

New Jersey Court of Errors and Appeals.

Between

ADELAIDE MARTH,
Petitioner and Appellant,

and

HENRY MARTH,
Defendant and Respondent.

On Appeal from
the Court of Chan-
cery.

Brief and Arguments for Appellant.

CHARLES E. S. SIMPSON, Solicitor.

The petitioner and appellant in this cause (the wife), is a resident of the State of New York. She charges her husband with being a resident of the State of New Jersey, and with having been such resident for the period of three years, during which the desertion of which she complains has continued, and a resident of New Jersey at the time of filing the petition against him.

Divorce Act, Sec. 39 (Gen. Stat. p. 1273).

The facts necessary to confer jurisdiction are alleged in the petition.

Barrett vs. Barrett, 37 N. J. Eq., 39.

The Special Master to ^{whom} ~~which~~ this cause was referred among other things reports "that the defendant has not had a *bona fide* residence within "this State since the Spring of Nineteen hundred," and bases his conclusion upon his view that "the witness Wolfensberger, at whose house "in Newark, New Jersey, the defendant professes "to keep a hall bed room cannot remember with "any certainty that he has slept there at all during that time."

It is ^{sub}mitted that this conclusion and report are erroneous, and not supported by the evidence.

The undisputed evidence, given by disinterested witnesses, shows that in the month of February or March, 1898, the defendant came to the City of Newark and took up a residence at No. 438 Fifteenth avenue, in that City (p. 24). That he brought with him his household furniture and belongings (p. 24). That he obtained employment with the Newark Gas Company as watchman, and afterwards at the tannery in Newark (p. 24). That he kept house at the address given, slept there nights, and lived there for two years, or until February or March, 1900 (p. 24), when he stored all his household furniture, and went to board at No. 150 South Orange avenue, Newark (p. 24), with a Mrs. Wolfensberger. That with the exception of about three months since that time (during which he boarded with a Mr. Keeber, in Newark), he has lived and boarded at Mrs. Wolfensberger's house. That he still lives there, and although *employed* during the part of the summer of 1900 or 1901 in Brooklyn, he maintained his room and home at Mrs. Wolfensberger's, pays her rent for it and instructed her to keep his room for him for the reason that he was apt to give up the employment in Brooklyn at any time (p. 34). Mrs. Wolfensber-

ger's house is a regular boarding-house (p. 30). The defendant has the key to the room, and a key to the house, and is at perfect liberty to come and go as it is necessary for him to do (p. 35). He keeps his belongings there, and returns to the house every week or two, because he boards with the people with whom he is employed (p. 52), and the distance from the place from where he is employed does not permit him to come to Newark each night and occupy the room. He pays for and retains the same room he occupies when he is in Newark daily, and when he is in Newark daily he pays Mrs. Wolfensberger board regularly, but only room rent when he does not take his meals there. His household furniture and effects are stored in the City of Newark, at the house of John Kirn and are there now (p. 33).

These are facts—not conclusions. It indisputably appears that in the month of February or March, 1898, the defendant took up a residence in the State of New Jersey, in the City of Newark, and ever since then has lived there, and there is a strong manifestation of the *animus manendi*.

Manifestly a man living in one place for over four years is *prima facie* evidence of his residence.

In *Tracy vs. Tracy* (48 Atl. Rep., 534), the Court of Errors and Appeals, through Judge Voorhees, declared that "the place where a person lives is *prima facie* taken to be his residence, "unless facts be established to the contrary," also that "residence does not depend upon the "manner of living, which may be at housekeeping or lodging."

The facts disclosed show a clear intention on the part of the defendant to remain a resident of New Jersey, and no facts appear going to show that he intends to remove from the State.

As observed before the evidence to establish the residence of the defendant was given by disinterested witnesses; but in addition to this we have the defendant's own declarations. In the petitioner's testimony it appears that during a conversation had with the defendant in the year 1898, she told the defendant that she would take proceedings against him to compel him to support her (p. 14). She testifies that he told her that it would be useless to take any proceedings against him because he was a resident of the State of New Jersey (p. 14). The familiar rule that "the declarations of a party standing alone are of no probative force to establish the fact of residence" would have application here, were it not that the defendant's acts have been laid before the Court, and taken together, the only conclusion to be reached in that the defendant is a resident of the State of New Jersey, and was at the time the petition was filed against him, and had been for more than the statutory period.

See testimony of John Kirn and Maria Wolfensberger.

The Special Master's view is, that because the defendant was *employed* during part of the summer of 1900 in Brooklyn, and because the defendant took the same employment in July, 1901, his residence in Newark is not *bona fide*.

It is well settled in law that *employment* of a person is never considered in determining his residence.

The evidence here is that after the defendant got through with his employment in Brooklyn in the summer of 1900, he returned to the City of Newark (having retained his home in Newark during his absence p. 32), and boarded at Mrs. Wolfensberger's boarding-house all through the fall and

winter of 1900-1901, and the spring of 1901, up to the month of July, 1901 (p. 32), when, as the witness John Kirn says, "the work at the tannery "in Newark was slow and then he went over to "Brooklyn" to take *employment* there. Mrs. Wolfensberger testifies that the defendant pays her for his room "because he (the defendant), says if "he does not like it over there he comes back "again to the tannery shop, and he knows he has "a *home* and can come there, and he knows he "has a place to sleep" (p. 32 lines 30-40.

Those are his declarations. What are his acts?

1. He has lived in the City of Newark since the year 1898, two years of which he has kept house.

2. He has all his furniture, household effects and personal belongings stored and kept at the home of John Kirn and Mrs. Wolfensberger, both at Newark.

3. He pays for and retains the same room he has occupied since September, 1899, at the same house in which he boarded in which he slept every night while he was at Newark daily, and instructs his landlady to keep the same room for him because he knows he has a home he can come to and he knows he has a place to sleep.

4. He has a key to the house, and a key to the room, and is at perfect liberty to come and go as it suits him.

5. He retains his home near his friends, Mr. Keeber, Mr. Kirn, the latter of whom he has known for some years and for whose children he is godfather, and returns to the City of Newark every week or sometimes two weeks.

Mrs. Wolfenberger's testimony (p. 35).

By Mr. Simpson:

Q. Does he (the defendant) come there (the boarding house) very often? A. Sometimes once a week, sometimes it is two or three weeks, I don't know when he comes; he has a key to the house and his room key and he comes in and sleeps there at nights and goes back early in the morning.

When did he last sleep in your house? A. Two weeks ago.

As the witness testified to the above facts on January 7th, 1902, this would make it that the last time the defendant slept in the house, was on December 24th, 1901. There is no uncertainty about that, notwithstanding the Special Master's views.

The above abstract from the testimony does not justify the Master's conclusion, and it is submitted that the fact of residence has been proved.

Abele vs. Abele, 50 Atl. Rep., 686.

"In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and establishment, and to which whenever he is absent he has the intention of returning."

10 Am. & Eng. Enc. of Law (2d Ed.), p. 8;

Wright vs. Boston, 126 Mass., 161;

Weld vs. Boston, 126 Mass., 166.

In Harral vs. Harral (39 N. J. Eq., 286), Mr. Justice Depue laid down the rule that

"A person *sui juris* may change his residence as often as he pleases. To effect such change naturalization in the country he adopts as his domicile is not essential. He need not do all that is necessary to divest himself of his original nationality. There must be

a voluntary change of residence; the residence at the place chosen for the domicile must be actual; to the *factum* of residence there must be added the *animus manendi*; and that place is the domicile of a person, in which he has voluntarily fixed his habitation; not for a mere temporary or special purpose but with a present intention of making it his home, unless or until something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home," citing

Haldane vs. Eckford, L. R. (8 Eq.), 631;
King vs. Foxhall, L. R. (3 Chan. Div.),
518;

Lord vs. Colvin, 5 Jur. (N. S.), 351;

Aikman vs. Aikman, 7 *Ibid* 1017-1019;

Douglas vs. Douglas, L. R. (12 Eq.),
617/644;

Udney vs. Udney, L. R. (18c. App.), 441;

Cadwalader vs. Howell, 3 Harr., 144/5.

This rule was followed with approval in Firth vs. Firth, 50 N. J. Eq., 138.

See also Plant vs. Harrison, 36 Miscellaneous Rep. (N. Y.), 649, *et seq.*

His acts and intent so manifested and qualified, indicated his purpose, and his relation to the State of New Jersey is clearly shown.

There is no evidence to repel the logical conclusion that the defendant, when he came to the State of New Jersey in 1898, and from that time up to the filing of the petition, became and was a *bona fide* resident of the State and as such answerable to its laws.

There is no such thing in the statute as a *bona fide* resident. The cases all rest upon the assertion of residence by the complainant or petitioner. I find no case where the injured wife followed her

husband into his domicile as in this case. What is the meaning of all these actions on the part of the defendant since February 1898? Is it reasonable to assume that he did all the things testified to without intending to be a resident of New Jersey?

A husband who will wilfully abandon a defenseless woman in a manner as described in the testimony in this case, will resort to every device to defeat the suit and prevent the process of the Court from reaching him.

In Conclusion.

This suit for divorce was commenced in perfect good faith. The petitioner now is, and has been supporting herself for almost 5 years since her husband deserted her in this most despicable manner. To refuse a divorce in this case is contrary to the statute, and the law as laid down by the authorities. The petitioner, is entitled to a decree in her favor, and I ask the careful consideration of the Court to this question: Is the State of New Jersey to become the haven of refuge for unprincipled men who may, to shirk their responsibilities, migrate to this State, and live here without molestation or incurrence of the penalties resulting from violation of the marriage contract?

I submit the decree of the Court of Chancery should be reversed.

Respectfully submitted,

CHAS. E. SIMPSON,
Solicitor for Appellant.

