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Petition.

(Filed October 3, 1928.)

10

In Chancery of New Jersey

TO HIS HONOR EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of Frederick W. Reich, of the city of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

20

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Sarah Elizabeth Reich, the defendant in this suit, on the 21st day of May, 1895, by Reverend Mr. Howland, a Minister of the Gospel, at Jersey City, in the city of Jersey City, State of New Jersey.

2. The defendant deserted the petitioner on the first day of September, 1926, ever since which time and for more then two years last past, said defendant has wilfully, continuedly and obstinately deserted your petitioner.

30

3. The petitioner has been a bona fide resident of the State of New Jersey, continuously since their marriage. The petitioner has resided at No. 39 Charles Street, Jersey City, continuously for the past nine years, where he is residing at the present time. The defendant resided with the petitioner at said address up until the time she deserted him as aforesaid, and since that time has resided at No. 27 Wingra Avenue, Rutherford, New Jersey.

40

Petition.

4. Four children were born of the marriage aforesaid, to wit: Florence, Frederick, George and Walter, who are all over the age of twenty-one years.

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

And your petitioner will ever pray, etc.

FREDERICK W. REICH,
Petitioner.

20 CAREY & LANE,
Solicitors for Petitioner.

Dated October 2nd, 1928.

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

30 FREDERICK W. REICH, of full age, being duly sworn according to law, on his oath deposes and says: that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition.

FREDERICK W. REICH.

Sworn and subscribed to before me, }
at Jersey City, N. J., this 2nd day }
of October, 1928. } J

40 ARTHUR PFORR,
Attorney at Law
of New Jersey.

Answer and Cross-Petition.

(Filed November 20, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK W. REICH,
Petitioner,

and

SARAH ELIZABETH REICH,
Defendant.

On Petition for
Divorce.

Answer and Cross-
Petition.

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1. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged.

20

2. This defendant denies that she deserted the petitioner in the month of September, 1926, and she denies that ever since that time and for more than two years preceding the commencement of this action she has wilfully, continuedly and obstinately deserted the petitioner.

3. This defendant says that since the month of September, 1926, she has made several attempts to induce her husband to return to her and resume co-habitation, but petitioner persistently refused her requests.

30

4. This defendant says that there were four children born of the marriage aforesaid, to wit: Florence, Frederick, George and Walter who are all over the age of twenty-one years.

5. This defendant prays that the petitioner's petition be hence dismissed with her reasonable costs and charges that may be most wrongfully sustained.

40

Answer and Cross-Petition.

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

10 1. Defendant was lawfully joined in the bonds of holy matrimony to the petitioner on the 21st day of May, 1895, by Reverend Howland, a Minister of the Gospel, in the City of Jersey City, County of Hudson and State of New Jersey.

20 2. Commencing with the early part of 1924 defendant began a course of ill treatment and abuse towards this petitioner and refused to properly provide for her and their children; this condition continued to exist up until September 1, 1926. Defendant would hardly ever speak to this petitioner during all of this time and would only do so on rare occasions when it suited his convenience, going for two or three weeks at a time without speaking to her and when he did speak to her it was only to talk to her slightly, never to carry on an extended conversation. Likewise he would rarely speak to any of the children except their daughter Florence. Prior to the first day of September, 1926, on numerous occasions this petitioner called the defendant's attention to the deplorable condition of their home, which had not received any attention in the way of repairs or painting and all of the walls were very dirty and covered with soot coming from the coal stove; that most of the furniture needed repairing to which the defendant constantly sneered at the petitioner without any provocation. During the month of August, 1926, and prior thereto for a period of five weeks this petitioner told defendant that she was in very poor health and suffering with articular rheumatism and that it was absolutely necessary that they move from that house, as petitioner could not walk up and down stairs without great physical pain, nor was she able to do all the housework including the

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Answer and Cross-Petition.

laundry and taking care of three coal and two oil stoves, and that the children had looked at a house in Rutherford, N. J., the rental of which would be \$65.00 and that the children (particularly their two married sons) would share the expenses, which this defendant refused to agree to, saying it was good enough for him. On August 31st and for many weeks prior thereto, defendant would not talk to petitioner or any of their children except their daughter, Florence, whom he scolded, calling her a dirty hypocrite among other things. On numerous occasions after September 1st, 1926, this petitioner communicated with the defendant and asked him to come and live with her and their children at Rutherford, N. J., but he refused to do so and defendant has never sought out the petitioner to resume their marital status.

3. Petitioner has no means of support except from her own exertions and depends upon her children for her support.

4. The defendant and petitioner have both been bona fide residents of the State of New Jersey continuously since the month of May, 1895, to the time of the commencement of this action and both of said parties now reside in the State of New Jersey.

5. Defendant prays that the marriage between the petitioner in this cross-petition and the defendant in said cross-petition may be dissolved for the cause aforesaid according to the statute in such case and provided that she may have such further relief as may be just.

And your petitioner will ever pray, etc.

SARAH ELIZABETH REICH, 40
Defendant.

THOMAS H. BROWN,
Solicitor and Counsel for Defendant.

Answer to Cross-Petition.

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

MRS. SARAH ELIZABETH REICH, being duly sworn upon her oath deposes and says as follows:

10 That she is the petitioner named in the foregoing cross-petition and her cross-petition is not made by any collusion between her and the defendant therein, but in truth and good faith for the cause set forth in said cross-petition.

SARAH ELIZABETH REICH.

Sworn and subscribed to before me)
 this 19th day of November, 1928. {

20 HERMAN LIPSCHITZ,
 Master in Chancery
 of New Jersey.

Answer to Cross-Petition.

(Filed December 2, 1923.)

IN CHANCERY OF NEW JERSEY.

30 Between
 FREDERICK W. REICH,
Petitioner,
 and
 SARAH ELIZABETH REICH,
Defendant.

70-209.
 On Petition, etc.
 Answer to Cross-Petition.

40 Frederick W. Reich, the petitioner herein, for answer to the cross-petition of the above named defendant, says that:

Answer to Cross-Petition.

1. He admits the allegations of paragraph one as to the marriage.

2. He denies the allegations of paragraph two. He denies that in the early part of 1924 he began a course of ill-treatment and abuse towards the defendant, and refused to properly provide for her and their children, and this condition existed up until September 1st, 1926. He says that as a matter of fact all of the children had become of age long before September 1st, 1926. He denies that he would hardly speak to the defendant during all of this time and would only do so on rare occasions when it suited his convenience, going for two or three weeks at a time without speaking to her; he denies that when he would speak to the defendant, it was only to talk to her slightly, never to carry on an extended conversation. He says that while it is true that he talked more to his daughter Florence than to any of the other children, that this was not his fault but because of the actions of the other children towards him, and that Florence made herself more agreeable and talked more to him than the other children did. He denies that prior to the first day of September, 1926, and on numerous occasions, defendant called his attention to the deplorable condition of the home. He says that he owned the said home and that he and his family had resided in said home from the year 1897 to September, 1926, with the exception of three and a half years when they lived in Newark because of petitioner's occupation being in Newark. During the period they lived in Newark, petitioner rented the floor in the Charles Street home. He says that he has always properly supported his family to the best of his means. He denies that during the month of August, 1926, and

Answer to Cross-Petition.

10 prior thereto, for a period of five weeks, that the defendant told him that she was in very poor health and suffering with articular rheumatism and that it was absolutely necessary that they move from the house, as she could not walk up and
20 down stairs without great physical pain, nor was she able to do all the housework, including the laundry and taking care of three coal and two oil stoves. He says that the defendant came to him and asked if he would go out and look at a house in Rutherford which she and the children thought about taking, and that petitioner said that he would not go to look at a house in Rutherford for the reason that he was going to continue to live in the house in Jersey City, and that he had no desire
30 to move to Rutherford. He denies that on August 31st, and for many weeks prior thereto, that he did not talk to this defendant or to any of the children, except to his daughter Florence, whom he scolded, calling her a dirty hypocrite among other things. He says that on August 31st, after supper, that the defendant and the children commenced to pack up their things preparatory to moving and he did become quite angry and in the heat of the occasion did say to his daughter, Florence, "You
40 hypocrite, are you going to have a Sunday school class out in Rutherford?" This was under the stress of the realization that the defendant and the children had finally determined to leave him and go to live in Rutherford. That this was the only occasion that any one can say that he ever called his daughter Florence any names, or treated her anywise but kindly. He denies that on numerous occasions after September 1st, 1926, that the defendant communicated with petitioner and asked him to come out and live with her and their chil-

Answer to Cross-Petition.

dren in Rutherford; he says that the only communication which he received from the defendant was a letter which she wrote him and which he offers to produce upon the trial of this action. He says that it is true that he has refused to go to live in Rutherford, but says that he has always maintained the home at Charles Street, and that he has on numerous occasions requested his wife to come back and live with him and he denies that he has never sought her out to resume their marital status. He says that he wrote her several letters, asking her to come back and live with him to which he received no reply. Also that before instituting this suit, that he endeavored to see the defendant and talk with her and ask her to come back and live with him, but that she refused to have anything to do with him and refused to open the door and talk with him about the matter.

3. He admits that the defendant and petitioner have been bona fide residents of the State of New Jersey, ever since the month of May, 1895, to the time of the commencement of this action, and that both of said parties now reside in the State of New Jersey.

For further answer to said cross-petition he says that he has never, at any time, treated the defendant cruelly nor has he refused to maintain and provide for her, but says that the said defendant has deserted him as set forth in his petition filed herein, and that the petitioner has continued to maintain the home, the same as he maintained it for many years of married life of the petitioner and the defendant, and on numerous occasions has requested her to return to the home and live with him which the said defendant has continuously refused to do.

Testimony.

Your petitioner therefore prays that the cross-petition filed herein by the defendant may be dismissed and that he may have the relief prayed for in his petition filed herein.

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FREDERICK W. REICH,
Petitioner.

CAREY & LANE,
Solicitors for and of Counsel
with Petitioner.

Testimony.

IN CHANCERY OF NEW JERSEY.

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Between

FREDERICK W. REICH,
Petitioner,

and

SARAH ELIZABETH REICH,
Defendant.

70-209.

On Pet. for
Divorce.

Transcript.

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Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City on Monday, October 14, 1929, at 10 o'clock in the forenoon, before His Honor

JOHN BENTLEY, Vice-Chancellor.

Present:

40

HARRY LANE, Esq., for the Petitioner.

THOMAS H. BROWN, Esq., for the Defendant.

Testimony.

The Court: Are you ready, gentlemen?

Mr. Lane: Yes, sir.

The Court: I glanced through your petition and the counterclaim and unless there is something you want specially to call my attention to you may proceed, and call your witnesses.

10

Mr. Lane: There is just one thing I would like to say: These parties have been in litigation for some time. The first suit was tried before Vice-Chancellor Garrison and Judge Brown also appeared on the other side, and that petition, as I recall it, was dismissed without prejudice. Then there was a subsequent suit at the end of two years, after the determination of the first one, and that subsequent suit was also dismissed without prejudice, upon consent, there having been a reconciliation effected at that time, if I recollect right. Am I right?

20

Mr. Brown: Correct.

Mr. Lane: Those papers are before your Honor.

Mr. Brown: I might add to what Mr. Lane has already said, this: Of course, I realize that the scope of this examination rests within the sound discretion of the court and I don't want to take up needlessly and unnecessarily the time of the court; but I would like to state that in 1911 there was a suit started by the same petitioner which was heard by Vice-Chancellor Garrison, and which resulted in a dismissal of the petition. And following that, in 1914, still another suit was started. Mr. Lane and myself both having the interest of our clients at heart, got them in our office and got the parties together; because they both seemed eminently respectable, and we effected a reconciliation. Now, I don't want to trespass upon the good nature of the court to any great extent; I realize it is within

30

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Testimony.

10 your Honor's discretion to accept certain facts about which there is no dispute. There is no dispute about the fact that these people had sexual relationship right up to the time they separated; but there have been certain acts of mental conduct which we are going to develop and which your Honor must appreciate are naturally very difficult of proof unless you can carry them over an extended space of time. It isn't a case of brutality unless you can say one, two, three, four, and fix the number of batteries and so forth. That isn't our situation here. Now, I would like to see whether I could get some indication whether the court will indulge me in going back to these prior suits.

20 Mr. Lane: We are trying to get to your Honor the history of the case. The old case embodied their living in the same house, but Mrs. Reich has withdrawn herself and doesn't live with her husband; and my recollection of the case is also refreshed by the papers that I find, including the opinion of Vice-Chancellor Garrison. The petitioner's case was thrown out because he had not made a robust effort to get his wife to come back. At that time I remember very well I had him on the stand and Vice-Chancellor Garrison examined the witness and examined him very closely as to whether he had made any efforts to get her back, and at that time he had not. Now, Judge Brown indicates that he wants to go into a lot of stuff that came out in the former cases, but it will be more appropriate for your Honor to see what it is and rule upon it when it comes up.

30 The Court: What you want to do is that you rely upon the course of treatment over a long period of time.

40 Mr. Brown: Yes.

Benjamin D. Van Beuren, direct.

The Court: All right, Mr. Lane; you may proceed.

COMPLAINANT'S CASE.

Mr. Lane: There were three letters written to the defendant by the petitioner; may I have those? (Mr. Brown produces papers.) 10

Mr. Lane: Mr. Brown produces a letter bearing date September 23, 1926, written by the petitioner to the defendant, together with an envelope post-marked "Jersey City, September 24, 1926, addressed to Mrs. Frederick W. Reich, 27 Wingra Ave., Rutherford, N. J." I would like to offer that in evidence, produced by the other side, letter and envelope. 20

(Marked Exhibit P-1.)

Mr. Lane: Also a letter bearing date August 2nd, 1927, written by the petitioner to the defendant, and contained in an envelope dated August 2nd, 1927, addressed to Mrs. Reich.

(Admitted and marked Exhibit P-2.)

Mr. Lane: Also a letter dated March 3, 1928, sent by the petitioner to the defendant, and, according to the envelope, mailed on March 3rd, 1928, to the defendant, which she admits she received. 30

(Admitted and marked Exhibit P-3.)

BENJAMIN D. VAN BEUREN, sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Van Beuren, did you at my request meet Mr. Reich at my office? A. I did. 40

Q. And did you on any occasion go with Mr.

Benjamin D. Van Beuren, direct.

Reich to 29 Wingra Avenue, Rutherford, N. J.? A. The following day, September 28.

Q. What date was that? A. The 28th day of September, 1928.

10 Q. And will you just state what happened on that day? A. We proceeded to Carlton Hill, Mr. Reich and I, in an automobile, and we got out at the place of residence of Mrs. Reich, walked up the stoop, Mr. Reich rang the bell. A lady came to the door.

Q. Who was the lady? A. Mrs. Reich.

Q. Do you see her in the courtroom? A. I do.

Q. Where is she? A. Sitting in front of me.

Q. Right alongside of her counsel? A. Yes, sir.

20 Q. Go ahead. A. Mr. Reich started to talk to her and she said, through the door—she didn't open the door—"I refuse to talk to you; you have had a chance and I have none." Mr. Reich's answer was, "I understand; I merely wanted to ask you to come back." She walked away and made no answer, and we left. I reported to you what happened.

Q. That is all that happened on that day? A. That is all that happened on that morning; yes, sir.

30 Q. Did you go there again? A. The next day.

Q. September 29th? A. Correct.

Q. In the daytime or night? A. Daytime.

Q. And with Mr. Reich? A. Both Mr. Reich and his brother were with me. I got out of the car and walked up and rang the bell. Mrs. Reich came to the door, and I said, "Mr. Reich is in the car; will you talk to him now?" and she said "No." I asked her when she would talk to him. She said she would see him on October the 2nd, Tuesday.

40 Q. On Tuesday? A. I think on a Tuesday.

Benjamin D. Van Beuren, cross.

Q. Night, or morning, or afternoon? A. In the evening.

Q. When the children were home? A. She told me the children were away for the week-end. That was a Saturday.

Q. Did she say anything about the children? A. She said they were away on a week-end. 10

Q. Did she say anything about having them present? A. She said they would be present, and we called Mr. Reich and asked him if that date would be satisfactory and he said yes, and we left. After that Mr. Reich showed me a letter—

Mr. Brown: I object to that.

Q. You didn't go there again? A. No, sir. 20

Cross examination by Mr. Brown:

Q. On this first occasion, Mr. Van Beuren, when you visited the home of Mrs. Reich at Rutherford, and which you have fixed the time as of September 28, 1928, you and Mr. Reich went there in the evening? A. In the afternoon—no, no, that was in the morning.

Q. You are an investigator? A. Well, I wouldn't say that; no, sir; I merely went at the request of Mr. Lane. I didn't know what I was going up there for at the time. 30

Q. You were a stranger to Mrs. Reich? A. Oh, yes.

Q. She had never had the pleasure of your acquaintance prior to this occasion? A. No.

Q. And you were a stranger to Mr. Reich? A. Yes.

Q. Now, what was Mr. Reich's purpose in having you go up there to Rutherford; did he tell you? A. He did not. 40

Benjamin D. Van Beuren, cross.

Q. Didn't he tell you that he wanted you to go up there to act as a witness? A. I didn't know anything about that at all.

10 Q. Didn't he tell you at the time that he contemplated beginning a suit in Chancery against his wife and that he wanted you to go along as a witness to lay a foundation, that his wife refused to talk matters over with him? A. I don't think there was a conversation of that kind.

Q. Just think awhile; you say you don't think; don't you know? A. There was not.

By the Court:

20 Q. I suppose, as a matter of fact, you were not taken out there at the solicitation of the petitioner at all but by counsel? A. Correct.

By Mr. Brown:

Q. Now, when you were directed by his counsel to go up there did his counsel outline what information he desired you to get, to find out one thing or another? A. Not for me to find out one thing or another, no, sir.

30 Q. Well, were you directed to go along with Mr. Reich to be there as a witness? A. To go with Mr. Reich to see if it is possible to meet his wife.

Q. You didn't go there with any instructions to try and effectuate any reconciliation? A. Myself? No.

Q. You say on the first occasion Mrs. Reich talked to you through the door; that is, she didn't open the door? A. Correct.

40 Q. Didn't Mr. Reich point rather sneeringly there at that time to his wife and say "that's my wife"? A. No, sir; he did not.

Q. What other conversation did you have with Mrs. Reich at that time? A. No other conversation.

Benjamin D. Van Beuren, cross.

Q. Now, you went away and came there the next day? A. Correct.

Q. And the next day that you came there you also brought Mr. Reich's brother? A. Yes.

Q. What is his brother's name? A. His brother is in court; I don't know his first name. 10

Q. You say he is here in court? A. Yes.

Q. Did you go there again the next day? A. I went up the stoop there alone.

Q. What did you say to Mrs. Reich, if anything?
A. I asked Mrs. Reich if she would talk to her husband now.

Q. What did she say? A. She said no.

The Court: When was that?

Mr. Brown: The next day, the 29th of September, 1928. 20

Q. When you asked her if she would talk to her husband, up to that time you had never met Mrs. Reich? A. Not up to this time.

Q. You hadn't been introduced to her? Mr. Reich hadn't said, calling her by her first name, "Elizabeth, or Lizzie, this is Mr. Van Beuren, an old friend of mine"? A. Not at all.

Q. So that you were a complete stranger? A. If you say so. 30

Q. Now, he stayed in the automobile out on the street? A. Both stayed in the automobile.

Q. Made no attempt to get out of that car and go in and talk to his wife? A. That second day, no.

Q. And she suggested, you say, through you as a medium, to tell him to come, if he would, the following evening when the children would be home?
A. On the 2nd of October. 40

Q. Saying the children were away over week end? A. Yes.

Frank J. Reich, direct.

Q. Now, did you return with him on the 2nd of October? A. No, sir.

Q. You don't know whether he returned? A. I don't know whether he returned or not.

10 Mr. Lane: I offer in evidence a letter written by Mrs. Reich to Mr. Reich, which bears no date. Mr. Brown will admit the wife's handwriting.

Mr. Brown: No objection.

(Admitted and marked Exhibit P-4.)

FRANK J. REICH, sworn on behalf of the petitioner, testified as follows:

20 *Direct examination by Mr. Lane:*

Q. Mr. Reich, you are a brother of the petitioner? A. Yes, sir.

Q. And do you know where your brother has been living since September 1st, 1926? A. 39 Charles Street, Jersey City Heights.

Q. Have you visited that home during all that time? A. Off and on.

30 Q. What floor has he been living on? A. Second floor—top floor—two-family house.

Q. Is the house furnished? A. Oh, yes, well furnished. The floor that he was living on was well furnished.

Q. Well, the other floor is rented out, isn't it? A. Yes, it is.

Q. Now, during the time that you have visited there has Mrs. Reich been there since September 1st, 1926? A. Not while I was there.

40 Q. Not while you were there? A. Not while I was there.

Q. These last two letters that were written by

Frederick W. Reich, direct.

Mr. Reich, Exhibits P-2 and P-3, did you see your brother mail those two letters?

Mr. Brown: He needn't spend any time on that. We will produce the defendant and she will admit them.

Mr. Lane: All right; that is all.

Mr. Brown: No cross examination.

10

FREDERICK W. REICH, the petitioner, sworn in his own behalf, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Reich, you are the petitioner? A. Yes, sir.

Q. And when were you married? A. In May, 1896.

20

Q. I show you transcript from the record of the Board of Health, Department of Vital Statistics, which was dated October 4, 1928, showing the marriage of Frederick William Reich to Sarah Elizabeth Charles on May 31, 1895— A. 1895 is correct; I made a mistake. 1895 I was married, on May 21st.

Mr. Lane: I offer this certified copy in evidence.

30

(Admitted and marked Exhibit P-5.)

Q. You were married by Rev. Mr. Howland, a minister of the gospel, in Jersey City? A. Yes, sir.

Q. Is your wife living with you at the present time? A. No, sir.

Q. Since when has your wife not been living with you? A. She moved away on September 1st, 1926.

40

Q. Since that time have you cohabited with her or she with you? A. No, sir.

Frederick W. Reich, direct.

Q. Where had you been living at that time? A. 39 Charles Street.

Q. What city? A. Jersey City.

Q. New Jersey? A. Jersey City, New Jersey.

Q. Did you own that house? A. Yes, sir.

10 Q. How long had you owned that house? A. I bought it in 1897.

Q. And have you lived in that house continuously since 1897, with the exception of one occasion when you went to Newark? A. With the exception of three and a half years that I lived in Newark I have lived in that house all the time.

