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NOTICE OF APPEAL
Filed March 30, 1917

IN CHANCERY OF NEW JERSEY.

Between ARTHUR C. DIETRICK, Petitioner-Respondent, and CHRISTINE DIETRICK, Defendant-Cross Petitioner, Appellant.	)	On Petition for Annulment. Cross-Petition for Divorce.
Between CHRISTINE DIETRICK, Petitioner-Appellant, and ARTHUR C. DIETRICK, Defendant-Cross Petitioner, Respondent.	)	On Petition for Divorce. Cross-Petition for Annulment.

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NOTICE OF APPEAL.

Christine Dietrick, the above named defendant and cross-petitioner in one action, and petitioner in another action (said two actions having been consolidated and having been heard together), hereby appeals from so much of the decree nisi filed in this, the above stated cause as consolidated, and which said decree is dated the third day of March, Nineteen Hundred and Seventeen, as denies to her, the said appellant, permanent ali-

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mony to be paid to her by her husband, Arthur C. Dietrick, and so much of the said decree nisi which in denying to her, the said appellant, said permanent alimony, recites as follows:

"And it further appearing that the petitioner Christine Dietrick is possessed of real property given to her by the defendant Arthur C. Dietrick during coverture of a value equal to the present worth for her life of such allowance as to the court seems a reasonable amount paid to her monthly out of her husband's income, it is further ordered, that no permanent alimony be allowed to the said Christine Dietrick. defendant in the first entitled suit and petitioner in the second entitled action" to the Court of Errors and Appeals in the last resort in all causes.

Dated March 30, 1917.

ALEX. SIMPSON,

Solicitor for and of counsel with Christine Dietrick, Defendant Cross-Petitioner in one action and Petitioner in the other action.

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

ALEX. SIMPSON,

Of Counsel.

Filed March 30, 1917.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ARTHUR C. DIETRICK, Petitioner-Respondent, and CHRISTINE DIETRICK, Defendant-Cross Petitioner, Appellant.	On Appeal from Chancery.
Between CHRISTINE DIETRICK, Petitioner-Appellant, and ARTHUR C. DIETRICK, Defendant-Cross Petitioner, Respondent.	

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PETITION OF APPEAL.

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To the Honorable, The Court of Errors and Appeals in the Last Resort in All CAUSES:

The petition of Christine Dietrick, Appellant, respectfully shows:

That your petitioner finds herself aggrieved by so much of the decree nisi made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the third day of March, Nineteen Hundred and Seventeen,

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which said portion of said decree recites and adjudges that no permanent alimony be allowed to her, the said appellant, as denies to her permanent alimony to be paid to her by her husband, Arthur C. Dietrick, and so much of the said decree nisi which in denying to her, the said appellant, said permanent alimony, recites as follows:

"And it further appearing that the petitioner Christine Dietrick is possessed of real property
10 given to her by the defendant Arthur C. Dietrick during coverture of a value equal to the present worth for her life of such allowance as to the court seems a reasonable amount paid to her monthly out of her husband's income, it is further ordered that no permanent alimony be allowed to the said Christine Dietrick, defendant in the first entitled suit and petitioner in the second entitled action."

And your petitioner appeals from the above por-
20 tion of the said decree and from so much of said decree as denies to her the said appellant permanent alimony, on the ground that the said ruling in the Court of Chancery denying permanent alimony to the said appellant is erroneous, for that the said Chancellor should have recited and adjudged that your petitioner, the said appellant, was entitled to have permanent alimony sufficient to maintain her according to her station in life as by the testimony taken in said cause in the Court
30 of Chancery will more fully appear.

Your petitioner therefore prays that said portion of said decree nisi denying to her the said petitioner permanent alimony may be reversed, rescinded and for nothing holden, and that your petitioner may have such further relief as shall seem meet.

Dated March 30, 1917.

ALEX. SIMPSON,
Solicitor for and of counsel with Christine
40 Dietrick.

IN CHANCERY OF NEW JERSEY.

Between ARTHUR C. DIETRICK, and CHRISTINE DIETRICK, Defendant and Cross-Petitioner,	)	On Petition for Annulment. Cross-Petition for Divorce.
Between CHRISTINE DIETRICK, Petitioner, and ARTHUR C. DIETRICK, Defendant and Cross-Petitioner.	)	Decree Nisi On Petition for for Divorce. Cross-Petition for Annulment.

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The above causes having been consolidated and coming on to be heard in the presence of Isidor H. Brand, Esq., of counsel with the first named petitioner and second named defendant, and Alex. Simpson, of counsel with the second named petitioner and the first named defendant, on the petitions, answers, cross-petitions and oral proof taken in open court; whereupon and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor that the petitioner in the above entitled first named petition for annulment of marriage has not sustained the allegations of his petition and that the marriage between himself

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and the defendant was valid; and it further appearing that the first named petitioner and the defendant were lawfully joined in the bonds of matrimony on or about the 4th day of June, 1911, and that the defendant in the second entitled action and petitioner in the first entitled action, has been guilty of the adultery charged against him in the petition and cross-petition and the cross-petition and petition in the respective suits, and that at the time the cause of action for divorce arose, the petitioner and defendant were bona fide residents of this state and that they have continued so to be down to the time of the commencement of the action; and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant Arthur C. Dietrick and the defendant Christine Dietrick in this state.

It is thereupon, on this thirteenth day of March, Nineteen Hundred and Seventeen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the petition of Arthur C. Dietrick for annulment of marriage be dismissed and the cross-petition for the annulment of said marriage be dismissed;

And it is further ordered, adjudged and decreed, by the authority aforesaid, that the said petitioner Christine Dietrick and the said Arthur C. Dietrick, is also the petitioner in the first entitled action, and Christine Dietrick who is cross-petitioner in the first entitled action, be divorced from the bonds of matrimony for the cause of adultery alleged in the cross-petition of said Christine Dietrick and the subsequent petition of the said Christine Dietrick, and that the said parties and each of them be freed and discharged from the obligations thereof, unless sufficient cause be

shown to the Court why this decree should not be made absolute within six months from the date hereof.

And it further appearing that the petitioner Christine Dietrick is possessed of real property given to her by the defendant Arthur C. Dietrick during coverture of a value equal to the present worth for her life of such allowance as to the court seems a reasonable amount paid to her monthly out of her husband's income, it is further ordered that no permanent alimony be allowed to the said Christine Dietrick, defendant in the first entitled suit and petitioner in the second entitled action.

And it is further ORDERED, ADJUDGED AND DECREED that the said Arthur C. Dietrick, petitioner and cross-petitioner, do pay the sum of $100 in said actions for counsel fee together with costs of suit to be taxed, and that the said Christine Dietrick, petitioner and cross-petitioner have execution therefor according to the practice of this Court.

E. R. WALKER,

Chancellor.

Respectfully Advised,

CHARLES J. ROE,

Advisory Master.

I, ROBERT B. McADAMS, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the Decree Nisi in the cause wherein Arthur C. Dietrick is petitioner, and Christine Dietrick is defendant, now on the files of my office.

(Seal)

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 19th day of March A. D. nineteen hundred and seventeen.

ROBERT B. McADAMS,

Clerk.

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Filed March 18, 1917.

IN CHANCERY OF NEW JERSEY.

Between ARTHUR C. DIETRICK, Petitioner, and CHRISTINE BRADLEY, Defendant.	)	On Petition for Annulment.
Between CHRISTINE DIETRICK, Petitioner, and ARTHUR C. DIETRICK, Defendant.	)	On Petition for for Divorce.

Isidor H. Brand, Solicitor for Arthur C. Dietrick.

Alexander Simpson, Solictor for Christine Dietrick (Bradley).

CONCLUSIONS OF CHARLES J. ROE, ADVISORY MASTER.

In the first named action a petition was filed by the husband to annul the marriage between himself and his wife. The defendant in that action filed a cross-petition for divorce on the ground of adultery, to which an answer has been filed.

The second of said suits is an action brought by the wife for divorce on the same grounds as

those mentioned in her cross-petition in the first suit.

These two actions must be consolidated. Complete relief of the parties can be had in the first named action to which I shall refer in designating the parties.

The petitioner and defendant were married on June 4th, 1911, by the same Minister of the Gosepl who on May 14th, 1904 had performed a marriage ceremony between the defendant and one William Tully Bradley, Jr. At the time of the marriage of the petitioner and the defendant, Bradley was living and the marriage existing between him and the defendant had not been dissolved.

Bradley, however, at the time he contracted the marriage with the defendant in 1904 was a married man, he having on October 21st, 1902, contracted a ceremonial marriage with one Maude M. Tyler in the State of Virginia, and at the time of his marriage with the defendant in 1904 his wife was living and the marriage entered into in 1902 had not been annulled or dissolved.

Bradley at the time of his marriage with the defendant was not competent to contract marriage, and, therefore, the marriage of Bradley and the defendant was bigamous and void. Bradley and the defendant, however, lived together as husband and wife from the time of their marriage until the summer of 1909, and a child had been born to them while they were living together as husband and wife.

