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Bill of Complaint

daughter, born September 16, 1919, and now deceased; Frank James, a son, born August 20, 1922.

10 4. On February 16, 1926, said defendant, Ernest Tomaine without any justifiable cause abandoned complainant and separated himself from her; ever since that time he has refused and neglected to maintain and provide for her, and for her said children. Said Ernest Tomaine told the complainant's oldest daughter, Ernestine Margaret Tomaine, that he did not intend to provide or support complainant, and the said children; that he intended to go to Italy, but that before he went he intended to "ruin" the complainant.

20 5. Complainant is now depended for the support of herself and her children upon her mother and father, as she has no means of support nor money of her own.

6. Defendant is the owner of several tracts of Real Estate in the City of Long Branch, among which are the following:

30 a. A factory and tenement building situate at Morris Avenue, of a value of upwards of \$50,000 the said factory and tenement building being encumbered by a mortgage given to secure the payment of approximately \$7,700 which has been reduced by installments so that the amount now due is approximately \$4,000. The rental value of said factory building is not less than the sum of \$310 per month, when fully rented, and the actual rent now received by the said defendant
40 amounts to \$275 per month.

Bill of Complaint

b. A house and lot situate at 425 Bath Avenue, in the City of Long Branch, County of Monmouth and State of New Jersey, of the value of \$15,000. Said house is not encumbered by any mortgage and is rented, the tenant paying \$65 per month rent. 10

c. Three (3) lots situate on Bath Avenue, in the City of Long Branch, County of Monmouth and State of New Jersey, of the value of \$6,000.

In addition to said property the said defendant is the owner of purchase money mortgages on lands in the township of Eatontown, in the county of Monmouth, State of New Jersey, on lands and premises consisting of a food products factory 20 • situate on Lewis Street, in said township, which property was sold by the said defendant and this complainant for the sum of \$19,000, said Ernest Tomaine taking back in part satisfaction of the purchase money, a purchase money mortgage upon the real property of \$5,500, and a collateral chattel mortgage on the personal property said sale was made in about the month of September, 1925.

30
Until September, 1925, said defendant was engaged in the business of the manufacture of canned tomatoes and tomato paste, at Eatontown, N. J., from which he derived a large revenue, the amount of which complainant does not know. He was also engaged in business as a merchant at 263 Morris Avenue, Long Branch, from which he also derived a substantial income, the amount of which complainant does not know. In August, 1925 said 40 defendant retired from business and since that

Bill of Complaint

time has not been engaged in any active business except in the purchase and sale of stocks and bonds in speculation.

10 Said defendant is able to earn by his personal attention to his business, trade or profession, sufficient abundantly to maintain and support complainant and her children in a manner suitable to their position.

7. Said defendant has lately threatened to abandon complainant and her said children and leave complainant and her said children without making any provision for their support, and to leave the State of New Jersey and to go to Italy. Said
 20 defendant informed complainant and his daughter, Ernestine Margaret Tomaine, that he intended to depart out of the State of New Jersey and go to Italy and that he did not intend to maintain or provide for the said complainant, or any of her said children.

8. If defendant is suffered to leave the State of New Jersey, the just claim of complainant for support and maintenance, and that of the infant
 30 children of her marriage, now in complainant's custody, will be defeated.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Ernest Tomaine, who is the defendant in this suit, may answer this bill of complaint and each statement therein made.
- 40 2. That he may be ordered and decreed to provide such suitable support and maintenance to

Bill of Complaint

be paid and provided by him, or made out of his property, for complainant and the children of the said marriage, and for such times as the nature of the case and the circumstances of the parties render suitable and proper.

3. That the defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time, under the compulsory orders of this honorable Court as provided by statute. 10

4. That a writ of *ne exeat republica* be issued out of this honorable Court to restrain the defendant, Ernest Tomaine, from departing out of the jurisdiction of this Court. 20

5. That in case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor.

6. That the defendant may be required to pay the complainant a proper amount for counsel fees and that she may have such further equity as to your Honor shall seem meet. 30

7. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

MERRITT LANE,
Solicitor of Complainant.

Eugene Blankenhorn,
of Counsel.

40

Affidavit of Edna Tomaini.

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

10 Edna Tomaine, the above named complainant, being duly sworn according to law on her oath deposes and says:

I have read the foregoing bill of complaint and know the contents thereof, and the same is true to my own knowledge, except as to the matters that are therein stated to be on my information or belief, and as to those matters, I believe it to be true.

20 For a long time prior to January, 1913, said Ernest Tomaine visited me at the home of my mother and father, at 417 Spring Street, Long Branch, Monmouth County, New Jersey, and on or about January 15, 1913, the said Ernest Tomaine agreed with me that we should be married, and that from and after said date he and I should be husband and wife. The said Ernest Tomaine stated to me and to my mother that he would provide for me and my child, and that such a contract between us was as valid and binding a marriage contract as though we were married in any
 30 other way, whether by a civil marriage or by a religious ceremony. Thereafter, pursuant to the said contract and in about the month of September, 1913, the said Ernest Tomaine and I took up our residence together as man and wife at 417 Spring Street, City of Long Branch, County of Monmouth aforesaid, where we resided until August 1, 1922, when we moved to 415 Bath Avenue, City of Long Branch, County of Monmouth
 40

Edna Tomaini

aforesaid, and thereafter we resided at the said 415 Bath Avenue, until January 4, 1926, when my husband, after a quarrel with my mother, left me and remained away from his home until January 29, 1926, when he returned and continued to live with me until February 16, 1926, when he again left me and from that time he has refused to maintain and provide for me and has separated himself from me. 10

In about the month of September, 1925, at my husband's request, I joined with him in the execution of a deed for the property in the township of Eatontown, County of Monmouth, State of New Jersey, which my husband had sold. 20

On March 18, 1926 I had driven my daughter Ernestine and my infant son to Red Bank, and while we were in Red Bank my husband came up to the automobile in which I was sitting with my two children, and my husband said to me "You will not keep those children long. I am going to take them." To which I replied "No, you can't have them." And my daughter Ernestine said to my husband "Papa, if you want us so bad why don't you give us something to get along on." My husband then said "I will not give you anything because I am not there to get any benefit of it" (or words to that effect.) My husband then said "I will take the children away from you and put them in a home in Italy. I am going to Italy, but before I go I am going to ruin you." I have also been told by Mrs. Emily Fiocca, a sister of my husband, that my said husband intends to go to Italy in May. 30 40

Edna Tomaini

There have been born to me and my husband, as the fruit of our marriage, the following children: Ernestine Margaret Tomaine, a daughter, born March 15, 1913; Florence Marie, a daughter, born September 16, 1919, and now deceased;
10 Frank James Tomaine, a son, born August 20, 1922.

I am dependent upon my mother and father for the support of myself and my children, as I have no other means of support, or money of my own.

My husband is the owner of several tracts of real estate in the City of Long Branch, among which are the following:

20 a. A factory and tenement building situate at Morris Avenue, of a value of upwards of \$50,000 the said factory and tenement building being encumbered by a mortgage given to secure the payment of approximately \$7,700 which has been reduced by installment payments so that the amount now due is approximately \$4,000. The rental value of said factory building is not less than the sum of \$310 per month, when fully
30 rented, and the actual rent now received by the said defendant amounts to \$275 per month.

b. A house and lot situate at 425 Bath Avenue, in the City of Long Branch, County of Monmouth and State of New Jersey, of the value of \$15,000. Said house is not encumbered by any mortgage, and is rented, the tenant paying \$65 per month.

c. Three (3) lots situate on Bath Avenue, in the City of Long Branch, County of Monmouth
40 and State of New Jersey, of the value of \$6,000.

Edna Tomaini

In addition to said properties my husband is the owner of purchase money mortgages on lands in the township of Eatontown, in the County of Monmouth, State of New Jersey, on lands and premises consisting of a food products factory situated on Lewis Street, in said township, which property was sold by my husband and myself for the sum of \$19,000, my husband taking back in part satisfaction of the purchase money, a purchase money mortgage upon the real property of \$5,500, and a collateral chattel mortgage on the personal property of said sale was made in about the month of September, 1925. 10

Until September, 1925, my husband was engaged in the business of the manufacture of canned tomatoes and tomato paste, at Eatontown, New Jersey, from which he derived a large revenue, the amount of which I do not know. He was also engaged in business as merchant at 263 Morris Avenue, Long Branch, from which he also derived a substantial income, the amount of which I do not know. In August, 1925, my husband retired from business and since that time has not been engaged in any active business except in the purchase and sale of stocks and bonds in speculation. 20 30

By personal attention to his business, trade or profession, my husband is able to earn sufficient to abundantly maintain and support me and my children in a manner suitable to our position.

My husband has lately threatened to abandon me and my children and leave me and my children without making any provision for our sup- 40

Ernestine Margaret Tomaini

port, and to leave the State of New Jersey and go to Italy.

If my husband is suffered to leave the State of New Jersey, my just claim for support and maintenance, and that of the infant children of my marriage, now in my custody, will be defeated.

EDNA TOMAINE.

Subscribed and sworn to
before me this 12th day
of April, 1926.

Elizabeth A. Coons,
Notary Public of New Jersey.

20

Affidavit of Ernestine Margaret Tomaini.

(Filed, Apr. 15, 1926)

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

Ernestine Margaret Tomaine, being duly sworn according to law, on her oath deposes and says:

I am thirteen years old and reside with my mother, Edna Tomaine, at 415 Bath Avenue, City of Long Branch, County of Monmouth and State of New Jersey.

On March 18, 1926, I was sitting in the automobile with my mother and my little brother, in the Borough of Red Bank, and while sitting there

40

Ernestine Margaret Tomaini

my father came over to the automobile. He told my mother in my presence that he intended to take me and my brother and send us to a home in Italy, and before doing so he intended to "ruin" my mother. I said to my father, "Papa, if you think so much of us, why don't you give us support," and I also told my father that I thought he had not done right; that I had heard all about the alleged relations existing between him and Christine Julienne, a school girl who was in my class, and I did not think his actions were right. My father replied "Dolly, you are crazy; you don't know anything." I replied to him, "Well, I know enough to know that you have not been doing right towards us" (or words to that effect). My father then told me that he would not support my mother, or me or my brother, but that he intended to take me and my brother away from my mother and take us to Italy and support us there; that he had a right to do it; that he already had instituted proceedings to bring that about.

ERNESTINE TOMAINE.

Subscribed and sworn to before
me this 12th day of April, 1926.

Elizabeth A. Coons,
Notary Public of New Jersey.

Order for Ne Exeat.*(Filed, April 15, 1926)*

IN CHANCERY OF NEW JERSEY

10	Between, EDNA TOMAINE, Complainant, and ERNEST TOMAINE, Defendant.	}	On Bill etc. Order
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20 The complainant having filed her Bill of Com-
 plaint against the defendant, to be relieved touch-
 ing the matters therein contained, and now upon
 reading and filing the Bill of Complaint and the
 affidavits thereto annexed, whereby it satisfac-
 torily appears that the defendant, Ernest To-
 maine, designs quickly to depart from this State;

30 It is on this 15th day of April, 1926, on motion
 of Merritt Lane, of counsel with complainant,
 ORDERED that a writ of *ne exeat republica* be
 awarded against the said Ernest Tomaine until
 he shall fully answer the complainant's bill, and
 this Court shall make other order to the con-
 trary; and the said writ is to be endorsed in the
 sum of \$10000 dollars, in words at length, and not
 in figures.