Q. How long ago did you live in Newark? A. About 13 or 14 years ago.

20 Q. What happened, if anything, on September 1st, 1926? A. I went to work in the morning as I usually did; I always got up an hour or two before the rest of the family, prepared my breakfast and went out to work, and came home six o'clock, and when I came back at night I found a note on the table.

Q. I show you a note and ask you if this is the note that you found on the table? A. Yes, that's it.

30 Q. Is that in your wife's handwriting? A. Yes, sir.

Mr. Lane: I offer it in evidence.

(Admitted and marked Exhibit P-6.)

Mr. Lane: I understand Mrs. Reich admits the writing of the note?

Mr. Brown: Yes.

40 Q. Had there been any talk previous to Mrs. Reich's going? A. Oh, yes, I felt it for two weeks. On Sunday, August 15, Mrs. Reich asked me if I would go to Rutherford and look at a place out there. She went and wanted to know if I would

Frederick W. Reich, direct.

go out and look at it. Well, I didn't go and they went without me.

Q. Did you, by the way, have any children? A. At that time I had three children home, two sons and a daughter.

Q. How old are those sons and daughter? A. Well, all are over 21. 10

Q. Were the three you mention living in the house at that time? A. Yes.

Q. Had they been living with you? A. Oh, yes, living there for over 9 years.

Q. And prior to your other son being married, did he live there, that was brought up by you? A. Yes, the three children were born in that house—all born there excepting the oldest child.

Q. Did the children go with Mrs. Reich when she went? A. There was nobody there when I got home September 1st, that night. 20

Q. You say August 15th, 1926, or about that time, there was mentioned to you about some house in Rutherford? A. Yes.

Q. Who spoke to you about that? A. Mrs. Reich.

Q. What did she say, as near as you can recollect? A. She said, "I looked at a place in Rutherford" and wanted to know if I would go out there with them to look at the place, but I didn't go, and they went alone. 30

Q. Did you tell her you wouldn't go? A. I said in so many words I wouldn't go. After that I went out and they were home when I left.

Q. Did you say anything about where you were going to live? A. Oh, later on. That came afterwards.

Q. Go ahead and tell the story. A. A few days after that Mrs. Reich told me that they looked at the place and decided to take it; and I said, "Well, 40

Frederick W. Reich, direct.

I didn't intend to move; I intended to stay here; our home is here and if you want to desert me that's up to you." She says, "We are not deserting you; we want you to come." And I said, "I don't intend to come; I'm going to stay here."

10 Q. Anything else? A. They were going to go on September the first; I didn't know whether they meant it or not—I thought it was a bluff; and when Mrs. Reich told me a couple of days afterwards that they had decided to take the place I didn't think that they would go without me going with them. I thought they were trying to force me to go and, of course, it was a question whether they would really go without me.

20 Q. Back in 1906 had Mrs. Reich withdrawn herself sexually from you? A. Oh, that was for years.

Q. Do you recollect the reconciliation that was effected by Judge Brown and myself with you and your wife? A. Yes.

Q. And then your divorce suit was dismissed; do you recollect that? A. I recollect that reconciliation; I don't know about the dismissal of the suit.

Q. About when was it? A. Well, about 1914.

30 Q. Exactly; and from 1914 up until this time did you and your wife live together and cohabit together from the time of that reconciliation? A. From the time of that reconciliation up until August 15th, 1926. Of course, they went away August 15th I think; after that time.

40 Q. Now, why didn't you go to Rutherford with your wife? A. Well, I had one house; and another thing was that Mrs. Reich at various times wouldn't agree to sell; and I have a son—my oldest son—I believe he was more anxious to go there than anybody else. That son has threatened me and insulted me, and that was another reason I

Frederick W. Reich, direct.

wouldn't go. Legally, the husband can put the children out, but I wouldn't do anything like that because it would only make me trouble and I didn't want to make any trouble for myself. I swallowed that and let it go. The average father would perhaps put his son out.

10

Q. You had this house and you say you couldn't sell it without the consent of your wife? A. Under the law, a married man cannot sell his property without she signs and she said she wouldn't sign. I hadn't asked her, but I know she wouldn't, and there was no such thing as selling.

Q. I show you a letter and ask you if, after your wife left, you received that letter from your wife? A. Yes, sir.

Q. And did you receive it in this envelope bearing postmark Sept. 26, 1926, Rutherford? A. Yes, I remember that date very well, September 26th.

20

Mr. Lane: I offer that letter in evidence.

Mr. Brown: No objection, and we concede that was a letter that was sent.

(Admitted and marked Exhibit P-7.)

Q. And did you reply to that? A. I did, immediately, that night.

Q. And wrote this letter that has been marked Exhibit P-1? Right? A. Yes.

30

Q. Did anybody tell you to write this letter? A. No. I wrote it right after opening the envelope. I sat down and wrote that letter and went out and mailed it.

Q. And at that time were you anxious to have your wife come back to you? A. I surely was.

Q. And have you been desirous of having your wife come back to you? A. I am and I was.

Q. Are you desirous today of having your wife come back? A. I am.

40

Frederick W. Reich, direct.

Q. Even to the extent of stopping this suit and having your wife come back? A. Exactly.

Q. Now, September, 1928, did you go up to the home there with Mr. Van Beuren? A. Yes, sir, on a Friday morning, September 28th.

10 Q. What happened in that case? A. I went out in Mr. Van Beuren's car and went up the front stoop. I pushed the button and Mrs. Reich came to the window and I asked her if she would open the door; I wanted to go in and have a talk with her. And she refused to open the door and said that I ought to be ashamed of myself the way I had been talking.

I said to her, "What have I been saying?"

20 "You know well enough what you have been saying," she replied.

I didn't argue with her; I asked her if she would come back, and she walked away from the window and made no answer.

Q. Did you go there the next day? A. I went there the next day, in the afternoon. That was a Saturday.

30 Q. Was there an appointment made for Tuesday? A. I had been up and spoke to her Friday and, as I say, she wouldn't open the door to me, and I had Van Beuren go and ask her if she would "see Mr. Reich and speak to him." Of course, I couldn't hear her talk, but I saw her at the window and I could tell by motions that Mr. Van Beuren said something. I didn't exactly hear what she said to him; but Mr. Van Beuren said, "Will it be all right to come some other night in the week when you have your witnesses" and I said "yes" and Mr. Van Beuren called down to me and I said
40 "Yes, I will come Tuesday evening," and the intention was—

Frederick W. Reich, cross.

Q. Never mind the intention; you were to go Tuesday evening? A. Yes.

Q. Did you go Tuesday evening? A. No.

Q. Why not? A. Monday I got a letter from Mrs. Reich cancelling the engagement.

Q. That is Exhibit P-4? A. Yes.

10

Cross examination by Mr. Brown:

Q. Mr. Van Beuren was an entire stranger to you? A. Yes.

Q. And he was also an entire stranger to your wife? A. Yes.

Q. And other than the occasion that you have told the Vice-Chancellor about, to wit, on the 28th day of September, 1928, never in the interim between the first day of September and that date, have you personally visited your wife for the purposes of trying to effectuate a reconciliation or trying to get her to come back to live with you, have you? Yes or no. A. No.

20

Q. Your purpose in going there at a period of time practically two years and three and one-half weeks after the date of the alleged desertion was for the purpose of securing, in your mind, evidence of a refusal on your wife's part to come back to you; isn't that so? A. Proof to show that I went there and asked her to come back.

30

Q. In other words, you went there for the purpose of securing evidence, as you say, corroborating— A. Corroborating that she refused to come back.

Q. You love your wife, of course? A. Yes, I do, in a way.

Q. What do you mean by "in a way"? A. Because there has been lots of times in my life of embitterment.

40

Frederick W. Reich, cross.

Q. And you were embittered on the first day of September, 1926, weren't you? A. Embittered because she went away.

10 Q. You were embittered before the first day of September, 1926? A. No. Of course I was sorry the thing had been done.

Q. You have been embittered for many years at your wife? A. At different times.

Q. And doesn't all of your embitterment go back to along about the time of 1911 when you filed your first suit for divorce against your wife, which was dismissed by Vice-Chancellor Garrison; isn't that so? Doesn't it go back to that? A. Of course, in between the years had been forgotten and wiped out entirely, so far as I was concerned.

20 Q. And wasn't that embitterment engendered at that time because you had your own sisters in your home and various disputes arose because of that fact? A. I don't intend to bring my sisters into this case.

Q. I'm not trying to bring them in; I'm trying to find out what the reason is, if I can. Isn't that the underlying reason of your embitterment against your wife? A. No, not now.

30 Q. Wasn't it at that time? A. At that time.

Q. All right. Didn't your wife at that time charge you with having physically beaten her up?

Mr. Lane: I object to that. That isn't fair at all.

Mr. Brown: I am trying to locate and show how this man's mind has been embittered. In a few more questions I will have reached my climax of what I am going to develop, if I can.

40 The Court: I will allow it.

A. Will you permit me to answer that?

Frederick W. Reich, cross.

The Court: Yes, you can answer any question that is asked you.

Q. (The question is read by the stenographer.) Just yes or no; I'm not going to go into it. A. That has no relation to this case at all. You want to prejudice this case. That was tried before Vice-Chancellor Garrison, and let me tell you what the Vice-Chancellor said— 10

The Court: You mustn't argue.

Q. You began another suit in 1914? A. Yes.

Q. And in that suit a reconciliation was effectuated between you and your wife? A. Yes.

Q. Now, didn't you for two or three years, maybe more than that, prior to the first day of September, 1926, try to get your wife to sign off her interest in that property and agree to sign a deed? A. No, no. 20

Q. Didn't you want to sell the property so that you could take the money and invest it in stocks? A. That is absolutely false.

Q. And didn't she tell you if you did that you might lose the little competency you had and your life savings, or words to that effect? A. No, nothing like it. 30

Q. And isn't it a fact that her refusal to sign this deed so aroused you that you refused to talk to her? A. No, sir.

Q. Didn't you go for months at a time without greeting your wife? A. No, sir.

Q. Didn't you refuse to talk to her at the breakfast table? A. The only time I saw her at the breakfast table was Sunday morning. I had to get my own breakfast.

Q. Didn't you refuse to talk to her at the dinner table in the evening? A. No. 40

Frederick W. Reich, cross.

Q. Isn't it a fact that you haven't talked with your own sons—(I leave your daughter out)—for many years although they lived in the same house with you—and for how many years? A. I won't say how many, because I couldn't say.

10 Q. You haven't talked with your three sons since 1924; isn't that a fact? A. No, that is not a fact.

Q. Isn't it a fact that you refused to talk to your own wife for many months at a time? A. No, that is not true.

Q. Where were you working in the year 1926? A. In Newark.

Q. For whom? A. Gorham Silver Company.

Q. You are a silversmith at this time? A. No, sir; silver finisher.

20 Q. What was your salary at that time? A. \$36 a week.

Q. And out of that you gave your wife \$12? A. Yes.

Q. And your three sons and daughter all contributed their proportionate share in maintaining the home? A. One of the sons was married; he wasn't in the house; two sons and the daughter, they contributed, yes; I don't know what they contributed. I don't know what they earned.

30 Q. Isn't it true at that time your wife didn't know what your earning capacity was? A. That may be, yes.

Q. Isn't it also a fact that there was some discussion in your household, between yourself and your wife, about the living conditions there in the house at 39 Charles Street? A. Well, it isn't a fact—

Q. That house is about 33 years old; isn't that a fact? A. Yes.

40 Q. What floor did you and your wife occupy? A. Top floor.

Frederick W. Reich, cross.

Q. First floor was rented? A. Two rooms rented downstairs and the two boys had the other rooms. We had 7 rooms in a nine-room house.

Q. Isn't it a fact that your wife complained at that time to you about the fact that that apartment didn't have a bath-room? A. She didn't know just where to talk about it. 10

Q. And didn't your wife call your attention to the fact that your daughter couldn't have company, and couldn't take a bath there, with privacy? A. No, not that.

Q. And didn't your boy, before and after the breach, call those living conditions to your attention? A. I never heard the boys say anything.

Q. Didn't your wife, then? A. Oh, at times.

Q. Didn't your wife call your attention to the fact that the furniture was all falling apart, that the springs were coming out of the seats and chairs and sofa? Isn't that so? A. No, it isn't so. 20

Q. Didn't she call your attention to it? A. No, I don't remember her doing that.

Q. Isn't it a fact that they were in a deplorable and wretched condition? A. No, it is not a fact. There were only two pieces of furniture that needed upholstering at that time.

Q. Your house hadn't been painted for years? A. I painted it a year before myself. 30

Q. That was the outside? A. Yes; and it was painted inside all the time.

Q. Isn't it a fact that you hadn't painted the inside of the house until after they left, and then as soon as they left you painted it all up; isn't that a fact? A. No, it is not a fact.

Q. Now, you have wanted for many years to get rid of your wife? A. Absolutely not. 40

Q. And you have wanted to get rid of her so that

Frederick W. Reich, cross.

you could have this property all to yourself? A. No, sir; no, sir.

Q. When was the last time prior to the first day of September that you had carried on any extended conversation with your wife? A. Well, I don't
10 remember that.

Q. But it is a fact that you had practically ceased to talk with your wife since 1924, is it not? A. Oh, no, it is not so at all.

Q. How many times during the year 1924 and 1925 would you say that you conversed with your wife? A. At various times.

Q. You won't say here on the record that you talked with her every day although you lived under the same roof? A. I wouldn't want to say that.

Q. Isn't it a fact that you went for weeks and months at a time without talking to her? A. I might have gone a week or so at times.
20

Q. And didn't she ask you and say to you, "Fred, why do you treat me so?" A. No, sir; absolutely not.

Q. And didn't you say, "You know," and that is all she could get out of you by way of explanation? A. No.

Q. Now, you and your wife had talked for some time prior to the first day of September, 1926, about going out of town to live, hadn't you? A. There were times when I had thought about moving, myself.
30

Q. And that was due to the fact that the house you lived in was so old and antiquated that comfortable living in it was almost impossible? A. Oh, no.

Q. And you went at one time out to Newark? A. Yes, for about three years and a half.

Q. And didn't your wife on this particular occa-
40

Frederick W. Reich, cross.

sion point out to you that with your children living conditions in a new house in Rutherford would be much more congenial than in Jersey City, because of the age of the house in Jersey City? A. Oh, no.

Q. When she left you this note about going up to Wingra Avenue—you knew where Wingra Avenue was? A. I never heard of that place in my life. 10

Q. You knew it was up in Rutherford? A. Oh, yes.

Q. She had asked you to go up there to live? A. About three weeks she asked me again to go and look at the place, and I said "no."

Q. Didn't you testify on direct examination, in response to a question of Mr. Lane's, on Sunday, August 15, "My wife asked me to look over the house"? A. She asked me to look at a place. 20

Q. And the place she referred to was this place on Wingra Avenue? A. I don't know.

Q. Your relationship at that time was so frigid that you didn't carry on any conversation with her? A. That isn't true; that very day we had conversation and she asked me that question.

Q. Didn't you say on direct examination that your wife did ask you to go to Rutherford? Yes or no. A. Yes. 30

Q. Didn't you say that you didn't give her any answer? A. Yes.

Q. And instead of coming out openly and frankly, you went on out of the house? A. Yes; naturally.

Q. And you made no effort— A. No, I had no intention of going away. She knew by my actions. I didn't want to bring up any argument and I said nothing. I had too much of that already. 40

Frederick W. Reich, cross.

Q. And that is the same course of conduct that you have been pursuing since 1924; that is, you refused to talk to your wife for months at a time?

A. No.

10 Q. You did it for weeks at a time? A. I wouldn't say so.

Q. Will you admit there has been a period of one week when you declined to talk to her? A. Well, there might have been that. I did that because I didn't want any argument. Certain things came up and I kept quiet, that's all. That's the best way.

Q. Did you ever speak to Mrs. Reich about selling the house? A. Yes, and I will give you an instance right now if you want it.

20 Q. Yes, go ahead. A. My daughter Florence and I looked at a place out in Belleville—

Q. When was that? A. When I lived in Newark.

30 Q. What year was that? A. It was before we moved back to Jersey City, and we moved back in December, 1919. Between 1916 and 1919, I couldn't give you the date. At that time I was willing to buy a new house, and we went up to Belleville and saw a house with improvements, six rooms, and my daughter liked the place very much; and I came back and I was talking and of course I had to make small payments, and I says to Mrs. Reich: "If anything should happen that I would have to let one place go, Charles Street would have to be sacrificed," and I said, "We will sacrifice the place in Jersey City"; and she says, "No, don't do that." So I didn't bother to take the place in Belleville.

40 Q. You looked at a place in Greylock Street? A. Yes.

Q. And that house didn't suit you, either? A. No. I looked at that myself.

Frederick W. Reich, cross.

Q. Now, when your wife wrote you Exhibit P-7 you at that time had great love and affection for your wife? A. Yes.

Q. Well, why didn't you go up there and see her? A. Because I didn't have any intention—I told her in the letter it was a waste of time as I had no intention of going to Rutherford. 10

Q. She told you at the time that the boys and the daughter were going to bear some of the expense? A. It wasn't a matter of expense; I was able to pay my own way. That was never mentioned, anyhow.

Q. You never went out to see her in response to this letter? A. No.

Q. Now, Mr. Lane has interrogated you on your reasons why you didn't go to Rutherford; what did you say your reasons were that you refused? A. There were several reasons, but two outstanding reasons I can give you now. 20

Q. What are they? A. One reason is Mrs. Reich said she wouldn't sign the paper and wouldn't agree to sell; that it had increased in value.

Q. What was the other reason? A. The other reason was that my oldest son Frederick seemed to be more anxious to go to Rutherford than any of the rest of the family. A school-mate of his and a companion lived there and for that reason he wanted to go there, and he was trying to run my house. He seemed to be the boss there. But he had insulted and threatened me and I made up my mind if there was no other way I could reprimand him I wouldn't go. In other words, I didn't want to give him the satisfaction of winning his point in this instance. 30

Q. Now, what other reasons were there for your refusal to go to Rutherford? A. At that time it 40

Frederick W. Reich, redirect.

was more convenient for me to ride to Jersey City than to go to Rutherford.

Q. Now, the first visit that you made with Mr. Van Beuren was on September 28th, was it not?
A. Yes, on a Friday.

10 Q. Now, when you went down on the second day to see your wife it was the following day, the 29th; and you remained in the car, didn't you? A. Yes.

Q. Were you desirous of effectuating a reconciliation with your wife at that time? A. Certainly.

Q. If you desired to effectuate a reconciliation, why did you remain in the car, allowing a strange man to speak to your wife? A. I went up there on the day previously and she wouldn't open the door,
20 and I thought perhaps Mr. Van Beuren could make an appointment for me to see her.

Q. You were at least encouraged sufficiently to go back a second time? A. Yes.

Q. And having that in mind, why didn't you make some sort of robust effort yourself by going up to the door? A. I said I went up the day previous and she wouldn't let me in.

Q. As long as you had to travel 16 miles out to Rutherford, why didn't you get out of the car and say, "Let's get together" and sit down and talk it over with her? A. The day before, when I went
30 up there, she says, "Do you think I am dumb your coming here when I have no witnesses," and I went the next day thinking that the children would be home on Saturday afternoon, and I thought that would be a good time when she had witnesses.

Redirect examination by Mr. Lane:

40 Q. And then you were told that the children were away over week-end? A. Yes; Mr. Van Beuren told me that.

Frederick W. Reich, redirect.

Q. Have your sisters lived in the home with you since the reconciliation? A. Oh, not for years.

Q. Or had anything to do with it? A. No, they have been away from that place over 20 years.

Q. You said you did not want to bring up any argument and that is the only reason why at times you didn't speak out; why was that? A. Well, I was in Rutherford different times, with a friend of mine on the front stoop, and I never mentioned anything about my family affairs at all; and that evening something happened as I was talking to this friend, Walter Goalay, and my son thought I was talking about him, from what I learned when he got upstairs later on. He said that he could do me and do that brother of his together—

Mr. Brown: When was that?

A. That was before they moved away; I couldn't tell you the date. It was a threat, nevertheless. There was no occasion for it. I hadn't had any trouble with the boy and he assumed I was talking with this friend about him.

Q. Did you paint the inside of your house at the time your wife left? A. Just before they left—two weeks before they left, and when I was painting the kitchen walls Mrs. Reich looked up and says, "Oh, but we don't intend to stay."

Q. You say Mrs. Reich said that? A. Mrs. Reich said that.

Q. When you were painting? A. Yes.

Q. How did she come to tell you that? A. In the evening she looked up—of course, I spent almost all my idle time painting and improving the house, and when I wasn't scrubbing off the walls inside I was scrubbing off the outside. I never went away with the family and enjoyed my vacation; I spent my time doing something to fix up the property.

Frederick W. Reich, redirect.

Q. How would you spend your nights? A. I was home always. I very seldom went out.

Q. Why didn't you want to go out to Rutherford after you received your wife's letter? A. No use in going out and I never had any intention of going out, and I told her beforehand that I wouldn't go. I said in the letter, "No use of going; it isn't a question of how nice it is; I don't intend to leave here."

Q. And during this time she moved out to Rutherford and wrote you this letter she refused to sign off, so that you could sell the property, didn't she? A. Just after she moved out and at different times before going away, whenever that question came up she said she wouldn't agree to sell the property.

Q. Did she suggest what you were to do with the house if you lived in Rutherford? A. Oh, no.

By the Court:

Q. Did you hear Mr. Van Beuren testify that when you went to your wife's house on the 28th of September, 1928, she said she would not talk to you because you had a witness with you? A. I don't remember just what he did say; I know what she said.

Q. What did she say? A. "Do you think I am dumb; come here sometime when I have my witness."

Q. Did you gather from that that she did not want to talk with you in the presence of some third person? A. Exactly.

Q. Now, if you really wanted her to come back and live with you why didn't you either send Mr. Van Beuren away at that time or go out without him on Saturday afternoon? A. She spoke about having witnesses the next time I went there on

Florence E. Reich, direct.

Saturday, and I went then thinking the children would be home then, and as long as she had the children there they would be pretty much under her thumb and I had to have somebody to corroborate what I said.