On January 6th, 1906 while defendant and Bradley were living together, and after the birth of their child, upon petition of Maude M. Bradley, the marriage between her and Bradley was by a decree of the Court of Hustings, in the City of Portsmouth, State of Virginia, dissolved on the ground of desertion. The suit upon which this decree was founded was begun on November 14th, 1905 against Bradley who was a non-resident and

it appears that no personal notice of the pending of said suit was given to him apart from a publication of 15 days in a Portsmouth newspaper, no appearance by Bradley being entered.

There is no evidence before me to show that either the defendant or Bradley had any knowledge of the existence of this decree of divorce during the period that he and the defendant lived together, except the doubtful statement made by one witness that the defendant had declared to her in 1908, as she had heard, that Bradley has been married to a woman in Virginia who had obtained a decree of divorce from him.

The petitioner concedes that prior to the fall of 1908 the relations existing between Bradley and the defendant were bigamous; that while she and Bradley lived together as husband and wife under their ceremonial marriage up to that time, no such relations existed between them. The petitioner, however, says that in September, 1908, the defendant learned from an interview with Bradley's father, that his son Bradley was a married man at the time of her marriage to him and that the former marriage of Bradley had been dissolved, and that after learning these facts the defendant and Bradley entered into a consensus or common law marriage, and thereafter lived as husband and wife for a few months, or until July or August, 1909, when they finally separated.

The petitioner, therefore, asks for an annulment of his marriage with the defendant on the ground of a prior common law marriage existing between the defendant and the said Bradley, abandoning the ground of a ceremonial contract.

The evidence offered to sustain this contention is statements or declarations made by the defendant to two or three persons at or after this time coupled with the fact that thereafter Bradley and the defendant continued to live together as husband and wife.

It appears from the evidence that in the fall of 1908 while Bradley and the defendant were living together, Bradley was charged with some crime and confined to the Hudson County Jail; shortly after his release, William Bradley, his father, came from Virginia to visit his son. At this visit Bradley and their respective fathers were present and a neighbor living in an apartment in the same house testified that she overheard some of
10 the conversation had at this interview. That she heard Mr. Bradley, Sr., say that he wanted to take his son home to Virginia and that Mr. Nyberg, the father of the defendant should take his daughter home. That Bradley, Jr., said "No; that he would stick to Christine and to Lillie, her child." That the defendant came out of the room and told the witness the same thing and that the defendant said "No, he cannot do that, I am going to stick to Will Bradley," and she further
20 told her that Bradley had another girl, named Maude, in Virginia. The same witness testified that after the separation of the defendant and Bradley, the defendant told her that Bradley's father had said in the interview in 1908 that his son was married and that his wife had got a divorce from him "four years previous," and that the defendant further said that when she learned of this she considered herself married by Mr. Hopper, and that she and Bradley were living to-
30 gether, but she further said "That they had agreed to live together for Lillie's sake."

The mother of the petitioner testified that the defendant told her after her marriage to her son, the petitioner, "that Bradley had always promised to do right, but never did." That she found out Bradley was married and he had asked her to forgive him which she did, and that she further said "I am divorced now and am free," and she took him back and lived with him again, but he mis-
40 behaved himself and she left him in disgust.

Another witness testified that after this conference in 1908, the exact date she cannot tell, the defendant told her that "Will was a divorced man, I hope he will wake up."

On the other hand the defendant herself denies that she ever made the statements attributed to her, and Bradley, Sr., says that at the interview in 1908 no mention was made by him or anyone else of his son's prior marriage, or the subsequent divorce. 10

This is all the proof that is offered by the petitioner to prove the common law or consensus marriage between Bradley and the defendant. In the light of the surrounding circumstances, I think the testimony of the witnesses as to the declarations made by the defendant in 1908 is incorrect in that they were not made in the manner in which they testified. And the same may be said of the declarations alleged to have been made by the defendant with regard to her relations with 20 Bradley, subsequent to 1908.

It is possible, and I think extremely probable, that the defendant had knowledge of the former marriage of Bradley during the period of their illegal relations, but that it is not probable that either Bradley or the defendant had knowledge of the dissolution of Bradley's former marriage until after the relation between him and the defendant ceased.

The petitioner became acquainted with the de- 30 fendant and Bradley while they were living together in 1904. He knew of their living together in 1904. He knew of their living together as husband and wife in 1908 and 1909. In the fall of 1909, after the relations between Bradley and the defendant had ceased he became a suitor for the hand of the defendant. In 1910, after he had engaged to marry the defendant they went together on a trip to Portsmouth, Virginia. They occupied the same state room on that trip and while at 40

Portsmouth, the petitioner could not have been ignorant of the fact that the defendant hunted out the residence of Maude Bradley, and inquired into the circumstances of Bradley's former marriage and the facts connected with the dissolution of that marriage.

After the return to Hudson County it is improbable that the petitioner was not cognizant of the fact that the defendant consulted lawyers regarding her matrimonial status, and that she had Bradley indicted for bigamy. The petitioner denies any knowledge of these transactions upon the part of the defendant, but to me it seems improbable, that being as intimate as he was with the defendant, that he should not have known of these various steps of the defendant.

The petitioner broke his engagement to marry and an action for breach of promise was brought by the defendant against him in 1910, after their return from the South. He settled this suit by paying to the defendant $500, when in point of fact, if she was married as he now alleges, he had a perfect defense to any such suit.

Shortly after this the petitioner takes the defendant with him to procure a license for their marriage. He heard her state to the license clerk in answer to the inquiry made of her that she had been married before to William Tully Bradley, Jr., but that she had been advised by lawyers that the marriage was void. He knew that they were married by the Rev. Hopper, the same Minister that had married her to Bradley, and must have known of the statements made by her at that time. He knew she had an illegitimate child.

All of these facts go to show that the conduct on the part of the defendant was consistent with the denial that she made on the stand that no admissions were made by her of her having contracted a new marriage with Bradley following their void ceremonial marriage. It does not ap-

pear that Bradley, Sr., at the time of the interview in 1908 knew of the dissolution of his son's first marriage.

Bradley, himself, was not produced as a witness.

But apart from these considerations, assuming that the defendant did make the declarations attributed to her, viz., "that she was going to stick to Bradley," and that in 1910 she had further declared that "she and Bradley had agreed to live together for Lillie's sake," after ascertaining the dissolution of Bradley's prior marriage, in my opinion, such declarations are not sufficient evidence to prove a consensus marriage.

The first of these declarations that they would "stick together" was nothing more than a future promise to live as they had lived. The second declaration made in 1910, when the defendant had said that "she and Bradley after they had found out that Bradley had been married and had been divorced, that they had agreed to live together for Lillie's sake," coupled with the fact that they continued to live together, still falls short of an admission of a common law marriage made by her.

The declaration of one party that a marriage exists between her and another party has a very light probative force.

In Collins v. Voorhees, 47 N. J. Sq. 555, the husband in that case had obtained a decree of divorce from a former wife in a foreign state which was an absolute nullity. He married his second wife and they lived together as husband and wife. It was urged that this cohabitation formed the basis of an inference that there had been an interchange of consent to marriage after the dissolution of the first marriage. In that case the Court of Errors and Appeals held that cohabitation with habit and repute being the accompaniments of the original status could not of themselves be taken as proof that a new status had been agreed to by the par-

ties. That all cohabitation had by and between the parties who originally entered into an adulterous relation must be attributed to that original adulterous agreement. This case was so modified by the Court of Errors and Appeals in Chamberlain v. Chamberlain, 68 N. J. Eq. p. 736, that if the parties to a marriage had entered into a marriage relation in good faith both being ignorant of the existence of any impediment when that im-
10 pediment is removed and it is shown that the same intention continued there their relations will be lawful.

In this case the defendant and Bradley entered into an adulterous relation. The impediment was known to exist by Bradley when he attempted to go through the form of a marriage with the defendant. He, as one of the parties, never entered into the ceremonial marriage with the defendant in good faith, and he continued to live in that
20 relation for five years. That same relation existed for five years unless there was a new ceremonial marriage or a common law marriage entered into after the impediment was removed, so that strict proof must be made of such an agreement.

The agreement required to constitute a common law marriage is that the consent must be per verbe de paesenti and must be mutual. 1 Bishop on Marriage and Divorce Section 246 and Section 247. There must be a mutual agreement on the
30 part of one to take the other as his wife, and on the part of the other to take him as her husband.

An agreement to live together for an illegimate child's sake is not proof of an agreement to live together as husband and wife, especially where the parties have been living in adulterous relations. The true, is, that we have been living together in adulterous relations and that we would continue to live together in such relations with no promise or agreement to change our relations.
40 The doctrine and the cases in this state are quoted

by the learned Vice-Chancellor in Bay v. Bay, 83 N. J. Eq. 239.

My conclusions are that no valid marriage existed between the defendant and Bradley at the time of the marriage of the petitioner and the defendant and that the prayer for annulment must be refused.

Referring to the cross-petition filed to the petition for annulment, and the petition in the suit which is consolidated in this suit,—That the petitioner, Arthur C. Dietrick on the 13th day of July, 1916, committed adultery with an unknown woman, described in the petition, at Asbury Park, New Jersey. The circumstances connected with this act were that he left Jersey City in an automobile and was followed by his wife and two men to Asbury Park, and that after arriving there he went to the station in the evening and upon the coming in of a train met a woman described as tall and slender with a green dress and took her to the Plaza Hotel and there registered as Mr. and Mrs. A. C. White, and was assigned a room. The defendant and two men that were with her went to the room and knocked at the door and one of them said he was a waiter and by that deceit the door was opened. The petitioner was found in the room partially undressed, the bed in the room was in disorder, and after some search the same young woman was found in a closet in a semi-nude condition and a part of her clothes were lying upon the chair.