E. R. WALKER,
C.

40 Respectfully advised,
 John Bentley,
 V. C.

Writ of Ne Exeat.*(Filed, April 15, 1926)*

New Jersey, to wit:

The State of New Jersey to the Sheriff
 (Seal) of the County of Monmouth, GREET- 10
 ING:

WHEREAS, it is represented to us, in our Court of Chancery, before our Chancellor, on the part of Edna Tomaini, complainant, against Ernest Tomaini, defendant, that the said Ernest Tomaine abandoned Edna Tomaini his wife and refuses and neglects to support and maintain her (and the children of his marriage to her) and that he designs quickly to go into parts without 20 the State of New Jersey, as by oath, on that behalf made, appears, which tends to the great prejudice and damage of the said complainant;

Therefore, in order to prevent this injustice, we hereby command you that you do, without delay, cause the said defendant personally to come before you, and give sufficient bail or security in the sum of \$10000.00 lawful money of the United States, that he will not go, or attempt to go, into 30 parts without the said State, without leave of our said Court; and in case the said defendant shall refuse to give such bail or security, then you are to commit him to the common jail of your county, there to be kept in safe custody until he shall do it of his own accord; and when you have taken such security, you are forthwith to make and return a certificate thereof to our Chancellor, in our Court of Chancery, at Tren- 40

Writ of Ne Exeat

ton, distinctly and plainly under your hand, together with this writ.

10 WITNESS, HIS HONOR, EDWIN ROBERT WALKER,
Chancellor of our said Sate, at Trenton the 15th
day of April, 1926.

THOMAS BARBER,
Clerk.

Merritt Lane,
Solicitor.

Endorsed on back:

20 The defendant shall give bond in the sum of
ten thousand dollars.

JOHN BENTLEY,
V. C.

Answer

of complaint and affidavits thereto annexed,
which need not be certified, be served upon the
defendant within 4 days from the date hereof.

E. R. WALKER,
C.

10 Respectfully advised,
John Bentley,
V. C.

Answer.

(Filed, May 4, 1926)

20

IN CHANCERY OF NEW JERSEY

Between, EDNA TOMAINI, and ERNEST TOMAINI, Defendant.	}	Complainant, Defendant.	On Bill &c.

30

The answer of Ernest Tomaini to the bill of
complaint filed by the complainant in the above
stated cause:

1. As to paragraph 1 of the bill, he denies that
he was ever lawfully married to the said defend-
ant by ceremony or by any contract, but, never-
theless, that he does not dispute that he is under

40

Answer

all the obligations to her usually incident to matrimony and has and does recognize the complainant as his wife.

2. He admits paragraph 2, excepting that he absolutely denies that he ever, at any time, abandoned or deserted, or refused to support the complainant. 10

3. He admits paragraph 3.

4. He denies in toto each and every of the allegations contained in paragraph 4.

5. As to paragraph 5, he says that if she is dependent upon support for herself and children, it is because she has refused repeatedly, and does refuse, to accept support from this defendant. 20

Further answering paragraph 5, he says that the complainant has separated herself and deserted this defendant, refusing to live with him, or to let him live with her or sustain marital relations with her.

6. He admits that he owns the property mentioned in paragraph 6, excepting as follows: That the fair value of the property on Morris Avenue does not exceed \$25,000.00 and the rental thereof is not in excess of \$3,000.00 per annum. That the property mentioned in sub-divisions B and C of paragraph 6 are one and the same property and altogether are not worth over \$9,000.00. Regarding the property in the Township of Eatontown, he says that it is absolutely untrue that this defendant and complainant sold said property for the sum of \$19,000.00, but the truth 30 40

Answer

is that it was sold for \$9,000.00 and of which fact the complainant was well aware, because she executed the deed of conveyance therefor.

10 7. Defendant admits the allegation as to his being engaged in various businesses, but says that when he discontinued said business in August, 1925, it was because of the condition of his health and upon the advise of his physician that he should desist from any active employment. That the total net income that deponent receives from any source in property, mortgages or any other source whatsoever does not average over \$1500.00 a year.

20 8. Answering paragraph 7, he absolutely denies each and every statement therein contained; on the contrary, he says that he never threatened to abandon the complainant and her children and never intended to, or that he intended to leave the State of New Jersey and go to Italy, except to this extent, that his mother lives in Italy and he has twice in the long period of years in which he has been a resident of this country, gone over to visit her and that he has been con-
30 templating going again for a similar visit, but had fixed no time and did not contemplate going until next Summer, or perhaps later.

9. Defendant says that he always has been willing and desirous of supporting his said wife and his said children, and that he has never had, and not now has, any desire to abandon them, or to neglect them in any manner whatsoever, but
40 that the trouble between him and his said wife is due solely to the fact that she has no regard

Answer

for him as he verily believes and that she has repeatedly told him that she did not want him to live with her, but that if he did live with her, that it must be in the home of her parents and nowhere else. Defendant has remonstrated with his wife repeatedly on her attitude and knowing that her parents were unfriendly to him and that he was most unhappy in their residence and knowing that they have several times ordered him away from there and have locked and closed the doors so he could not enter, he has suggested to his wife that he would furnish a comfortable and appropriate home for her and the children in another place in the City of Long Branch, she has absolutely refused to give her consent. 10 20

10. Defendant has since the institution of this suit, of his own volition, permitted her a total sum aggregating \$15.00 per week for each week that he has been away from her since last January, at which time he was simply driven from her house by her and her parents and told not to return. He has also continued said payments in advance up to the 10th day of May, next. 30

11. Defendant here again repeats his desire to furnish a home of his own selection for his said wife and children where he will bear all the expense and support them properly, but submits that his wife's attitude is arbitrary, unjust and unreasonable and that he should not be obliged to yield thereto.

This defendant, therefore, prays to be humbly dismissed from this litigation. 40

WILBUR A. HEISLEY,
Solicitor of Defendant.

Answer

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

10 Ernest Tomaini, being duly sworn, deposes and says, that he is the defendant in the foregoing cause and has filed said answer hereto attached. That the statements contained in the said answer, in so far as relate to deponent's acts are true, and in so far as they relate in the acts of others, he believes them to be true.

20 He denies that at any time he has ever abandoned said complainant, or refused to support her; he has always been able and willing to do so and has requested her to accept his support, but that she has, without any justification or excuse refused to live with him, or to permit him to live with her, unless he should reside in the home of her parents and that although he has lived in such home for a long time, not only has she, but her said parents have, upon frequent occasions driven him from the house without any excuse or justification and have locked the doors against him so that he could not re-enter and have told him they did not want him around there and for him to stay away from her.

30 Deponent has been prevented from living with his said wife and children, unreasonably and unjustly because of the fact that his said wife has refused to live with him, or let him live with her at her parents' residence and that the said parents have assumed the same attitude and this deponent verily believes that the sole purpose and object of his said wife is to procure a decree
 40 compelling this defendant to contribute to her

Ernest Tomaini

support and to support her and she having no
intention of living or residing with him.

ERNEST TOMAINI.

Sworn and subscribed before me

May 1st 1926.

Jacob Steinbach, Jr.,
Master in Chancery
of New Jersey.

10

(Copy)

DEFENDANT'S AFFIDAVITS.

Affidavit of Ernest Tomaini.

20

(Filed, May 24, 1926)

IN CHANCERY OF NEW JERSEY

Between,

EDNA TOMAINI,

Complainant,

and

ERNEST TOMAINI,

Defendant.

On Bill &c.

30

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

Ernest Tomaini, being duly sworn, on his oath
says: That he is the defendant in the above 40

Ernest Tomaini

stated cause. He denies that he has ever, or at any time, deserted the said complainant and he especially denies that on February 16, 1926 he abandoned her. That for a long time, this defendant and the said complainant, with their
10 children boarded and lived in the house of the complainant's parents on Bath Avenue, in the City of Long Branch, and that he regularly down to the 26th day of February paid the sum of \$15 weekly to her parents for their board and keep and \$15 to complainant.

Deponent has never wanted to live with his family at the house and in the home of the complainant's parents and has repeatedly told the
20 complainant so and requested her to let him provide a home of his own where he would keep her and the children in proper condition and that she has always refused and still does refuse, without any justifiable excuse whatsoever to accede to defendant's repeated request.

That he is not upon friendly terms with her said parents, of which fact she is well acquainted. That the complainant and her mother have locked
30 the doors of their said house against him on several occasions, so that he could not get access to the house and that such conduct was absolutely without any excuse and not caused by any conduct or mis-conduct of this defendant.

That on January 4, 1926, without any excuse whatsoever, he was locked out of said house and not permitted to enter the same. That there was
40 no reason whatsoever for his being so treated

Ernest Tomaini

and that the only excuse, or cause, for the conduct of the said complainant and her parents in locking him out was their intense dislike for this deponent and which they often expressed to him.

That having been so locked out and forbidden by her parents to come to the house, he remained away for several weeks, but, finally induced her, the complainant, to receive him into the house, where he remained until Feb. 26, 1926, when without reason her mother ordered him from the house and never to return; thereupon he requested her to come and live with him in his own house but she refused. 10

The complainant has upon a number of occasions told deponent that she did not want to live with him; that she did not want him to support her; that she could take care of herself and that she would be perfectly content if he would pay her the sum of \$15.00 a week for the support of her children and deponent for a long time paid said sum. 20

When she refused to allow him to live, or go with complainant she suggested that an agreement should be drawn up obligating him to pay a certain sum of money. She employed an attorney to represent her in the matter and deponent employed also an attorney to represent him and she expressed her willingness to accept the sum of \$15.00 a week toward the support of the children, inasmuch as she refused to live with him and refused to allow him to provide a separate home for the complainant and his children and refused to allow him to live with her in the home 30 40

Ernest Tomaini

of her parents. She assented or expressed her willingness to enter in said agreement, but within a few days and before any agreement was signed, deponent was surprised to be served with the papers in this cause.

10

Deponent further says, that she and her father have, in the presence of other persons, and particularly in the presence of Benjamin P. Morris, expressly said that she would not let deponent have the children and that they did not want him around their house and did not want any of his money and that they wanted him to remain away from the home of her parents and leave the complainant and her parents and complainant's children alone.

20

Deponent always has been, and still is, willing and desirous of maintaining his wife and children in his own home and in a thoroughly comfortable, appropriate and respectable manner and has often so told her, but that she frequently refused to live with him at any place, excepting in the home of her parents and has repeatedly told him that she did not want him, to live even there.

30

Deponent expressly denies that he has ever made any threat or expressed any intention to leave the said complainant and his children, or any of them, or to ruin them or desert any of them, and he expressly denies that he ever intended to depart for Italy, or to leave this jurisdiction, excepting in this way, that his mother lives in Italy and he has been a resident of this country for many years and during that time

40

Ernest Tomaini

has twice gone to Italy to visit his mother. He has expressed the desire to repeat such visit, but had fixed no time for making it, but contemplating doing it sometime during the coming Summer, if he could arrange his matters properly so to do. If he made such visit, it would be purely and simply a visit with the intention to return to this country again within a short time and continue his residence here and support his wife and children, if they would accept his support. 10

Deponent has not consciously given the complainant any cause of which he is aware, to dislike him, or to refuse to live with him. On the contrary, he firmly believes that she thoroughly dislikes him, has no love for him and wants to get rid of him, if possible. He is informed in such a way that he verily believes it to be true, that she has formed an attachment for a man in the Town of Red Bank and that she is almost a daily visitor at his place of business and that this deponent has protested against her conduct in that respect and she has become, or pretended to be, very angry with deponent. 20 30

Upon one of these occasions when he was locked out of the parents' house and directed not to come back deponent sought the complainant at the house of her aunt for the purpose of having a talk with her and urging her to let him provide a home where he and his family could live and where he would properly support them and did not find her there, but upon information given him, he did proceed to Red Bank and found her 40

Ernest Tomaini

in the place of business of the said man. That he knows of no employment in which she was engaged in the service of said man and of nothing that could legitimately require her constant visitation to him.