Q. But you understood that her main objection to talking with you was the fact that you had a witness with you? A. That is what she said. 10

Q. All right; why didn't you then either tell Mr. Van Beuren to go on his way and meet you somewhere else so that your wife would talk to you, or else go back there without anybody? A. She wouldn't let me in alone.

Q. When she indicated that she didn't want to talk to you in the presence of a witness why didn't you then make the proposal to her that you would come in alone and leave Mr. Van Beuren out? A. Well, I didn't. I don't know why. No particular reason for it. The thought didn't come to me. 20

Q. How long before the first of September, 1926, did your wife first discuss with you going to Rutherford? A. In August, the 15th the first time.

Q. How did she come to bring up the subject? A. Why, she was looking at a place in Rutherford and she wanted me to go out with her and look at it. 30

Q. Did you know before that that they had been looking for another home? A. No.

(Miss) FLORENCE E. REICH, sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Lane:

Q. Miss Reich, you are a daughter of Mr. and Mrs. Reich, the petitioner and defendant here? A. Yes, sir. 40

Florence E. Reich, direct.

Q. Since September 1, 1926, have you been living in Rutherford, 29 Wingra Avenue? A. 27 Wingra Avenue; yes, sir.

Q. Has your mother been living there also since that time? A. Yes, sir.

10 Q. Has your father been living there? A. No, sir.

Q. Do you know that your mother and father have been living separate and apart from each other since September, 1926? A. Yes, sir.

Mr. Brown: I have some questions but I will develop it later.

By the Court:

Q. How long have you lived with your mother, all your life? A. Yes.

20 Q. Has she ever lived anywhere except here in New Jersey? A. Only in New Jersey.

Q. And your father? A. In New Jersey.

By Mr. Lane:

Q. You are over 21? A. Yes.

Mr. Lane: Petitioner rests.

30

THE DEFENSE.

(Miss) FLORENCE E. REICH, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Brown:

Q. Miss Reich, how old are you? A. Thirty-three.

Q. What is your business or profession? A. I am a bookkeeper.

40 Q. And during the time that you lived at home at 39 Charles Street, will you describe to the court

Florence E. Reich, direct.

in detail your father's mental attitude towards your mother; that is, describe and tell the court facts, not your own conclusions, as to what his conduct and attitude was towards your mother. A. Well, when my father came in in the evening, mother would call "Fred" or some greeting of that kind, and my father never made any response at all. And at the table he had very little to say. Now, he might have put in a word here and there, but he never carried on a real conversation; and when he was at the table, sitting in the evening reading a paper, he would sit with his side to my mother instead of facing her. 10

Q. How long a period of time prior to September 1, 1926, had that condition existed? A. Well, as long as I can remember, my father never had been very friendly toward my mother, never. 20

Q. What was your father's mental attitude towards your three brothers in regard to carrying on conversations with them? A. My father didn't get along with my brothers at all.

Q. Not even talked to them, would he? A. Very slightly. He would carry on a conversation once in a while. If my father did something that was wrong with my mother they would defend her. 30

Q. Were you the only one in the family that your father talked with? A. Yes, sir.

Q. Now, what was the condition of the house? Describe it in minute detail at 39 Charles Street, Jersey City, prior to the first day of September, 1926? A. Well, the house was very unclean. The ceilings in the living room were in bad condition, and the furniture was dilapidated.

Q. What do you mean by "dilapidated"? A. I mean the plush on the chairs and sofas was so bad that it was fastened with thumb-tacks. I tried to 40

Florence E. Reich, direct.

fix them with thumb-tacks and my father sent out and got a hammer and fixed it so that it lasted during the evening.

10 Q. What arrangement did you and your brothers make in regard to paying a part of the upkeep of the home? A. We paid our board weekly to my mother, and at the end of the month we each paid an additional \$10 to my mother, and she, in turn, paid rent to my father so that we wouldn't need to have others on that floor instead of five.

Q. You mean there were originally 5 rooms to a family? A. Yes.

Q. And subsequently, when you paid additional compensation, you had two more rooms? A. Yes.

20 Q. When did you get those two additional rooms? A. About July the 1st, 1922.

Q. What modern improvements did the house have in it, if any? A. The house had no modern improvements—simply cold-water flats, and the gas was very poor.

Q. Did you have a conversation with your father about the gas? A. He had it blown out twice.

Q. But it didn't do any good? A. Only lasted a week or two.

30 Q. Did you call it to his attention again? A. And we spoke to him about it, but nothing was done.

Q. Did you and your brother make any improvements about that time? A. When we took the two rooms on the lower floor my brother wanted to help all he could with the painting, and he painted the back room downstairs so that he could have a bedroom, and the chandeliers, which had never been cleaned since the house was purchased; he burnished them also.

40 Q. What was the condition of the chandeliers?

Florence E. Reich, direct.

A. They were dirty and black, and my brother wished to help all he could and he took them off and burnished them.

Q. What was the method of heat that you had to this place to heat the house? A. We had one stove upstairs and we had one downstairs to heat the two rooms; and in addition to that we had two oil heaters that my mother had to carry oil for every day. 10

Q. Where would your mother have to go? A. Down two flights of stairs to get the coal.

Q. That is, she would have to go from the cellar up to the attic floor? A. Yes.

Q. How many floors did she have to take care of? A. Three.

Q. What was the condition of those stoves? A. The kitchen stove particularly was in a broken-down condition—in such a bad condition that mother could never use the oven of that stove, and the stove was so loose that the ashes from it were coming out constantly when coal was put in. 20

Q. Did you have any trouble with coal-gas there? A. Oh, yes; the coal-gas was bad.

Q. Did you ever talk with your father about those conditions? A. I didn't, but my mother spoke to him about it. 30

Q. Were they remedied? A. They were not remedied.

Q. What did you have in the way of conditions so far as bathing is concerned? A. There was no bath at all, and the toilet was outside of the kitchen door, and there was no way of ventilating that toilet, as the door could not be open and have privacy in the toilet.

Q. You, I believe, in order to improve your condition, went to the New York University? A. Yes, sir. 40

Florence E. Reich, direct.

Q. And your brother is a graduate of— A. I went to the New York University in 1925 and my brother is a graduate in 1922.

10 Q. And you worked your way through college without any objections from your father? A. Yes, sir.

Q. How about the facilities there to take a bath in that house? A. The boys had to use a stationary tub in the kitchen at such hours as they could do so.

Q. Did you have to do the same thing? A. I generally bathed in my own room.

20 Q. Did you ever talk with your father about it—about the living conditions there? A. I spoke to my father about the bath, and he said the only thing he knew was to bathe in the kitchen. That is the only thing he knew.

Q. Now, who provided the furniture in the various parts to make up your household furniture there? Did your father provide all those things? A. My father provided some of the things, but the only floor covering that my father provided was the linoleum in the kitchen that we had. Part of that father gave us because we didn't want it that way any longer.

30 Q. Who bought the rugs and so forth? A. My mother bought them, through our contributions.

Q. You children actually paid for them? A. Yes.

Q. Now, prior to the first day of September, 1926, did you or your mother or brothers have any discussion with your father about purchasing a house in the suburbs? A. Yes, they talked about taking a house.

40 Q. Previous to that time had he indicated a desire to move? A. Yes; when he came back to Jersey City he made us think that that was only a temporary arrangement.

Florence E. Reich, cross.

Q. When you came back from Newark do you remember whether any discussion was had, about the middle of August, at which you were present, when there was a house mentioned at Rutherford?

A. I know that mother had been looking around for a place, and so my mother told my father about it and she said she would like to have him go out and see it.

10

Q. What did your father say? A. He wouldn't go.

Q. What was your mother's physical condition prior to the first day of September, 1926? A. Mother had been afflicted with rheumatism for some years.

Q. Had that incapacitated her in the performance of her household duties? A. Yes; her feet were in very bad condition.

20

Q. What did that necessitate? A. She had to care for them at night first.

Q. How did she care for them? A. Of course, I didn't see her do it, but she told me—

Q. Don't tell what she told you. Do you know whether she was laid up for a time? A. About 10 weeks with rheumatism.

Q. Was she in bed during that time? A. Yes.

30

Q. And had to have medical attendance for a while? A. Yes.

Q. Now, do you know whether she was troubled with anything else subsequently? A. Well, she had trouble with her feet after the rheumatism was over she had great difficulty in walking on her feet.

Cross examination by Mr. Lane:

Q. Of course, you were not there when your mother was walking along and carrying the oil?

40

A. We had just got home.

Florence E. Reich, cross.

Q. Why didn't you help her carry the oil? A. I carried the oil very often.

Q. Did you have difficulty in carrying the oil?

A. No, but after working in the office all day long it wasn't possible for me to do all the shopping.

10 Q. You refer to the incident where you say your mother had difficulty in carrying the oil? A. Yes.

Q. If you were there you would help her? A. Certainly.

Q. You mean to say that your father never contributed anything towards your support? A. Towards my support?

Q. Yes. A. You mean, as a child?

Q. Certainly. A. Well, he provided some food and my mother practically provided for me since
20 I was 14 years old.

Q. Where did your mother get the money? A. She had to work.

Q. Didn't your father work, too? A. Yes.

Q. You say your mother provided for you since you were 14 years old; what did she provide for you? A. Well, my mother clothed me.

Q. You don't know whether that money which bought your clothes came out of the common hoard or not? A. No.

30 Q. Then how do you know she clothed you? A. Because at the time my mother was buying my clothes my father was buying the food for the table. There was no common hoard.

Q. You had been working and you gave your money to your mother? A. We paid our board to my mother and she paid rent.

Q. When you were— A. In Jersey City.

Q. And you say that was paid at the time you took two rooms downstairs? A. Yes.

40 Q. Your mother has been suffering from rheu-

Florence E. Reich, cross.

matism for the last 25 years? A. Not as long as that.

Q. Back when this trial was before Vice-Chancellor Garrison, when you were 12 or 13, did she have it then? A. It may have been coming on gradually at that time, but the severe attack that she had that put her in bed for 10 weeks was about 20, I think. 10

Q. Now, who was it that first suggested going out to live in Rutherford? A. No one actually suggested it; it was a case of going where we could live more comfortably and making it easier for my mother.

Q. Did you ever speak to your father about living at any other place than Rutherford? A. My father spoke to me about living in some place. 20

Q. Where? A. Newark.

Q. When? A. Shortly after we came back from Newark.

Q. You mean 10 or 12 years ago? A. Well, if we came back from Newark about 10 years ago it must have been around that time.

Q. Did he speak to you about going to live in any place in the last 4 years? A. No.

Q. Did you speak to him about going and living at any place in the last 4 years? A. Not I personally. 30

Q. And did you speak to him about going away to Rutherford? A. Not I personally.

Q. You know that your father has always signed his name Walter— A. Fred.

Q. More particularly than the other? A. I wouldn't say more particularly than the other.

Q. Isn't it true that Fred wanted to go out to Rutherford? A. He had no idea of going; he had nothing to do with it. 40

Florence E. Reich, cross.

The Court: She said that she believed he was the one.

10 Q. Did you ever hear Mr. Reich say anything about Fred being the one that wanted to go out there? A. He said that a few minutes ago.

Q. Did you hear him say it at any other time? A. No, sir.

Q. As a matter of fact, you knew that when your mother was living there at your father's home and you were living there, that her going away would leave your father home alone, didn't you? A. When we were leaving we expected my father to go.

20 Q. What led you to believe that your father was going to move out there to Rutherford? A. That my father would accompany us to our home?

Q. Yes. A. When we were in Newark we had moved when my father had taken that place and got my mother to go down to look at it, and there wasn't any reason that he wouldn't go again.

Q. Did you ask your father if he would go to Rutherford? A. Not I.

Q. Why do you say he was going to go there? A. He had done that previously.

30 Q. So you didn't consult your father at all as to where you were going to live? A. Not I.

Q. Anybody in your presence? A. My mother.

Q. When you were there? A. Certainly.

Q. What did she say? A. She said, "Come to Rutherford," and she told him about the house and described the house, and she wanted him to go and look at it.

Q. And he wouldn't go? A. No, he wouldn't go; or, at least, he gave no answer at all.

40 Q. You know he didn't go? A. Yes.

Q. And you left him to get along the best he

Florence E. Reich, cross.

could. You knew your father's disposition, didn't you? A. Yes, sir.

Q. And did you gather from the way your father acted at that time that he would go to Rutherford?

A. Well, people have said "no" and changed their minds, and my father is a man that occasionally changes his mind. 10

Q. When did you ever know him to change his mind before about anything? A. When we could get something and then decide not to.

Q. What do you mean by that? A. He would change his mind and decide not to get it.

Q. You know your father is a pretty determined man? A. Yes, sir.

Q. What I am trying to find out is, what led you to believe that the family was going to Rutherford? A. When the family went to Newark the family went together, and it went the second time, and the third time, and there wasn't any reason to believe since the family had gone together several times that my father wouldn't go to Rutherford. 20

Q. You didn't come back to Charles Street and then go back to Newark; you went around from one place to another at that time? A. Yes.

Q. Now, as a matter of fact, there wasn't anything that led you to believe that your father would follow you to Rutherford? A. I think so. When we were in Newark we bought a large suite of furniture and he said that that dining-room was too large for it. 30

Q. By the way, your father did buy some furniture? A. When we were in Newark.

Q. And the dining-room furniture that you had in the house in Charles Street? A. Yes.

Q. Who bought the furniture in the living-room? A. Why, we had that since they were married. 40

Florence E. Reich, cross.

Q. You know he bought the dining-room furniture? A. Yes.

Q. And you know he bought some bedroom furniture? A. What bedroom furniture?

10 Q. I don't know, any furniture? Did he buy any? A. Probably that was bought before I was born.

Q. Any bought lately? And when I say "lately" I mean in the last 10 years. A. No, sir.

Q. How about furniture in the kitchen; did you ever see any that he bought there? A. He had that ever since I can remember.

Q. By the way, just before you went to Rutherford the outside of the house had been painted, hadn't it, or shortly before? A. Not shortly before.
20 I think it was painted the previous summer.

Q. You mean a whole year ago or during the summer just passed? A. I'm not certain about that; I'm not sure whether it was last summer or the year before.

Q. That was right about the time he was busy painting the inside of the house, wasn't it? A. Well, he had given it a coat of paint in my room which was very shabby.

30 Q. He had painted your room? A. Given it one coat of paint.

Q. And it was painted in the kitchen? A. Yes; but the way my father paints—he paints the wall and then about a year or two later he would paint the woodwork and the living-room ceiling was absolutely dirty and the hall was absolutely dirty, too.

40 Q. And at the time he painted your room and the other rooms did you know anything about going to Rutherford to live? A. No; my mother hadn't selected it then.

Florence E. Reich, cross.

Q. Did your mother select the place there? A. Yes.

Q. With whom? A. My youngest brother took her. They went out looking for a house and went to several towns, and the rent seemed prohibitive, and they went to Rutherford and saw this house and it was within our means. 10

Q. You knew at the time you left, your father was alone in this house? A. If my father refused to come with us or if he didn't finally decide to come, that was up to him.

Q. And you were perfectly determined, as far as your talk went with your mother that if he didn't decide to come with you she would go anyway? 20

Mr. Brown: I object to the question.

Mr. Lane: I withdraw it.

Q. So far as you were concerned, you were going to go whether your father went or not? A. I think we were considering my mother.

Q. But so far as you were concerned, you were determined to go whether your father went or not?

Mr. Brown: We can't fix the status of the parties by what the daughter had in mind. 30

The Court: I was going to say, it is allowable for the purpose of testing her credibility.

Mr. Brown: For that purpose I have no objection.

A. Yes, sir; I was.

Q. And did you tell your father in the morning when he went to work that you were going to move that day? A. He went before I got up. 40

Florence E. Reich, cross.

Q. Did you tell him the night before that you were going to Rutherford the next morning? A. No, sir; my father insulted me the night before.

Q. And did you know the night before that you were going to leave the next day? A. Yes, sir.

10 Q. At a time when your father was not there?
A. I had no way of knowing whether he was going to stay home or not.

Q. Did you expect him to stay home the next day? Had he said anything about staying home the next day? A. No, he hadn't said anything.

Q. Did you know whether or not your father knew that you were going to move that day? A. Yes, sir.

Q. Did he know? A. Yes.

20 Q. Who from? A. My mother.

Q. In your presence? A. Yes, sir.

Q. When? A. After they went out to look at the place on Sunday, with mother and Walter, mother told him we were going to move on the first.

Q. When you say on Sunday, what date was that? A. The Sunday preceding September 1, 1926.

30 Q. Or around August 15th, two weeks before?
A. In fact, my mother told him several different times during that period that she was going, and asked him to go with us.

Q. You were not opposed to leaving the house and going alone? A. Not opposed to leaving the house.

Q. Were you opposed to leaving your father?
A. I didn't like that.

40 Q. What do you mean by you didn't like that?
A. I believe it is much nicer for families to stay together, which we would have done if conditions were different.

Florence E. Reich, cross.

Q. What didn't you like? A. The conditions that we found there, just those three stoves and two oil heaters, and we were never comfortable and I had a heavy cold and I wanted to get into a place where we would be at least comfortable for the winter. And there wasn't any bath, and, of course, it was embarrassing; and the place was unclean and that was embarrassing, too. 10

Q. Did you ever hear any talk about selling the house so that you could get some money? A. Well, the only time that I can remember is when they wanted to buy a house in Belleville and my father said he would buy the house if my mother would sell the other house.

Q. Well, did you hear any talk about selling the house around this time that you moved to Rutherford? A. No, sir; not just that time. 20

Q. Did you ever hear your mother say that she wouldn't agree to sell the house? A. Yes, sir.

Q. When was that? A. That was when my father spoke of buying the house in Belleville and she said she wouldn't sign the deed.

Q. When was that, Miss Reich? One year, two years, five years— A. About 10 or 11 years.

Q. Were you present at any talk between your father and mother about going to Rutherford? A. Oh, my mother told him when she had asked him to go out and see the house. She asked him to go. 30

Q. Were you there? A. Yes, sir.

Q. Did you ask him why he didn't go? A. No, sir.

Q. Why not? A. It is not my duty. I don't think it is my mother's duty, either.

Q. Your relations with your father were quite cold about that time? A. No, he had been very good to me, but when my mother spoke about 40

Florence E. Reich, cross.

looking at a place he became very indifferent to me as well as several other members of the family.

10 Q. He had a little argument with you because you wouldn't talk with him about going after you made up your mind about going irrespective of whether he would go or not; isn't that what the dispute was about? A. No, sir.

Q. What was it? A. There wasn't any dispute.

20 Q. He got cold feet when you people were talking about going to Rutherford and you made up your mind that he wasn't going, and so much so that you wouldn't speak to your father when you were packing up? A. When we were packing up and going, my father knew that I was going, the night before, and he says, "You going, too, you little hypocrite."

Q. That was the night before? A. Yes.

Q. During the two weeks you were talking with him, even before this thing happened, why didn't you say something like this to your father: "Why don't you come out and live with us"? Why didn't you? A. My father didn't encourage any conversation.

30 Q. From the fact that he knew you were going you believed that your father would follow you out to Rutherford? A. I thought he would.

Q. You know that your mother received this letter, Exhibit P-1, from your father, don't you (handing paper to witness)? A. (Witness reads letter through.)

Q. You knew your mother received that from your father about the time he wrote it, didn't you? A. Yes, sir.

40 Q. And you know that was shortly after you had left to go to Rutherford to live, wasn't it? A. So far as I remember.

Florence E. Reich, cross.

Q. And you knew after he wrote that letter that your father had no intention of moving to Rutherford, didn't you? A. Yes, sir.

Q. What did you do then; did you go and see your father? A. No, sir.

Q. Did you talk with your mother and ask her whether she would go back and live with your father in Charles Street? A. No, sir. 10

Q. Never said anything to her? A. No, sir.

Q. How did you come to see this letter? A. As a matter of fact, I don't think I ever saw that letter until now.

Q. Why did you say a minute or two ago that you knew at the time your mother received that letter? A. Because her letters were on the serving-table and I saw my father's writing on the envelope. 20

Q. Were you there when the letter came by the postman? A. No, sir.

Q. Was your mother home when you got home that day? A. Yes, sir.

Q. Do you mean to say that that letter was in the envelope on the table waiting until you got home before your mother opened it? A. Well, the top of the envelope was torn and I supposed she had opened it and read it and put it back in the envelope. 30

Q. And did you ask your mother whether your father had written a letter? A. She told me.

Q. What did she tell you? A. She just said that pa had written a letter to her saying he wouldn't come out.

Q. Well, what else? A. That's all I know about it.

Q. And you and your mother talked it over? A. That is all I know about it. 40

Florence E. Reich, cross.

Q. You were paying a part of the expenses at this Rutherford house, were you not? A. Yes.

Q. Did your mother say, under those circumstances she would go back and live with your father at Charles Street? A. Nothing was said about it.

Q. One way or the other? A. No.

Q. And you say now you didn't read that letter at the time? A. I don't recall that letter. I read one of the letters, but I don't think that was the one.

Q. I show you the other letters and ask you to see if you can tell. A. I think it was the last one, if I am not mistaken; no, Exhibit P-2 is the second one.

Q. Exhibit P-1 was the first letter that you knew of that your mother had received from your father after you people left the home there? A. Yes.

Q. And you expected your father, you say, to come out to Rutherford? A. Before we left Jersey City.

Q. Now, when was it that you made up your mind that he wasn't coming? A. When we got there we waited a few days, because we wanted to fill in with the furniture that was missing, and we thought in a couple of days he might feel lonesome in Jersey City and he might come back to his family.

Q. When you moved did you move the furniture out of this house? A. Everything that was ours.

Q. What do you mean by that? A. That my father had not purchased.

Q. What did you move? A. We moved three beds, dresser, and the wash-stand, and all the rugs, and some things I had bought, and all the dishes we had bought, and my piano, and all my book-cases.

Sarah Elizabeth Reich, direct.

Q. When you left you didn't leave much in the house, did you? A. It looked rather bare.

(Mrs.) SARAH ELIZABETH REICH, the defendant, sworn in her own behalf testified as follows: 10

Direct examination by Mr. Brown:

Q. Mrs. Reich, you were married to the petitioner in this case on the 21st day of May, 1895; is that correct? A. Yes, sir.

Q. And during the greater part of that time, with the exception of one occasion when you lived in Newark, you have lived in Jersey City? A. Yes.