The petitioner denies that he committed adultery. He says substantially,—That he admits that they were in the room together and had some drinks. But the evidence is overwhelming.

I shall, therefore, advise a decree dismissing the bill for annulment adjudging that the marriage between the petitioner and the defendant was valid and that a divorce be granted on the ground of adultery pursuant to the prayer of the cross-petition of the defendant.

PETITION FOR ANNULMENT.

Filed July 15, 1916.

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Arthur C. Dietrick, of the Township of North Bergen, in the County of Hudson and State of New Jersey, respectfully shows:

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1. On the 14th day of June 1911, a form or ceremony of marriage took place between your petitioner and Christine Bradley, whose maiden name was Christine Nyberg, the defendant in this suit, at the Town of Union, County of Hudson, in the State of New Jersey, the said ceremony having been performed by Rev. A. W. Hopper, a minister of the Gospel.

20 2. Previous to the said 14th day of June 1911, that is to say, on or about the 14th day of May 1904, the said defendant was lawfully married to one William Tully Bradley, Jr., who, at the time said ceremony of marriage between your petitioner and the said defendant was performed, was living and was the husband of the said defendant, the marriage of the said William Tully Bradley, Jr., to the said defendant not having been dissolved or annuled, but was then subsisting.

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3. Petitioner and defendant are both bona fide residents of the State of New Jersey at the time of the commencement of this action, residing at No. 310 Twenty-ninth Street, Woodcliffe, Hudson County, New Jersey.

4. Your petitioner prays that the said pretended marriage between your petitioner and the said defendant may be declared by the decree of this
40 Honorable court to be null and void for the cause

aforesaid, pursuant to the statute in such case made and provided; and that your petitioner may have such further relief as shall be just.

And your petitioner will ever pray, &c.

ARTHUR C. DIETRICK,

Petitioner.

ISIDOR H. BRAND, 10

Solicitor for Petitioner.

STATE OF NEW JERSEY,)
)ss.
COUNTY OF HUDSON.)

Arthur C. Dietrick, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the said defendant, but in truth and good faith, for the causes set forth in the petition. 20

Sworn and subscribed to before me this 14th day of July, A. D. 1916.

ARTHUR C. DIETRICK.

HARRY E. BLOCH, 30

Notary Public of New Jersey.

A True Copy,

ROBERT H. McADAMS,

Clerk.

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IN CHANCERY OF NEW JERSEY.

Between	)	
	)	
ARTHUR C. DIETRICK,	)	
	)	
Petitioner,	)	
	)	
	)	On Petition for
10 and	)	Annulment.
CHRISTINE DIETRICK,	)	
	)	
(Impleaded as Christine	)	
Bradley,	)	
	)	
Defendant.	)	

AMENDMENT TO PETITION.

20 Amend the petition for annulment heretofore filed herein by striking out the second paragraph of said petition and inserting in lieu thereof the following paragraph, viz.:

"2. Previous to the said 14th day of June, 1911, that is to say, on or about the 14th day of May, 1904, a ceremony of marriage was performed between the said defendant and one William Tully Bradley, Jr.; that on said 14th day of May, 1904, 30 one Maud Tyler Bradley claimed to be the lawful wife of said William Tully Bradley, Jr., and on the 6th day of January, 1916, said alleged marriage between the said William Tully Bradley, Jr. and the said Maud Tyler Bradley was dissolved by a decree of the Court of Hustings, for the City of Portsmouth, in the State of Virginia, in an action or suit brought for that purpose in said court, and which court had jurisdiction of the subject-matter of said action or suit and of the person of the 40 parties thereto; that afterwards, and in or about

the month of September, 1908, the defendant and the said William Tully Bradley, Jr. entered into a contract of marriage; that on the said 14th day of June, 1911, the said defendant was the lawful wife of the said William Tully Bradley, Jr. who was then and afterwards still living, and that the said marriage between the said defendant and said William Tully Bradley, Jr., on said day and at the time of the performance of the said ceremony of marriage between petitioner and defendant was, and still is subsisting, and had not been dissolved or annulled.''

ISIDOR H. BRAND,

Solicitor for Petitioner.

IN CHANCERY OF NEW JERSEY.

Between	)	
	)	
ARTHUR C. DIETRICK,	)	
	)	
Petitioner,	)	On Petition for
	)	Annulment of
and	)	Marriage.
	)	Answer.
CHRISTINE DIETRICK,	)	
	)	
(Impleaded as Christine	)	
Bradley,	)	
	)	
Defendant.	)	

The answer of Christine Dietrick (impleaded as Christine Bradley) to the petition of Arthur C. Dietrick, is as follows:

Defendant admits paragraph 1, except that she says a valid marriage occurred on the said date named in the said paragraph between petitioner and defendant.

Defendant denies paragraph 2.

Defendant admits paragraph 3.

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

ALEX. SIMPSON,

Solicitor and of Counsel with Defendant.

IN CHANCERY OF NEW JERSEY.

Between	)	
	)	
ARTHUR C. DIETRICK,	)	
	)	
Petitioner,	)	
	)	On Petition for
and	)	Annulment of
	)	Marriage. 10
CHRISTINE DIETRICK,	)	
	)	
(impleaded as Christine	)	
Bradley,	)	
	)	
Defendant.	)	

CROSS PETITION.

The cross petition of defendant, CHRISTINE 20
DIETRICK, (impleaded as Christine Bradley) respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Arthur C. Dietrick, the defendant in this suit, on the 14th day of June, 1911, by Rev. Hopper, a Minister of the Gospel, at Union Hill, in the State of New Jersey.

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2. Defendant, since his marriage to your petitioner and on the 13th day of July, 1916, committed adultery, at the Hotel Plaza, at Asbury Park, New Jersey, with a woman whose name is unknown to your petitioner, but who is described as short and slim, with brown hair, about 25 years old.

3. Petitioner and defendant were bona fide residents of the State of New Jersey, when this 40

cause of action arose, and have been since their marriage, and have ever since continued to be bona fide residents of this State, residing at Hoboken and Woodcliffe, in the County of Hudson.

4. Petitioner has no means of support, except from her own exertions; no children were born of the marriage aforesaid.

10 5. Petitioner's maiden name was Christine Nyberg.

6. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the defendant may be compelled by the decree of this Honorable Court to support her and that she may be permitted to resume her maiden name;
20 and that she may have such further relief as may be just.

And your petitioner will ever pray, &c.

ALEX. SIMPSON,

Solicitor for Petitioner.

STATE OF NEW JERSEY,)
30)ss.
COUNTY OF HUDSON.)

CHRISTINE DIETRICK, being duly sworn according to law, upon her oath deposes and says, that she is the petitioner named in the foregoing petition; and that her said petition is not made by any collusion between her and the defendant, but is truth and good faith, for the causes set forth in the petition.

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Sworn and subscribed to before
me, at Jersey City, this 31st
day of July, 1916.

CHRISTINE DIETRICK.

ERIC H. JENTZ,

Attorney at Law
of New Jersey. 10

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ANSWER TO CROSS PETITION.
Filed August 5, 1916.
IN CHANCERY OF NEW JERSEY.

Between	)	
	)	
ARTHUR C. DIETRICK,	)	
	)	
Petitioner,	)	On Petition for
	)	Annulment of
and	)	Marriage.
	)	
CHRISTINE DIETRICK,	)	
	)	
Defendant.	)	

ANSWER TO CROSS-PETITION.

The answer of Arthur C. Dietrick, the above named petitioner, to so much of the answer of Christine Bradley, the above named defendant, as in the nature of a cross-petition.

1. This petitioner, as defendant in said cross-petition, denies paragraph 1 of the said cross-petition but to the contrary this petitioner says that on the 14th day of June 1911, a form or ceremony of marriage took place between your petitioner and Christine Bradley, the defendant in this suit.

2. Petitioner denies paragraph 2 of the cross-petition.

3. Petitioner admits that defendant and petitioner are bona fide residents of the State of New Jersey and have been since the said form or ceremony of marriage.

4. Petitioner admits that there were no children born of the defendant and petitioner but denies that the defendant has no means of support except from her own exertions, and petitioner

says that defendant is seized of real estate in the State of New Jersey, of the value of $5,000.00 over and above encumbrances.

5. Petitioner admits paragraph 5 of the cross-petition.

This petitioner prays that the said cross-petition of the defendant may be dismissed, and that the petitioner may have the relief prayed for in his said petition. 10

ARTHUR C. DIETRICK,

Petitioner.

ISIDOR H. BRAND,

Solicitor for Petitioner.

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PETITION FOR DIVORCE.

Filed July 14, 1916.

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of CHRISTINE DIETRICK, of the Borough of North Bergen, in the County of Hudson and State of New Jersey, respectfully shown:

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1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Ar-C. Dietrick, the defendant in this suit, on the 14th day of June, 1911, by Rev. Hopper, a Minister of the Gospel, at Union Hill, in the State of New Jersey.