10 Deponent is in very bad health and for a long time, upon the advise of his physician, has refrained from engaging in active business and he depends solely for his living upon the income he receives from his real estate and the interest on some mortgages that he has. That he has no other income and that he verily believes and states it to be the fact that his net income, that
20 is to say, after paying his taxes and expenses for repair upon property he owns, does not exceed, from all sources, in his judgment, net over the sum of \$1500.00 per year. It is true that he owns the factory and building referred to in paragraph 6 of her complaint subject to the mortgage thereon, but that said property is not reasonably worth over \$25,000.00 and that the rent produced by said building in the year 1925 did not exceed the sum of \$3000.00.

30 That he also owns the house and lot at 425 Bath Avenue, but that the same instead of being worth \$15,000.00 is not worth over \$9,000.00, and that the three lots mentioned in sub-division C of paragraph 6 of the complaint is included in that property and in the said value of \$9000. That the property in the Township of Eatontown was sold for the sum of \$9,000.00 and not the sum of \$19,000.00, as falsely stated by the
40 said complainant. That he will produce at the

Ernest Tomaini

hearing of this cause a written contract made on the 5th day of September, 1925, by the defendant and the complainant, which will show that the contract price and the price actually paid for said property was the sum of \$9000 and not \$19,000.00.

10

Deponent now is, and always has been, able, willing and desirous of supporting the said complainant and his said children and has no desire, and never had any intentions to avoid his responsibility in that regard and that he earnestly desires that they shall reside with him in a home to be provided by him suitable in all respects for their living, but separate and apart from her said parents.

20

ERNEST TOMAINI.

Sworn and subscribed to before me this

1st day of May 1926.

Jacob Steinbach, Jr.,

Master in Chancery of N. J.

Affidavit of Emilie Fiocca.*(Filed, May 24, 1926)*

IN CHANCERY OF NEW JERSEY

10	EDNA TOMAINI,	}
	Complainant,	
	vs.	
	ERNEST TOMAINI,	}
	Defendant.	

Emilie Fiocca, being of full age and duly sworn according to law on her oath deposes and says
 20 that: She is the sister of the defendant and the sister-in-law of the complainant in the above matter.

This deponent's attention has been brought to statements made by the complainant in her Bill of Complaint wherein she alleges that I told her that the defendant Ernest Tomaini was to leave the United States of America for Italy on May 1st, 1926, never to return.

30 This deponent emphatically denies ever having made such a statement to the complainant or to anyone. As a matter of fact this deponent upon the request of her brother, the defendant in this suit, called at the home of the parents of the defendant for the purpose of asking her whether or not she would be willing to come back with the defendant and take up her abode with him again, in a new home which the defendant was
 40 ready and willing and able to provide.

Francisco Felice

The complainant's answer to this message brought to her by me was that she would not under any circumstances go back with her husband, and that she would not leave her mother and father's home for him.

EMILIE TIOCCA (L. S.)

10

Sworn to before

John C. Snider,

An Atty. at Law of N. J.

May 4, 1926.

Affidavit of Francisco Filice.

20

(Filed, May 24, 1926)

IN CHANCERY OF NEW JERSEY

Between
EDNA TOMAINI,

Complainant,

and

ERNEST TOMAINI,

Defendant.

On Bill etc.,
Affidavit

30

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

Francisco Filice, being duly sworn, says, that he is a medical physician, practicing his profession in the City of Long Branch, New Jersey, and has been Mr. and Mrs. Tomaini's family physic- 40

Francisco Felice

ian and attended them at different times during a period of over four years; I attended the defendant Ernest Tomaini on account of a nervous condition, and the defendant had frequently and before any litigation had started between the
10 complainant and defendant, mentioned to deponent, the attitude of his wife toward him, because I was the family doctor.

That on the 23rd day of March, 1926 the complainant, came into deponent's office for a medical treatment and while she was in the office she expressed herself saying, that she was feeling worse because of worrying about her family
20 affairs.

Mr. Tomaini having previously asked me to try to have his wife reconciled to him and to go back and live with him, I then said to her that he was able and desirous of supporting her and her children but she replied to deponent that she never would go and live with Ernest. I had this talk with her simply because I was the family physician.

30 Mr. Tomaini at the present time and for a long time has been suffering from chronic Myocarditis and a double inguinal hernia and neurasthenia and in my judgment is in no condition to engage in active enterprise.

FRANCISCO FILICE.

Sworn and subscribed to before me this

Third day of May, 1926.

John C. Snider,

40 An Atty-at-Law of New Jersey.

Affidavit of John H. Schultz.*(Filed, May 24, 1926)*

IN CHANCERY OF NEW JERSEY

Between EDNA TOMAINI, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">vs.</div> ERNEST TOMAINI, <div style="text-align: right;">Defendant.</div>	}	10 On Bill etc.,
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John H. Schultz, of full age being duly sworn according to law, deposes and says: 20

I am the brother of Edna Tomaini, the above-named complainant, and reside at Fair Haven, Monmouth County, New Jersey. That sometime early in January, about the second week, Ernest Tomaini came to my home at Fair Haven, and said there was trouble at home, that they had packed up his clothes, and told him to get out, and requested me to go see my sister and try to persuade her to become reconciled and permit him to return to his home. I did as he requested and went to Long Branch and saw my sister and I asked her to move away from father and Mother and go and live with Ernest and the children by themselves, she said she would not take him back and that he (meaning Ernest) had to get out; she positively refused to talk with me about the matter. I then went home. Some time thereafter (about three weeks), I went over to Long Branch to call on my Father and 40

John H. Schultz

Mother and I found my sister and Mr. Tomaini had become reconciled and that he (Tomaini) and she were living together and seemed very happy.

- 10 About March First, I again visited my parents with whom my sister and Mr. Tomaini lived, and as soon as I entered the house both my sister and mother began to abuse me for interceding between my sister and Ernest and told me to "mind my own business", and told me to leave the house and never come back. During this conversation my sister and mother said that Ernest had to get out and stay out, and she (sister) positively refused to talk about taking him back
20 again.

During the period when my sister and Ernest were reconciled about February 1st, Ernest came to my home one day and inquired for Edna, saying she had gone away early in the morning and he was worried about her, and was looking for her to take her home.

(Signed) JOHN H. SCHULTZ.

- 30 Sworn to and subscribed before me this
29th day of April, A. D. 1926.

Benj. P. Morris,
Master in Chancery
of N. J.

Affidavit of Charlotte M. Garrahan.*(Filed, May 24, 1926)*

State of New Jersey }
 County of Monmouth. } ss:

Charlotte M. Garrahan, of full age, being duly 10
 sworn according to law on her oath says that
 she is a widow and resides at Fair Haven in the
 County of Monmouth, and State of New Jersey,
 that she runs a boarding house at Fair Haven
 and has lived there about thirty-five years, that
 she is well acquainted with one Edna Schultz,
 daughter of Herman Schultz, who resides on
 Bath Avenue at the corner of Division Street in
 the City of Long Branch, and has known her ever 20
 since she was a little girl, and that she has visited
 her place frequently prior to the past year and
 during the past year she has visited this depon-
 ent's home almost daily, her visits would take
 place usual between 9 and 10 o'clock in the morn-
 ing, she told me that she brought her father to
 work over at Rumson to Mr. George V. Coes
 place about 7 o'clock in the morning and then
 she went to Red Bank, and then returned to my 30
 place as above stated, and some times took me
 back to Red Bank shopping at the Atlantic and
 Pacific Tea Company store located at Front
 Street near Broad. On several of these visits
 during the past fall, I noticed that she was very
 familiar with the manager of the store, whose
 name I understand is Bradhurst, that on several
 occasions she would go behind the counter and
 help herself to things and conduct herself in such
 a manner that I chastised her for doing so and 40
 sometimes they would go in the rear room of the
 store where they could not be seen by any one

Charlotte M. Garrahan

in front and remain there for several minutes. The general conduct between them indicated great familiarity. On several of the visits that I made with Edna at the store, she displayed a great deal of affection for Mr. Bradhurst, when
 10 I spoke to her about it she told me that he was her "affinity" and that she expected to marry him. On several occasions she showed me silk stockings and other items of apparel including a little boys suit, which she said had been presented to her by Mr. Bradhurst, I first learned of her visits to Red Bank every morning between seven and nine from my boarders. Edna said to
 20 me one time that she expected to go to New York and that if Mr. Ernest Tomaini called and inquired for her that she wanted me to say that she had just gone, and I never promised to carry out that request. On one of my visits to the store since January 1st, of this year, Mr. Bradhurst, asked me if I had heard the rumpus, and I told him No, he then told me that Edna and her mother had thrown Mr. Tomaini and his clothes out doors. He seemed to know all about it immediately after it happened and was laugh-
 30 ing and very much pleased. I saw Miss Schultz one day give Mr. Bradhurst a bill and ask him to pay it amounting to \$12.00 for automobile expenses. I was present at the Elks fair in Red Bank one evening and Edna was there with Mr. Bradhurst, and Mr. Bradhurst won a nice pair of blankets and gave them to Miss Schultz, and at that time she had her daughter Dolly with her.

(Signed) CHARLOTTE M. GARRAHAN.

40 Sworn to and subscribed before me this
 15th day of January, 1926.

Benj. P. Morris,

Master in Chancery of N. J.

Benjamin P. Morris

was the defendant to contribute \$15.00 a week for the support of the children. Upon such occasion, I expressed the willingness and desire of the defendant to provide a home of his own for her and the children, but she frequently refused to
10 accede to such request, saying that she was through with the defendant. The understanding arrived between her attorney and deponent and the defendant, was that Mr. Warwick was to draw up an agreement in proper form, obligating the defendant to contribute \$15.00 per week, but Mr. Warwick did not do so and only a few days before the papers in this cause were served upon the defendant, deponent called upon Mr. War-
20 wick to urge him to prepare the papers.

In deponent's law office in Long Branch, on two occasions, the father of the complainant positively said that he would not let the defendant have the custody of his, the defendant's children and that they did not want him around the house, or any of his money and that they wanted him to stay away and leave them along.

The mother of the complainant has also
30 expressed to deponent her hostility for the defendant and stated that she would not permit him to live at their house.

Upon being informed of the institution of this cause against the defendant by the complainant and realizing that in all probability I would be needed as a witness to testify to the facts as set forth in this matter, and in this affidavit, and
40 possibly on other subjects, and realizing the

Benjamin P. Morris

impropriety of my being a witness and the legal advisor of the said defendant, I told him I could no longer represent him and advised him to compensate me for my services to that time and to employ other counsel to represent him. He has compensated me in full and as I understand, has employed other counsel to represent him and I am absolutely and entirely uninterested and unconcerned in the outcome of this litigation and in no respect represent him or expect any pecuniary or other advantage as the result of the litigation. 10

BENJ. P. MORRIS.

Sworn and subscribed to before me this

Fourth day of May, 1926.

