnes Larkey, or at such place as the said petitioner might be with the said child as theretofore by mutual arrangement, on Sunday of each week between the hours of 2 o'clock in the afternoon and 5 o'clock in the evening of said day.

*Order for Visitation.*

And it further appearing that said parties hereto have been unwilling or unable to continue said mutual arrangement and that a dispute exists as to the right of visitation by the said Benjamin Larkey and that the same should now be changed, and the rights of the parties regarding such visitation determined, and application being made to determine the rights of the respective parties, as to the custody of said child, the parties living apart, it is on this 25th day of September, nineteen hundred and seventeen, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, that the said Agnes Larkey shall retain the custody of the said minor child, Louis Larkey, until the further order of this Court, but that pending the making of any such order, or modification thereof, the said Benjamin Larkey shall have the right to call for the said Louis Larkey on Sunday morning of each and every week hereafter and to take said child with him to Newark, in the State of New Jersey, and to return said child to the residence of the said Agnes Larkey, the same day. And it is further

ORDERED, that either party be at liberty to apply upon a future change of circumstances of the parties for a modification of this order, or any part thereof.

E. R. WALKER,  
C.

Respectfully advised,

MERRITT LANE,  
V. C.

A true copy.

ROBERT H. McADAMS,  
Clerk.

*Notice of Appeal.*

**Notice of Appeal.**

**In Chancery of New Jersey.**

*Between*

AGNES LARKEY,  
*Petitioner and Cross-Def't,*

*and*

BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r.*

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*On Petition,  
&c.*

*Notice of Ap-  
peal.*

AGNES LARKEY, the above mentioned petitioner, appeals from an Order made and entered in the above entitled cause on September 25th, 1917, and from every part thereof in which it was ordered that:

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“ \* \* \* the said Agnes Larkey shall retain the custody of the said minor child, Louis Larkey, until the further order of this Court, but that pending the making of any such order, or modification thereof, the said Benjamin Larkey shall have the right to call for the said Louis Larkey on Sunday morning of each and every week hereafter and to take said child with him to Newark, in the State of New Jersey, and to return said child to the residence of the said Agnes Larkey the same day. And it is further

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ORDERED, that either party be at liberty to apply upon a future change of circumstances of the parties for a modification of this order, or any part thereof.”

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*Notice of Appeal.*

to the Court of Errors and Appeals in the last resort in all causes.

Dated, September 29th, 1917.

KALISCH & KALISCH,  
*Solicitors for and of Counsel with Petitioner.*

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

ISIDOR KALISCH,  
*Of Counsel with Petitioner.*

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*Petition of Appeal.*

**Petition of Appeal.**

**New Jersey Court of Errors and Appeals**

*Between*

AGNES LARKEY,  
*Petitioner and Cross-Def't,*  
*Appellant,*

*and*

BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r,*  
*Respondent.*

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*Petition of  
Appeal.*

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

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The petition of Agnes Larkey, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by an order made in said cause in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 25th day of September, 1917, wherein the said Agnes Larkey was petitioner and cross-defendant, and the said Benjamin Larkey was defendant and cross-petitioner, in this respect, to wit: That the said order adjudges that:

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“ \* \* \* the said Agnes Larkey shall retain the custody of the said minor child, Louis Larkey, until the further order of this Court, but that pending the making of any such order, or modification thereof, the said Benjamin Larkey shall have the right to call for the said Louis Larkey on Sunday morning of each and every week hereafter and

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*Petition of Appeal.*

to take said child with him to Newark, in the State of New Jersey, and to return said child to the residence of the said Agnes Larkey the same day.

10 And it is further Ordered, that either party be at liberty to apply upon a future change of circumstances of the parties for a modification of this order, or any part thereof."

20 And your petitioner humbly appeals from said order of the Chancellor upon the ground that the same is erroneous, for that the above entitled cause was by an order of reference made on the 17th day of July, 1916, referred to Honorable J. Franklin Fort, one of the Advisory Masters of this Court, to hear the same for the Chancellor and report thereon to him and advise what order and decree should be made therein, and that on the 27th day of July, 1917, the said Honorable J. Franklin Fort advised a decree *nisi*, in which it was ordered, *inter alia*, that the petitioner, Agnes Larkey,

30 " \* \* \* who now has the custody of the minor child, the issue of the marriage between the petitioner and the cross-petitioner, shall retain the custody of said child until further order may be made in this behalf by this Court, but that pending the making of any such order or modification hereof, the cross-petitioner shall have the right to visit and see the said child at the home of the petitioner, or at such place as the said petitioner may be with the said child, as heretofore by mutual arrangement, on Sunday of each week, between the hours of two o'clock in the afternoon and five o'clock in the evening of said day."