2. Defendant, since his marriage to your petitioner and on the 13th day of July, 1916, com-
20 mitted adultery, at the Hotel Plaza, at Asbury Park, New Jersey, with a woman whose name is unknown to your petitioner, but who is described as short and slim, with brown hair, about 25 years old.

3. Petitioner and defendant were bona fide residents of the State of New Jersey, when this cause of action arose, and have been since their marriage, and have ever since continued to be
30 bona fide residents of this State, residing at Hoboken and Woodcliffe, in the County of Hudson.

4. Petitioner has no means of support, except from her own exertions; no children were born of the marriage aforesaid.

5. Petitioner's maiden name was Christine Nyberg.

40 6. Your petitioner prays that the marriage be-

tween your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that the defendant, may be compelled by the decree of this Honorable Court to support her and that she may be permitted to resume her maiden name; and that she may have such further relief as may be just.

And your petitioner will ever pray, &c. 10

ALEX. SIMPSON,
Solicitor for Petitioner.

STATE OF NEW JERSEY,)
)ss.
COUNTY OF HUDSON.)

CHRISTINE DIETRICK, being duly sworn according to law, upon her oath deposes and says, that she is the petitioner named in the foregoing petition; and that her said petition is not made by any collusion between her and the defendant, but in truth and good faith, for the causes set forth in the petition. 20

Sworn and subscribed to before
me, at Jersey City, this 14th
day of July, 1916. 30

CHRISTINE DIETRICK.

ERIC H. JENTZ,
Attorney at Law,
of New Jersey.

40

30 ANSWER AND CROSS PETITION.
Filed August 18, 1916.
IN CHANCERY OF NEW JERSEY.

CHRISTINE DIETRICK,	)	
	)	
Petitioner,	)	
	)	
and	)	On Petition, &c.
	)	
ARTHUR C. DIETRICK,	)	
10	)	
Defendant.	)	
	)	

ANSWER AND CROSS-PETITION.

The answer of Arthur C. Dietrick sued herein as Arthur C. Dietrick, defendant, to the petition of Christine Dietrick, petitioner.

20 1. Defendant denies paragraph 1 of the petition but to the contrary this defendant says that on the 14th day of June 1911, a form or ceremony of marriage took place between your defendant and Christine Bradley, whose maiden was Chrisrine Nyberg, the petitioner in this suit.

2. Defendant denies paragraph 2 of the petition.

30 3. Defendant admits that petitioner and defendant are bona fide residents of the State of New Jersey and have been since the said form or ceremony of marriage.

4. Defendant admits that there were no children born of the petitioner and the defendant but denies that the petitioner has no means of support except from her own exertions, and defendant says that petitioner is seized of real estate in the
40 State of New Jersey, of the value of $5,000.00 over

and above encumbrances.

5. This defendant prays that the said petition may be dismissed.

And this defendant by way of cross-petition exhibited against the petitioner says:

1. On the 14th day of June 1911, a form or ceremony of marriage took place between your defendant and Christine Bradley, whose maiden name was Christine Nyberg, the petitioner in this suit, at the Town of Union, County of Hudson and State of New Jersey, the said ceremony having been performed by Rev. A. W. Hopper, a minister of the Gospel.

2. Previous to the said 14th day of June 1911, that is to say, on or about the 14th day of May 1904, the said petitioner was lawfully married to one William Tully Bradley, Jr., who, at the time said ceremony of marriage between your defendant and the petitioner in this suit was performed, was living and was the husband of the said petitioner in this suit, the marriage of the said William Tully Bradley, Jr., to the said petitioner in this suit not having been dissolved or annulled, but was then subsisting.

3. Petitioner and defendant are both bona fide residents of the State of New Jersey at the time of the commencement of this action, residing at No. 310 Twenty-ninth Street, Woodcliffe, Hudson County, New Jersey.

4. This defendant prays that the said pretended marriage between your defendant and petitioner in this suit, may be declared by the decree of this Honorable Court to be null and void for the cause aforesaid; and that your defendant may

have such further relief as may be just.

And this defendant will ever pray, &c.

ARTHUR C. DIETRICK,
Defendant.

ISIDOR H. BRAND,
10 Solicitor for Defendant.

STATE OF NEW JERSEY,)
)ss.
COUNTY OF HUDSON.)

Arthur C. Dietrick, being duly sworn according to law upon his oath deposes and says, that he is the cross-petitioner named in the foregoing cross-petition, and that his cross-petition is not made by
20 any collusion between him and the defendant therein, but in truth and good faith, for the causes set forth in said cross-petition.

Sworn and subscribed to before
me this 15th day of August,
A. D. 1916.

ARTHUR C. DIETRICK,

30 HARRY E. BLOCH,
Notary Public
of New Jersey.

40

IN CHANCERY OF NEW JERSEY.

Between—	)	
	)	
ARTHUR C. DIETRICK,	)	
	)	
Petitioner,	)	
	)	On Petition
and	)	for
	)	Annulment. 10
CHRISTINE BRADLEY,	)	
Defendant.	)	
	)	

Between—	)	
	)	
CHRISTINE DIETRICK,	)	
	)	
Petitioner,	)	
	)	On Petition 20
and	)	for
	)	Divorce.
CHRISTINE DIETRICK,	)	
	)	
Defendant.	)	

Testimony taken at the hearings of the above entitled causes before Charles J. Roe, Advisory Master, on the question of alimony, at the office of the Master, 15 Exchange Place, Jersey City, 30 New Jersey, February 27th, 1917, at 4:30 o'clock in the afternoon.

APPEARANCES:

Isidor H. Brand, Solicitor for Arthur C. Dietrick.

Alexander Simpson, Solictor for Christine Dietrick. 40

CHRISTINE DIETRICK, called in her own behalf, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

Q. Mrs. Dietrick, you are the Christine Dietrick, the defendant in the original suit and the petitioner in the second suit?

10 A. Yes, sir.

Q. And in which Arthur C. Dietrick was the opposing party?

A. Yes, sir.

Q. How long did you live with him?

A. About five years.

Q. What is his business?

A. Dentist.

Q. And was he a dentist during all the time you lived with him?

20 A. Yes, sir.

Q. Did you have access to his books and accounts while you were with him?

A. Yes, sir.

Q. Did you have any conversation with him about his income?

A. Yes, sir, he always told me what his income was.

Q. What did he say he was making as a dentist at or about the time you separated?

30 A. On an average of eight hundred dollars a month.

Q. Did you know what his expenses were?

A. Why I know he always said it was sixty to seventy-five percent. profit in dentistry.

Q. Where was he carrying on his business as a dentist?

A. At 716 Washington Street, Hoboken.

Q. Did he rent that house?

A. Yes, sir.

40 Q. And did he sub-let some part of it?

A. Yes, sir.
Q. So that brought his rent down?
A. Yes, sir.
Q. Do you know to what?
A. To about eighteen dollars a month.
Q. Have you any kind of property, real or personal, except this at Woodcliffe?
A. No, sir.
Q. What mortgage is on that house?
A. Thirty-five hundred dollars. 10
Q. And do you know what the house cost—the lots and the house,—what it cost to build it and buy the lots?
A. The lots cost fourteen hundred dollars, and I don't remember just what it did cost to build it, but over four thousand dollars.
Q. You don't know how much over four thousand dollars?
A. No, sir.
Q. As much as five thousand dollars? 20
A. Well when you take in everything—the contract for the house and all the rest, it cost that and more.
Q. It could have cost more than that?
A. Yes, sir, I think so.
Q. How much more—approximately how much more?
A. Well not very much more—perhaps a couple of hundred or something like that.
Q. So that the total investment would be $1,400 plus $5,200: that would be about $6,600? 30
A. Yes, sir.
Q. That would represent the house?
A. Yes, sir.
Q. And you say there is a mortgage of $3,500?
A. Yes, sir.
Q. You are not employed now?
A. No, sir.
Q. And you have no income of any kind?
A. No, sir. 40

CROSS EXAMINATION BY MR. BRAND:

Q. You have a boarder, Mrs. Dietrick, have you not?

A. Yes, sir.

Q. You had a boarder within the last three or four months?

Q. Didn't you have a school teacher living with you and paying rent or board during the last
10 six months?

A. I had one school teacher—a roomer, but not as a boarder.

Q. Did you have a roomer during the last six months?

A. Yes, sir.

Q. How much rent did he pay you?

A. Two dollars a week.

Q. How many weeks did he rent that?

A. I don't remember how many.

20 Q. Is he there now?

A. Yes, sir, he is there now.

Q. And paying you two dollars a week?

A. He is going the first of March.

Q. You do millinery work?

A. No, sir, I never done that in my life.

Q. Do you do any manicuring work?

A. No, Sir.

Q. You know something about that, don't you?

A. Why I did about six years ago: I wouldn't
30 know anything about it now.

Q. You are not unable to work?

A. Well I have been very ill, and I am not in condition to go to work at the present time.

Q. You were ill in December, 1915?

A. I have been ill for the past year.

Q. Have you done any work since December, 1916?

A. No, Sir.

Q. Have you done any since December, 1915?

40 A. No, sir, I have not done anything except

my own house work, which I have got to do.