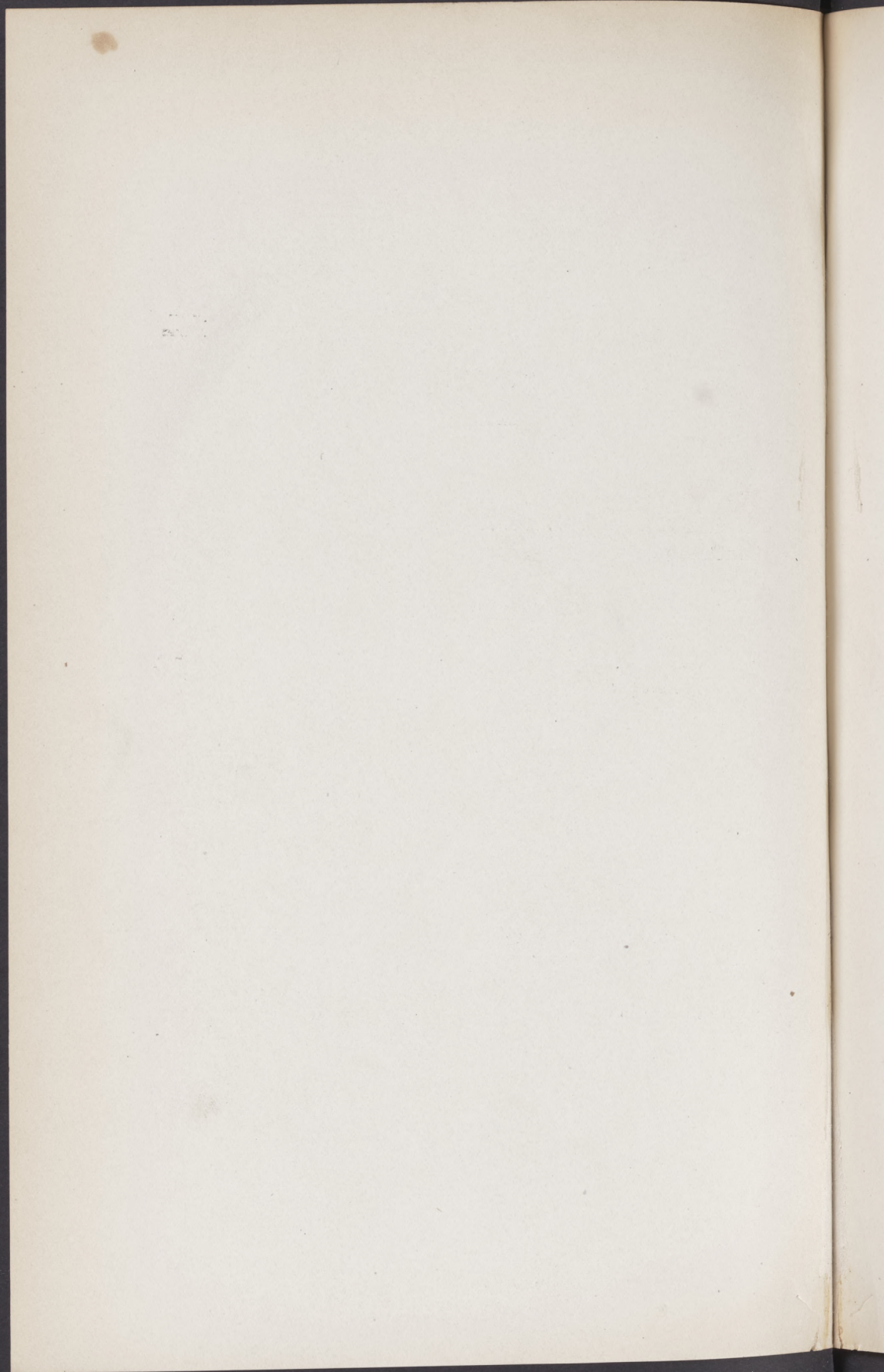
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INDEX.

	PAGE
Petition for Divorce.....	1
Master's Report.....	3
Exceptions to Master's Report.....	56
Memorandum	57
Decree Dismissing Petition Filed August 7th, 1902.....	58
Notice of Appeal.....	59
Petition "	60

TESTIMONY.

Adelaide Marth,	direct.....	6
	recalled direct ...	35, 42, 54
Dederich Jachens,	direct.....	18
	recalled direct..	42
Dora Graefe,	direct.....	21
John Kirn,	direct.....	23
	recalled direct..	39
Maria Wolfensberger,	direct.....	30
	recalled direct..	47
Anna Jachens,	direct ...	43



New Jersey Court of Errors and Appeals. 10

Between

ADELAIDE MARTH,
Petitioner and Appellant,

and

HENRY MARTH,
Defendant and Respondent.

On Appeal from
the Court of
Chancery.

20

Petition for Divorce.

(Filed Sept. 23, 1904.)

IN CHANCERY OF NEW JERSEY.

To the Honorable William J. Magie, Chancellor
of the State of New Jersey.

The petition of Adelaide Marth, of the Borough
of Brooklyn, County of Kings and State of New
York, respectfully shows that your petitioner was
married on the sixth day of January, eighteen hun-
dred and ninety-five, in the City of Brooklyn, in
the State of New York, to Henry Marth, her pres-
ent husband, since which time, with the exception
of about one and one-half years, during which she
has lived in the City of New York, she has
lived and resided in the Borough of Brooklyn afore-
said. 30 40

And your petitioner further shows that her said husband lived with her and contributed to her support for about two years after they were married, and until the month of July, eighteen hundred and ninety-seven, when he deserted her and came to the State of New Jersey, and that her said husband now resides at number one hundred and fifty South Orange avenue, in the City of Newark, County of Essex and State of New Jersey, where he has resided for the past three years and upwards, during which time the desertion hereinafter mentioned and complained of was continued.

And your petitioner further shows that for more than three years last past, and while the said Henry Marth, the said husband of your petitioner, was a resident of the State of New Jersey, your petitioner's said husband has wilfully, continually and obstinately deserted her, and during all that time has wholly neglected to make any provision for her support.

And your petitioner further shows that she has no children by her said husband.

And your petitioner further shows that her maiden name was Adelaide Jachens, and that she has no means of support except from her own exertions.

Your petitioner, therefore, prays that she may be divorced from her said husband, and that she may have such other and further relief as may be equitable and just.

CHAS. E. S. SIMPSON,
Solicitor for Petitioner.

State of New Jersey, {
County of Hudson, } ss. :

Adelaide Marth, the petitioner in the foregoing petition named, being duly sworn, deposeth and saith, that her complaint in said petition is not made by any collusion between her and the defend-

ant in said petition for the purpose of dissolving the marriage relation, but in truth and good faith for the causes set forth in said petition.

ADELAIDE MARTH.

Subscribed and sworn to before
me this 18th day of September,
A. D., Nineteen hundred
and one.

10

GEORGE R. DUTTON,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

MASTER'S REPORT.

To the Honorable William J. Magie, Chancellor of the State of New Jersey.

20

In pursuance of an order of this Court, made in the aboce cause, bearing date the twenty-fourth day of December, nineteen hundred and one, whereby it was referred to the subscriber, one of the special masters of this court, to ascertain and report as to the truth of the allegations of the petitioner's petition, and his opinion thereon:

I do report that I have been attended by Charles E. S. Simpson, solicitor of said petitioner, and in his presence I have taken the depositions of witnesses produced before me, and have examined into the matters by said order referred to me; the depositions so taken are herewith returned.

30

And I find and report that the said petitioner and the defendant were lawfully married on the sixth day of January, eighteen hundred and ninety-five, in the City of Brooklyn, State of New York; that the petitioner and the defendant

40

lived together as husband and wife from the time of their marriage as aforesaid, until the second day of July, Eighteen hundred and ninety-seven, and that from their marriage to the date last aforesaid, they resided in the said City of Brooklyn. The petitioner has, since her marriage to the defendant, and still does reside in said City of Brooklyn, State of New York.

10 And I further report that on the second day of July Eighteen hundred and ninety-seven, while both were residents of Brooklyn, New York, the defendant deserted the petitioner, and has never since then returned to her, and in my opinion the said desertion was and is wilful, continued and obstinate; all of which will more fully appear by the testimony annexed to this my report.

20 And I further report that I have endeavored to ascertain the facts and circumstances under which the said desertion took place, and the reasons which caused it, and am of opinion, from the testimony, that the defendant tired of the companionship of the petitioner and desired to rid himself of her. He failed, for some time before he deserted her, to provide for the household expenses and refused to work. That he illtreated the petitioner, is evidenced by the fact that on the second day of July, Eighteen hundred and ninety-seven, he quarreled with her and struck her on the arm with his shoe, hurting her severely, so much so that she was compelled to go to her mother's home, in Brooklyn, and remain there under a doctor's treatment for some four weeks, and while petitioner was at her mother's, the defendant broke up his home and took the furniture to Newark, New Jersey, since which time he has continued his desertion of the petitioner, and
30
40 has made no effort to provide a home for her.

The petitioner sought to prove the defendant a

resident of this State for a period of more than two years prior to the filing of her petition as the foundation for her right to a decree of divorce by this Court: From the testimony herewith returned, I find that the defendant has during the greater part of said period, been a resident of Brooklyn, New York, where he is now employed and now resides. The testimony shows that he was employed and lived in Brooklyn during all the summer of Nineteen hundred, and that he has so lived and been employed there continuously since the spring of Nineteen hundred and one. The witness, Wolfensberger, at whose house in Newark, New Jersey, the defendant professes to keep a hall bedroom, cannot remember with any certainty that he has slept there at all during that time. 10

And I further report that the defendant has not had a *bona fide* residence within this State since the spring of Nineteen hundred, and is not now a resident of this State and in my opinion the prayer of the petitioner for a divorce should therefore be denied. 20

Respectfully submittd this February Twenty-fifth, Nineteen hundred and two.

WM. G. E. SEE,
Special Master in Chancery of
New Jersey. 30

IN CHANCERY OF NEW JERSEY.

Depositions of witnesses taken before me, William G. E. See, one of the special Masters in Chancery of New Jersey, at my office, No. 1 Montgomery street, Jersey City, New Jersey, on Tuesday, January 7th, 1902, at half-past one o'clock in the afternoon, pursuant to an order of reference bearing date December 24th, 1901, in the pres- 40

ence of Charles E. S. Simpson, solicitor of petitioner.

ADELAIDE MARTH, the petitioner, being duly sworn according to law, on her oath says:

By Mr. Simpson:

10 Q. Where do you live? A. 260 5th avenue, Brooklyn, N. Y.

Q. You are the wife of Henry Marth, the defendant in this cause? A. Yes, sir.

Q. When were you married? A. January 6th, 1895, at Brooklyn, New York.

Q. At the time you were married to him did you obtain a marriage certificate? A. Yes, sir.

20 Q. Is this the certificate which you obtained (showing witness certificate)? A. Yes, sir.

Certificate shown witness is offered in evidence and marked Exhibit P. 1.

Q. Who were the witnesses to your marriage ceremony? A. My sister, Magdalene Jachens, and William Fennichal.

30 Q. Who else was present at your marriage? A. My mother, Anna Jachens, and my brother, Dederich Jachens.

Q. What was your name before your marriage? A. Adelheid Jachens.

Q. That name "Adelheid" is the German for "Adelaide?" A. Yes, sir.

Q. After you were married did you go to house-keeping? A. Yes, over in New York.

Q. Whereabouts? A. 629 5th street.

40 Q. How long did you remain there? A. We lived there about one year.

Q. Then where did you move to? A. 428 5th street.

Q. How long did you live there? A. About half a year.

Q. That was in New York? A. Yes, New York.

Q. Were you housekeeping all that time? A. Yes.

Q. Where did you then move to? A. Over to Brooklyn, to 308 Union street. 10

Q. You lived about one year and a half in New York? A. Yes.

Q. Then you moved to 308 Union street, Brooklyn? A. Yes.

Q. You were housekeeping there? A. Yes.

Q. From the time you moved to 428 5th street, New York, was your husband always employed? A. No, sir, he refused to work.

