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# New Jersey Court of Errors and Appeals

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Between,	} On Appeal From Chancery	10
BLANCHE LUDWIG, (Petitioner),		
<i>Appellant.</i>		
and		
ARTHUR LUDWIG, ADAM J. LUDWIG and BRIDGET S. LUDWIG, (Defendants),	}	
<i>Respondents.</i>		

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IN CHANCERY OF NEW JERSEY. 20

## PETITION FOR DIVORCE

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

The petition of Blanche Ludwig, now living at No. 52 Chestnut Street, in the City of Rochester, in the County of Monroe and State of New York, respectfully shows:

1. Petitioner, whose maiden name was Blanche Chrysler, was lawfully joined in the bonds of matrimony to her husband, Arthur Ludwig, the defendant in this suit, at New Brunswick, New Jersey, on the Twentieth day of December, in the year nineteen hundred and twelve, by Rev. Qual, then pastor of the German Reformed Church in said City. 30

2. Defendant deserted petitioner on August 2, 1918, in the City of Rochester, in the County of Monroe and State of New York, where they had come to live about three months prior to that date,

ever since which time defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Defendant returned to New Brunswick within a day or two after said date of desertion and has been a bona fide resident of the State of New Jersey since that time, and had lived with your petitioner in New Jersey from the date of their said marriage until they went to Rochester as above set forth.

10 4. One child named William was born of said marriage on June 21, 1913, and has always lived with and been supported by petitioner since the date when defendant deserted her as above stated.

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

20 And your petitioner will ever pray, etc.

BLANCHE LUDWIG,  
THEODORE STRONG,  
*Solicitor and of Counsel*  
*with Petitioner.*

State of New York. ss.  
County of Monroe.

Blanche Ludwig being duly sworn according to law upon her oath deposes and says:

30 I am the petitioner named in the foregoing petition. Said petition is not made by any collusion between me and the said defendant but in truth and good faith for the causes set forth in said petition.

BLANCHE LUDWIG.

Sworn and subscribed this 11th day of August, 1920, at Rochester, in said county and State, before me a Notary Public in and for said county and State, as witness my hand and notarial seal.

CASSIUS C. DAVY,  
*Notary Public.*

(L. S.)

## IN CHANCERY OF NEW JERSEY.

BETWEEN

BLANCHE LUDWIG,  
*Petitioner,*

and

ARTHUR LUDWIG,  
*Defendant.*} On Petition for Divorce.  
} Answer by Way of  
} Counterclaim.

The answer of Arthur Ludwig, defendant, to the petition of Blanche Ludwig, the petitioner, says that: **10**

1. Defendant admits that petitioner and defendant were married as alleged in the first paragraph of the petition.

2. Defendant denies that he deserted the petitioner on August 2, 1918, and he denies that ever since that time he has wilfully, continuedly and obstinately deserted petitioner; but on the contrary the defendant alleges that the petitioner deserted him in manner particularly stated in the succeeding part of this answer, which is by way of counterclaim. **20**

3. Defendant denies that he returned to New Brunswick, New Jersey, from Rochester, New York, as alleged in the third paragraph of the petition, and says he returned from Rochester, New York, to the City of Newark, in the County of Essex and State of New Jersey. Defendant admits that he has been since that time a bona fide resident of the State of New Jersey. **30**

4. Defendant admits that one child, William, was born of the said marriage, on June 21, 1913. Defendant denies that the said child has been supported by petitioner, as alleged.

## ANSWER BY WAY OF COUNTERCLAIM.

Defendant, by way of counterclaim, exhibited against the petitioner, says that:

1. Petitioner and defendant were married on

the twentieth day of December, nineteen hundred and twelve, as alleged in the petition. They resided in the City of New Brunswick, Middlesex County, New Jersey, until about the month of April or May, 1918, when they moved to the City of Rochester, County of Monroe, and State of New York, where they continued to live until the second day of August, 1918. While in the city of Rochester defendant and petitioner resided with petitioner's relatives. Defendant was without employment while in the City of Rochester, and desired to return to New Jersey, where he could obtain proper and suitable employment. He requested the petitioner to return with him. She refused to do so. On the second day of August, 1918, defendant requested petitioner to return to New Jersey to live with him, but she refused to do so. Defendant left the house at Rochester, New York, in which they were living, a short while, and when he returned found his baggage and clothing on the porch of the house. Defendant tried to open the door but found it locked. Defendant did not have a key to it, whereupon he took his clothes and baggage and went to the City of Newark, in the County of Essex, and State of New Jersey, where he obtained employment and took up his residence. Defendant continued to reside in the City of Newark for about two months, when he returned to the City of New Brunswick, in the County of Middlesex, where he has ever since resided.

2. While in the City of Newark defendant sent two letters to the petitioner requesting petitioner to return to him, but no reply was ever received from the said letters. In February, 1920, defendant was taken sick with pneumonia, and while at St. Peter's Hospital in the City of New Brunswick, it was thought that the defendant would die, whereupon defendant's relatives sent a letter to petitioner, advising her of defendant's precarious condition, and asking her to come to New Brunswick to see him.

Petitioner replied to that letter, and refused to come to New Brunswick to see the defendant.

3. Petitioner deserted defendant on or about October 2, 1918, and has ever since, and for more than two years next preceding the commencement of this action, continuedly wilfully and obstinately deserted the defendant.

4. The said child, William, is in the custody of the petitioner, who, by reason of her inability to properly provide for and support the said child, is unfit to have his custody. The welfare of the said child requires that he should be removed from petitioner's custody and restored to that of this defendant. 10

5. The defendant has been a bona fide resident of the State of New Jersey for the period stated in the petition, and as admitted in the preceding part of this answer.

6. Petitioner's maiden name was Blanche Chrysler. 20

7. Defendant prays that the marriage between this defendant and the petitioner may be dissolved for the cause aforesaid, as alleged in this answer by way of counterclaim, according to the statute in such case made and provided, and that this defendant may be awarded the custody of the said child of the marriage, and that this defendant may have such further relief as may be just.

RUSSELL E. WATSON, 30  
*Solicitor for Defendant.*

State of New Jersey.  
County of Middlesex. ss.

ARTHUR LUDWIG, being duly sworn, according to law, on his oath deposes and says that he the defendant named in the foregoing counterclaim, and that his said counterclaim is not made by any collusion between him and the said petitioner but

in truth and good faith for the cause set forth in the counterclaim.

ARTHUR LUDWIG.

Sworn and subscribed before me this 21st day of October, A. D. 1920.

MARGARET A. HARKINS,  
*Notary Public of N. J.*

(Filed by consent as within time August 16, 1921.)

10 IN CHANCERY OF NEW JERSEY.

BETWEEN BLANCHE LUDWIG, <i>Petitioner,</i> and ARTHUR LUDWIG, <i>Defendant.</i>	}	On Petition for Divorce.
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REPLICATION.

20 The petitioner joins issue on the answer of the defendant.

AMENDED ANSWER TO COUNTERCLAIM.

As to the counterclaim contained in said answer, petitioner says:

1. Petitioner denies that defendant was without employment while in the City of Rochester and says that he was employed at Schantz Furniture House

30 and Symington's Shell-making Plant; denies that defendant at any time requested petitioner to return with him and that she refused to do so; denies that she placed defendant's baggage and clothing on the porch of the house or caused it to be placed there, and says that on August 2, 1918, defendant beat her, and her sister called a policeman, who came, but did not arrest defendant as he promised to let her alone and not make any trouble; later on the same day petitioner went out to do some shopping and took William with her and when they returned de-

defendant and his clothes were gone, all of petitioner's money, together with numerous articles which he could sell, belonging to her and purchased with her own money, including jewelry and clothing.

That defendant returned that evening with a pistol but petitioner was afraid to let him in the house, as he had threatened to kill her. Petitioner sent for the police but he left before they got there and she has never seen him since and he has not attempted to see her. 10

2. Petitioner denies that defendant sent her any letters requesting her to return to him; denies that she received any letters requesting her to return to him. When defendant was sick his sister telegraphed her to bring William there. Petitioner at once telegraphed that William was sick with measles, which was the fact. They wrote petitioner when defendant was sick and informed her when he was getting well.

3. Paragraph 3 is denied. 20

4. Paragraph 4 is denied, except that it is admitted that the child, William, is in the custody of petitioner.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. Your petitioner further says that she was sixteen years of age at the time of her marriage to defendant, who was then nineteen years of age; that her marriage was never happy; that he frequently beat and kicked her, and that she has the scars from some of his beatings on her person now; that on one occasion when he beat her he broke several of her teeth; that on one occasion he struck her on the hand with a bottle, gashing it badly; that he on several occasions kicked her in the stomach; that she left him three times because of his cruelty and that on one occasion had him arrested for beating her and he spent the night in the New Brunswick Police Station and was discharged the next day upon her failing to appear against him; that her husband 30

gambled away his money and for about four and one-half years of her five and one-half years (about) of married life in New Brunswick she was compelled to work for the support of herself and child; that her husband repeatedly charged that the child was not his and warned her not to leave the child with him, as he would not support someone else's child; that defendant's maiden sisters have sought and are now seeking to obtain possession of the child and have written the Children's Society in the City of Rochester in the endeavor to obtain possession of him; that since she went to Rochester defendant has at no time contributed anything for the support of herself or child.

This petitioner prays that the said counterclaim of the defendant may be dismissed and that the petitioner may have the relief prayed for in her said petition.

20 THEODORE STRONG,  
*Solicitor for Petitioner.*

(Filed by consent as within time  
September 3, 1921.)

IN CHANCERY OF NEW JERSEY.

30	BETWEEN BLANCHE LUDWIG, <i>Petitioner,</i> and ARTHUR LUDWIG, <i>Defendant.</i>	}	On Petition for Divorce. <i>Amendment to Defen-</i> <i>dant's Answer by Way</i> <i>of Counterclaim.</i>
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The defendant, Arthur Ludwig, amends that part of Paragraph 1 of his counterclaim, which reads as follows:

“Defendant was without employment while in the City of Rochester and desired to return to New Brunswick, where he could obtain proper and suitable employment.”

so as to read as follows:

“Defendant was unable to obtain proper and suitable employment while in the City of Rochester, and desired to return to New Jersey, where he thought he could obtain better employment.”

R. E. and A. D. WATSON,  
*Solicitors for Defendant.*

(Filed by consent as within time  
September 3, 1921.)

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## IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Petition for Divorce. Defendant's Replication.
BLANCHE LUDWIG, <i>Petitioner,</i>		
and		
ARTHUR LUDWIG, <i>Defendant.</i>		

The defendant, Arthur Ludwig, joins issue on the complainant's answer to counterclaim, as amended. 20

R. E. and A. D. WATSON,  
*Solicitors for Defendant.*

## IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Petition for Divorce. 30
BLANCHE LUDWIG, <i>Petitioner,</i>		
and		
ARTHUR LUDWIG, <i>Defendant.</i>		

## TESTIMONY.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the eleventh day of April, 1922, at 12.45 P. M.,

Before HON. MALCOLM G. BUCHANAN, Vice Chancellor.

APPEARANCES—THEODORE STRONG, Esq., for the petitioner. ffl

RUSSELL E. WATSON, Esq., for the defendant.

BLANCHE LUDWIG, the above-named petitioner, being duly sworn in her own behalf, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

- 10 Q. You are the petitioner?  
A. Yes, sir, I am.
- Q. Where do you live?  
A. Rochester, New York.
- Q. What street number there?  
A. 52 Chestnut Street.
- Q. With whom?  
A. My aunt.
- Q. What is her name?  
A. Mrs. Weixelbaum.
- Q. How long have you lived there?  
A. Since 1918.
- 20 Q. What time in 1918?  
A. I went there in May, 1918.
- Q. What was your maiden name?  
A. Chrysler.
- Q. When did you marry the defendant?  
A. December 20, 1912.
- Q. Where?  
A. New Brunswick, New Jersey.
- Q. Where did you go to live with him after  
30 your marriage?  
The Court: You might as well exhaust the testimony as to the marriage.
- Q. By whom were you married?  
A. The Reverend Qual.
- Q. In the German Reformed Church?  
A. Yes.
- Q. At New Brunswick?  
A. New Brunswick.
- Q. Can you give the names of any who were present at that time?  
A. Mr. and Mrs. George Holzapfel.

Q. Anyone else?

A. No one else

By the Court:

Q. Who was Mr. Qual who married you?

A. A minister of the German Reformed Church.

Q. The minister of the church in which you were married?

A. Yes, sir.

Q. Where did you go to live after you were married? 10

A. For a few months I lived home with my mother, and then I went to live on Scherman Street, New Brunswick.

Q. Did your husband live with you when you were staying at your mother's?

A. No, he didn't.

Q. How long after your marriage did your husband begin to live with you? 20

A. I should think about two months.

Q. And that was on Scherman Street?

A. Yes.

Q. In New Brunswick.

A. Yes, in New Brunswick.

Q. How did you get along with your husband?

A. We never got along.

Q. In what way did you fail to get along while you were together? 30

A. He always called me names and beat me.

Q. What names?

A. He would call me a "whore."

Q. And how did he beat you?

A. He used to strike me for the least little thing, and kick me.

Q. How long after your marriage was your child born?

A. About six months, June 21, 1913.

Q. Where were you born?

A. In New York State, near Rochester.

Q. What was your father's name?

A. Elmer Chrysler.

Q. Where does he live?

A. Milltown, New Jersey.

Q. When did you come to New Jersey to live?

A. I was about five years old.

Q. And you came with your father?

A. Father and mother, yes.

10 Q. How did your husband treat you after your child was born?

A. Worse than he did before.

Q. What did he do to you?

A. Well, he beat me and didn't give me any money most of the time.

Q. Did you ever take any action to try to stop his beating you?

A. I had him arrested one time and I didn't appear against him, and several times I was to  
20 Judge Suydam's and complained of him.

Q. Well, now, after your child was born, where did you live?

A. In Scherman Street.

Q. For about how long did you keep the child?

A. I lived with him until he was two and a half years old.

Q. And then what became of the child?

A. Then I went to Rochester and took—

30 Q. Was he with your husband and yourself all the time until he was two and a half years old—and the child with you?

A. Yes.

Q. Then you went to Rochester, New York, and took the child with you?

A. Yes.

Q. Did your husband go with you at that time?

A. No.

Q. How did you happen to go?

A. He was abusing me.

Q. What do you mean?

A. He was abusing me, and he would stay out late, and I got discouraged and I—

Q. What do you mean—

A. He stayed out nights half the time.

Q. Did he have employment?

A. He worked all the time.

Q. What did he do with his money?

A. I couldn't say; I think he gambled with 10  
it.

Q. Why do you think so?

A. He said so when he didn't have any.

Q. What were his habits with respect to the use of liquor?

A. Well, he didn't drink so much, he was just mean all the time; he was worse when he was drinking.

Q. He was worse when he was drinking? 20

A. Yes, sir.

Q. Well, now, you went to Rochester and you took Billy with you, the little boy?

A. Yes.

Q. And to whom did you go in Rochester?

A. To my aunt.

Q. And what did you do; you took Billy there?

A. Yes.

Q. What did you do when you went to Rochester in the way of supporting yourself? 30

A. I did housework.

Q. How much did you earn?

A. Seven or eight dollars a week.

Q. And how long did you keep Billy there?

A. Until about May.

Q. You went there, you said, in what month?

A. In February.

Q. And you kept Billy there in May?

A. Until May.

Q. 1915?

A. 1915.

Q. Then, how did it happen—then where did Billy go?

A. Then I asked them to take him for a few months, as I was sick and not able to earn much money.

Q. Did they take him?

A. They took him with the understanding for a little while.

10 Q. And how long did they keep him?

A. They kept him right up till the time I took him away from them in 1918, and went back in December; and he promised to make a home and take Billy with us.

Q. You went back in 1915?

A. Yes, sir.

Q. And your husband was to make a home for you?

A. Yes.

20 Q. And to do what in respect to Billy?

A. To make a home for Billy and I.

By the Court:

Q. You said 1918; was that in 1915?

A. Yes, sir.

Q. And you also said it was when the child was about two and a half years old, as I understood it?

A. That is the way I figure it.

30 Q. Which is the thing you are positive of, the child's age?

A. Yes.

Q. The child was born June 21, 1913; if he was two and a half years old, that would be 1916?

A. It would be 1916.

Q. It was in December, 1916, and not in December, 1915, that this reconciliation took place, or this promised reconciliation.

A. I left him the first time when Billy was two and a half years old, in February, —the 12th.

Q. You are sure of that?

A. Yes.

The Court: That was in 1916.

Q. The child was born in 1913, in June?

A. And he was two and a half years old.

Mr. Watson: It is our understanding that it was in February, 1916.

Q. You came back to New Brunswick in December?

A. Yes.

10

Q. And where did you live then?

A. We went to live in furnished rooms.

Q. What?

A. I lived in furnished rooms.

Q. With your husband?

A. Yes.

Q. How did he treat you?

A. All right for a few weeks, and then afterwards it was the same thing.

Q. I think you said that he didn't attempt to keep his promise to make a home for Billy?

20

A. No, he didn't want to take Billy.

Q. Did you see much of Billy during that time?

A. He used to bring him up sometimes, and after my sister used to live with me, she got him once or twice a week, and sometimes they wouldn't let him come at all.

Q. What did he call you?

A. Before then he called me "Blanche."

30

By the Court:

Q. Before whom?

A. Before his people.

Q. Before your husband's mother and sisters?

A. Yes, sir.

Q. Did I understand you to say, sometimes they wouldn't let him come?

A. Sometimes they wouldn't let him come.

Q. Well, now, how long did you continue then to live with your husband in New Bruns-

wick?

A. Till May, 1918.

Q. Till May, 1918; then what did you do?

A. I went to Rochester, New York.

Q. Did you have any talk with your husband beforehand about going?

A. I did, but then in a way he seemed to want me to go.

By the Court:

10 Q. What did you say; what talk did you have with him and he with you?

A. There was trouble all the time, and a week before that I took Billy with me—I received letters from his sister; they were awful mean about it.

Q. What was said by him; how did the matter of going to Rochester come up?

A. I said I would try to start over again.

20 Q. How did the matter of going to Rochester come up?

A. I said the best thing to do was to go out of town to see if we couldn't get along.

Q. You mentioned the matter to your husband?

A. Yes.

Q. And you said you thought if both of you made a home in some other place, you would get along together?

A. Yes.

30 Q. What did he say to that?

A. First, he didn't care; he didn't agree for me to go, but after, he said I could go.

Q. You could go?

A. Yes.

Q. And you went where?

A. To Rochester, New York.

Q. What was said about anybody going to Rochester?

A. I spoke about going out of town.

Q. Did you say Rochester?

A. Yes. I have people in New York State.

Q. Do I understand that you suggested, not that he go out of town generally, but that he go out of town and go to Rochester?

A. Yes, sir.

Q. And that he finally agreed to do?

A. He did.

Q. You have relatives in Rochester?

A. My aunt. 10

Q. What is her name?

A. Mrs. Weixelbaum.

Q. What does she do?

A. She has a rooming house, a furnished room house.

Q. And you went to Rochester in what month?

A. In May, 1918.

Q. And when you left, where was your husband; did your husband know anything about your going? 20

A. Surely he did.

Q. Where was he?

A. In New Brunswick.

Q. State whether or not he knew at the time you were going?

A. He knew; I said "Good-bye" to him.

Q. Whereabouts?

A. On Nelson Street. 30

Q. At your home?

A. We were living there at that time.

Q. Did he see Billy go with you?

A. Yes.

Q. What, if anything, at that time, did he say about going to Rochester to live?

A. He said he would be there in a week or so.

Q. Did he go to Rochester?

A. He did.

Q. When?

A. About two weeks after.

Q. Where did you live?

A. At 52 Chestnut Street.

Q. Your aunt's house?

A. Yes.

Q. What, if anything, did your husband find in the way of employment in Rochester?

A. The first place he worked was Schantz Furniture House.

Q. Then where?

10 A. Then at Symington's Shell Making plant.

Q. How did you get along together?

A. We didn't get along very well.

Q. In what manner did he treat you?

A. He beat me there and called me names.

Q. What names?

A. The same as I said before.

Q. The same names you have mentioned before?

A. Sure.

20 Q. How did he beat you?

A. He would strike me with his fist, and a few times he kicked me.

Q. He struck you with his fist and kicked you; now, where would he kick you?

A. I don't remember that; at one time he kicked me in the stomach, but that was before we went to Rochester.

30 Q. In your answer and counterclaim I think you said he struck you in the teeth?

A. He did.

Q. Where was that?

A. That happened in New Jersey, New Brunswick.

Q. Do your teeth still show that?

A. Yes.

Q. How did he strike you?

A. With his fist, on the chin.

Q. You also, I think, allege that he struck you and cut your hand in some way?

A. He did, I still have the scar.

Q. How was that?

A. He struck me with a bottle.

Q. And is there or not any scar from that cut with the bottle?

A. I still have the scar.

Q. Where is it?

A. On my hand.

Q. Show me.

A. (Witness does so.)

Q. And your teeth?

10

A. On this side (indicating).

Q. What, if anything, was done to remedy the trouble with your teeth?

A. Nothing.

Q. Did you go to the dentist?

A. I went, but he thought it wouldn't make any difference; they were not broken so bad.

Q. What did he do?

A. Nothing at all; he didn't do anything to them.

20

Q. Well, I mean—you are sure he did nothing whatever to them?

A. Nothing at all to those teeth that were broken.

Q. Nothing with respect to making them more presentable?

A. No, sir; these two here he filed.

Q. Because of what?

A. To make them even with the ones that are broken.

30

Q. How long did you live in Rochester with your husband?

A. I lived with him from May until August 2, 1918.

Q. And how did you happen to separate—what happened on August 2, 1918?

The Court: We will take a recess at this time.

RECESS UNTIL 2 O'CLOCK

## AFTER RECESS

Q. Tell us what happened on August 2, 1918.

A. We had some trouble in the afternoon—

Q. About what?

A. I don't remember what it started over, and he started to call me names—

Q. What did he call you?

A. The same as I said before.

Q. Go on.

10 A. And he started to hit me and everything, and I was crying and my sister had to go after a policeman.

Q. Where did he hit you?

A. I don't remember, the arms or anywhere.

Q. What with?

A. His hand, his fist.

Q. What, if anything else, did he say to you?

20 A. He called me names and swore, and she went after a policeman and brought him to the house. She went and called him off the street; and he talked to him and told him to be different and not to hit me like that, or else she would have him arrested. My aunt talked to him about it, and he wanted to take Billy away from me and the policeman told him not to and not to strike me, or he would put him in jail.

By the Court:

Q. How did this start?

30 A. Just little things.

Q. On that day?

A. I can't remember what started it; it was most every day, every week.

Q. What sort of things started it?

A. I don't know; he would start calling me names.

Q. What would make him call you names, and what names?

A. A whore.

Q. Did he have any reason to?

A. Well, I don't know.

Q. Well, he certainly didn't start it out of a clear sky?

A. He certainly did.

Q. There must have been something that he thought—

A. No, I don't know what.

Q. At any time?

A. If I tried to tell Billy to do something he told him to tell me to go to hell.

Q. What did he say in regard to Billy's parentage? 10

A. Oh, he often said he didn't belong to him and he wasn't the father.

Q. What did he say about your leaving Billy with him?

A. He always said, "Don't leave him with me; he's not my child;" later on he would say, "Well, I'll take him; I don't want him, but my people do."

Q. What, if anything, did he say what his people would do to get him? 20

A. He said he would get plenty of money if he could get him, but I wouldn't never see it.

Q. You say you don't remember just how it started on this day, but was it or not an unusual thing for you and him to quarrel while you were in Rochester?

A. Most every day we had some little quarrel.

Q. Well, after the policeman had been there and left, then what happened? 30

A. Then I went out to do some shopping, and when I came back he wasn't there any more; his things he got and he took some of my things, and later on that night he came back himself, and I was afraid to open the door, and he said he would fix me if I didn't open the door, and he would get me if I didn't let him in.

Q. Why were you afraid to open the door?

A. Because he always had a pistol, and he had such an awful temper.

Q. Had he ever said anything with respect to—

A. He often said he would fix me.

Q. What was his language?

A. He would fix me and blow my brains out, or something like that.

Q. And he came back and you wouldn't let him in; then you found your clothes—

10 A. We already knew he had some of my clothes, but I couldn't get them, because he had already taken them.

Q. He came back after he had taken the clothes?

A. Yes, sir.

Q. And wanted Billy?

A. He said he wanted to get in the house.

Q. What did he say he wanted to get in for?

A. I didn't ask him; he said "Open the door."

20 Q. Why did you think it was not safe to open the door?

A. Because he had said so many things to me, and I knew he had a pistol, and I was afraid.

Q. Then what happened?

A. Then he left, and I never seen him since or got any letters from him.

Q. Did he ever come to Rochester to see you since?

A. He never come to see me.

30 Q. And never wrote to you?

A. Never wrote to me.

Q. Did he ever send anything for the support of Billy?

A. Not one thing.

Q. When he came back the second time, and you would not let him in, what, if anything, was done with respect to protecting yourself or sending for anybody?

A. Well, he talked so loud and swore that he would fix me, and I was afraid, and I started to call up the police.

Q. How?

A. By telephone in the same room, and I think he heard me, and he went away and didn't come back.

Q. How did he hear you?

A. The window was open and he stood on the window and tried to get in that way.

Q. What place have you always considered home?

A. I always considered New Jersey.

10

Q. Do you ever intend to return to New Jersey?

A. I hope so.

Q. Is that an expectation?

A. I intend to come back.

Q. How were you employed in Rochester?

A. I am working in a factory.

Q. What factory?

A. In the collar factory.

Q. What do you earn?

20

A. Between eighteen and twenty dollars a week,

Q. And for how long have you been so employed?

A. For over a year.

Q. State whether or not there was one time when you wrote to him for money, and how it came about?

A. Well, Billy had been sick; he had a bad eye, and I had to take him to a specialist there, and I wrote for \$10.00.

30

Q. To whom did you write?

A. I wrote to his sister, and asked her to ask him for \$10.00, and she wrote back that he wouldn't give me that; that if I couldn't take care of him that they would.

Q. Afterwards did he or not recover from that trouble?

A. Yes, he is all right now.

Q. And who has supported him since?

A. I have always supported him since.

Q. Have you ever had any trouble about earning money?

A. No.

Q. Have you always been employed steadily?

A. Always.

Q. In whose charge is he now?

A. Mrs. Lauer.

Q. Who is she?

10 A. A friend of the family.

Q. How far from you does she live?

A. About three blocks.

Q. And you have to go out, as I understand it, to work during the day?

A. During the day.

Q. And how much do you pay Mrs. Lauer for the support—

A. \$4.00 a week.

Q. Does he or not attend school?

20 A. He attends school every day.

Q. What school?

A. No. 15.

Q. Public school?

A. Public school.

Q. In the City of Rochester?

By the Court:

Q. You earn \$18.00 a week?

A. Between eighteen and twenty.

30 Q. You say you board with your aunt?

A. Yes, sir.

Q. How much do you pay your aunt?

A. \$5.00 a week.

Q. And your aunt keeps—

A. A rooming house.

Q. Who rooms in the house?

A. Mostly all married people.

Q. How many families are there there now?

A. Three or four.

Q. Married couples?

A. Married couples.

Q. Are there children there, too?

A. No children.

Q. Did your husband ever say anything to you with respect to the draft during the war?

A. He wanted me to sign for him to be exempt, and he always said if he had to go to war he would fix me.

Q. Did he go to war?

A. I don't think he had to go.

Q. What do you mean by "fix" you? 10

A. I suppose he wanted to scare me and say he would shoot me, or something like that.

Q. What did he say?

A. He said he would blow my brains out and fix me—different things like that.

By the Court:

Q. When was that, that he wanted you to sign this paper?

A. It was the same year I went away; it was 1918. 20

Q. Was it after he had left?

A. It was here in New Brunswick, and later on I went to New York State.

Q. Before you went to Rochester in 1918?

A. 1918.

Q. Why wouldn't you sign it?

A. I didn't want to sign it anyway; I was working myself and Billy was living with the mother.

Q. How much were you earning then? 30

A. I don't just remember.

Q. About how much?

A. I think it was pretty good money; I was working at Johnson's doing war work; it was about \$3.00 a day.

Q. So that from it you were able to support yourself?

A. Yes.

Q. And the baby was being supported by his people?

A. His people.

Q. Was he supporting the baby at all while his family had it?

A. He didn't give him anything at all.

Q. Do you see the child frequently, or not?

A. Yes, every day.

By the Court:

Q. Why don't you keep him with you?

10 A. I have to work, and somebody has to be there to get him up and send him to school.

Q. Did you put him with Mrs. Lauer of your own accord, or what compelled you to put him there?

A. I put him there on my own accord.

Q. Did the Children's Society of Rochester, or any institution of any kind, ever compel you to do anything?

A. No; there was some letters written by his people, saying I wasn't a good person to have him, and they investigated.

20 Q. Have you got an affidavit here?

A. I think so.

Mr. Watson: I object to that; we have no opportunity to cross-examine.

The Court: Objection sustained.

Q. Who were the witnesses to your marriage; the witnesses who were at your marriage, where are they?

A. I said they were—

30 Q. There were only two at the marriage?

A. Yes, only two.

Q. Where is your marriage certificate?

A. He took it with him the day he left.

Q. By whom were you employed, do you say?

A. Cluett and Peabody.

Q. And in his answer he charges that you put his goods out on the street at the time he left?

A. I didn't put anything out; I didn't know he was going.

Q. The time you came back—how many times did you have to leave him, or did you leave him?

A. Here in New Brunswick?

Q. Yes.

A. About three times, or four times.

Q. For what reason?

A. He used to beat me, and one time he put me out.

Q. When you came back from Rochester on one occasion when you had been there several months and had sent Billy home, where did you go to work then?

10

A. At the 5 and 10 cent store on George Street.

By the Court:

Q. The five dollars a week that you are paying, is that for room or room and board?

A. Room and board.

Q. How was it that the baby was born so soon after your marriage?

A. Because I had to make him marry me.

Q. You had had intercourse together before you were married?

20

A. Yes, sir.

Q. Under his promise of marriage?

A. Yes, sir.

Q. How do you mean you had to make him marry you?

A. Well, he wasn't going to, and I went and told his mother, and she told him the best thing he could do was to marry me.