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*Petition of Appeal.*

And your petitioner further shows that the said order, dated September 25th, 1917, from which appeal is taken was advised by Honorable Merritt S. Lane, one of the Vice-Chancellors of this Court, to whom application was made for that purpose upon notice given to your petitioner, although the same had not been previously referred to the said Honorable Merritt S. Lane, by any order of the Chancellor, all of which was contrary to equity and the rules of this Court.

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Your petitioner therefore prays that said order of 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.

KALISCH & KALISCH,  
*Solicitors of Appellant and of  
Counsel with Appellant.*

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Usual answer filed.

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4C

*Affidavit of Benjamin Larkey.*

**Affidavit of Benjamin Larkey.**

IN CHANCERY OF NEW JERSEY.

*Between*

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AGNES LARKEY,  
*Petitioner and Cross-Def't,*

*and*

BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r.*

*On Bill, &c.*  
*Affidavit.*

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

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BENJAMIN LARKEY, being duly sworn according to law on his oath deposes and says:

I am the defendant and cross-petitioner in the above entitled cause. On September 30, 1917, at about 10:30 in the forenoon, I went to the residence of Agnes Larkey, the petitioner and cross-defendant in the above entitled cause, in Brooklyn, New York, and requested the said Agnes Larkey to give me Louis Larkey, our child, to  
30 take to Newark in conformity with the order entered in this matter, but the said Agnes Larkey refused to give me the child, saying that she would not permit me to take him to Newark. I showed her the order entered in this matter which permitted me to take said child to Newark and she said she knew about the order but that she was appealing it. I then left the house.

BENJAMIN LARKEY.

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*Affidavit of Barney Larkey.*

Sworn and subscribed to before  
me this 2nd day of October,  
A. D. 1917.

JULIUS GORDON,  
*Notary Public of New Jersey.*

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IN CHANCERY OF NEW JERSEY.

*Between*

AGNES LARKEY,  
*Petitioner and Cross-Def't,*

*and*

BENJAMIN LARKEY,  
*Defendant and Cross-Pet'r.*

*On Petition  
to Change  
Visitation.*

*Affidavit.*

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

BARNEY LARKEY, being duly sworn according to  
law on his oath deposes and says:

I am an Attorney and Counsellor at Law of  
the State of New Jersey and a brother of the  
defendant and cross-petitioner in the above  
entitled cause; on September 25, 1917, Harry  
Kalisch, Solicitor of the petitioner and cross-  
defendant called at my office, No. 420 Prudential  
Building, Newark, New Jersey, and I served him  
with the order changing the visitation  
entered on said day, by showing him the original  
and by handing him a copy thereof.

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BARNEY LARKEY.

Sworn and subscribed to before  
me this 2nd day of October,  
A. D. 1917.

JULIUS GORDON,  
*Notary Public of New Jersey.*

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*Order to Show Cause.*

**Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>AGNES LARKEY, <i>Petitioner and Cross-Def't,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BENJAMIN LARKEY, <i>Defendant and Cross-Pet'r.</i></p>	<p><i>On Petition to Change Visitation.</i></p> <p><i>Order to Show Cause.</i></p>
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20 Upon opening this matter to the Court by Charles M. Myers, of counsel with the defendant and cross-petitioner, and it appearing to the Court that on September 25, 1917, this Court made an order providing that the petitioner and cross-defendant should retain the custody of the minor child, Louis Larkey, until the further order of this Court, but that pending the making of any such order or modification thereof, the said defendant and cross-petitioner should have the right to call for the said child Sunday morning of each and every week thereafter and to take said child with him to Newark, in the State of New Jersey, and to return said child to the residence of the said petitioner and cross-defendant the same day.