20

G. B. Noyes,

Notary Public of N. J.

COMPLAINANT'S AFFIDAVITS.**Affidavit of Edna Tomaini.***(Filed, May 24, 1926)*

IN CHANCERY OF NEW JERSEY

10

Between

EDNA TOMAINI,

Complainant,

and

ERNEST TOMAINI,

Defendant.

} On Bill etc.
Affidavit.

20

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

Edna Tomaini, of full age being duly sworn according to law on her oath deposes and says:

I have read the affidavit of Ernest Tomaini made in this cause on May 1st, 1926.

30 It is absolutely untrue that the said defendant ever told me that he did not want to live at the home of my parents and that he ever requested me to allow him to provide a home of his own where he could keep me and my children in proper condition; and it is absolutely untrue that I ever refused, without any justifiable cause, to accede to such request, except as follows:

40 Sometime prior to January 4, 1926, my husband demanded payment of a mortgage that he

Edna Tomaini

held on the house, given by my mother to secure the payment of \$2,000. My mother had not been paying any interest on this mortgage for the previous four years, for the reason that my husband told me he did not want her to pay interest to him, so that he could always feel that I and the children had a home so long as he held the mortgage. When he demanded payment of the mortgage, my mother borrowed the money from the Building & Loan association, and paid my husband, together with the four years' interest which he demanded. 10

My mother then told my husband that it would be impossible for her to continue to have us board with her unless he paid more than \$15.00 a week, which was for myself, my husband, and our two children, whereupon my husband informed her that he could not pay more and that he would go elsewhere. My husband left the house on January 4th. From January 4th until January 29th I had absolutely no communication from my husband and received no money from him. On January 29th, which was the day on which my daughter graduated from grammar school, I met my husband on the street in the evening, and he asked me if he could speak to my daughter, and my mother asked him to come into the house where he might talk to her, instead of standing on the street. My husband stayed with me from that time until February 16th, when he again left the house. During that time my husband continuously told me that his brother, Petè, did not want him to live with my 20 30 40

Edna Tomaini

mother and father, and that it would be impossible for him to stay there. He did not ask me to go to a home of our own, and did not prepare one or offer to prepare one. The only thing that he did say to me about leaving my parents' home
10 was when he finally left on February 16th, when he turned to me as he was going out, and said "Well, do you want to come along?" to which I said "Where? Down in the house below" referring to the house that my husband owns, on Bath Avenue, about two doors below the house where we are living. I said I cannot live in that house, because it is in such a bad condition, and it would be dangerous for me and for the children's
20 health, on account of the water in the cellar, and the condition of the floors all through the house. My husband answered, "We will not live in Long Branch; you think it over." Since that time I have not had any communication from my husband, until May 8th, when he telephoned me and asked me to discontinue this suit.

It is not true that my husband has ever been locked out of the house; the fact of the matter is
30 that he still has the key to the house and could enter at any time. I never told my husband that I did not want to live with him and that I did not want him to support me. I did try to get my husband to support me, but considered the best I could do was to get \$15.00 a week from him for the support of my two children. The reason that I did not try to get more from him was because I thought I could not without great difficulty, and
40 a long legal fight.

Edna Tomaini

I deny that I ever, in the presence of Benjamin P. Morris, or any other person, said that I did not want my husband around and did not want any of his money and that I wanted him to stay away from my home and leave me and my children alone. I never went to the office of Benjamin P. Morris and never talked to him or in his presence about my husband. 10

I deny that I dislike my husband and have no love for him; and I deny that I want to get rid of him, as stated in his affidavit. I deny that I have formed any attachment for any man in the town of Red Bank, or any other person, and I deny that I am a visitor at the place of business of any man, and I deny that my husband ever protested against my conduct with any man. 20

I am informed and believe that my husband has stated to other people that I have been guilty of improper relations with other men, particularly with a man named in the affidavit of one Charlotte M. Garahan, and I deny the truth of such statements.

I have read the affidavit made by Francisco Felice. I did visit the office of Dr. Felice on March 23rd, 1926, and I was informed by the doctor that I would not get better unless I stopped worrying about my trouble with my husband, to which I replied that I was not able to stop worrying about his treatment of me. I deny that I told Dr. Felice that I would not go back to my husband. I made no such statement, and the subject of my return to my husband was not discussed by me with the Doctor. Subsequent to 30 40

Edna Tomaini

my visit to the doctor's office on March 23rd, Dr. Felice treated my son at the house and on that occasion Dr. Felice asked me if it would not be possible to become reconciled with my husband, and I told Dr. Felice that my affair was in the
10 hands of an attorney.

I have read the affidavit of John H. Schulz, who is my brother. It is not true, as stated in the affidavit, that he ever requested me to move away from my parents' home, to live with my husband, and I deny that I ever had any conversation with him at any time with respect to the matter.

20 On March 1st, the date at which he called at our home, the difficulty between my mother and he was that my mother objected to my brother coming into the house intoxicated.

I have read the affidavit of Charlotte M. Garahan, made January 15, 1926. The said Charlotte Garahan is an aunt of my mother's. I deny that it is true, as stated in her affidavit, that I ever went behind the counter in the Atlantic & Pacific Tea Company store, mentioned in her affidavit, or was ever guilty of improper conduct
30 with the said Bradhurst, and I deny that the said Charlotte Garahan ever spoke to me about my alleged conduct with the said Bradhurst. I deny that I ever went into the rear room of the store of the said Atlantic & Pacific Tea Company store, either with the said Bradhurst or alone. I deny that I ever told the said Garahan woman that the said Bradhurst, or any other person was my
40 affinity, and I deny that I said I ever expected to marry him.

Edna Tomaini

I deny that I ever showed silk stockings to the said Garahan woman, or any other items of apparel, including a little boy's suit, and I deny that I ever told her that the said articles had been presented to me by Mr. Bradhurst. My son has had four suits in his lifetime and these were bought by my husband; three he brought back from Italy with him, and the other one he bought in Long Branch. I deny that I ever told the said Garahan woman to tell Mr. Tomaini that I had just gone to New York. I deny that I ever gave the said Bradhurst a bill for automobile expenses and asked him to pay it. 10

It is true, as alleged in the said affidavit of the said Garahan, that at an affair of the B. P. O. Elks, in Red Bank, one evening, the said Bradhurst presented me with a blanket which he had won at a raffle in said Fair. It is also true that the said Bradhurst presented a great many other articles that he had won at the raffle, to other people. It is true that at the time when said Bradhurst presented me with the blanket, my daughter was with me and my mother, and the said Garahan woman. 20 30

I have read the affidavit of Benjamin P. Morris made May 4, 1926. I never talked to the said Benjamin P. Morris, and was never in his office, or in his presence at any of the times mentioned in his affidavit. I never heard Mr. Morris express the willingness and desire on the part of my husband, to provide a home for me and my children, and I never refused to accede to such a request; and I never said that I was 40

Herman Schultz

through with my husband, and have no knowledge of any such statement being made on my behalf.

EDNA TOMAINI.

Subscribed and sworn to before me this

10 17th day of May, 1926.
Elizabeth A. Coons,
Notary Public of N. J.

Affidavit of Herman Schultz.

(Filed, May 24, 1926)

20 State of New Jersey, } ss:
County of Essex.

Herman Schultz, of full age being duly sworn according to law upon his oath deposes and says:

I am the father of Edna Tomaini, the complainant in the above mentioned action. About the year 1913 I learned of the relations between my daughter and the defendant, Ernest Tomaini, and I made a complaint against the said Ernest Tomaini in the Long Branch Police Court, charging him with being the father of the unborn child of my daughter. Before this complaint came to a hearing the said Ernest Tomaini asked me to withdraw the complaint, promising that he would marry my daughter, and relying upon that promise I did withdraw the complaint. I asked Tomaini to marry my daughter immediately, and he asked me to wait until he had

30
40

Herman Schultz

settled all of his business affairs with his brothers, Peter Tomaini and Joseph Tomaini. I consented to this at the request of my daughter, who at that time was in no condition to appear at a hearing. When my daughter's oldest child was born the said Ernest Tomaini took up his residence with my daughter, in my house, and they lived together as husband and wife, and he held out my daughter as his wife. I again asked the said Ernest Tomaini to marry my daughter and he again asked me to wait until he got his business affairs settled with his brothers. Frequently, between 1913 and January 29, 1926, I requested the said Ernest Tomaini to marry my daughter, by a civil and religious ceremony, and particularly upon the birth of each of my daughter's children I requested him to do so, and he always put off the matter saying that it wasn't necessary.

On January 29, 1926, when my daughter's daughter graduated from the Grammar School, the said Ernest Tomaini came to our house with a gift for her, and I again urged him, through consideration for the welfare of his child, to marry my daughter by a religious and civil ceremony, and he refused saying, "What do you think, do you want me to make a fool of myself for a little piece of paper? It is all over and we are man and wife anyhow." On January 29th, 1926, when I made the request of Ernest Tomaini, my daughter was present. She requested the said Tomaini to marry her saying to him, "Ernest, why don't you marry me now

Herman Schultz

and be done with it," to which the said Ernest Tomaini said that he would not do so. I have heard my daughter, Edna Tomaini, ask the said Ernest Tomaini to marry her, a great many times between 1913 and 1926, and he has always
10 refused.

It is not true that the said Ernest Tomaini was not on friendly terms with myself and my wife. The contrary is the fact. Neither my wife, nor I, nor my daughter, to my knowledge, have ever locked Ernest Tomaini out of the house. It is not true that I, or my wife, or my daughter locked the said Tomaini out of the house on January 4, 1926. It is not true that the said Ernest
20 Tomaini has been forbidden to enter the house. The fact is that my wife requested the said Tomaini to pay more than \$15 a week for the board of himself, his wife and his two children, whereupon he refused and left the house. My wife told the said Ernest Tomaini, in my presence, that he should pay at least \$25 per week for the board and lodging of himself, his wife, and two children, which included all of the laundry work also, which was done for the said family by my wife.
30

It is absolutely not true that I, in the presence of any persons, and particularly in the presence of Mr. Benjamin P. Morris, an attorney at law of New Jersey, said that my daughter would not let the said Ernest Tomaini have the children, that they (myself and my daughter) did not want the said Tomaini around the house, and did not
40 want any of his, the said Tomaini's money, and

Herman Schultz

that I and my daughter wanted him to remain away from my home and leave my daughter and myself and my wife, and the said Tomaini's children, alone. No such statement was ever made.