Q. He finally performed his promise?

A. Yes.

30

Q. What was the reason he called you these vile names, or this vile name, when he was angry with you?

A. I don't know; it was just his way, I guess.

Q. Did he ever accuse of any wrong-doing anywhere?

A. Always.

Q. With any specific person?

A. No, he just thought things.

## CROSS-EXAMINATION, by Mr. Watson.

Q. Mrs. Ludwig, you have a strong temper, have you not?

A. I don't think more than anybody else.

Q. Isn't it a fact that from the beginning of your married life there was trouble between you and your husband?

A. Yes.

Q. And that you frequently got hot tempered?

10 A. I don't believe I did.

Q. And quarrelled with him?

A. I don't think so; I was more apt to cry.

Q. And tussled with him physically?

A. I don't think so.

Q. You first went to Rochester in February, 1916?

A. The baby was two and a half years old.

Q. That was the first time?

A. That was the first time.

20 Q. He was nearly three years old, wasn't he?

A. He would be three in June; I went in Feb-

Q. Didn't you refuse to go back to New Brunswick?  
ruary.

Q. Up to that time, Mr. Ludwig worked steadily?

A. Yes.

Q. And never was out of work?

A. Never was out of work.

30 Q. He wasn't given to drinking very much, was he?

A. He drank quite a bit.

Q. But you wouldn't call him a drunkard by any means, would you?

A. I wouldn't call him a drunkard.

Q. He always went to his work in the morning on time?

A. Yes.

Q. During those first few years, when you were living in New Brunswick, you left his house several times?

A. I left two or three times.

Q. Not more than that?

A. I don't think more than that.

Q. And each time you left the house you sent Billy to Arthur's parents, didn't you?

A. Most every time I left at night and he put me out, and I took him to his people's.

Q. Assuming that is the truth, didn't you at any time take the boy, take Billy to his parents?

A. No, I left him with him.

10

Q. One time while you were living in New Brunswick, you were away for about three months, weren't you?

A. No, sir.

Q. The time you stayed at Holzapfel's?

A. No, sir.

Q. Didn't you go away one time and stay at Holzapfel's in New Brunswick?

A. I never stayed more than two days, or one day.

20

Q. And in 1916, you went to Rochester and took Billy with you?

A. Yes, sir.

Q. You were not able to take care of Billy while you were there, properly?

A. I didn't have good work there at the time.

Q. So you wrote to Arthur's sister, Maud, asking her to come and get the child, didn't you?

A. For a while; that was the understanding.

Q. Is this the letter? (Showing witness a paper.)

30

A. Yes, sir.

Q. You went to Rochester about February, 1916, did you not?

A. Yes, sir.

Q. And this letter was written in May?

A. In May.

Q. The letter is May 16, 1916; that is not your handwriting, is it?

A. It looks like it.

Q. This part here (indicating)?

A. It looks like it.

Q. At any rate, the rest is in your handwriting?

A. Yes.

Mr. Watson: I offer the letter in evidence.

Mr. Strong: No objection.

Said letter is marked "Exhibit D 1."

10 Q. This letter, Mrs. Ludwig, in this letter in which you asked Miss Maud Ludwig to come to Rochester for the child, you say, "I know you will love him, and he will be happy with you;" there was no hard feelings between you and Arthur's people at that time?

A. Oh, yes, but not Maud.

Q. There were no hard feelings between you and Maud?

A. No. We have always had more or less trouble.

20 Q. What did you mean when you say—you knew Miss Maud or May Ludwig is employed in Van Pelt's drug store and is not home?

A. Yes.

Q. You knew that his parents would have the care of Billy if she got him?

A. Sure.

Q. You were perfectly content at the time to have him left with the Ludwig family?

A. For a few months. We wrote other letters, too.

30 Q. Miss Ludwig came to Rochester for the child?

A. Yes, sir.

Q. And at that time you hadn't been able to provide proper clothing for the child?

A. Oh, yes, as good as any child.

Q. You say he was properly clothed when she came for him?

A. I think he was.

Q. Billy stayed with the grandparents and aunts?

A. Yes.

Q. When did you come back from Rochester?

A. The following December.

Q. You were there about seven months?

A. Yes.

Q. When you returned to New Brunswick in December, you and your husband lived in furnished rooms, did you not?

A. Yes.

Q. You did that for about a year or longer?

A. I don't know; I don't remember just how long. 10

Q. You went back to Rochester—this was December, 1917, when you returned?

A. No, 1916.

Q. And you returned to Rochester about August, 1918?

A. No, we returned to Rochester in May.

Q. I beg your pardon. During that time, from December, 1916, to May, 1918, during nearly all of that time you and your husband lived in furnished rooms? 20

A. We bought furniture after a while.

Q. How long did you live in furnished rooms?

A. I couldn't say; it must have been a year, I should think.

Q. And Billy continued to live with the grandparents during all that time?

A. Yes, sir.

Q. And you worked?

A. I worked.

Q. Isn't it a fact that your husband found fault with you during all that time, because you insisted upon working and that you wouldn't keep house and live within his income? 30

A. Nothing like that, no. He wanted me to work.

Q. During that time did you go or make any objection to Billy being with his grandparents?

A. All the time; that's what we had trouble about.

Q. You continued to work?

A. Yes, until I could get money together to start a home.

Q. When did you finally start the home?

A. To get Billy the home, do you mean?

Q. Yes.

A. I took him one week before we went to Rochester.

Q. Well, at that time you were planning to return to Rochester?

10 A. No.

Q. You had no idea in your mind of going to Rochester at the time you took Billy back with you?

A. No.

Q. When did you and your husband first begin to talk about going back to Rochester?

A. After we had some talk about Billy going back with us, and he was mad because I talked to him, and I thought it would be the best thing to do to start in some other city and try to get along.

20 Q. From whom was this letter that you referred to?

A. From his sister.

Q. Which one?

A. Mrs. Heckman.

Q. Have you that letter now?

A. Yes, I believe.

Q. Where is it, here?

A. Yes, sir.

(Counsel produces a letter.)

30 Q. During these two years Billy lived with his grandparents?

Mr. Strong: I offer the letter in evidence.

Said letter, dated New Brunswick, N. J., May 11, 1918, addressed to Mrs. Arthur Ludwig by Agnes E. Heckman, is marked "Exhibit P 1."

Q. How soon after receiving this letter "P 1" did you go to Rochester?

A. In a day or so.

Q. You went right away?

A. Right away.

Q. Was it then that you went to Rochester, because you thought you might get into trouble with the draft authorities?

A. No.

Q. Was it just a coincidence that you went so quickly after receiving this letter?

A. No; I couldn't stand it any longer, so much trouble.

Q. This letter threatens you with disclosure of the fact that you had violated the draft law; had you done so? 10

A. I signed for him to be exempt.

Q. Are the statements made in this letter true?

A. I don't understand most of them, like my sister attending school, or things like that.

Q. How old was your sister then?

A. About thirteen.

Q. Did you sign a statement that you and Arthur had two children? 20

A. No, one child.

Q. It is true, that a day or two after receiving this letter, you left New Brunswick?

A. Sure.

Q. And you took Billy with you?

A. Yes.

Q. And at the time you left, your husband agreed to follow you in a week or two?

A. Yes.

Q. And he did go after you in a week or two? 30

A. Yes.

Q. You wanted him to go?

A. Sure.

Q. Where did you go to live in Rochester?

A. I took rooms in my aunt's house until I could get something better.

Q. As soon as Arthur got there, he went right to work?

A. Yes, just a few days.

Q. How long did that take him?

A. It was one or two days afterwards.

Q. Practically as soon as he got there, he found a job and went to work?

A. Almost as soon.

Q. After he had been there a while, did he not begin to talk to you about returning to New Brunswick?

A. He never said nothing about it.

10 Q. Didn't he say he wanted you to come back to New Brunswick, and wanted you to return with him?

A. He did not.

A. No; he never asked me.

Q. You say that on the second day of August there was trouble between you and him?

A. Yes.

Q. And your sister called a policeman?

A. Yes.

20 Q. But you can't recall what it started about?  
A. No, he would start swearing and things, and the next thing he would hit me; just temper, that's all.

Q. As a matter of fact, Mrs. Ludwig, you are as big as he is, aren't you?

A. I think so.

Q. Aren't you well able to take care of yourself?

A. I don't know why I should.

Q. Of course, you should not; you shouldn't have to. You sent for a police officer?

30 A. Yes.

Q. And when the police officer came, the police officer told him he shouldn't strike you?

A. Yes.

Q. And shouldn't take Billy away with him?

A. Yes.

Q. Why did he say that?

A. Every time he was home he said, "I'll take Billy away when you are away, and get out."

Q. Didn't you say he didn't say anything about returning to New Brunswick?

A. About taking me, I think.

Q. I think your words were, "He said nothing."

A. I didn't mean that; I meant he didn't ask me to go back.

Q. He had several times said he would go back to New Brunswick and take Billy with him?

A. In temper.

Q. How did the policeman know that?

A. My aunt told him; she told the policeman 10  
what he said, and asked him if he could.

Q. And the policeman told him he shouldn't take Billy?

A. Yes, sir.

Q. You say Arthur had often called you names?

A. Yes, sir.

Q. And you have mentioned one of them?

A. Yes.

Q. You mentioned "whore"?

A. Yes. 20

Q. And that he had said that Billy didn't belong to him?

A. Yes, sir.

Q. Isn't it a fact, that from the very beginning Arthur and his people were kind and loving to Billy and always were glad to have him at their home or your home?

A. They were very good to him; they never done anything to him.

Q. They were very kind to him? 30

A. In a way, yes.

Q. They treated him as if they considered him a natural grandson?

A. As far as I know.

Q. As a matter of fact, when you were in Rochester, Arthur had threatened, so you say, to take the boy Billy back with him to New Jersey?

A. Yes; he said he didn't want him, but his people did.

Q. You say he took some of your things?

A. Yes, and some of my money.

Q. You say he took some of your money on this day?

A. He took everything I left home.

Q. How much did he take?

A. I should think about twelve or fourteen dollars, something like that.

Q. Where did you keep this money?

A. In the dresser.

10 Q. In what?

A. I don't know; just laid it there, I suppose.

Q. Whose money was it?

A. My money.

Q. Were you working there?

A. I was working.

A. I was working.

Q. And he was working, too?

A. Yes.

Q. What time of the day did this occur?

20 A. That he left? It was in the afternoon; I should think about four o'clock; it was about that time.

Q. What were your working hours?

A. I was working nights.

Q. So that while you were in Rochester you were at a job which took you out part of the time?

A. Yes.

Q. From what time?

A. From 7.30 until 12.

30 Q. You worked in a restaurant? ..

A. Yes, sir.

Q. You were a waitress?

A. Yes.

Q. Did Arthur like that?

A. He never said anything about it.

Q. Didn't he tell you he didn't want you to work as a waiter in a restaurant?

A. No.

Q. And he thought you ought to be home with the child?

A. No; he seemed glad to have the extra money.

Q. And this afternoon you had gone out to do some shopping?

A. Yes.

Q. Hadn't you taken your money to do—

A. No, sir; very little.

Q. How much did you take?

A. I don't know; I took one bill out of the drawer; I was going to buy something for supper.

Q. Why did you leave that money there?

10

A. I always do.

Q. Always; if you had twelve or fourteen or fifteen dollars and you needed one, you would take that and leave the rest?

A. Lots of times.

Q. Did you have a house to yourself?

A. No; two rooms.

Q. In what house?

A. In my aunt's house.

Q. Were there other roomers in that house?

20

A. Yes.

Q. Very many?

A. Two or three couple.

Q. And still you would leave twelve or fourteen dollars in a drawer in the dresser?

A. Surely.

Q. You say, when you returned he had a pistol with him?

A. Yes.

Q. And I think you said he always carried a pistol?

30

A. He had it in his baggage.

Q. Did he have it in his baggage or in his pocket?

A. In his pocket when he came back.

Q. You didn't mean to imply that he always carried a pistol in his pocket?

A. No.

Q. Well, what did you mean?

A. I mean, he always had one in his possession.

Q. And you don't know, as a matter of fact, that

he had that pistol on him when he came back that afternoon?

A. Yes, sir.

Q. How do you know?

A. The way his coat looked.

Q. How did it look?

A. You could almost see it in his pocket.

Q. You mean, he carried it in his side coat pocket?

10 A. Yes.

Q. Suppose he had a pair of gloves?

A. I don't think he did.

Q. Or handkerchiefs, or a bunch of keys, or a knife?

A. It could have been that, but he wouldn't say he would blow my brains out, would he?

Q. Yes, but you say at the time he told you he would blow your brains out if you didn't open the door, he was on the other side of the door?

20 A. Yes.

Q. Then, how could you see this bulge in his pocket?

A. It was a glass door.

Q. Was there a curtain to it?

A. A fine curtain; you can see a person inside, but not out.

Q. You also said the window was open, and he tried to get in that way?

A. He did.

30 Q. What floor of the building was this room on?

A. On the ground floor.

Q. Was there anything to prevent his getting in that way?

A. That doesn't raise from the bottom very good, but it was down a little bit from the top.

Q. You have never written to him since he came back?

A. No, sir.

Q. Have you not received letters from him?

A. Nothing from him at all.

Q. Did you not receive two letters about September, October or November, 1918, written by his sister Kate for him?

A. No.

Q. Asking you to return to housekeeping with him in Newark, New Jersey?

A. No, sir.

Mr. Strong: That is objected to.

The Court: The answer may stand.

By the Court:

10

Q. Did you receive any letters written by the sister?

A. Yes.

Q. About that time, whether they were written by her for him or not?

A. Well, I did receive letters.

Q. Didn't you receive, about that time, a letter from him, written by him himself, asking you if you would not return?

A. No, sir.

20

Q. Then you have never written to him asking any support for Billy or yourself?

A. I wrote to his sister asking her to ask him for the money.

Q. Why didn't you write to him?

A. He never wrote to me.

Q. And you wouldn't write to him?

A. He wouldn't write to me.

Q. You say you wrote once to his sister, telling her that Billy had had serious trouble with his eyes? 30

A. Yes.

Q. And you wanted him to send ten dollars?

A. To help me.

Q. With what?

A. With Billy.

Q. And they sent you that ten dollars, didn't they?

A. No, sir.

Q. And also some clothes?

A. No, sir.

Q. You deny receiving that ten dollars in response to the letter?

A. Yes, I didn't receive any money.

A. Yes, I didn't receive any money.

Q. Is that the letter you wrote (showing witness a paper)?

A. Yes, sir; but I don't remember any money, it wasn't ten dollars, I know.

Mr. Watson: I offer the letter in evidence.

10 Mr. Strong: No objection.

Said letter is marked "Exhibit D 2."

Q. This letter was written about June, 1919, was it not?

A. I don't know; there's the postmark; I know it wasn't ten dollars.

Q. It was written about Easter time?

A. I suppose so.

Q. It refers to Easter; it was after Easter?

A. It must have been.

20 Q. And it was written after 1918?

A. Sure.

Q. So it must have been either 1919 or 1920; isn't that so?

A. I couldn't say.

The Court: That is obvious.

Q. At this time you had no ill feeling towards Mrs. Celia Ludwig, did you?

A. No.

30 Q. Just as this earlier letter, written to Miss Maud Ludwig, shows you had no ill feeling towards her?

A. No; all I want is Billy.

Q. How long did Billy live with you after August, 1918?

A. Until he went to Mrs. Lauer, do you mean?

Q. Yes.

A. Until New Year's of that same year or the next year.

Q. He went to live with Mrs. Lauer?

A. About six months after he left Rochester.

Q. That can't be New Year of any year.

A. Then it was at the end of the year 1918; it was between Christmas and New Year's.

Q. You mean it was New Year's, about January 1, 1919, that he went to live with Mrs. Lauer?

A. Somewhere around that; yes, sir.

Q. Didn't Miss Maud Ludwig go to Rochester to see you about September, 1920, about Labor Day?

A. She went to Rochester to see Billy, and right after I started divorce; that must have been 1920. 10

Q. Right after you started a divorce, Mrs. or Miss Maud Ludwig came to see you?

A. No; to see Billy.

Q. She did come to see you?

A. Yes.

Q. And you told her you had started divorce proceedings?

A. Yes.

Q. She told you they didn't know anything about it; that no papers had been served? 20

A. She didn't tell me anything.

Q. Didn't she come there to see you if she couldn't get Billy to come down to New Brunswick to live with them?

A. Yes.

Q. Billy at that time was living with you?

A. He was living with Mrs. Lauer.

Q. At that time?

A. Yes.

Q. Did the Society for the Prevention of Cruelty to Children at Rochester have anything to do, directly or indirectly, with placing Billy with Mrs. Lauer? 30

A. No, sir; they wrote letters and complained about me, and that's why he come to my house.

Q. How did you come to place him with Mrs. Lauer?

A. She was a friend of the family for years; she knew my mother.

Q. How far does Billy live away from you?

A. Three blocks.

Q. How often do you see him?

A. Every day.

Q. How often do you see him on an average?

A. Sometimes twice a day.

Q. What time do you get home from your work?

A. 5.30.

Q. Where do you take your meals?

A. With my aunt.

10 Q. Where does he take his meals?

A. With Mrs. Lauer.

Q. What class in school is he in?

A. The second grade.

Q. The second year?

A. Yes, sir.

Q. When did he start school?

A. That would be—he started two years ago, but he had trouble with his eyes, and I kept him out for one year; he started during the next year.

20 Q. As a matter of fact, Mrs. Lauer has a great deal more to do with his care and bringing up than you have, hasn't she?

A. She has just as much.

Q. She is with him a great deal more than you are?

A. I am with him every day, almost.

Q. How many hours a day do you see him?

A. I don't know.

Q. More than one?

A. Sure.

30 Q. You are there every night?

A. Maybe one or two nights a week I don't go there, when I'm tired.

Q. Mrs. Lauer is with him all day?

A. All day.

By the Court:

Q. Not when he is in school?

A. No.

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. Is Billy in court here?

A. Yes, sir.

Q. Is this Billy?

Mr. Strong: Is that your mother?

The Child: Yes.

Q. Is that the letter you received in reply to the letter in which you requested ten dollars?

The Court: That is not material at this time; it may be, in case they attempt to show some other situation.

By the Court:

10

Q. When you went to Rochester, in May of 1918, you say you and your husband went there because of trouble that you had had in regard to Billy. That was shortly after this letter from Mrs. Heckman?

A. Yes.

Q. Where had your husband been working up to that time?

A. In a furniture store in New Brunswick.

Q. Doing what, a salesman?

20

A. He drove a truck.

Q. Had he lived in Rochester before that?

A. No, sir; never.

Q. You had moved down from Rochester to New Brunswick?

A. Yes, sir.

Q. With your mother and father?

A. Yes, sir.

Q. Are your parents still living?

A. My mother is dead; my father is living.

30

Q. Was your mother dead in May, 1918?

A. My mother died a month before Billy was born.

Q. Your father was living in Milltown in May, 1918?

A. Yes.

Q. What was the plan of yourself and your husband when you went up to Rochester in May, 1918?

A. I was going to make a home there and

see if we couldn't get along better.

Q. You and he were going to establish a home up there?

A. Yes.

Q. You expected to stay there indefinitely?

A. Yes, sir.

Q. And you were going to have a home there for yourself and your husband and Billy?

A. Yes.

10 Q. And that's what your husband expected?

A. That's what he told me.

Q. What job did he get when he went there?

A. With a furniture house.

Q. Driving a truck?

A. No; he packed furniture.

Q. Your intention, then, was to stay there and make that your home?

A. Yes.

20 Q. You had no intention of coming back to New Jersey?

A. I might have; I could never tell.

Q. You might come back, but you had no present intention of coming back?

A. No.

Q. You were going to stay there and make your home there?

A. Yes.

30 Q. Were you going there for a while, or were you going to stay there and make your home there?

A. Make our home there.

Q. I understood you to say you considered New Jersey your home?

A. We always had.

Q. Your father lived in Milltown?

A. Yes, sir.

Q. And you were having trouble with your husband's people, as you refer to them. Let me understand you. Did you mean you didn't expect to come back to New Brunswick at all?

A. Oh, we would come back some time, surely, only I thought we would try it there for a while, and both work and keep Billy with us.

Q. Try it there for a while and keep Billy with you?

A. Yes.

Q. Your idea was—

A. We had trouble all the time.

Q. As I understand you, you meant later on to intend to come back to New Jersey? 10

A. Yes, sir.

Q. I don't want to misunderstand you about that matter; I want to find out what you did do.

The Court: There is no weight to testimony of that kind. The last question was absolutely leading.

Q. When you went to Rochester on this occasion what was your—did you intend to remain there always, or what was your intention with respect to that? 20

A. We thought we would both work and keep Billy with us and have no trouble about it.

Q. Why did you say to me, that you always considered New Jersey your home?

A. I like it better here.

Q. And what other reason, if any?

A. Well, I have a brother here, too.

Q. Your father lives near New Brunswick?

A. In Milltown.

Q. How far is that from New Brunswick? 30

A. Just a few miles.

Q. And you have a brother in New Brunswick?

By the Court:

Q. When you went there in May of 1918—and when I say “you” I mean you and your husband—was it your plan that you would come back to New Brunswick at some time?

A. Some time, sure. We wasn't going to buy a lot there, or anything like that.

Q. Where?

A. In Rochester; we expected to save our money, and by that time there wouldn't be any more trouble about Billy, and we expected to come back here.

Q. When did you expect to come back here?

A. We never talked about when.

Q. You might have stayed there, and you might have come back?

A. Well, we surely would come back.

10 Q. Why do you say that?

A. I like it better.

Q. You didn't at that time?

A. I didn't like the trouble.

Q. And that is the reason you went away?

A. On account of the trouble.

Q. Was there anything said by you and your husband about coming back here before you went up to Rochester in May, 1918?

20 A. We always said we would go up there for a while and things might be better, and come back.

Q. They might be better, and you might come back? And suppose they were not better?

A. I don't know anything about it; we never said.

Q. You didn't really say anything about coming back at all, at that time?

A. Yes, he wouldn't go, he said, I knew that, but I said we would go for a while.

30 Q. He said he wouldn't go to stay?

A. Well, I knew he wouldn't go to stay.

Q. You say you knew he wouldn't go to stay; how did you know that?

A. I didn't think he would, the way he acted about it; all his people are here.

Q. Why didn't you think so?

A. Well, just the way—I didn't think he would; I said, "We will go there for a few months and try it, and make a home and get a little money."

Q. At first, you say, he didn't want to go?

A. No, sir; he didn't want to go.

Q. I thought you testified this morning that he didn't approve of the idea when you first suggested it; he didn't want to go to Rochester?

A. I didn't think so; he agreed with me.

Q. He didn't agree with that at first, did he?

A. He didn't say we should go there; he agreed to it, when I talked to him; and we had so much trouble over Billy. 10

RE-CROSS EXAMINATION, by Mr. Watson.

Q. Mrs. Ludwig, if you and your husband had got along all right at Rochester, you never would have come back to New Brunswick, would you?

A. Sure, why not?

Q. You went away because you wanted to get away from his people?

A. When the trouble was over, I think it would be different. 20

Q. If you had gone away and things had turned out all right, would you have come back to New Brunswick and run the risk of having the trouble all over again; would you have the nerve to do that?

A. I don't think we would have had the trouble over again after a few months.

Q. Then, in August, 1918, when he left you there, as you say, you never had any idea of coming back to live with him, did you? 30

A. Not to come back to live with him, no.

Q. You continued to live in Rochester?

A. Yes.

Q. And in August, 1920, two years later, you were living in Rochester?

A. Yes.

Q. Earning your living there?

A. Yes.

Q. And you have lived there ever since?

A. Yes.

Q. Have you made preparations to go back to Rochester after this trial is over?

A. I have not.

Q. Have you still your position in Rochester?

A. I didn't tell them I was coming back.

Q. Have you any permanent place to stay in New Jersey here?

A. No; I have only been here since Friday.

10 Q. You came specially for this trial?

A. Sure.

Q. Billy is going back to Mrs. Lauer, isn't he, when the trial is over?

A. Billy is going with me when the trial is over.

Q. And he is going back to Mrs. Lauer?

A. Yes, as far as I know now.

Q. As far as you know, you and Billy are going back to Mrs. Lauer at Rochester, are you not?

20

A. Yes, sir.

CHARLES W. SUYDAM, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. You are a Justice of the Peace in the City of New Brunswick?

30 A. Yes, sir.

Q. And have been for how long?

A. 28 years.

Q. Were you at any time called upon by the petitioner here, Mrs. Ludwig?

A. Yes, sir.

Q. When, as near as you can tell?

A. Well, it was shortly before she was married, the first time.

Q. For what purpose?

A. To make a complaint against her husband,

Q. Of what sort?

A. Seduction with promise of marriage.

Q. After her marriage, did you see her again?

A. She came to see me on two or three different occasions.

Q. For what purpose?

Mr. Watson: That is objected to.

Q. Did you, on any occasion, notice one of her hands?

A. One of her hands had a cut on it. 10

Q. And in consequence of what she said—did she say anything to you at any time about it?

Mr. Watson: That is objected to.

The Court: It would not be proof that the husband did it.

Q. In consequence of what she said to you, did you seek her husband?

A. I sent for him.

Q. Did he come to see you?

A. Yes. 20

Q. What did you say to him?

A. Well, I told him he was guilty of assault and battery if he did it; and I think I got them together again one time.

Q. What did he say as to whether he had done it or not?

A. Well, I don't recall; I don't think he denied it; his wife was there when I spoke to him about it.

Q. Whom did she say did it? 30

A. She said her husband cut her.

Mr. Watson: No questions.

ALBERTA CHRYSLER, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. You are the sister of the petitioner here?

A. Yes.

Q. How old are you?

A. Nearly 17.

Q. Since she married Arthur Ludwig have you ever lived with them?

A. Yes, sir.

Q. Where and when?

A. New Brunswick.

Q. And where did you live?

A. On Morris Street and Nelson Street.

10 Q. Can you tell what year that was?

A. I don't remember what year.

Q. About how long after they were married?

A. About five years, I guess it was.

Q. Was that after your sister had been to Rochester the first time?

A. Yes.

Q. Or before? And how long after she came back from Rochester was it?

A. I came back with her.

20 Q. And when you came back together from Rochester, did you continue to live with her and her husband in the City of New Brunswick?

A. Yes, for about a year.

Q. How about your board?

A. My father paid my board.

Q. How did Arthur treat her?

A. He was mean to her all the time.

Q. What did he do?

30 A. He would do different things to her, and he never treated her right.

Q. In what way?

A. He would hit her and swear at her all the time.

Q. How would he hit her?

A. With his hand and fist.

Q. Where would he hit her?

A. Most any place he come to.

Q. Did you say he called her names?

A. Yes.

Q. What names did he call her?

A. He called her several different names.

Q. Don't be afraid to say what they were.

A. I heard him call her a whore.

Q. Did he ever say anything about who was the father of Billy?

A. I heard him say he wasn't the father.

Q. You have heard him say he was not the father?

A. Yes, sir.

Q. Well, your sister went back to Rochester 10 in May, 1918, didn't she?

A. Yes, sir.

Q. Did you go with her?

A. Yes, sir.

Q. Did you or not live with her in—or live where she was living in Rochester?

A. Yes, sir.

Q. That was at your aunt's rooming house?

A. Yes, sir.

Q. And did her husband join her there? 20

A. Yes, sir.

Q. A little while afterwards?

A. Yes, sir.

Q. And how did he treat her in Rochester?

A. Just the same as he did in New Brunswick.

Q. In what way; describe his treatment.

A. He was always mean with her.

Q. In what way?

A. He never treated her like a husband should. 30

Q. In what way?

A. He was always swearing at her, everything she did seemed to be the wrong thing.

Q. What, if anything else, did he do to her?

A. I have seen him strike her.

Q. With what?

A. With his hand.

Q. Open or closed?

A. I never noticed that.

Q. Have you ever heard him—has he ever called her any names—what did you ever hear

him call her?

A. Just the same as he did in New Brunswick.

Q. What was that?

A. He called her a whore.

Q. Were you there the day that they finally parted?

A. In Rochester?

Q. Yes.

A. Yes, sir.

10 Q. State what happened that day.

A. Why, he was quarrelling with her and hitting her, and I went out after the police.

Q. Did the police come?

A. Yes.

Q. What, if anything, did he do?

A. Why, he quieted him down.

Q. Quieted who down?

A. Him.

Q. Arthur?

20 A. Yes.

Q. And then what happened—what time of the day was that?

A. Late in the afternoon.

Q. Then where did you go after that, after he was quieted down, did you go out or stay in the house?

A. We went out shopping.

Q. Who did?

30 A. My sister and I.

Q. When did you get back?

A. We weren't gone long; I don't know just how long.

Q. When you got back what, if anything, did you see happen?

A. He was gone.

Q. What became of his clothes?

A. He took them with him.

Q. Do you know whether he took any other clothes besides what belonged to him or not?

A. He took some of her things and he took her marriage certificate.

Q. Had you or not seen the marriage certificate?

A. I had seen it before that.

Q. What did that certificate contain; what did that certificate say about their marriage?

A. It just said that they were united in marriage.

Q. By whom?

10

A. I don't remember the name.

Q. You came back and he was gone?

A. Yes, sir.

Q. That was about what time you came back?

A. I imagine around five o'clock.

Q. Did you see him again after that, that day?

A. He come back.

Q. About what time?

A. Just a few minutes after we got home.

Q. Are you sure about the times, or is it as near as you can recollect?

20

A. As near as I can recollect.

Q. What happened when he came back?

A. He wanted her to let him in.

Q. Did she do it or not?

A. No, she was afraid of him.

Q. What, if anything, did you hear him—what did he say?

A. He threatened her.

Q. What did he say?

30

A. He told her he would get her yet.

Q. Then what; did she let him in?

A. No, she didn't.

Q. Then what happened?

A. He went away.

Q. Why did he go away?

A. My sister was afraid of him; she went to call a police again, and when she got back he was gone.

Q. Did the police come afterwards?

A. No, she was going to call him, but he went.

Q. He went when she went to call the police?

A. Yes.

Q. Did you ever see him in Rochester after that?

A. No.

Q. Did you ever see any letters from him?

A. No.

CROSS-EXAMINATION, by Mr. Watson.