Q. You had an operation and much other medical treatment in December, 1915, didn't you?

A. No.

Q. Well when did you have any medical attendance?

A. I was very ill and had an operation: I was operated on February 25th, 1916,—just a year ago.

Q. Since that time have you been doing any work, other than your house work? 10

A. No, sir, nothing.

Q. At the time of the operation were you living with Doctor Dietrick?

A. Yes, certainly.

Q. And he paid for the operation?

A. Yes, sir, but he has never paid my doctor bill yet.

Q. He paid something like $350 didn't he?

MR. SIMPSON: I object to all this as 20 not proper cross examination, and it is immaterial and irrelevant. The alimony does not depend upon the ability of the wife to work.

Q. Do you remember the contract that was signed when the house was built?

A. No, I do not.

Q. Do you remember that it contained the sum of six thousand dollars? 30

A. No, sir, I do not remember just what.

Q. Don't you know that the house with the lots cost about eight thousand dollars complete?

A.No, sir, I don't: I heard that it was worth that now, being that material is so much higher now than at that time, but I don't remember the figure at that time.

Q. Have you tried to rent the house?

A. No, sir, I couldn't rent it without it being decorated and garage being built. 40

Q. The house was new when you moved in?

A. Yes, sir, but it has never been decorated or anything done to it in three years and it needs repairs.

Q. (THE MASTER) The house is three years old?

A. Yes, sir.

Q. How many rooms in the house?

10 A. Seven rooms.

Q. How many bed rooms?

A. Three bed rooms.

Q. You occupy one, I suppose?

A. Yes, sir.

Q. And are the other two taken?

A. Well one was taken and the other will be.

Q. None of your family live with you?

A. No, sir, none of my family, except my daughter.

20 Q. You say that you had access to Doctor Dietrick's books and his accounts?

A. Yes, sir.

Q. When did you see his books last?

A. Why I think it was about the 11th of July, 1916.

Q. What impresses that date upon your mind?

A. Because I went to the office to meet the Doctor and I had been shopping and he had gone from the office and so I was in the office a few 30 minutes and I saw his book which was always open so that everybody could see it.

Q. And you opened it and looked at it?

A. It was open.

Q. And you just saw what was written there on the 11th of July?

A. That was the last time that I was in his office, the 11th of July.

Q. Did you look at pages other than the 11th of July?

40 A. Yes, sir.

Q. Do you recall any other amounts you saw in there?

A. Do you mean his income?

Q. Yes.

A. Yes, sir. I think that every month from January, 1916, to July his income was over eight hundred dollars a month, each month.

Q. Can you state any amount for each month: take the month of June—you looked at that didn't you—the month of June, 1916? 10

A. I have the accounts I looked at—I have them here. (Producing sheets of paper).

Q. You mean you ripped the pages out?

A. Yes, sir, I did.

Q. When you ripped these pages out that was just three or four days prior to the time you saw him in Asbury Park?

A. Yes, sir. It was $724.50 (referring to paper).

Q. (MR. SIMPSON) When was that for? 20

A. For June.

Q. How can you tell from these pages the total income for June, 1916?

A. Because the way he has it written.

Q. Did you tell him you took them out of the book?

A. No, sir, I didn't tell him: I suppose he knew they were gone.

Q. You didn't tell him the next morning you had been down to his office and torn these sheets out of this book? 30

A. I was not to the office then.

Q. But you saw him at the house?

A. Yes, sir.

Q. And you didn't tell the Doctor you tore them out?

A. No, sir, because I didn't care to then.

Q. You went down to his office that night to see him? 40

A. Yes, sir, I called in.

Q. And he was not there?

A. No, sir.

Q. You went there by appointment?

A. No, sir: I went shopping and I called in at the office and he was gone.

Q. He had no idea you was going to be there?

A. No, sir.

10 Q. He didn't ask you to call?

A. No, sir; I just thought I would call in and have him come home with me.

Q. It was quite unusual for you to do that, was it not?

A. Why no.

Q. Why you didn't live happily with him for three months prior to this Asbury Park occasion, did you?

A. Well we never quarreled: we didn't have 20 any quarrel. I knew what he had been doing but I didn't tell him I knew it, but I knew it.

RE-DIRECT BY MR. SIMPSON:

Q. What is the tax on the house a year?

A. I paid $80.89 for 1916 taxes.

Q. And what is the interest on the mortgage?

A. $52.50 every three months, and about three dollars water bill every three months.

30 WILLIAM H. HALPIN, a witness on behalf of Arthur C. Dietrick, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. BRAND:

Q. Mr. Halpin, where do you live?

A. Woodcliff, New Jersey.

Q. And are you in the real estate business?

A. Yes, sir.

40 Q. And your office is located where?

A. 965 Broadway, Woodcliff.

Q. How long have you been in the real estate business?

A. Twenty-two years.

Q. And during that time have you bought and sold real estate?

A. Yes, sir, done nothing else.

Q. And have you had occasion to advance money to people as loans for the construction of buildings? 10

A. Yes, sir.

Q. And do you know the value of materials, and so forth?

A. Yes, sir, I certainly do.

Q. Have you seen this house at 310 29th Street, Woodcliffe?

A. Yes, sir.

Q. Can you tell us what in your opinion is the value of the lots?

A. The lots there are worth one thousand dollars each. 20

Q. In your opinion, Mr. Halpin, what is the house worth as it stands to-day, with the lots—together?

A. The house is worth six thousand dollars and the lots are worth two thousand dollars, which would make for the house and lots eight thousand dollars.

Q. In your estimation it is worth eight thousand dollars as it stands to-day? 30

A. Yes, sir.

Q. Can you tell us the rental value of that property?

A. That property to rent is worth about sixty-five dollars a month.

CROSS EXAMINATION BY MR. SIMPSON:

Q. You mean it would bring eight thousand dollars under the hammer? 40

A. No, sir, but it is worth eight thousand dollars the way we are selling houses there.

Q. Suppose it was put up under the hammer how much would it bring?

A. I can't say.

Q. That is about what you think it should sell for?

A. Yes, sir.

10 Q. Do you know anybody that would give that for it now?

A. Well I am selling them all the while.

Q. Would you give eight thousand for it now?

A. Not myself, no.

Q. And you are in the business of buying and selling?

A. Well I don't buy any houses: I do mostly a brokerage business.

Q. And you are familiar with the values in
20 the neighborhood?

A. Yes, sir, I am.

Q. Are lots on the Boulevard more valuable than these or less?

A. More.

Q. What are lots on the Boulevard worth?

A. About two thousand dollars each.

Q. And these lots are worth one thousand dollars each?

A. Yes, sir.

30

RE-DIRECT BY MR. BRAND.

Q. You have recently sold lots on Broadway, near 33rd Street?

A. Yes, sir, I sold two lots there for $5,500, including the corner.

ARTHUR C. DIETRICK, being duly sworn in his own behalf testified as follows:

DIRECT EXAMINATION BY MR. BRAND:

40 Q. Have you in any one month since you have

been married to Mrs. Dietrick had an income of eight hundred dollars a month?

A. Not an income of eight hundred dollars a month, no, sir.

Q. Or that amount of gross receipts?

A. No, sir.

Q. Did you ever tell her that your gross receipts were eight hundred dollars a month?

A. No, sir: I couldn't make a false statement like that. 10

Q. Did you tell Mrs. Dietrick, or did you ever mention the fact in her presence, that your profits amounted to sixty to sixty-five per cent. of your gross receipts?

A. No, sir, I couldn't make that.

Q. What are the profits in your profession?

A. The profits on an average I would say are about twelve percent.

Q. Twelve percent net?

A. Yes, sir, twelve per cent net. 20

Q. Is it necessary for you to have an assistant?

A. Yes, sir, it is for the mechanical work.

Q. What do you pay him?

A. Fifteen dollars a week.

Q. How much rent do you pay?

A. Sixty dollars a month, but I sub-let a part there, and I get twenty dollars from one party and fourteen dollars from another, and I have gas to pay which is fifteen or sixteen dollars a month, 30 and generally two tons of coal a month, which amounts to about fifteen dollars a month.

Q. For how many months do you pay the coal and gas?

A. All the time; and the water exceeding twelve dollars a year I have to pay.

Q. The house at 310 29th Street, Woodcliffe, cost in the neighborhood of eight thousand dollars with the lots?

A. Yes, sir. 40

Q. You have no income from the house, have you?

A. No, sir, not a penny.

Q. The only income you have is from your profession?

A. Yes, sir.

Q. Have you any saving's bank account?

A. No, sir: I have a Christmas account.

Q. Started when?

10 A. This Christmas.

Q. How much do you deposit in that every week?

A. Five dollars.

Q. Where do you bank?

A. With the First National of Hoboken.

Q. Do you mean a check or savings account?

A. Check. I never have enough for a savings account.

Q. Mrs. Dietrick says she tore three sheets out
20 of your book on June 8th last, in which she says that it appears that you took in $724 that month gross?

A. No, sir.

Q. Well, how do you figure that, if there was such an amount, how would it be possible that there was $724 on the book for June?

A. That is just the amount that I took in and the additional amount that was in the bank at that time, and that would probably add up to
30 $724 readily enough. There was always a cash carried to run the business with. That month I had in the bank probably three or four hundred dollars, if I recall it rightly. I have the figures on that.