Q. What supported the house? A. I had to go 20 out to work.

Q. It was your labors that supported the two of you? A. Yes.

Q. How long did that continue? A. Until about June or July of that year.

Q. Of what year? A. 1897.

Q. July, 1897? A. Yes.

Q. Did you object to earning the money? A. I did not object, believing my husband was unable 30 to obtain work.

Q. During that time did your husband make any attempts to break up your home? A. Yes, he did.

Q. In what way? A. He told me a man was very foolish to have a wife to support, and he started in to sell all the furniture—

Q. That happened between January and July, 1897? A. Yes.

Q. Did you quarrel with him when he was in those moods? A. No, sir, I would always try to quiet 40 him; I always told him that if he would have steady

work we would be more prosperous.

Q. Do you remember the months of April, May and June, 1897? A. Yes, sir.

Q. What was your husband's conduct towards you then? A. He treated me very mean at the time.

Q. What did that consist of? A. He always told me a man was foolish to have a wife.

10 Q. Did he tell you anything about the Brooklyn Bridge? A. Yes, he told me on several occasions that I had better go and jump over the bridge and not be a bother to him.

Q. Did you ever quarrel with him when he told you to do those things? A. No, I always tried to quiet him.

Q. Do you remember the early part of July, 1897? A. Yes.

20 Q. Do you remember any day in particular? A. Yes, July 2d.

Q. What happened on that day? A. He came home and he acted very queer, and he told me I had better go home to my mother, I told him I would not leave him.

Q. What else did you tell him? A. I told him there was nothing that should make me leave him.

30 Q. Did you tell him anything about being willing to do your duty towards him as his wife? A. Yes; he was very angry and he walked up to me and struck me on the arm.

Q. You told him you were willing to do your duty as his wife? A. Yes.

Q. Then what happened? A. He walked right up to me and struck me with his shoe on the arm.

Q. Which arm? A. The right arm.

40 Q. Did he say anything to you? A. He said if I wanted more I could get some more.

Q. Did he have any reason for striking you? A.

He told me that I had a good reason now for leaving him.

Q. He told you that by his striking you and injuring you you had reason to leave him? A. Yes.

Q. Did you say you would leave him? A. No, I did not tell him that.

Q. Did your arm pain you? A. Yes, very much.

Q. What did you say to him? A. I asked him what made him do that.

Q. What did he say? A. He said if I wanted more I could get more.

Q. Did he say anything about being tired of you?

A. Yes, he told me he was tired of me.

Q. What did you do then? A. I told him my arm hurt me very much, and we had no money that time in the house, so I told him I had better go to my mother's to see what she could do for me, so I put on my things and went to my mother's house. I told him to stay there until I come back.

Q. Did you say anything about his coming to you if you sent for him? A. No, but he knew where I was.

Q. He knew you were going to your mother's? A. Yes.

Q. Where was that? A. Prospect Place, Brooklyn.

Q. Was it very far from where you lived at that time? A. No, not very.

Q. Just a short walk? A. Yes.

Q. Are you still troubled with that injury to your arm? A. Yes, it hurts sometimes very much.

Q. Is your husband a muscular man, is he a strong man? A. Yes.

Q. Do you remember what his weight was at that time? A. He weighed about two hundred pounds.

Q. About how tall was he? A. Quite tall.

Q. Over five feet? A. Yes.

Q. Not six feet? A. I don't know.

Q. He was not quite six feet tall? A. No.

Q. You reached your mother's house? A. Yes.

Q. What was done there? A. My mother sent for the doctor.

Q. What doctor? A. Dr. Quinn.

Q. Where does he live? A. 314 Greene avenue.

Q. How long were you at your mother's house?

10 A. About four weeks.

Q. Under the doctor's treatment? A. Yes.

Q. When you were able to go out what did you do? A. I went down to my house and found he had moved all the furniture and household effects.

Q. He had moved them all away? A. Yes.

Q. Did you know that he was going to move those things away? A. I did not.

20 Q. What did you do then? A. I made inquiry about him but could not find out where he had moved to.

Q. Did you know what he had done with himself? A. No.

Q. When was the first that you learned about him? A. I met one of his friends in 1897, and they told me he had moved over to Newark.

Q. How did you know it was a friend of your husband's? A. I often had seen him going with him.

30 Q. Did you know he was going to leave at all? A. No, sir.

Q. Did he move with your consent? A. No, sir.

Q. He did not leave or desert you with your consent? A. No, sir.

Q. When you found he was in Newark, did you write to him? A. Yes, once.

Q. Did you keep a copy of the letter you sent? A. No.

40 Q. Do you remember the contents of it, about?

A. I wrote to him that he had better come back.

Q. Did you receive a reply to that letter? A. I did.

Q. I hand you a letter, in whose handwriting is that letter? A. My husband's writing.

Q. You had seen him write before? A. Yes, sir.

Q. Is there any question in your mind that it is not your husband's writing? A. No.

Q. You are sure of it? A. Yes, it is his writing.

Q. That letter is written in German, is it not? A. Yes. 10

Q. Is that the way your husband generally signed his name? A. Yes, that is the way he writes it in German.

Q. What is it in English? A. Henry.

Letter is offered in evidence and marked Exhibit P. 2.

Q. Will you please read that letter? (Witness reads letter.) 20

Q. I show you what purports to be a translation of that letter; is that a true transcript of that letter? A. Yes, sir.

Q. You are sure of that? A. Yes.

Q. Do you remember when you received that letter? A. I believe it was in May, 1898.

Q. Did you reply to that letter? A. Yes.

Q. Did you keep a copy of the reply you made to it? A. No. 30

Q. Do you remember about what you said in reply to it? A. No; I think I wrote to him that he had better come over to see me.

Q. Did you say anything about living together again? A. Yes, that is what I wrote him about.

Q. Did he come in answer to that letter? A. Yes, he did.

Q. Do you remember when? A. In May, 1898, 40

I believe; he said then that he lived in Newark ever since 1897.

Q. He came to your house in Brooklyn? A. To where I was employed.

Q. That was in Brooklyn? A. Yes.

Q. Did he say anything to you about living together again? A. No, he did not say anything about that.

10 Q. Did he ask you to live with him again? A. No.

Q. Did you put any question to him as to why he had gone away from you? A. Yes, I did; I asked him why he had treated me so mean, and he said women should not ask such questions.

Q. Did he leave you then without asking you to live with him again? A. Yes, he told me he would see about that.

20 Q. Did you ever write to him after you saw him in May, 1898? A. I saw him a couple of times after that.

Q. Did he ever promise to come back and live together? A. No.

Q. You asked him to provide a home for you, did you not? A. Yes.

Q. He always refused? A. Yes.

30 Q. Those times you saw him, was it by appointment or by accident? A. It was just by—he just came there.

Q. Where you were employed? A. Yes.

Q. Did you ever receive any other letter from him? A. Yes, I got one more letter from him.

Q. I show you a letter, in whose handwriting is that letter? A. My husband's writing.

Q. Is his name signed to that letter? A. Yes, Henry.

Q. That letter is in his handwriting? A. Yes.

40 Q. There is no doubt about that? A. No.

Q. When did you receive that letter? A. I think it was in 1899.

Q. Do you remember the month? A. June, I believe.

Q. That letter is also written in German? A. Yes.

Q. I show you a paper, is that a true translation of that letter? A. Yes.

Q. You are sure of that? A. Yes. 10

Letter is offered in evidence and marked Exhibit P 3.

Q. Did you keep the envelopes that these letters came in? A. No, sir.

Q. They came to you by mail, did they? A. Yes.

Q. After you had received this second letter, did you see your husband? A. Yes, he came in there once after that. 20

Q. What did he say? A. He said it was better for us to get a divorce.

Q. What did you tell him? A. I told him he had no reason to get one.

Q. Did you say anything to him about doing so if he didn't take care of you as his wife? A. Yes, he told me he had his residence in Newark.

Q. Did you say anything to him about consulting a lawyer? A. Yes, sir. 30

Q. When he asked you if he could not have a divorce, what did you say to him? A. I told him he had no reason to get one.

Q. Did you tell him to leave the house or anything of that kind? A. Yes, I did.

Q. Have you seen or spoken to him since? A. No.

Q. Did you ever get any other letters from him? A. There were some letters only I did not keep them; they must have got lost. 40

Q. They have either been lost or mislaid? A. Yes.

Q. You can't find them? A. No.

Q. Did you ever tell your husband that you would have to take proceedings against him to compel him to support you? A. Yes, I did.

Q. What did he say? A. He told me that his residence was in Newark, New Jersey, and I could not do anything to him.

10 Q. Do you remember when that was? A. I believe it was in 1899.

Q. Are you sure of that, or was it before that? A. It was in 1898.

Q. Was that during the visit in May, 1898? A. Yes, the first time I saw him.

Q. Did he say anything about intending to stay in the State of New Jersey? A. No, he did not.

20 Q. When you told him that you would take proceedings against him for support, do you remember exactly what he said to you? A. That is all he said, that he had his residence in Newark and I could not do anything to him.

Q. Each time that you wrote him where did you direct the letter? A. To Newark.

Q. Newark, New Jersey? A. Yes.

Q. Did they always reach him? A. Yes.

30 Q. Since the time you charged him with having deserted you, do you know whether he has resided in New Jersey or not? A. I don't.

Q. You know he lived in Newark, New Jersey? A. Yes, sir.

Q. Since your husband deserted you has he contributed anything towards your support? A. No.

Q. During all that time how have you supported yourself? A. Always had to work.

40 Q. You supported yourself by your own labors? A. Yes.

Q. What kind of labor was it? A. I worked as a saleslady in a store.

Q. Were there any children by your marriage? A. No, sir.

Q. If your husband had asked you to live with him would you have objected? A. No.

Q. Did he leave you without your consent? A. Yes.

Q. And without your knowledge? A. Yes. 10

By the Master:

Q. What were your husband's habits at the time he left you, was he a sober man or a drinking man? A. He was not a drinking man, he was very cross and ugly.

Q. Did he work? A. He did at first.

Q. How long did he work? A. About a year and a half.

Q. And contributed towards your support? A. Yes. 20

Q. Was he sick at any time? A. No.

Q. He was able to work when he didn't work?

A. Yes, he was able to work; he always told me I was young enough to work myself.

Q. The night he hit you on the arm and you left the house, did you leave then with the intention of staying away? A. No, I did not.