10 Q. You lived with your sister and Arthur Ludwig for a year?

A. Nearly a year.

Q. What house did you live in in New Brunswick?

A. In the Morris Street and the Nelson Street.

Q. Were you living with them at the time your sister went back to Rochester in 1918?

A. Yes.

20 Q. Your father paid your board?

A. Yes, he give me money every week.

Q. To whom did you give it?

A. I give the money to them.

Q. To whom did you give it?

A. They would both be there.

Q. Who got the money?

A. Well, sometimes he would and sometimes she would.

Q. How much was it?

30 A. He give me different amounts, sometimes four, five and six dollars.

Q. You always paid four or five or six dollars a week for your board?

A. Yes, sir, never less than four.

Q. You say sometimes Arthur Ludwig got that money?

A. Yes, sir.

Q. And during this time you say Arthur Ludwig hit your sister?

A. Several times.

Q. With his fist?

A. Several times.

Q. How many times?

A. I don't remember.

Q. How many?

A. I don't know.

Q. How many?

A. Several times.

Q. Ten times?

A. No. I don't know how many times; I don't remember. 10

Q. What happened when he hit her?

A. They would be arguing over things.

Q. Where would he hit her?

A. Anywheres.

Q. In the face?

A. Yes.

Q. With his fist?

A. I don't know.

Q. Did he hit her as hard as he could? 20

A. I don't know about that.

Q. Very hard?

A. Yes, so she cried.

Q. Who else lived in the house in Morris Street?

A. Some other roomers.

Q. How many other roomers?

A. Why, I don't know; I think there was about four families; I don't just remember.

Q. This Morris Street house is the place where your sister and Arthur Ludwig boarded—they weren't keeping house? 30

A. They had furnished rooms.

Q. They were keeping house, weren't they?

A. Yes.

Q. Who kept the house, do you remember?

A. I don't remember.

Q. It is in Morris Street, New Brunswick?

A. Yes.

Q. Who kept the house?

A. I don't remember.

Q. Your brother-in-law struck your sister with his fist very hard?

A. Yes.

Q. Ten times?

A. I don't know.

Q. Three times?

A. I don't know.

Q. One time?

A. More than that.

10 Q. Two times?

A. I don't know.

Q. You don't know?

A. Several times.

By the Court:

Q. What do you mean by several times?

A. Different times.

Q. You are not sure whether it was more than twice?

20 A. No, I am not. I can remember he hit her several times; I believe it was more than twice.

Q. Can you remember two occasions that he hit her?

A. Why, yes, different occasions. I can remember two.

Q. Can you remember any more than two?

A. No, not exactly.

30 Q. What happened on these two times you can remember?

A. They were arguing over Billy. She wanted him to come home and live with her, and he wouldn't let her.

Q. What happened after that?

The Court: The allegation is of actual desertion. You don't need to go into minute detail.

Mr. Strong: It might be constructive desertion as well as actual.

Q. What did the other people in the house

do these times when he hit her in this way?

A. She would never tell them. On Nelson Street there was poeple heard it. The landlord heard it.

Q. Who was she?

A. I think her name was Hummell.

Q. In the Morris Street house weren't there other people there?

A. Yes, sir, but they never interferred on Morris Street.

10

Q. They could hear it, could they not?

A. I suppose they could hear them quarrelling.

Q. How many times did you see him strike her at Rochester?

A. Why, two different times.

Q. When was the first time?

A. The first time they got into an argument over Billy.

Q. What was their argument over Billy then?

A. She tried to correct him, and different 20 things, and he would tell him to tell his mother to go to hell.

Q. He would tell him that?

A. Yes.

Q. How old was Billy at that time?

A. How old?

Q. Yes.

A. I think about five.

Q. How old were you?

A. I was only about fourteen.

30

Q. How old are you now?

A. Nearly seventeen.

Q. Seventeen now?

A. Yes, sir.

Q. You were only about twelve, weren't you?

A. No, I was older than that.

Q. You are sixteen now?

A. Yes.

Q. And this was nearly four years ago?

A. Three years ago.

By the Court:

Q. How much older is your sister than you?

A. About five years, I think. No, she is more than that; she is about nine years older.

Q. Nine years older than you are?

A. Yes, sir.

10 Q. At the time you speak of you were twelve or thirteen and she was twenty-one or twenty-two?

A. Yes, I was about thirteen or fourteen.

DORA WEIXELBAUM, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Mrs. Weixelbaum, you are the aunt of the petitioner?

A. I am.

20 Q. And she is living with you in Rochester?

A. She is.

Q. And she came to live with you about when, as near as you can recollect?

A. The last time?

Q. Yes.

A. Let me see. I think it was May; it was in the spring—the springtime—I think about May.

Q. About May of the year that she and her husband separated?

30 A. Yes, sir.

Q. And how long after she came to live with you did the husband come there?

A. About two weeks, I imagine.

Q. Did they continue to live with you up to the time when they parted in August, 1918?

A. They did.

Q. How did they get along together?

A. Always quarrelling.

Q. What, if anything, did he say or do—what was his treatment of her?

A. He didn't treat her very good, as a husband. He used to call her awful names. I heard him call her a whore many times.

Q. What else have you heard him say or seen him do?

A. I heard him tell her he would get her yet.

Q. Do you recall the day that he left?

A. Yes, sir.

Q. Tell us what happened that day?

A. They had to call an officer.

10

Q. Why?

A. He was beating her, and she ran in with me, and he was beating her.

Q. Beating her with what?

A. With his hands, I guess.

Mr. Watson: I object to that; she wasn't there.

Q. She came in crying to you?

A. I seen him strike her.

Q. She came in crying to you?

20

A. Yes, sir.

Q. Then what was done?

A. The officer came.

Q. What did the officer say?

A. He told him if he didn't leave her alone he would put him where he would have to.

Q. Then what happened—what was next after that?

A. They went out, and he packed up and went away, and took some of the things with him—her divorce—or her certificate was gone out of the drawer; she always kept it; and her lavalliere and other things.

30

Q. Her lavalliere?

A. Yes, that was her own; she bought it herself.

Q. Did anyone put his goods out on the stoop that day at all?

A. No, sir; he went himself; packed up himself.

Q. Now, what time did Mrs. Ludwig and her sister Alberta go out that afternoon?

A. I can't remember; it was in the afternoon some time.

Q. Did this happen while they were out?

A. That's when he went.

Q. Do you know when they came back?

A. Yes, he was gone.

Q. Are you able to say when that was?

10 A. In the afternoon some time; it was late; I don't remember just what time.

Q. Did you see anything further of him?

A. Never.

Q. That day?

A. Yes, in the afternoon he came back and wanted her to let him in.

Q. Where were you?

A. In my own apartments.

Q. How near was that to her?

20 A. Just near the door—the next apartment.

Q. Could you hear him out there?

A. Yes, sir.

Q. What was he saying?

A. He was trying to get her to let him in, and she was afraid of him; he had threatened her.

Q. What had he threatened?

A. He told her he would get her yet, and she was afraid of him. He had an awful temper.

By the Court:

30 Q. What did he say when he came there?

A. He asked her to let him in, and she wouldn't do it because she was afraid of him.

Q. What did he say?

A. Why, he just asked her to let him in.

Q. What did he say? Did he say, "Let me in"?

A. Yes.

Q. Is that all he said?

A. As far as I know. I heard him say he would get her yet.

Q. You say you heard all his conversation?

A. Not all of it.

Q. What part of it didn't you hear?

A. I heard him when he came back.

Q. I am speaking about when he came back and tried to get in. You say he said, "Let me in"?

A. Yes, sir.

Q. What did she say? 10

A. She wouldn't let him in. She was—

Q. What did she say?

A. That he couldn't come in. She didn't dare to let him in.

Q. What did she say to him?

A. She wouldn't let him come—

Q. What did she say to him?

A. She told him she wouldn't let him in.

Q. What did he say to that?

A. I don't remember that he said anything only he would get her yet. 20

Q. Did he say he wanted to get in?

A. Not that I know of.

Q. How did he speak when he first asked her to let him in?

A. Just the same as he always did.

Q. Madam, I don't care anything about what he always did. How did he do it at that time?

A. He just said he wanted to come in. He hollered so I heard him in the other room, and I came to the door. 30

Q. And what then did Mrs. Ludwig do, if anything?

A. What did she say?

Q. Yes.

A. She stayed there in the house, in her room.

Q. What, if anything, did she do?

A. I don't remember.

Q. Did he go away after?

A. He went away, yes.

Q. Why did he go away?

A. Because she wouldn't let him in.

Q. Do you know whether or not she attempted to protect herself in any way?

A. No.

Q. Or to send for anybody?

A. Oh, yes, she was going to call a policeman at that time in the afternoon.

10 By the Court:

Q. How do you know she was going to call up a policeman?

A. She said she would. I wasn't in there at that time. She came to my room; I have a telephone.

Q. She had no telephone in her room?

A. No; I have the telephone.

Q. Did you ever see him in Rochester again?

A. Never.

20 Q. You are married?

A. Yes, sir.

Q. What is your husband's occupation?

A. A barber.

Q. And you take boarders; is that it?

A. No, sir; we keep roomers.

Q. How many families are living in your place?

A. I think four.

30 CROSS-EXAMINATION, by Mr. Watson.

Q. You say they were always quarrelling. What about?

A. There didn't anything seem to satisfy him.

Q. What about?

A. Her cooking, and nothing seemed to satisfy him. They were always quarrelling over Billy; she never could make him mind but what he would interfere.

Q. Was he working at this time?

A. Yes, sir.

Q. What time did he go to work?

A. I couldn't say.

Q. In the morning?

A. Yes.

Q. What time did he come back from work?

A. In the afternoon.

Q. At five or six o'clock?

A. Yes, at five o'clock, or six.

Q. What time did his wife go out to work?

A. Half-past seven.

Q. What time did she come back?

10

A. Noon. I think about twelve o'clock.

Q. What was the quarrelling?

A. After he got home.

Q. Between six o'clock?

A. Sundays and any time.

Q. Your rooms were right next to theirs?

A. Yes, sir.

Q. How many rooms do you have?

A. Four.

Q. How many did they have?

20

A. Two

Q. Did they connect in any way?

A. Yes.

Q. Did they have a kitchen?

A. Yes.

Q. Did they do their own housekeeping?

A. Yes. They had a kitchenette.

Q. Two rooms and a kitchenette?

A. Two rooms—the kitchenette and the big  
room. 30

Q. The kitchenette and one room?

A. Yes, sir.

Q. On August 2nd, the day they went away, when did you first know of the trouble?

A. That day I was there when he was quarrelling with her.

Q. Were you in her rooms?

A. After my niece came to the door and called me, or opened the door—I think it was her sister.

Q. Who called you?

A. Her sister, I think, called me. I can't tell exactly.

Q. Do you mean that Alberta called you?

A. Yes.

Q. She called you?

A. Yes.

Q. Did you go into her rooms?

A. Yes, sir.

Q. What happened there?

10 A. They had to call the police.

Q. Tell us everything that happened after you got there.

A. I went in just after the police came, or just before the police came.

Q. How long before?

A. Just as he was coming up on the porch.

Q. As he was coming up on the porch he was coming in?

A. Yes, sir.

20 Q. And it was Alberta that came for you?

A. I think it was Alberta that came for me.

Q. Can't you remember?

A. It was one or the other. I never had any trouble in my house.

Q. Was Alberta there when you went in?

A. Yes.

Q. Who called the police?

A. Alberta.

Q. How did she call him?

30 A. She went out for him.

Q. Did she come back with the policeman?

A. Yes.

Q. She came in with the policeman?

A. I think she did. He came up in about the same time. I don't recall anything.

Q. You only got there about half a minute before the policeman?

A. Yes, a little while, but I could hear it all; I was next door.

Q. What did you hear?

A. I heard him calling her a whore and things like that.

Q. What else did you hear?

A. Oh, I don't know; I can't tell; I heard him swearing at her.

Q. And is that all you can remember?

A. Yes.

Q. You got in the room about half a minute before the police officer got there?

A. Oh, I don't remember.

10

Q. You say he was on the porch?

A. Yes, he was.

Q. How far is the porch away?

A. The porch door opens into their room.

Q. It took him three or four steps to get in?

A. Yes.

Q. What happened before the police officer got there?

A. I heard them quarrelling and he calling her names.

20

Q. What else?

A. I heard him strike her.

Q. You heard him strike her?

A. Yes.

Q. You now say you heard him strike her?

A. She said he struck her.

Q. Did you hear it?

A. Yes, I could hear it.

Q. When?

A. When he struck her.

30

Q. Where were you?

A. In my room.

Q. That wasn't the question; but, however, awhile ago I asked you what you could hear and you said you could hear him calling her names. And I asked you if you could hear anything else, or if you heard anything else, and you said nothing. Then you said you could hear him strike her, and after that you said she told you that, and now you say you heard him strike her.

Which is correct?

A. I could hear someone slapping her. I didn't see it; I could hear it.

Q. How did you know he was slapping her?

A. I didn't know.

Q. As a matter of fact, you don't know whether he struck her or not?

A. No, not for sure, because I didn't see it.

Q. How long was Alberta gone for the police?

10 A. I don't know.

Q. Did you hear her go out?

A. I can't say I did.

Q. How long was this occurrence going on before the police came?

A. Not many minutes.

Q. How many?

A. Maybe ten.

Q. Ten minutes?

A. Maybe.

20 Q. And you didn't go in their rooms at all until just an instant before the police officer got there?

A. Just a few minutes.

Q. Who packed his baggage?

A. He did, himself.

Q. Where were you?

A. In my room.

Q. Then how do you know he did?

30 A. His baggage was gone while the girls was gone out, so—

Q. How do you know that?

A. I know his baggage was gone while they was gone.

Q. What did his baggage consist of?

A. I don't know.

Q. Then how do you know it was gone?

A. I know he had his suitcases.

Q. Then you do know what it consisted of?

A. I know that.

Q. How many suitcases?

A. One.

Q. Why do you say suitcases?

A. Suitcase.

Q. First you say you don't know what it consisted of?

A. I thought you meant what was in the baggage. I didn't know what he had; that's what I thought you meant.

Q. That is what you thought?

A. Yes.

10

Q. You said he had suitcases, and after you said one suitcase?

A. One suitcase.

Q. How do you know it was gone?

A. It wasn't there when I went back in when Blanche—when Blanche came home.

Q. You didn't know it was gone till Mrs. Ludwig returned?

A. No, I didn't go in.

20

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. How much does Mrs. Ludwig pay you for board?

A. \$5.00.

Q. Does she pay you regularly?

A. Yes, sir.

Q. Has she regular employment?

A. Yes, sir.

The Court: That is not rebuttal. It is not re-cross-examination. 30

Q. What makes you think he struck her?

A. I noticed him.

ELLA L. LAUER, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Where do you live, Mrs. Lauer?

A. In the City of Rochester, New York.

Q. What is the street number?

A. 8 Lafayette.

Q. Are you married?

A. Yes, sir.

Q. Your husband's name?

A. Lewis John Lauer.

Q. What is his occupation?

A. Silk draper.

10 Q. He is employed by whom?

A. He has an office in the Seneca Hotel.

Q. Have you any children?

A. Yes, sir.

Q. How old?

A. Mine?

Q. Yes.

A. I have a daughter about forty or—forty this  
June.

Q. One daughter?

20 A. I have a son, lawyer, he is dead now.

Q. Does your daughter live with you?

A. Yes, sir.

Q. Does the petitioner's son Billy live with  
you?

A. Yes.

Q. Who pays his board?

A. Mrs. Ludwig.

Q. The petitioner here?

A. Yes, sir.

30 Q. And how long has she paid his board?

A. Why, he came to me in 19— it was just a  
day or so before New Year's Day, in the holiday  
week; it was just that holiday week; it was the  
last day, I am pretty sure, of the old year.

Q. Who has paid his board there since?

A. Blanche.

Q. How much?

A. \$4.00 a week.

Q. Has anybody else ever paid you anything  
for his board?

A. No, sir.

Q. What care do you take of Billy?

A. You mean what care the child needs? I don't understand it—what care?

Q. Billy lives with you. What do you do for him?

A. Send him to school and send him to church, and keep him warm and clean and do as the doctor said when he had his bad eye. He was under the Humane Society; they watched him. Taylor comes whenever he likes. 10

Q. What school does he go to?

Q. Do you know what grade he is in?

A. No. 15.

A. The second. He didn't go to school on account of his eye. I had a letter here from the principal, but I either mislaid it here—

The Court: That is not important.

Q. Did you ever see any of Mr. Ludwig's family? 20

A. I seen the one.

Q. What was that?

A. Miss Ludwig there.

Q. How did you happen to see her?

A. She came to our place.

Q. When was that?

A. Well, I don't know; I should judge it was in the month of August.

Q. Of what year?

A. Perhaps—it seems to me that it was the same year he came to me. 30

Q. What?

A. It seems to me that it was the same year that he came. I think it was the following August. I wouldn't be sure about that, because I paid no attention.

Q. At any rate, it was in August, you think?

A. I think it was in the month of August.

Q. What, if anything, did she say to you?

A. Shall I tell it all, do you mean?

Q. Yes.

A. I didn't know her. She came up on the porch;

I think the door stood ajar. She had two valises. She rang the bell and I went to the door. I think she said, "Is this Mrs. Lauer? Is there somebody here by the name of Billy Ludwig?" I said, "I have—"

The Court: Is this part of your main case?

Mr. Strong: There has been some question on the subject of the visit—I will withdraw this line of questioning at present.

10 Q. How often does Mrs. Ludwig see the child Billy?

A. Well, sometimes every night and sometimes she comes regular every three or four nights and then skips a night.

Q. Comes after work?

A. Yes, sir.

CROSS-EXAMINATION, by Mr. Watson.

20 Q. How long does she stay when she comes to see the child?

A. Well, different times; sometimes it is the little fellow goes to bed about half-past eight or nine; she will sometimes remain there with us till ten.

Q. Do you mean to say that she stays every night she comes until nine or ten o'clock?

A. She always stays till I put Billy to bed.

Q. What time does she come?

30 A. I don't know that; in the neighborhood of half-past seven or so—when she could get her dinner, I suppose.

Q. Does she come nearly every night at half-past seven and stay until half-past eight or nine?

A. That is her hour; if she comes, she comes to see her boy.

Q. Never mind. I understand you to say she comes nearly every night; she comes three or four nights in succession and then skips one?

A. She might; I couldn't say that.

Q. What do you want to say?

A. I want to say she is there from three or four nights a week.

Q. And then there are three or four nights each week that she doesn't come?

A. I don't know where you get it. She comes on Sunday afternoon and evening.

Q. You have just stated she comes three or four nights a week. The week she comes three nights, that means she doesn't come four nights in the week?

10

A. She never came just the three nights.

Q. Then what did you mean when you said that?

A. Well, she comes four times a week—three or four times a week and Sunday afternoon. I don't know what more I could say.

Q. And you said in the evening?

A. Well, afternoon.

Q. Have you received board for Billy every week he has lived with you?

20

A. I have.

Q. From whom?

A. Mrs. Blanche Ludwig.

Q. What did you mean when you said he is under the Humane Society?

A. Because they wrote a letter there, and Mr. Taylor came and told me and showed the letter that they had slandered her and said that things wasn't right, and he had to come; it was his duty. So he said he got it from them.

Q. Has he been coming ever since?

30

A. He calls, yes, and we had one lady from Washington a short time ago, that she found him in a good home and good care.

Q. How often does the representative of the society call?

A. I could say sometimes he comes in the morning—

Q. Once a month?

A. I couldn't say about that.

Q. How long had you known Mrs. Ludwig be-

fore Billy came to live with you?

A. I have known the family a great many years.

Q. How long had you known Mrs. Ludwig?

A. I knew her people.

Q. You didn't know her?

A. Sure.

Q. How long had you known her?

A. I couldn't just tell you how long, because I knew the people before her.

10 Q. Who of her people had you known?

A. I knew her aunt.

Q. As a matter of fact, you never knew Mrs. Ludwig herself, did you?

A. Oh, yes.

Q. When?

A. I have known her right along. I didn't correspond with her down here. When she was to Rochester I certainly knew her, because she lived with her aunt.

20

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. As I understand it, when you said three or four times a week and Sunday—

A. Yes, she always comes Sunday afternoon.

Q. And three or four times a week?

The Court: That is plain.

30 Mr. Strong: I offer in evidence letter of April 17, 1919, written by a sister of the defendant, in answer to the request for \$10.00, stating what the attitude was with respect to it.

Mr. Watson: No objection.

Said letter addressed to "Dear Blanche," and signed by "C. M. Ludwig," is marked Exhibit P 2.

PETITIONER RESTS.

Continued to Thursday, April 13, 1922, at 10.30 A. M.

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Petition, &c.
BLANCHE LUDWIG,		
<i>Petitioner,</i>		
and		
ARTHUR LUDWIG,	}	
<i>Defendant.</i>		
TESTIMONY.		

Testimony taken in the above-entitled cause at 10  
the State House, Trenton, New Jersey, on Thurs-  
day, the thirteenth day of April, 1922, at 10:30  
A. M.

Before Hon. MALCOLM G. BUCHANAN,  
Vice-Chancellor.

Appearances as heretofore noted.

ELLA A. LAUER, being recalled on behalf of  
the petitioner, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Did you ever have any conversation with 20  
Mrs. Ludwig, the petitioner, with respect to her  
home?

A. Yes, sir.

Q. What was the nature of it?

A. Why, I said to her, "I should think you  
would rather live in Rochester, where your aunt  
is." She said, "No, I will always go back to Jer-  
sey, because my father is there and is old, and my  
brother; I shall make Jersey my home." I urged  
her several times, but it was always the same an- 30  
swer.

Q. And that was during—

A. I said I thought she would be better off there.

Q. That was during the time—

By the Court:

Q. When was it?

A. Right through the trouble, when I took  
the boy.

Q. When was that?

A. I took him in 1918, the last week, I think,

in the holidays; I couldn't tell the date.

Q. The last week when?

A. It was in the holiday week; I think it was the day before New Year's eve, in 1918.

Q. Just about the time that the child came to you; is that it?

10 A. Yes, whenever that is; whenever I would have a conversation with her about her going back, she said all her trouble was over the child; she wanted to keep her child. I said, "Why don't you stay with your people here?" I had never been in anything like that. She said, "No, I shall make Jersey my home; my father is there and my brother is there."

By the Court:

Q. This was the last week in 1918?

A. Well, every time she come I would say she was so foolish to take up the case.

Q. What do you mean?

20 A. She was fighting for the baby; they always wanted the baby away from her.

Q. How many times do you suppose she spoke in that way and over about how long a period of time?

A. To the best of my knowledge, every time after the trouble came on of the divorce, and his sister came there and tried to drive it, and she knows it; and then we said that day—I said, "Blanche, don't go back there." She said, "That's  
30 my home; my mother died there, my father is there and my brother is there."

Q. That is the day her sister-in-law came?

A. That's the day her sister-in-law came, and I sent for her right away; I was frightened.

Q. Can you tell about what year and what time that was?

A. I think it was in 1919, in August; it was during vacation; she was on her vacation, and I couldn't say just to the minute; she told me she was on her vacation.

Q. I understood you to say—see if I am correct about this—I understood you to say she first spoke of her intention to return to New Jersey at the time when the child was brought to you?

A. Yes.

Q. And she spoke of it at different times afterwards, and on one occasion when her sister-in-law came to see you; is that right?

A. Yes.

Q. In 1919?

10

A. Yes; I immediately called the mother up; I was scared; the child was in my care.

CROSS-EXAMINATION, by Mr. Watson.

Q. You testified that Mrs. Ludwig told you all her trouble was over the child?

A. All the worst trouble was his people wanting the child from the beginning.

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. At the time the sister was there, was that the year the divorce suit was started?

20

A. It was started at that time.

Mr. Watson: That is objected to.

DORA WEIXELBAUM, being recalled on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Did you ever have any talk with the petitioner, Mrs. Ludwig, with respect to her home?

30

A. Yes, I did.

Q. When and what was it?

A. She has always, ever since she came to Rochester—she never liked Rochester, on account of the winters being so severe; she said she was going to New Brunswick to live, where her father and her brother was.

Q. How often have you heard her say that, and about when?

A. Every time we were talking of it, she would

say it in regard to coming back to New Jersey, whenever she would get a letter from her brother and her father.

Q. Before or after the divorce, or both?

A. Before and after, too.

Q. That was after she and her husband had come to Rochester?

A. Yes, sir.

Mr. Watson: No questions.

10

ALBERTA CHRYSLER, being recalled on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Did I understand you went to Rochester with your sister the last time in May, 1918?

A. Yes, sir.

Q. And continued to live there ever since?

A. Yes.

20

Q. With your aunt?

A. Yes, sir.

Q. Have you ever had any talk with your sister, the petitioner here, with respect to her home?

A. Yes, sir; we always planned coming back to New Jersey.

Q. What, if anything, was said with reference to those plans?

A. We always talked about coming back where our father and brother was.

30

Q. Who supported you in Rochester?

A. My aunt.

Q. Did your father contribute anything?

A. Sometimes he did, yes.

By the Court:

Q. Whom do you mean by "we"? You say, "We always planned to come back to New Brunswick?"

A. My sister and I.

## NO CROSS-EXAMINATION.

Mr. Strong: I have here a letter from the petitioner to myself, dated August 3, 1920, containing the statement as to her residence, showing it is not an after-thought. I would like to offer the letter in evidence.

Mr. Watson: I have no objection to it.

Said letter from Blanche Ludwig to Mr. Strong, dated August 3, 1920, is marked "Exhibit P 3."

10

ARTHUR LUDWIG, the above-named defendant, produced on behalf of the petitioner, being duly sworn, testified as follows:

## DIRECT EXAMINATION, by Mr. Strong.

Q. You are the defendant in this suit?

A. Yes.

Q. And the husband of the petitioner here?

A. Yes, sir.

20

Q. Were you married to her in—when were you married to her?

A. December 20, 1912.

Q. Where were you born?

A. I was born in New Brunswick.

Q. And how long have you been living there?

A. All my life.

Q. When you returned to New Brunswick—what time did you return to New Jersey, on or after August 2, 1918, when you and your wife parted?

30

A. I didn't return to New Jersey for about two weeks, after I received the position in Irvington.

By the Court:

Q. How long was that after August 2d?

A. Well, it was about two weeks, I should judge.

Q. What I mean is this: On August 2d, where did you go when you left your wife?

A. To Newark.

Q. And you reached there August 2d or 3d—the

same day or the next day?

A. I imagine it was the next day.

Q. It was within a day or two?

A. Yes.

Q. You went from Rochester right to Newark; is that right?

A. Yes.

Q. State whether or not, after you returned to Newark, you have always lived in New Jersey; state  
10 whether you have—

A. No, sir, I didn't; I went back to Newark and continued my work there—

Q. Well, Newark is in New Jersey?

A. Yes.

Q. You have always lived in New Jersey?

A. Yes.

Q. Since you returned from Rochester, you have always lived in New Jersey?

A. Yes.

20 Q. Are you or not a bona fide resident of New Jersey at the present time?

A. Yes, sir.

Q. Who married you?

A. The Reverend Qual.

Q. In New Brunswick?

A. Yes.

Q. What church?

The Court: What is this for?

Mr. Strong: I want to corroborate her.

30 The Court: You can't corroborate her with this witness in that way.

MARY M. LUDWIG, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Are you older than your brother?

A. Yes, sir.

Q. Where does he live?

A. He lives with my mother and father, 14

Richmond Street, New Brunswick, New Jersey.

Q. How long has he lived in New Brunswick?

A. All his life.

Q. About how old is he now?

A. Twenty-eight or twenty-nine; I did look up the date, but it is about that.

Q. On August 2d or 3d, 1918, where did he go to, do you know, after he left his wife?

A. He came to our home with his baggage, and the next day or two after left for Irvington, because his position in New Brunswick was no longer open; and he lived with my sister in Irvington. 10

Q. For about how long?

A. Until the draft board notified him that he must return to New Brunswick.

Q. How long was that after?

A. A month or two.

Q. After he returned to New Brunswick at that time—

A. He has been living there since. 20

Q. He has been living there since?

A. With my mother and father.

Mr. Watson: No questions.

WILLIAM E. RULE, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Mr. Rule, you are a police officer of the City of New Brunswick? 30

A. Yes.

Q. And have been for how long?

A. Four years.

Q. Did you see the defendant here, Arthur Ludwig, at any time during the month of August, 1921?

A. Yes, sir.

Mr. Watson: That is objected to, unless the case is reopened. It was opened after the other side had rested, to prove residence.

Mr. Strong: I wish to produce a witness

that will have a distinct bearing on the situation. The defendant seeks the custody of the child, and I wish to show by this police officer that he was intoxicated in the month of August last, and it took two policemen to hold him, and he was taken to the hospital.

10 The Court: It seems to me that this is not the time for that. In the first place, you rested your case, and then asked to obtain leave to introduce further testimony on the question of residence and jurisdiction. It is improper to call him in this way; you did not ask leave of the Court to do so. In the second place, it is a matter that does not belong in your main case now; it is a matter you can introduce as contradictory to testimony that will be brought out in the defendant's case.

Mr. Strong: I will withdraw the witness.  
 PETITIONER RESTS.

20

ARTHUR LUDWIG, the above-named defendant, being recalled in his own behalf, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. You are the defedant in this suit?

A. Yes, sir.

Q. Where do you reside?

A. New Brunswick, 14 Richmond Street.

30 Q. When were you married?

A. December 20, 1912.

Q. Whereabouts?

A. By the Reverend Qual.

Q. By the Reverend Qual?

A. Yes.

Q. Where?

A. At his home, Townsend Street.

Q. New Brunswick, New Jersey?

A. Yes, sir.

Q. When was your son Billy born?

A. He was born in 1913, June 21st.

Q. Where did you and your wife go to live after your marriage?

A. 69 Schureman Street.

Q. How long after you were married did you go there to live?

A. It wasn't but a short time, about a month or so.

Q. And you lived in New Brunswick until when?

A. Well, we lived in New Brunswick until we moved in a house down further. 10

Q. You lived in several places in New Brunswick?

A. Yes, sir.

Q. But you lived at New Brunswick until when?

A. Till the first quarrel we had.

Q. How long did you live in New Brunswick all together?

A. About two or three years, or something like that. 20

Q. Did you and your wife have trouble?

A. Yes, sir.

Q. How often and beginning when?

A. Well, it didn't start until after her mother died and her aunt come here when her mother was buried. From then on, I always had trouble, after her aunt came here.