CROSS EXAMINATION BY MR. SIMPSON:

Q. You have a bank account, have you,—a check account?

40 A. Yes, sir.

Q. Where is your pass book?
A. I guess I have got that with me.
Q. Produce it, will you?
A. Yes, I will. (Produce bank pass book).
Q. How far back does this go?
A. Why it don't go back very far.
Q. Where is the one before this—before November 21, 1916?
A. I have not got it.
Q. How old is this account? 10
A. It runs back a couple of years.
Q. How far back does it run?
A. I don't just recall.
Q. Did you have any account before you had that one?
A. No, sir.
Q. Will you produce here your bank pass book prior to this one?
A. I don't think I have that.
Q. Will you get a copy from the bank of that 20 account?
A. I don't know whether I can.
Q. Will you produce a copy of that account at the next hearing if I get an adjournment?
A. I will try, sure: I will ask the bank for it.
Q. What is this $1,136.65: is that the total amount of the deposits?
A. Why yes.
Q. The total amount?
A. Yes, sir. 30
Q. From what time to what time?
A. I don't know. That shows the balance in the old book,—November, and then it goes on into February.
Q. You knew you were going to be examined about your income to-day?
A. No more than the regular business—that was all.
Q. Why didn't you produce the rest of your account before November 21st, 1916? 40

A. I don't believe I have it.

Q. You don't think you have got any?

A. No, sir: when I got this one I didn't keep the other one.

Q. Is this the only check account you have or had before?

A. Yes, sir, that is the only one.

Q. Did you have any other check account in any other bank since you married Mrs. Dietrick?

10 A. No, sir, not of my own, but I have been Treasurer for an organization.

Q. I mean your own?

A. No, sir.

Q. And do you keep any books at all in which you enter the amount of business done by you?

A. Yes, sir.

Q. Have you got those here?

A. Yes, sir.

Q. Produce them, will you?

20 (Witness produces books).

MR. SIMPSON: I offer this bank pass book produced by the witness.

Pass book marked Exhibit D-1 for Identification.

Q. This is your book covering what period? (Referring to book produced by witness). Is this

30 the only book kept by you?

A. Yes, sir, that is the only book kept by me.

Q. Have you any other books showing the amount of business done by you?

A. No, sir, only the cash book.

Q. What would you say your total gross income was each month?

A. I would say about four hundred dollars.

Q. That is about one hundred dollars a week?

A. Yes, sir. It is below that now. it is falling

40 down gradually all the time. There is a lot of peo-

ple that don't come in now that used to come in before this case started—a lot of women.

Q. And you say you only made an average of four hundred dollars during 1916?

A. Yes, sir, I don't believe I took in more than that.

Q. Is not this the bill for a diamond ring that you bought in April, 1916, for $344.75? (Showing witness paper).

A. It is a bill for a diamond ring I bought, but no such amount as that. 10

Q. What was the amount?

A. $74.00.

Q. What is the $344.75?

A. That is the original value: that is a ring I got with one that belonged to her.

Q. That was in a pin?

A. Yes, sir.

Q. I show you this paper and ask if you can tell what that is? (Showing witness paper). 20

A. Surely.

Q. What is it?

A. It is out of the cash book.

Q. And what year?

A. It shows 1916.

Q. Does it show what month it is?

A. June 25th, 1916.

Q. Does that show your total income for the month of June?

A. No, sir. 30

Q. What does it show?

A. It shows what came in during June: it doesn't show how much I paid out.

Q. How much does it show came in?

A. One day was $7.00 and the other day was $29.50.

Q. Just two days that was?

A. Yes, sir.

Q. One day $29 and one day $7.

A. Yes, sir. 40

Q. That is a leaf out of the cash book for June?
A. Yes, sir, that was torn out.

MR. SIMPSON: I offer this for identification.

Page from cash book marked D-2 for Identification.

10 Q. I show you another page and ask you what that is?
A. Well this is another one, and it shows $19 on one side.
Q. Is that the receipts for one day?
A. Yes, sir, one day's receipts.
Q. What is on the other side?
A. The other is $72.50.
Q. What does that represent?
A. That is the day's receipts from people that
20 I did work for.
Q. It is cash that came in for that one day?
A. Yes, sir, that one day.
Q. What is the date?
Q. That is May 4th and May 5th.

MR. SIMPSON: I offer this page.

Marked D-3 for Identification.

30 Q. I show you another page and ask you what this is?
A. This is Tuesday, April 4th: that day was $17 and the other side April 5th is $39.

Offered and marked D-4 for Identification.

Q. I show you another page dated June 3rd: what is the total there?
40 A. There is a whole lot of writing here that I

knew—that don't belong to me.

Q. Is there anything on there that is not your writing?

A. Yes, sir.

Q. What is it?

A. There is one (indicating): I never had a patient by that name: I have no Ahlberg, and I have no party by the name of Jack. This thing has been padded: there is $24 added to this thing.

Q. Anything else put in besides that? 10

A. This Morsner is not right there.

Q. Whose handwriting is the rest of it in?

A. This handwriting is not mine.

Q. You have another book besides this one that you took this into?

A. No, sir, not now any more.

Q. But you did have that book?

A. Yes, sir.

Q. Where is that book?

A. That is not in existence any more. 20

Q. What did you call it?

A. That book?

Q. The book that you take these entries to?

A. That is the cash book.

Q. But in what book do you transfer it?

A. I don't have any other book.

Q. You said you had another book?

A. That book: you asked me for the book that came out of.

Q. I asked you if there was some where you 30 copied these items by which you could compare these items and see whether they are your items or somebody else's?

A. I could see my handwriting there.

Q. I didn't ask you that. Was there any cash book which you kept and which you copied these entries into?

A. No, sir.

Q. Never at any time?

A. No, sir. I had a card system. 40

Q. You had a card system—a ledger system?

A. No, sir, a plain small card system.

Q. Is that in existence now?

A. No, sir, when I get through with the patient I throw it away.

Q. But did you have any book by which you could compare these entries?

A. No, sir, no book that I could compare the entries.

10 Q. You say that you never had a patient named Ahlberg?

A. No, sir.

Q. Will you write Ahlberg on this piece of paper for me with a pencil?

A. Yes, sir. (Witness writes name requested).

Q. And then write $20.00 along with it.

A. Yes, sir. (Witness writes figures as requested).

Q. And then write Ahiberg.

20 A. Yes. (Witness writes as requested).

Q. And then write Ahibecy with $20 after it.

A. Yes. (Witness writes as requested).

Q. And then write Jack and $4 along side of it?

A. (Witness writes as requested).

Q. Now is there anything else in here that you say is not in your handwriting?

A. Morsner is not.

Q. Just write that.

30 A. (Witness writes as requested).

Q. And write $3 along side of it.

A. (Witness writes as requested).

MR. SIMPSON. I offer this last page I have referred to.

Page from book marked D-5 for Identification.

40 Q. Did your boy make entries in your cash

book?

A. No, sir, I don't believe he did.

Q. Did he have this book?

A. No, sir.

Q. Well if you were out and somebody came in and paid a bill would any one make an entry in the cash book?

A. Yes, sir, if somebody paid a bill he would make it on a slip and I would put it in later.

Q. Wouldn't he mark it in the cash book? 10

A. No, sir.

Q. I show you another page marked Saturday, February 5th: what is that?

A. Saturday, February5, $59.50.

Q. Does that represent the cash taken in on that day?

A. Yes, sir. And on the other side is February 4th—nothing for the whole day.

Q. That was Sunday?

A. No, sir, Friday: there was nothing for the 20 whole day.

Q. That was your day off?

(No answer).

MR. SIMPSON: I offer this page.

Marked D-6 for Identification.

Q. You took Fridays off, didn't you: it was your custom to take Fridays off? 30

A. Yes, sir, Friday afternoon.

Q. All Friday afternoon.

A. Yes, sir.

Q. Now how many hours do you work a day?

A. Why from eight until seven.

Q. What do you charge an hour?

A. We don't charge by the hour.

Q. How do you charge?

A. Whatever the job is worth.

Q. What is the smallest amount you make in 40

an hour?

A. I can't tell you that.

Q. Have you got any bills for material and supplies during the past month?

A. I guess so.

Q. Did you bring them?

A. Yes, sir.

Q. Let me see them, will you?

A. Yes. (Witness produces bills). There are
10 the two last months.

Q. Do these bills represent material that you have used in your work or that you have on hand?

A. Well what I used and what I have got on hand.

Q. How much have you got on hand?

A. I don't know.

Q. Half of it?

A. I might have half: I can't tell.

Q. What do you say was your net income a
20 week?

A. My net income a week?

Q. Yes: I of course include your living expenses: I mean after you have paid the expenses of your business?

A. It is hard to tell, because it is always getting lower: it was good once.

Q. Do you know what it was last month?

A. Well last month I can't tell you.

Q. Fifty dollars a week?

30 A. No, sir, it wasn't fifty dollars a week.

Q. Do you know what it was last month?

A. No, sir, I don't.

Q. You can't tell what your net income was?

A. No, sir, for my income has gone down.

Q. (THE MASTER): Can't you give us any idea what your net income is a week?

A. I would say according to the way it
40 is going now I don't make over twenty-five

dollars a week—the way it is going now—it is going to the dogs.