Q. And you have lived at 27 Wingra Avenue, Rutherford, New Jersey, since the first day of September, 1926; is that correct? A. Yes. 20

Q. Now, then, when did you move back from Newark to Jersey City? A. About 1919.

Q. And at that time did you have any discussion or conversation with your husband in reference to the living conditions in the house at 39 Charles Street, Jersey City? A. Yes.

Q. What does your family consist of? A. I have a daughter and two sons living with me. 30

Q. And you have one son married? A. One son married.

Q. Now, your boys; where did they receive their education? A. In Jersey City and Newark. Walter went to school in Newark.

Q. Did they all graduate? A. Fred and George are graduates from college.

Q. What college? A. Wesleyan and New York University.

Q. And your daughter? A. She is attending the New York University at the present time. 40

Sarah Elizabeth Reich, direct.

Q. Their advanced education that they have received has been from their own initiative? A. They earned it all themselves.

10 Q. Why didn't you talk with your husband about moving from the home at 39 Charles Street in September, 1926? A. I was worried. While I was there my husband would talk to me once in two weeks, and there were as many as three months when he came in at night and wouldn't answer.

Q. You would greet him? A. Always. I talked to him about things that occurred in the neighborhood, and even at meals he wouldn't answer me, and if I put a dish down he would take it; he wouldn't answer me if I put a dish down; he would simply take it.

20 Q. Well, you sat down at meals with him; what was his conduct then? A. He wouldn't converse at all then.

Q. Did you ever ask him why that was? A. Yes, in May, 1924, I said one morning, "What's the trouble; why don't you speak to me?" and he said, "Oh, you know." And I said, "No, I don't know." He said, "You know what you said."

30 Q. Had you said anything to him? A. I said, "I haven't said anything to offend you."

Q. What did he say to that? A. Nothing further; simply wouldn't speak to me.

Q. Now, this house, 39 Charles Street, Jersey City, will you please describe it to his Honor? A. Why, we had seven rooms for my family and they were in very wretched condition.

40 Q. What do you mean by "wretched condition"; particularize that. A. Well, the walls and ceilings were dirty; they hadn't been painted in four years. They were blackened from the coal stove and oil stove heater; and the furniture was falling apart.

Sarah Elizabeth Reich, direct.

Q. What do you mean by "falling apart"? A. The springs were down in four of the parlor chairs.

Q. When you say the "springs were down"— A. Almost touching the floor.

Q. The springs were dropping out from underneath the upholstery? A. Yes.

10

Q. Did you call that to your husband's attention?

A. I called his attention—I had two chairs in the parlor that couldn't be used and I called his attention to them and he said, "It's up to you."

Q. Who did all the housework during all of these years? A. I did all the housework.

Q. And, at any period of time, did you yourself work outside of the household? A. Yes, that was from 1906 to 1916; I worked for 10 years.

20

Q. And did you contribute your earnings towards the support of the family during that time?

A. Yes. My husband didn't give me any money at all.

Q. Now, getting down to more recent times, what was the reason you hated the house at 39 Charles Street? A. I had three coal fires and two oil heaters—

Q. When you say "three coal fires" what do you mean by that? A. Coal stoves—kitchen stove with hot-water attachment, and then we had two parlor stoves, one upstairs and one down.

30

Q. Where did you get the coal to feed those three stoves? A. Down in the cellar, one flight down.

Q. What was your condition at that time? A. I was troubled with rheumatism frequently, and my sons would stock up enough coal to last during the day and at night if they weren't home I would have to get it myself.

Q. Were you physically able to do that? A. No, I had rheumatism.

40

Sarah Elizabeth Reich, direct.

Q. Did your husband know you had rheumatism? A. Yes.

Q. Did you talk to him about it? A. Yes.

Q. Did you have medical attention? A. No, I didn't.

10 Q. What did you do, doctor yourself? A. Yes.

Q. Were you ever incapacitated or laid up for any length of time so that you couldn't get about? A. Yes, in 1921 and 1922 I was sick with rheumatism.

Q. For how long a period of time? A. I was in bed 10 weeks, and I suffered previous to that and after that for a long time.

20 Q. Now, the rheumatism that you had; describe the feelings that came over you at that time. A. I had an articular rheumatism in my joints—

Q. When you say your joints do you mean your arms and legs? A. I couldn't use my hands; I couldn't turn the doorknob.

Q. During that period of time were you ever bedridden? A. For 10 weeks, yes.

Q. Now, what was the method that was utilized for washing themselves in that house? A. Well, we had no bath. My husband and son used the washtub.

30 Q. Did you ever speak to him about putting a bathtub in? A. He said he would put one in the kitchen, and I said there would be no privacy then.

Q. What about the stoop condition? A. I found it hard work to clean that because of my knees, and I asked him to fix it and he sneered at me and he says it was going to be fixed, and he sniffed with his nose.

40 Q. What was the condition of the kitchen range? A. All cracked at the corners and the dust came out all the time.

1921-1922 Sarah Reich

Sarah Elizabeth Reich, direct.

Q. Did those coal stoves and the other oil stove provide sufficient heat during the winter to keep you comfortable? A. Never in the dead of winter.

Q. Did it have any effect on your health? A. Yes, we had colds all winter.

Q. Did you have any coal gas there? A. Yes, in January, 1926, the place was filled with coal gas. 10

Q. Did you talk to your husband about it? A. Yes, I spoke to him about it.

Q. What did he say? A. He failed to change it; that's all.

Q. What was the condition of the gas pipe? A. Our light was very poor and we had the Public Service come up and blow out the lights and in about a week or two weeks it would get dim again. 20

Q. Have you any idea how old that house was in Charles Street? A. Yes, 34 years old now. 20

Q. Now, during this period of time, and prior to the marriage of your one son, what was your husband's attitude in regard to your sons and daughter being there? A. After we moved from Newark he was all right.

Q. It was before that that he objected to it? A. Yes, before that.

Q. Now, what was your husband's attitude towards your children going to college? A. Well, he didn't have much to say; he sneered. 30

Q. Well, what did he say?

Mr. Lane: I object to that, going back 10 or 15 years.

Mr. Brown: I only want it from this standpoint: To show what a positive, determined man the petitioner in this case is.

The Court: I will allow it.

A. He sneered about college men. 40

Sarah Elizabeth Reich, direct.

Q. What did he say, if anything? A. That is all. He would speak of college men with a sneer.

Q. What did he say about the children going to Sunday School? What was his attitude on that, particularly in regard to your daughter? A. That was understood that he objected to their going to Sunday School. He wouldn't permit them to go. He kept them at home.

Q. Wouldn't permit them to go? A. Wouldn't permit them to go, no.

Q. Did you have any talk with your husband prior to the first day of September, 1926, about the purchase of a house in the suburbs? A. Oh, we had been looking for a house for years.

Q. Had he also been looking for a house? A. Yes.

Q. Where had he gone? A. He had gone to Hal-leck Street in Newark, and to a place in Hillside. A real estate man sent him a letter and he left it on the bureau one day and I read it.

Q. Where else? A. I don't know just where else. That was in May before we moved, in 1926.

Q. Your husband began a divorce suit against you in 1911? A. Yes.

Q. And then he began another suit against you in 1914? A. Yes.

Q. And a reconciliation was effected? A. Yes.

Q. Now, in May, 1924, did you have any discussion with your husband about the property at 39 Charles Street? A. No, I don't remember anything.

Q. Well, in May of that same year, along in 1924, did anything happen? A. He spoke of selling the house.

Q. What did he say to you about selling the

Sarah Elizabeth Reich, direct.

house? A. He said, "Will you sell this house?" and I says, "Why?" Well, he says, "I want the money."

Q. Why did he say he wanted the money? A. I says, "Why do you want the money?" and he said, "I saw an advertisement in the paper this morning where I can get 8%." I says, "Isn't that speculating? You don't want to sell the house to speculate?" and he says, "Yes, sure; people are getting rich, why shouldn't I?" 10

Q. Is that the reason why at that time you refused to sell the property? A. Yes.

Q. And from that time on did you notice a change in his attitude towards you? A. Yes.

Q. How did it manifest itself? A. He wouldn't speak to me, or greet me, or talk to me in any way. When he went to work he turned his shoulder and went. 20

Q. For how long a period of time would that condition that you have described continue? A. Two weeks, three weeks, and sometimes three months.

Q. That was between the period, you say, from 1924 to 1926? A. Yes.

Q. For how long a period prior to the 15th of August, 1926, had your husband refused to talk to you? A. From the 4th of July until about the 10th of August. 30

Q. What did you discuss with him when you first spoke about going to Rutherford? A. I said, "I can't stay here; I can hardly go up and down the stairs. I couldn't get my breath."

Q. Had you ever had any stroke since that time? A. No.

Q. Have you had one since? A. Yes.

Q. When did that bother you? A. In 1924 and 1926. I had to go downstairs, the bell rang, I tried to go down but I couldn't. 40

Sarah Elizabeth Reich, direct.

Q. When was it you discussed for the first time a house in Rutherford? A. About the 10th of August.

10 Q. What did you say to him then? A. I told him I knew of a house with all improvements and about 35 minutes' travel.

Q. What did he say in reply to that? A. Nothing.

Q. Now, prior to the day that you actually left the house to move to Rutherford did your husband know that you and all the family were going out to Rutherford? A. Yes, I told him, about the middle of August, I was taking the place and was going to move to Rutherford.

20 Q. Did your husband during the years of your married life ever take you out to places of amusement? A. Well, about 4 years before I moved I think I was out with my husband.

Q. Now, getting down to a time more recently, say, beginning from 1924 until the day you separated in September, 1926,—during all that time did your husband ever ask you to go to a moving picture house? A. No, sir; he wouldn't go out with me. I asked him to go to certain places and he refused and said "no."

30 Q. Where did you ask him to go? A. To the Bronx Park, Botanical Gardens to see the dahlias.

Q. Did you ask him to go to any other place? A. Walter had a car in 1925—

Q. Is that your son Walter? A. Yes. And we asked him to go out with us, and he refused.

40 Q. What did he say when he refused to ride with your son? A. He said, "I am tired"; and I think I asked him about six times, and the sixth time I says, "You are not tired" and he says "no."

Q. Can you fix the time, approximately, when

Sarah Elizabeth Reich, direct.

that happened? A. Well, that was about the early part of October, 1924.

Q. Now, besides your husband's salary checks, what was the rent that he received from that house? A. My young people paid \$18 a month.

Q. You mean your son and daughter? A. My two sons and one daughter, all combined, paid the \$18 a month, and the tenant downstairs paid \$16. 10

Q. You have no idea, I suppose, of how much the taxes were on that property? A. No.

Q. What was your husband's attitude towards those he came in contact with in and about the home? A. He was very pleasant to Florence, and very pleasant to the neighbors; he wouldn't speak to me and he wouldn't speak to the boys. 20

Q. For how long a period of time would he refrain from talking to the boys? A. Before 1926; I should say four years.

Q. You mean during all that time he had not talked to them at all? A. No.

Q. Prior to the day you went out to Rutherford did your husband notice you and the others packing things in the house on Charles Street? A. Yes. I told him I was going. 30

Q. What did he say? A. He says "packing?"

Q. Did he have a conversation on the same day with your daughter Florence? A. Florence was in the dining-room packing books and he said, "You dirty little hypocrite, when you get out to Rutherford remember you taught Sunday School in Jersey City.

Q. Shortly after that, did you write him this letter that has been offered in evidence by the petitioner, and marked Exhibit P-7? A. Yes. 40

Q. What was the reason that motivated you, or

Sarah Elizabeth Reich, direct.

caused you, to move from 39 Charles Street? A. I wasn't happy there; he was so cruel and didn't speak to me.

10 Q. When you say he was so cruel in his attitude towards you what do you mean by that? A. He wouldn't speak to me; he would treat me with the utmost contempt in every way, and he would talk to Florence and talk with her in a nice way and turn and sneer at me.

Q. When was the first letter you received from your husband; do you remember? A. I think it is this one here, P-1.

Q. Was that in response to a letter that you had written him? A. Yes, that was in answer to it.

20 Q. And when you received that letter did you write him further? A. No, I did not. He says, "Our home is here at 39 Charles Street; that is my house." He never said "ours" or anything like that.

Q. He emphasized it? A. Yes, he always said "my house" and "my furniture."

Q. You mean to say that, during all the course of the years you lived together, he always put emphasis on "my"? A. Yes.

30 Q. Had he done that on more than one occasion? A. Always "my house"; always.

Q. Now, I call your attention to a second letter that he sent you under date of August the 2nd, 1928, marked in evidence P-2, and ask you if you read that letter when you received it? A. Yes.

Q. What was your reaction on receiving that letter? A. It seemed like a scolding to me, and I didn't feel like being treated like a child and, of course, I didn't answer it.

40 Q. Did he say anything in that first letter, do you recall, about not coming to the Wingra Avenue

Sarah Elizabeth Reich, direct.

house? A. Yes, he said he would not come; he didn't intend to come. He was determined not to come.

Q. Now, you recall the visits that he made you on September 28th with Mr. Van Beuren who has testified this morning? A. Yes.

10

Q. Will you please narrate the whole conversation, word for word? A. The bell rang, and I went to the living-room off the front porch, and I saw an old man sitting there all huddled up, and I walked over to the window right on the stoop, and I saw him turn up his coat collar, and I said I never had seen that person before, and I looked and I saw another person which I recognized as my husband, and I was looking at them for a few seconds and finally he turns and saw me, and I says, "What do you want?" He says, "Open the door and let me in." And I says, "No, I will not." He says, "Open the door" in a very aggressive way; and I said, "Why do you want to come in?" "I want to have a talk with you," he said. "Oh," I said, "Come around some night next week." He said, "Why can't I come now?" and I says, "You have got your witness back there and I will have mine."

20

Q. Was that the first time you had personally seen your husband in two years and practically three weeks? A. No, I went to 39 Charles Street.

30

Q. When? A. About June 1, 1927.

Q. Was anybody present at the time you saw him there? A. Yes, I stopped in and saw the tenant and she came out on the front stoop, and my husband came in the front gate and looked at me, and he says, "Coming back?" and I said, "No, I can't carry coal up two flights of stairs."

Q. What was his attitude at that time? A. It wasn't friendly.

40

Sarah Elizabeth Reich, direct.

Q. Why did you go back to Charles Street to see him? A. I went there to see him because I wanted him to come and live with us, and I asked him then to come.

10 Q. What did you say to him? A. I said, "Fred, will you come out to us to Wingra Avenue; we have a very pretty place there and we need you there."

Q. Now, what transpired on the second day that he came there? A. One Sunday afternoon the bell rang—

Q. Who rang the bell, Mr. Van Beuren or your husband? A. Mr. Van Beuren. I went to the door and I raised the curtain and looked out and I saw Mr. Van Beuren, and I said, "What do you want?"
20 He was a stranger to me.

He says, "Will you open the door; I want to talk with you."

"Who are you," I said.

He says, "My name is Van Beuren."

I says, "What do you want?"

He says, "Mr. Reich wants to know if he can come out and have a talk with you when your sons and your daughter are home."

30 And I saw my husband and I says, "When do you want to come?"

And my husband said, "Will Tuesday be all right?"

And I says "yes." So when I got thinking it over I concluded I had had enough of that and I sat down and wrote him a letter.

Q. Now, prior to the time you had been afflicted with rheumatism did you do anything yourself as a help in supporting the family?

40 Mr. Lane: I object to that.

Sarah Elizabeth Reich, direct.

Q. Do you know whether or not your husband ever looked over any other location out of town with the object of either living there as a tenant or for the purpose of purchasing a home elsewhere? A. Not in any particular place, but he was always looking from the time we moved back from Newark. 10

Q. Do you know whether he ever went to look at a place in April, 1926? A. Yes, that was a house on Halleck Street in Newark.

Q. Do you know whether he went to any other place in May? A. Yes, Hillside.

Q. In Bergen County? A. No, that is a part of North Newark.

Q. Do you know whether he went to any other place? A. No. 20

Q. How about Lincoln Place? A. That is where we lived in Newark. He went there.

Q. Did he put up any deposit on the house? A. Yes, he paid a deposit.

Q. Let me ask you, during any of the years from 1924 down to September, 1926, has your husband ever given you anything in the way of a present? A. Well, he used to give me a Christmas present until 1919 and after that he stopped it. 30

Q. Did he ever ask you to go on an automobile ride with you? A. No, sir.

Q. How old are you? A. 58.

Q. How old is your husband? A. 62.

(Recess until 2 o'clock.)

Q. Just one question, Mrs. Reich: You just called my attention to some correction you desired to make in your testimony; what was it you desired to correct in regard to a date? A. Why, I asked my husband to go out in the car with us and when 40

Sarah Elizabeth Reich, cross.

I was asked when that was I said it was 1924, but it was October, 1925.

Cross examination by Mr. Lane:

10 Q. What was the occasion? A. Why, I asked my husband to go out in the car with Walter and Fred and myself for a trip.

Q. And you remember that particularly as being in October, 1925? A. Yes.

Q. And it was such a rare occasion that you asked your husband to go in a car that you remember this occasion? A. It wasn't so rare an occasion. I had asked him five or six times previous.

Q. You mean, this was the last time? A. Yes.

20 Q. You were accustomed to going out with your sons almost every week? A. Very frequently on Sunday.

Q. You and your two sons would go out in the automobile and leave your husband at home? A. We asked him to go.

Q. Every time? A. Every time. We never went out without asking him and he always said "no."

Q. And he never went once? A. He refused every time. We wanted him to come with us.

30 Q. When did you get the automobile? A. In August, 1925.

Q. Well, that was just a period of two months, August to October? A. Yes.

Q. And during that time when you went out in it you asked Mr. Reich to go with you? Right? A. Yes.

Q. And only in October he said he wouldn't go? A. He wouldn't, no.

Q. And you never asked him again after that? A. I didn't, no.

40 Q. Did your children ask him in your presence? A. No, I don't think so.

Sarah Elizabeth Reich, cross.

Q. Now, for a long number of years you and Mr. Reich have been—while you were living together, nevertheless you have been living together under some strained relations, haven't you? A. I didn't think so until 1924, when he stopped talking.

Q. In 1911 you wouldn't have anything to do with him at all? A. No. 10

Q. You wouldn't have any sexual intercourse with him in 1911 when he started his divorce suit? A. No.

Q. And for one or two years prior to that you wouldn't have any sexual relations with him; that's right, isn't it? A. Yes.

Q. Do you remember being before Vice-Chancellor Garrison and his asking you whether you would go back to your husband and you said you would not? A. Yes, I guess I did. 20

Mr. Brown: If the Court please, if counsel intends to go on with this line of testimony, why, I just ought to revert to the fact that he objected to my going into it. I haven't any desire to prolong this hearing but, of course, if he opens the door I shall be obligated to go into it also.

Mr. Lane: I don't intend to go into it. 30

Q. And that condition continued and your husband brought a second suit against you after the first one? A. Yes.

Q. And then Mr. Brown and myself and your husband and yourself got together and there was a reconciliation? A. Yes, I asked Mr. Brown to do so.

Q. And that was shortly prior to the time the trial was to come up; is that right? A. Yes. 40

Q. That was in 1914, wasn't it? A. Yes, 1915.

Sarah Elizabeth Reich, cross.

Q. And during all of that time you were living in Charles Street? A. Yes, sir.

Q. And you then continued to live with your husband, you say, without much trouble until 1924? A. Yes.

10 Q. May, 1924? A. Yes, about that.

Q. And that was the occasion when your husband wanted you to sign the deed so that he could speculate with the money? A. In April he asked me, but he stopped speaking to me in May. He hadn't spoken to me from the first two weeks in May.

Q. And was that right after you had refused to sign the deed? A. Shortly after.

20 Q. Well, the first two weeks in May you say he didn't speak to you; did he speak to you the second two weeks in May? A. Oh, yes, he was pleasant for a couple of days. I think I asked him what the trouble was. I said, "Fred, what's the trouble?" He said, "You know; you know what you said."

Q. What did you say? A. I said, "I haven't said anything to offend you and never did."

Q. Did you ask him what it was? A. He said it wasn't anything; he wouldn't say anything further.

30 Q. Do you know what he was referring to? A. No.

Q. Do you know what he was referring to? A. No, I had nothing definite.

Q. You say you were ill; what year was it that you were ill, 1921? A. Yes, 1921, and also 1922; in all, two years.

40 Q. The reason I ask you that is because I have in my notes that from 1921 to 1923 you were in bed for 10 weeks. A. Yes, 10 weeks and I lingered on until 1922.

Sarah Elizabeth Reich, cross.

Q. How old is your oldest son now? A. 31.

Q. Florence said she was 31? A. No, Florence said she was 33.

Q. Florence is the oldest? A. Yes, Florence is the oldest.

Q. How old is your youngest one now, about? A. Walter is 27. 10

Q. Are any of them married? A. George is married.

Q. How long has George been married? A. Oh, five years.

Q. Prior to your leaving the Charles Street home? A. Yes; he was married in November, 1924.

Q. Where did he live with his wife? A. He went to Newark to live.

Q. That is, when he was married he went to Newark? A. Yes. 20

Q. Have you another son married? A. No.

Q. The reason I ask you that is, I notice in the petition there is reference to two married sons.

The Court: I guess that was a typographical error.

Q. You mean two unmarried sons that were living with you, is that right? A. Yes. 30

Q. Did you say that the house has not been painted for four years where you lived in September, 1926? A. Inside of the house.

Q. Had the outside been painted? A. Yes.

Q. When? A. In the spring of 1925, I think.

Q. That is a little over a year before? A. Yes.

Q. And the inside had not been painted at all? A. No. My husband promised and promised for years to do it and hadn't done it.

Q. For how long? A. Two or three years. 40

Q. Now, he painted Florence's room, didn't he?

Sarah Elizabeth Reich, cross.

A. After I told him I was going house-hunting and the place was too dirty to live in.

Q. And he painted the boys' room downstairs?

A. Fred did that.

Q. The room downstairs was painted, wasn't it?

10 A. In 1922, yes.

Q. And just before you left he painted the kitchen, didn't he? A. He was doing it. After I told him I was going to move then he began painting the kitchen. He thought he would clean up a little bit.

Q. Did you tell him there wasn't any use in doing that, that you were going to move anyway?

A. No, sir; I did not.

20 Q. Did you say a word to him about the painting? A. Only on one occasion.

Q. When was that? A. I said, "Are you going to leave it that way, Fred?" The side walls had two coats of paint.

Q. About when was that would you say? A. Well, that was about the 12th or 13th of August.

Q. You didn't speak to him about going to move to Rutherford until about the 15th of August? A. I spoke to him on the 10th of August.