Q. When was it her mother died?

A. About a year after I had been married.

Q. You spoke of her aunt coming to New Brunswick? 30

A. Yes.

Q. Who is that aunt?

A. I don't know what her name is.

Q. Has she been in this court room?

A. Yes.

Q. Do you mean Mrs. Wexelbaum?

A. Yes.

Q. What was her name then?

A. Peck.

Q. She came from where?

A. Rochester.

Q. After that, you and your wife began to have trouble?

A. Yes, sir.

Q. What was the trouble about?

A. The whole trouble was about her aunt had put these things in my wife's head to leave me all the time.

10 Mr. Strong: That is objected to; he can't possibly know about that.

Q. What did your wife want to do?

A. My wife wanted to leave me all the time; she never took care of me at all, never took care of the home; she was always out nights, and when I came home for a meal I had to get it ready myself.

Q. Where were you employed?

A. Edward Hingher's Furniture Company.

20 Q. What was your salary?

A. When I was first married?

Q. Yes.

A. My salary was \$9.00 a week.

Q. How long were you on that salary?

A. For about, well, a year.

Q. Then, were you raised?

A. Yes, sir.

Q. What salary were you receiving at the time you went to Rochester with your wife in 1918?

30 A. Twenty-two a week.

Q. Had your salary been raised in the meantime from \$9.00 to \$22.00?

A. Yes, sir.

Q. Gradually, I suppose?

A. Yes.

Q. During all of that time were you ever out of employment?

A. No, sir.

Q. When was there first any separation between you and your wife?

A. When we lived in Hingher's apartment.

Q. How long after you were married?

A. About a year and a half.

Q. What happened at that time?

A. Well, I'll tell you. My wife didn't stay home nights, and sometimes would be out noon times, and I would come out for supper and she wouldn't be there and have the meal ready, and what was supposed to be on the table. She wouldn't cook any; she would go out and buy stuff at the delicatessen, and I didn't want to eat that kind; I was working hard. 10

Q. What happened?

A. I would oftentimes receive letters from her aunt from New York State to tell her, don't you think it was about time for her to come on there.

Q. What happened this first time that there was any separation between you and your wife; how did the separation come about?

A. Well, it was just because she couldn't stand to have me tell her what to do; she told me she was her own boss, and she didn't intend to listen to what I had to say. 20

Q. What did you or she do?

A. I come home one night for supper, and I refused to eat what she had on the table, and I happened to be cutting bread at the table and telling her I thought it was her place to get home and get supper and have it ready for me when I get there; and she just—she was very quick tempered, and she picked up something and hit me with it, and I went to take it away from her hands, and that's when she received the mark on the back of her hand. 30

Q. What did she pick up?

A. A pitcher.

By the Court:

Q. What happened after that?

A. After that, she just told me when she got the chance she would leave me.

Q. Well, did she?

A. Yes, it was only about a month afterwards that she left the place there, and I kept house for two months, waiting for her to return.

Q. Where did she go?

A. New York State.

Q. The first time that she ever left you, did she go to New York State?

A. The first time she went with some girl in the Sixth Ward, named—

10 Q. I wasn't referring to the time she went to Rochester and was away for some time; I was referring to the separation that lasted for a short time.

A. This lasted for the following year.

Q. I am referring to the first time she left you. How long was she away from you?

20 A. She left so many times, I can hardly remember; I didn't know, for a fact, whether she would be home at night when I got there. She would be just as decent, and then she would just—one day I met her on Nelson Street, and I had to take her by the arm and beg her to come back home, on the street.

Q. How many times did she do that thing?

30 A. Several times; I couldn't remember. She left one time, one time on Morris Street, which was unknown to me; she didn't say anything to me about leaving there, and after she got to New York State she wrote and told me afterwards that she didn't mean to leave me, she only went to New York State to get the money that was coming to her from her mother's funeral; and when she come back from there she didn't have money or anything; she even spent what I had saved; she took everything.

Q. When she left you several times in New Brunswick, where did she go?

A. She always went to New York State.

Q. You stated a while ago she left you several times in New Brunswick, you couldn't say how many times?

A. Yes.

Q. Where did she go those times?

A. Every time she always left for New York State, but I didn't know for a fact whether she went there or not.

Q. Did she leave you any time when she stayed in New Brunswick?

A. Yes, often.

Q. Where did she stay those times?

A. I don't know, except one time she stayed pretty near a week in the Sixth Ward, and I had to— 10

Q. Where did you find her?

A. Delafield Street.

Q. With whom?

A. This girl; I had to go and get her.

Q. The first time that she went to Rochester was in 1916, wasn't it?

A. Yes, sir.

Q. Do you remember where you were living when she went to Rochester that time— 20

A. How long did she stay that time?

Q. Well, I don't know; you are testifying, I'm not.

A. Well, you see she left so many times I couldn't remember, to tell the truth, hardly.

Q. Do you remember the year 1916, the time she went to Rochester for nine months?

A. That was in Hingher's house.

Q. Why did she leave at that time? 30

A. Why, she just left of her own accord; she would take it in her head for to go there. Letters that she got from her aunt, and she would always stay in the winter at home, and in the summer she would always leave for New York State.

Q. When she went in 1916 to stay nine months, where did you go to live when she got back?

A. We went to live on Morris Street.

Q. Were you keeping house?

A. Yes, sir.

Q. When was it that you boarded for about a year?

A. That was in 1916.

Q. It was when she came back from Rochester?

A. Yes.

Q. Where did you board?

A. Church Street.

Q. How long did you board altogether?

A. I guess for a year.

10 Q. During the two years, or thereabouts, that she was in Rochester, and you boarded on Church Street, where was Billy?

A. Billy was with my mother.

Q. In New Brunswick?

A. Yes, sir.

Q. Why did you board?

A. Well, because she wouldn't go out and get rooms; she said she didn't want to go to that trouble any more.

20 Q. What trouble?

A. Keeping house; she had no use for keeping house, she always wanted to be a sport.

Q. What did she do while you were boarding?

A. She went to work.

Q. Did you have any trouble or quarrels about

A. Well, I didn't want her to work at all; I made enough at that time, and I had enough saved to get furniture, without living that way.

30 Q. Did you have any trouble or quarrels about that?

A. Well, yes, we did have lot of trouble and quarrels about it; she was never satisfied, no matter which way I wanted to go.

Q. What was your salary at that time?

A. At that time it was about twenty-two.

Q. \$22.00 a week?

A. Yes, sir.

Q. When she went to Rochester in 1916, the time she was there for nine months, did she take Billy with her?

A. Yes, sir.

Q. Did any one go for Billy?

A. Yes, sir; I sent my sister up in the summer, and she always went off in the summer for a vacation, and I asked her if she wouldn't, when she took her vacation this summer, if she wouldn't stop there and see how he was, on account I couldn't go.

Q. Did she bring Billy back to New Brunswick with her?

A. Not just at that time, but a short time after 10  
that my wife sent word to Maud for her to come  
and get him.

Q. Did she go get him?

A. Yes, sir.

Q. Where did Billy live after that?

A. With my mother.

Q. Where were you living?

A. 14 Richmond Street, with my mother.

Q. And Billy, as I understand it, continued to  
live there for nearly two years? 20

A. Yes, sir.

Q. Do you remember when you went to Rochester in 1918?

A. Yes.

Q. About May?

A. Yes.

Q. How did you come to go to Rochester?

A. My wife wouldn't leave me rest unless I went; she kept continuously at me until she got me to go there. She told me if I didn't go, she would go, 30  
anyhow.

Q. What did you do?

A. So, I didn't tell her whether to go or not; she went, and after she went she got there about a month and she left word with me, she said, "You can come just as soon as you could, just as soon as you get enough money." I didn't have enough money at the time, and I had to stay until the following month, until I had enough to go there.

Q. Did you go?

A. Yes, I went there and I wasn't there but a week, when I seen it was no place for me, that is, I seen it was no place for my wife and child to live, and I said to my wife, "I think it would be better if we moved from this place; this place is no place for us to live." I simply asked her to come back to New Brunswick where I always got my living.

- 10 Q. Where were you living in Rochester?  
 A. 52 Chestnut Street.  
 Q. How many rooms did you have?  
 A. Two rooms.  
 Q. Were you living in a lodging house?  
 A. Yes, sir.  
 Q. Were you working?  
 A. Yes.  
 Q. Where?  
 A. At the storage company.  
 20 Q. How soon after you got there did you get work?  
 A. A day or so.  
 Q. Did your wife work, too?  
 A. Not right away.  
 Q. Did she begin to work later?  
 A. Well, she did that on her own account. I never wanted her to work.  
 By the Court:  
 Q. The question is, did she begin to work?  
 A. Yes, sir.  
 30 Q. Where did she go to work?  
 A. She went to work in a restaurant on Main Street.  
 Q. What were her hours?  
 A. From anywheres between seven and four or five o'clock in the morning.  
 Q. What time would she get in?  
 A. At all hours; you never could tell; I used to stay up some nights waiting for her.  
 Q. Did you have any trouble on account of that?  
 A. Yes, I told her I didn't want that, and then

her aunt would come and it blowed over.

By the Court:

Q. What?

A. There was no need of working at all.

Q. Was she working with her aunt?

A. Yes, the same restaurant.

Q. The same aunt you were living with?

A. Yes.

Q. Did Mrs. Wexelbaum work in the same restaurant?

10

A. Yes, sir.

Q. What happened on August 2d?

A. On August 2d—well, we had an argument on what was taking place in the house a couple of nights beforehand.

By the Court:

Q. What was that?

A. A young couple lived in the house that weren't married, and we had a time there, and these people in the front room said, "Don't you think it is pretty near time we moved out of this place; Mrs. Peck doesn't keep a decent house." And the next morning, early in the morning, I said to my wife, "This is no place for us to live; you will have to get out of here. I will be satisfied to live anywhere outside of here." She said, "I am right where I propose to be," she said, "and if you don't like it, you can get out."

20

Q. What happened after that?

30

A. And then I took a walk downtown, and right after—she got so hot tempered she couldn't keep her hands to herself, and she flew at me, and I put up my hand to shove her, and she screamed—she had a habit of screaming over nothing; she would get herself all nervous; it was only a bluff; her sister wasn't in the house at the time; her aunt was in her own room. Her sister was out playing with the child, and she called for her sister to get a cop; and when the cop come back he said, "What did you strike

her for?" "I didn't strike her at all," I said, "I only told her she should do what I say, and not what other people tell her to do." He said, "If you want to make a charge against this man, the only thing you can do is to go down to police headquarters." I got dressed and went out, and when I come back my goods was out on the porch; my dress suitcase and my trunk was set on the porch. I knocked on the door, and even hollered, asking her to let me in.

10 She refused, and never answered at all, and made believe they wasn't home. I stayed in Rochester three days, and got a lady to let me have a room the first night, until I borrowed some money from a fellow I worked with, from the people where I worked, until I got some back pay, and when I got that, I got my stuff and come on back here to New Brunswick.

By the Court:

Q. Where did you get your stuff?

20 A. My stuff was laying down at the station all the time, except my valise; I carried that with me.

Q. Laying where?

A. At the station.

Q. How did it get down to the station?

A. I sent the baggage man after it after they put it on the stoop.

Q. When?

A. August 2nd.

30 Q. The same day?

A. Yes, sir.

Q. Did you ever strike your wife?

A. No, sir.

Q. Did she ever strike you or strike at you?

A. Well, it used to come through quarrels, and I would push her away from me, and she would come up against me.

Q. What can you say about her temper?

A. She had a very bad temper; she couldn't hold herself together at all. The first thing she

would say, she would holler and tell me I was no good; I wasn't getting enough money for her; she could get others better than I was; and she always misused the child; she used to hit the child for nothing, and I used to call her for it, and she told me I had nothing to do with the child for I wasn't the father of it.

Q. Did you ever strike her on the chin or jaw?

A. No, sir.

Q. Did you ever know her teeth were loose? 10

A. No, sir; I know she had them fixed at one time; I don't know how much it come to; she never showed me the bill. She left town—

Q. Where was that?

A. New Brunswick.

Q. Do you know what dentist it was?

A. I knew he was on Bayard Street; I didn't even know that at the time.

Q. On August 2nd did you strike your wife?

A. No, sir; I pushed her, I had to; she had such a temper she would always come after me. 20

Q. Did you ever kick her?

A. No, sir.

Q. When you left Rochester in August, 1918, where did you go?

A. When I left Rochester?

Q. Yes.

A. I went to Newark, New Jersey.

Q. Did you go to New Brunswick first?

A. I went to New Brunswick first, to let my people know she put me out. 30

Q. How long were you in New Brunswick?

A. I wasn't there but a day or so, and I went to my sister's place in Newark.

Q. What is her name?

A. Mrs. Catharine Patterson.

Q. Where did she live?

A. 933 South Rose Street, Irvington.

Q. Did you get work?

A. Yes, sir, in two days.

Q. Where did you live?

A. With her.

Q. How long?

A. Well, I should judge a couple of months.

Q. While you were there, did your sister Kate write any letters to your wife for you?

10 A. Yes, my sister wrote one or two letters; I know one letter she wrote herself, signing her own name; and the other letter she wrote for me, I telling her what to say; and I signed my name to the bottom of it.

Q. What was in these letters?

Mr. Strong: That is objected to; I think the letters should be produced, or a copy of them.

Q. Did you make any copies of those letters?

A. Yes.

Q. Did you keep any copies of the letters?

20 A. The only thing I did was to write the address on the back of the letters.

Q. Did you make a copy of it on another sheet of paper?

A. Yes.

Q. Where are they?

A. Oh, no, sir, I guess I didn't.

Q. Did you or did you not make a copy of the letters?

A. I didn't.

30 Mr. Watson: Have you the letters?

Mr. Strong: No, we have no such letters.

A. The letters I wrote to her was, that I asked her to come to Newark, and told her my people wasn't there, and we could have a fine time, and maybe we could get along all right, being away from everybody. My sister's husband was at work, and she could go out with her nights and have a fine time, but she refused.

Q. Did you get an answer to the letters?

A. No, sir.

Q. Did you see the letter your sister wrote?

A. Oh, yes.

Q. What was in that?

A. She just asked her if she wouldn't come on and bring Billy and make her home at Irvington with us, and I was working and had a fairly good job at the time being, and she could have good times there.

Q. Then while you were there, did you write a letter?

A. Yes, sir. 10

Q. Yourself?

A. Yes.

Q. What was in that letter?

A. I wrote to her just asking her to come back with me.

Q. How were those letters mailed?

A. One of them was a registered letter, if I am not mistaken; every letter was addressed anyhow on the back, "If not received in six days return to" my address, where I was staying. 20

Q. What was the address?

A. 933 South Rose Street.

Q. How were those letters mailed?

A. Special delivery.

Q. Well, were they put in the mail box?

A. Oh, yes.

Q. Do you know whether they were or not?

A. Oh, yes, because I put them myself.

Q. Were you taken quite sick in December, 1919, or January, 1920? 30

A. Yes, sir.

Q. How were you sick, with what?

A. I had double pneumonia and some kind of poison.

Q. Were you in the hospital?

A. Yes, sir.

Q. Whereabouts?

A. St. Peter's Hospital.

Q. New Brunswick?

A. New Brunswick, yes.

Q. How long were you in the hospital?

A. About two months.

Q. Dangerously sick?

A. Oh, yes.

Q. Have you ever received any letters from your wife since August, 1918?

A. No, sir.

Q. Any letters that were addressed to you?

A. Not addressed to me, no, sir.

10 Q. You know the letters that have come to your sister's?

A. Yes, sir.

Q. I show you a letter and an envelope, the envelope dated February 4, 1920, addressed to "Dear May;" read it and tell me if you knew of the receipt of that letter by your sister May; tell me whether you knew of your sister receiving that letter?

20 A. No, I didn't know of my receiving this letter until I got out of the hospital.

Q. Until you got well?

A. Yes, sir.

Q. You knew of it then?

A. Yes, sir.

Mr. Watson: I offer that in evidence.

Mr. Strong: I have no objection.

The Court: Is it admitted that that is a letter from the petitioner?

30 Mr. Strong: Yes, sir.

Said letter and envelope is marked "Exhibit D 3."

Q. After you were sick, the following summer, did your sister May go up to Rochester?

A. Yes, sir.

Q. Why did she go?

A. She told me that she received a letter from my wife, stating that she—

Q. Never mind. What was her errand to Rochester?

A. She went up on a vacation, and I told her

as long as she was going to take a vacation to go to New York State and see my child on account I couldn't go myself.

Q. Was there anything else to her errand?

A. I told her, also, to ask my wife if she wouldn't come back with me.

Q. Was there anything about the child?

A. Oh, yes, my wife and child, of course.

Q. Did she bring the child back with her?

A. No, sir.

10

Q. Did you ever carry a pistol?

A. No, sir.

Q. Did you ever own a pistol?

A. No, sir, I never even saw one.

Q. Did you, on the day you left there, August 2nd, 1918, did you take any of your wife's money?

A. No, sir, she never had it in her care, anyhow; she used to give it to her aunt; every time I asked her for money, she only had two dollars.

20

Q. Ever since you have been married, what did you do with your money when you lived with your wife?

A. Always gave it to her.

Q. Did she pay the bills?

A. Yes, sir.

Q. Were you called in the draft?

A. Yes, sir.

Q. What happened?

A. My wife was working at the time, but she claimed exemption on the support of the child; my mother was keeping it; I didn't say anything. I was called, and I didn't pass, anyhow.

30

Q. When was that?

A. When she came back to live with me on Morris Street.

Q. That was before you went to Rochester?

A. Yes, sir, that was before.

Q. You were called?

A. Yes, sir. I was called for being examined.

Q. You were called for an examination?

A. Yes.

Q. And rejected?

A. Yes, sir, I was put in Class 4, and when I returned from Rochester, she reported me again that I was in Newark, and I was called again, and I was rejected and put in Class 2.

Q. Who owned the house you lived in on Morris Street at the time you went to Rochester in 1918, the house on Nelson Street?

10 A. Mrs. Hummer.

Q. Is that where you were living when you went to Rochester?

A. Yes, sir.

By the Court:

Q. How old are you?

A. 29.

Q. How old is your wife?

A. Now?

Q. Yes.

20 A. 25 or 26.

Q. Three or four years younger than you?

A. Yes, sir.

Q. Did you ever call your wife a whore?

A. No, sir, I never mentioned any of those words to her.

Q. Did you ever say you were not the father of the child?

30 A. No, sir, she used to tell me I wasn't, because I always looked out for the child in every way possible; she used to be so mean to it.

Q. You lived in New Brunswick when you were married?

A. Yes.

Q. When you went to Rochester in 1918, what was your intention as to your residence?

A. The only intention, I went because my wife told me if I didn't go she would go and take the child with her; so I made up my mind, I told her I would go and try it, and after I got there she made it so unpleasant for me that I couldn't

hardly stand it; that is, she didn't come home and get the meals ready, and got that job in a restaurant, and she didn't get up in time mornings to get me to work; she made me lose my position on account she wouldn't get me up, on account she didn't get up herself.

Q. What happened after you tried it?

A. Well, I tried it; I seen I couldn't get along with her, and I asked her to come back to New Jersey where I always made my living, and she refused; she said, "I am back where I always wanted to be, and if you are not satisfied yourself, you can get out, and if you can't stay yourself, you can get out when you feel like it, but you can't take the child." 10

Q. You came back where?

A. To New Brunswick.

Q. Directly from Rochester to New Brunswick?

A. I come directly from Rochester; I stopped in Newark first, and then I went to New Brunswick the following day. 20

Q. How long did you stay in New Brunswick?

A. Only about a day or two.

Q. Where did you go then?

A. I went to Newark.

Q. Where did you live there?

A. 933 South Rose Street.

Q. How long did you stay there? 30

A. About three months.

Q. Are you sure of the time?

A. No.

Q. These letters you have testified about being written; where were you living when they were written?

A. 933 South Rose Street.

Q. What city?

A. Irvington, New Jersey.

Q. After living at Irvington, you went where?

A. To New Brunswick.

Q. Where have you been ever since?

A. New Brunswick.

Q. From the time you were married until the time you went to Rochester in 1918, where did you live?

A. I always lived in New Brunswick.

Q. All the time?

A. Yes, sir.

10 CROSS-EXAMINATION, by Mr. Strong.

Q. Mr. Ludwig, what is your birthday?

A. I was born in 1891, January 7.

Q. January 7, 1891?

A. Yes, sir.

Q. And you were married when?

A. December 20, 1912.

Q. Your salary now is how much?

A. \$25.00.

20 Q. A week?

A. Yes, sir.

Q. What way did your wife cut her hand that time?

A. That was accidental when she cut her hand that time.

Q. How?

30 A. I was sitting down at the dinner table and telling her I was getting tired eating the same stuff from the delicatessen store, and I asked her why she didn't stay home once in a while instead of running the street, and cook something different for a change; I was just going to pour water in my glass to take a glass of water, and she got excited and she grabbed the glass and I took it away from her, and it cut her on the back of the hand.

Q. Accidentally?

A. Yes, sir.

By the Court:

Q. With what?

A. With the pitcher.

Q. What pitcher?

A. The pitcher what had ice water in.

Q. You didn't hit her with any bottle?

A. No, sir.

Q. When her hand began bleeding, what did you do?

A. I wanted her to go to a doctor with it.

By the Court:

Q. How did the pitcher cut her hand?

A. You see, she was trying to get it off me, and I twisted it quick; and her hand was closed, and it must have— 10

Q. How could any pitcher cut her hand?

A. Well, it had a sharp thing on it where the water come out, you know.

Q. She wouldn't go to the doctor's?

A. No, sir, she didn't think it was worth while; she didn't think it would amount to anything.

Q. Where did she go?

A. She didn't go anywheres at that time. 20

Q. She didn't go to Judge Suydam?

A. No, sir.

Q. When did she go there?

A. It was about a week later.

Q. Was it still bleeding a week later?

A. She didn't go to Judge Suydam at that time.

Q. How was it her teeth became broken?

A. That was something new to me; I never heard it before. 30

Q. You never heard it?

A. I never heard tell of it.

Q. You never heard tell of it in Court?

A. No, but she never mentioned that to me.

Q. You are not a drinking man?

A. No, sir.

Q. Never drink anything?

A. Oh, yes, I did, but I never got drunk while I was living with her.

Q. Have you got drunk since?

A. Only once, or possibly twice, that's all.

Q. Her influence was so good while you lived with her that you didn't get drunk; is that it?

A. Why, I never did bother with it.

Q. Were you drunk in August last?

The Court: 1921?

Mr. Strong: Yes, sir.

Mr. Watson: That is objected to as not material.

10 The Court: On account of the custody of the child, I think it might be material.

Mr. Watson: I hadn't thought of that; I will withdraw my objection.

A. Not as I remember it; I don't think I was drunk.

Q. You had been drinking something on that occasion?

A. I was moving a man out Milltown, and this man give me one or two drinks of wine, and when  
20 I got in his son-in-law ordered me to take out a load of stuff, and I asked him when he became my boss; and he was trying to get me out of there, and I jumped off the wagon and punched him, and when I punched him, three or four grabbed me right away, and they got me and hit me, that I lost my mind.

Q. Your mind?

A. Yes, I lost my temper and I broke loose and made a swing at him, and he ran through a door  
30 and my wrist ran through the glass.

Q. Did three police take charge of you on that occasion?

A. After I cut my wrist on that.

Mr. Strong: Mr. Rule, stand up, please.

Q. Is that Mr. Rule one of them?

A. Yes.

Q. Now, you swore that up to the time—during all the time you were living with your wife you never drank anything?

A. No, sir, not never drank anything—never got

drunk, that I remember.

Q. Not that you remember?

A. I never drank enough; I never was drunk.

Q. A drop of alcoholic liquor of any sort never crossed your lips; is that right?

A. No.

Q. Did you give your sister any money to take to Rochester to give to the person who had the custody of the child there, Mrs. Lauer, the time your sister went to Rochester on the vacation you have spoken of? 10

A. I told my sister when she went there to see the child, to look to see it didn't need anything, and to find out where it was located.

Q. Did you give your sister any money to spend on the child?

A. Oh, yes.

Q. What did you give your sister?

A. I give my sister \$50.00 at that time.

Q. Is that all you gave her? 20

A. Well, at that time.

Q. Did you authorize her to pay that money, or any other sum of money, to the person who was taking care of the child in Rochester, to get her to get the child back?

A. No, sir, my sister didn't go with that intention.

Q. At the time, I think, you said you were sick?

A. Yes.

Q. And the child was also sick at the time, wasn't it, in Rochester? 30

A. It was only through the mail that I was told that.

Q. And those letters—did you preserve the receipt of that letter you registered?

A. Did I what?

Q. Keep the receipt for that letter you registered for your wife?

A. I did for a while, until I lost it, that's all.

Q. In May, 1917, do you recollect your wife

being sick in bed?

A. Only through the letters that my sister received.

Q. In May, 1917, before she went to Rochester, do you recollect her being sick in bed when she was living with you?

A. She never was laid up, to my knowledge.

Q. Did you beat her during that month?

A. No, sir.

10 Q. You didn't strike her during that month at all?

A. No, sir.

Q. Did she have you arrested during that month?

A. Yes, I think she did; she had me arrested on Morris Street.

Q. For what did she have you arrested?

A. She had me arrested and swore I hit her. Why, I couldn't talk at all, hardly, without she would scream and swear I hit her.

20 Q. She had you arrested and swore you hit her?

A. Yes, and the next morning she come around trying to get me out; she didn't press the charge.

Q. She simply swore you hit her, and had you arrested?

A. She only wanted them to keep me over night there.

Q. You were arrested?

A. In one way, yes.

Q. Who arrested you?

30 A. Sam Lewis.

Q. A policeman?

A. Yes.

Q. Where did you spend the night?

A. In jail.

By the Court:

Q. What makes any doubt in your mind that you were arrested?

A. Well, I didn't think she pressed the charge.

Q. You weren't asked anything about press-

ing the charge; you said you supposed you were arrested in one way. If you were taken in charge by a policeman and kept in jail over night, what is the doubt whether you were arrested or not?

A. I was arrested.

RE-DIRECT EXAMINATION, by Mr. Watson.

Q. Since your separation August 2d, 1918, have you and your wife lived together?

A. No, sir.

10

Q. Have you seen her until this trial in this court room?

A. No, sir.

Q. Upon this occasion in August, 1921, where did you get this wine or liquor that you had on that day?

A. I got that given to me; I moved these people out there, and after I got finished, they give me one or two drinks of it.

Q. Do you know whether it was homemade or not?

20

A. I suppose so; they didn't tell me; I didn't ask them.

By the Court:

Q. You don't know whether it was one or two?

A. It wasn't more than two.

Q. How many was it?

A. It was about two, I imagine.

Q. What do you mean "About two, I imagine"; do you know whether it was more than one or not?

30

A. Well, it was more than one, but I couldn't have been very drunk—

Q. I asked you how many drinks you took.

A. Two.

Q. You are positive of that?

A. Yes.

Q. When these officers came, you were in a frenzy, were you not?

A. Yes.

By the Court:

Q. Your wife went to Rochester in 1916, you say, and stayed for about nine months?

A. Yes.

Q. How did you and she come to live together again after that?

A. She wrote to me, asking me to take her back.

10 Q. Have you got the letter?

A. No, sir, I didn't save any letter.

Q. Wrote you from Rochester?

A. Yes, sir.

Q. And these letters that you have spoken of as being sent from Irvington to your wife, which one was registered?

A. The only one I sent I had registered myself, because I walked down to the post office with it.

20 Q. That was the last one?

A. Yes.

Q. Why did you have it registered?

A. I wanted to be sure she was there and got it.

Q. Why?

A. Because it was important what I had in it; I wanted her to come back to Irvington.

Q. Why was that important?

30 A. Because I felt I wasn't doing right with her away from me.

Q. Why did you feel you were not doing right?

A. Because I knew it was my place to stay with her.

Q. Then, why didn't you go back to her?

A. I couldn't very well go back to her when she put me out; she absolutely refused to leave me in.

Q. Well, you say she was hot tempered?

A. Yes, sir.

Q. Was she in a temper that day she put you out?

A. Yes, sir.

Q. Those tempers didn't last forever, did they?

A. Yes, she never had a pleasant word for me.

Q. She was always in a hot temper?

A. Yes.

Q. Always; every single moment you lived with her? 10

A. Yes, I couldn't say two words to her unless—

Q. So you wanted her to come back and live with you?

A. Yes.

Q. Why?

A. I knew it wasn't my fault, and that she might change and we would get along all right if she come back. 20

Q. You knew it wasn't your fault?

A. Yes, sir.

Q. Had you been to consult a lawyer at that time?

A. No, sir.

Q. Now, which one of the letters was sent by special delivery?

A. The letter I wrote. No,—the letter I wrote—or the special delivery was the one my sister wrote and I signed my name to it. 30

Q. Why was that sent by special delivery?

A. Because I was anxious to hear from her.

Q. That doesn't explain to me yet why you sent it by special delivery.

A. Well, I wanted it to get there and know what she would have to say, whether she was coming back to me.

Q. Who told you to have that letter sent by special delivery?

A. Why, I thought of that myself.

Q. Who thought of having the last letter sent by registered mail?

A. I did myself, because it took her so long to answer.

Q. What do you mean by that, you sent it by registered mail because it took her so long to answer?

10 A. I knew she wouldn't answer it, see? And I thought she wouldn't be located there any more, and if that letter come back that would let me know she wasn't there; see?

Q. Did you ever consult an attorney until I was retained after this case was started?

A. No, sir.

MARY M. LUDWIG, being recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

20 Q. Where do you live?

A. 14 Richmond Street, New Brunswick, New Jersey.

Q. You are a sister of Arthur Ludwig, the defendant?

A. Yes, sir.

Q. What is your occupation?

A. I am a registered pharmacist of the State of New Jersey.

30 Q. Employed where?

A. By Edward Van Pelt, of New Brunswick.

Q. Do you recall the time of your brother's marriage?

A. Yes, sir.

Q. You were not present, were you?

A. No, sir.

Q. Where did they go to live after they were married?

A. On the upper part of Schureman Street, near George, but I don't know the number.

Q. How long did he live in New Brunswick?

A. Always.

Q. Up until when?

A. Arthur has always lived in New Brunswick up until the time he went to Rochester to satisfy his wife, in 1918.

Q. Did they live there until 1918?

A. They lived in New Brunswick, except when his wife deserted him, except when his wife went to Rochester.

Q. What name did she come back with after they were married? 10

A. Mrs. Blanche Ludwig.

Q. And they lived together as man and wife?

A. They lived together as man and wife, yes.

Q. Did you see them very often?

A. Quite often; I didn't see her so often. Well, she came to the house after they were married like any other woman would that was married into a family.