Q. You are running an automobile on that twenty-five?

A. No, sir, I don't own an automobile.

Q. But you use an automobile?

A. I drive one some times, but I don't own it.

Q. Who owns the automobile?

A. Several different fellows. 10

Q. You did own an automobile?

A. Yes, sir, one time.

Q. What make?

A. Corbin.

Q. What did you do with it?

A. I sold it.

Q. And you don't own an automobile now?

A. No, sir.

Q. It did belong to you?

A. Yes, sir. 20

Q. How much do you pay your assistant?

A. Fifteen dollars a week.

Q. This automobile was in the name of Mrs. Dietrick's father?

A. No, sir.

Q. It never was?

A. No, sir.

Q. Does this book represent all the cash that you have taken in?

A. Yes, sir. 30

Q. You knew an attempt was going to be made to collect alimony from you when you made these entries?

A. No, sir.I thought the woman had enough when she got the house.

Q. You paid her ten dollars a week voluntarily while the suit was going on?

A. I wouldn't call it voluntary.

Q. I mean during the progress of the suit?

A. Well I paid her ten dollars a week, but I 40

wouldn't call it voluntary.

Q. (THE MASTER): How old are you?
A. Thirty-one years.

Q. How long have you been practicing?
A. Since 1908. I worked for a dentist before that—ever since I was seventeen years old.
Q. Did you graduate as a dentist?
10 A. Yes, sir, the Pennsylvania College of Dentistry and Surgery in Philadelphia.

MR. SIMPSON: I want to offer the bank pass book. It begins November 21st, 1916, following the old book, $156.98, and the last entry is February 19th, 1917, and the total is $1,136.54, against which is checked out $1,049.32; but the total deposits up to the 24th of February, 1917, are $1,136.54, plus
20 137.22.

RE-DIRECT BY MR. BRAND:

Q. This automobile which was a Corbin was a 1910 model?
A. A 1909 model.
Q. Was it a two passenger?
A. Yes, sir, a two passenger.
Q. It just had two seats?
30 A. Yes, sir.
Q. A little car?
A. Yes, sir.
Q. It was not one of the usual types we have to-day?
A. No, sir, it was made over.
Q. Worth about $150?
A. Yes, sir, about that. I didn't pay much for it: when I bought it it cost me some eighty dollars.

40 Q. (THE MASTER): Have you any

debts?

A. Well debt in my accounts that I don't seem—

Q. No, do you owe people money that you have borrowed?

A. No, sir.

Q. Do you owe any borrowed money?

A. No, sir, not just now I don't.

Q. Do you owe your mother any money? 10

A. No, sir, not just now. The only thing I owe is my accounts which I have never been able to settle.

Q. Where do you live now?

A. 716 Washington Street, Hoboken.

Q. Do you get your meals out?

A. Yes, sir, I get them just where I happen to be.

Q. It has been customary for you to take Friday off? 20

A. I won't say all day: I don't make appointments for that day, but I am often there to straighen up some of the work.

Q. Do you work on Sunday?

A. Yes. sir, I work Sundays until two or three o'clock in the afternoon.

BY THE MASTER:

Q. Where did you get the money to build this house with? 30

A. Before I met this lady here I made a lot of money—what I would call a lot of money, and I was single and I could save very well. I was quite a saving fellow, and I saved as much as I possibly could save and I put it in the bank and in that way the money accumulated.

Q. You didn't borrow any for that purpose?

A. Yes, sir, I borrowed some from my mother —four hundred dollars. 40

CHRISTINE DIETRICK—(Recalled) Direct.

Q. How much?

A. Four hundred dollars for buying the lots.

Q. Did you pay that back?

A. Yes, sir, I paid her back out of my life insurance. I had to cancel my life insurance in order to pay her back that money.

Q. Have you any other property? ?

A. No, sir, not a nickel.

10 Q. How much did it cost you to live when you were living in the house there after you went in it?

A. It came higher than before: it cost me for meals possibly about two dollars a day and room cost me—

Q. No, I am speaking about running your house when you were living with your wife?

A. Oh, as I have said before, I got twenty dollars off of one party—

Q. No, the house in Woodcliffe, where you 20 were living with your wife: how much did it cost you to live there?

A. I used to give her fifty-six dollars a month and I paid for the gas and electricity and water and the interest.

Q. You gave her fifty-six dollars a month?

A. Yes, sir, fifty six dollars a month.

RE-CROSS BY MR. SIMPSON:

30 Q. You got your living out of that?

A. Yes, sir, my supper and breakfast.

Q. Where did you get the $525 to settle the breach-of-promise suit?

A. I got that from my mother.

CHRISTINE DIETRICK, being recalled, testified as follows.

.DIRECT EXAMINATION BY MR. SIMPSON:.

40 Q. Doctor Dietrick testifies that he gave you

$56 a month?

A. Yes, sir.

Q. What was that used for?

A. That was not enough for the table and he had to raise that amount because everything had gone up in price, and he bought my clothes besides.

Q. What did you use that $56 for?

A. Just for things for the table, and he paid extra for the electricity and the gas and coal and interest and everything. 10

Q. You used that for the table?

A. Yes, sir, just for the table.

Q. And he also bought your clothes?

A. Yes, sir.

Q. How much a year did he give you for your clothes?

A. Well I don't know: whenever I needed anything I got it.

Q. You know about what your clothes cost, don't you? 20

A. I know I got a couple of hundred dollars or two hundred and fifty dollars.

Q. Did he ever increase the $56 for the table?

A. Yes, sir.

Q. When did he increase it?

A. For a year and a half before we separated.

Q. How much did he give you then?

A. He gave seventy-five to eighty dollars a month. 30

Q. That was for what?

A. For the table and things like that.

Q. Did he ever give you spending money, besides the money he gave you for clothes and for the table?

A. Yes, sir, he used to give me five dollars a week.

Q. That was for pin money?

A. Yes, sir.

40

BY THE MASTER:

Q. How many were in your family?

A. Why the Doctor and my daughter and myself.

Q. Any one else?

A. My sister boarded with me, but she paid me eight dollars a week board, and she was just home for breakfast and supper.

10 Q. How old are you, Mrs. Dietrick?

A. Thirty years old.

CROSS EXAMINATION BY MR. BRAND:

Q. Is it not a fact that the reason you couldn't get along with the $56 a month was because your sister boarded with you for over three years?

A. No, sir: my sister was making a salary of $24 a week.

20 Q. Just answer the question.

A. No, sir, it is not a fact.

Q. You got eight dollars a week from your sister?

A. Yes, sir, eight dollars a week.

Q. For three years?

A. No, sir, she was not with me for three years.

Q. Did you tell the Doctor that you were getting eight dollars a week from her?

A. Yes, sir.

30 Q. He knew it?

A. Yes, sir, of course he knew it.

Q. You also supported your daughter and bought clothes for her out of the money you got from Doctor Dietrick?

A. Not so much for her clothes: my father gave a great deal of that.

Q. How much did your father give you a week for the support of the child?

A. I didn't say he gave the money, but he
40 bought a great deal of her clothes.

ARTHUR C. DIETRICK—(Recalled) Direct.

Q. How many times did he buy her clothes?

A. Any time she needed anything.

Q. How many times—don't you know?

A. No, I don't think I could count how many times—sometimes every week or every month,—just whenever she needed anything.

Q. And he was buying her clothes for the five and a half years you lived with Doctor Dietrick?

A. My daughter was not with me for two years: he wouldn't have her with me, but he wanted her put in a home, but my father wouldn't allow it and so he took her with him. 10

Q. The Doctor objected to your taking the child home?

A. Yes, sir, he wouldn't have her home with me.

RE-DIRECT BY MR. SIMPSON:

20

Q. Where did your sister earn the twenty-four dollars a week?

A. She was working for the Eastern Steel Company.

Q. Whose sister was she?

A. She was my own sister.

ARTHUR C. DIETRICK, recalled, testified as follows:

30

DIRECT BY MR. BRAND:

Q. Doctor, did you ever raise the allowance to your wife from $56 to $75 or $80 a month?

A. No, sir, I wouldn't do that, because that was just when the fight started about the $56.

Q. Did you give your wife at any time in any year in the five and a half years an additional $250 a year for clothes and $5 a week extra for pin money?

A. No, sir. She got her clothes out of the 40

money she got for the table—the $56, and she got no $5 for pin money.

Q. Did she ever tell you she was getting eight dollars a week from her sister for board?

A. No, sir. she told me at one time she was getting four dollars a week, and she was afraid she was not getting enough: she said she was sure it was not enough because ever since she had her sister there she was constantly in a hole about
10 money. She was always wanting money then and I told her to get her sister out.

Q. Since you have lived in Woodcliffe in your own home, since that time the child has been living in the house with the mother?

A. Yes, sir, except when she went away on vacation for a week or two at White Plains in the summer time.

Q. Any other member of her family live with you in that house?

20 A. They would come there every Sunday for their meals—the father and mother and a couple of more friends besides, and her brother was constantly there when he was around this neighborhood.

Q. Did her sister have any company come to the house?

A. Yes, sir: she kept company with a young man.

Q. Did he have any meals at your house?

30 A. Yes, he did have meals there, because we came home many a time and the dishes were dirty.

CROSS EXAMINATION BY MR. SIMPSON:

Q. Did you say that the food and the running expenses of the house and the clothes of your wife and the pin money and entertainment of guest were provided for with $56 a month?