30 Q. What did you tell him? A. That I had seen a place there.

Q. That you had taken? A. I had intended taking it.

Q. Had you taken it? A. I took it about the middle of August.

Q. What did you tell him, that you had seen the place and you had taken it? A. I had intended to take it.

40 Q. Was that on the 10th of August? A. About the 10th of August.

Q. Had he done any painting in the house before

Sarah Elizabeth Reich, cross.

that? A. Washed the walls in the hall and he painted the ceiling in the hall, and the side walls looked as though they had smallpox.

Q. Did your sons do any painting, or try to do any painting? A. In 1922 they did.

Q. In 1926? A. No, they didn't.

10

Q. So that, so far as you knew your husband was trying, even by doing the painting himself, to put this house in proper shape, so far as cleanliness was concerned? A. The first of June I told him the place was too dirty to live in, and I looked all summer for another place and he knew it.

Q. How do you know he knew it? A. I told him so.

Q. How often? A. Frequently.

20

Q. What do you mean by frequently; every week? A. Yes, every time I went out. I used to go Saturdays with Walter.

Q. You used to go Saturdays? A. Yes.

Q. And he told you, of course, that that was perfectly all right? A. My husband didn't speak to me.

Q. Didn't he say a word to you when you said you were going to move? A. Not then.

Q. You mean he didn't speak to you from June until August? A. He spoke to me a few times in June, perhaps, but not very much.

30

Q. What did he say to you when you told him you were going to look for a house before? A. Nothing.

Q. Did you ask him whether he was going to move with you? A. Yes, I did.

Q. What did he say to that? A. Well—(witness pauses). That was the 15th I told him I was going to move, but previous to that I told him I had to have a place and was going.

40

Sarah Elizabeth Reich, cross.

Q. What did he say? A. He wouldn't answer.

Q. Why did you have to think a moment when I asked you what he said? A. I wanted to get it straight.

10 Q. So he didn't say a word one way or the other whether he would move or wouldn't move? A. No, he didn't.

Q. The 15th of August when you spoke to him— Do you remember speaking to him on the 15th of August? A. Yes.

Q. Or was it the 10th? A. 15th of August.

Q. What was it you said to him on the 10th; you said you spoke to him before he started to do this painting. A. I told him I had looked at a place in Rutherford and thought I would take it.

20 Q. And on the 15th you told him you had taken it? A. Yes.

Q. And before the 15th you knew he was painting in the house; is that right? A. Yes, he had done some painting.

Q. And was it before the 15th or after the 15th that you asked him whether he was going to leave the ceilings or the wall that way? A. It was before the 15th.

30 Q. Before you had taken the house? A. Yes.

Q. Why did you ask him that if you intended to take the house? A. Why, just on the impulse of the moment. It didn't look right.

Q. Why did you care whether it didn't look right after you were going to leave?

The Court: I think you are talking to cross purposes. She says that she spoke about painting the ceiling before she took the house.

40 Mr. Lane: But that she had intended to take it on the 10th.

Sarah Elizabeth Reich, cross.

Q. Did you tell your husband on the 10th that you had intended to take the house? A. I was looking at a place and I said, "Yes, I think I will take it."

Q. At that time you had made up your mind to take it? A. Well, I wasn't positive until the 15th. 10

Q. When did you pay the deposit on it? A. About that time; about the 15th.

Q. And when you paid the deposit did you tell your husband that you had paid the deposit? A. Yes.

Q. Did you ask him whether he was going with you? A. Yes.

Q. And he said nothing? A. Not on the 15th he didn't.

Q. When did he say it? A. On the 10th, when I spoke to him and he said nothing; but on the 15th he said "I am not going; no woman is going to lead me around by the nose." 20

Q. Was your daughter present when he said that? A. Yes, I think Florence was there.

Q. So when you left on the 1st of September you didn't expect your husband to go with you? A. I did.

Q. After living with him some 25 or 30 years you knew what kind of a man he was? A. Yes. 30

Q. And he was a very determined man? A. Yes.

Q. And you knew he had some arguments with his son Frederick? A. Arguments?

Q. Had he had any arguments with his children or not? A. Not particularly.

Q. Didn't you testify on direct examination that he was more friendly with your daughter Florence than with you two sons? A. Yes.

Q. That is a fact? A. That is a fact, yes. 40

Q. And on the 15th of August when you spoke to

Sarah Elizabeth Reich, cross.

Mr. Reich were any of your children present? A. Florence heard it.

Q. And he said he wasn't going with you and he wasn't going to be led around by the nose? A. Yes.

10 Q. What did you say? A. I said, "Oh, Fred, come on out and see the place; I think you will like it; I don't think it will cost us as much as it will here and I think it will be pleasanter."

Q. You said it wouldn't cost as much to live there as in your own house? A. Yes.

Q. Did you talk with him as to what he could do with his own house that he had had for 30 years? A. No, I did not.

20 Q. Did you say that he could rent the house? A. No. I had said that long before—years before.

Q. What did he say? A. That he could rent that any time if we moved.

Q. Was the house rented when you were living in Newark? A. Yes.

Q. To two families, that is, one upstairs and one downstairs? A. Yes.

30 Q. And were there any more bathrooms or toilets in the house at that time than there are now or were in September, 1926? A. No, sir.

Q. Now, up until the time that your children became self-supporting the only money that came into that household was what Mr. Reich earned and what you earned by taking in sewing in the house, was it? A. Yes.

40 Q. And Mr. Reich never asked you to take in sewing, did he? A. No. He did tell me, however, when I asked him for money in years previous, when that first case came up, if I wanted any money I could get out and earn it.

Q. That was when you wouldn't have intercourse with him? A. Yes.

Sarah Elizabeth Reich, cross.

Q. And your children all went to grammar school and primary school? A. Yes.

Q. And high school? A. Yes, sir.

Q. One son went to college? A. Yes, sir.

Q. What college was it?

10

The Court: Two sons went to college.

Q. Which college did either of them go? A. Fred went to Wesleyan University, Middletown, Conn.

Q. And your husband contributed toward his going to that institution? A. No, sir.

Q. Never gave him a nickle? A. Well, at Christmas time I gave him \$20 and Fred had \$20 from his father all together.

Q. Do you remember when the son was attending that college he wrote to his father for money and he gave him \$500? A. That was when they were making a drive for the building.

20

Q. Who bought his clothes when he was going to Wesleyan? A. He bought his own clothes.

Q. How old was he when he graduated from that college? A. 24.

Q. And before he went to college had he done any work? A. Yes.

Q. How long? A. About eight years.

30

Q. And when did your son graduate from college; do you remember the year? A. In 1922.

Q. And this money that was paid you know that it was in 1921? A. No, I don't remember the date, Mr. Lane.

Q. You are sure it was after your son had graduated? A. No, I'm not positive. I know at that time they were talking about it.

Q. Now, I may have missed it. Did you say how long your son had worked before he went to college?

40

The Court: About 8 years.

Sarah Elizabeth Reich, cross.

A. About 8 years. I won't be positive, though. I can't remember just how long.

Q. Didn't you say that he went to grammar school? A. Yes.

10 Q. And to high school? A. Yes, sir.

Q. How old was he when he got through high school? A. 15.

Q. And how old was he when he went to college? A. 16, almost 17. He was almost 17 when he graduated and he worked about 8 years.

Q. That would make him 25 before he went to college. A. No, a boy can work while he is attending school.

20 Q. Do you mean that he worked when he went to high school? A. He didn't work until he was 17.

Q. And then he started to go to work? A. Yes.

Q. And when did he go to college? A. 18.

Q. I mean, how old was he?

The Court: He is how old now?

A. 31.

The Court: That would make him about 20.

30 Q. So that he worked for about 3 years from the time he was 17 years old? A. Yes, I was wrong, Mr. Lane.

Q. Take this other son— A. George.

Q. Which college did he go to? A. New York University.

Q. How old was he when he got through high school? A. I don't remember.

Q. About 15, 16, or 17? A. No, I think between 17 and 18.

40 Q. And did he go from there to college? A. No, he went to work and went to the University nights.

Sarah Elizabeth Reich, cross.

Q. And then your daughter Florence; she went through high school? A. Yes, sir.

Q. And then Fred did not go to college? A. Walter, no.

Q. Now, who was it that first spoke to you about going out to Rutherford to live? A. Why, Walter and I went out to different towns and we couldn't find anything that we liked. The rent was pretty high and was so far beyond our means that I told Walter to drive down to Rutherford and we would stop at a real estate office there. 10

Q. And did either one of your sons have any friends out in Rutherford? A. Oh, we know lots of people out there from Jersey City.

Q. And didn't your husband have considerable talk about the fact that you were willing to go and let your son pick out the place to live where his friends were rather than to pay any attention to him? A. No. 20

Q. Nothing said about that at all? A. I don't remember anything being said about it.

Q. Now, at the time that you went to Rutherford, you wanted your husband to come with you? A. Surely.

Q. And did you tell your husband that you were going the next day, on the night of August 31st? A. I told him I was going to move there the 1st of September. 30

Q. When did you first tell him that? A. On the 15th.

Q. Had you said anything to him about when you were going to move after the 15th? A. Yes, I said on the 1st of September.

Q. When was the last time you told him that? A. On the 15th of August. 40

Q. You hadn't spoken to him after that that you

Sarah Elizabeth Reich, cross.

were going to move? A. He saw me packing up and knew I was going.

Q. Did you during that day say anything to him about going with you? A. I did on one or two occasions; I says, "Fred, are you coming?" and he wouldn't answer me.

10

Q. What did you do about packing up his things? A. I didn't take any of his things.

Q. Did you suggest to him that he should have them ready by a certain time? A. No, I didn't.

Q. Did you tell him what time the moving van was coming? A. No.

Q. You knew at that time that he wasn't going with you? A. He said so.

Q. And he said he wasn't going? A. Yes.

20

Q. And you made up your mind that you were going whether he went or not? A. I told him I had paid the deposit for the place and intended to go.

Q. And you didn't speak to him during any of that time or make any suggestion as to whether or not he should rent the house or sell the house, or anything of that kind? A. No; he always said "that is my house" and told me to mind my own business, when I told him about selling the house or renting the house.

30

Q. Did you want him to go with you? A. Yes.

Q. So his treatment of you was not so bad, on the whole, before this that you didn't want your husband to go with you? A. I thought the change would do him good.

Q. But you wouldn't live with him even if he lived at some other house than 39 Charles Street which you say wasn't fit to live in? A. I asked him to have it cleaned.

40

Q. All the house needed was a little paint? A. A lot of paint.

Sarah Elizabeth Reich, cross.

- Q. Well, a lot of paint? A. Yes, a whole lot.
- Q. How much do you figure it would cost to paint that house on the inside? A. I haven't any idea.
- Q. Did you ever have anything to do with having houses painted? A. No; we had them papered. My husband always did his own work. 10
- Q. Now, you said that he told you he would put a bath in the kitchen; do you remember that, or didn't you say it? A. Yes, we asked him about having a bath put in, and he said we would have to have it in the kitchen.
- Q. He thought that was the only place it could be put? A. Yes.
- Q. And you had a large kitchen? A. Yes.
- Q. And by that he meant you had to use a part of the kitchen to make a bath? A. Yes. 20
- Q. And you didn't like that to be done, did you? A. We were crowded as it was; we had a large family.
- Q. And he was always ready and willing to do things, within reason, in the house? A. Not always.
- Q. When you spoke to him about blowing out the gas he had it blown out? A. Yes, I asked him to have it cleaned out by the gas man in the Public Service. 30
- Q. Did you find out how much that would cost? A. Cost \$4.50 when he had it blown out before.
- Q. And then things were better? A. For a year.
- Q. You don't mean to say that the coal-stove is the only kind of heat in the house? A. Two oil heaters.
- Q. Didn't you have a gas heater? A. We never could use it.
- Q. You said you had colds in that house? A. Yes. 40

Sarah Elizabeth Reich, cross.

Q. And you lived in that house for 30 years? A. Yes.

Q. And none of your children died? A. They all lived.

10 Q. Did your husband have colds, too? A. Occasionally.

Q. And you got along pretty well for 30 years in that house? A. Yes, pretty well.

Q. Did you telephone to your daughter Florence as to whether or not when you moved you expected your husband to go with you? A. Yes, we spoke of it.

20 Q. Did you tell her that you didn't think before you left that your husband was going with you? A. I said I didn't know; it was very uncertain. He had refused to come.

Q. In her hearing? A. I think so, yes.

Q. Now, after you got out there you wrote this letter to your husband, Exhibit P-7, did you not, some time along about three weeks after you left; is that right? A. Yes.

Q. What was your purpose in writing that letter? A. I wanted him to come out and see the place. I thought he would come and live with us.

30 Q. So that the only real difficulty between you and your husband was as to whether this 39 Charles Street was a proper place to live in? A. Oh, no, my husband didn't speak to me for two years and four months. He only spoke to me for two weeks, and then the third day he began to get angry and sneered at me, and then he stopped altogether.

Q. It was only in 1925 that you asked him to go out in the automobile? A. I did.

40 Q. During this time he would ask you to go out with him? A. Never.

Q. When was the last time he asked you to go

Sarah Elizabeth Reich, cross.

out with him, about? A. Oh, about 1923—some time in 1923.

Q. Did you tell your husband how much rent you paid for the house A. Yes, sir, \$65.

Q. Did you tell him that when you were talking with him August 15th? A. Yes, sir; and I told him also that the young people would share the rent. 10

Q. The young people were sharing some of the rent of the Charles Street house? A. Yes. I told him it wouldn't cost him any more than it would cost in Charles Street; I knew we could rent the floor and get an income from that.

Q. Did you speak with him about renting it? A. No, I don't remember anything about it, because he always said he could rent that at any time. 20

Q. Now, you received a reply to this letter almost immediately, from your husband, Exhibit P-1, did you not? A. Yes, sir.

Q. And in this letter he says that he told you when you said you were going to move to Rutherford that he would not go and that he wouldn't change his mind, and he says in this letter "Our home is here." A. Yes, that's the first time he said "our" in a great many years—oh, for about 10 or 15 years; it was always "my house." 30

Q. In this letter he asked you to come back and sincerely hoped you would come back? Right? A. Yes.

Q. Now, you didn't reply to that letter? A. No, sir.

Q. Why not? A. Well, it didn't sound sincere to me. He said "our home"; he never said "our home." 40

Q. Is that the only reason, it didn't sound sin-

Sarah Elizabeth Reich, cross.

cere? A. Yes. I thought he wasn't cooperating at all.

Q. And then you received another letter in August, 1927, Exhibit P-2? Right? A. Yes.

Q. Did you answer this letter? A. No, sir.

10 Q. Why not? Was there anything insincere in this letter? A. Will you let me see it, first. (Counsel hands letter to witness.) I thought it was a scolding letter.

Q. You thought it was a scolding letter? A. Yes.

The Court: Which one is that?

Mr. Lane: Exhibit P-2.

20 Q. And between the writing of P-1 in September, 1926, and this Exhibit P-2 in August, 1927, you hadn't written to your husband at all, had you—between the first and second letter? A. No, I hadn't.

Q. And you hadn't sent any of the children in to see how he was getting along? A. No, I heard.

Q. From whom did you hear? A. My son George, constantly.

Q. You heard constantly from him? A. Yes.

30 Q. Did your son George tell you that he visited his father? A. No; he used to work right near there and went evenings, and then he heard from a man he worked for about my husband.

Q. And then after receiving this August 2nd letter, Exhibit P-2, in March 28 you received Exhibit P-3; why didn't you reply to that letter? A. May I see it?

40 Q. Surely; that is why I put it down there in front of you. A. (After reading the letter.) Well, if I had written him I would have said more than I should, and I thought best not to write him. He knew how we felt.

Sarah Elizabeth Reich, cross.

Q. Knew about what? A. About those views.

Q. What views was he referring to? A. Marriage views.

Q. What did you understand him to mean about marriage views? A. Whatever he put in there.

Q. Now in this second letter he write and says that the tears came into his eyes when he sits home alone, and it also mentions the fact that he wouldn't go to Rutherford, and that he knew that he wouldn't feel at home there, and it would not be his home. You understand what he meant by that, that the children would be the boss of that home? A. He probably mentioned that. I don't know what else he could have mentioned. 10

Q. Exactly; you thought that when you got that letter? A. Yes, I thought he meant that. 20

Q. And, as a matter of fact, the children were paying most of the rent for that house; in fact, all of it? A. Yes.

Q. And it was really their home? A. Yes; but if he came I expected him to share it.

Q. You weren't paying any of the rent, were you? You were simply taking care of the house? A. I was there, yes.

Q. What kind of a house was that out in Rutherford? A. One-family duplex house, 7 rooms. 30

Q. And you and the three children live in it? A. Yes, sir.

Q. Anybody else? A. No, sir.

Q. Have you any help there? A. No, sir.

Q. You do the work there? A. Yes. We have all improvements, electric light, and it has made my work very much lighter. I have all the labor-saving devices.

Q. During this time you would have been willing to go back to live with your husband at 39 Charles 40

Sarah Elizabeth Reich, cross.

St.? A. Well, if I thought he would treat me decently and speak to me and not run a deaf-and-dumb asylum. I had enough of that.

10 Q. Were you willing to live with your husband at 39 Charles Street in September, 1926? A. It wouldn't make any difference where I lived; if he had treated me right I didn't care about his old house.

Q. So you didn't leave him because of the condition of the house; you left him because he wasn't treating you right? A. And the house also. I thought if I could get him out there and away from other influences, why he would be better.

20 Q. What other influences are you talking about? A. You know, Mr. Lane, he caused trouble by going there and visiting them, and he consequently kept getting more ugly and disagreeable as time went on.

Q. Years ago you attributed most of the trouble to his sisters living in this house? A. Their influence over my husband.

Q. You knew if he lived out in Rutherford he could go down to Hoboken and see his sister? A. Yes.

30 Q. How did you know he went to see his sisters? A. I was told.

Q. Did he tell you he went there? A. No, he did not.

Q. As a matter of fact, from the time of your reconciliation he never had his sisters there in the home, did he? A. No, sir.

Q. At any time? A. No.

40 Q. Well, now, if you were willing to go back to Charles Street and live with your husband why didn't you answer any of these letters? A. Well, he didn't treat me right. He said nothing of his

Sarah Elizabeth Reich, cross.

conduct towards me, the way he treated me. Why, I was almost worried sick over his cruel treatment; he wouldn't notice me, wouldn't speak to me week in and week out.

Q. What I am trying to find out is, whether that is the reason you left, or whether because of the condition of the house? A. Oh no, I could live anywhere if he treated me right. 10

Q. Then you loved this man, did you, at that time, in September, 1926? A. I think I have always loved him.

Q. And you loved him when you wouldn't even cohabit with him? A. I don't know, Mr. Lane.

Q. Now, in this letter, Exhibit P-7; you said that you were lonesome without him; is that right? A. Yes. 20

Q. And were you? A. Yes, I was.

Q. Notwithstanding the way he treated you? A. Yes, I thought if he came out there under different surroundings he would change.

Q. The only surroundings you thought he would be further away from was Hoboken; is that right? A. Not that alone.

Q. What other reason? A. Oh, I thought a change in environment alone would make him change. 30

Q. Did you tell your daughter Florence that, when you left in September, you expected him to follow you out to Rutherford? A. Well, I can't say "expected" but I hoped that he would.

Q. Irrespective of the fact that he told you he wouldn't go? A. Yes. He told me in Newark, when he moved to 139 Sumner Avenue that he wasn't going to that house and he came the last day, so that, you see, he is rather uncertain. 40

Q. Well, you didn't have a lease on this house, did you? A. Yes.

Sarah Elizabeth Reich, cross.

Q. From when until when? A. September 1st.

Q. To when? A. September 1st, 1926, to September 1, 1927.

10 Q. And before the year was up in 1927, you had received this second letter from your husband in August; right? A. Yes.

Q. By the way, did you take the lease in your name, or whose name? A. I don't remember now. I think I gave the name of my husband.

Q. You mean the name of Frederick Reich? A. Frederick W. Reich, my husband.

Q. Or Fredereick C. Reich? A. He didn't know anything about it.

20 Q. Did Frederick live with you? A. My son? Yes; but he had nothing to do with that lease.

Q. Does he live with you? A. Yes.

Q. And he pays a part of the rent? A. Yes, he pays part of it.

Q. And his name is Frederick C.? A. Frederick C. Reich.

Q. And you think you took the lease in the name of Frederick W., your husband? A. Yes.

Q. Who signed it? A. I signed it.

30 Q. You signed Frederick? A. I gave my own name; and they said "what is your husband's name," and so they put it in the lease. I didn't tell them to.

Q. What about the lease for the second year? A. I didn't have any lease; oh, no, I renewed that. They asked me if I would renew the lease and I said "Yes" and that's all.

Q. When did they ask you that? A. September 1, 1927.

40 Q. And in between, during the time you received this letter from your husband and September 1, 1927, you didn't do anything to find out whether

Sarah Elizabeth Reich, cross.

your husband had changed his mind? A. I went to Charles Street to see him.

Q. When? A. June 1, 1927.

Q. Did you go in there for dahlia bulbs that day? A. Yes, I went in several times.

Q. And didn't you, on that particular day, get dahlia bulbs out of your garden? A. No. 10

Q. Isn't that the reason why you went in there that day? A. No.

Q. Did you notify your husband you were coming in? A. No, I didn't.

Q. When you got there what did you do? A. I went to see Mrs. Herzog, the tenant.

Q. Who lived downstairs? A. Yes, the tenant.

Q. Did you go up to your own rooms, first? A. No. 20

Q. Why did you go in Mr. Herzog's first if you went there to see your husband? Why didn't you go upstairs first? A. I went to the door and said, "Is my husband home" and she says "no."

Q. Have you two entrances there, one for upstairs and the other for downstairs?

The Court: One entrance.

A. One entrance.

Q. Did you have a key? A. No, I left the key there when I left. 30

Q. Did you give it to him or leave it with this note P-6? A. I think I left it with the note, Mr. Lane.

Q. What time of the day did you get there to Miss Herzog's, if you remember? A. Oh, it was in the afternoon about nearly three o'clock, I might say.

Q. And you didn't expect your husband to be home at that time, did you? A. Well, I heard he was out of work and I thought he would be home. 40

Sarah Elizabeth Reich, cross.