Q. Do you remember the time she went to Rochester in 1916? 20

A. Yes, sir.

Q. How long was she away at that time?

A. About two years.

Q. Are you certain of that?

A. Well, she went away February 12, 1916—oh, no, I am twisted on that. She went away February 12, 1916, and she came back in December of the same year.

Q. While she was there, did you receive a letter from her? 30

A. I wrote to her myself and I received several letters from her.

Q. Did you receive a letter from her asking you to come to Rochester to get Billy, "D 1"?

A. Yes, that is the letter.

Q. In response to that letter, what did you do?

A. As soon as I got that letter, I went to my employer, and I told him it was necessary to go—

By the Court:

Q. Did you go to Rochester?

A. I went to Rochester that same—the day after, in the evening, and arrived in Rochester somewheres between six and seven o'clock in the morning.

Q. Where was the child living?

A. I think at South Clinton Avenue, or South Clinton Street.

Q. With whom?

10 A. With Mrs. Peck, now Mrs. Weixelbaum.

Q. Who else was living there?

A. I didn't see anybody but Mrs. Ludwig and Mrs. Weixelbaum.

Q. What was the child's condition?

A. When I went to the house they were all in bed, and I went out and got my breakfast and came back and told them I was going to make the half-past eight train from Rochester. When I came back to the house—when I went up there I put a  
20 pair of white rompers in, I didn't know in what condition the child might be—

Q. Answer the question; what was his condition?

A. He was in very destitute circumstances.

Q. And what about his clothing?

A. His underclothes were in the last stages; he had no outside clothing to go back in other than what I brought, and his overcoat which I had given him the year before, and the 10-cent hat, and a pair of shoes that lasted one day after he came, because  
30 they had paper soles.

Q. You brought him back to New Brunswick?

A. I brought him back to New Brunswick.

Q. How long did he live with you and your mother and father?

A. A little over two years

Q. When did Mrs. Ludwig return to New Brunswick?

A. December, that same year.

Q. Where did they live?

A. On Church Street, in furnished rooms.

Q. Did they keep house?

A. No, sir.

Q. And the child was with you?

A. With us.

Q. During the time that Mrs. Ludwig was there, would Mrs. Ludwig come to see the child—during the time it was with you?

A. I don't remember that.

Q. Well, did she come very often?

A. She wasn't very anxious to come back to our home after she went; I think she was embarrassed. 10

Q. Did she see the child very often?

A. When she came back, the day before Christmas, they took the child; we were anxious to have him, but his mother came first, and we let him go. When he came back he was in a nervous condition; it seems he had sort of forgotten her. They took the child to spend Christmas; we had a treat for him, and as I say, we were anxious to have him. but, of course, his mother came first. 20

By the Court:

Q. Listen to the question. Did his mother come to your house to see the child while you were there?

A. I don't remember that.

Q. Did the child go there very often?

A. Yes, he would come over to ask if he could have the child and take him back in the evening, and bring him back and forth for his mother to see him; and that would be done; but sometimes he didn't stay more than fifteen minutes. 30

Q. Before this time Mrs. Ludwig went to Rochester in 1916, were Arthur and his wife separated, to your knowledge?

A. Yes.

Q. Many times?

A. Well, I know on one occasion they were apart about a week.

Q. Where was she?

A. She went to a girl friend's house, Miss Etta

Halspen.

Q. Did you know of any other separations between them?

A. Only what they told me; he didn't tell all his troubles.

Q. She left in May, 1918, to go to Rochester?

A. Yes.

10 Q. During the time they were married and lived in New Brunswick, did Mrs. Ludwig ever complain to you about Arthur hitting her or striking her?

A. No, sir.

Q. Did she ever say to you that he did?

A. No, sir.

Q. You went to Rochester again, did you not—your brother Arthur was taken ill, wasn't he, in December, 1919, or January, 1920?

A. January, 1920.

Q. What was the trouble?

20 A. Septicemia poisoning from influenza and pneumonia, and that accounts for his nervous condition and lack of hearing.

Q. How long was he sick?

A. As near as I can remember, about January 16 to April 2, when he came home from the hospital.

Q. How sick was he?

A. Sick unto death; I was in the hospital ten days and ten nights.

Q. Did you telegraph for his wife?

30 A. I telegraphed to his wife, telling her his condition.

Q. Did you receive a reply?

A. Yes.

Q. Have you that letter?

A. I think you have it.

Q. Did you receive that letter from her about that time ("Exhibit D 3")?

A. Yes, sir.

Q. You say you were in the hospital?

A. Yes, I was in the hospital ten days and ten nights, nursing him myself.

Q. Did you receive any other letters from her about that time?

A. I received a telegram in answer to my telegram.

Q. Have you that?

A. No.

Q. What did it say?

A. It said she couldn't come because Billy had had the measles, she couldn't take him out; I wanted her to bring Billy with her.

10

Q. The following September did you go to Rochester?

A. Yes.

Q. What was your errand?

A. My brother and my father and mother and my sister wanted me to see the child. The other errand was, I was to take a vacation in that section of the country—

Q. What did you do when you went there?

A. I found the hotels crowded on account of---

20

Q. Did you go to see the child?

A. I went to see the child.

Q. Whom did you see?

A. Mrs. Lauer and the child.

Q. Did you see Mrs. Ludwig?

A. Not when I came there; she was not at Mrs. Lauer's home.

Q. During your stay?

A. I asked her to tell Blanche I was in Rochester.

30

Q. Did you see her?

A. I saw her that evening.

Q. What was said?

A. She wasn't overjoyed to see me.

Q. Did you say anything about Billy going back to New Brunswick?

A. Not to Mrs. Ludwig; I asked Mrs. Lauer. She said she couldn't let me take him, because he was in her charge; she really had no right to let me see him at all, only she would. I said, "I don't see why; Blanche and I were always friendly." I

said, "Why does she feel that way?" She said, "She is going to sue for divorce, because there's another man paying attention to her, and she wants to marry him."

Q. Who suggested that?

A. Mrs. Lauer.

Q. You didn't bring the child back with you?

A. No, sir; after that, I thought it was useless, and then I deducted that Mrs. Lauer, although she  
 10 tried to be a lady to me, she was evidently posted not to have anything to do with me, for, although I saw the child another evening—

Q. Did you seek to bribe her?

A. No.

Q. Did you offer a bribe to her?

A. I saw the child out lots of times, and I thought, "What will I buy him?" I wanted to buy him something; I thought he should have something, and I said, "Mrs. Lauer, won't you let me give Billy  
 20 some money?" I said, "He seems to have everything." She said, "He doesn't need any money; a man friend of Blanche's gives him a dollar every time he comes here." So I didn't make any effort to give him any more money, although I was going to give him five dollars for a present.

CROSS-EXAMINATION, by Mr. Strong.

Q. Did you not offer Mrs. Lauer \$300.00 if she would let you take that child away?

30 A. Decidedly not; I wouldn't be guilty of such a thing.

Q. Did you offer her any money?

A. I asked her if I might give Billy some money for a present; that is all the money transaction there was.

Q. How much?

A. Well, I didn't mention how much, but I had five dollars I was going to give her, because I thought I would pay that for a toy.

Q. Did you say to her that you would give her

so much money, and she could let you take the child?

A. No, sir, because I had plenty of opportunity to kidnap that child if I wanted to.

Q. You made her no offer?

A. Certainly not; the opportunity to kidnap that child was there, and I could do it very easily; if I didn't want to live within the law, I would have done it.

By the Court:

Q. Don't volunteer anything. You didn't say anything to Mrs. Ludwig about taking the child away? 10

A. No, after I heard she was going to get a divorce to marry somebody else, I thought, what was the use of my—

Q. You simply heard that from someone else?

A. Yes. She didn't want, really, to see me; I thought what was the use antagonizing her; maybe she would tell me I couldn't go to the house. 20

Q. You had always been friendly up to that time?

A. I always treated her the same as my sisters and brothers.

Q. She had been perfectly friendly with you?

A. Yes, she had.

Q. Why did you feel that you couldn't talk to her then about taking Billy on a visit? 30

A. When I heard the, I thought what was the use getting myself in trouble.

Q. Why didn't you ask Mrs. Ludwig whether she was going to marry someone else?

A. She calmly informed me that she was going to get a divorce.

Q. Who did?

A. Mrs. Ludwig.

Q. When?

A. During my visit.

Q. The first time he saw you?

A. I think the second time.

Q. What did you say to her when you saw her—Mrs. Ludwig?

A. It was just a friendly visit—

Q. I didn't ask you that. What did you say to her, and what did she say to you?

10 A. She asked me how Arthur was, and she didn't say very much to me; she sat there in a surly sort of a way; and after the visit was completed, and I found out that her idea wasn't a friendly one towards me—

Q. How did you find that out; what did she say to you? You had a visit and talked about something.

A. She talked about her own affairs.

Q. Nothing about Billy?

A. No.

Q. Not in the whole conversation?

20 A. I didn't say anything to her, only about his little ways, how cunning he was, and things like you would say to a mother.

Q. Did you tell her why you came up there?

A. I think I told her—I am not quite sure whether I told her or Mrs. Lauer only, that I was up there to see him and to get a vacation and go as far as Niagara Falls.

Q. Did you talk about your brother?

A. Yes.

30

Q. What was said?

A. I said I was a little surprised to think she wanted a divorce. Blanche knew I knew that, and I said, "I am surprised at that," and I hoped her second venture won't be a greater mistake than the first one.

Q. You said that to whom?

A. To both of them; Mrs. Lauer was in the room.

KATHERINE PATTERSON, a witness pro-

duced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. Where do you reside?

A. At present I am living at 136 Elm Street—

Q. You are a sister of Arthur Ludwig, the defendant in this cause?

A. I am.

Q. Where were you living in August, 1918? 10

A. At 933 Rose Street, Irvington, New Jersey.

Q. Did your brother come to stay with you at that time?

A. He did.

Q. Was that after he had left Rochester?

A. Yes.

Q. How long did he stay with you?

A. He stayed with me a little over a month.

Q. Was he working?

A. He was. 20

Q. Do you recall writing letters for him to his wife at Rochester?

A. I do.

Q. How many letters did you write?

A. I wrote two letters to Mrs. Ludwig, to 52 Chestnut Street, Rochester.

Q. How were the letters signed?

A. I signed—I wrote the first letter and signed my name in my home; the second letter, Arthur signed his name. 30

Q. What was in those letters?

A. Well, Mr. Watson, I don't think I can recall, word for word. I offered my home to Mrs. Blanche Ludwig with her child, free, while I was at business in the duPont de Nemours during the war.

Q. What was in the second letter?

A. The second letter was similar to the first letter, at Arthur's direction.

Q. Did Arthur know what you wrote in the first

letter, and know of your writing it?

A. He did know I wrote that letter, yes.

Q. Do you know of a letter he wrote while he was there?

A. Arthur wrote a letter; I was sitting at the table, and I saw part of it, and he had addressed it to "Mrs. Blanche Ludwig, Chestnut Street." I went with him to the mail box to mail that letter, I am sure.

10 Q. Are you absolutely certain about that?

A. I had better recall that statement; I had so much to do for the duPont at that time, I am not positive about that one.

Q. Do you know anything about the mailing of the others?

A. Yes, I do.

Q. What do you know about it?

A. I knew we had gone to mail them.

By the Court:

20 Q. Both of them?

A. Both letters, one signed by me and one by my brother.

Q. How were those letters addressed?

A. On the outside of the envelope?

Q. Yes, to whom?

A. To "Mrs. Blanche Ludwig, 52 Chestnut Street, Rochester, New York."

Q. Anything else on the envelope?

02  
30 A. I don't recall anything else outside of the return address on one of them.

Q. Do you recall about the return address on the other, or not?

A. I don't recall.

Q. Which one do you recall it was on?

A. On the second letter, signed by my brother Arthur.

Q. Did you ever see any reply to the letter you wrote?

A. I did not.

CROSS-EXAMINATION, by Mr. Strong.

Q. Are these the letters that Arthur has testified to before, that he registered and sent special delivery?

A. They are.

Q. And you wrote a letter without his asking you to do it?

A. I did not.

Q. And who asked you to write the letters?

A. Arthur asked me to write for him.

10

Q. And another letter he wrote himself you oversaw?

A. That was the third letter; when there was no answer coming to either of the first.

Q. How did you happen to oversee it?

A. We were sitting together at the table, and he left it open while he went to get a stamp and put it on.

Q. And you oversaw it?

A. Yes; he said, "I am writing to Blanche once more."

20

AGNES E. HECKMAN, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. Mrs. Heckman, you reside in Jamesburg?

A. I do.

Q. You are a sister of Arthur Ludwig, the defendant in this suit?

30

A. I am.

Q. During the two years, during 1916 and 1917, that Billy lived at your mother's home in New Brunswick, do you remember that?

A. I do.

Q. Where were you living then?

A. Jamesburg, New Jersey.

Q. Did you see Billy very often during that time?

A. Two or three times a week, and a half holiday on Saturday afternoons, and sometimes on Sun-

day afternoons.

Q. Did Billy seem to be happy with his grandparents?

A. Very happy.

Q. During part of that time, his mother and father were living in furnished rooms, weren't they?

A. Yes, sir.

Q. Do you know whether his mother saw the child very frequently during that time?

10 A. Not very frequently.

CROSS-EXAMINATION, by Mr. Strong.

Q. You are the sister-in-law of the petitioner that wrote the letter that has been offered in evidence with respect to the draft?

A. I am.

BRIDGET LUDWIG, a witness produced on behalf of the defendant, being duly sworn, testified  
20 as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. You are the mother of Arthur Ludwig?

A. Yes, sir.

Q. And you and your husband live in New Brunswick?

A. Yes.

Q. Your husband is retired now?

A. Yes.

30 Q. You have how many children?

A. Nine living.

Q. Your son Arthur lives with you?

A. Yes.

Q. In New Brunswick?

A. Yes.

Q. And if your son Arthur were awarded the custody of his boy Billy, where would the boy live?

A. With me.

Q. At your home?

A. At my home.

Q. Would you be glad to make a home there for the boy with your son?

A. Always, yes, and I always have from his infancy.

Q. You have reared and educated, as well as you could, your own family of children?

A. They have a good education; they are school teachers and—

Q. Several of your daughters are school teachers?

10

A. Yes, sir.

CROSS-EXAMINATION, by Mr. Strong.

Q. Would you take the child, even if Arthur should not come to live with him there; would you be willing to do that?

By the Court:

Q. Who lives with you?

A. My husband and my children.

Q. How many children?

20

A. Why, there's four or five, five living with me; I have eight in family at present, my husband and myself, and six of them all have different positions.

Q. Who is the six?

A. Arthur lives with me.

Q. You said yourself, your husband and five children, as I understood you; who are the ones that live with you?

A. Leo and Benedict; they are both ex-soldiers; and Arthur and Cecelia and Mary and my husband and me.

30

Q. That is yourself, your husband and five children?

A. Yes.

Q. Anybody else?

A. No, sir.

Q. What kind of a house is it?

A. An eight-room house, a big yard, a barn and everything, and my husband is a retired

man.

Q. Eight rooms all together in the house?

A. Yes, sir.

Q. And yourself and your husband occupy one of the bedrooms?

A. Yes.

Q. And how many rooms are there?

A. Four; one on the lower floor—

10 Q. Does Arthur occupy the one on the lower floor?

A. Yes.

Q. His two brothers occupy another one?

A. Yes.

Q. And the two sisters occupy the other?

A. No, they have single beds; they are large rooms.

Q. I asked you about the room?

A. The rooms, oh, they are large rooms.

20 Q. You and your husband occupy one room, the two brothers occupy one room, and the two sisters occupy another; is that it?

A. There are four bedrooms upstairs and one down.

Q. Five bedrooms?

A. Yes, because Arthur was home and had his own bedroom.

Q. What did you do with the vacant bedroom?

30 A. Well, left it there; Billy used to occupy that when he was home.

Q. Now, it isn't occupied by anybody?

A. Sometimes; we have lots of people come back and forth; and my daughters go back and forth once in a while; we don't live like hermits, your Honor, we live respectable.

Q. Would you feel that you were not living respectable unless you had people going back and forth?

A. No, but my own family comes back and forth to see me.

Q. Is this in the outskirts of New Brunswick?

A. No, sir; in the center of the town.

Q. How big a lot is it?

A. Two lots.

Q. How big?

A. 50 by 100 feet deep.

Q. 14 Richmond Street?

A. Yes.

Q. One of the oldest and most tumble-down parts of New Brunswick, isn't it? 10

A. No, sir.

Q. That is down towards the river?

A. Not quite near the river.

MARGARET HUMMELL, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. Mrs. Hummell, where do you live? 20

A. 261 French Street.

Q. New Brunswick, New Jersey?

A. New Brunswick, New Jersey.

Q. Did you have a house on Nelson Street?

A. Yes, sir.

Q. Where Mr. and Mrs. Arthur Ludwig and his wife lived?

A. Yes, sir.

Q. Do you remember when they separated and went to Rochester? 30

A. Yes.

Q. Do you remember when they went to Rochester, New York?

A. Yes, sir, the 20th of May; the beginning of May she told me she is going to leave him; they wouldn't pay any more rent; I shouldn't tell her husband about that, nor neither my husband. And then we waited a couple of days, and they didn't go, and we went upstairs for the rent; and she

said to her husband she wants to pay the rent, but that is not so; she said we refused to take it.

Q. That was in 1918?

A. Yes.

Q. Did you live in the same house?

A. Yes.

Q. How long did they live there all together?

A. Three or four months.

Q. Did you ever hear any trouble between them?

10 A. They make a terrible racket at night; half-past twelve or half-past eleven; and then we stopped it, they stopped it.

Q. What was the noise?

A. She always hollered and screamed; I don't know what for.

Q. Did you hear his voice?

A. I never hear what Mr. Ludwig said; I only hear her.

Q. Did you hear her?

20 A. She screamed for police and everything; I opened the window; I thought there was a fire in the house; I went up to stop her twice.

Q. Was the door open?

A. Not all the time.

Q. What did you see?

A. Nothing; I said, "Will you please stop that noise?" and Mr. Ludwig answered quietly, "All right."

Q. What did you see the second time?

30 A. That was the second time; the first time she only opened the door a little bit; I said, "Will you please stop that?" I didn't have anything like that in the house, and we can't have it, and he said, "All right."

CROSS-EXAMINATION, by Mr. Strong.

Q. He was nice and sweet?

A. Yes, I would say that he always talked nice.

By the Court:

Q. Did Mrs. Ludwig say anything to you?

A. She never spoke to me only on the first, when she came downstairs and knocked—

Q. I am speaking about these two times.

A. No.

Q. When the door was opened, did she say anything?

A. Not a word; she never said a word.

Q. Neither time?

A. Not a word; she never said a word.

19

RE-DIRECT EXAMINATION, by Mr. Watson.

Q. Did she ever make any complaint to you about her husband striking her and beating her?

A. Not a word.

RE-CROSS EXAMINATION, by Mr. Strong.

Q. Did you tell Mr. Ludwig that he would have to stop the noise?

A. Yes, I told him.

Q. Was Mrs. Ludwig's sister there at the time? 20

A. Yes, she was there at the time; they stayed.

Q. What was that?

A. They chased her out of the house at ten o'clock at night, and we went after her; I don't know where the child went.

Q. Chased who out of the house?

A. The sister.

By the Court:

Q. Who?

A. I don't know whether it was Mr. Ludwig 30  
or Mrs. Ludwig; she came down the stairs and  
flew right out.

DEFENDANT RESTS.

WILLIAM E. RULE, being recalled on behalf of the petitioner, testified in rebuttal, as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. What was the condition of Arthur Ludwig at the time that you and Officer Manley and Officer

Robinson took charge of him?

A. He was a man acting not in a normal state, to my observation.

Q. What was his condition?

A. Violent.

Q. What was it due to; what would you say was his condition?

A. I don't know.

By the Court:

10 Q. Was he drunk?

A. I don't know.

By Counsel:

Q. What sort of a time did you have with him?

A. Quite a battle.

Q. All three of you?

A. Yes, sir.

The Court: That he admits himself.

20 Q. You had a bad time with him?

A. Quite a battle.

Q. What was your opinion as to whether he was intoxicated or not from what you saw?

A. I had no opinion formed.

Q. Was he in a condition that might have been produced by liquor?

Mr. Watson: We admit that on this occasion he was in an extraordinary frame of mind, and we think it was through that liquor.

30 CROSS-EXAMINATION, by Mr. Watson.

Q. Did you ever hear of Arthur Ludwig being drunk on any other occasion?

Mr. Strong: That is objected to as not being cross-examination.

The Court: The witness may answer.

Q. Did you ever hear much about him on any other occasion?

A. No, sir.

Q. Didn't you say to me last night that he was drunk?

A. No, sir.

BLANCHE LUDWIG, the above-named petitioner, being recalled in her own behalf, testified in rebuttal, as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Mrs. Ludwig, state whether or not your husband ever prepared his own meals?

A. He never did.

10

Q. State whether or not you prepared them?

A. I always did; I was always there when he came home.

Q. State whether or not you were out nights while you lived in New Brunswick together.

A. I never was out nights.

Q. You worked a good deal of the time, or some of the time, I think you said, while you were living in New Brunswick?

A. What's that?

20

Q. When you were in New Brunswick you worked some of the time?

A. Yes.

Q. What time would you get home nights?

A. One place I got home at six o'clock.

Q. And other places?

A. I got home—well, from Johnson's I got home at four o'clock.

Q. State whether or not your aunt ever sent you any letters which made trouble between you?

30

A. She never tried to make trouble.

Q. What did you say—I don't know whether you said with what your wrist was cut?

A. With a bottle.

Q. How did it happen to be cut with a bottle?

The Court: That is not rebuttal.

Q. What have you to say about leaving him without notice?

A. Most every time he put me out.

Q. And where did you go when he put you

out?

A. To Mrs. Holzapfel.

Q. He said you stated that you—state whether you ever said that you wanted to be a sport?

A. I never said anything like that.

Q. And that he could get out whenever he liked?

A. I never said anything of the kind.

10 Q. After you had left home these different times, how did you happen to return home?

A. Well, I went back to him most of the time; one time he came after me.

Q. How did you happen to go back to him?

A. He coaxed me to go back; he would do different, and he wouldn't hit me any more.

Q. Did he do different?

A. The same thing again.

20 Q. Did you ever receive any letters from him asking you to return to live with him?

A. I never received any from him.

Q. Or any signed by him, asking you to return to live with him?

A. I never received any.

30 Q. There has been some testimony here as to trouble between an unmarried couple in this house where you resided, which caused him to say to you that it was no place for you and him, and that he wanted you to go to New Brunswick; is that so or not?

A. There was nothing like that ever said; they were all married people in the house.

Q. Was there any such occasion at all of a fight in the house or anything of that kind?

A. There was never any fights.

Q. Did he ever ask you to return to New Brunswick after you went to Rochester?

A. He never asked me to.

By the Court:

Q. Would you have gone, if he had?

A. Well, I don't know, I suppose so.

Q. I think you said you never told him he could get out?

A. I never told him.

Q. If I understood the testimony, it was—I think he said you didn't need him, you could get others; did you ever tell him anything of that sort?

A. I never told him nothing like that.

Q. Did you ever strike the child?

A. No, not more than any mother would, just a little bit if he did something awful bad. 10

Q. You never injured the child?

A. Never.

Q. The time he was sick, a telegram was received from his sister; did you go to see him in New Brunswick?

A. I did not.

Q. Why?

A. They didn't ask me to come along, they told me to bring Billy, and Billy had the measles at the time. 20

Q. And state whether or not you were informed of your husband's condition.

A. They wrote to me and told me the condition he was in.

Q. Did you ever tell him that he was not the father of the child?

A. I never told him that; he told me he was not the father of it. 30

CROSS-EXAMINATION, by Mr. Watson.

Q. You say you would have gone back to New Brunswick if Arthur had invited you to, or received these letters?

A. I don't know whether I would, I suppose so; I don't know whether I would ever go to New Brunswick; he never said he wanted to go back.

Q. Do you say you would have gone back to him if he had suggested it?

Mr. Strong: That is objected to.

A. I don't know; we never talked it.

Q. You don't know whether you would or not; is that the way you want to leave it?

A. I don't know whether he wanted to.

Q. The question is, if he had asked you?

A. I suppose I would have.

Q. Did you write this letter in February, 1920, to his sister: "I received your letter this morning. Am very glad to know that Arthur is better. Billy is well, but I have only had him out a few minutes each day, as I am afraid he might take cold. Now, May, I don't know why you think I would come back and live with Arthur; he is nothing more than a stranger to me as far as any love that I have for him." Did you write that?

A. Yes.

Q. Did you mean it?

A. There is more to it.

Q. You say, "You know that Arthur was as mean to me as a man could be, so I don't ever care to have anything more to do with him. If he was very bad and could not live I would let him see Billy if it was possible, but that is more than him or any of your people would do for me. Billy is all that I have in the world, so I can see no reason why I would let him live with a man who would teach him to call his own mother names." The fact is you would not have gone back?

A. At the time I would have done anything to keep Billy with me.

Q. I am not asking you that; I am asking you about living with your husband?

A. At that time I would, I think; he didn't desert me until afterwards, you know.

Q. How about after he deserted you, as you say?

A. After he deserted me I wouldn't have gone

back to him.

Q. After he left you in Rochester, you would not have gone back with him there?

A. No, sir.

By the Court:

Q. When was it you first consulted an attorney?

A. In 1920.

Q. What time in 1920?

A. About July. 10

Q. And whom did you then consult?

A. Mr. Strong.

Q. Did you see him or write to him?

A. I wrote to him.

Q. It was in July, 1920, that you wrote to Mr. Strong?

A. Yes, sir.

Q. For the purpose of retaining him to bring a suit for divorce?

A. Yes, sir. 20

Q. Why do you want a divorce?

A. I want to be free from him and have Billy with me and know that he can't steal him, and write letters about me. They wrote to the Children's Society; they said I wasn't a proper person to take care of him.

Q. You have been free from your husband for the last four years?

A. I am not free to keep Billy; if he wanted to he could come and take him from me. 30

Q. How could he?

A. He has as much right to him as I have.

Q. But he didn't?

A. No, but his people made all the trouble.

Q. He made no effort to take the child away?

A. No, only that once she came there, and writing letters.

Q. That wasn't taking the child away

from you; she could have taken the child at that time if she had wanted to try?

A. Yes.

Q. So you didn't have any fear that the child would be taken away from you?

A. I always had that fear.

Q. You have testified to nothing that would give you any ground to have that fear?

10 A. I should think it was if they cared enough to write there and have this agent come to my home; I think they would care to take him away from me in other ways.

Q. When was it that they had the agent come to your home?

A. Quite often—

Q. When did he first come?

A. That was the first, I believe.

Q. What year?

20 A. That would be—it wasn't the first few months, but it was some time in 1919 he started to come the first time; he said he had a letter from them complaining that I was not the proper person to care for him.

Q. That was not the place where he was staying?

A. No. That I was not the proper person.

30 Q. Well, you know, of course, that you could have a legal adjudication as to the custody of the child, without your having a divorce?

A. Yes, I suppose so.

Q. Why is it you want a divorce, then?

A. Well, I have put in all these years of misery. Don't you think I ought to have?

Q. I am asking you why you want a divorce?

A. I want to be free from him.

Q. Free for what?

A. Well, just free, that I'm not married

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ELLA  
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DIRECT  
Q. Mr  
in-law, M  
was—wh  
Billy, th  
petitione  
A. No.  
saw her  
Q. Did  
ever pay  
child?  
A. No.  
Th  
Q. Did  
giving her  
child?  
A. No.  
from her.  
Q. Stat  
when she  
A. I do  
Q. Stat  
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against yo  
right." S  
any more.  
I called  
looked bla

to a person like that.

The Court: There is no competent proof about any society; the fact that this person visited there is a fact, and that is all; but there is no proof regarding its custody of the child.

ELLA L. LAUER, being recalled on behalf of the petitioner, testified in rebuttal, as follows:

DIRECT EXAMINATION, by Mr. Strong. 10

Q. Mrs. Lauer, did you ever tell the sister-in-law, Miss May or Mary Ludwig, I think it was—who visited you on one occasion to see Billy, that another man was attentive to the petitioner here?

A. No, sir, I never mentioned a man; I never saw her with a man.

Q. Did any other man or person than herself ever pay you any money for the support of the child? 20

A. No, sir.

The Court: There is no such testimony.

Q. Did you ever tell her any other person was giving her a dollar a week for the support of the child?

A. No, sir, I never received anything only from her.

Q. State what took place on that occasion when she came to you. 30

A. I don't understand.

Q. State what was said between you when she came to see you that time.

A. She came to my home, as I told you, and told me who she was. I said, "I don't know as I have a right, as I understand there is a divorce against your brother, and perhaps I ain't doing right." She said, "There is not." I couldn't say any more. The little boy was across the street. I called him; the child didn't know her; he looked blank in her face and said he didn't know

her. She gathered him up fondly and told him about things, and tried to refresh his memory, and he ran away and went across the street. She asked me a few questions, where she could get rooms, and I said, "I don't know; I don't know of any place;" I said, "Are you in this city?" She said, "I am on my vacation; I am going around by the way of Canada, and I thought Blanche would let me take Billy." I  
10 said, "Well, I couldn't;" she said she would go and look for a place. She left my home, and I telephoned for Blanche to come as soon as she was done work. She came. I told her, and while we were conversing this Miss Ludwig came in; the door stood open; she said, "Hello, Blanche;" Blanche, in a very cold way, said, "Hello." She didn't talk about anything, about her coming or going at all, and she left. She  
20 called again the next day; she said, "I have got something on her; while going to work this morning, I saw her with a man;" she said she left and went to her business; "I went up back of him and I accosted him by asking him where the Young Woman's Christian Association was, so I got a good chance."

By the Court:

Q. Was Mrs. Ludwig present then?

A. No. The investigator of the Humane afterwards came, and I said, "I don't know what to do;" he said, "Be careful of the child, and don't allow Billy to go to the door with you"—  
30

The Court: Never mind, unless Mrs. Ludwig was present.