Q. When did you expect to return? A. When I was better, I expected to come back again. 30

Q. Not that night? A. No.

Q. How long were you away? A. About four weeks.

Q. Did you see him during that time? A. No.

Q. He did not come near you? A. No.

Q. He knew where your mother's was? A. Yes.

Q. He had been there before? A. Yes, he had been there often before. 40

Q. Were you in bed when you were at your mother's? A. Yes.

Q. All the time? A. Yes.

Q. Where did you write to him at Newark, what street and number? A. I wrote to the post office.

Q. To the general post office? A. Yes.

Q. Did you talk over your divorce proceedings with him? A. No.

10 Q. He did with you? A. He just asked me if I could not let him have a divorce.

Q. What did you say? A. I told him he had no reason for it.

Q. Did he ask you to procure a divorce? A. No.

Q. Did he know you were going to start this suit? A. No.

20 Q. How long before he left you, which you say was in July, 1897, was it that he had not been contributing to the household expenses? A. It was most nine months.

Q. You were at that time by your own exertions making money and running the house? A. Yes.

Q. He didn't contribute anything? A. No.

Q. What is his business? A. He had his own business first and then he sold it.

Q. What was that business? A. He had a coal and ice route.

30 Q. After he sold that business what did he do? A. He did not work.

Q. Do you know of any particular reason why he left you? A. No.

Q. Did you have quarrels? A. No.

Q. While you were at your mother's did you hear that he had left the house? A. No.

Q. You first ascertained that when you went back there? A. Yes.

40 Q. When did you see him last? A. About a year and a half ago.

Q. Where was that? A. Over in Brooklyn, at the time he wrote the letter.

Q. He came to see you? A. Yes.

Q. At the time he wrote Exhibit P. 3? A. Right after that.

Q. What did he come to see you for? A. About that letter, he wanted to know if I could not let him have a divorce.

Q. Where were you then? A. Where I am living now, 260 5th avenue. 10

Q. What time of day was it? A. It was in the afternoon.

Q. You were home then? A. Yes.

Q. Was it on Sunday? A. Yes, it was Sunday.

Q. How long did he stay? A. He only stayed for a short while.

Q. Have you seen him since? A. No.

By Mr. Simpson: 20

Q. 260 5th avenue, Brooklyn, that is where you were employed? A. Yes.

By the Master:

Q. That is where you were employed at that time? A. Yes.

ADELAIDE MARTH.

Taken, sworn to and subscribed this seventh day of January, A. D. nineteen hundred and two, before me. 30

W. G. E. SEE,
Master in Chancery of New Jersey.

DEDERICH JACHENS, being duly sworn according to law on his oath says:

By Mr. Simpson:

Q. Where do you live? A. In Brooklyn.

Q. Whereabouts? A. 147 Rochester avenue, corner of St. Mark's Place.

Q. Are you a brother of Adelaide Marth, the petitioner in this suit? A. Yes.

10 Q. Were you present at her marriage to Henry Marth, the defendant in this suit? A. Yes.

Q. You saw them married? A. Yes.

Q. Do you remember when they lived at No. 308 Union street, Brooklyn? A. Yes.

Q. Do you remember the month of July, 1897? A. Yes.

Q. Do you remember anything that took place then? A. My sister came home; he treated her mean always, she had to come home to her mother to find a home.

20 Q. What condition was she in when she came there? A. She was hurt.

Q. Where was she hurt? A. On the arm.

Q. On the right arm? A. Yes.

Q. How long was she in that house then? A. She stayed with her mother about four weeks.

Q. You lived at the house with your mother then?

30 A. I lived in the same house.

Q. You say your sister stayed there four weeks?

A. Yes.

Q. Did you see her under the care of the doctor?

A. Yes.

Q. Do you remember the doctor's name? A. Dr. Quinn.

Q. When she was able to go out do you remember what she did? A. She looked for some position, her mother could not afford to have her home.

40 Q. Do you know whether or not she went down to

where she had had her home, No. 308 Union street?

A. Yes.

Q. Do you know of your own knowledge whether her husband had carted all the furniture away? A. Yes.

Q. He had? A. Yes.

Q. What did your sister do after that? A. She went and looked for a position so she could make her living, he could not do it for her, he never gave her anything I know that. 10

Q. Do you know of your own knowledge whether she has been earning her own living ever since then? A. Yes.

Q. Have you ever seen her husband since July, 1897? A. I seen him passing once, he was living over in Brooklyn, I guess, we never talked together.

Q. You saw him once since that time? A. Yes.

By the Master: 20

Q. When did you see him? A. About a couple of years ago.

By Mr. Simpson:

Q. Before her husband left her do you know that your sister was supporting herself and her husband? A. Yes, sir.

Q. Did you ever obtain employment for your sister? A. Yes, sir. 30

Q. What did she do just before he left her? A. She was down in a store, and then when she came up to my mother's I had to look for employment for her.

Q. You don't know whether he ever contributed anything to her support since he left her? A. He did not.

Q. Was she badly hurt on the arm when she came to your mother's house? A. Yes. 40

Q. Was she in the house about four weeks as the result of that injury? A. Yes.

Q. Did she tell you what had happened? A. Yes: she told her mother; I was not at home that time.

By the Master:

Q. How often did you say you saw this defendant since he left his wife? A. I see him once when he was in Brooklyn, he had employment there, I guess,
10 he was on a wagon.

Q. What kind of a wagon? A. Coal and ice wagon.

Q. When was that? A. A couple of years ago.

Q. About two years ago? A. Yes.

Q. You don't know where he was living then?
A. No, I do not, because I never talked to him.

Q. Do you know whose wagon it was? A. No.

Q. Did you ever see him since? A. No.

20 Q. You can't tell exactly when it was you did see him? A. No.

Q. It was about two years ago? A. It was about a couple of years from now.

Q. You mean a couple of years from this January? A. Yes, about that time.

Q. You are pretty positive about that? A. Yes, he only passed by, we never saw each other again.

Q. Then he was driving a wagon? A. Yes.

30 Q. A business wagon? A. Yes.

Q. Did you notice what business? A. A coal wagon.

Taken, sworn to and subscribed this January 7th, 1902, before me,

W. G. E. SEE,
Master in Chancery.

DORA GRAEFE, being duly sworn, according to law on her oath says:

By Mr. Simpson:

Q. Where do you live? A. 378 7th street, Brooklyn, New York.

Q. What is your usual business and occupation? A. Translating.

Q. How long have you followed that calling? A. About six years; I have done some as long as ten years ago. 10

Q. That is your means of livelihood? A. Yes, sir.

Q. Do you understand the German language? A. Yes, I understand it thoroughly.

Q. I hand you a letter, marked Exhibit P1, which is written in German, will you please translate that letter?

Witness reads as follows:

20

"Newark, 28th.

Dear Adelheid:

Your letter received to-day, and was so nervous I could not eat anything, I am very glad that you are not angry; formerly I had a very bad head, but it is all over now. I know that you did not deserve that I should act so to you. Dear wife, I now pray you to write me if I can call on you next Sunday and see you, and I will right everything with Theodore and then we will speak over everything and possibly will go together again. That is most likely the best. Nothing is nicer in this world then when two which have loved each other dearly will begin a new life again. My mother always writes me that I ask your forgiveness and to ask you to come back to me again. Everything that man gets is sent to us by God, and she prays day 30 40

and night for us. I sent her \$5 for Easter. You write me your arm still pains you, but it does not pain you as much as my action toward you pains me. I pray you forget all this and do not account this against me; if I think of it now I really do not know how I could act so toward you, and pray you again to please forget all this and write me if I may call on you Sunday. Hoping that this letter will find you well as it leaves me. I am your ever loving
 10 Henry.

Many regards to you, my dear wife, and all your people; good night, sleep well, close your dear eyes, it is half-past ten."

Q. I show you letter Exhibit P3, written in German, will you please translate that letter.

Witness reads:

20

Newark, 18-6-99.

"As I have seen that you will have no more love for me, I will now inform you that perhaps it will be better if we will get a divorce, it can be done very easily when both parties are satisfied, and it would be best if we could talk over things first and then go on with the case so that we can at last stand on our feet free. For I think two years is long enough to think over this thing and I would like
 30 to——"

Regards to all brothers-in-law,

Henry.

If I do not receive an answer I will advertise in the papers by July.

Q. You swear that you have translated those letters that that is the literal translation from the German to the English? A. Yes, sir.

Q. There is no doubt in your mind about that?
 40 A. No, sir.

By the Master:

Q. Your nationality is German, is it not? A. Yes, sir.

Q. And your translations are confined to the German language? A. Yes, from German to English and from English to German.

DORA GRAEFE.

Taken, sworn to and subscribed this January 7th A. D., 1902, before me.

10

WILLIAM G. E. SEE,
Master in Chancery.

JOHN KIRN, being duly sworn according to law on his oath, says:

By Mr. Simpson:

Q. Where do you live? A. 438 15th avenue, Newark, New Jersey. 20

Q. How long have you lived in Newark? A. Over thirteen years.

Q. What is your business? A. Tanner.

Q. How long have you been a tanner? A. Ten years.

Q. Do you know Henry Marth, the husband of Mrs. Marth, who has testified here? A. Yes.

Q. How long have you known him? A. Eight years. 30

Q. Did you ever know him to live in Newark? A. Yes.

Q. Where did Henry Marth live in Newark? A. Kenney street, the time I knew him.

Q. Do you know what number? A. No. It is between Lewis street and Morris avenue.

Q. You don't know the number of the house? A. No. 40

Q. When was the first that you knew he lived in Newark? A. I was at the shop and he was there a week before me.

Q. Do you know when that was? A. About eight years ago.

Q. Did you know him in 1898? A. Yes, sir.

Q. Did you know that he lived in Newark then? A. Yes.

10 Q. Where did he live in that year, 1898? A. 438 15th street, where I live now; I lived at 440, alongside of him.

Q. That was in 1898, was it? A. Yes, sir.

Q. The early part of 1898, January, February, or March? A. It was in the winter time, I can't tell that surely, it was about February or March.

Q. Was he keeping house there? A. Yes, he was keeping house himself.

20 Q. Had all his household furniture there? A. Yes, he brought it there from Brooklyn.

Q. He told you that, did he? A. Yes, he has it yet, too.

Q. How long did he live there? A. He lived there over two years.

Q. Did you know him all the time he lived there? A. Yes.

Q. He used to go to his work from that house? A. Yes.

30 Q. He used to sleep there every night? A. Yes, sometimes he was watchman and worked nights.

Q. What did he work at then? A. First he was with me in the shop, and then the work was done and he was the last man, so he was laid off, and then he worked for the Gas Company in Newark.

Q. What was the name of the Gas Company? A. The Newark Gas Company.

40 Q. You say he lived there and was employed in Newark for about two years, he lived at 438 15th avenue? A. Yes.

Q. He kept house there? A. Yes.

Q. He used to sleep there every night? A. Yes.

Q. Do you know where he moved to when he left 438 15th avenue? A. Then he moved to 150 South Orange avenue.

Q. Do you know whether he lived there or not, at 150 South Orange avenue? A. He lived there, he boarded there.

By the Master.