Q. And who told you he was out of work? A. My son George.

Q. So when you got there you asked Miss Herzog if your husband was home? A. Yes.

10 Q. Have you two separate entrances to go upstairs, or do you all go in the same vestibule?
A. The same vestibule.

Q. So, in order to get in upstairs you had to ring the bell; did Miss Herzog answer? A. Yes.

Q. Was she keeping these dahlia bulbs for you? A. I left them there.

Q. When? A. Oh, in the fall previous.

Q. When you left the house, you mean? A. No.

20 Q. Or did you go back there? A. I came back after my dahlia bulbs in October, I think.

Q. And you were on your way out when your husband came up, were you not? A. Yes.

Q. On the porch or stoop? A. Yes, with my foot off the step.

Q. Down on the sidewalk? A. Yes, between the steps and the gate.

Q. And if your husband hadn't come along you would have been gone, would not? A. I stayed there talking quite a while.

30 Q. How long were you there all together? A. Well, I don't remember now; half an hour, I might say, all together.

Q. So you had taken this trip in all the way from Rutherford to see your husband? A. Yes, I expected to see him.

Q. And when your husband saw you what did you do? A. I said, "Hello, Fred."

Q. What did he do? A. He looked at me and walked over to the post side with his back to us.

40 Q. What post do you mean? A. The front steps.

Q. With his back toward you; was he facing you? A. Yes.

Sarah Elizabeth Reich, cross.

Q. How far away? A. About three or four feet.

Q. As near as you can recollect, what was the conversation? A. He said, "Coming back again?"

Q. What did you say? A. I said "No; I cannot carry up coal to keep warm."

Q. You say you came in there to be reconciled to your husband; what was your intention of doing? A. I went there to ask him to come back, and I did ask him to come out to Rutherford. 10

Q. When did you do that? A. Right then.

Q. What else did you say? A. I said the house was very comfortable, and the house had all the improvements, and I said, "Will you come, Fred?" And he didn't answer me.

Q. Are you willing to go back and live with your husband now? A. I don't think so, Mr. Lane. 20

Q. Why? A. Well, because he wouldn't speak to me. I bided my time and he never gave me a chance to defend myself.

Q. Defend yourself from what? A. He certainly had something against me when he wouldn't speak to me.

Q. Would you say it was about the selling of the house? A. I think it goes further back; I think it goes back to the time that we had trouble with his sisters. He never was the same. 30

Q. From 1915 to 1924, a period of 9 years, you got along pretty well? A. Fairly well, yes.

Q. When did you make up your mind that you wouldn't go back and live with your husband? A. When did I make up my mind? Oh, I don't know that I ever made up my mind, exactly.

Q. Right now, today, is this the first that you made up your mind you wouldn't go back to live with him? A. No. I think if my husband promised, and would keep his word, to live well and 40

Sarah Elizabeth Reich, cross.

treat me right, I think I would never have gone at any time.

Q. You remember when your husband went out to see you with Mr. Van Beuren? A. Yes.

10 Q. And you made an appointment finally for Tuesday night? A. Yes.

Q. And you knew that you would have your children there? A. Yes.

Q. And you know at the last trial before Vice-Chancellor Garrison, Mr. Reich was in court testifying alone and you and all the children testifying against him, didn't they? A. I knew what? Well, we had to tell the truth; what else could we say.

20 Q. And you were objecting at this particular time to Mr. Reich having some witness with him so as to be able to testify to what was said? A. He was looking for evidence; that is what I thought.

Q. What evidence did you think he was looking for? A. Well, I thought they were trying to catch me in something.

Q. You were perfectly willing to talk with your husband? A. Oh yes, I would talk with him.

30 Q. You were perfectly willing to talk with your husband, particularly in the presence of your children? A. Yes. Why not?

Q. Then if you made this appointment to be out there on Tuesday night when your children would be present, why was it you sent him this belated notice to cancel the appointment? A. Because he insulted me the day Mr. Van Beuren was there and I feared he would do it again.

Q. Which day? A. Friday, September 28.

40 Q. Immediately the next day was the day of the appointment for Tuesday? A. Yes.

Q. Why was it you made the appointment for Tuesday if he insulted you the day before? A.

Sarah Elizabeth Reich, redirect.

Well, I am rather easy-going and I think I would let it go if it would be all right.

Q. So you didn't want to shame your husband in the presence of your children? A. No, not exactly that, but my husband was very aggressive when he came.

10

Q. You had no fear if your children were present? A. Well, if he said anything I knew there would be trouble, so far as I am concerned. I wouldn't care to have it happen.

Q. What do you mean by "trouble"? A. Well, if he insulted me again I knew my sons would resent it—both of them.

Q. Is that the reason you cancelled the appointment? A. I didn't want to be insulted and I didn't want any trouble.

20

Q. And because of that, you refused to talk with your husband or have him come there to talk with you in the presence of your children? A. Just what do you mean, Mr. Lane?

Q. Because you didn't want to be insulted and you didn't want any trouble you refused to talk with your husband out in your house in the presence of your children? A. Yes. I was worrying about that strange man, too; he acted suspiciously.

30

Q. Why, then, didn't you write to Mr. Reich and say you would see him if he came alone? A. I don't know why I didn't.

Q. So you consoled yourself by writing this letter and you did nothing further? A. No, nothing further.

Redirect examination by Mr. Brown:

Q. Some reference has been made by Mr. Lane of the proceeding heard here before Vice-Chancellor Garrison; prior to that time had you ever

40

Frederick Charles Reich, direct.

had your husband arrested for assault and battery? A. Yes.

Q. And that testimony was before him at that hearing? A. Yes.

10 *Recross examination by Mr. Lane:*

Q. And he had you arrested, too, didn't he? A. No.

Q. You were held under a bond to keep the peace? A. I had trouble with a neighbor, Mrs. Sullivan. No, the case was dismissed. Mr. Brown was there.

20 **FREDERICK CHARLES REICH**, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Brown:

Q. Fred, where are you living at the present time? A. 27 Wingra Avenue, Rutherford, N. J.

Q. Are you living with your mother? A. I am with my mother, my sister Florence, and my brother Will.

Q. How old are you? A. 31, June 30.

30 Q. A graduate from what college? A. Wesleyan University, Middletown, Conn., getting Bachelor of Science degree; and then went nights to New York University and obtained the degree of Master of Business Administration in June, 1925.

Q. During the period of time you were in college did you work in between times? A. I worked my way through college. I borrowed money from my sister to supplement my earnings and I paid her back when I was finished.

40 Q. Well, describe, if you will, the condition of the household that you lived in with your mother

Frederick Charles Reich, direct.

and your father at 39 Charles Street. A. 39 Charles Street, Jersey City, was not in good condition.

Q. I am referring to the years 1924 to 1926. A. '24 to '26 in detail. In the first place, let's take the outside condition of the house. The house had been painted but my father had not repaired the fence. It was in a dilapidated condition, and the back stoop was in poor condition; one of the posts had rotted and the banisters were loose. My father had sawed off this and nailed a little piece of white pine over. The other banister was shaky. Coming to the inside of the house, the hall gas jet, even when turned on full, was less than an inch in length, the pipes were so stuffed up; in fact, when my mother went to the door she failed to recognize people because the gas was so dim.

Q. Did the house have a bath-room? A. The house had no bath-room. My sister's room had no door on it. There was no clothes closet in my sister's bed-room. There was no clothes closet in my father and mother's bed-room in the rear of the house.

Q. Let me ask you, what were the living conditions there during the years 1924 and 1925? A. During the winter of 1924 and 1925 the place was very difficult to keep warm on cold days.

Q. What were the means provided by your father for heat? A. Three coal stoves were provided and with an oil heater for my room we tried to keep warm.

Q. Who took care of the place and did the housework? A. My mother.

Q. Did you notice during that period of time your father's attitude towards your mother? A. Yes.

Q. Describe in detail what you saw, if anything;

Frederick Charles Reich, direct.

10 what you observed. A. My father frequently would not talk to my mother. I do not say he did not converse with her at all; he did occasionally; but the conversation was rare. There were long stretches of time when he would not notice her; when he was sitting at the table, for instance, if he wanted to have a row there was certain tell-tale sentences you could see in my father's face. If he was looking at a piece of steak he would make some remarks and take a knife and carve out the bone, and so on. He didn't often say anything; he often did things to indicate his feelings without saying anything. That was just one instance. I could write a whole book of instances if you would permit me, to detail a few.

20 Q. No, we will save the Court that experience; I want to just get it brief. Did you at any time ever threaten your father? A. I don't understand that question, Mr. Brown.

Q. Your father, in the course of his testimony, referred to some threat; you heard his testimony? A. I couldn't hear it, no.

Q. Did you make any threat to him during the years 1924, 1925, or 1926? A. Absolutely no.

30 Q. Did you at any time try to run his household for him? A. Absolutely no.

Q. Did your father's course of conduct, in the way of not speaking to your mother, extend to other members of the family? A. Yes, my father didn't speak to me from around December, 1915, with the exception of the interval when I was discharged from the army in 1918; that was the first time he had spoken to me since 1915.

40 Q. While you were in the army did your father ever write you? A. My father never wrote me a letter all the time I was at college, to the best of my memory.

Frederick Charles Reich, direct.

Q. Now, during the period of time during 1924, 1925, and 1926, up to the time you moved to Rutherford, did your father converse with you during that time? A. My father never conversed with me from September, 1922, until the present time, with the exception of two or three arguments. 10

Q. What was his attitude towards your brother Walter? A. My father seldom noticed my brother Walter for about the same period of time.

Q. What was his attitude toward your brother George? A. His attitude towards my brother George was outrageous.

Q. I don't want that conclusion; I want to know what he did by way of talking to your brother George. Did he converse with him? A. My father, when he had an argument with him, seemed to become embittered to him as to all the members of the family, although they weren't in it; and he was even distant to them. Before George was engaged he tried to bring his fiancée's people to the house and my father absented himself whenever those people came; and he threatened not to go to George's wedding. 20

Q. Did he go there? A. Yes.

Q. Did he go with the rest of the family? A. He did not. I went there with a party consisting of my mother and about five other ladies, and when we got out there on the street we met father on the street hunting for the number. 30

Q. Did your father ever take your mother to any places of amusement that you know of? A. I can remember when he took her to Keansburg in 1922. I can remember vaguely several other places since then, but not the last couple of years that we lived there I cannot remember a single instance when he went out with my mother. 40

Frederick Charles Reich, direct.

10 Q. Did you ever hear your father, in the course of his conversation with her, call your mother by her first name? A. My father absolutely strove, apparently to the utmost of his ability, to get by without calling her by her first name. When he wanted food he would sit there and fidget in his chair and he would not speak, and frequently he would lounge the whole length of time rather than ask to have it passed. If Florence wouldn't pass it to him he wouldn't ask anybody else.

20 Q. What was your mother's attitude in the way of greeting your father when he came home? A. My mother never failed to say "Hello, Fred" to my father, and he would stare at her and he would look as though he was going to cry and then turn his back up her.

30 Q. Do you remember your mother, during the year 1925, speaking to your father about her inability to do all the work around the house because of her condition? A. My mother continually kept at my father for years telling him of the condition of the stove, saying it was unfit for use; that she would burn gas and make a double bill, and that the ashes from the stove were terrible, and the coal gas was bad; and she complained about the condition of the home in a good many other ways, and this was an incessant complaint.

Q. Did you have any animals around the house?
A. We had a cat.

Q. Did your father ever make any remarks in connection with that cat? A. He made a remark, but I can't swear that I was there when he made it.

40 Q. Then don't tell it. Did you notice any other peculiar actions or conduct on the part of your father? I am referring to the years 1924, 1925 and 1926. A. Why yes. One of the things that was

Frederick Charles Reich, direct.

particularly noteworthy was the fact that he went out alone. Sometimes he told us where he was going and sometimes he didn't. Frequently he would take a nap on a Saturday afternoon, and about half-past five or so he would run out and look at things in the kitchen and start to upbraid my mother about not having his meal ready. To the best of my knowledge, he hadn't told my mother that he was going out and asked her to have the meal ready, but he told her he was going out then and bawled her out for not being ready. 10

Q. Did your mother or any other members of your family have any discussion or conversation with your father with reference to moving, during the month of August, 1926? A. Well, I never had any discussion with my father. 20

Q. Did your mother talk with him in your presence? A. Yes.

Q. What did she say during the month of August? A. My mother told him first—I don't remember the date—that she had looked at a place in Rutherford, which seemed to be satisfactory from the standpoint of expenses and location and family needs and so on, and she asked him if he would come out and look at it. 30

Q. All right; what did he say? A. I don't remember that he said anything. I can't be sure of that.

Q. What did those premises have in the way of bathroom accommodations? A. There was no bathroom—

The Court: He has told us about that. (Addressing the witness.) Haven't you told us about that?

A. Yes, but there were other points. 40

Frederick Charles Reich, cross.

10 Q. What other things were there about the house? A. The furniture in the parlor was in a terribly dilapidated condition; the springs were coming out; the webbing was broken and giving way. One time a girl was sitting on it and the thing gave way and it was very embarrassing. There were two parlor chairs in the back bedroom which were unfit to use.

Q. Who contributed to your mother for the support of the family? A. I paid \$6 a week to my mother, and in addition after George was married I paid also \$10 a month; in addition to that Walter and I bought one ton of coal.

Cross examination by Mr. Lane:

20 Q. In September, 1926, what was your occupation? A. I was employed as assistant to the director of Business Bureau Research of the New York University.

Q. What was your income? A. I don't remember.

Q. What is your income now? A. Is that important?

30 Mr. Brown: That is a personal question. I don't see that it is relevant to the issue.

The Court: Is it important?

Mr. Lane: I think it is very important.

Mr. Brown: I withdraw the objection and request the witness to answer.

40 A. At the present time my salary is for the work I do for the Business Research, \$3,000, and in addition to that I lecture at the University two or three or four times during the year in the school of business administration in the New York University, for which I receive a compensation of \$100, and another time \$50.

Frederick Charles Reich, cross.

Q. Well, you knew that your father's income was only about \$1,800 a year, didn't you? A. No, I did not know that. Our family never knew what my father earned; he was very reticent with us and we didn't know what he earned a good many years. We might know what he earned when he was on the trolley cars way back 10 or 15 years ago, but in recent years we never knew what he earned. 10

Q. You knew that he was a silversmith? A. Yes.

Q. Now, you say you always paid \$6 a week?

A. I paid—

The Court: And \$10 a month.

A. Yes, \$10 a month from November, 1924, when George was married, until September, 1926. 20

Q. Do you know what your other brother paid?

A. To the best of my knowledge we all paid the same.

Q. You say that the gas in this house was so dim that your mother couldn't recognize whoever came in? A. I said in the hallway.

Q. And that was because of not being blown out? A. Yes.

Q. And that would cost \$4.50? A. I don't know now. The last time I know it was that. 30

Q. Did your mother ever pay for having it blown out? A. No, sir.

Q. She had the money to pay for it? A. Yes.

Q. Were you making \$3,000 then? A. No, sir.

Q. Were you making \$2,500 a year then? A. I think I was making \$2,500, yes.

Q. And you did not have the money? A. I did not. I was paying my college debts.

Q. And you were paying your sister? A. Yes. 40

Q. Did you speak to your father about the gas? A. Yes, I did.

Frederick Charles Reich, cross.

Q. When? A. In September, 1922, and he hasn't spoken to me since.

Q. What did you say to him in September, 1922?

10 A. In the first place, my mother and my father were sitting there eating our evening meal Sunday night; and there was no one else there but us three. My mother and my father were discussing the fixing the gas and, as usual, my father was evasive, and I asked him if he couldn't have Mr. Edgar, the plumber, and he didn't know whether Mr. Edgar could fix those things. He had had Mr. Edgar fix something previously, and I knew that he knew and he knew that I knew that he could fix those things. We had lived there from November 1st, 1900, until then, and this condition had
20 become so annoying and I was paying my board at that time, and I started to say something and my father very abruptly told me to shut up; and I told him that I was going to talk and he was going to listen, and I went on and pointed out that my father was neglecting the condition of the home that he had promised to do. A new piece of zinc under the stove was needed.

Q. Do you know how much the zinc cost? A. No.

30 Q. Why didn't you buy it? A. Because I was contributing my share to my mother each week, as my share of the rent, and I was paying off my college debts.

Q. And you made up your mind you wouldn't pay any more than \$6 a week? A. That doesn't represent my contribution. I spent \$80 for bookcases and a big chair, previously.

40 Q. And you also bought an automobile? A. Indeed, no, sir; I had no money for an automobile.

Q. Your brother did? A. Yes. He didn't go to college.

Frederick Charles Reich, cross.

Q. Your brother didn't have an automobile, did he? A. No, sir.

Q. You were living in this house till about September, 1926? A. Yes, sir.

Q. And in addition to these coal stoves that you were talking about, there was some kind of gas log? A. Yes, there was. 10

Q. In the parlor? A. Yes.

Q. And your father, in September, 1926, had done some painting in the kitchen? A. Well, let us talk about the gas first, Mr. Lane.

Q. We are talking about the painting of the kitchen right this minute. A. The kitchen needed it. My mother hired the place in Rutherford because it was so filthy and the ceiling so black where we were. 20

Q. When did your mother hire the place in Rutherford? A. Some time in August. I didn't keep track of the date.

Q. Your father started painting the kitchen when she hired the place, didn't he? A. I don't remember, Mr. Lane.

Q. Now, why did you leave the home there? A. Because my mother had taken a place in Rutherford and the family was moving. It did not develop until the last minute that my father absolutely would not go; but I had nothing to do with the moving; I had not suggested moving; I had not asked to move, but when they asked me if I would go to Rutherford I said that my attitude was that I was willing to cooperate, that's all. 30

Q. You didn't have any talk with your father, or go to your father and ask him why he didn't go out to Rutherford? A. No; I was not on speaking terms with him. He had not noticed me for that three-year period. 40

Frederick Charles Reich, cross.

Q. By the way, you said your father wrote you when you were at war? A. No, I should have said to my mother.

Q. You never sent him a postal card even, did you? A. No, sir.

10 Q. Did you ever give him a Christmas present in the last six years? A. I don't recall when the last time was. You see, my ideas are these—

Q. I don't care about your ideas; the question is did you give your father a Christmas present in the past six years? A. I will say "no."

Q. Did you ever say that inasmuch as your father had forced you children to move to Newark some years ago that you and the children, or you alone, would make your father move to Rutherford? A. Absolutely no; but it is absolutely true that my father when he wanted to move to Newark did it first as a threat to get my mother away from her work.

20 Q. What work? A. My mother was taking in sewing at the time.

Q. Did you ever say to anyone that your father wanted to sell the house so that your mother wouldn't work? A. Why, I believe I have told friends that, yes.

30 Q. When? A. Well, I can't recall. Yes, I do know that a friend of mine, whose name my father mentioned; he had a conversation with my father and he suggested to my father that he sell the house.

Q. Since you moved you said that? A. No, before we moved.

Q. Was one of the reasons you moved because Italians moved in the next house? A. That had nothing to do with my attitude at all.

40 Q. Did you see these letters written by your

Frederick Charles Reich, cross.

father to your mother? A. I thought I saw some of them, if not all of them.

Q. Then you talked the matter over with your mother at the time she received these letters, didn't you. A. My mother showed me some of these letters, not all of them.

10

Q. Will you look at them and tell me which ones she showed you?

Mr. Brown: I don't want to object, but I can't see any purpose in the question.

The Court: Well, it is cross examination and I think I will allow it.

Mr. Lane: I'm not going very far.

A. Yes, I saw that letter.

Q. That is P-1; how about P-2? By the way, do you have to read it all the way through to tell whether you saw it or not? A. No, that is not it; as soon as I saw where he said about tears coming to his eyes—

20

Q. Do you remember it? A. Yes, I remember that.

Q. Then you saw that letter, P-2? A. Yes.

Q. How about P-3? A. I don't know about that.

Q. You are not sure about P-3; is that it? A. I am not sure about P-3.

30

Q. Did you know at the time the family moved from the house that your father had refused to go with you, didn't you? A. Yes.

Q. And when did you first know about that? A. Well, I couldn't state the exact date, but it was some time in August.

Q. And you talked it over with your mother, of course, before you went? A. We—

Q. Yes or no. A. To a certain extent, yes.

Q. And did your mother say that she was going

40

Frederick Charles Reich, cross.

10 anyway, whether he came or didn't come? A. I don't recall any such conversation. I am not certain whether he was going or not. This attitude my father took was the same attitude he took in moving back from Newark in 1917. He said he wasn't going and I knew my mother believed there was a chance he would go. This was merely a second instance of the same precedent that he had established.

Q. Now, your mother was perfectly willing to have him go there and live with her? A. Yes.

Q. And your mother was perfectly willing to live with your father at that time? A. Yes.

Q. And she so stated it to you, or in your presence? A. Yes, I heard her ask him.

20 Q. To go and live with him? A. Yes.

Q. Now, when was it that you first heard that your mother wouldn't live with your father, if you heard it at all? A. I didn't hear any such thing.

Q. When did you talk over these two letters, P-1 and P-2, with your mother; when she received them? A. I believe the day that she received them she showed them to us and she said she got a scolding in one of the letters.

30 Q. Did she say that she was going to reply to them? A. Well, I don't recall that she committed herself as to what she was going to do. She seemed to be up in the air.

Q. Didn't you talk with her about it? You are the oldest son? A. I am the oldest son.

Q. And when you asked her about the letters didn't you ask her if she would reply to them? A. I did.

40 Q. What did she tell you? A. I don't recall; I'm not sure whether she replied to any of them.

Frederick Charles Reich, cross.

Q. And did you hear about this time he went out to the house in 1928, September, if it was that time that he came out with some man? A. Yes.