A. I said to her, "My gracious, she might know somebody, that's all;" and then the officer came, and she got up to go, and she came again that evening and told me that story, and then she said, "I have \$300.00 with me." I smiled, and I sat in the hall; I said, "You shouldn't tell

that to everybody;" I smiled, and I said, "Do you like to travel?" She said, she looked me in the eye, and she said, "I don't suppose you would take this \$300.00 and let me take Billy?" I said, "No." She said, "What would you do if Billy came up missing?" I said, "I would do all in my power to get him back." She called and kept calling; I couldn't say; she called Sunday morning and I didn't answer the bell. She had annoyed us so much; but as for her speaking to me about a man, she said she met her on the street with this man. 10

Q. She said she had?

A. Yes, she said Blanche left him and went to her work, and he went on. I said, "That's somebody she has spoken to; I don't know." She didn't say one word against Blanche's character, only that there was a man concerned in it. I have never saw Mrs. Blanche Ludwig with a man in my life. 20

CROSS-EXAMINATION, by Mr. Watson.

Q. You say the first day Mrs. Ludwig came there, Billy went across the street?

A. Yes.

Q. For what?

A. To play.

Q. He went across there to play?

A. He was out playing when she came. 30

Q. And she fondled him?

A. He wouldn't go to her.

Q. He went back to his play?

A. Yes.

Q. He was playing there when Miss Ludwig went away?

A. Yes.

By the Court:

Q. When was this?

A. Well, I wouldn't say as to that; she was on her vacation; I suppose it was in

the last of August or the first of September.

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. What year?

A. 1919.

RE-CROSS-EXAMINATION, by Mr. Watson.

Q. You are sure that wasn't 1920, Mrs. Lauer?

A. Well, that—

10 Q. You said to Miss Ludwig that Mrs. Ludwig was about to start a divorce action; you told her that?

A. I said I heard she had; she said she had.

Q. You heard she had started one?

A. I said I heard she had, yes.

Q. This divorce action actually started in September, 1920; do you think that it was about the time of the divorce action?

20 A. Yes. After I understood she had written to—

Q. Mr. Strong?

A. Yes, after she had written to him; I wouldn't just say the year.

Q. Did you ever see Miss Ludwig on any other occasions?

A. No, sir, I knew she was in the city; she was seen by the Humane officer.

30 DORA WEIXELBAUM, being recalled in behalf of the petitioner, testified in rebuttal, as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. During the month of August, 1918, did you ever have any unmarried couples in your house living together as man and wife?

A. You mean—

The Court: I am not going into that issue.

Q. Was there any quarrel between people living in your house at that time?

A. No, sir.

Mr. Strong: I offer in evidence a certificate and record of the marriage of Arthur Ludwig to Blanche Chrysler, by the Rev. M. H. Qual, from the Bureau of Vital Statistics of the State of New Jersey.

Said certificate, dated April 12, 1922, is marked "Exhibit P 4."

BOTH SIDES REST.

10

RECESS UNTIL TWO O'CLOCK.

The Court: (After argument)

The suit commenced by the wife on petition for absolute divorce against the husband upon the ground of desertion—an alleged actual desertion by the husband on August 2, 1918. The husband files a counterclaim in which he alleges desertion by the wife at a time some three months after the time of the desertion which is alleged and relied upon by the wife in her pleadings. 20

Admittedly, the pair separated on August 2, 1918, in the City of Rochester. The wife's story is that the separation took place under these circumstances; that the husband had been committing an assault upon her, that she sent out for a policeman, that upon the arrival of the policeman the husband left, and that he later came back and sought to get in, but because of the way he spoke and acted she would not let him in, and that he then left and never came back again after that; that he had previously taken his belongings away. She couples this with the story that during their entire married life he had been guilty of brutal treatment toward her. Admittedly, she had left him on a number of occasions before that time—she says because of this brutal treatment. 30

Now, upon the theory, and looking at it in the light of the possibility of this separation being a "lock-out"—a constructive desertion—that constructive desertion must have as its basis conduct of the husband amounting to a matrimonial offence. The brutal conduct that would justify her in locking him out and making the desertion his must be such as threatens her life or health—such as would give her the right to a divorce for extreme cruelty.

I am not able to find that any such conduct on his part has been proved here; that is, conduct that sufficiently amounts to, or would have amounted to, enough to serve as the basis for a divorce for extreme cruelty. In her testimony she says he called her names, but the only name she mentions is one, and that he denies. There is no allegation of cursing or anything else but calling her that one name. She says that he treated her "mean" and was unkind to her, and she mentions specifically two occasions on which she says he struck her. On none of these occasions did she herself leave, with the exception, perhaps, of this last occasion on August 2nd. The most serious one was when her hand was cut, but she did not leave him then, and did not take any steps to have him arrested until a week afterwards. Both the instances are denied by him. He says on occasions he did have struggles with her, but they were occasioned by her coming at him. Each one charges the other with a violent temper. The owner of the house in which they lived together on Nelson Street—I think it was Mrs. Hummell—testifies—and she, apparently, is as nearly free from bias as any one of the witnesses on either side—that she heard noises up

there on two or three occasions; that she went up there twice and told him it must stop; that she had not heard the husband's voice downstairs, but heard the wife screaming; that when she got up there the door was open and there was no complaint made by the wife and no calling upon her for help against the husband. If the husband had on either of those occasions been beating her or maltreating her, certainly you would expect to have some statement or some act, asking for help or justifying her screaming—justifying herself on her part. Nothing of that kind took place, and the wife herself does not say there was. She does not deny that testimony. 10

If it was the truth that the husband was treating her in such a way as to justify her leaving, I cannot understand why she did not go to her brother or her father in New Brunswick, for protection. She did not say she went to either one, nor that she ever complained to either, and neither is produced in court. They would have been her natural protectors; they were the only ones of her family living in New Brunswick. And if she was being treated as she would have this court believe she was, it seems to me she would have inevitably gone to one or the other. 20 30

I do not believe that there was any course of conduct by the husband prior to August 2, 1918, sufficient to justify the wife in leaving the husband, or sufficient, by adding it to his conduct on that day, to justify her in leaving him or locking him out on that occasion. Certainly, I do not believe that his conduct on that day justified her separation. The character of her testimony about the fear of a pistol is indicative of the un-

reliability of her version of the occurrence.

10 Nor can I give any weight to the corroborative testimony of the wife's sister and the aunt. Both were strongly partisan, frequently reckless in their testimony, and their manner upon the stand, as well as a consideration of their statements and their alliance of interest with the wife, inevitably deprives the wife of any strengthening of her case thereby. It is worthy of note that the wife made no attempt to make a complaint, against her husband for the alleged assault, as advised by the policeman—and that he was not called as a witness nor his testimony taken.

20 There was, of course, a quarrel between husband and wife on that day—the husband admits that—but I am satisfied it was because of the husband's desire or insisting that they leave Rochester and go back to New Brunswick. It will be remembered that two years previously the wife had left the husband and gone to Rochester to her aunt without the husband's consent, and that this time also it was the wife's desire to go to Rochester, and she had argued with her husband until he finally consented and agreed to go, too. I do not believe that anything took place which justified the wife in locking out the husband and separating herself from him. I believe that she found he was determined that they should go back to New Brunswick—as was his right—and she determined to stay where she was, and to lock him out so as to avoid any attempt to force her to accompany him, and to avoid further quarrel and trouble. Possibly also there was some spite involved.

30

The theory of constructive desertion, therefore, fails.

From what I have already said as to my findings of fact, it is equally clear that there was no actual desertion by the husband. The wife desired to live up there in Rochester, and did not want to come back to New Brunswick. He, for some reason or other, did want to come back to New Brunswick. He had the right to choose the matrimonial domicile. He wanted to come back to New Jersey. He was not satisfied with it up there, and that was his right. His coming back here and leaving the wife in Rochester because of her refusal to come back to New Jersey with him or to follow him back here certainly does not amount to a desertion on his part. It is equally clear that the separation during those two years was not against her will. 10

Now, on the counterclaim. The husband says that the wife locked him out of the house and put his baggage out. No, I will correct that. He says his baggage was put out on the porch and he could not get into the house of Mrs. Weixelbaum when he tried, and that he thereafter made no other attempt. There is no proof that the wife put his baggage out on the porch. She says he took it away himself. There is no corroboration of the husband's story on this point. The wife admits that she refused to let him in the house—but her conduct in this regard, immediately after a quarrel, does not, to my mind, constitute a desertion. 20 30

Furthermore, notwithstanding her refusal "in limine" to leave Rochester and go back to New Jersey with him (assuming there is sufficient corroboration of this)—I cannot see that there could be a commencement of a legal desertion until he had provided a proper home for her in New Jersey and noti-

fied her and she had refused to come there. I am not able to see that any commencement of desertion has been proved on August 2, 1918.

10 A few days later he returned to New Jersey, stayed two or three days in New Brunswick, and then went to Irvington, where he lived with a married sister, Mrs. Patterson, for a month or two; and while he was at the latter place two or three letters were written to his wife by him and his sister, asking her to come and live with him there. In the first place, there is insufficient proof that the wife received these letters; she denies receiving them. In the second place, I do not think it can be said that he was providing her or offering her a proper home in asking her to come live with the sister. The wife has a right to a home where she is mistress, subject only to her husband—whether that home be a house or rented rooms. In the third place, even if there had been a proper home provided, and the letters had been received by the wife, and she had unjustifiably refused to come, so that it could be said that a desertion by her then and there commenced, it is not proven that such desertion continued for the requisite two years. The dates of the sending of the letters are not proven, other than that they were sent while he was at Irvington. He left Rochester two or three days after August 2, 1918, and went to Irvington a few days after that, so that he reached Irvington perhaps August 8th—possibly later. The sister says he stayed there a little over a month; another sister says it was a month or two; and he himself says it was about a couple of months. It is not certain then—  
20  
30 it certainly is not proven—that the letters

were sent till October, 1918, whereas the petition in this case was filed in August, 1920, and the citation issued about September 23rd. The proof, therefore, fails of a two-year period of desertion, prior to the commencement of the suit.

The conclusion is, therefore, that the petitions for divorce on behalf of both parties must be denied.

I am still left with the question of the determination of the custody of the child. Neither counsel touched upon the provisions of the statute of 1921. Have either of you considered that? 10

Mr. Watson: The statute which says that neither party being at fault, the welfare of the child—

The Court: The statute has some reference to the preference for the parent who lives in New Jersey. 20

Mr. Watson: I was not aware of that.

Mr. Strong: I consider the rights equal, and the welfare of the child.

The Court: The issues as to the custody of the child and the maintenance of the child I will continue until two weeks from Tuesday, at the same time and place. And there may be an interim order entered in accordance with the order of the court, which will be this, that in that interim the legal custody of the child shall be with the father, but that he shall permit the mother to have possession of the child. The mother is not to take the child out of the State, and he shall pay to the mother for the support of the child during that period the sum of \$15.00 for that period. That will give the mother an opportunity to establish a home in New Jersey, as she says she intends and desires to do, and evidence can be presented to this court 30

at that time—the time of the continuance—  
 as to the character, conditions and surround-  
 ings of that home, whether it is a proper  
 place for this child to live and be brought  
 up in. It may be that in the meantime these  
 parents will become reconciled to each other.  
 They are husband and wife and must needs  
 continue to be unless one or the other gives  
 good ground for divorce. This child is en-  
 10 titled to be brought up in a home where it  
 has its father and mother both. The duty  
 of the father and mother is to give that child  
 the benefits of an American home under  
 American circumstances. Let it have the  
 benefit of a father's care and a mother's care.  
 They are the ones who brought the child  
 into the world; they are responsible for its  
 being here, and that responsibility does not  
 20 end with the birth of the child, but it con-  
 tinues, as I have said, until the child is full  
 grown. They are not doing their duty by  
 the child; they are not giving him his proper  
 chance if, by the fault of either one, the child  
 does not have the normal upbringing and  
 the normal life, direction and care of a  
 father and mother both.

IN CHANCERY OF NEW JERSEY.

30 BETWEEN  
 BLANCHE LUDWIG,  
     *Petitioner,*  
     and  
 ARTHUR LUDWIG,  
     *Defendant.* } On Petition, Etc.

TESTIMONY.

Testimony taken in the above-entitled cause,  
 at the State House, Trenton, New Jersey, on  
 Tuesday, the second day of May, 1922, at 2  
 o'clock P. M.

Before Hon. MALCOLM G. BUCHANAN,  
Vice Chancellor.

Appearances as heretofore noted.

CHARLES TAYLOR, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Where do you live, Mr. Taylor?

A. Rochester, New York.

10

Q. What is your employment?

A. I am agent of the Rochester Society for the Prevention of Cruelty to Children.

Q. State whether that society is under the supervision of any court.

A. It is under the supervision of the Juvenile Division of the Court.

Q. Have you your badge here with you?

A. Yes (exhibiting badge).

Q. When did you first see the petitioner, Blanche Ludwig, or under what circumstances, at any rate?

20

A. That was February, 1919; Mrs. Ludwig came to our office and said that her husband left her and her child, about August, 1918, without any support, and that she hadn't heard from him up to the time she came to our office and asked for our aid and assistance in securing some support for the child.

Q. And in consequence of that, what, if anything, did you do?

30

A. We wrote to the Superintendent of the Society for the Prevention of Cruelty to Children of New Brunswick.

Q. Have you any record of what response you received to that?

A. No, sir.

Q. Then what did you do with respect to the child?

A. We investigated the home where the child

was, that is, Mrs. Ludwig had placed the child with a Mrs. Lauer, of 8 Lafayette Place.

Q. What did you find it to be?

A. A very excellent home.

Q. What sort of person did you find Mrs. Lauer to be?

A. She appeared to be a motherly woman of a little past middle age.

10 Q. And have you, from time to time, investigated the home of the child since then?

A. Yes, sir.

Q. Now, did you ever receive any word from the husband respecting this child?

A. No, sir.

Q. Did you ever receive any word from his sister respecting the child?

A. Yes, sir.

20 Q. And in consequence of those letters, did you make further investigation of the home of the child and the mother?

A. I did.

Q. What was the result of your investigations?

A. I found the child in the same home—continued with Mrs. Lauer—and the mother I always found at 52 Chestnut Street, where she resided.

Q. Did you ever find, as a result of your investigations, anything wrong or unfit with the mother or Mrs. Lauer, or the home?

A. No, sir, I never did.

30

CROSS-EXAMINATION, by Mr. Watson.

Q. What was Mrs. Lauer's address?

A. 8 Lafayette Place.

Q. You always found Mrs. Ludwig at 52 Chestnut Street?

A. That is where she was living.

Q. How long since you have seen Mrs. Ludwig?

A. I guess about six months ago.

The Court: Your examination is not sufficient in detail. The witness' statements that

the place is excellent, etc., are mere generalizations.

RE-DIRECT EXAMINATION, by Mr. Strong.

Q. What care did you find was being taken of the child?

A. Why, I found the child had a nice little room to himself; he was always well clothed, appeared to be happy, and was attending school; and had a nice back yard for him to play in; and the street itself is a very desirable location. 10

Q. And what, if anything, was being done with respect to his education?

A. He was attending No. 15 School in this district where Mrs. Lauer resides.

Q. What seemed to be the nature of the care that Mrs. Lauer was giving him?

A. Why, she—why, that is, when I would call and talk to Mrs. Lauer about the child, she would always have some anecdote about something funny he had said, like parents will tell about their children; she seemed to have a great interest in the child. 20

Q. State whether or not the mother has supported the child.

A. Yes, sir, to my knowledge.

Q. The society has not supported her?

A. No.

By the Court:

Q. This house is located where—Mrs. Lauer's house? 30

A. 8 Lafayette Place.

Q. You say that is in a desirable location?

A. Yes.

Q. In the city itself, or a suburban part of the city?

A. Almost in the heart of the city.

Q. Any grounds around the house?

A. Yes, sir.

Q. How big?

A. Well, I should judge the lot is probably 50 by 125.

Q. How large is the house?

A. I think the house contains 11 rooms; I don't know; it is quite a large house.

Q. Who lives in the house besides Mrs. Lauer and the child?

10 A. Mr. and Mrs. Lauer and a daughter, and I think they have three young lady roomers there.

Q. Would you be willing, if the Court should request it at any time, to investigate further the conditions there?

A. Yes, sir.

By the Court:

Q. These young ladies are roomers and not boarders?

20 A. No, sir, not boarders. Mr. Lauer, I think, is in the silk drapery business; he has an office in the Seneca Hotel Building.

Q. How, as to the place of residence of Mrs. Ludwig?

A. As far as my investigation showed, it was a very good place; it was a rooming house conducted by her aunt.

MARY M. LUDWIG, being recalled on behalf of the defendant, testified as follows:

30 DIRECT EXAMINATION, by Mr. Watson.

Q. Miss Ludwig, you were present at the last hearing in this case on April 13th?

A. Yes.

Q. After the hearing you returned home?

A. Yes.

Q. Did Mrs. Ludwig, the petitioner, call at your home that evening and ask for you?

A. She rang the bell, and I went to the door, and was surprised to find her on the porch.

Q. Tell us what was said.

A. She said, "May, I want to leave Billy with you; I am going back to Rochester tonight." I said, "Well, maybe he won't come with me." She said, "Come down to the taxi; I'll go with you." I went down to the taxi, and I found he didn't want to come out of the taxicab. She said, "Promise him something, and he'll come with you." I asked him to come in and see the kittens. She and her sister took leave of him, and that evening when I went to the train with my other sister, Mrs. Ludwig was at the station. I spoke a few words to her, and told her I was sorry the way things were going. She said, "After all, it was the divorce I was after." She said, "I know I have lost Billy, and he will get over it and so will I." 10

Q. Did she say anything else?

A. She said she was going into another State and get a divorce. I said, "I don't think you can." She said, "Well, I will, just the same." 20

CROSS-EXAMINATION, by Mr. Strong.

Q. Just tell us how that began again.

A. When I went to the station with my sister, she was there with her friends, and I told her I was sorry for what happened, and she said that Billy would get over it and so would she; she intended to go into another State and get a divorce, because a divorce is what she wanted.

Q. That is what she said?

A. Yes. 30

Q. Where was this?

A. At the station.

Q. Where?

A. At New Brunswick.

Q. What did you mean, that you were sorry for what happened?

A. I was sorry for her.

Q. Weren't you laughing at her in the court room before she left?

A. No, indeed; why should I laugh at anybody?

Q. And that was all that was said?

A. That is all that was said; that is all I remember. Oh, I did ask her if she wouldn't send his clothes down; she said she couldn't, because Mrs. Lauer had his clothes. I said, "I can't understand that," because I figured we would have to buy clothes for him, because he had nothing except what was on his back.

10 RE-DIRECT EXAMINATION, by Mr. Watson.

Q. Has he been with you ever since?

A. He has been with us ever since.

BLANCHE LUDWIG, the above-named petitioner, being recalled in her own behalf, testified as follows:

DIRECT EXAMINATION, by Mr. Strong.

Q. Mrs. Ludwig, what have you to say with respect to this interview that has just been spoken of  
20 by the witness?

A. I went to the house that night and told her I was going to leave Billy.

Q. Why?

A. Until I went back there and got some things, and Billy said he wouldn't go. She said, "I'll go down to the taxi and I'll make him come." She wanted to drag him up in the yard; she told him about the kittens, and he went in the house. Later  
30 on, when my sister and I were going on the train, she came up on the platform and told me she was very sorry what happened, "she didn't know much about the case," or something like that. There was nothing said about a divorce at all, except I asked about Billy.

Q. Did you tell her it was a divorce you were after, and not the child?

A. No, sir; we talked about Billy. I said, "I think he will stop crying."

Q. Why did you leave Billy that night?

A. I had no money and no place to stay; I had

\$3.00 and my return ticket.

Q. Did you say Billy would get over it and so would you?

A. No, sir.

Q. You only had \$3.00 left?

A. Yes, sir.

Q. Did you see Billy in the court room this morning?

A. I did.

Q. Did you attempt to speak to him? 10

A. I did; he came part way to speak to me, and he said, "I can't talk to you; I have got to sit in my seat."

CROSS-EXAMINATION, by Mr. Watson.

Q. Didn't I see you and your son talking together on that second and third chair?

A. Yes.

Q. For two or three minutes?

A. I don't know; he kept pulling away from me. 20

Q. Didn't you have your arm around him?

A. Yes, I kissed him.

Q. On the 13th of April, when you left him with the Ludwigs, did you go to see your father or your brother?

A. I went before that time to see my father and brother.

Q. Did you see them?

A. Yes.

Q. After the trial did you see them? 30

A. No, sir.

Q. After the trial you didn't go to see your father or your brother?

A. No, sir, I didn't.

BOTH SIDES REST.

The Court: I am desirous of questioning the child, and I would be glad to have counsel present at the time of the interview, if they wish to.

Mr. Watson: I am perfectly willing that the Court should question Billy in the absence of counsel. I think your Honor would be more likely to get satisfactory answers from him if counsel are not present.

Mr. Strong: I think it would be just as well if counsel were not present.

The Court: We will recess for half an hour.  
AFTER RECESS.

10

The Court: The case is an extremely difficult one by reason of the fact that neither parent's conduct has been such as to appeal particularly to the Court as showing great concern in the interest of the child. The contest is really one between Mrs. Lauer, on the one hand, and the grandparents, on the other, as far as custody is concerned.

20

As counsel has pointed out, the mother has not shown good faith in her representations to the Court on the previous hearing as to her intention then expressed and so sworn to, of her residence being in New Jersey, and of her intention to take up her residence here.

Mr. Strong: She can't get employment.

The Court: She knew that when she told the Court she would come back here.

Neither of the grandparents are in Court, I understand.

30

Mr. Watson: Not today; the grandmother testified, but the grandfather did not. He is retired, and his health is not good.

The Court: The father said he was perfectly willing to take the wife back, so that she does not need to work and support herself and the child to come here to New Jersey. Am I to understand that she refuses to go back?

Mr. Strong: I don't think the offer is made in good faith; she couldn't live with him; they care nothing for one another; they have been

apart for four years, and the husband has not communicated with her.

The Court: That may be, and yet if he is willing to support her, she could try it. There are many other families where the husband and wife have no affection for each other.

I am not impressed with the fact that either one cares particularly for the child. This is perfectly obvious as far as the father is concerned—he has made no effort to see the child for four years, or to do anything for it. As far as the mother is concerned, it is almost equally obvious. If she had had the same solicitude for the child's welfare that counsel seeks to impress upon the Court, she could have found some place where the child could have lived with her. Her chief solicitude seemed to be that of living with this aunt, and to this child was entirely subordinated. There is no evidence whatever that she made any effort to find any place where she and the child could live together. Surely, in a town the size of Rochester, there is more than one place where the child could have been taken care of for the same price she has had to pay, and in a situation where the two could have been together.

I might say, for the benefit of counsel, that the child's statement to me corroborated what was testified to, both as to the visits from the father and mother; that the father had paid no visits and made no efforts, as far as the child knew, to see him during the four years, during the time he was in Rochester, and that the mother had not seen him every day, but only a few times a week.

Mr. Strong: But she can find another place in Rochester, if your Honor wants it.

The Court: But she says she lives in New Jersey, and not in Rochester.

Mr. Watson, is your client willing to pay to the wife \$35.00, if there be a further continuance?

Mr. Watson: The defendant is willing to do anything that the Court thinks reasonable. I think legally there is no ground for any payment from him to her, but I will waive the legal right, if your Honor thinks it will tend to the welfare of the child.

10 The Court: I will continue the matter for four weeks further, with the custody as at present, and on the day to which it is continued, I want to have the grandfather and the grandmother here.

IN CHANCERY OF NEW JERSEY.

20	<p style="text-align: center;"><i>Defendant.</i> ARTHUR LUDWIG, and <i>Petitioner,</i> BLANCHE LUDWIG, BETWEEN</p>	}	On Petition, &c.
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TESTIMONY.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, June 1, 1922, at 10:30 A. M.

30 Before Hon. MALCOLM G. BUCHANAN,  
Vice Chancellor.  
Appearances as heretofore noted.

ADAM J. LUDWIG, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Watson.

Q. Where do you live?

A. New Brunswick, New Jersey.

Q. How old are you?

A. I will soon be 72 years old.

Q. How long have you lived in New Brunswick?

A. About 68 years.

Q. You are the father of Arthur Ludwig, the defendant in this cause?

A. Yes.

Q. The grandfather of Billy Ludwig?

A. Yes.

Q. Are you living retired?

A. Yes, I am not able to work.

Q. What members of your family live with you at home? 10

A. Seven all together, with my wife.

Q. Billy has been with you now six or seven weeks?

A. About that time.

Q. Since the last adjournment four weeks ago, what have you done with Billy?

A. Well, I have sent him to school.

Q. What school?

A. The public school. 20

Q. What class is he in?

A. The second grade, I believe.

Q. Are you giving a good deal of your time to Billy?

A. I have been, night and morning and noon time.

Q. If the custody of Billy should be awarded to your son, state to the Court what you would be willing to do with reference to his care.

A. I'll take care of him all his life as long as I live. 30

Q. Are you willing to state to the Court whether or not you are anxious to have him come to live at your home with his father?

A. I will make a good home for him.

CROSS-EXAMINATION, by Mr. Strong.

Q. How old did you say you were?

A. Going on 72 years old.

Q. You are no longer able to work, you say?

A. Well, I haven't worked for five or six years.

Q. And who live with you?

A. My family.

Q. Who are they?

A. Well, six or seven of them at home.

Q. Name them.

A. Well, Mary—

10 Q. Is she married or single?

A. Single.

Q. How old is Mary?

A. Well, I guess she is about 45, somewhere along there.

Q. Where does she work?

A. In Mr. Van Pelt's drug store.

Q. And who else?

A. Then I have Celia at home.

Q. How old is she?

20 A. About 35.

Q. Married?

A. No, sir.

Q. And she works where?

A. She works in Mr. Reeves' book store, stenographer and typewriter.

Q. Who else?

A. Then I have Arthur with me.

Q. That is the defendant in this case?

A. Yes.

30 Q. Who else?

A. I have Benedict with me.

Q. How old?

A. About 30.

Q. What does he do?

A. He is kind of broken down from the war, he's a war veteran.

Q. Who else?

A. Then I have Leo; he is a war veteran.

Q. How old?

A. About 25.

Q. He does what?

- A. Well, he was chauffeur for Mr. Ross.
- Q. Who else?
- A. I guess that's all I got home, except my wife and myself.
- Q. Is your wife about your age?
- A. She is a couple of years younger than I.
- Q. Is she in good health?
- A. Apparently so.
- Q. Your wife stays at home?
- A. She does. 10
- Q. And how many rooms have you in the house?
- A. Eight.
- Q. And where is the house?
- A. 14 Richmond Street, New Brunswick.
- Q. That is the lower part of the city, near the river, isn't it?
- A. I suppose I am as far as the Delaware is from here, not quite as far.
- Q. How did you get the boy in the public school? 20
- A. We saw the person—the school teacher.
- Q. Who went with you?
- A. My daughter took him up; I didn't go, but I saw that he went; I sent him.
- Q. How?
- A. Why, I told her to take him up.
- Q. She wouldn't have done it if you hadn't told her?
- A. She certainly would. 30
- Q. Then there was no use your saying anything about it; how many times have you been to the school since Billy has been there?
- A. I go pretty near every day, noon and night; I even go up there at recess and see him.
- Q. What did you do?
- A. I stand there and look at him playing.
- Q. Are you afraid that—
- A. Not necessarily; I think he is a **stranger** in town; why wouldn't I look after him?

Q. What are his hours there?

A. His hours is from 20 minutes, I think, past eight, up to twelve o'clock.

Q. And then at twelve o'clock what does he do?

A. Comes home to his dinner.

Q. And goes back at what time?

A. Something like 15 minutes to one, something like that.

10 Q. And then he comes home?

A. About half-past three.

Q. Does he go back again?

A. No, sir.

Q. What did you refer to by night?

A. That is evening.

Q. Which one of the teachers have you seen about Billy?

A. I haven't seen any teacher about him.

20 Q. You have looked over the fence at him playing?

A. I have looked at the gate.

Q. And you do that every day?

A. Pretty near every day.

Q. How many times?

A. Well, I might miss sometimes, of course; I have to go to the store for bread, and in doing so I make it a point to be there.

Q. And how long do you stay there?

30 A. Well, perhaps five minutes, perhaps ten minutes; I didn't never figure on the time.

Q. Do you go to the store again for bread at night?

A. No, sir.

Q. You only go to see him when you go to the store for bread?

A. That's the idea.

Q. How often a day do you go to the store for bread?

A. I can't go to-day; I'm here.

Q. How many times do you go a day?

A. Once.

Q. Every day?

A. Every day.

Q. So you see him once a day, is that it?

A. Once a day is all I go for bread.

Q. You go once every day?

A. Yes.

Q. Then, what attention do you give him at home?

A. Oh, we play ball. 10

Q. You play ball with him?

A. I do.

Q. You pitch and he catches?

A. Any way to amuse him.

Q. How much of the day do you play ball with him?

A. We play different things; we don't play ball all the time; he has a little dog, and we play with that. 20

Q. You vary the sports?

A. We amuse ourselves the best we know how.

Q. When does that amusement begin?

A. He comes home and gets a little lunch, perhaps, and then we go out and see what we will do; he suggests something, and I say, "All right, let it go."

Q. Then he goes back to school and gets out at half-past three? 30

A. Yes.

Q. He comes home, and then how long do you play?

A. Sometimes we take a little walk down to the market.

Q. How often?

A. I couldn't say, I don't keep tally.

Q. I got the impression that you played with him all the time.

A. I amuse him all I know how.

Q. Then he comes home at half-past three; how long do you play with him?

A. Till supper time.

Q. When is that?

A. Around six o'clock.

Q. What do you do after supper?

A. We amuse ourselves by looking at the paper and one thing or another.

10 Q. Does Billy read the paper?

A. Some.

Q. How old is he?

A. Nine years old.

Q. How late does he read the paper; how long does it take him?

A. He only looks at the funny parts of it.

Q. For how long?

A. Twenty minutes, maybe a little longer.

Q. Then what happens?

20 A. He amuses himself one way or the other.

Q. What ways, for instance?

A. Any way he feels like it.

Q. You know what he does, don't you?

A. He does lots of things I don't really know sometimes.

Q. You don't know all the things that are going on all the time about Billy?

A. Not all the time, that would be an impossibility.

30 Q. You say, "lots of things"?

A. Not all, that is impossible.

Q. Then how do you know, if you don't see it?

A. I know he don't do anything of any importance.

Q. What time does Billy generally finish his paper at night?

A. Sometimes even when the light is lit.

Q. That is, sometimes after half-past eight or so?

A. Sometimes, maybe earlier.

Q. You generally light the lights around half-

past eight?