40 A. Yes, sir.

Q. Everything came out of that?

A. Yes, sir.

Q. Did you pay her by check or cash?

A. By cash.

Q. And you never increased it?

A. No, sir.

Q. Never gave any pin money or anything to buy clothes?

A. No, sir, never bought her clothes, except with the $56. 10

Q. She paid the running expenses of the house and for her clothes and for everything out of the $56 a month?

A. Yes, sir.

RE-DIRECT BY MR. BRAND:

Q. You paid the interest on the mortgage?

A. Yes, sir.

Q. And the taxes and water rents? 20

A. Yes, sir.

Q. And gas and telephone?

A. Yes, sir.

Q. And the implements that you used and the garden?

A. Yes, sir, I used to pay for it.

30

40

NEW JERSEY COURT OF ERRORS AND APPEALS OF LAST RESORT IN ALL CAUSES.

Between
ARTHUR C. DIETRICK,
Petitioner-Respondent,
and
CHRISTINE DIETRICK,
Appellant.

Between
CHRISTINE DIETRICK,
Petitioner-Appellant,
and
ARTHUR C. DIETRICK,
Defendant-Cross Petitioner, Respondent.

Brief of Defendant-Cross Petitioner, Respondent.

The sole question to be determined in this appeal is whether or no the ends of equity are met through the final decree in this cause which denies the appellant petitioner any permanent alimony, and it is pertinent to inquire, therefore, just what property the wife has and what property and income the husband is possessed of. It appears that the husband had conveyed a valuable property at Woodcliffe, New Jersey, to his wife, the appellant-petitioner, the value of which property is conclusively shown, by the testimony of an expert, to be eight thousand ($8,000) dollars (p. 41); against this there is a mortgage of three thousand five hundred ($3,500) dollars (p. 35) leaving a net equity therein of four thousand five hundred ($4,500) dollars.

The testimony also shows that the rental value of the property is about sixty-five ($65) dollars a month, (p. 41).

It appears that the profits in the profession of dentistry in which the defendant cross-petitioner, respondent is engaged are about twelve (12%) per cent. (p. 43).

His net income a week is stated to be twenty-five ($25) dollars (p. 57), and this fact does not seem to be controverted. There is some testimony concerning the amount of moneys received by the defendant-cross petitioner respondent on several given dates, but there is no proof, it is respectfully submitted, that amounts such as mentioned were received continually in the regular course of business; in the absence of direct evidence and specific proofs to the contrary, therefore, it must be assumed that the net income of the husband is twenty-five ($25) dollars a week.

The case of Moran v. Moran, 2 Atl. Rep. 777, so far as it relates to the discussion of alimony, is directly in point. In that case the husband had conveyed a house and lot to the wife, and the rule is laid down that in such cases it is usual to allow in permanent alimony about one-third of the income of the husband. It is very obvious that the income from the real estate yields an amount greater than one-third of the income of the husband.

Under the rule laid down in Boyce v. Boyce, 27 New Jersey Equity, 433, the amount of permanent alimony is determined with reference to the circumstances of the whole case, taking into consideration the situation and station in life of the parties, the amount of defendant's property and income, consideration also being had for the

amount that would be necessary for the support and maintenance of the wife. The evidence discloses that the petitioner-appellant has some knowledge of manicuring (p. 36). It does not appear that she has any physical disabilties which would militate against her were she to engage in business. The case of Abele v. Abele, 50 Atl. Rep. 686, is authority for the principle that on decree of divorce for a wife of middle age and in good health and in great part supporting herself, in the absence of any reason showing why permanent alimony should be allowed, an order for the same will not be made.

The principle is well imbedded in our jurisprudence that the sum to be fixed for permanent alimony is that amount which the wife would have a right to expect if she were living with her husband. See Biddle, 2nd edition, p. 148.

It is respectfully submitted that the facts in this case do not warrant the granting of permanent alimony to the appellant-petitioner in view of the undisputed income of the husband and particularly in view of the fact that the wife has equity in real estate given to her by her husband, of $4,500. It is respectfully urged, therefore, that the appeal be dismissed.

James A. Bretta

Solicitor of Respondent.

New Jersey Court of Errors and Appeals of Last Resort in All Causes.

Between
ARTHUR C. DIETRICK,
Petitioner-Respondent,

and

CHRISTINE DIETRICK,
Defendant-Cross Petitioner,
Appellant.

Between
CHRISTINE DIETRICK,
Petitioner-Appellant,

and

ARTHUR C. DIETRICK,
Defendant-Cross Petitioner,
Respondent.

BRIEF OF APPELLANT-PETITIONER.

Statement of Facts.

This is an appeal from a decree in favor of appellant in a divorce action which although granting her a divorce on the ground of adultery of her spouse, denied her permanent alimony. There

were three suits, one suit filed by her husband against her for annulment of marriage on the ground that she had a husband living at the time she married him. Second suit: A bill filed by him to set aside on the ground of fraud a conveyance of a piece of real estate to her, the house in which they lived. Third suit: A suit by her for divorce on the ground of adultery. The suits came on to be heard together before an Advisory Master and he dismissed the suit for the annulment of marriage brought by the husband, he dismissed the bill brought by the husband for the re-conveyance of the real-estate, and he allowed the petition of the wife for divorce on the ground of adultery.

Afterward he took testimony on the question of alimony, and denied the wife permanent alimony on the grounds that the house, the subject of the bill, which was originally bought in the joint names of husband and wife, and afterward conveyed to the wife by the husband was sufficient for her, although this house had a heavy mortgage on it amounting to Thirty-five hundred ($3500.00) Dollars, p. 35 p. c., and although there was a lis pendens filed against it by the husband at the time of filing the bill, preventing the present appellant from mortgaging the same and although the rental value thereof is only Fifty ($50) Dollars a month. This appeal attacks the judgment of the Court of Chancery, denying the appellant permanent alimony. The facts show that the defendant, the husband, is a dentist and is in receipt of a large income, p. c., pp. 48, 49, 50 and 52, taking in as much as $72.50 in one day, p. c., p. 48. While living with his wife he allowed her Seventy-five ($75) Dollars to Eighty ($80) Dollars a month

for table, gave her Twenty ($20) Dollars a month spending money, bought all her clothes, p. 57. He produced no books as to his income except a bank book; he said the other books were destroyed, p. 49 and p. 45. Bank book shows deposits by him of Twelve hundred seventy-three and 76/100 ($1273.76) Dollars in three months from November 21, 1916 to February 19, 1917, p. 54.

Argument.

If the wife was successful in her suit she was entitled to such alimony as would allow her maintained in the station that she was maintained at the time the husband committed a marital wrong. This was not a matter of discretion but a matter of right. The Master did not hold that she was not entitled to alimony but held that the equity in the house was a sufficient provision for her, although this was of the value even at their own figures Sixty-five ($65) Dollars a month rental value and although she could not dispose of it until a time for appeal by her husband from the decree dismissing his bill would expire, she could not mortgage or dispose of it any way. The Master gave no reasons for his conclusions except that he thought the house would sufficiently maintain her. Although when living with her husband in this house, rent free, with Eighty ($80.00) Dollars a month for the table and clothes supplied, and Two hundred and fifty ($250) Dollars a year pin money, the Advisory Master found that all that she had been receiving was equalled by the possession by her of the house, that possession being challenged by the husband, and her interest so

tied up by lis pendens that she could realize nothing on it, and the Advisory Master found that the rental value of this house on which house there was a mortgage of Thirty-five hundred ($3500) Dollars, taxes, insurance and up-keep, the house only renting for Fifty ($50) Dollars a month equalled what she would be entitled to, but this house even if she was the owner of it unchallenged, which is not the fact, and free to do as she liked with it after all expenses were paid, might not bring her in Eight Dollars a week net, although her husband is a professional man and earning at the least calculation Six thousand ($6000) a year. Under the authorities she was entitled to be maintained as he had maintained her, she being the innocent party. (*Boyce v. Boyce,* 27 New Jersey Equity, p. 433); also cases collected in *Biddle,* last ed., pp. 148-149. These cases do not hold that alimony is a present to be given or withheld in the discretion of a Court but that the wife is entitled, if she is innocent, to be supported as she would have been if she lived with her husband. Such a finding as this, it is respectfully submitted, would put a premium on adultery so far as man was concerned. In the financial aspect of the penalty to be paid by him for violation of the marriage covenant it would be against public policy (14 Cyc., 767, et seq.). It would drive her to her own property, however insufficient to maintain her in the manner in which she had been maintained by her husband. While living with him, she had the possession and ownership of this house, her living, her clothes and over Two hundred and fifty ($250.00) Dollars a year pin money, and now she is by this decree, although innocent, and although the marital relation has

been destroyed by the act of her husband, deprived of her living which she had, of clothes, of pin money, and left in a worse situation than she was before she had obtained the decree. If the value of the house is taken as Seven thousand ($7,000) Dollars, she has an equity of Thirty-five hundred ($3500) Dollars, and with her life expectancy this would not give her Five ($5.00) Dollars a week.

Respectfully submitted,

Solicitor of Appellant.