I have read the affidavit of Emilie Fiocca. The said Emilie Fiocca is the sister of Ernest Tomaini. She told me, on or about April 12, 1926, that the said Ernest Tomaini intended to go to Italy and never come back, and she told me that he intended to go about the beginning of May, as soon as the estate of his deceased brother was settled and as soon as he had finished with the complainant. 10

I have read the affidavit of John H. Schultz. I was present when my said son came into the house, on or about March 1st. My wife and my daughter did not abuse him, as alleged in said affidavit, and said nothing to him concerning the relations of my daughter with her husband, but did find fault with the said Schultz for coming into the house intoxicated. My wife told my son that if he could not come into the house when he was sober he was not to come there when he was drunk. There was no conversation with the said John H. Schultz with reference to Ernest Tomaini. 20 30

I have read the affidavit of Benjamin P. Morris. The statements in said affidavit contained, purporting to have been made by me, are false. I was in the office of the said Morris on January 17th, and January 29th. On each of said occasions I went to his office for the purpose of paying off a mortgage held by the said Ernest 40

Herman Schultz

Tomaini, on my wife's property, in Long Branch, being the residence in which we live. It was given on August 1, 1922, to secure the payment of \$2,000 and no interest had been paid on the said mortgage since that date because the said
10 Ernest Tomaini told my wife that he did not want any interest. When I called at the office of the said Morris on January 17th he demanded payment of the interest from the date, and as I did not have sufficient money I asked for a postponement of 10 days, and on January 29th, I went to the office to pay the mortgage in full, with interest for about 3 1/2 years. I never made any statement in his office that I would
20 not let the said Ernest Tomaini have the custody of the children, and that I did not want him around the house, nor that I did not want any of his money, and that I wanted him to stay away and leave us alone. The conversation between Mr. Morris and myself was in substance, as follows: The said Morris said to me "Herman, what is this trouble between your daughter and Ernest?" I replied "Let them fight it out themselves. Let her get a lawyer and let him
30 get a lawyer," and I wanted to be between and I demanded a marriage. To which Mr. Morris replied "Let it go—they will be running together again." This conversation took place in the hall, outside of Mr. Morris' office, on January 29, 1926.

HERMAN SCHULZ.

Subscribed and sworn to before me this
17 day of May, 1926.

40 Elizabeth Coons,
Notary Public of New Jersey.

Eugene Blankenhorn—Schedule "A"

Catherine Blodgett and Jerry, her husband,	Mortgage for \$700.00 Book 653, page 478. Dated Feb. 26, 1923 Acknowledged Feb. 26, 1923. Recorded Mar. 5, 1923.
to Ernesto Tomaini	

COVERS

10

Property situate on the east side of Third Avenue,
Township of Ocean, County of Monmouth, State of New
Jersey.

Gussie Rosen	Mortgage for \$5,500. Book 751, page 123 Dated Oct. 12, 1925.
to Ernesto Tomaini	Acknowledged Oct. 12, 1925. 20 Recorded Oct. 14, 1925.

COVERS

Two tracts situate in the township of Eatontown,
county of Monmouth and state of N. J.

Marian Ferraro, widow	Mortgage for \$500.00 Book 765, page 38/ Dated Jan. 26, 1926	30
to Ernesto Tomaini	Acknowledged Jan. 26, 1926 Recorded Jan. 27, 1926.	

COVERS

Lot No. 48 "Map of Lots at Springdale" situate at
Long Branch, New Jersey.

40

Eugene Blankenhorn—Schedule "B"

SCHEDULE "B."

- 10 Cesare Teti and Rosa Teti, his wife, of the City of Long Branch, in the County of Monmouth and State of N. J. Mortgage for \$500. Book 467 page 347 Dated Dec. 3, 1913 Acknowledged Dec. 3, 1913 Before Benj. B. Morris M. C. C. of N. J. Recorded Dec. 12, 1913.
- to Ernesto Tomaini of the City of Long Branch in the County of Monmouth and State of N. J.

COVERS

All that certain lot on the corner of Willow Ave. and Prospect Street, Long Branch.

- 20 Cancelled March 4, 1916.

-
- 30 Teresa Torchia and Joseph Torchia, her husband, of the City of Long Branch in the County of Monmouth and State of N. J., Mortgage for \$300. Book 468 page 248 Dated Aug. 14, 1913 Ackn. Dec. 20, 1913 Before Geo. W. Gelder M. C. C. of N. J. Recorded Dec. 23, 1913.
- to Ernest Tomaini and Suiseppe Tomaini, of the City of Long Branch, County of Monmouth and State of N. J.

COVERS

Lots numbers 27 and 28 and a portion of lot number 29 as laid down on a map of lots at Long Branch, N. J., belonging to H. S. Terhune and W. H. DeNuse, dated June 1, 1903.

- 40 Cancelled Aug. 15th, 1916.

Eugene Blankenhorn—Schedule "B"

Frank Sirrianni and Tessie Sirrianni, his wife, of the City of Long Branch, in the City of Minmouth and State of N. J.	Mortgage for \$850. Book 498 page 413 Dated July 30, 1915 Acknowledged Aug. 10, 1915 Before Anna Feinberg, Com. of Deeds of N. J.	
Ernest Tomaini of the same place.	to Recorded Aug. 12, 1915.	10

COVERS

Lots numbers 8, 9, and 10 on a map entitled "Map of Lots at Long Branch, N. J., belonging to the estate of William H. DeNuse, deceased," made Dec. 30, 1901.

Cancelled Nov. 6, 1919.

Rosa Guzzi & Joseph Guzzi, her husband, of the City of Long Branch,	Mortgage for \$1000 Book 515 page 15 Dated Apr. 5, 1916 Ack. Apr. 5, 1916 before L. S. Throckmorton, Atty. at Law of N. J.	20
Ernesto Tomaini, of the City of Long Branch.	to Recorded Apr. 10, 1916	

COVERS

Premises on the east line of Indiana Avenue with the north line of Eastbourne Avenue, Long Branch. 30

Cancelled Sept. 26, 1924.

Antonio Graziano & Marta Rau Graziano, his wife, of the City of Long Branch	Mortgage for \$500. Book 520 page 457 Dated July 31, 1916 Ack. Sept. 12, 1916 before Lydia Zengel Notary Public of N. J.	40
	Recorded Sept. 13, 1916.	

Eugene Blankenhorn—Schedule "B"

COVERS

Premises on the north side of Willow Avenue, Long Branch, N. J.

Cancelled Feb. 17, 1919.

10

Carmine Iovino & Mary Iovino, his wife, of the City of Long Branch,	Mortgage for \$950.00 Book 582 page 422 Dated Aug. 30, 1920 Ack. Aug. 30, 1920 before Geo. W. VanGelder M. C. C. of N. J. Monmouth County Recorded Sept. 7, 1920
to	
Ernest Tomaini, of the City of Long Branch	

20

COVERS

Lot 14, Block No. 29, Section on the official map of the City of Long Branch, &c.

Cancelled Jan. 24, 1921.

Joseph Vinci & Stella Vinci, his wife of the City of Long Branch	Mortgage for \$300. Book 583 page 80 Dated Aug. 20, 1920 Acknowledged Sept. 3, 1920 before A. T. Wooley, Comm. of Deeds for Mon County Recorded Sept. 4, 1920
to	
Ernest Tomaini, of the City of Long Branch	

30

COVERS

Premises on the westerly side of Slocum Avenue, Long Branch, N. J.

40

Cancelled Oct. 26, 1921.

Eugene Blankenhorn—Schedule "B"

Guiseppeino Bassellato, widow, of the City of Long Branch, to Ernest Tomaini, of the City of Long Branch.	Mortgage for \$2000. Book 611 page 180 Dated Oct. 29, 1921 Ack. Oct. 29, 1921 before H. C. Morford Atty. at Law of N. J. Recorded Nov. 3, 1921.	10
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COVERS

Lot No. 9, on Map of Building sites owned by O. & D. Edwards & Co. surveyed by J. W. Seaman, C. E., Long Branch, N. J. Aug. 1902, also Lot No. 11 Map of lots belonging to Jos. Mazza & others, made by E. E. Throckmorton, Surveyor April 11, 1911.

Cancelled Dec. 1, 1924.

20

Mary J. Schulz & Herman Schulz, her husband, of the City of Long Branch to Ernest Tomaini, of the City of Long Branch	Mortgage for \$2000. Book 634 page 266 Dated Aug. 1, 1922 Ack. Aug. 1, 1922, before Leo J. Warwick, M. C. C. of N. J. Recorded Aug. 5, 1922.	30
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COVERS

Premises on the north side of Bath Avenue, Long Branch, N. J.

Cancelled Feb. 1, 1926.

40

Eugene Blankenhorn—Schedule "C"

CONVEYS

Undivided 2/3rd part in lot 21 to 26 incl. and the north east 1/4th part of lot 29. H. S. Terhune Map. South side of Winter Street 250 ft. east of Norwood Avenue.

10

Ernesto Tomaini, unmarried	Bargain & Sale Deed
to	Book 915 page 346
Maria B. Tomaini	Dated Nov. 13, 1911
	Ack. Nov. 13, 1911
	Recorded Nov. 14, 1911
	Cons. \$1. &c.

CONVEYS

Lot 56 Hall and Pemberton Map South side of Winter Street 74 ft. 6 inches from Chandler place. 20

Lots 26-27 Louisa S. Applegate Map at Springdale; West Side of Springdale Avenue and north saide of Chandler place.

Lots 21 to 26 inc. and northeast 1/4th part of 29 H. S. Terhune Map, south side of Winter St. 250' east of Norwood Avenue W.

Lot S. side Exchange Place at extreme northerly end of Exchange Place.

30

Ernesto Tomaini (unmarried)	Warranty Deed
to	Book 939 page 98
Joseph Guzzi	Deed dated Oct. 1, 1912
	Ack. Oct. 1912
	Rec. Oct. 15, 1912
	Cons. \$1.00 &c.

CONVEYS

Lot north side of Willow Avenue 105 feet from west side of Prospect Street. 40

Eugene Blankenhorn—Schedule "C"

Ernesto Tomaini, unmarried, to Antonio Graziano and Maria Rau Graziano, husband and wife.	Warranty Deed Book 942, page 397 Dated Dec. 23, 1912 Ack. Dec. 30, 1912 Recd. Dec. 31, 1912 Cons. \$1.00
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CONVEYS

Lot north side of Willow Avenue 50 ft. west of Prospect Street.

Ernesto Tomaini, unmarried, to Cesare Teti and Rosa Teti, 20 husband and wife.	Warranty Deed Book 966 page 134 Dated Dec. 3, 1913 Ack. Dec. 6, 1913 Rec'd. Dec. 12, 1913 Cons. \$1.00
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CONVEYS

Lot northwest corner of Willow Avenue and Prospect Street.

30 Ernesto Tomaini and Guiseppe Tomaini and Antoinette Tomaini, wife of Guiseppe Tomaini, of Long Branch to Guiseppe Monaco and Michela Monaco, his wife, of Long Branch	Warranty Deed Book 950 page 95 Dated Mar. 13, 1913 Ack. Mar. 13, 1913 Recd. Mar. 22, 1913
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40

Eugene Blankenhorn—Schedule "C"

CONVEYS

Undivided one half interest of lot 20 on Map of Lots of Long Branch, N. J. belonging to H. S. Terhune and W. H. DeNuse "dated June 1, 1903, and being lot 14 on Map of City of Long Branch, N. J." adopted by City Council of City of Long Branch Aug. 6, 1906, beginning on north side of High Street. 10

Ernesto Tomaini, unmarried, Guisseppi Tomaini and An- toinette Tomaini, his wife, of Long Branch,	Bargain and Sale Deed Book 977, page 12 Dated May 4, 1914 Ack. May 9, 1914 Ret'd May 29, 1914	
to	Cons. \$1.00	
Guisseppi Monaco and Mi- chela Monaco, his wife of Long Branch		20

CONVEYS

Lot 20 on "Map of lots at Long Branch, N. J. belonging to H. S. Terhune and W. H. DeNyse" dated June 1, 1903, and known as Lot #15 block 16, section 3 on official map of city of Long Branch Beginning on the north side of High Street.

Ernest Tomaini of Long Branch	Warranty Deed Book 1047, page 179 Dated May 17, 1917	30
to	Ack'd May 17, 1917	
Peter Tomaini of Long Branch	Rec'd June 29, 1917 Cons. \$1.00 etc.	