A. Somewhere around there.

Q. And Billy generally finishes his paper by the lamplight?

A. Sometimes, and sometimes he has it finished before.

Q. Then what does he do after he finishes his paper?

A. Well, he might talk with the girls or boys.

Q. For how long?

10

A. I never keep track of it.

Q. You don't know what Billy is doing?

A. I know what he is doing in that regard.

Q. How long do you think?

A. He may be a half an hour.

Q. And then after he talks with the girls for a half an hour, what does he do?

A. Well, he goes to bed then.

Q. And he gets up what time in the morning?

A. Sometimes six o'clock.

20

Q. Who gets him up?

A. He gets himself up.

Q. And who dresses him?

A. Sometimes his grandmother and sometimes his aunts.

Q. Do you ever dress him?

A. No, sir.

Q. Are you up, when he gets up every morning?

A. Not always, no, sir.

30

Q. What time do you get up?

A. About half-past six or seven o'clock.

Q. Billy is up a half an hour before you get up?

A. Sometimes an hour.

Q. What does he do?

A. Oh, well, now, that is impossible—

Q. Then you don't know what Billy is doing all the time?

A. Not according to that.

Q. Then what do you do when you get up?

A. I wash and walk around and we got a few little chickens he takes care of.

By the Court:

A. When does he study?

A. Evenings, after supper.

Q. Does he have any help with his studies?

10 A. Sometimes his aunts help him, sometimes I read to him, and sometimes his grandmother reads to him.

Q. You are up at seven; what time do you breakfast?

A. Maybe half an hour after.

Q. When you get your breakfast, do you play with Billy?

A. For a while.

Q. Baseball?

20 A. Several things; I do several things with him.

Q. How long do you play?

A. Until it's time to go to school.

Q. That is how long?

A. A half an hour or something like that.

Q. What time does he go to school?

A. About twenty minutes after eight.

Q. And then, I think you said, you hadn't been to see any of the teachers?

30 A. No, except standing in the yard with them while they were at play.

By the Court:

Q. You are sufficiently well off that you don't have to work any more?

A. Well, I hope so.

Q. You are able financially to take care of the boy's needs?

A. As long as I live, Judge.

Q. His needs in regard to clothing and schooling?

A. He gets all right.

Q. You are financially able to take care of that for him?

A. Yes.

Q. You are fond of him?

A. I am.

Q. And your wife is fond of him?

A. Yes, sir.

Q. And how as to his aunts?

A. They all seem to love him.

Q. Would you wish to undertake the responsibility of his care and custody? 10

A. I will, as long as I live; after that, I can't tell.

Q. What is your income now?

The Witness: Am I obliged to answer that?

The Court: Is there any reason for that? If you have any honest doubt as to it, I will allow it.

Mr. Strong: I have a great deal of doubt. 20

Mr. Watson: It seems to me that the financial upkeep is the father's duty, and he is earning sufficient money to do it. Howsoever, I have no objection to it, if your Honor wants to hear it.

The Court: I won't go into that now.

Q. What property do you own?

A. The property that I live in.

Q. And when did you buy that? 30

A. I bought it in '76 or '77, I can't say which.

Q. How much did you pay for it?

A. I built it all myself.

Q. What is it assessed for?

A. It is assessed for—I think it is \$2,000.

Q. Have you any money in the bank?

A. Well, there you are getting to it again; you want to know what I possess.

Q. Have you got any money in the bank?

By the Court:

Q. Have you any money in the bank?

A. Yes, sir.

Q. How much?

The Court: I won't go into that.

Q. What other property have you besides that house?

The Court: I have already stated I am not going further into that.

Q. You stated you are fond of him?

A. I am; I have always taken care of him.

10 Q. How long was he with his mother in Syracuse?

A. Four years.

Q. Did you go up there to see him?

A. No, sir.

Q. Did you write him?

A. No, sir, I—

Q. Just answer the question.

A. I have answered; no, sir.

Q. You started to say something else?

20 A. I started to say somebody else did.

Q. Who did?

A. My daughters.

Q. And it is your daughters that are interested in the child now?

A. No, sir, no more than to please him while he is here. We have taken care of him for years before that.

Q. You are the one that takes care of him now?

A. I am, yes.

30 The Court: You may have an order making both grandfather and grandmother parties. Let an appearance be entered for them, and let there be filed their consent to be bound by all the proceedings in the cause and by such order as may be made in the cause. We will take a recess for ten minutes, and the order may be drawn now.

RECESS.

Mr. Strong: I object to these parties being

made defendants.

The Court: It comes rather late; the order is now signed, and you did not object some time ago when it was made.

I am satisfied by the testimony and the evidence in the entire case, that the custody of the child, which the wife had for a time in Rochester, was, as a practical matter, abandoned by her in 1916, when she sent it to the grandparents,—and abandoned not to the father of the child, but to the grandfather. And the custody so remained even after the wife came back to New Brunswick and lived with her husband again. The child was not with them. Custody was resumed by both parents when they went to Rochester in 1918. It was abandoned by the husband when he left on August 2, 1918. After that he made no effort to get the child, or to see it; he never wrote to it or contributed to its support, or evinced any interest in it whatsoever. Although the wife retained custody, it was little more than in name. She made no effort to keep the child with herself, but boarded it out and left its care and education to Mrs. Lauer,—going to see it only a few times a week. I cannot feel that she has any great love or care for the child, and I think that in her keeping of it in Rochester and her present contest, she was and is actuated principally by antagonism to her husband and her husband's people.

I am satisfied from the evidence that the child's welfare will best be conserved—and that is the thing, after all, which is the motive and guiding principle which actuates this court in such cases—that the child's welfare will best be conserved by having his custody given to the grandfather for the present, at least; and I say I see no obstacle in the way of that, by reason of the conduct of the father and mother

heretofore. The father, as I have said, abandoned the custody in 1918, and there is a statutory bar to any custody by the mother, under the circumstances of this case. Section 7 of the Act of 1902 (P. L. 1902, p. 263) provides that where a child is a native of this State, as this child is, it shall not be removed from this State "against its own consent if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order."

10 There may be some doubt as to the child being of "suitable age." He is about nine years old, and seems quite intelligent, although possibly a little young for his years. If he be deemed of suitable age, his desire, as stated to me, was to remain here in New Jersey at the grandfather's, where the father also is at present residing. If he be not deemed of suitable age, the consent of the father is lacking to have him removed from the State. There is not the slightest doubt in my mind that the wife's residence is in Rochester, and her frankly expressed intention, in her testimony, was to take the child back to Mrs. Lauer's in Rochester. Certainly no cause has been shown, to my mind, to induce or justify the court to "otherwise order,"—

20 quite the contrary.

30

The order, therefore, will be that the custody be given to the grandfather, who has been made a party to the suit,—the legal custody,—and there being no evidence before me that any change in the situation as to the residence of the father or mother has occurred since the taking of testimony upon the last hearing, the decree will provide that both the father and mother shall have the right of access to the child at all reasonable

times for visitation.

There will also be a provision that the father shall contribute to the support of this child. I think I will make the amount \$7.50 per week that he shall pay to his father towards the expense of the support of the child.

Filed April 13, 1922.

IN CHANCERY OF NEW JERSEY.

10

BETWEEN

BLANCHE LUDWIG,  
*Petitioner,*

and

ARTHUR LUDWIG,  
*Defendant.*

On Bill, &c.

ORDER.

This cause coming on to be heard in the presence of Theodore Strong, solicitor for the Complainant, and Russell E. Watson, of R. E. and A. D. Watson, solicitors for defendant, and the evidence of the parties having been adduced and the arguments of counsel having been submitted, 20

It is on this 13th day of April, 1922, ordered, adjudged and decreed that the custody of the child of the said parties, William K. Ludwig, be awarded to the defendant, Arthur Ludwig, until the second day of May, 1922, or until such further time as the Court may by order then direct. 30

It is further ordered, adjudged and decreed that the said Blanche Ludwig have the physical possession and society of the said William K. Ludwig until the said second day of May, 1922, or until such further time as the Court may by order then direct, such possession being conditioned and limited to the State of New Jersey.

It is further ordered, adjudged and decreed that pending the said further order of the Court, the

said Blanche Ludwig and the said Arthur Ludwig, or either of them, do not remove or accompany or cause to be removed or accompanied, directly or indirectly, the said William K. Ludwig from the State of New Jersey.

It is further ordered, adjudged and decreed that the said defendant, Arthur Ludwig, pay to the petitioner, Blanche Ludwig, for the support of the said William K. Ludwig until the said second day of 10 May, 1922, the sum of fifteen dollars.

Respectfully advised,

E. R. WALKER,

C.

MALCOLM G. BUCHANAN,

V. C.

Filed April 26, 1922.

IN CHANCERY OF NEW JERSEY.

20 BETWEEN  
BLANCHE LUDWIG,  
*Petitioner,*  
and  
ARTHUR LUDWIG,  
*Defendant.*

Memorandum.  
Buchanan, V. C.

Petition by the wife and counterclaim by the husband, both on the ground of desertion.

The proofs do not substantiate either party's claim as to wilfulness and obstinacy, and both petition and counterclaim will be denied as to the 30 divorce.

The matter of the custody of the child will be continued for further testimony.

Filed May 2, 1922.

## IN CHANCERY OF NEW JERSEY.

BETWEEN BLANCHE LUDWIG, <i>Petitioner,</i> and ARTHUR LUDWIG, <i>Defendant.</i>	}	On Bill, &c.
--	---	--------------

## ORDER.

This cause coming on to be heard in the presence of Theodore Strong, solicitor for the petitioner, and of Russell E. Watson, of R. E. & A. D. Watson, solicitors for the defendant, and further testimony having been taken and further arguments having been submitted, 10

It is on this 2d day of May, 1922, ordered, adjudged and decreed that the custody of the child of the said parties, William K. Ludwig, be continued in the defendant, Arthur Ludwig, until the 30th day of May, 1922, or until such further time as the Court may by order then direct. 20

And it is further ordered, adjudged and decreed that the said Blanche Ludwig have the physical possession and society of the said William K. Ludwig until the 30th day of May, 1922, or until such further time as the Court may by order then direct, such possession being conditioned and limited to the State of New Jersey.

And the defendant having consented thereto, it is further ordered, adjudged and decreed that the defendant pay to the petitioner the sum of thirty-five dollars. 30

And it is further ordered, adjudged and decreed that the final hearing of the said cause be continued until the 30th day of May, 1922, at 10.30 o'clock A. M., daylight saving time, at the Chancery Chambers, State House, Trenton.

Respectfully advised,

E. R. WALKER,

C.

MALCOLM G. BUCHANAN,  
*V. C.*  
 Filed June 1, 1922.

IN CHANCERY OF NEW JERSEY.

10 BETWEEN  
 BLANCHE LUDWIG,  
*Petitioner,*  
 and  
 ARTHUR LUDWIG,  
*Defendant.* } On Bill, &c.

APPEARANCE OF ADAM J. LUDWIG AND  
 BRIDGET S. LUDWIG.

20 We, Adam J. Ludwig and Bridget S. Ludwig,  
 having been admitted as parties defendant in the  
 above entitled cause, do hereby enter our appear-  
 ance therein, as if we had been original parties  
 thereto and duly served with process therein, and  
 do hereby consent to be bound by all the proceed-  
 ings in the cause thus far had and taken, and by all  
 further proceedings, orders and decrees therein.

Dated June 1, 1922.

ADAM J. LUDWIG,  
 BRIDGET S. LUDWIG,  
 R. E. & A. D. WATSON,  
*Solicitors.*

Filed June 1, 1922.

30 IN CHANCERY OF NEW JERSEY.

BETWEEN  
 BLANCHE LUDWIG,  
*Petitioner,*  
 and  
 ARTHUR LUDWIG,  
*Defendant.* } On Bill, &c.

ORDER.

This cause coming on to be heard in the pres-  
 ence of Theodore Strong, solicitor for the peti-  
 tioner, and Russell E. Watson, of R. E. and A. D.

Watson, solicitors for the defendant, and further testimony having been taken,

It is, on this first day of June, 1922, ordered, adjudged and decreed, that Adam J. Ludwig and Bridget S. Ludwig, parents of the defendant, Arthur Ludwig, be admitted as parties defendant to the above entitled cause.

Respectfully advised,

E. R. WALKER,

C. 10

MALCOLM G. BUCHANAN,

V. C.

Filed June 1, 1922.

IN CHANCERY OF NEW JERSEY.

BETWEEN

BLANCHE LUDWIG,

*Petitioner,*

and

ARTHUR LUDWIG,

ET AL.,

*Defendants.*

{

20

FINAL DECREE.

This matter coming on to be heard in the presence of Theodore Strong, solicitor for the petitioner, and Russell E. Watson, of R. E. and A. D. Watson, solicitor for the defendants, and further evidence of the parties having been adduced, and the arguments of counsel having been submitted,

And it appearing to the Chancellor that the defendant did not desert the petitioner, and continue wilfully, continuedly and obstinately to desert the petitioner for a period of two years, and it further appearing to the Chancellor that the defendant has failed to prove a wilful, continuous and obstinate desertion by the petitioner for a period of two years prior to the institution of the suit by the petitioner:

30

And it further appearing to the Chancellor that the welfare of William K. Ludwig, son of the said

Arthur Ludwig and Blanche Ludwig, will be best served by awarding his custody to Adam J. Ludwig, his grandfather,

It is, on this first day of June, 1922, ordered, adjudged and decreed, that the prayer of the petitioner that the marriage between her and the defendant may be dissolved, be denied:

10 It is further ordered, adjudged and decreed, that the prayer of the defendant, Arthur Ludwig, that the marriage between him and said petitioner may be dissolved, be denied;

20 It is further ordered, adjudged and decreed, that the defendant, Adam J. Ludwig, have the custody, care and education of William K. Ludwig, the infant child of the said Arthur Ludwig and Blanche Ludwig, and that the said Arthur Ludwig and Blanche Ludwig have access to and the right to visit their said son, William K. Ludwig, at all reasonable times.

It is further ordered, adjudged and decreed, that the said Arthur Ludwig pay to the said Adam J. Ludwig for the support and maintenance of the said William K. Ludwig, the sum of seven and one-half dollars per week.

Respectfully advised,

E. R. WALKER,

C.

30 MALCOLM J. BUCHANAN,

V. C.

Filed June 8, 1922.

IN CHANCERY OF NEW JERSEY.

BETWEEN  
 BLANCHE LUDWIG,  
*Petitioner,*  
 and  
 ARTHUR LUDWIG,  
 ADAM J. LUDWIG  
 AND BRIDGET S.  
 LUDWIG,  
*Defendants.*

On Petition and Counterclaim.

10

NOTICE OF APPEAL.

Blanche Ludwig, the above-named petitioner, hereby appeals from that part of the decree filed in this cause June 1st, 1922, which denies the prayer of your petitioner that the marriage between her and the defendant, Arthur Ludwig, may be dissolved, and also from that part of said decree which awards the custody, care and education of William K. Ludwig, the infant child of your petitioner and the defendant, Arthur Ludwig, to the defendant, Adam J. Ludwig, to the Court of Errors and Appeals in the last resort in all causes. 20

THEODORE STRONG,  
*Solicitor for and of Counsel with  
 Petitioner and Appellant.*

Dated June 8, 1922. 08 3

Filed June 9, 1922. 0

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

BETWEEN  
BLANCHE LUDWIG,  
(PETITIONER),  
*Appellant.*  
and  
ARTHUR LUDWIG,  
ADAM J. LUDWIG,  
AND BRIDGET S.  
LUDWIG (DEFEND-  
ANTS),  
*Respondents.*

PETITION OF APPEAL.

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

The petition of Blanche Ludwig, appellant, respectfully shows that your petitioner finds herself  
20 aggrieved by a certain decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the first day of June, A. D. nineteen hundred and twenty-two, in that said decree recites and adjudges that the defendant, Arthur Ludwig, did not desert your petitioner and continue to wilfully, continuedly and obstinately desert your petitioner for a period of two years, as alleged in her petition for divorce, filed in said Court; and doth decree that the prayer  
30 of the petitioner that the marriage between her and the defendant be dissolved, be denied;

And further, in that the said decree recites and adjudges that the welfare of William K. Ludwig, son of the petitioner and the defendant Arthur Ludwig, will be best served by awarding his custody to the defendant Adam J. Ludwig, his grandfather, and doth decree that the said defendant Adam J. Ludwig have the custody, care and education of the said William K. Ludwig, the infant child of your petitioner and the said defendant Arthur Ludwig.

And your petitioner appeals from the parts of the said decree above set forth on the ground that the same are erroneous, for the said Chancellor should have recited and adjudged that the said defendant Arthur Ludwig did desert the petitioner and continue, wilfully, continuedly and obstinately to desert the petitioner for a period of two years, and should have decreed that the prayer of your petitioner that the marriage between her and the said defendant Arthur Ludwig might be dissolved, be granted; and for that the said Chancellor should have recited and adjudged that the welfare of said William K. Ludwig would not be best served by awarding his custody, care and education to the defendant Adam J. Ludwig, his grandfather, and should have decreed that the custody of the said William K. Ludwig be awarded to your petitioner, in whose custody he was at the time of the filing of said petition for divorce. 10

Your petitioner therefore prays that the parts of the said decree above set forth may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall be meet. 20

THEODORE STRONG,  
*Solicitor and of Counsel with Petitioner  
and Appellant.*

Dated June 8, 1922.

Filed October 6, 1922.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

BETWEEN  
BLANCHE LUDWIG,  
(PETITIONER),  
*Appellant.*  
and  
10 ARTHUR LUDWIG,  
ADAM J. LUDWIG,  
AND BRIDGET S.  
LUDWIG (DEFEND-  
ANTS),  
*Respondents.*

ANSWER TO PETITION OF APPEAL.

The answer of the respondents to the petition of appeal of the appellants.

20 These respondents admit it to be true that a certain decree was on June 1, 1922, made and entered in the Court of Chancery as in the petition of appeal is stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced.

These respondents are advised and believe that the said decree is agreeable to law and equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

R. E. & A. D. WATSON,

*Solicitors and of Counsel with Respondents.*

30 BETWEEN  
BLANCHE LUDWIG,  
*Petitioner,*  
and  
ARTHUR LUDWIG,  
*Defendant.*

EXHIBIT P1

New Brunswick, N. J., May 11, '18.

Mrs. Arthur Ludwig:

This is to notify you that unless you return Bill to Richmond street within one week I am going to report your Arthur to the Exemption or Draft Board for "lying." This, you know, is a very serious charge, as Arthur was exempted from the draft because he said he had two children to support. A serious lie, as Alberta is no relation to him and has a father living who can take care of her. And little Bill has a good home at his grandmother's for two years, and still has one. You nor Arthur have not supported Bill since the draft, and it will be a sad day when I notify "Uncle Sam" that you both have "lied."

Will also notify Alberta's principal of school that she has not been attending school regularly. The principal will be glad to look up this matter and report you to the State authorities. As I have been a teacher, I know this is very serious for you and Arthur.

Maybe you will not understand why I am so interested, but will say now that I have been just as much interested before in the case, when you put Arthur "behind the bars" and myself and husband had to lower ourselves to get him "out." One of the worst, lowering, beastly wrongs a wife can do her husband.

So you see why I can make it very unpleasant for you just one week from today.

Agnes E. Heckman.

EXHIBIT P2

New Brunswick, N. J., April 17, '19.

Dear Blanche:

I received your registered letter this morning and the box of Easter novelties are on the way for Buster. We were sorry to learn that Buster is having trouble with his eyes. I told Arthur I received the letter and you would like some money for clothes for the child, and he refused to give it to me to send. If you are having trouble in

taking care of Buster we are willing to have him come to make his home here again, and if you write either my sister or myself we will call for him and dress him up to come home.

We hope he will come here, for we expect Bennie home soon, and every letter he writes he states he hopes Bill will be here when he arrives back from France.

Hoping to hear from you soon,

Yours truly,

C. M. Ludwig.

EXHIBIT P3

Rochester, N. Y., August 3, 1920.

Attorney Theodore Strong:

My husband returned to New Brunswick within one or two days after leaving me. I heard that he was in Newark, N. J., for a month or so, but was in New Brunswick the rest of the time.

Rochester is in Monroe County.

I have at all times considered myself a resident of New Brunswick, as I have lived there since I was five years old until I had trouble with my husband.

I can't remember the clergyman's full name, but his last name was Qual, and I was married at his home on Townsend street. He was in the German Church that was on the corner of George and Albany streets.

I was married December 20, 1912. William was born June 21, 1913.

I have one child.

We lived all of the time in New Brunswick; only about three months before my husband left me we were in Rochester, N. Y.

I took William to Rochester about the 10th of May, 1918. My husband came here about two weeks later; he stayed until August 2, 1918.

Sincerely,

Blanche Ludwig.

EXHIBIT P4

Certified copy of Marriage License and Certificate of Arthur Ludwig and Blanche Chrysler, New Brunswick, N. J., December 20, 1912.

State of New Jersey, Bureau of Vital Statistics. Certificate and Record of Marriage:

Place of marriage, New Brunswick, N. J. Date of marriage, December 20, 1912.

Full name of husband, Arthur Ludwig; residence, 14 Richmond street, New Brunswick, N. J.; age, 21 years; color, white; single; number of marriage, 1; occupation, furniture worker; birthplace, New Brunswick, N. J.; father's name, Adam Ludwig; mother's maiden name, Mary unknown.

Maiden name of wife, Blanche Chrysler; residence, 54 Huntington street, New Brunswick, N. J.; age, 19 years; color, white; single; number of marriage, 1; birthplace, Rochester, N. Y.; father's name, Elmer Chrysler; mother's maiden name, Minnie Briggs.

Witnesses—George C. Holzapfel, Mrs. George C. Holzapfel; residence of witnesses, New Brunswick.

Signature of person or officer of society officiating and P. O. address—Rev. M. H. Qual, 261 Townsend street.

No. of License, 961, State of New Jersey, County of Middlesex, City of New Brunswick.

This is to Certify, That any person, religious society, institution or organization authorized by law to perform marriage ceremonies within the state of New Jersey to whom this may come, he or they, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between Arthur Ludwig, of New Brunswick, in the County of Middlesex and State of New Jersey, and Blanche Chrysler, of New Brunswick, in the County of Middlesex and State of New Jersey, and to certify the same to be the said parties, or either of them, under his hand and seal in his ministerial or official capacity.

In Testimony Whereof, I have hereunto set my hand

and affixed the seal of said town, township or city at New Brunswick, this eighteenth day of December, nineteen hundred and twelve.

Elmer J. McMurtry, City Clerk.

Department of Health of the State of New Jersey,  
Bureau of Vital Statistics.

I, Jacob C. Price, Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby certify that the foregoing and annexed is a true copy of a certain Certificate of Marriage and Marriage License, as taken from and compared with the original now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Official Seal of said Bureau, at Trenton, this twelfth day of April, A. D. 1922.

Jacob C. Price, M. D., Medical Superintendent.

Attest:

David S. Smith, State Registrar.

Petition  
Answer  
Replica  
Amendm  
Testimon  
Blanche L  
Blanche L  
Blanche L  
Blanche L  
Charles W  
Alberta C  
Alberta C  
Dora Wei  
Dora Wei  
Ella L. L  
Ella L. L  
Ella L. L  
Dora Wei  
Alberta C  
Arthur Lu  
Mary Lud  
William E  
Arthur Lu  
Arthur Lu  
Arthur Lu  
Mary Lud  
Mary Lud  
Katherine  
Agnes E. F  
Bridget Lu  
Bridget Lu  
Margaret  
Margaret F  
William E  
William E  
Blanche Lu  
Blanche Lu  
Dora Weix  
The Court  
Charles Tay

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# New Jersey Court of Errors and Appeals

Between,

BLANCHE LUDWIG, (Petitioner),  
*Appellant,*  
*and*  
ARTHUR LUDWIG, ADAM J. LUDWIG  
AND BRIDGET S. LUDWIG (Defend-  
ants),  
*Respondents.*

On Appeal from  
Chancery.

## BRIEF FOR PETITIONER-APPELLANT

The decree appealed from denies petitioner and her husband, the sole original defendant, divorces for desertion, and awards the custody of the only child, William, to his grandfather, Adam J. Ludwig, a respondent.

The date and place of marriage were December 20, 1912, at New Brunswick, New Jersey, and the date and place of the desertion complained of by petitioner, Rochester, New York, August 2, 1918.

Petitioner was seduced under the age of consent and William was born on June 21, 1913, about six months after a marriage which the husband had sought to evade (p. 27, l. 16, etc.)

They began to live together about two months after the marriage (p. 11, l. 21.) The usual happened and practically from the beginning of their married life the husband began the abuse complained of. He frequently called her a whore (p. 11, l. 33); charged that he was not the father of the child and warning her not to leave it with him; habitually beat and kicked her and threatened to "fix" and "get" her; broke her teeth with his fist so that their neighbors had to be filed even with them (p. 19, l. 34; p. 19, l. 28); gashed her hand with a bottle (p. 19, l. 2, etc.), of which she still bears the scar.

He was arrested for beating her (p. 12, l. 18); he

drank (p. 13, l. 16) and even after this suit was begun on one occasion it took several policemen to arrest him when frenzied with liquor and covered with blood in consequence of an accident due to his condition (p. 124, l. 13 etc., 27, etc.)

She left him several times because of his cruelty, and on one occasion about two and one-half years after the child was born, went to Rochester, New York, where her aunt, Mrs. Weixelbaum, lived, taking her child with her, and where she supported herself and child by housework (p. 13) until being sick and not able to earn sufficient money she temporarily placed the child with the family of her husband. Upon the promise of her husband to provide a home she returned to New Brunswick to live with him (p. 15, l. 8, etc.), but in a few weeks he resumed his cruel treatment of her. The wife was anxious for the child and the husband did not want him (p. 15, l. 20, etc.). Sometimes his family would not let the child come to her and they taught the child to call her Blanche (p. 15, l. 30, etc.).

Petitioner endured this as long as she could and then in May, 1918, she stated to her husband (p. 16, l. 20), that it was best for them to go out of town and see if they could not get along. At first he demurred (p. 16, l. 30), but finally agreed to it. She again went to Rochester to her aunt and he followed in about two weeks (p. 17, last line). The experiment was a failure as he resumed his cruel treatment (p. 18, l. 14, etc.). He moreover taught the child to tell his mother to go to hell (p. 21, l. 8, etc.), and repeated his usual slander of the parentage of the child and the injunction not to leave it with him (p. 21, l. 10;) though he would add that he would take the child because his people wanted him (p. 21, l. 18) and that they would pay him plenty of money for him (l. 22). There was trouble almost every day (p. 21, l. 27, etc.).

On August 2, 1918, the date of the desertion, he called her the usual names (p. 20, l. 8) and began hitting her (l. 10); she was crying and her sister brought a policeman (l. 18); and he wanted to take Billy from her (l. 24, etc.), but the policeman forbade it and quieted

matters. After the policeman left she went out to do some shopping and when she returned he was not there and had taken some of her things (p. 21, l. 32, etc.). Later on that night he returned and she was afraid to open the door and he said he would "fix" her and "get" her if she did not let him in (p. 21, l. 35, etc.). She was afraid to open the door because he always had a pistol (she thought she saw it), "and he had such an awful temper" (p. 21, bottom; p. 22, l. 21). He had often threatened to "fix" her and blow her brains out (p. 22, l. 3, etc.). Then he tried to get in the window (p. 23, l. 6), but left when she started to again call the police (p. 22, bottom), and she never saw him again or got any letters from him and he never came to see her nor sent her anything for the support of herself or the child (p. 22, l. 24, etc.).

And now for the first time since her seduction happiness came into the life of this young mother. She was freed from her husband's abuse and his family's contempt. She lived with her aunt, earned \$18.00 to \$20.00 a week in a collar factory, boarded Billy in happy surroundings with a friend of the family, a Mrs. Lauer, three blocks away, where she saw him daily.

All this appears by the testimony of Charles Taylor, agent for the Rochester Society for the Prevention of Cruelty to Children (p. 143, etc.), which had been notified by the maiden sisters of the husband for the purpose of securing the child, that petitioner was not a fit person to be entrusted with him. It will be observed that this Society upon investigation found these charges absolutely unfounded and that on the contrary petitioner was a person of good character, that the child was in happy surroundings with the best of care and being suitably educated in the public schools.

From August 2, 1918, to the hearing before the Vice Chancellor, April 11, 1922, not one of the respondents ever sought to see mother or child, or ask the return of either mother or child, or communicate with mother or child, or contribute to any extent to the support of either mother or child or exhibit the slightest interest in either mother or child (though the husband seeking to support

his divorce application, claimed to have procured his sister to write to petitioner).

The maiden sisters, however, did exhibit an interest in the child and one of them sought, by the offer of money, to induce Mrs. Lauer to give the child surreptitiously to her, but the offer was declined.

Such was the situation when this case came on for hearing. To that hearing the petitioner, unordered and of her own free will, brought her child that the court might see the results of her stewardship, that he was well, happy, well cared for and fond of her. She was never allowed to take him back. It happened in this wise:

The Vice Chancellor, whose conclusions begin at page 135, denied the petitions of both parties and then, (p. 141) feeling bound by the statute of 1921, hereinafter discussed, impounded the child in the custody of the father with the physical possession in the mother, and forbade its removal from New Jersey. The reason for awarding the custody to the father was, as stated by the court, to constitute the removal of the child from the state, a crime for which the mother could be extradited and punished.

The deplorable consequence of this order was that at night fall, in a strange city with about \$3.00 (p. 14, l. 1) in her possession and a return ticket to Rochester, where was her only means of earning a living, this mother was forced to give up her child to the very persons who had abused and traduced her and made her existence unhappy from marriage to desertion.

The dumb misery caused by this unexpected order of the court at the conclusion of a cause wherein her hopes of matrimonial freedom and permanent happiness with her child were high, needs no description here. She and her husband could no more unite than oil and water. She returned to Rochester that night.

#### FIRST POINT.

A DIVORCE SHOULD HAVE BEEN GRANTED PETITIONER.

It is unnecessary to take up the space of this charity

brief, limited by court order to ten pages, with citations to show what constitutes constructive desertion. The Compiled Statutes notes and Biddle on Divorce abound with such citations, to say nothing of Cyc and Corpus Juris.