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And it further appearing to the Court by the affidavits of Barney Larkey and Benjamin Larkey, the defendant and cross-petitioner filed herewith, that a copy of said order has been duly served on the Solicitor for the petitioner and cross-defendant and that the said petitioner and cross-defendant has also been per-

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*Order to Show Cause.*

sonally apprised of the contents thereof and that she has refused to conform to and abide by the same, it is on this 2nd day of October, 1917, on motion of Charles M. Myers, solicitor of the defendant and cross-petitioner, Ordered, that the said petitioner and cross-defendant, Agnes Larkey, show cause before the Chancellor, at the Chancery Chambers, Prudential Building, in the City of Newark, New Jersey, on the eighth day of October, 1917, at 10 o'clock in the forenoon, why she should not be adjudged guilty of contempt of Court and punished for her failure to obey the order hereinabove referred to. And it is further

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ORDERED, that a true copy of this order and the affidavits herein referred to be served on the said Agnes Larkey, personally, and on her Solicitor, Harry Kalisch, within one day from the date hereof.

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E. R. WALKER,  
C.

Respectfully advised,

MERRITT LANE,  
V. C.

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*Conclusions of Vice-Chancellor Lane.*

CHAMBERS OF VICE-CHANCELLOR LANE,  
NEWARK.

COURT OF CHANCERY OF NEW JERSEY.

November 7th, 1917.

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Charles M. Meyer, Esq.,  
763 Broad Street,  
Newark, N. J.

Kalisch & Kalisch,  
790 Broad Street,  
Newark, N. J.

Gentlemen:—

20 I have concluded in the case of Larkey *v.* Larkey not to, at this time, sign an order adjudging the complainant, Agnes Larkey, guilty of contempt for the reason that such an order would be ineffective. It could not be enforced and there would be no virtue making the order, under the circumstances, pending the determination by the Court of Appeals of the validity of the order upon which the contempt is predicted.

Yours very truly,

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MERRITT LANE.

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*Stipulation.*

## New Jersey Court of Errors and Appeals

*Between*

AGNES LARKEY,

*Petitioner,*

*and*

BENJAMIN LARKEY,

*Defendant.*

*On Petition, 10*  
*&c.*  
*Stipulation.*

It is hereby stipulated and agreed by and between counsel for the respective parties herein, that the following facts shall be considered as proved, in the above entitled cause:

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1. That Agnes Larkey, the above-named petitioner, and Louis Larkey, the child of the above mentioned parties, have lived continuously in the State of New York, from August, 1913, until the present time and were living in the said State of New York at the time the Order appealed from in this case was entered.

2. That no actual notice of the intended application for the Order appealed from was given to the petitioner, but that the following notice was served upon the solicitor for the petitioner on September 13, 1917:

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*Stipulation.*

IN CHANCERY OF NEW JERSEY.

10	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">AGNES LARKEY,</p> <p style="margin: 0; text-align: right;"><i>Petitioner,</i></p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0;">BENJAMIN LARKEY,</p> <p style="margin: 0; text-align: right;"><i>Defendant.</i></p>	}	<p><i>On Bill, &amp;c.</i></p> <p><i>Notice.</i></p>
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To Harry Kalisch, Esq., solicitor for petitioner and cross-defendant:

20 PLEASE TAKE NOTICE that I will apply to the Chancellor at the Chancery Chambers, in the Prudential Building, in the City of Newark, New Jersey, on Tuesday, the eighteenth day of September, nineteen hundred and seventeen, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order varying and modifying the decree made by this Court on the third day of August, nineteen hundred and seventeen, in so far as the same affects the support, custody and visitation of Louis Larkey, the child of the parties hereto.

30 Yours respectfully,

(Signed) CHARLES M. MYERS,  
*Solicitor for Defendant and Cross-Petitioner.*

40 3. That solicitor for the petitioner appeared specially on the day the application was made and objected to the making of the order on the ground that the Vice-Chancellor, to whom application was made, had no jurisdiction and stated that the application should have been made to Advisory Master Fort, to whom the

*Stipulation.*

cause had been referred by an Order of Reference, dated July 17, 1916, a copy whereof appears in the state of case.

4. Advisory Master Fort filed his findings in the Court of Chancery and a decree *nisi* was entered thereon on August 3, 1917.

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KALISCH & KALISCH,  
*Solicitors of Petitioner.*

CHARLES M. MYERS,  
*Solicitor of Defendant.*

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