10

Q. When did you see him last? A. I saw him last Sunday.

Q. Have you been to his house on South Orange avenue? A. He was at my house.

Q. How many times has he been to see you? A. I saw him last Sunday.

Q. Whereabouts? A. In my house.

Q. Did he say anything to you about this divorce suit? A. No, he said nothing, not much.

20

Q. What did he say? A. He said he got a telegram to come to 150 South Orange avenue, so he came over to my house to see me.

Q. Did he say anything about this case? A. I showed him the paper I got, that is all.

Q. You lived next door to him in Newark you say for two years? A. Yes.

Q. How often did you see him? A. Sometimes every night, he might come over and eat supper with me.

30

Q. You saw him nearly every day? A. Yes, when he worked with me in the shop, after that when he worked for the gas company I only saw him nights.

Q. Since he worked for the gas company how often have you seen him? A. Sometimes nights, not every night, he was a watchman sometimes, and worked nights, then I saw him day times.

Q. Have you ever been in his house in South Orange avenue? A. I was there once.

40

Q. When? A. When he was sick once.

Q. About how long ago? A. It was over a year, it was last winter.

Q. A year ago? A. Yes.

Q. Was he boarding there? A. Yes.

Q. Have you seen him since that time he was sick? A. Yes, after a couple of weeks I go to get him to start in my shop again, he worked with me once and then he worked there with me again.

10 Q. When was that? A. Last winter.

Q. How long did he work with you then? A. Until spring time or summer, then the work was slow and then he went over to Brooklyn where he is now.

Q. He lives in Brooklyn now? A. Yes, he works there.

Q. Where does he live? A. He works there on an ice wagon and coal wagon.

20 Q. Who does he work for? A. I don't know the name.

Q. How long has he been there? A. Since the starting of the summer.

Q. He is working in Brooklyn? A. Yes, he lives in Newark, he has a room in Newark.

Q. Does he come there every night? A. I don't know that.

30 Q. You saw him last Sunday? A. Yes, I saw him in my house.

Q. Do you know where he came from then? A. He said he came from home.

Q. Home in New Jersey or Brooklyn? A. I don't know.

Q. When you saw him last Sunday did he say what he was doing? A. Yes, he worked over in Brooklyn.

40 Q. Did he tell you that last Sunday, that he was working in Brooklyn? A. Yes.

Q. Did he tell you what kind of work he was doing? A. Coal wagon and ice wagon.

Q. Driving? A. Yes, driving a wagon.

Q. Did he tell you the name of the people he worked for? A. He told me that a couple of times, but I have forgotten.

Q. Did he tell you he was living in Brooklyn? A. He has a room in Newark.

Q. Did he tell you that he was living in Brooklyn? A. Yes. 10

Q. What did he tell you about living in Brooklyn? A. Well, he did not say much about it, only that he had plenty to do.

Q. He told you he had plenty to do? A. He had plenty of work over in Brooklyn is what he told me.

By Mr. Simpson:

Q. You say you saw him last Sunday? A. Yes, 20
he was in my house.

Q. In Newark? A. Yes.

By the Master:

Q. How did he happen to come to your house last Sunday? A. He is godfather to my children, and he was not here Christmas or New Years, so he came over then.

Q. Did he tell you why he could not come Christmas or New Years? A. He said his boss was away. 30

Q. His boss was away and he could not come? A. Yes.

Q. Did he tell you he was staying in Brooklyn? A. He said he was staying in Brooklyn.

Q. He could not come over Christmas or New Years, and he came over as soon as he could, is that the idea? A. Yes.

Q. When was he at your house before last Sunday? A. He was there one night and I was not home, the week before. 40

Q. He was there one night about one week before last Sunday? A. It was a week before Christmas, and I was not home .

Q. You did not see him then? A. No.

Q. You say it was last spring or early summer that he went to Brooklyn on this job? A. Yes, then he took that job.

10 Q. As far as you know he has been working there ever since, has he not? A. Yes.

By Mr. Simpson:

Q. How do you know he has been working over in Brooklyn ever since last summer? A. He left the shop where I work because he got a job over there, the work in the shop was slow so he got another job.

Q. Did you see him before he went to Brooklyn to take that job? A. He was working in my shop.

20 Q. He was working with you in your shop? A. Yes.

Q. Did he tell you he was going to Brooklyn to get a job? A. Yes, he said he was going to Brooklyn to see if he could get a job there.

Q. That is all he went to Brooklyn for, was it? A. Yes.

Q. When he had this job in Brooklyn he used to come over to Newark, didn't he? A. Yes, he did.

30 Q. How often? A. Sometimes every two or three weeks I saw him in my house.

Q. What days of the week would he generally come on? A. On Sunday.

Q. Do you know why he came to Newark when he would come on those Sundays? A. He told me he liked it better in Newark, so he came over to my house to see me.

By the Master:

40 Q. When he would come to Newark on Sundays

to see you, would he stay at your house over night?
 A. No, not in my house, he left there sometimes at seven o'clock.

By Mr. Simpson:

Q. Do you know whether or not his clothes were at 150 South Orange avenue, when he left there did he keep any of his clothes there? A. He brought them over to my house, when he left there he brought his things to my house. 10

Q. What things? A. All the furniture.

Q. That was before he went to board at 150 South Orange avenue? A. That was after he went over to Brooklyn.

Q. When he went to Brooklyn he brought his furniture to your house? A. Yes.

Q. You went to see him when he was at 150 South Orange avenue? A. One time when he was sick, when I went to get him to start working again at our shop. 20

Q. Do you know whether he kept his clothes there or not? A. I don't know.

Q. Do you know whether he kept his trunk there? A. I have his trunk in my house, a trunk with dishes in.

Q. I mean the trunk with his good clothes in? A. I don't know, I had some clothes.

Q. Since he has been working in Brooklyn you know he has come to Newark almost every Sunday? A. Not every Sunday. 30

Q. Almost every Sunday? A. Every two weeks, sometimes three.

Q. Did he ever tell you that he only went to Brooklyn because he got work there? A. Yes.

Q. That was the only reason? A. Yes.

Q. Did he intend to stay in Newark? A. He said he could get more pay over in Brooklyn than in the tannery. 40

MARIA WOLFENSBERGER, being duly sworn according to law, on her oath, says:

By Mr. Simpson:

Q. Where do you live? A. 150 South Orange avenue, Newark, N. J.

Q. How long have you lived there? A. Over two years, two years and two months; I moved in three
10 years next September.

Q. Do you recognize the card I show you? A. Yes, that is my name.

Q. That is your business card? A. Yes, I keep a boarding house.

Card shown witness is offered in evidence and marked Exhibit P-4.

Q. How long have you kept a boarding house
20 since you moved into that house? A. I had one house over ten years.

Q. Do you know Henry Marth, the defendant herein? A. Yes, I know him two years.

Q. Do you know him to be the husband of Adelaide Marth, who had testified here to-day? A. He said he was married, but I do not know the woman, I did not ask him.

Witness is shown a photograph.

30 Q. Do you know whose picture that is? A. Yes, Henry Marth.

Q. That is a true picture of Henry Marth? A. Yes.

Photograph is offered in evidence and marked Exhibit P-5.

Q. You say you became acquainted with him about two years ago? A. Yes, he came to me and asked for board, for a room.
40

Q. Do you remember when that was? A. It was

about the 15th of September, I moved in on the first of September, and he came to me the 15th.

Q. What year was that? A. 1899.

Q. He occupied a room in your house? A. Yes, he boarded there at that time.

Q. How long did he stay with you? A. He was there from September until the next year in July.

Q. What year? A. 1900.

Q. From September, 1899? A. That time he goes over to Brooklyn. 10

Q. He boarded with you from September, 1899, to July, 1900? A. It was before, he goes some place else from me, he went from me to the butcher on 15th avenue, then he stay there.

Q. He left you in July, 1900? A. A couple of months before that.

Q. Then he took a job with a butcher there? A. He wanted to change his boarding house. 20

Q. Then he went to 15th avenue? A. Yes, to Mr. Keeble, a friend of his.

Q. How long did he stay with Keeble? A. A couple of months until he went to Brooklyn.

Q. He boarded with Keeble? A. Yes.

Q. Stayed there every night? A. Yes.

Q. He lived with him? A. Yes, boarded there.

Q. Had his trunk there, do you know? A. Yes, his furniture.

Q. Then when did he come back to you? A. He goes there in May, he is away all the summer through, and when the business is poor he comes back to me again. 30

Q. When was that? A. May, 1900.

Q. That is when he came back to you, in May, 1900? A. Yes.

Q. Then he got a job in the tannery? A. Yes, again.

Q. He still boarded with you? A. Yes. 40

Q. And has he been there ever since? A. Yes,

Q. Do you know whether or not he keeps anything belonging to him in your house—does he keep his trunk there? A. He keeps some suits there; every month he pays me, he comes there sometimes Sundays, stays over Sundays, sometimes he don't come every Sunday, just how he feels.

10 Q. This time when he went to that job in Brooklyn, in May, 1900, did he pay you room rent all that time? A. Yes.

Q. Since the first time he came with you, with the exception of the time he lived with Mr. Keeble, up to this time, he has paid you every month for the room? A. Not that time when he was with Keeble.

Q. All the other time? A. Yes, when he came back.

20 Q. Has he paid you for this month? A. He was here last Sunday and paid me for the whole month.

Q. He keeps his clothes there? A. Yes, he keeps some coats, his shoes, he is back every week if he does not like it there.

Q. He pays you regularly for that room he occupies? A. Yes, since he was over in Brooklyn.

Q. In 1900, when he was over there, did he pay you? A. When he came back.

Q. He paid you for the time he was in Brooklyn? A. Yes.

30 By the Master:

Q. How much does he pay? A. He gives me seventy-five cents a week, because he says if he does not like it over there any more he can come back again to the tannery shop and then he knows he has a home, he can come there and he knows he has a place to sleep.

40 Q. He has been away from your place since May, 1900, as a permanent? A. Well, the first of July he went away.

Q. He went to Brooklyn to take a job there? A. Yes.

Q. Was that last summer or the summer before?

A. Last summer and the summer before last summer, he worked there once and he came to me and boarded at my house all winter through until last summer and then he went away again.

Q. Then he went back to Brooklyn? A. Yes.

Q. And he is there now? A. Yes.

10

Q. Except that he keeps this room in your house and pays you seventy-five cents a week for it, and he sometimes comes there? A. Sometimes in the week, sometimes he does not come at all, sometimes he comes Saturday and stays over Sunday.

Q. Sometimes he does not come there for two or three weeks? A. Yes, just as he feels.

Q. When did you take this house on South Orange avenue? A. I moved there in September, three years ago next September.

20

Q. He has had a room in your house since then?

A. Yes, he was away once to go to Mr. Keeble.

Q. When was that? A. The first summer.

Q. In the summer of 1900 he went away? A. Yes, he changed his boarding house.

Q. Did he keep a room at your house all the time? A. Not when he was away, when he went to another boarding house then he had no room with me.