If the petitioner's testimony is true there is no doubt that she is entitled to her divorce. There is every reason to believe her. Calling their wives whores and reflecting on the paternity of their premature off-spring is a notorious pastime of husbands of unwilling marriages. Can physical violence be greater cruelty than such oral abuse? If so it was present here in mayhem, in kickings, in beatings and threats of her life. Two authorities are sufficient. *Abele v. Abele*, 62 Equity, 644, and *Csanyi v. Csanyi*, 115 Atlantic, 76, both of which were decided favorably to the wife on strikingly similar but milder facts.

If petitioner was, as the court believed (p. 164, 1. 22) a resident of Rochester, the husband was certainly a resident of New Jersey more than two years before suit begun. Is it believable that any good purpose would be served by attempting to reunite this husband and wife? The marriage was not founded in love on his part, but was a reluctant consequence of illicit passion, and they did not begin to live together as husband and wife until about two months after marriage (p. 11, 1. 21), when she was sixteen years of age.

It was not merely constructive desertion but actual desertion. A policeman had been called in to restrain him that same day and she might well dread his resentment. He threatened to shoot her and she was undoubtedly right in thinking she saw the pistol in his pocket (p. 38). She was justified in refusing him admittance. He was not justified in deliberately walking out of her life (p. 38

## SECOND POINT

THE CHILD SHOULD HAVE BEEN LEFT IN THE CUSTODY OF THE PETITIONER.

At the conclusion of the testimony June 1, the Vice Chancellor (p. 163, 1. 30) made the respondents, Adam

J. Ludwig and Bridget S. Ludwig, parents of the husband, defendants (orders page 168) and awarded the custody of the child to the respondent, Adam J. Ludwig (Decree page 169).

## 1

*The Vice Chancellor lacked jurisdiction over the child.*

If his conclusion that petitioner was a resident of Rochester (p. 164, 1. 22) is correct the child never came under his control. The testimony on that subject is found pp. 43, 44, 45, 46, 47, 48.

The petition (pp. 1, 2) contains no prayer for the child's custody nor does the reply to counterclaim (pp. 6, 8).

Power v. Power, 65 Equity, 93, is not in point because there the wife prayed the custody of the children (p. 94). In this case the dismissal of the wife's petition terminated any possible incidental control in the court over the child, but the husband's petition was *also* dismissed *in toto* and the custody of the child awarded not to him but to the grandfather, and that solely on the court's own motion. The husband prayed custody of the child, the wife denied his fitness and the court found he was unfit (p. 164, top; p. 151, lines 7 etc., 30 etc.).

There was therefore no question of the child's custody before the court, and the residence of the wife was in fact unimportant.

## 2

*The Act of 1921, page 205, sec. 10, does not apply.*

The difficulty as to the child's custody arose because the Vice Chancellor felt bound by this enactment which is as follows:

"The court may make the necessary orders and decrees from time to time in relation to such custody or possession, but the father, as such, shall not have preference over the mother as to the award of custody of such minor child if the best interests of the child otherwise may be protected, and in no case shall the court having jurisdiction in this State over the person and custody of

any minor permit such child to be removed from this State where the mother or father resides in the State of New Jersey and is the suitable person who should have the custody of such child for its best welfare."

## a.

The Court was without jurisdiction for the reason stated, *supra*.

## b.

The Court decided that the husband was not the suitable person as stated *supra*.

## c.

The act is intended to protect a child actually residing in New Jersey and not one having a fictional residence following the technical legal residence of a parent. It means that a child living in New Jersey shall not be *removed* where a "suitable" parent is also living here. Such was the interpretation of the Court (p. 141, l. 18). "The statute has some reference to the preference for the parent who lives in New Jersey." It never was intended to apply to a child within the State for a few hours going to, and in attendance at Court, as an "exhibit" and in fact as a witness. (He identified his mother, but I cannot refer to the page at this instant).

In fact it is the policy of the court to protect witnesses going to and from the Court and while in attendance.

This is written very hurriedly and without the opportunity of the fullest examination, but the act of which it is a part, is P. L. 1902, page 259, "An act concerning minors, their adoption, custody and maintenance (Revision of 1902)," and special proceedings for these purposes in the Court of Chancery are provided for. The words "separated or living separate" indicates that actual and not fictional residences are intended. The act was never intended to have any application to proceedings of this nature.

The act of 1902, page 263, section 7, does not apply.

At a later date the Vice Chancellor cited this act (page 164 top), as a bar to the child's removal from the State. It reads as follows:

"When the court of chancery has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order; the court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this and the preceding sections."

The inhibition against removal from this state refers to children dwelling within the state. It refers to children who are "natives" or "have resided five years within its limits." It is intended to apply to children who have always lived in this state, or who have lived for five years last past in this state. It refers to children actually living in New Jersey. It is the sense and not the letter of the statute which must control.

For instance, a child born in New York and removed to New Jersey, who resided here five years, returned to New York and down to the present time has resided in New York, is not intended by this act, although he is within its lettering.

Moreover, is, as the court found (p. 164, l. 24), the petitioner's residence was in Rochester, that, too, was the residence of the child, and it was not ipso facto impounded by this section of the statute merely by accompanying its mother to Court. Furthermore "jurisdiction over the custody and maintenance" refers to children who have actually and not theoretically been wards of the court.

The Vice Chancellor, at page 164, line 13, expresses a doubt as to whether the child is of the "suitable age" referred to in the statute, and states that he is "possibly a little young for his years," and then states (p. 164, 1, 18), that the child expressed a desire to remain at his grandparents. It must be remembered, however, that the child had then been three weeks in the exclusive possession of the grandfather and the other members of the Ludwig family at their joint residence, and with his reappearance in court always in view, had doubtless been so treated that its plastic mind in those three weeks had turned from the mother who bore it and protected it with a devotion seldom equalled, to a grandfather of whom it could have had no recollection.

If there is any doubt that the mother was justified in seeking to keep her child from its father and his people, read her testimony (page 149, l. 7), three weeks after the night she was compelled to leave him with the Ludwigs.

Q. Did you see Billy in the Court room this morning?

A. I did.

Q. Did you attempt to speak to him?

A. I did; he came part way to speak to me and he said "I can't talk to you; I have got to sit in my seat."

and on cross-examination she was asked:

Q. Didn't I see you and your son talking together on that second and third chair?

A. Yes.

Q. For two or three minutes?

A. I don't know; he kept pulling away from me.

Q. Did you have your arm around him?

A. Yes; I kissed him.

There was no contradiction of this testimony.

In three weeks they had taught him to tell his mother that he could not talk to her and to pull away from her

when she sought to talk to him, and to tell the Vice Chancellor that he wished to remain with his grandfather.

Is such treatment well calculated to keep in the straight and narrow path a young woman who, it may well be assumed, had been kept in that straight and narrow path by the love of this same child for all the years succeeding her childhood's shame?

In *Dixon v. Dixon*, 71 E. 281, decided in 1906, actual residence was interpreted to be what the statute intended and no difficulty was found in permitting the children to depart New Jersey. Both parties apparently were legal residents of New Jersey with winter residences in New York City (p. 282) and the court said: "While in New York I think the children should be taken by their nurses to the home of their father's parents for such reasonable time during the morning or afternoon of one or two days in each week as may accord with the father's engagements. While the children are in Madison (New Jersey) Mr. Dixon should be permitted to visit his children once a week at a time mutually convenient and at some place—either the mother's home or elsewhere—that the parties may agree upon."

It appears from another decision between these parties, *Dixon v. Dixon*, 76 E. 264, that these children were ordered to be sent to visit their father two months in each year at Pittsfield, Massachusetts and one month during the winter at his home in New York City; and that the father was living in New York and that the wife, who was awarded the custody of the children, was living separate from him in New Jersey.

A hurried examination of the various phases of the *Dixon* litigation, including the decision 72 E. 588, indicates that so far from the act of 1902 holding any difficulties for the courts, the children were shifted from state to state in frequent changes.

The courage, persistence and resourcefulness with which the parents fought would indicate that nothing was being consented to. Probably these removals from the State are accounted for by the clause in the section under

consideration "unless the court upon cause shown, shall otherwise order."

That same clause permits this court, if it deems cause to have been shown in this suit, to permit Billy to be returned to his mother.

It is respectfully submitted that his absence is a hardship on the mother which, if the court agrees with her contention, it might terminate earlier than in the usual course of decision.

The endeavor has been made to avoid exaggerated statement in this brief and it is believed that no exaggeration is indulged in when it is stated that few cases have come before this court where the decision appealed from has worked greater suffering.

## 4

THE COURT WAS WITHOUT AUTHORITY TO MAKE ADAM J. LUDWIG THE CUSTODIAN, A PARTY DEFENDANT.

This follows from what has been said before and from the additional fact that he was not mentioned in the pleadings and there was no opportunity afforded to properly ascertain whether he was a fit person to have custody of the child. To be sure he was cross-examined, but it was without notice. Moreover, that cross-examination was closed to petitioner by the ruling of the Court (p. 161, 1. 26; p. 162, 1. 3, 6).

In reviewing the Dixon litigation, *supra*. in 76 E. 369, the court said: "It was held in *Reynolds v. Stockton*, 140 U. S., 254, that a judgment not responsive to the pleadings is a nullity in so far as it is not responsive, and in *Munday v. Vail*, 34 N. J. Law (5 Vr.) 418, that a decree entirely aside from the issue raised in the record is invalid and to be treated as void, even in a collateral proceeding."

See also 16 Stew., 211. 140 U. S. 240.

The subject has by no means been exhausted but the space limited by this court's order perhaps has been. If

so a bill will be rendered the husband for printing only ten pages of the brief, and thereby the sense of the order will be conformed to.

In conclusion it may be said that the welfare of the child has not been promoted by the decree appealed from. He is in a crowded household, consisting of the grandparents, the father and two or three or more others of the family and possibly some outsiders, not one of whom can be expected to feel the same interest in the child as the mother, who battled for him all these unhappy years.

The conditions which surrounded him at Rochester to say the least, have not been improved upon and it is submitted that the present conditions are not so good. But assuming the conditions to be equal there is something else to be considered and that is the parental claim. The father was eliminated as an undesirable person by court decree and yet he participates in the actual custody of the child.

The character of the mother, however, was in so wise impeached and the court wished her to have the custody of the child restricted to New Jersey.

Therefore, as between the father and mother, the custody belongs to the mother. The remaining question is where does it belong as between the mother and the grandfather. What statute gives the grandfather any claim upon the child? There have been numerous legislative enactments which have improved the position of the mother, until now the rights of the father are not superior. A grandfather never had any. As between the mother and the grandfather it is not at all a question of what is best for the child. A parent has well defined rights which cannot be taken away by one offering it superior surroundings. Were that not so the world's wealthiest man would have an indefeasible title to any child he might covet.

It is submitted that petitioner's prayer for divorce should be granted and her child returned to her.

THEODORE STRONG,  
Solicitor and of Counsel for Petitioner-Appellant.

# New Jersey Court of Errors and Appeals

BLANCHE LUDWIG,  
*(Petitioner)-Appellant,*  
vs.  
ARTHUR LUDWIG, ADAM J. LUDWIG  
AND BRIDGET S. LUDWIG,  
*(Defendants)-Respondents.*

On Appeal from  
Chancery.

Brief for Defend-  
ants-Respondents.

Arthur Ludwig and Blanche Ludwig were married on December 20, 1912, at New Brunswick, New Jersey, and lived there, except for an interval between February, 1916, and December 1916, until May, 1918. Their marriage was not a happy one. Blanche Ludwig in her testimony blamed him for the unhappiness, while he charged it to her, saying that she did not stay at home nights, and did not properly prepare the meals (Pg.83, li.5). He was employed as a truck driver and received a salary of nine dollars per week at the time of his marriage. In 1918 his salary was \$22 per week (Pg.82, li.30). He was never out of employment (Pg.28, li.28), and was temperate in the use of liquor (Pg.28, li.34).

The parties had one child, William, referred to in the testimony as "Billy." He was born in June, 1913. He spent much of his time at the home of his grand-parents, Adam J. Ludwig and Bridget S. Ludwig, two of the defendants-respondents (Pg.29, li.6). In February, 1916, Blanche Ludwig went to Rochester, New York, and stayed there until December, 1916, with an aunt, Mrs. Weixelbaum (Pg.29, li.33; pg.31, li.12).

In May, 1916, Blanche Ludwig wrote to Mae Ludwig (erroneously referred to in the State of the Case as "Maud" Ludwig), and asked her to come to Rochester for Billy. In her letter she said: "I know you will love

him and he will be happy with you." (Pg.30, li.10). Miss Ludwig went to Rochester for Billy, and he lived with his grand-parents until May, 1918. Blanche Ludwig returned to New Brunswick in December, 1916, and stayed there until May, 1918, when she went back to Rochester, taking Billy with her. Arthur Ludwig followed a few weeks later. Between December, 1916, and May, 1918, Arthur Ludwig and Blanche Ludwig lived in furnished rooms, not keeping house (Pg.31, li.22). They lived at Rochester from May, 1918, until August 2, 1918, with Mrs. Weixelbaum, who kept a rooming house. Arthur Ludwig worked in factories during that time, while Blanche Ludwig and Mrs. Weixelbaum worked as waitresses in a restaurant. Blanche Ludwig's work kept her out from late in the afternoon until after midnight (Pg.36, li.30; pg.88, li.35). Arthur Ludwig objected to her working, desiring that she should live on his income (Pg.88, li. ).

Husband and wife separated on August 2, 1918 at Rochester, New York. Blanche Ludwig's version of the causes leading to the separation is set up in her brief. His version of it is that he was unable to obtain steady work in Rochester, New York, and that he objected to her working nights, and desired to return to New Jersey, which she refused to do (Pgs. 96 & 97). They quarrelled about these matters on August 2, 1918, and upon his return to their rooms he found the door locked and his baggage packed and on the porch. He tried to get in but was refused admittance (Pg.89, li.30). He returned to New Jersey, living first for a short time with his sister, Kathryn Patterson, at Irvington, New Jersey, and later at New Brunswick with his parents. While he was living with his sister, Kathryn Patterson, she wrote one letter to Blanche Ludwig, at his request, and he wrote one, requesting her to return to him (Pgs. 92, 93, 115). Blanche Ludwig admitted the receipt of letters in this connection (Pg. 39, li.16).

During the time of the separation, Blanche Ludwig felt no ill will toward Arthur Ludwig's people, upon the contrary she corresponded with them in a friendly man-

ner. In September, 1920, Mae Ludwig went to Rochester to see Blanche Ludwig, and endeavor to induce her to permit Billy to come to live with Arthur Ludwig and his people at New Brunswick (Pg.30, li.8; pg.35, li.23; pg. 40, li. 20). She never made any complaints of Arthur's alleged ill-treatment to any of his people, nor did she ever go to her own father or brother, who lived nearby. She never left Arthur Ludwig as a result of ill-treatment, and there is no evidence whatever that he ever ill-treated the child. Although they lived in various rooming houses and other places in New Brunswick, there was no evidence of Arthur Ludwig's ill-treatment of his wife from other roomers or neighbors. On the contrary, the only person of this class called was Mrs. Hummell, referred to by Alberta Chrysler, sister of Blanche Ludwig (Pg.57, li.6), who was called by the defendant. Mrs. Hummell testified that she once went to the rooms of the parties at a time when they were quarrelling, and that Blanche Ludwig made no complaint to her of cruel treatment by her husband, nor did she see any (Pgs. 121, 122 & 123).

In February, 1920, Arthur Ludwig was taken seriously ill. His life was despaired of. Mae Ludwig wrote to Blanche Ludwig and asked her to come to see Arthur and bring Billy with her (Pg.110, li.20). Blanche Ludwig replied as follows:

"I received your letter this morning. Am very glad to know that Arthur is better. Billy is well but I have only had him out a few minutes each day, as I am afraid he might take cold. Now, May, I don't know why you think that I would come back to live with Arthur. He is nothing more than a stranger to me as far as any love that I have for him." (Pg.128, li.8). Blanche Ludwig testified that after August 2, 1918, she would not have gone back to him (Pg.128, li.40).

The Appellant did not live with her son at Rochester, New York. She lived with her aunt, Mrs. Weixelbaum, and boarded Billy with Ella L. Lauer. Blanche Ludwig visited Billy three or four times a week and on Sunday

afternoon (Pg.71, li. 12; pg.151, li.35). Arthur Ludwig requested his wife to return and said that he was perfectly willing to take her back (Pg.150, li.34). Billy, who was nine years old, expressed his desire to the Vice Chancellor to remain with his grand-father, Adam J. Ludwig (Pg.164, li.25).

## I.

### THE DECREE DENYING THE PETITION FOR DIVORCE WAS PROPER.

Counsel for the Appellant presents the unsoundness in his argument under the first point, when he says in the first sentence of the second paragraph on page 5, that there is no doubt but that she is entitled to her divorce, "if the petitioner's testimony is true." The difficulty with his argument is that the petitioner's evidence as to the alleged cruelty on the part of her husband, is virtually without corroboration, and such little corroboration as there is, is untrustworthy, and insufficient to show the extreme cruelty required by our law. Viewed as a constructive desertion, there were but two witnesses who even attempted to corroborate the petitioner's statements that her husband had habitually beaten her, applied humiliating epithets to her, and threatened her with physical violence. Her sister, Alberta Chrysler, in her direct examination testified to such conduct, but as to the physical violence upon cross-examination she could remember only two occasions, dates not fixed, when that happened (Pg.56, li.25).

Dora Weixelbaum, in whose house the parties boarded between May 18th, and August 3, 1918, attempted to corroborate the petitioner's statement that Arthur Ludwig struck her on August 2nd, and in her direct testimony so testified. Upon cross-examination she admitted that she did not know whether Arthur Ludwig struck his wife or not on that day (Pg.66, li.8).

The case is absolutely barren of any corroboration of Blanche Ludwig's testimony of brutal treatment on the

part of her husband between May 18th and August 2, 1918, the period immediately preceding the separation. Blanche Ludwig testified to only two specific acts of cruelty, during her married life, one when her tooth was injured, and one when she was cut on the hand. Arthur Ludwig denied point blank the first, and explained the second as an accident (Pg.83, li.25). The petitioner did not fix the time of these two specific occasions, but the general inference from her testimony, and from that of Charles W. Sedam (Pg.48), is that both of these alleged events occurred, if at all, early in their married life.

The petitioner's allegations of cruelty were all denied absolutely by the defendant. Her testimony, except for the two instances referred to, specified no times or places even generally. She made no complaints to his people; she never left him because of brutal treatment, and she never sought aid from her father or brother, who resided near-by, nor from neighbors or roomers in the rooming house in which they lived. If her testimony of brutal treatment of her by her husband for a long period of time had been true, there should have been available to her much corroborative evidence from neighbors and friends. No such evidence was offered or adduced.

The case is absolutely devoid of corroboration of any conduct on the part of her husband endangering the safety of Blanche Ludwig or her health.

*Taylor vs. Taylor, 73 N. J., Eq. 745.*

The untrustworthiness of the appellant's testimony is illustrated by her testimony that Arthur Ludwig carried a pistol with which he threatened her (Pg.21, li.39). On cross-examination (Pg.37, li.30), she testified as follows:

“Q. And I think you said he always carried a pistol?

A. He had it in his baggage.

Q. Did he have it in his baggage or in his pocket?

A. In his pocket when he came back.

Q. You didn't mean to imply that he always carried a pistol in his pocket?

A. No.

Q. Well, what did you mean?

A. I mean, he always had one in his possession.

Q. And you don't know, as a matter of fact, that he had that pistol on him when he came back that afternoon?

A. Yes, sir.

Q. How do you know?

A. The way his coat pocket looked.

Q. How did it look?

A. You could almost see it in his pocket.

Q. You mean he carried it in his side coat pocket?

A. Yes.

Q. Suppose he had a pair of gloves?

A. I don't think he did.

Q. Or handkerchief, or a bunch of keys, or a knife?

A. It could have been that, but he wouldn't say he would blow my brains out, would he?

Q. Yes, but you say that at the time he told you he would blow your brains out if you didn't open the door, he was on the other side of the door?

A. Yes.

Q. Then, how could you see this bulge in his pocket?

A. It was a glass door.

Q. Was there a curtain to it?

A. A fine curtain, you can see a person inside but not out."

Counsel refers to the case of *Abele vs. Abele*, 62 N. J. Eq. page 644. The distinction between that case and this is that in the former there was ample corroborative evidence which is referred to at page 647 of the reports.

There is the same distinction between the case at bar and the case of *Czanyi vs. Czanyi*, 115 Atl. Rep. 76, also cited by Counsel under this point.

A significant circumstance is that the petition does not allege a constructive desertion, but alleges an actual desertion (Pg. 1), indicating that the facts upon which the

appellant endeavors to make out a case of constructive desertion are an after-thought.

The appellant's case is equally weak, considered as one of actual desertion. It is clear from the testimony that the wife desired to live in Rochester, while the husband desired to return to New Brunswick. He did not have steady employment there, his wife worked at night, and it was his legal right to choose the home. Even assuming the contrary, the desertion was not obstinate, in that it was not against her will. In February, 1920, she wrote the letter hereinbefore referred to, in which she stated that she would not come back and live with Arthur who was nothing more than a stranger to her. Upon cross-examination she testified as follows: (Pg.128, li.35).

*Q.* I am not asking you that; I am asking you about living with your husband?

*A.* At that time I would, I think; he didn't desert me until afterwards, you know.

*Q.* How about after he deserted you, as you say?

*A.* After he deserted me I wouldn't have gone back to him.

*Q.* After he left you in Rochester, you would not have gone back with him there?

*A.* No, sir.

The charge of actual desertion is not seriously argued by Counsel upon the briefs, and it is plain that there is nothing in the testimony upon which a persuasive argument could be based.

## II.

### THE COURT EXERCISED SOUND DISCRETION IN AWARDING THE CUSTODY OF THE CHILD.

The appellant argues first that the Court lacks jurisdiction because the petition contained no prayer for the child's custody. That is true, but the counter-claim in Paragraph 4 alleged that petitioner was unfit to have the custody of the child, and Paragraph 7 prayed that its

custody be awarded to him. In the answer to the counter-claim the appellant joined issue as to Paragraph 4, and prayed that the counter-claim be dismissed.

Counsel argues that the "Husband's petition was also dismissed in toto." Such is not the fact. The Court denied the husband's petition for divorce, and in so doing expressly reserved the question of the determination of the custody of the child (Pg.141, li.7). The final decree adjudged, "that the prayer of the defendant, Arthur Ludwig that the marriage between him and the said petitioner may be dissolved, be denied," and proceeded to award the custody of the child to Adam J. Ludwig.

*Power vs. Power, 65 Eq. 93, is directly in point.*

True it is that in the Power case the wife, the petitioner, prayed for the custody of the children, but what legal difference can there be whether the issue is raised by the petition or by the counter-claim? Moreover, the case was tried on that theory and counsel for the petitioner first introduced it. At page 100 the petitioner attempted to show that the defendant, Arthur Ludwig, was intoxicated in August, 1921, after the separation. The following colloquy took place:

*Q.* Were you drunk in August last?

*The Court:* 1921?

*Mr. Strong:* Yes, sir.

*Mr. Watson:* That is objected to as not material.

*The Court:* On account of the custody of the child I think it might be material.

*Mr. Watson:* I hadn't thought of that; I will withdraw my objection.

*A.* Not as I remember it; I don't think I was drunk.

In the case of Baird vs. Baird, 19 Eq. pg. 481, an issue as to the permanent custody of certain children was raised by habeas corpus proceedings and decided under the Chancellor's general jurisdiction as *Parens Patriae*. At page 486 this Court used the following language:

"Nor does it seem to me that there is any weight in the suggestion that, looking on these proceedings as appertaining to the general jurisdiction of chancery,

the habeas corpus was not the proper process to bring the parties into court. It is certainly sufficient to say that the parties interested have actually appeared and been heard upon the merits, and that consequently, upon obvious principles, no exception on this ground can be taken. The decision which has been rendered must be conclusive on these litigants, as there can be no doubt that all courts and magistrates except an appellate tribunal, would be bound to regard as *res adjudicata* the right of the mother, by force of this decree, to the custody of these infants."

It is next argued that Section 7 and Section 10, as amended, of Chapter 92 of the Laws of 1902 do not apply. Section 7 is found at page 2809 of the Compiled Statutes, and Section 10, as amended, is found at page 205 of the laws of 1921.

Section 7 is quoted at page 28 of Appellant's brief. Irrespective of this Statute, the Chancellor had ample jurisdiction, under equity's general jurisdiction hereinafter referred to, but no reason appears why the Statute does not apply. The parents of this child were living separate; the child was a native of the State; he was nine years old, and preferred to remain here (Pg.164, li.16); the father desired the child to remain here, and no cause was shown for an order otherwise, as appears by the conclusions of the Court.

In the case of *Francisco vs. Francisco*, 73 N. J. Eq., page 313, a child nine years of age was held of suitable age to signify his assent or dissent under this Statute.

The contest over the custody of the child was in fact one between Mrs. Lauer and the grand-parents. As hereinbefore noted, Blanche Ludwig's care of her child consisted of three or four short visits a week. Although she earned \$20 per week, her love for her child was not sufficiently strong to move her to live in such a manner that her child would have her constant society and care outside of her working hours. She preferred to live with her aunt, Mrs. Weixelbaum. The care, rearing and training of the child therefore devolved upon Mrs. Lauer.

On this point the appellant was guilty of bad faith in

her statements to the Court. At the first hearing (Pg.23, li.11) she stated that she intended to return to New Jersey. The hearing was concluded on April 13th, when it was continued until May 2nd (Pg. 141). Arthur Ludwig was directed to pay to her \$15 for the support of the child during that period, which was in fact then and there paid. Although the Court did not expressly say so, it is Counsel's deduction that the continuance was directed in order that the petitioner, Blanche Ludwig, might have opportunity to carry out her expressed intention. Instead of making such an arrangement, the appellant left her child with the grand-parents and returned to Rochester (Pg. 146). It is idle for Counsel to argue that she was actuated by her lack of financial resources and the "dumb misery caused by this unexpected order." She had the \$15 paid to her by the Court's order, and she had a father and brother residing in or near New Brunswick. On May 2nd, further testimony was taken when the Court dwelt upon the appellant's failure to find some place where the child could live with her, and her desire to live with her aunt, to which the welfare of the child was entirely subordinated. It was also pointed out to the appellant that she showed bad faith in her representation to the Court at a prior hearing (Pg. 150-151) that she intended to take up her residence in New Jersey (Pg. 150-151), the hearing was continued again until June 1st, and Arthur Ludwig paid to his wife \$35 at the suggestion of the Court (Pg. 152). The appellant then had ample opportunity either to take up her residence in New Jersey, or to arrange a more suitable home for Billy at Rochester. She did neither. On June 2nd, Adam J. Ludwig and Bridget S. Ludwig, the grand-parents, were admitted as parties defendant. Adam J. Ludwig was examined and cross-examined, and a decree was made awarding the custody of the child to him with a right of visitation to the mother, and requiring the father to pay \$7.50 weekly for the support of the child.

There can be no doubt that the welfare of the child is better served by living with his grand-parents, uncles and aunts, than with Mrs. Lauer, who, however estimable,

cannot have the same love and affection for him that his blood relatives have. There was, therefore, no cause shown for the removal of the child from the State of New Jersey under the Statute of 1902.

The litigation in *Dixon vs. Dixon*, rested upon a very different state of facts. In that case there was ample cause for removing the children from the State. There was no question of the fitness of the mother, in whose custody they were, nor of the home which she provided for them, and both parents resided, at certain times of the year, outside the State.

It is next argued that the Court was without authority to make Adam J. Ludwig a party defendant, and the question is asked: "What Statute gives the grandfather any claim upon the child?" Rule 12 of the Chancery Rules provides as follows:

"The Court, at any stage of the proceedings, either upon or without application, may order, upon terms, any party improperly joined to be dropped; or any party improperly omitted, or whose presence is necessary to a complete determination of the controversy, to be added."

The authority of the Court to award the custody of the child to the grandfather need not rest upon any Statute, but is found in "that beneficent prerogative which exists in the Court of Chancery to see to the protection and provide for the proper care and permanent custody of infants."

*Buckley vs. Perrine*, 55 N. J., Eq., 514.

It is argued that the decree of the Court in this particular was not responsive to the pleadings. In many cases in New Jersey decrees have been made under the Chancellor's general jurisdiction as *Parens Patriae*, originally instituted by habeas corpus, the distinction between which is pointed out in *Baird vs. Baird*, 19 N. J., Eq. 481.

This general jurisdiction has been exercised in the cases of

*Buckley vs. Perrine*, 54 N. J. Eq., page 285.

*Buckley vs. Perrine*, 55 N. J. Eq., page 514.

*Power vs. Power*, 66 N. J. Eq., page 93.

*Power vs. Power*, 66 N. J. Eq., page 320.

*Dixon vs. Dixon*, 72 N. J. Eq., page 588.

The custody of the child was taken from the parents and awarded to the grandfather under this general jurisdiction in the case of

*Keesling vs. Keesling* (*Appellate Court of Ind.*), 85 N. E. Rep. 837.

In the case of *Power vs. Power*, 65 N. J. Eq., page 93, *supra*, it is held that the jurisdiction of the Court is not based upon the presence of the infant in court by the use of a writ of habeas corpus, but on the application of the Court by a petition to the Chancellor as *Parens Patriae* in a summary manner to determine the custody of the infant *between the parents or other persons claiming it*.

No objection was made to the admission of Adam J. Ludwig as a defendant until after the signing of the order (Pg.162, li.38). The appellant was not surprised, and the conditions of the Ludwig household had been the subject of exhaustive inquiry.

It is submitted that the Court exercised a sound discretion, having in mind only the welfare and best interests of the child in awarding his custody to the grandfather.

The case in hand is almost entirely one of fact, save for the question of jurisdiction raised for the first time in this Court and hereinbefore argued. Much depends upon the demeanor and credibility of the witnesses. The Vice Chancellor has better opportunity to judge the credibility of witnesses than the reviewing court, and therefore great weight is given to his findings on the question of fact.

*Cartan vs. Phillips*, 91 N. J. Eq., 312.

It is respectfully submitted that the decree appealed from is in accord with the law and the facts and should be affirmed.

R. E. & A. D. WATSON,  
Solicitors and of Counsel with Respondents (Defendants)

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