CONVEYS

First tract. South side of Lewis Street, Eatontown.

Second Tract. Adjoining Hat Factory Property, Eaton- 40
town.

Eugene Blankenhorn—Schedule "C"

- | | | |
|----|---|--|
| 10 | Ernest Tomaini, unmarried, of
Long Branch,
to
Guiseppe Tomaini of Long
Branch | Warranty Deed
Book 1065 page 265
Dated July 10, 1918
Ack'd July 15, 1918
Rec'd July 16, 1918
Cons. \$1.00 &c. |
|----|---|--|

CONVEYS

Lot north side of Broadway, at northwest corner of lot conveyed to Geo. W. Brown, by the Board of Education School District No. 85 of Long Branch.

- | | |
|----|--|
| 20 | Lots Nos. 90, 91, 92, 93, and 94 Map of lots belonging to Wm. G. Hall and Henry H. Pemberton, Long Branch, easterly side of Laurel Street 150 feet from intersection of easterly side of Laurel Street with northerly line of Joline Avenue. |
|----|--|

Equal undivided one half part lots Nos. 13, 14, 15, 16, 17, 18 and 19 on "Map of lots at Long Branch, N. J. belonging to H. S. Terhune and W. H. DeNyse" dated June 1, 1903. Beginning at southeast corner of lot #12 in north side of High Street.

- | | | |
|----|---|--|
| 30 | Ernest Tomaini, unmarried,
and Peter Tomaini and Del-
fina Tomaini, his wife, of
Long Branch,
to
Cora M. Throckmorton of
Long Branch. | Bargain and Sale Deed
Book 1065 page 451
Dated May 18, 1918
Ack'd Aug. 2, 1918
Rec'd Aug. 6, 1918. |
|----|---|--|

CONVEYS

- | | |
|----|--|
| 40 | South Side Lewis Street, Eatontown.
Lot adjoining Hat Factory, Eatontown. |
|----|--|

Eugene Blankenhorn—Schedule "C"

Ernest Tomaini (single man)	Warranty Deed	
and Guisseppi Tomaini and	Book 966 page 281	
Antoinetta Tomaini, his	Dated Aug. 14, 1913	
wife,	Ack. Dec. 20, 1913	
to	Rec'd Dec. 23, 1913	
Teresa Torchia, wife of Jo-	Cons. \$950.	
seph Torchia		10

CONVEYS

Lots 27, 28 and a portion of 29 on H. S. Terhune and W. H. DeNyse Map. South side of Winter Street 150' east of Norwood Avenue.

Ernesto Tomaini (single) and	Warranty Deed	
Guisseppi Tomaini and An-	Book 992 page 92	20
toinetta Tomaini, his wife,	Dated Jan. 27, 1915	
to	Ack. Feb. 4, 1915	
Frank G. DeSantis.	Rec'd Feb. 9, 1915	
	Cons. \$1.00 &c.	

CONVEYS

Lots 4 and 5 Map of H. S. Terhune and W. H. DeNyse, north side of Winter Street.

Ernesto Tomaini and Gui-	Agreement	
seppi Tomaini	Book 1028, page 379	
to	Dated July 13, 1914	
Bernardo Saggese	Ack. Sept. 28, 1916	
	Ack. Sept. 29, 1916	
	Recd. Sept. 30, 1916	
	Cons. \$525.	

Eugene Blankenhorn—Schedule "C"

AGREES

To convey Lots 15 and a part of 29 H. S. Terhune and
W. D. DeNyse, Map. North side of High Street 250' 2"
East of Norwood Ave.

10

Ernest Tomaini (unmarried)	Warranty Deed
to	Book 1117 Page 434
Fernando Corcione and Rose	Dated Feb. 17, 1920
Corcione, his wife.	Ack. Feb. 17, 1920
	Recd. July 9, 1920
	Cons. \$1.00 &c.

20

CONVEYS

Lot north side of Westbourne Avenue 205 ft. 8 inches
West of Springdale Ave.

Also lot adjoining Susan A. Hendrickson, Asher Ward-
ell.

30 Ernesto Tomaini (unmarried)	Warranty Deed
to	Book 1151 page 209
Antonio Mazza and Raffaella	Dated Aug. 3, 1921
Mazza, husband and wife.	Ack. Aug. 3, 1921
	Rec'd Aug. 5, 1921.
	Cons. \$1.00 &c.

CONVEYS

Lot 10 Block 15 Section 2. South Side of Willow Ave.
105 ft. west of Prospect Street.

40

Eugene Blankenhorn—Schedule "C"

Ernesto Tomaini (unmarried)	Warranty Deed	
to	Book 1177 page 460	
Elizabeth Cantine	Dated April 20, 1922	
	Ack. April 20, 1922	
	Rec. Apr. 24, 1922	
	Cons. \$1.00 &c.	10

CONVEYS

Part lot 10 block 15 Section 2 North Side of Willow Avenue 105 feet west of Prospect Street.

Ernesto Tomaini and Edna	Warranty Deed	
Tomaini, his wife,	Book 1319 page 456	20
to	Dated Oct. 12, 1925	
Gussie Rosen	Ack. Oct. 12, 1925	
	Recd. Oct. 14, 1925	
	Cons. \$1. &c.	

CONVEYS

Lot south side of Lewis Street, Eatontown.

Lot adjoining Hat Factory, Eatontown. 30

Memorandum of Opinion.*(Filed June 4, 1926)*

IN CHANCERY OF NEW JERSEY

10	Between EDNA TOMAINI, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and ERNEST TOMAINI, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	Not for Print. On Bill &c., Memorandum.
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June 4, 1926.

20 Merritt Lane, Esq., Solicitor; D. Eugene Blankenhorn, Esq., of counsel for the Complainant;
 Hon. Wilbur A. Heisley, for the Defendant.

Memorandum of Opinion.

(This memorandum is not to be published in the official or unofficial reports.)

30 BENTLEY, V. C.:

On application for temporary alimony under a bill for separate maintenance.

The bill alleges desertion upon the part of the defendant, and prays for alimony, both *pendente lite* and permanent. I think there can be very little dispute that the husband stands in a most unpleasant light with regard to this marital controversy. There is proof of his having seduced
 40 the complainant at a time when she was a mere

Memorandum of Opinion

girl and who had withheld the only means of partly righting the wrong he had committed, by marrying her. The only thing transpiring upon the hearing of the motion that caused me to hesitate about instantly advising an order for the payment of alimony was the offer made in open court to provide a home and take the complainant into it. Upon mature deliberation, my mind is clear that this amounts to what Vice-Chancellor Lewis has so often referred to as a death-bed repentance. It has recently become quite a frequent practice for a defendant in the position now occupied by this man to protest his love for his wife and offer to take her back again if it is hoped thereby that he may thus defeat her suit. It seems to me that offers of this kind should be scrutinized with great care and that the court, in advance of the final hearing, ought to be reasonably certain that the proffer is made in good faith and not in a last-minute hope of defeating the adversary party.

In the case at bar there is enough to make me of the opinion now that the complainant will be able to establish the allegations of her bill, and it does not seem to me that the proposed reconciliation is one that should be enforced by withdrawing the protection of the court from the wife. My suspicion against the offer is confirmed by two facts: First, because it is made to appear that the defendant has threatened that he will so blacken the complainant's name that she will be obliged to leave the vicinity in which she resides, and this is strongly corroborated by the character of one of the affidavits, insinuating an adulterous

Memorandum of Opinion

disposition on the part of the complainant with some man, although counsel must have known that if every fact and circumstance recited therein were proved to the point of demonstration, it would not amount to proof of adultery upon her part. I would consider it eminently unfair, in face of the filing and publication of this affidavit, to compel this woman to suffer the burning indignity of returning now to the domination of the man who has thus shamed her. In addition to that fact is another perhaps even of more weight, and that is the failure of the defendant over a long period of years to go through a marriage ceremony with the complainant by whom he has had two or more children born. She states that she has repeatedly importuned him to go through a ceremonial marriage, and even yet he asks to take her back without any intimation of an agreement to respond to this eminently fair and reasonable request.

In view of the undoubted resources of the defendant, the fact that he has voluntarily paid the complainant \$30 a week for some of the period of their separation and the necessities of a family such as this, I consider the request of the wife reasonable and will, therefore, advise an order for a payment of \$35 a week to the wife for her support and that of her children. In view of the spirited and stubborn contest that appears to be in prospect, there should be a preliminary allowance of counsel fee of \$350.

It is impossible to close this memorandum without some reference to a most amazing com-

Memorandum of Opinion

munication in the form of a letter from defendant's counsel, undated, but apparently dictated on the afternoon following the argument of the motion. The author appears to be under a misapprehension that Mr. Lum's report will be given some weight as evidence in the wife's favor. This, of course, is entirely incorrect, and I do not see how counsel could have remained in any doubt after my explanation to him that I simply directed Mr. Lum, as an officer of the court, to investigate the woman's story and report to me whether or not there appeared to be any merit. I did not ask Mr. Lum to exercise my function of deciding between the parties, but only to report whether or not the woman's story appeared to bear the impress of truth. The rest of the letter appears to be an effort on the part of counsel to delegate my duties to a partisan advocate and rely rather on his opinion than the proofs and circumstances of the case, coupled with a threat to take an appeal unless I accept his dictation as to the amount of alimony to be allowed, although he generously leaves me some latitude of discretion by not naming any sum as the maximum of counsel fee that will be endured. After his length of experience it is unnecessary that he be informed that the appellate court is always open to any litigant who feels himself aggrieved at any determination of this court which he feels to be prejudicial to his property or other rights.

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Order for Alimony Pendente Lite.*(Filed June 11, 1926)*

IN CHANCERY OF NEW JERSEY

10	Between EDNA TOMAINI, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and ERNEST TOMAINI, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	On Bill, &c. Order for Alimony <i>Pendente Lite</i> .
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20 This matter being opened to the Court by Merritt Lane, of counsel with complainant, and in the presence of Wilbur A. Heisley, Esq., of counsel with defendant, and good cause being shown by bill of complaint and affidavits why the complainant is entitled to relief in the premises;

30 It is thereupon on this 11th day of June, 1926, Ordered that Ernest Tomaini, the above-named defendant, do pay to his wife, Edna Tomaini, or to her solicitor, the sum of \$35.00 per week, at the beginning of each and every week, commencing from April 26, 1926, the date of the return of the Order to Show Cause, until the termination of this suit, for her support and maintenance and that of the infant children of the marriage, now in her custody; and

It is further Ordered that the said Ernest Tomaini do pay to the said Edna Tomaini, or to her solicitor, a preliminary counsel fee of \$350 and the costs of this application to be taxed.