30

Q. You mean another boarding house in Newark? A. Mr. Keeble.

Q. Was that in Newark? A. Yes, he goes from me to there and from there to Brooklyn.

Q. What things has he at your house? A. Some shoes and overcoat; he keeps his things over at this man's house (pointing to Mr. Kirn), his bed, clothes, trunk and everything that he has he keeps at this man's house, he had them in my house before and then he took them over there.

40

Q. Do you know of your own knowledge that they are there? A. Yes.

Q. Have you seen them there? A. Yes.

Q. You have been there? A. Yes, I was there when he kept house there too.

Q. Do you remember last election day? A. Yes.

10 Q. Was he at your house then? A. He was in Brooklyn, he moved there.

Q. He was not at your house last election day? A. What day was that?

Q. Election day was last November, was he there then? A. I can't remember that, I don't think he was home, I can't say for sure.

By Mr. Simpson:

20 Q. You keep that room in your house at his request? A. Yes, because I don't know when he comes there every day. I am not sure.

Q. Did he tell you that? A. Yes.

Q. What did he tell you, that he expected to come back every day? A. Yes, when he gets mad there he packs up his things and comes back again, he is that way, if everything is all right he stays there, but if he gets mad he packs up his things and comes back, I don't ask him as long as he pays me my money, I don't care for that.

30 Q. He pays you regularly for that room? A. Yes.

Q. He has done that for the last three or four years? A. Since July, he moved away from me to Brooklyn, and he keeps his room there all the time.

Q. Do you mean this last July just passed? A. Yes.

Q. July, 1901? A. Yes.

Q. When he went away over to Brooklyn in July, 1901, did he tell you anything about keeping

his room? A. Yes, he told me to keep that room and he would pay every week so much, and when he comes there he pays me the month.

Q. Does he come there very often? A. Sometimes once a week, sometimes it is two or three weeks, I don't know when he comes, he has a key to the house and his room key and he comes in and sleeps there at nights and goes back early in the morning.

Q. When did he last sleep in your house? A. Two weeks ago. 10

Q. He slept in the same room he pays you for? A. Yes.

Q. You say he has a key to the house? A. Yes, to the room and the house.

Q. You permit him to go to his room whenever he wants to? A. Yes, any time.

MARIA WOLFENSBERGER. 20

Taken, sworn and subscribed this Seventh day of January, A. D. 1902, before me.

W. G. E. SEE,
Master in Chancery,
of New Jersey.

ADELAIDE MARTH, being recalled by the Master, testified as follows: 30

Q. Where were you married? A. In Brooklyn.

Q. You say your husband called on you one Sunday at No. 260 5th avenue, Brooklyn, where you were employed? A. Yes.

Q. What was your employment there? A. I worked in a bakery.

Q. When was that? A. That was one Sunday afternoon.

Q. How long ago? It was in 1898, about May. 40

Q. This letter, Exhibit P3, you received in June, 1899? A. Yes.

Q. Did he say anything to you at the time he called in May, 1898, about the two years of desertion necessary for a divorce? A. No, not then.

Q. When did he? A. That was in 1899 he said that.

Q. When? A. After he wrote that letter.

10 Q. After he wrote P3? A. Yes.

Q. You saw him after that? A. I saw him after he wrote the first letter.

Q. At this time after he wrote Exhibit P2, he did not say anything to you about the two years necessary for a divorce? A. No.

Q. When did he say that? A. That was after he wrote that letter.

20 Q. You saw him after he wrote this letter, Exhibit P3? A. Yes.

Q. Where? A. 260 5th avenue, Brooklyn.

Q. How long after that letter? A. Right after that letter.

Q. What did he say to you then about the two years of desertion necessary to get a divorce? A. He told me the best would be to get a divorce.

Q. Is that all he said? A. Yes, I told him he had no reason.

30 Q. Did he tell you to get a divorce? A. No, he did not tell me to get it, he said it would be the best thing; he was going to get one.

Q. What did you say? A. I told him he had no reason for it.

Q. Have you seen him at all since that time? A. No.

Q. Did you know he was living in Brooklyn. A. No.

40 Q. Your brother told you he had seen him? A. Yes.

Q. Are you sure that was all that was said about

the divorce proceedings, that he was going to get a divorce? A. Yes.

Q. Have you ever made any effort to find him or see him since the time you left after he struck you? A. No, I did not know where he was, I asked friends for him but I could not find anything of him.

Q. You knew he was in Newark? A. Yes.

Q. Did you know he was going to break up house while you were away? A. No, I did not. 10

Q. You did not hear from him all the time you were sick? A. No.

Q. Not at all? A. Not at all.

Q. Except for this one time he struck you, has he ever harmed you in any way before? A. Did he ever strike me?

Q. Yes, did he? A. Yes, he did, a couple of times, but not as hard as this time.

Q. When he went to see you, did you offer to live with him again? A. Yes, I told him if he intended to take care of me, that I would live with him. 20

Q. Do you know Mr. Kirn, the witness who has testified here? A. Yes.

Q. How long have you known him? A. Eight years.

Q. When did you see him last? A. About six years ago. 30

Q. You had not seen him since then until he was here last week? A. No.

Q. Have you written him any letters about your divorce suit? A. No.

Q. Did you ask anybody to see him about being a witness in this case? A. No. You know Mr. Kirn was my husband's friend.

Q. You say your husband was not a drinking man? A. No, he was not. 40

Q. What was his treatment towards—when he

was working? A. He was always very ugly, bad tempered.

Q. How is your temper, are you quarrelsome?

A. No.

Q. Do you know of any reason at all why he left you? A. No.

Q. Did you intend to go back again the night you left when he struck you? A. Yes.

10 Q. After you got out again you went to the house? A. Yes.

Q. You found all the things moved? A. Yes.

Q. Did you make any further effort to find him?

A. Yes, but I could not find out where he was.

Q. Was he working at that time? A. No.

Q. You know John Kirn was a friend of his? A. Yes.

20 Q. Did you inquire of Kirn where he was? A. I did not know at that time where he lived, had not been there in so long.

Q. Did not know where who lived? A. Mr. Kirn.

Q. You knew his business? A. Yes, but I did not know where he was, I had only seen him a couple of times before.

Q. You knew his business? A. Yes.

Q. Did you make any effort to find Mr. Kirn to inquire about your husband? A. No.

30 Q. When you were home were you doctored for this sore arm? A. Yes.

Q. Was it swollen? A. It was very much swollen, the whole side was swollen and inflamed.

Q. How long before July 2nd, 1897, was it that your husband was abusive? A. About three months.

By Mr. Simpson:

40 Q. You testified that your husband had a bad head, that he was ugly, what did you do whenever

you found him in that state? A. I always tried to quiet him up.

Q. Did you ever quarrel with him while he was in that state? A. No, sir.

Q. When he left you on July 2nd, 1897, did he leave you with any money? A. No, sir.

Q. Nothing at all? A. Nothing at all.

By the Master:

Q. Did you receive any letters from him at all since you received the letter Exhibit P-3? A. No, sir, that was the last. 10

ADELAIDE MARTH.

Taken, sworn and subscribed this January 7th, 1902, before me.

WM. G. E. SEE,

Master in Chancery of N. J.

Continuation of the testimony in the above matter this eleventh day of January, nineteen hundred and two. 20

JOHN KIRN, being recalled, testified as follows:

By the Master:

Q. At the day you were here before you were asked how many times he had been to see you and you answered that you saw him last Sunday? A. Yes. 30

Q. And I asked you what he said, and you answered "He said he got a telegram to come to 150 South Orange avenue, so he came over to my house to see me?" A. Yes.

Q. Did he tell you who he got that telegram from? A. He says he got a telegram from 150 South Orange avenue to come there. 40

Q. Did he tell you who sent it? A. He said that the lady that keeps the boarding house at 150 South Orange avenue, where he boards.

Q. Now you showed him the subpoena you got? A. yes.

Q. What did you say to him about it? A. I thought that came from him and he said he knew nothing about it.

10 Q. Did he say anything about why they wanted him to come to South Orange avenue? A. No, he didn't say anything about that.

Q. Did he talk to you about this divorce suit? A. No. I knew a little of it, but a good while ago.

Q. What did he say about? A. I can't tell you now, I didn't bother much with it.

Q. Did he tell you why he kept this room at 150 South Orange avenue? A. He told me that a year ago.

20 Q. What did he say? A. He said I have got a room down there, I keep that room down there.

Q. Did he tell you why he kept the room? A. He said I keep that room, maybe I don't like it over in Brooklyn, so then I can come back.

Q. Have you seen him since last Sunday? A. No.

Q. Do you know where he lives in Brooklyn? A. No, he told me, but I don't know where the number is.

30 Q. Did he tell you whether he was boarding or not in Brooklyn? A. He worked there, I know that.

Q. Did he tell you where he boarded in Brooklyn, if he did board in Brooklyn? A. No, I don't know where he did board.

By Mr. Simpson:

40 Q. You are a friend of Mr. Marth, the defendant? A. Yes, sir.

Q. You came here under a subpoena, you were served with a subpoena to come here and testify, a paper you got last Saturday? A. Yes.

Q. Did you know what you were to testify to before you came here; did you know what you were going to say before you came here? A. No. I didn't know anything about it.

Q. Did any body speak to you about this case before you got that paper? A. No.

10

Q. Are you sure of that? A. Nobody spoke to me; only Marth was over there last Sunday, and I told him about that paper.

Q. Where he is employed in Brooklyn, does he board with these people? A. I think so, I think he got his board there, but I don't know.

Q. Did he tell you that he kept his room at 150 South Orange avenue because he was going back? A. He told me that once, the first time, and I never asked him after that.

20

Q. Before you got that paper last Saturday, the subpoena, did Mrs. Marth speak to you about it—about this case—his wife? A. I never saw Mrs. Marth until last Tuesday here in this office.

Q. Did anybody speak to you for her about this case? A. No, sir, I know nothing about that.

JOHN KIRN.

Taken, sworn to and subscribed this January 11th, A. D., 1902, before me.

30

WM. G. E. SEE,

Master in Chancery of N. J.

On Monday, January 13th, 1902, the examination was resumed.

DEDERICH JACHENS, a witness heretofore produced and sworn, being recalled by the Master, testified as follows:

Q. You say you saw the defendant on a wagon in Brooklyn about two years ago, did you tell your sister you saw him? A. I did.

Q. You never saw him after that in Brooklyn? A. No, I did not.

10 Q. When your sister was sick at her mother's was she in bed all the time? A. Yes.

Q. Under this doctor's care? A. Yes.

Q. For this trouble with her arm? A. Yes.

Q. She was in bed all the time she was there? A. Yes, she could not do anything.

Q. Since the time you saw him in Brooklyn on a wagon about two years ago, have you heard he was living in Brooklyn? A. No, I did not hear from him, I only saw him on the wagon.

20 Q. Since that time have you heard that he was in Brooklyn? A. I have not.

Q. Not from anybody? A. No.

DIEDRICH JACHENS.