Q. You heard about that? A. Yes.

Q. And you talked over with your mother the appointment that was to be made for Tuesday night? A. My mother told me when I came home that Sunday night that she had made an appointment for Tuesday night. 10

Q. What did you say? A. I said I thought they were trying to frame her up.

Q. What did you mean by that? A. That they were merely trying to get evidence.

Q. And you advised her to write and say you would cancel the appointment? A. I didn't advise her at any time as to what she should do, but she could tell from my attitude that it was a mistake to dicker with my father and a strange party acting the way they were in trying to get evidence. 20

Q. Did you know that she had written this letter, P-4? A. Yes.

Q. Did she write it in your presence? A. I don't believe so; but I asked her what she wrote and she told me just exactly what she had written there. 30

Q. You didn't get back until Sunday night? A. Not until Sunday night.

Q. What time? A. Late in the evening.

Q. What do you mean by that, 11 or 12 o'clock? A. No, 9 o'clock.

Q. Had she written the letter when you came home? A. Not to my knowledge, she hadn't.

Q. You stayed in the house after you got back? A. Yes.

Q. To your knowledge, did she write it that night? A. I don't remember. 40

Walter E. Reich, direct.

Q. Oh, by the way; there is just one more question: You say you were paying back debts for the schooling? A. Yes, sir.

10 Q. Did you pay back to your father the \$500 that he paid to the school? A. He didn't loan me any money.

Q. Did he pay \$500 to the school for you? A. I don't understand what you mean.

Q. Did you pay to your father any part of the \$500 that he paid to the school that you attended? A. No, sir.

Redirect examination by Mr. Brown:

20 Q. Did you ask him to make a contribution to the school? A. No, sir; he did it without my knowledge.

WALTER E. REICH, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Brown:

Q. Walter, you live with your mother at Rutherford? A. Yes, sir.

30 Q. And prior to the 1st day of September, 1926, you had lived with your mother and father and your brothers and sister at the address 39 Charles Street? A. Yes.

Q. And did you observe, centralizing in point of time your thought on the years between 1924 and the first of September, 1926, your father's attitude towards your mother? A. Yes.

40 Q. And what was your mother's attitude with reference to speaking to your father? A. My mother always spoke to my father when he came home; she would say "Hello, Fred" and he wouldn't notice her or answer her.

Walter E. Reich, direct.

Q. Did your father for any time refrain from speaking to your mother? A. Yes.

Q. For how long a time up to September, 1926? A. At times for several weeks and sometimes longer.

Q. Did you notice the course of your father's conduct at the dinner table? A. Yes; if the only one at the table was my sister he would not ask to have things passed to him; he would reach over. We would set the food down before him and he would not say "thank you"; he would always help himself. 10

Q. What was his attitude towards you and your brother with regard to carrying on conversations with you boys? A. We just didn't carry on conversation. 20

Q. Did you notice anything in particular during the Christmas holidays in 1925. A. Yes, I remember distinctly that my mother wished him a Merry Christmas that morning and he didn't answer.

Q. Now, do you know whether your father was aware of the fact that you folks were looking at a house in the suburbs during the year 1926? A. Well, I believe he was.

Q. Don't "believe," we want to know what you know. A. Yes, I am sure that my father knew that someone in the house had. 30

Q. Did you ever hear your mother talking about it? A. Yes.

Q. When was your brother George married? A. About five years ago this coming November.

Q. 1925? A. 1924, in November, I believe.

Q. Where did the wedding take place? A. Why, the wedding took place in Newark, St. Paul's M. E. Church. 40

Q. Are you the brother that had the car? A. Yes, sir.

Walter E. Reich, direct.

Q. Did you have any conversation about taking your father out? A. Yes, I was going to take him out in the car, but he refused to come. My mother asked him to come with us, but he said no, he had a ticket.

10 Q. How did he go? A. He took the train.

Q. And all the rest of the family went in the automobile? A. Yes, sir.

Q. How did he return? A. He returned by car, because I was late as it was.

Q. Do you recall, during that period in the last two years you were home, any friend calling to see either you or your brother, and observing any remarks made by your father? A. Why yes, I know one night a gentleman whom we have known
20 all our lives by the name of Taylor came in and greeted my father and asked him how his wife was, and he did not answer; he just turned his shoulder to my mother; that is, he always turned his shoulder to my mother when she was talking to guests at all times; he just tried to ignore her.

Q. So that we can get it on the record will you say just how he turned his shoulder; explain that a little more what you mean by it. A. If some-
30 one said, "How is your wife" and you wouldn't answer and if my mother was there with my father talking to some person he would look at that person and he would not look at my mother, and he would turn his shoulder to the side and talk to that person until my mother got through and talk again.

Q. Do you know a man by the name of James MacMillan? A. Yes, sir; I do.

Q. Do you recall any instance during that period when he was around? A. Yes, he visited us.
40

Q. Did anything occur while he visited you? A.

Walter E. Reich, cross.

Yes, he asked the same question how my mother is, and my father did not answer, and I think after a moment or two my sister Florence said, "She is all right," but he did not answer.

Q. What was the condition of the house during the month of August and prior thereto of 1926; describe the rooms just as they were furnished by your father while you lived there? A. In the first place, in coming into the house the hall light was very dim and very frequently the light would blow out and allow the gas to escape. It was so dim that my mother could not recognize guests; and the toilet was right off the kitchen, a little boxed-in affair with no outside ventilation, nothing other than opening the door which did not allow any privacy. 10 20

Q. Did it have any light in it? A. The only light was the little window which came through the kitchen.

Q. What was your mother's condition during those last few years? A. I knew that she had been complaining continuously of her feet; they would swell up. I knew that she bathed them practically every night; and I knew that she got all the rest that she could; and I knew from time to time that she would diet. 30

Q. Did your father know that? A. I believe he did.

Q. Did your mother suffer from rheumatism? A. Yes, I noticed that she was in bed for ten weeks at one time, and she exhibited it spasmodically since then, from time to time.

Cross examination by Mr. Lane:

Q. Did you write a postal card to your mother about August 23, 1928, or just before? A. I believe I did. I was on my vacation. 40

Walter E. Reich, cross.

Q. In which you said, "If anything comes up write me immediately"; what did you mean by that?

Mr. Brown: When was that?

10 Mr. Lane: 1928.

A. 1928, was it? No. 1926, you mean?

Q. 1926, I mean. A. Yes.

Q. What did you mean by that? Did you think of any trouble coming up because your mother was going to move? A. No; things were indefinite. I didn't know one week before we moved that my father wasn't going.

20 Q. What did you mean by "trouble"? Did you anticipate trouble? A. I mean just then that my father hadn't said yes or no when my mother had asked him to come to Rutherford. You see, we had gotten this place in Rutherford and paid our deposit shortly after I left for my vacation.

Q. Who is "we"? A. My mother and I.

Q. When did you leave on your vacation? A. The last two weeks in August, over Labor Day.

30 Q. So that during all of those two weeks before September 1st, 1926, you were away and you don't know what was taking place in the home, do you? A. That's true; I did not.

Q. Were you there August 15th when your mother first told your father that she had taken this place? A. I believe it was August 15th; yes, sir.

Q. Are you sure that you were? A. I'm not sure of the date.

40 Q. When did you leave to go on your vacation? A. Last two weeks in August; I don't recall the exact date.

Q. Was it Saturday or Friday? A. I think it was a Saturday morning.

Walter E. Reich, cross.

Q. And you work for the Standard Oil Company, don't you? A. Yes, sir.

Q. And in September, 1926, you were paying \$6 a week board and \$10 a month rent? A. I believe so; yes, sir.

Q. You are quite certain of it, aren't you? A. Yes. 10

Q. What was your income at that time, approximately? A. About \$2,400 a year.

Q. And you say that the gas in the house was bad? A. Yes, sir.

Q. Why didn't you go and have it blown out if your father wouldn't do it? A. Well, I didn't think it was my duty to do it.

Q. So it wasn't so bad that you would prefer to live in it than to have it blown out; is that so? A. Well, the light downstairs in the two rooms my brother and I had was pretty good, and inasmuch as we did our studying down there the light was all right; but upstairs it was very poor. 20

Q. Did you ever tell your father that you would break in the kitchen door if he locked it? A. I might have, but I don't remember it. I am not sure.

Q. Do you recollect around this time, shortly prior to September, 1926, any such action, telling him you would break in the kitchen door if he locked it at night? A. I may have said that shortly after the evening I arrived home, but I don't remember it. 30

Q. You may have said that because you would come home late at night and he would lock the doors so that you wouldn't disturb him? A. No, I wouldn't say that.

Q. You didn't have much to do with your father during all these years? A. No, sir. 40

Walter E. Reich, cross.

Q. And you wouldn't speak to him any more than he would speak to you? A. That's correct.

10 Q. Why did you leave the house, then, in September, 1926? A. Well, I knew that my mother had been suffering, due to overwork; that these things were brought on her shoulders and my father wouldn't help her to bring up the coal and do the heavy work taking care of three stoves, and I knew her feet was bad; of course, we would do it when we were home. That, with the fact that the kitchen stove was broken and the ashes blew all over the place, dirtied the place and making it unhealthy; and the fact that we had no modern improvements whatever, no running hot water, no bath and no electric light; and I knew that my 20 sister had no door leading into her room for privacy, and the only way we could take a bath was to heat the water in a little tub which was two and one-half feet long and the same width; we had to stand erect in it; and I knew the condition of the home in general was poor, and I do know I remember my mother asking my father to replace the furniture in the parlor. We were willing to contribute for new furniture to replace the dilapidated furniture that was there, and he said 30 if we moved that old furniture out he would put it back again; that it was good enough for him, or words to that effect.

Q. But it wasn't good enough for you? A. That's correct.

Q. Did you ever tell your father that you would contribute to replace that furniture? A. Perhaps I did not, but my mother did.

40 Q. Did you ever tell him? A. No. I wasn't talking to my father.

Q. Did your mother tell him, in your presence? A. No, I don't believe so.

Walter E. Reich, cross.

Q. You were willing to contribute towards buying new furniture but you were not willing to contribute towards having the gas pipe blown out or having the stove fixed? A. Probably the question was never brought up.

Q. You were the one that went around with your mother to find this place? A. Yes. 10

Q. And you talked with your mother about moving away? A. That's right.

Q. And your mother, to your knowledge, made up her mind that she was going to move, even if he did not go with her? A. No, sir.

Q. What did you say about moving? A. My mother and I went out to try to find a place that was more satisfactory to everybody. It was not a personal matter. We went to save distance in my car. 20

Q. And, therefore, it wasn't for any other reason, so far as you knew, than the fact that you all didn't like this house and you decided to move away? A. That was the chief reason, the condition of the home.

Q. Well, was there any other reason? A. Well, and as my mother explained before, I would say words to that effect, perhaps the environment and the fact that we got into a nicer place would induce him to act a little more differently. 30

Q. You say that that might be so? A. That's an opinion that I formed myself.

Q. At that time? A. Yes, sir.

Q. And you know that your mother received these letters from your father, saying that he wouldn't go there? A. Yes, I remember seeing this letter.

Q. Asking her to come back and live with him? A. Yes. 40

Walter E. Reich, cross.

Q. Did you talk with your mother about her living at Charles Street? A. Yes.

Q. And she said she wasn't going to reply to those letters? A. I don't remember.

10 Q. Did she say she was or was not going back to live with him in Charles Street? A. I don't know. I think I left that to my mother.

Q. And you didn't say one way or the other? A. I don't think I did.

Q. Were you away from the house when your father came there? A. Yes.

Q. And you talked about the appointment your father made for Tuesday night? A. My mother mentioned it to me, yes.

20 Q. Did you talk it over with her, whether she should go ahead with the appointment or cancel it? A. I left that up to her. It was immaterial to me. What she cared to do it was all right with me.

Q. Do you know whether she wrote a letter cancelling the appointment? A. No, sir.

Q. When did you first hear that? A. After she had written and mailed it.

Q. Before Tuesday night? A. Oh, I guess so.

30 Q. You have lived in that house since you came from Newark? A. Yes.

Q. When you went out to Rutherford you took your furniture with you, didn't you? A. Yes, we took all that we purchased ourselves.

Q. One question more: What time did your brother George get married? A. It was night, I believe the 10th of November, 1924.

Q. Your father at that time worked in Newark? A. Yes, sir.

40 Q. Your father had arranged to go to the place and he was waiting on the sidewalk waiting for you when you got there? A. Yes, sir; at the wedding.

George William Reich, direct.

GEORGE WILLIAM REICH, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Brown:

Q. George, how old are you? A. 29.

Q. Where do you live? A. Glen Rock, New Jersey. 10

Q. When were you married? A. November 21, 1924.

Q. And when did you leave the home? A. I left the home when I was married, November 21, that afternoon.

Q. Prior to that period of time did you ever notice your father's attitude towards your mother? A. Yes, I did notice it.

Q. What did you observe; what did you see? Tell us in detail everything you observed. A. Well— 20

Mr. Lane: Is that prior to 1924?

The Court: Yes.

Mr. Lane: I renew my objection that it is too remote. The petition says, from the early part of 1924.

Mr. Brown: Well, if the Court please, it is really accumulative of what has gone before. I think probably your Honor has got in mind the case is going to turn on some of the things it will turn on. 30

The Court: Well, I suppose he might tell what he observed. You see, the defendant says that she only complains of the treatment from the spring of 1924 on. Now, as I understand it, he lived with them until the fall, November.

Mr. Brown: I want to show by this witness not only the direct fact, if he knows, 40

George William Reich, direct.

but also the father's conduct and treatment of his son,—not that it has any direct bearing, but circumstantially bears upon the matter and is corroborative to that extent.

10 The Court: Are you willing to confine him to what he observed after 1924?

Mr. Brown: Yes.

Q. Did you visit the home of your mother after you went away? A. You understand I was married in the fall of 1924, I was home from the spring of 1924 until the fall.

Q. Did you observe anything from the spring of 1924 until the fall of 1924, with respect to the conduct of your father towards your mother? A. 20 Father didn't treat my mother right—

Q. Give us the facts, not the law.

The Court: What did you hear and see?

A. Father would never carry on a conversation with mother; I would say "very seldom" instead of never. He would come home nights and mother would say, "Hello, Fred" and he would sit down or go to his room—sit down at the table; and then he would finish before the others and he would 30 take his chair when he had finished, and turn his back directly to my mother and read his newspaper.

Q. After you married in the fall of 1924 did you return home? A. Very frequently.

Q. Did you notice, then, up to the first day of September, 1926, his course of conduct and treatment of your mother? A. The same condition continued.

Q. What do you mean by that? A. That he 40 wouldn't converse with mother; he wouldn't talk even to me; after I was married he was half-way

George William Reich, direct.

decent to me and talked with me, but he wouldn't talk to mother. The boys would be to school and mother would be without coal and I would go down and get the coal.

Q. Was she physically strong enough to carry this coal? 10

Mr. Lane: I object to that.

Mr. Brown: It will take me 10 or 15 minutes to find it out and I will save time this way. Of course, if you persist in your objection—

Mr. Lane: I do persist in my objection.

Mr. Brown: All right; I will develop it for you.

Q. What was your mother's physical condition? 20

A. My mother's physical condition was bad, especially her feet.

Q. Tell us what it was, what you observed, what you saw? A. Mother's feet were in poor condition. I observed it in this way: She was bathing her feet after being on her feet in the daytime, and I saw her rubbing her feet with witch-hazel in the kitchen.

Q. Do you know whether she was suffering with anything; if so, what? A. Rheumatism. 30

Q. What sort of rheumatism did she have? A. Articular rheumatism.

Q. What part did it affect her? A. Her feet and hands and knuckles would swell.

Q. Did that incapacitate her from doing housework or make the housework difficult? A. It certainly interfered.

Q. Now, did you hear your mother and father talking about disposing of the house down on Charles Street and moving to the suburbs? Just 40

George William Reich, direct.

answer "yes" or "no." A. No. I heard them talking about moving back from Newark into the suburbs.

10 Q. Was that your father's idea? A. Yes, we moved from Newark and came back to Charles Street because we couldn't rent a place for a time.

Q. Did you have occasion to visit the house, or were you visiting the house, during the months of July and August, 1926? A. Yes, I visited there.

Q. During that period of time did you hear your mother talk with your father about going to live in Rutherford? A. I didn't, no.

Q. Let me ask you, has your father ever since you left home visited you? A. Never.

20 Q. Have you any children? A. Two.

Q. Did you ever have any christening out at your home in which you invited your father? A. No, not christening; I sent for him at the time my children were born.

Q. Did he ever make any comment about it or the fact that you had any children? A. No; I met him after the first child was born and he said "How's the baby?" but he never came to see us.

30 Q. Were you at the house in the night of July 31st, 1926? Did you drive over in your car? A. August 31st.

The Court: You mean the night before they moved?

Mr. Brown: Yes.

A. Yes.

Q. Did you hear any conversation between your mother and your father at that time? A. No.

40 Q. Did you notice your father's attitude? A. He never even talked with me.

Q. Did you greet him? A. I greeted him.

George William Reich, cross.

Q. Did you notice whether he was conversing with the other members of the family that evening? A. He did while I was there.

Q. What did you observe in regard to his condition of mind? A. He was very excited.

Q. What prompted you to say that? A. Why, his actions; he was jumping up and running into his bedroom and closing the door and staying there for awhile and coming out again and repeating the procedure. 10

Q. During the month of December, 1926, or the month of January, 1927, did you ever meet your father in Newark? A. Yes.

Q. Where did you meet him? A. On the jitney bus going from that part of Newark to the North Newark station. I greeted him and sat alongside of him. 20

Q. Did you talk with him? A. I tried to talk to him, and he said, "How's the baby?" and I said "Fine; come over and see us sometime." And then he said to me, "Did you hear about the dirty trick they played on me?" I said, "What do you mean?" He said, "They left me all alone" and with that he came to his place of employment and he got out. 30

Cross examination by Mr. Lane:

Q. George, your relations with your father were fairly good? A. Starting at what time?

Q. Well, the time you got married? A. They were not.

Q. And for how long prior to that had they not been? A. About a year and a half.

Q. What was the cause of any trouble between you and your father? A. The fact that he insulted my mother and I wouldn't stand for it. 40

George William Reich, cross.

- Q. What do you mean by "insulted your mother"? A. I was home Saturday afternoon in 1923, and I was in the living-room reading a newspaper and I heard an argument in the kitchen between my father and mother.
- 10 Q. Was that about the selling of the house or signing a deed to the house? A. I think not.
- Q. Did you hear about the argument in May, 1924, about signing a deed of the house? A. I can't recall that argument.
- Q. Did you ever hear your father talk about selling the house? A. I can't recall that.
- Q. Your father has been to your house since you got married, hasn't he? A. At the first anniversary.
- 20 Q. He took part in the games and everything was lovely? A. Yes.
- Q. You got married in 1924? A. Yes.
- Q. When was your baby born? A. November, 1926.
- Q. And that all happened after your mother had left your father's house? A. Yes.
- Q. Did you ever go to your father and ask him why he didn't go up and live with you in Rutherford? A. No.
- 30 Q. Why not? A. It wasn't my duty.
- Q. Did you ever talk with your mother as to whether he was going out to Rutherford? A. Yes, I often talked with my mother, and they didn't know whether he was going out to Rutherford or not.
- Q. When was this? Was it before they moved? A. Yes.
- 40 Q. How about after they moved? A. After they moved they didn't know whether he would come or not.

Katharine Herzog, direct.

Q. They got the letter from him, saying that he would not come, in reply? A. They claimed that they did. They told me at the time that they did.

Q. Now, when you were in there August 31st, that was the night before they were going to move, you knew they were going to move and you came there on that day purposely? A. Yes. 10

Q. Did you bring your wife with you? A. No, I didn't.

Q. Why did you come in; did you expect trouble? A. No, Walter was on a vacation and he had his car with him and I had my car.

Q. Did you ask your father whether he was going? A. No, because if I asked him he wouldn't answer me.

Q. You knew that the relation was quite strained there? A. I did not. 20

Q. Did you speak to your mother about whether he was going? A. I asked her whether he was going and she said she didn't know.

(Miss) KATHARINE HERZOG, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Brown: 30

Q. Where do you live? A. 58 Jefferson Avenue.

Q. How long have you lived there? A. A year and a half.

Q. Prior to that where did you live? A. 39 Charles Street.

Q. Do you recall meeting Mr. Reich on the first day of June at that address? A. Yes.

Q. And did you hear any conversation between Mrs. Reich and her husband at that particular time and place? A. Well, she came and asked "Is he 40

Katharine Herzog, cross.

home," and I said "No, he is at work; I believe he went to Newark."

Q. Come right down to the conversation you heard between the two of them when he came home. A. She said "Hello"—

10

By the Court:

Q. Who said it? A. Mrs. Reich.

By Mr. Brown:

Q. What did he say? A. He didn't say anything; he didn't answer, but he said "coming back?" and she said, "Why not come back to us; we have a nice place," and he didn't answer. He turned his back and went up the stoop. Then I heard no more said about it.

20

Q. Just where in respect to the street or the yard did this conversation take place? A. Just about right near the gate by the stoop.

Q. You mean the front gate? A. The front gate. Of course, he went in and she stayed there.

Q. Did he invite her in at any time during the course of his conversation? A. No.

Cross examination by Mr. Lane:

30

Q. Mrs. Reich was on her way out when Mr. Reich came along? A. Yes.

Q. And she was out down the stoop in the yard going out the gate? A. At the gate, yes.

Q. And then Mr. Reich came along? A. Yes.

Q. She was inside of the gate and Mr. Reich was outside of the gate? A. Of course, she stood aside to let him in.

40

Q. She stood aside and Mr. Reich walked past her? A. He stood there, then walked a little further, and then went up the steps. I was up more on our part of the steps.

Katharine Herzog, cross.

Q. She had come down to your house to get some dahlia roots or bulbs that you had kept for her? A. She said, "I will leave them in your woodshed; will they be all right?" and I says, "Yes."

Q. And when she came there did she ask about her husband, or did you tell her? A. She asked if he is in and I says "He is not in now; he is not working." 10

Q. What did she say when you said he is not working? A. She couldn't say anything when he was not there.

Q. I mean, what did Mrs. Reich say when Mr. Reich asked her if she was coming back? A. She says, "Come out to our place; we have a very nice place." 20

Q. Did he say whether she was coming back or not? A. She didn't say anything.

Q. Did you tell Mr. Reich if he went out there to Rutherford it would not be his home? A. I did not; I never interfered with his family affairs. No, I wouldn't meddle with his affairs.

Q. When was it that you lived in this place 39 Charles Street? Were you living there when they moved away? A. Yes, but I wasn't home at the time.

Q. There was heat in the hall, wasn't there? A. It wasn't a very healthy place. They had gas heat, as far as I know, and there wasn't any bathroom. 30

Q. Did Mrs. Reich tell him that they had come back to live with him? A. No, she never spoke on that.

Mr. Lane: Defendant rests.