E. R. WALKER,
C.

40 Respectfully advised,
 JOHN BENTLEY,
 V. C.

Petition of Appeal

1. That your petitioner finds himself aggrieved by an order made in the Court of Chancery by Honorable Edwin Robert Walker, Chancellor of New Jersey, on the 11th day of June, 1926, in a cause depending in said court in which said Edna Tomaini was complainant and the petitioner was the defendant, in this respect, to wit: 10

That said order directs your petitioner to make a payment of \$35.00 weekly, as therein stated, for the support and maintenance of the complainant and her children, your petitioner alleging that said order was erroneous because there was no evidence, acts of petitioner or proof by affidavits, or otherwise, justifying the making of such an order and that said order was made without competent proof that petitioner had abandoned his wife or separated himself from her, and refused or neglected to maintain and provide for her, but that said proof and affidavits showed the contrary thereof to be the truth; that said affidavits and proofs duly filed in said cause demonstrated that complainant had unjustifiably and without reason refused to live with petitioner; that petitioner was and always had been able and desirous of supporting the said complainant and children, but, without reason, she refused to reside with him or live with him as his wife and that, therefore, petitioner had neither abandoned or separated himself from his wife, or neglected to maintain and provide for her. 20 30

Your petitioner alleges that no decree or order requiring him to pay \$35.00 weekly, or any other sum, was justified by the said proofs, but that if 40

Petition of Appeal

said proofs justified a decree or order directing petitioner to pay any sum, that the sum of \$35.00 was grossly excessive and beyond the ability and means of petitioner to pay.

10 That the said order directed the petitioner to pay complainant's solicitor a counsel fee of \$350.00 when the proofs for the reasons above stated, did not justify the making of any order directing the payment of any counsel fee and petitioner respectfully alleges that if any sum should be paid for counsel fees, it should be much less than \$350.00.

20 That \$350.00, as counsel fees, is excessive and more than such services are reasonably worth and much greater than the circumstances and ability of petitioner enable him to pay.

Your petitioner, therefore, prays that the said order of the said Chancellor, may in all respects be reversed, set aside and for nothing holden and that your petitioner may have such relief in the premises as this Honorable Court shall deem just and equitable.

30

WILBUR A. HEISLEY,
Solicitor of Appellant.

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Answer to Petition of Appeal.*(Filed Aug. 10, 1926)*NEW JERSEY COURT OF ERRORS AND
APPEALS

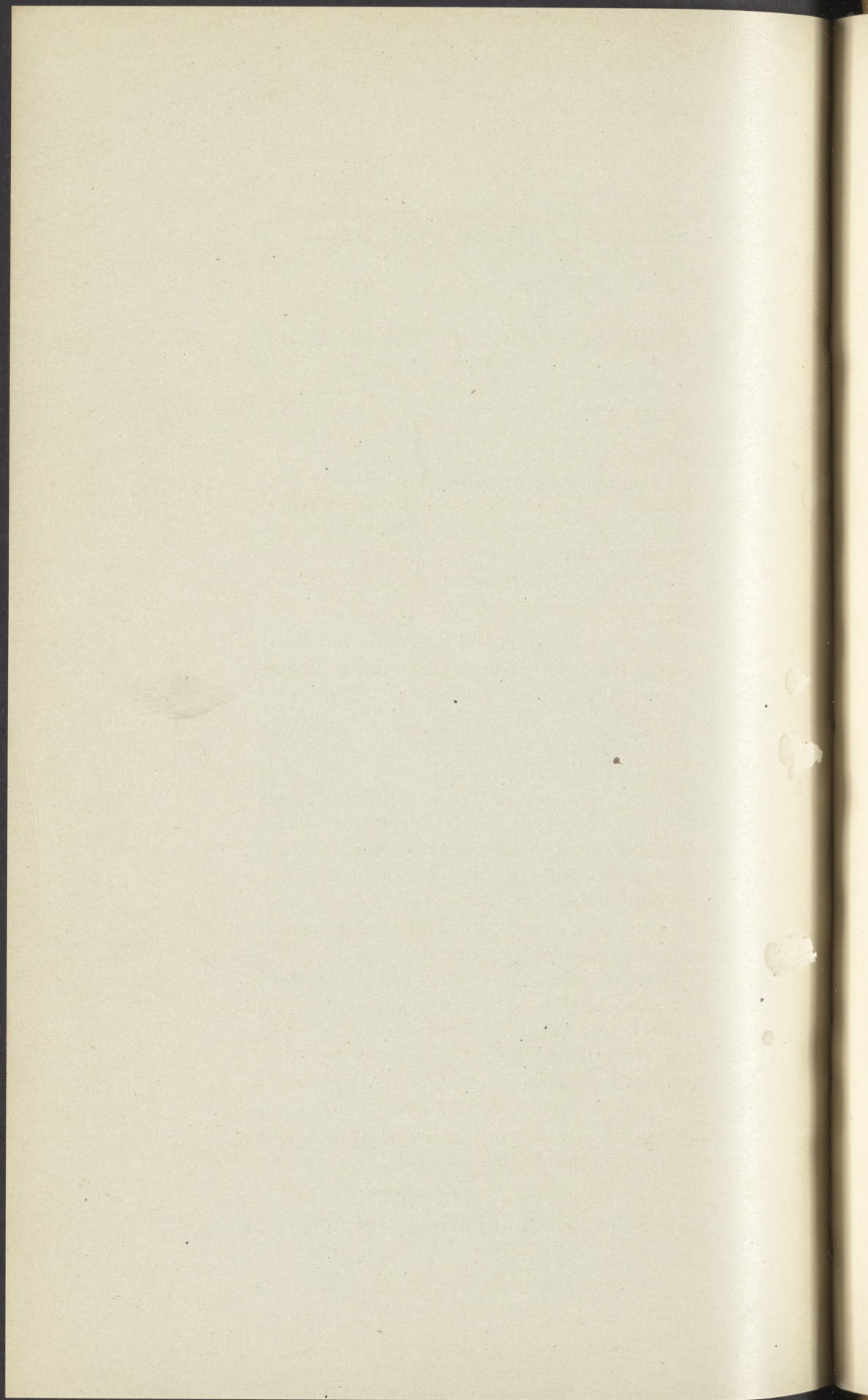
Between EDNA TOMAINI, Complainant-Appellee, and ERNEST TOMAINI, Defendant-Appellant.	} Answer to Pe- } tition on Ap- } peal.	10
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The answer of Edna Tomaini, the above-named appellee, to the petition of appeal of the above-named appellant. 20

This appellee, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits that an order was on the eleventh day of June last past, made and entered in the Court of Chancery in the said cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this appellee prays to refer thereto when the same shall be produced. 30

And this appellee is advised and believes that by the making of the said order, and of the said order, and by the things in said petition referred to, the said appellant is not aggrieved and that said petition for such reason should be dismissed and that said order is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this appellee. 40

MERRITT LANE,
Solicitor and of Counsel with Appellee.



Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

EDNA TOMAINI,
Complainant-Respondent,

and

ERNEST TOMAINI,
Defendant-Appellant.

BRIEF OF COMPLAINANT-RESPONDENT.

Complainant-respondent filed her bill in this cause for separate maintenance under Section 26 of the Divorce Act. The allegations of the bill are:

That she became the wife of defendant by a common law marriage;

That three children were born of the marriage, of whom two are living and in her custody, viz., a girl, aged thirteen years, and a boy, aged four years;

That defendant-appellant abandoned her and her children on Febraury 16, 1926, leaving her dependent upon her parents for her support;

That defendant is possessed of certain valuable properties and is well able to provide for her.

The bill prayed for a writ of *ne exeat*, upon the ground that defendant was about to leave the State and go to Italy, and a writ was issued and defendant placed under \$10,000 bond.

Upon the return of an order to show cause why defendant should not provide for and maintain her pending the cause, an order was made

requiring defendant to pay complainant \$35 per week and \$350 counsel fee, from which order defendant has taken this appeal.

On May 4th, and before the hearing upon the return of the order to show cause, defendant filed his answer denying the marriage "by any ceremony or by any contract," but nevertheless not disputing "that he is under all the obligations to her (complainant) usually incident to matrimony and has and does recognize the complainant as his wife." The answer also denies the abandonment; denies that defendant threatened to go to Italy and says that complainant repeatedly refused and now refuses to accept support from defendant, and alleges desertion by complainant of defendant. It disputes the values placed by complainant upon properties owned by defendant; alleges that defendant's income is not more than \$1,500 a year. It denies that defendant threatened to go to Italy, but admits that he contemplated going to Italy to visit his mother, who resides in Italy, and that he contemplated going "next summer, or perhaps later." It alleges that the separation was due to complainant's parents, (with whom the parties always resided,) who were hostile to him and ordered him to leave their house, that he had offered a home to complainant, which she had refused. It alleged defendant's desire to furnish a home of his own selection for his wife and children.

The affidavit proofs submitted by the complainant, and the admissions contained in the pleadings and proofs submitted by the defendant, upon the argument upon the return of the rule to show cause, are ample to support the finding of the Vice-Chancellor in this case, and the offer made by the defendant in his answer, and in open court, upon the hearing, viewed in con-

junction with the attitude of the defendant, toward his wife, is not made in good faith and is not such an offer as the complainant could accept with any certainty that she would be safe in so doing.

FACTS.

The fact of marriage of the parties is admitted by the defendant in paragraph 1 of the Answer (l. 16) in which paragraph he denies that he was ever lawfully married either by a ceremony or by contract, and then admits that he owes to the complainant the obligations "usually incident to matrimony" and recognizes the complainant as his wife.

The cohabitation of the parties is admitted in paragraph 2 of the Answer (p. 17, l. 9) and the birth of the children is admitted in paragraph 3.

Paragraph 4 of the Complaint, which alleges the abandonment on February 16, 1926, and the intention of the defendant to go to Italy, is denied by the Answer. The complainant has set up in her affidavit the circumstances upon which she based her knowledge of her husband's intent to go to Italy (p. 7, ll. 20-40), and while Mrs. Emily Fiocca denies that she ever made such a statement to complainant (p. 28, ll. 30-33), defendant himself admits that he contemplated going to Italy to visit his mother "next summer or perhaps later" (p. 18, l. 30).

The defendant's claim that the unhappiness was caused by the parents of complainant, and their interference in his martial affairs, is disproven by the facts as they are reflected by all of the affidavits and by the failure of the defendant to deny certain important facts. He alleges in his Answer and verifying affidavit, that complain-

ant's parents several times had locked him out of the house (p. 19, ll. 12-14), but in his answering affidavit he mentions only one date on which this occurred, viz., January 4, 1926 (p. 22, l. 36), and admits that after that time he returned to the house and lived with his wife until February 26, 1926, when complainant's mother ordered him to leave the house and never to return (p. 23, l. 13). It is clear that the defendant did not leave the house because complainant ordered him to do so as alleged by him at p. 22, ll. 30-40 and p. 23, ll. 1-20. That complainant's parents ordered him to leave or locked him out is denied by the complainant and by her father (Herman Schultz, p. 46, ll. 10-30).

During the time the Tomaini's resided with complainant's parents, he held a mortgage upon the dwelling house of the parents, in which complainant and defendant lived, given to secure the payment of \$2,000 and some time prior to January 4, 1926, for some reason which he does not offer to explain, defendant demanded payment of the mortgage, although he had told his wife, and had told his wife's parents, that so long as they, the Tomainis, lived with complainant's parents, he would not ask for the payment of interest on the mortgage. The parents were obliged to, and did negotiate a loan with a Building and Loan Association, and when they went with the money to Mr. Benjamin P. Morris, who represented the defendant in the matter of the demand for payment of the mortgage, they found that interest for four years was demanded by Mr. Morris, on behalf of the defendant, and it was necessary to secure additional monies, which they did. This was the reason that Herman Schultz, the father of complainant, went to Mr. Morris' office on January 17th and January 29th

(Herman Schultz, p. 47, ll. 32-40; p. 48, ll. 1-20). Defendant has not denied that on August 1, 1922, when this mortgage was given, he told Mrs. Schultz, complainant's mother, that she need not pay interest upon the mortgage, a thing which in itself, would show the friendly feeling existing between the defendant and the parents of complainant, and the desire of the defendant to assure to his wife, the complainant, a home for herself. As she says, her husband told her that he did not want her mother to pay any interest on the mortgage so that he could always feel that she and the children had a home as long as he held the mortgage (Edna Tomaini, p. 39, ll. 8-12).