ADELAIDE MARTH, the petitioner, being recalled, testified as follows:

30 By the Master:

Q. Did you know your husband was working in Brooklyn? A. No, sir.

Q. Had you not heard of it? A. No.

Q. Did your brother tell you that he met him there about a year ago? A. Yes, he seen him one time on a wagon.

40 Q. He told you that? A. Yes.

By Mr. Simpson:

Q. Do you know whether your husband was a voter or not? A. I don't think he was.

Q. When you were living together, did he ever go to vote? A. No.

Q. Did you ever know him to have registered in order to vote? A. No.

Q. Do you know what voting means? A. Yes.

Q. Is the picture I show you a picture of your husband? A. Yes. 10

Q. That is a true picture of him? A. Yes.

ADELAIDE MARTH.

Taken, sworn and subscribed before me Jan'y 7, 1902.

W. G. E. SEE,
Master in Chancery.

Examination adjourned to Monday, January 13th, 1.30 P. M.

20

ANNA JACHENS, being duly sworn according to law, on her oath says:

By Mr. Simpson:

Q. Are you the mother of the petitioner, Adelaide Marth? A. Yes.

Q. Were you present at the marriage of your daughter to Henry Marth, the defendant? A. Yes. 30

Q. You saw them married? A. Yes.

Q. Where did you live on July 2nd, 1897? A. Prospect Place, Brooklyn.

Q. Did your son Dederich Jachens, who has testified here, live with you at that time? A. Yes.

Q. Do you remember anything that happened on July 2nd, 1897? A. Yes, her husband struck her. 40

Q. Do you remember anything else? A. He has always been very bad with her.

Q. Did your daughter come to you on that day?

A. Yes, she came to me and I sent her to the doctor.

Q. Did you send her to the doctor or did the doctor come to the house? A. No, the doctor came to the house.

10 Q. Did you send for him? A. Yes, she was very sick. The doctor said that her bone was fractured by reason of the blow she had received.

Q. Did your daughter have to go to bed? A. Yes, she was in bed four weeks.

Q. Was she under the doctor's treatment all that time? A. Yes.

20 Q. When she was able to go out at the end of four weeks, do you know what she did? A. After the four weeks, she being quite sick, she tried to get another place, and she got work. Then she went to the house where she had lived with her husband, and the house was locked and she found that the goods were moved and she returned to me.

30 Q. How long after she found that her husband had moved the goods did your daughter stay with you? A. She remained with me a couple of weeks and then she got a position as saleslady with some relatives of hers.

Q. Do you know what her husband's conduct was towards her when she was living with him at 308 Union street, Brooklyn? A. Prior to this he would go away and would stay out nights and come home at two or three o'clock in the morning, and he would also lock the door on his wife and prevent her from going out and abuse her in that manner.

40 Q. Do you know whether he worked or not when they lived at that place? A. He worked for

a little while and then he said he had worked enough, and that she was young and hearty and she had better go to work, and she had to go to work, and what money she earned he took from her and hardly allowed her enough to sustain life.

By the Master:

Q. When they were living at 308 Union street, Brooklyn, how often were you there? A. I was only there twice, during the day time. 10

Q. How often since your daughter left her husband and obtained employment, have you seen her? A. Every two or three weeks.

Q. Have you seen the defendant Henry Marth since July 2nd, 1897? A. No.

Q. Do you know where he lives? A. No.

Q. Did your son tell you that he had seen him in Brooklyn? A. Yes.

Q. Did you know that he was working in Brooklyn since last May? A. I did not know, I did not concern myself about it. 20

Q. Did your daughter tell you about these divorce proceedings? A. Yes.

Q. Did she tell you that she had seen her husband? A. No.

Q. Did she tell you that her husband had been to see her at 260 Fifth avenue, Brooklyn, about May, 1898? A. It is possible, but I do not remember. 30

Q. When did you first hear of these divorce proceedings? A. A little before Christmas she told me of it, I can't tell exactly.

Q. What did she say to you about the divorce proceedings? A. She said that she could not live with him again because he had abused her so frightfully, it was dangerous for her to live with him.

Q. What did she say about the divorce proceedings? A. That is all she said, she could not live 40

with him, she did not discuss the matter fully with me.

Q. Do you know John Kirn? A. No.

By Mr. Simpson:

Q. While your daughter was sick at your house, did her husband come to see her? A. No.

10 Q. Had he ever been in your house before that time? A. Before that he had been at my house frequently with my daughter.

Q. Then he knew where you lived? A. Yes.

Q. Did he ever come to inquire for your daughter while she was sick there? A. No.

Q. Do you know of your own knowledge whether he has ever given her anything to support herself with since he left your daughter? A. She has told me he did not.

20 Q. How old is your daughter? A. Twenty-nine.

Q. What has your daughter done to support herself since her husband left her in 1897? A. She has always been in the bakery store as a saleslady.

Q. Did you know your son-in-law was going to move away in 1897? A. No.

Q. Did he ever give you any intimation of it? A. No.

30 Q. While they were living together in Union street, did you ever contribute to their support? A. Yes, often.

Q. Did you give your daughter money each time she asked for it? A. Whenever she asked me for it I gave her money.

ANNA JACHENS.

Taken, sworn to and subscribed this January 13, A. D. 1902, before me.

WM. G. E. SEE,
Master in Chancery.
January 17th, 1902.

MARIA WOLFENBERGER, being recalled,
testified as follows:

By the Master:

Q. When you were here before you were asked when Mr. Marth slept in your house last, and you said "two weeks ago," that was about January 5th?
A. Right after New Years.

Q. Do you know why he came there that night?
A. He came in the afternoon and goes back at night. 10

Q. Do you know why he came there that afternoon?
A. For to see us.

Q. Did you send him a telegram to come to see you?
A. Yes, when I got that paper to come here, I did not know what it was.

Q. When you got the subpoena to come here you sent a telegram to him to come over to see you?
A. Yes. 20

Q. And he came to Newark to your house?
A. Yes.

Q. That was about January 5th, shortly after the holidays?
A. Yes, after the holidays.

Q. Why did you send him a telegram?
A. Because I did not know what was the matter, I told him about that paper.

Q. You mean the subpoena that was served on you?
A. Yes. 30

Q. What did he say when he came to your house?
A. He said what is the matter?

Q. Then you showed him the paper that had been served on you?
A. Yes.

Q. What did he say?
A. He did not know nothing about it, he said he did not know nothing.

Q. What did you say to him?
A. I said I have to go over here.

Q. Did he tell you what it was about?
A. I did not see him—I saw him yesterday. 40

Q. At the time he called at your house in Newark, did you say, why you had to come to my office here?

A. Yes, for a witness.

Q. For what? A. For his case.

Q. Did he talk over his case with you? A. Not much.

Q. What did he say? A. He said he feel sorry.

Q. What did he say about his case? A. He did
10 not say nothing.

Q. Did he tell you what you had to swear to?
A. Not a bit.

Q. You saw him yesterday? A. Yes.

Q. Where? A. In Newark.

Q. Did he stay all night last night? A. He goes away, his boss is away, he has to go back.

Q. What time of day did he come there? A. In the afternoon.

Q. Did he say anything about his case yesterday?
20 A. He said if I was over here.

Q. What did you say? A. I told him yes.

Q. What else did he say? A. He say what you have to do over here?

Q. What did you say? A. I said they ask me if you live here, and he said all right; he was awful mad, I can't speak much with him.

Q. What was he mad about? A. I don't know,
30 he was mad.

Q. Is that all he said about the suit? A. Yes, he said he can't say anything any more, he was mad, I can't make out what he thinks.

Q. Did he ask you at any time to come here and be a witness? A. He never ask me any such thing, that is the reason I sent the telegram for him.

Q. What kind of a room has he in your house?
A. Back hall room.

Q. When he came there in answer to your tel-
40

ogram did he talk to you about being a witness here? A. Yes, he said I have to go over here.

Q. Did he tell you what you were to say? A. Not a bit.

Q. Nothing at all? A. Nothing at all, of course he did not know nothing.

Q. Do you know why he came out yesterday to see you? A. He wanted to know how I made out here, I did not see him before. 10

Q. He wanted to find out how you made out here? A. What I had to do here.

Q. What did you tell him? A. I said you asked me if he lived in Newark.

Q. Did you tell him what you had said here? A. Yes.

Q. What did he say? A. Nothing, all right, that is all.

Q. Did you tell him you were coming back here to-day? A. Yes, I told him that. 20

Q. Did he tell you when he was coming back again? A. He didn't know; I asked him and he said he didn't know, he can't tell, of course, he never can tell when he comes over.

By Mr. Simpson:

Q. Did you ever see Mrs. Marth, the petitioner in this case, before you met her the first day she was here? A. No, that is the first. 30

Q. Did you ever know her before that time? A. Never.

Q. Before the day you were subpoenaed here did anybody speak with you about this case? A. No.

Q. Did Mrs. Marth send anybody to talk to you about it? A. No.

Q. Did you know what you were going to be asked when you came here? A. No.

Q. Do you remember the ninth day of November, 40

last, when the Sheriff of Essex County left papers at your house? A. No.

Q. Did you ever see a paper like the one I now show you? A. It was a white paper.

Q. Was it a paper like that (showing witness paper)? A. Yes.

Q. Just like that? A. Just like that.

Q. Did it have Mrs. Marth's name on it like that? A. Yes.

Q. Did it have my name on it like that? A. Yes.

Q. It was just like that? A. Yes, only white, that was in the white paper.

Q. There was a white paper with it? A. Yes.

Q. Did the Sheriff leave those papers with you? A. Yes, I wrote a postal card.

Q. To whom? A. To Mr. Marth.

Q. What did he do? A. He came there?

Q. When? A. Right after that.

Q. Did you give him those papers? A. Yes.

Q. He got them? A. Yes, he has them in his pocket.

Q. He put them in his pocket when you gave them to him? A. He has them now in his pocket, he had them yesterday.

Q. Did you see them yesterday? A. Yes.

Q. Did he show them to you yesterday? A. It was no use any more, I see them once.

Q. When was the last time he slept at your house? A. I can't remember now.

Q. Can you remember when he stayed all night? A. No.

Q. Say it was a month ago? A. It was more than a month.

Q. Was it five weeks ago? A. I can't tell.

Q. You know he did sleep there? A. Yes, once.

By the Master:

Q. Since last May? A. No, since five or six weeks he slept there once.

By Mr. Simpson:

Q. Does he receive his letters at your house? A. No.

Q. Do any letters come to your house for him? A. No, I get no letters from him.

Q. I didn't mean that, I mean do any letters come there for him? A. No, only what comes from the court, that is all.

Q. Does he get letters, do you know? A. No. 10

Q. You say the room he has in your house is a hall room? A. Yes.

Q. When he slept at your house regularly over night he slept in that same room? A. Yes.

Q. He spoke to you about this case yesterday? A. Yes, he asked what I have to do here.

Q. He still has that room because he pays for it? A. Yes.

Q. Has he still got a key to the house? A. Yes. 20

Q. And to the room? A. The key to the room is in the dining room and he knows he gets it there every time he comes.

Q. Has he a trunk there? A. No trunk at all.

Q. You testified he keeps his clothes there? A. He keeps his clothes, overcoat and shoes there and hats, things he don't need now I suppose.

Q. He has his household goods, dishes, furniture and things in John Kirn's house? A. Yes, on 15th 30 avenue.

Q. Do you know whether they have been over there since he came to Newark in 1897? A. I don't know that time; I only know him two years.

Q. The only time he didn't pay you for that room and board was when he worked for Keever in Newark within the last two years? A. He never worked for Keever, he boarded there, he went away from me and lived there. 40

Q. Didn't he work for Kever? A. No, he worked in the tannery.

Q. He boarded there? A. Yes.

Q. For how long? A. About three months.

Q. Did you know all that time that he boarded there? A. Yes.

Q. How did you know? A. He came to my house to see us, my husband and he are old friends.

10 Q. He would come to spend the day? A. The evening, or Sundays, company, you know.

By the Master :

Q. He went to Brooklyn last May? A. It was not in May, it was in June, when the summer started.

Q. That is a year ago? A. Yes.

20 Q. How many times has he slept in your house since then? A. I did not mark it, I can't tell.

Q. Has he been there to stay over night five times in that time? A. I can't tell, because I did not make it down.

Q. He has not been there very often? A. He has been there every three weeks, he comes home Saturdays and goes home Sunday morning, not sleep there every time.

Q. He has not slept there many nights since last May or June? A. Not many.

30 Q. You don't know how many? A. He comes there and has to go away early in the morning, about two or three o'clock in the morning.

Q. When you saw him yesterday did he say where he was living now? A. Where he works he sleeps there

Q. Do you know his business? A. Yes.

40 Q. What is it? A. Expressman in the winter and ice in the summer, expressman, moving and such things.

Q. Did he tell you how long he was going to

keep this room at your house? A. Yes, I asked him and he said he can't tell.

Q. Did he tell you why he couldn't tell? A. I can't speak with him hardly yesterday, he was mad.

Q. Did he tell you why he couldn't tell you how long he was going to keep the room? A. He said he can't tell.

Q. Did he say anything about giving it up when this divorce suit was ever? A. He said he knows nothing about that, he don't know himself what he is going to do. 10

Q. He didn't talk with you about this suit at all? A. No.

Q. Did he tell you what you were to say here? A. Not a bit, he told me that I should say what I liked.

By Mr. Simpson: 20

Q. You say that every three weeks since he has been in Brooklyn he has come to your house on Saturday nights and then he would go away Sunday morning, do you know where he would stay for the night when he came over Saturdays and went away? A. He would stay in the saloon until it was time to go home.

Q. He would stay in the saloon all night? A. He had to go at two or three o'clock in the morning. 30

Q. How often has he come to your house on Saturday nights and paid you for the room and then left on Sunday night to go home? A. He never stayed all Sunday.

Q. He never stayed all day Sunday? A. No.

Q. You are sure of that? A. He can't.

Q. Are you sure he never did? A. I am sure.

Q. What makes you sure? A. Because I know it.

Q. Those times he came to see you, do you know whether he went to see John Kirn? A. When he 40

left me he would say he was going, I don't know if he was there or not.

MARIA WOLFENSBERGER.

Taken, sworn and subscribed this January 17th, 1902, before me.

WM. G. E. SEE,

Master in Chancery of New Jersey.

10

ADELAIDE MARTH, the petitioner, being recalled, testified as follows:

By Mr. Simpson:

Q. After you left your mother's house after the four weeks' sickness you have testified to, you say you went down to the house where you had lived and you found that your husband had carted all the household furniture away while you were absent; did you make any inquiries of those who lived in the house as to what he had done or where he had gone? A. Yes, I asked a party in the house whether they knew where he had gone and they said he moved away.

Q. Do you remember the name of that party? A. Yes, Wilson.

Q. Do you know the first name? A. John, I believe.

Q. Did they live in the house at that time? A. Yes.

Q. Have you tried to get Mr. Wilson since you commenced this suit? A. I went there, but they have moved away.

Q. Could you find out where they had gone to? A. No.

Q. Did you make any inquiry of any of the other tenants in the house? A. No.

Q. None at all? A. No.

Q. While you were living there were you employed in any way? A. Yes.

Q. What position did you hold in that house? A. I was janitor there.

Q. You took care of the house? A. Yes.

Q. Why didn't you ask any of the other tenants if they knew what he had done or where he had gone? A. I did not know them so well.

Q. Did you ask this Mr. Wilson about the name on the wagon that had carted away the goods? A. They did not know what wagon it was or what the name was. 10

ADELAIDE MARTH.

Taken, sworn to and subscribed this January 17, 1902, before me,

WM. G. E. SEE,

Master in Chancery of N. J.

To the Honorable William J. Magie, Chancellor of the State of New Jersey: 20

I do hereby certify that the foregoing depositions were taken in the above entitled cause, in my immediate presence and hearing, by a stenographer selected by me, and first duly sworn to faithfully and truly take stenographically and reproduce in typewriting the testimony given, and that I believe they accurately state the evidence so given.

Dated February 24th, 1902.

30

WM. G. E. SEE,

Special Master in Chancery of N. J.

A true copy.

E. C. Stokes,

Clerk.

Exceptions to Master's Report.

(Filed Mch. 2, 1902.)

IN CHANCERY OF NEW JERSEY.

The petitioner herein, to wit, Adelaide Marth, hereby files her exception to the report of William G. E. See, Esq., Special Master heretofore appointed in the above stated cause to ascertain and report as to the truth of the allegations of the petitioner's petition (by order made and entered in the above-stated cause bearing date the twenty-fourth day of December, 1901), and which said report was filed in the office of the Clerk of this Court on or about the twenty-fifth day of February, Nineteen hundred and two, in the following particulars, to wit:

I. The said Special Master reported as follows:

20 "I find that the defendant has during the greater
 "part of said period, been a resident of Brooklyn,
 "New York, where he is now employed and now
 "resides. The testimony shows that he was em-
 "ployed and lived in Brooklyn during all the sum-
 "mer of Nineteen hundred, and that he has so
 "lived and been employed there continuously since
 "the spring of Nineteen hundred and one. The
 "witness Wolfsenburger, at whose house in New-
 30 "ark, New Jersey, the defendant professes to
 "keep a hall bedroom, cannot remember with any
 "certainty that he has slept there at all during
 "that time. And I further report that the de-
 "fendant has not had a *bona fide* residence within
 "this State since the spring of Nineteen hundred,
 "and is not now a resident of this State, and in my
 "opinion the prayer of the petitioner for a divorce
 "should therefore be denied." Whereas the said
 40 Special Master should have found and reported
 that the said defendant was a resident of the State

of New Jersey at the time of filing the petition herein, and that said defendant had been a resident of this State for more than two years during which the desertion complained of by the petitioner herein had been continued, and that said petitioner was and is entitled to a decree of divorce in her favor, pursuant to the prayer of the petition.

Dated March 1st, 1902.

CHAS. E. S. SIMPSON,
Solicitor for Petitioner.

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To

Hon. William J. Magie,
Chancellor of the State of New Jersey.

Memorandum.

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(Filed July 22, 1902).

IN CHANCERY OF NEW JERSEY.

Mr. Charles E. S. Simpson, for petitioner.

THE CHANCELLOR:

The petitioner is a resident of the State of New York, and claims that the defendant, her husband, deserted her in that State.

The Master has reported that the jurisdiction to decree a divorce fails, because, although the desertion was continued for the statutory period and was wilful and obstinate, and although the defendant obtained a residence in New Jersey, he had not retained his residence in this State, but had abandoned it, and returned to New York, and was actually a resident there at the time the petition was filed.

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The witnesses were seen and examined by the Master.

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He has concluded that their evidence did not support the petitioner's contentions that defendant was a resident in New Jersey at the time of the filing of the petition. The evidence has been reviewed by me, and I am not satisfied that the Master has erred in his conclusions.

The report will be confirmed and the petition dismissed.

10

**Decree Dismissing Petition Filed
August 7, 1902.**

This cause having come on to be heard in the presence of Charles E. S. Simpson, Solicitor for the petitioner, and the Court having read the Master's report and the testimony taken in the cause and the Court being of the opinion that the petitioner is not entitled to the relief prayed for, and that the petition should be dismissed, it is on this seventh day of August, A. D. 1902 (nineteen hundred and two),

Ordered, adjudged and decreed, that the said petitioner's petition be, and the same is hereby, dismissed, without prejudice to the said petitioner filing a new petition or bill.

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By the Statute,
ALFRED REED,
Master.

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Notice of Appeal.

(Filed August 15, 1902.)

IN CHANCERY OF NEW JERSEY.

The petitioner hereby appeals from the final decree made in the above-stated cause, which decrees and declares that the petition of the said petitioner should be dismissed, to the Court of Errors and Appeals in the last resort in all causes. 10

Dated August 12th, 1902.

CHAS. E. S. SIMPSON,
Solicitor for Petitioner.

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

JOSEPH PARKER, JR.,
Of Counsel.

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Petition of Appeal.

(Filed August 15, 1902.)

NEW JERSEY COURT OF ERRORS AND APPEAL.

To the Honorable the Court of Errors and Appeals
of the State of New Jersey. In the Last Re-
sort in All Causes:

10 The humble petition of Adelaide Marth, the ap-
pellant in the above-stated cause, respectfully
shows that your petitioner finds herself aggrieved
by a final decree made in the Court of Chancery
of New Jersey by his Honor William J. Magie,
Chancellor of the State of New Jersey, bearing date
the Seventh day of August, Nineteen hundred and
two, wherein the said Adelaide Marth was peti-
tioner and the said Henry Marth was defendant, in
20 this respect, that the said decree orders, adjuges
and decrees that the petition of the petitioner should
be dismissed. And your petitioner humbly appeals
from the whole of said decree as aforesaid on the
ground that the same is erroneous, for that the said
decree should have been in favor of the said peti-
tioner, and should have directed and decreed that
the prayer of the petitioner be granted, and not
that the said petition be dismissed.

30 Your petitioner therefore prays that the said de-
cree of the said Chancellor may be in all respects
reversed, set aside and for nothing holden; and that
your petitioner may have such relief in the prem-
ises as to this Honorable Court shall seem meet.

CHAS. E. S. SIMPSON.
Solicitor of Appellant.

[1897]

LIBRARY AND APPENDIX

THE LIBRARY OF THE
UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS
1892

APPENDIX FOR COMPLAINT

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS
1892

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN HUTCHINGS
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. I.
BOSTON: PUBLISHED BY
J. B. ALLEN, 1825.