Defendant alleges in his affidavit that for a long time he and complainant, and their children, boarded with complainant's parents, and that he regularly, down to February 26, 1926, paid \$15.00 per week to the parents for their board and keep, and \$15.00 to the complainant. He does not deny that complainant's mother told him that she could not board the defendant and his family for \$15.00 a week, and that he would have to pay more; and he does not deny that he told complainant's mother that he could not pay more and that he would go elsewhere (Edna Tomaini, p. 39, ll. 18-24), (Herman Schultz, p. 46, ll. 25-31). The amount, \$25.00, that Mrs. Schultz asked for the board and lodging of four persons, which included all of the laundry work done by complainant's mother, would seem to be very small, and it is impossible to secure suitable board, lodging and laundry work for four persons, elsewhere, for anything like that sum.

Counsel for defendant has mistakenly assumed in his brief that the trouble between the parties

began at the time of their taking up residence with complainant's parents. As a matter of fact, the parties have always resided with complainant's parents from the time of the marriage down to the date of the separation (Herman Schultz, p. 45, ll. 1-20), a period of thirteen years.

He says he has not consciously given complainant any cause of which he is aware to dislike him, or to refuse to live with him and that he firmly believes she thoroughly dislikes him and has no love for him (p. 25, ll. 18-30), and yet upon the hearing of this matter he permits his solicitor to introduce and read an affidavit of one Charlotte M. Garrahan in which the deponent refers to his wife as "Edna Schultz" (p. 33, l. 16), and as "Miss Schultz" (p. 34, l. 37), and insinuates, but does not prove, an adulterous disposition on the part of complainant, of which affidavit the Vice-Chancellor said:

"I would consider it eminently unfair, in face of the filing and publication of this affidavit, to compel this woman to suffer the burning indignity of returning now to the domination of the man who has thus shamed her" (p. 66).

He believes he has not consciously given complainant cause to dislike him although for a period of thirteen years he has repeatedly refused to go through a civil and religious marriage ceremony with complainant, and particularly, on January 29, 1926, when his oldest daughter had graduated from grammar school, almost a month after he says he was locked out of the house, complainant begged him to marry her and he refused (p. 45, ll. 1-40). He does not deny this statement. His sister does not say in her affidavit that he offered to have a marriage ceremony performed (p. 28); nor does Dr. Felice

say that defendant had offered to make these amends.

The offer of a home came in a most off-hand way, as defendant was leaving the house, and was made at such a time and under such circumstances as that complainant would be most likely to refuse it, and the same must be said of the offer made in open court. Of this offer the Vice-Chancellor said:

“In addition to that fact is another perhaps even of more weight and that is the failure of the defendant over a long period of years to go through a marriage ceremony with complainant by whom he has had two or more children born. She states that she has repeatedly importuned him to go through a ceremonial marriage, and even yet he asks to take her back without any intimation of an agreement to respond to this eminently fair and reasonable request. (p. 66, ll. 5-25).

If the defendant was compelled to leave the house prior to January 4, 1926, because of the attitude of complainant's parents toward him, then he condoned whatever offense might be chargeable to his wife by returning and living with her until February 26, 1926, and unless some new offense arose since the condonation, defendant may not excuse his action by setting up the offenses which he condoned.

His offer to his wife to come along with him, made as he was leaving the house, and admittedly at a time when he had not furnished a home to which he was inviting her, was not such an offer as will defeat her suit for maintenance. It was said in *Howey v. Howey*, 77 N. J. Eq. 591, that if the husband provides a home and in good faith invites the wife to come to it, she must come and alimony must cease from the time the Court is

appraised of the fact that the husband has *in good faith*, offered to provide her with a home, but that the offers in the instant case do not appear to have been made in good faith, or within the ability of the defendant. In that case it was said further:

“It is works rather than words which are forceful and carry a conviction, and I do not think the complainant was required to accept the statement of the defendant that he would provide her a home, when he made no effort, and had no means to accomplish that purpose,—no apparent opportunity to accomplish it at any rate.”

And the offer by the defendant, after the commencement of this suit, to take back his wife as mistress of his house, will not defeat the suit, where it appears that such offer was a mere pretense to defeat the making of a mandatory order on him to maintain her. (*Parker v. Parker*, 57 N. J. Eq., 577.)

In *Irvine v. Irvine*, 81 N. J. Eq. 20, a wife's suit for alimony and maintenance, the Court said in granting temporary alimony, that the wife had presented “*prima facie* case entitling her to a trial of the question whether the circumstances of the separation were such as to make the husband's present offer pending suit, of rooms to live in with him, no defense to the suit, because not made with any right to expect it to be accepted.”

And the same was held in *Elliott v. Elliott*, 48 N. J. Eq., 231.

The complainant could not, under any circumstances, be expected to comply with the request of the defendant that she return to live with him unless he consented to be married to her, by a civil or religious ceremony. Her re-

quest in that respect was certainly reasonable and proper, and the finding of the Vice-Chancellor in that respect is amply sustained by all of the facts.

Allowance of \$35.00 per week for support and maintenance, and the allowance of counsel fee was proper.

The allowance made by the Vice-Chancellor for support and maintenance of Mrs. Tomaini and her two children pending this action, was \$35.00 per week, or \$11.67 per person. The defendant is a man of undoubted means as is shown by the records of his real estate transactions in Monmouth County, covering a period from 1912 down to 1925. He was engaged in a large and profitable canning industry and in addition he was engaged in business in a retail store. While he disposed of a large part of his real estate, he has mortgages still unsatisfied of record, which are returning him an income, and he has admitted that one building produced a rental of \$3,000 per annum (p. 26, l. 29).

There is no proof that Tomaini is a physical wreck, as stated by his counsel, nor that he is unable to work. He has a "double inguinal hernia" but this is not an unusual condition with a man of his station, nor one necessitating his refraining from work, nor does Dr. Felice state that Tomaini is unable to engage in any enterprise. His statement is limited to this: "In my judgment he is in no condition to engage in active enterprise." The fact that he is suffering from chronic myocarditis does not prevent defendant from engaging in his usual real estate business, nor other activities.

Defendant would be obliged, by the laws of this State, to support his children and particularly by the Act Concerning Welfare of Children (Cumulative Sup. Comp. Statutes, p. 1563, Sec. 97-90) wherein a penalty is imposed for failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public or by private persons not legally chargeable with its or their care, custody and control, and wherein cruelty to a child is defined, amongst others, as any wilful act or omission or commission, whereby unnecessary pain or suffering, whether mental or physical, is caused or permitted to be exerted on a child, or children; and wherein neglect of a child is defined as "wilful failing to provide proper and sufficient food, clothing, maintenance, regular school education, as required by law, etc., and the failure to do or permit to be done any act necessary for the child's physical or moral well-being."

Under this act defendant would be obliged to maintain his children and to provide clothing and proper schooling whether he were possessed of property or not. The amount allowed to the wife and children by the Vice-Chancellor would be scarcely more than sufficient to maintain the wife and children without application to the Poormaster.

But where, as in the case of this defendant, he has the means to maintain them in greater comfort, then he must provide such maintenance as is suitable.

"A husband who, without justifiable cause, separates himself from his wife, and neglects to provide for her such support and maintenance as this Court shall adjudge, 'that the nature of the case and the circumstances of the parties render suitable and proper' is

guilty of 'refusing and neglecting to maintain and provide for her' in the sense in which those words are used in the twentieth (now twenty-sixth) Section of the Act Concerning Divorces."

O'Brien v. O'Brien, 49 N. J. Eq., page 436;

Hollingshead v. Hollingshead, 91 N. J. Eq., 261, page 279.

The complainant is without means to prosecute her suit and under these circumstances is entitled to counsel fee, and the amount allowed, in view of the means of the defendant, is not excessive.

It is respectfully submitted that the allowance by the Vice-Chancellor of \$35.00 per week for the maintenance of the wife and two children, and the allowance of \$350.00 counsel fee, is reasonable and proper, and that this appeal should be dismissed with costs of the complainant.

Application for Alimony Pending Appeal.

Since appealing from the order directing defendant to pay alimony *pendente lite*, and counsel fee, defendant has refused to pay more than \$15.00 per week, and he tenders \$15.00 a week for the support only of both of his children, and nothing for the support of his wife, relying upon the ruling in the case of *Penn. R. R. Co. v. Nat'l. Docks and N. J. C. R. R. Co.*, (54 N. J. Eq., p. 647).

The case of *Robinson v. Robinson*, 86 N. J. Eq. 165, held that "every installment of permanent alimony paid by a husband to his wife under a final decree therefor, in a Court of Chancery, would be in execution of the decree *pro tanto*, the result being that any such payment,

pending appeal, would be an impairment of the subject of the appeal, to that extent or degree, and also an invasion of the appellant's right to have his property preserved and not diminished, during the contest in this court, and to protection from this he is entitled. The course which, as thus indicated, is required for the preservation of the rights of the appellant, is even more fundamentally required in order that the jurisdiction of the appellate court may not be destroyed or impaired." The same case holds that this Court has power to award alimony pending an appeal; that is, alimony *pendente lite*. That jurisdiction is firmly established (p. 168).

The distinction between *Robinson v. Robinson* and the instant case is that the appeal in this case is an appeal from an order made by the Court of Chancery for alimony *pendente lite*. The subject matter of the appeal, in fact, is the obligation of a husband and father to maintain his wife and children and to that extent at least, the Court will not treat the order to maintain his children, as an invasion of the defendant's right to have his property preserved. The first duty is the obligation to maintain his children and to prevent their becoming a charge upon the State.

However, the complainant has filed her petition here praying that she may have a suitable allowance for the maintenance of herself and her children, and an additional fee to enable her to defend this appeal, and defendant's counsel suggests, in his brief at page 9, that "if this Court thinks this bill should be retained, the Vice-Chancellor be directed to inquire as to defendant's income and health, and then award."

In *Ashby v. Yetter*, 76 N. J. Eq., page 173, at page 188, it is held that pending an appeal from an order or decree of the Court of Chancery, application may be made either to the Court of Errors and Appeals, or to the Court of Chancery, for leave to execute the order, or decree, of the Chancery Court, so far forth as may be necessary for the protection and preserving of the subject of the appeal, and such an order will be made when the exigencies of the situation call for it; but no order will be made that would destroy, or impair, the subject of the appeal, and further, that application for leave to proceed in the Court of Chancery may be made in the first instance to the Court of Errors and Appeals, at the election of the moving party, but such leave is not required.

The complainant is willing to have an order made in this Court remitting to the Vice-Chancellor the question of ability of the defendant to pay.

It is respectfully submitted, therefore, that an order may be made remitting to the Vice-Chancellor, the question of the ability of the defendant to pay, and the question of the amount of alimony and counsel fee to be paid pending the appeal; or she prays that an order may be made by this Court, directing the defendant to pay the alimony which by the order heretofore made by the Vice-Chancellor is directed to be paid, together with the counsel fee allowed by the Vice-Chancellor, and an additional fee to enable her to further prosecute her suit and to defend this appeal.

Respectfully submitted,

EUGENE BLANKENHORN,
Of Counsel with Complainant-Respondent.