Rebuttal.

COMPLAINANT'S REBUTTAL.

FREDERICK W. REICH, recalled in his own behalf, in rebuttal, testified as follows:

Direct examination by Mr. Lane:

10 Q. Mr. Reich, was it your custom not to speak to your wife during this period from 1924 to 1926?

A. No, not regularly. At times I didn't have anything to say; because of the provocation I felt sore. I didn't have any row; I kept quiet.

20 Q. What happened in June when you met Mrs. Reich at the house? A. June the 1st, no, June the 8th, on a Wednesday, I came home and as I got near the house I saw two women on the front porch. I had no idea at the time who they were, and I walked in, and Miss Herzog and Mrs. Reich were on the stoop, Mrs. Reich standing on the top step; and I said "Hello," and then I said, "Are you coming back?" and she said, "No, you come to our place; we have a very nice place." And then she beat it; I had no chance to talk to her. It looked as though I took her by surprise; she thought I was working. Miss Herzog told her that I happened to be out of work at that time; it was
30 entirely unexpected for me to be there, and Mrs. Reich came there to get those bulbs. She had no idea I was home.

Q. Did you go to Culver's Lake with your wife in 1925? A. My wife went out there before I went there. George, my married son, his wife's people, had a place at Culver's Lake and asked me if I would go out there, and I went out there at the time. I think one was missing, I don't know which one.

40 Q. How about going to Westfield? A. I went to Westfield in company with my wife, my wife's people lived out to Westfield and I went there.

Rebuttal.

Q. What year was this? A. The year I went to Culver's Lake, I think. I am not certain about the year.

Q. What about the coal gas in this house? A. There were times when the gas did escape. I have been there all along for three years, and at times I would notice a little coal gas but not all the time. 10

Q. Have you lived in that same house alone? A. All alone, and I still have that stove. I admit that it isn't as good as it might be, but it gives out good heat.

Q. Did you tell your children if they took out any of the old furniture and brought new furniture to take its place, the old furniture would be put back? A. I did not. Mrs. Reich said to me, "If we knew where to put that furniture we would buy a new parlor suite." Of course, I didn't want that furniture to be shoved down the cellar. 20

Q. Did Miss Herzog say anything to you about the house out in Rutherford not being your house and not somebody's else house? A. One day I was explaining to Miss Herzog why they went away—

Mr. Brown: I am going to object to that.

Mr. Lane: All right; I will withdraw it. 30

No Cross Examination.

Mr. Lane: That is the case.

Conclusions.

(After the arguments were made on both sides the Court then announced its conclusions as follows):

BENTLEY, V-C. (orally):

10

It will be impossible for me to do any more than to indicate as succinctly as possible my reactions to the proofs. This is a petition for divorce, filed by a husband against his wife who files a counterclaim. The husband charges actual desertion; the wife—I am not entirely sure whether she charges extreme cruelty or constructive desertion based upon cruelty.

20

They were married 34 years ago, in 1895, and have brought up four children who are an exceptional credit to them. I have been very, very favorably impressed by every one that has testified.

In 1911, trouble broke out between them, and the petitioner filed a petition alleging sexual desertion. That petition was dismissed and, subsequently, in 1914, another suit was initiated by him, which resulted in a settlement by the parties and a reconciliation.

30

They appeared to have lived together from 1915 to 1924, or 1914, whenever it was, in reasonable comfort. The defendant says that in 1924 the attitude of her husband changed, and from that time until they separated finally, his conduct was unendurable; that he returned from his employment on the night of September 1st, 1926, and discovered that his family had gone and taken with them most of the furniture of the home.

40

The defendant justifies her having left him in that way, and I have no doubt that this man had known for weeks, if not months, that she was

Conclusions.

going to leave. She explains her leaving by saying that the physical condition of the household and the conduct of the petitioner made it impossible for her to live there. She says that he would not talk to her for long periods of time; that he would not answer questions nor engage in conversation; that he would turn his back on her when he did respond to any of her questions, and it was in a disagreeable manner. I am convinced that she left because the woman's pride was injured. I don't suppose that any decent woman would continue to live with a man and merely take his bread and butter after she felt his affection for her was gone. I think that was the situation here.

10

Now, I have said in the case of *Arnabaldi v. Arnabaldi*, why a spouse cannot justify withdrawal except for the offense that our law recognizes as a ground for divorce. Those grounds, of course, are three: Adultery, desertion, or extreme cruelty. She has proven neither of them against the petitioner, and I must find that her leaving was without legal justification, and, therefore, she cannot succeed under her counterclaim.

20

On the other hand, although she left without legal justification I don't think that she left without some justification and, therefore, the case *Hall v. Hall*, 60 N. J. Equity, becomes applicable; and if her leaving was in any degree the result of his conduct not amounting to a matrimonial offense, then he, as the stronger member of the union, cannot succeed in his petition for divorce unless he shows that he made such effort as a reasonably just man would have made to secure her return, who had left, in some degree, as the result of his conduct. The only effort that has been made to

30

40

Conclusions.

meet that situation, as far as I can recall now, are the three letters that were first admitted in evidence, Exhibits P-1, P-2 and P-3. The first one expressed the hope that she would return. Not one word in it asking her to come back; there was not
10 one thing said to indicate to her that conditions would be changed and he would in the future endeavor to make her happy and agree to make up to her in the future any trouble he had caused her. There was not a thing calculated to bring back the happy relation that had existed before the trouble arose. The other two letters were no more effective in that regard. I think if this man had in the slightest degree wanted to change the situation he
20 would have accepted her invitation to at least come out and see the place where she was living. That might have brought back the days when they had been happier before their troubles broke out in the first place.

So far as their attempt to go back to the first or second litigation between these parties, I can't consider that. I can't help whether she failed in her matrimonial duties years and years back; nor can I help whether she proved before me that he
30 was guilty of extreme cruelty prior to their reconciliation. Those were condoned, and neither one of them, so far as the proofs before me showed, has been guilty of any matrimonial wrong. Of course, the result, as I have said, is that neither of them is entitled to a divorce and both the petition and counterclaim will be dismissed.

If there is any question that counsel cannot agree upon between themselves I will fix the terms of the decree, on notice.

40

*Exhibits.***Exhibit P-1.**

LETTER, PETITIONER TO DEFENDANT, DATED
SEPTEMBER 23, 1926.

39 Charles St
Jersey City 10
N J.

Dear Lizzie:—

I think it is more lonesome at 39 Charles St, with only a few cats as companions, but it is a condition over which I had no control, and was not of my making, and I must make the best of it.

I told you, when you said you were going to move to Rutherford, that "I would not go," and I was never more determined in anything. And it matters not how nice the place is, I will not change my mind, so it would only be wasting time for me to go and see the place. 20

Our home is here, and I wish you had not moved away. I know I can't force you to come back, but I sincerely hope you will do so.

Your husband,

FRED. 30

Sep 23rd/26

*Exhibits.***Exhibit P-2.**

LETTER, PETITIONER TO DEFENDANT, DATED
AUGUST 2, 1927.

10 39 Charles St
Jersey City
Aug 2/27

Dear Lizzie:—

You left me over ten months ago. Three weeks after you went away, I received a letter from you, which I answered the the day I received it, but to my letter I received no answer from you.

20 More than once tears came to my eyes to know that I am left alone at my time of life. I have been forced to suffer the humiliation of being deserted by you, both in this neighbor-hood, and elsewhere; but for all that I will not stultify myself by moving to Rutherford, and in addition to that I know I would never feel at home there. It would not be my home, and this fact would act on my mind at all times, with perhaps serious results were I to go and live there.

30 You have been obstinate and stubborn very often during our married life, but I hope that in this matter you will no longer be determined to have your own way, and that you will yield to my desire, and come back to our Jersey City home, where we lived for over twenty-five years. If you do so, for my part I will try to forget that you ever left me alone.

Hoping you will change your mind, and come back to live at 39 Charles St

I am your husband

40

FRED.

*Exhibits.***Exhibit P-3.**

LETTER, PETITIONER TO DEFENDANT, DATED
MARCH 3, 1928.

39 Charles St
Jersey City
N J. 10

Mar 3rd/28.

Dear Lizzie:—

I wrote you last summer and you have failed to answer my letter, still showing you are unrelenting.

I wish to impress on you that it is both your duty, and my earnest desire that you return to our home. 20

Would also like to remind you of the vow you took when we were married. "Until death do us part."

Have not yet found one person who knows us, that justifies you in going away without me.

For me to write a more lengthy letter to you now, altho my impulse is to do so, would be for me to repeat what I wrote you before in my appeal to have you come back. I refer you to my other letters, as my sincere wish. 30

Your husband

FRED.

*Exhibits.***Exhibit P-4.**

LETTER, DEFENDANT TO PETITIONER, RECEIVED
OCTOBER 1, 1928.

10 27 Wingra Ave.
Rutherford N J.

Mr. Fred W. Reich,

I hereby cancel the appointment for Tuesday
evening Oct. 2nd.

S. ELIZABETH REICH.

Exhibit P-5.

20 CERTIFIED COPY MARRIAGE CERTIFICATE.
BOARD OF HEALTH AND VITAL STATISTICS
OF THE
COUNTY OF HUDSON, N. J.

No. 71
Court House

Jersey City, October 4th 1928

—o—

30 A TRANSCRIPT FROM THE RECORD OF MARRIAGES
IN THE COUNTY OF HUDSON, N. J.

Vol. 3 Page 135 Registered No. 6723

Date of Marriage—May 21st 1895

Full Name of Husband—Frederick William
Reich

Residence—535 Garden St Hoboken N J.

Age—28 Color—White

No. of Husband's Marriage—One

40 Occupation—Silver finisher

Husband's Birthplace—America

Exhibits.

Name of Father—Theodore
 Name of Mother—Martha Hughes
 Full Name of Wife—Sarah Elizabeth Charles
 Wife's Birthplace—America
 Residence—187½ Sherman Ave Jersey City N J.
 Age, Nearest Birthday—24 Color—White 10
 Name of Father—Abraham
 Name of Mother—May Jane Morris
 No. of Bride's Marriage—One
 Minister or Person Officiating—Rev E. O. How-
 land
 When Recorded—May 31 1895

I, WM. A. PURCELL, Registrar of Vital Statistics
 of the County of Hudson, State of New Jersey, do
 hereby certify that the transcript of the record of 20
 the marriage of Frederick William Reich and
 Sarah Elizabeth Charles hereto attached, is a true
 and correct transcript of the record of the return
 originally made according to law.

(Seal) WM A. PURCELL
 Registrar of Vital Statistics.

Exhibit P-6. 30

NOTE LEFT BY DEFENDANT WHEN SHE LEFT HOME
 SEPTEMBER 1, 1926.

Send gas bill to 1st house Wingra Ave.

*Exhibits.***Exhibit P-7.**

LETTER, DEFENDANT TO PETITIONER, DATED
SEPTEMBER 26, 1926.

10 27 Wingra Ave.
Rutherford
N. J.

Dear Fred

It is very lonesome here without you & I wish that you would come & see this house.

You always liked the house at 739 Summer Ave. Newark. which I rented. You said then that you would not go but came with us & liked it very well.

20 If you will come, take the Lyndhurst Rutherford bus at the North Newark station which stops at the Erie depot Rutherford. Walk over to railroad gates at Park Ave. & get on the Jackson Ave. bus. Get off at Jackson Ave & turn right and walk about 2 blocks to Wingra Ave.; turn left & walk one short block to Vanderburgh Ave. & a few steps to #27. It is the first house on the street & is built of stucco.
Hoping to see you soon

30 I remain as ever

Lizzie

40

Decree of Dismissal.

(Filed April 17, 1931.)

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK W. REICH,
Petitioner,

and

SARAH ELIZABETH REICH,
Defendant.

70/209.

On Petition, etc.
Decree of Dis-
missal.

10

This cause coming on to be heard in the presence of Carey & Lane, of counsel with the petitioner, and Thomas H. Brown, of counsel with the defendant, on the petition, answer and counterclaim, and answer to counterclaim, and oral proofs taken in open court, whereupon, and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel, and it appearing to the Court that the petitioner has not sustained the truth of the allegations of the petition and is not entitled to the relief therein prayed, and that the defendant has not sustained the truth of the allegations of her counterclaim and is not entitled to the relief therein prayed for;

20

30

It is thereupon on the 17th day of April, A. D. nineteen hundred and thirty-one, ORDERED, ADJUDGED and DECREED that the petitioner's petition and the defendant's counterclaim be and the same are hereby dismissed.

E. R. WALKER,
C.

Respectfully advised

J. O. BIGELOW,

V. C.

40

Notice of Appeal.

(Filed May 6, 1931.)

IN CHANCERY OF NEW JERSEY.

10	Between FREDERICK W. REICH, <i>Petitioner,</i> and SARAH ELIZABETH REICH, <i>Defendant.</i>	70/209. On Petition for Divorce. Notice of Appeal. (Sat Below WALKER, C. BENTLEY, V. C. BIGELOW, V. C.)
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20 The above named petitioner, Frederick W. Reich, hereby appeals from the final order or final decree filed in this cause, made by the Chancellor on the advice of Vice-Chancellor John O. Bigelow, bearing date the 17th day of April, A. D. 1931, and from that part thereof which recites and finds that the petitioner has not sustained the truth of the allegations of the petition and is not entitled to the relief therein prayed, and orders, adjudges and decrees that the petitioner's petition be dismissed, to the Court of Errors and Appeals in the last resort in all causes.

30 Dated May 1, 1931.

CAREY & LANE,
Solicitors for and of Counsel
with Petitioner.

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

HARRY LANE,
Of Counsel with Petitioner.

40 (Service of copy duly acknowledged.)

Petition of Appeal.

(Filed May 16, 1931.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

FREDERICK W. REICH,
Petitioner-below,
Appellant,

and

SARAH ELIZABETH REICH,
Defendant-below,
*Respondent.*On Petition for
Divorce.
On Appeal from
Chancery.
Petition of Appeal.

10

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

20

The petition of Frederick W. Reich, the appel-
lant, respectfully shows:

That your petitioner finds himself aggrieved by a final order or final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John O. Bigelow, bearing date the 17th day of April, A. D. 1931, in that said order or decree recites and finds that the petitioner has not sustained the truth of the allegations of the petition and is not entitled to the relief prayed for therein, and that said decree further recites and orders, adjudges and decrees that the petitioner's petition be dismissed.

30

And your petitioner appeals from that portion of the said order or decree which recites and finds that the petitioner has not sustained the truth of the allegations of the petition and is not entitled

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Petition of Appeal.

10 to the relief therein prayed, and which further
recites and orders, adjudges and decrees that the
petitioner's petition be dismissed upon the ground
that the same is erroneous in that the said Chan-
cellor should have recited and adjudged that your
petitioner, the petitioner-below, had sustained by
his proofs the truth of the allegations of the peti-
tion filed herein, and was entitled to the relief
prayed for in said petition, and that the proofs
sustained the allegations of said petition that the
defendant-below deserted the petitioner on the
first day of September, A. D. 1926, ever since which
time, and for more than two years prior to the
filing of the said petition, said defendant had wil-
fully, continuedly and obstinately deserted your
20 petitioner, and that your petitioner made bona
fide efforts to have his wife, the defendant, return
to him, and that the proofs further showed that
any efforts on behalf of the petitioner to have his
wife, the defendant, return to him would have been
unavailing and fruitless, and that your petitioner
was entitled to have a decree entered dissolving
the marriage between your petitioner and the de-
fendant for the cause set forth in said petition, ac-
30 cording to the statute in such case made and pro-
vided.

Your petitioner therefore prays that the portion
of said order or decree which dismisses the peti-
tion of your petitioner may be reversed, rescinded,
and for nothing holden, and that it may be decreed
that your petitioner is entitled to the relief prayed
for in his petition, and that a decree may be di-
rected to be entered in the Court of Chancery dis-
solving the marriage between your petitioner and
40 the defendant for the cause set forth in said peti-
tion, according to the statute in such case made

Order Refusing to Re-settle Decree.

and provided, and that your petitioner may have such further relief as may be meet.

CAREY & LANE,
Solicitors for and of Counsel
with Appellant.

10

(Service of copy duly acknowledged.)

Order Refusing to Re-settle Decree
Nunc Pro Tunc.

(Printed at Request of Counsel for Respondent.)

(Dated May 26, 1931.)

IN CHANCERY OF NEW JERSEY.

20

Between

FREDERICK W. REICH,
Petitioner,

and

SARAH ELIZABETH REICH,
Defendant.

70-209.

Order Refusing to
Re-settle Decree
Nunc Pro Tunc.

30

This matter coming on to be heard, on notice of motion duly served and acknowledged, and the same being opened to the Court by Thomas H. Brown, solicitor of the defendant, and in the presence of Harry Lane, of Carey & Lane, solicitors of the petitioner; and the said Thomas H. Brown having moved to re-settle the decree signed in this cause on the 17th day of April, 1931, dismissing the petition and cross-petition herein, so that said decree would *nunc pro tunc* the date upon which the decision that the said petition and cross-petition

40

Order Refusing to Re-settle Decree.

be dismissed, was actually announced by the Court rendering the same.

10 And it appearing that the cause was tried before the late Honorable John Bentley, Vice-Chancellor, on October 14, 1929, at the termination of which trial, a decision was announced by him from the bench, that the petition and cross-petition should be dismissed, that thereafter and before a decree was signed formulating said decision announced, the said Honorable John Bentley, departed from this earth;

20 And it further appearing that no further steps were taken by either side, towards formulating and settling a decree in accordance with the decision announced by the said Honorable John Bentley, until April 17, 1931, when, on the motion of said Harry Lane, the Chancellor signed the decree dismissing the petition and cross-petition as hereinabove stated; and the Court having heard the arguments of counsel, and being satisfied that the decree heretofore signed should not be disturbed or re-settled in the manner requested or in any manner,

30 IT IS thereupon on this 26th day of May, 1931, ORDERED, that the aforesaid motion be and the same is hereby denied.

E. R. WALKER,
C.

Respectfully advised
J. O. BIGELOW,
V. C.

29 FEB.T.1932

New Jersey Court of Errors and Appeals

Between

FREDERICK W. REICH,
Petitioner-below,
Appellant,

and

SARAH ELIZABETH REICH,
Defendant-below,
Respondent.

On Petition for
Divorce.

On Appeal from
Chancery.

REPLY BRIEF OF APPELLANT.

In Point IV of his brief, counsel for respondent contends that "appellant's laches worked a waiver of appeal herein."

We have never heard of any laches or lapse of time other than that of the time limited by statute for appeal being held to be a waiver of the right of appeal.

It is true that in this case the decree was not signed until after the death of Vice-Chancellor BENTLEY, who heard the case. According to the record there was no objection made to the entry of the decree at the time it was advised by Vice-Chancellor BIGELOW (see Decree of Dismissal, p. 137), and it is a fact that there was no objection or suggestion of an objection until after the notice of appeal had been served. The notice of appeal was dated May 1, 1931, and after having been served was filed May 6, 1931 (p. 138). Subse-

quently, application was made to Vice-Chancellor BIGELOW for the resettling of the decree by antedating it. In the first place, it would seem that this could not be done after an appeal had been taken and was pending and consequently, that the action of the Vice-Chancellor in refusing to antedate the decree to a date which would prevent an appeal being taken, was entirely proper.

As to whether it is the duty of counsel for a losing party to enter a decree or the duty of the successful party, it seems to us that the duty is on the successful party. Certainly, no appeal could be taken until the actual entry of the decree. If counsel for respondent desired to start the time for appeal running all that was necessary was for him to apply to the Court and have the decree entered. All that Chancellor WALKER held in the case of *Hudson Trust Company v. Boyd*, 80 N. J. E. 267, was that a decree is appealable, irrespective of any enrollment, immediately upon its being signed.

As to the quotation from the opinion in the case of *Norfolk & New Brunswick Hosiery Company v. Arnold*, 49 N. J. E. 397, it has absolutely no application to this question, which, by the way, was rendered by Vice-Chancellor VAN FLEET and not Chancellor MCGILL. All that the Vice-Chancellor held, as has been uniformly held in numerous cases, was that a party defrauded in a bargain must elect to rescind as soon as circumstances permit after the discovery of the fraud.

In relation to Rule 132A of the Court of Chancery, counsel did not invoke that rule before the decree was actually signed, and in fact, if he had, if the Vice-Chancellor in his discretion had decided that the party to whom such order or decree be granted should be deemed to have waived the entry thereof and all benefit and advantage there-

from, the result would simply be that the case would have to be retried in the Court of Chancery.

We submit no appeal could have been taken until the decree was actually entered, that the appeal was taken within the statutory time thereafter and that no lapse of time other than that specifically limited for the taking of an appeal would be a bar to the appeal.

Respectfully submitted,

CAREY & LANE,
Of Counsel with Appellant.

No. 29, February Term, 1932.

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[5343]

29 FEB.T.1932

New Jersey Court of Errors and Appeals

Between,

FREDERICK W. REICH,
Petitioner-below,
Appellant,

and

SARAH ELIZABETH REICH,
Defendant-below,
Respondent.

On Petition for
Divorce.

On Appeal from
Chancery.

BRIEF OF APPELLANT.

Statement.

This case comes up on appeal from a decree of the Court of Chancery dismissing appellant's petition for divorce (p. 137). For convenience, appellant will hereafter in this brief be designated as petitioner, and the respondent as defendant. The decree also dismissed defendant's counterclaim for a divorce *presumably based* upon the ground of extreme cruelty.

The petition sets forth that the petitioner and defendant were married on September 13, 1900, at Jersey City, N. J.; that the defendant deserted petitioner on the first day of September, 1926, ever since which time and for more than two years prior to the date of the filing of the petition she has wilfully, continuedly and obstinately deserted

the petitioner (p. 1). The answer is a general denial of the desertion (p. 3). Included in the answer is a counterclaim designated as "cross-petition" wherein the defendant prays for a divorce upon the ground as stated before, *presumably* extreme cruelty. The case was tried before the late Vice-Chancellor BENTLEY, who, at the conclusion of the case, rendered his oral conclusions (pp. 128-130). In his conclusions the Vice-Chancellor determined that the defendant left petitioner "*without legal justification*" and that she had proven neither of the grounds for divorce recognized in our state, and that therefore her counterclaim should be dismissed. The Vice-Chancellor further held, however, that although the defendant had left petitioner and remained away from him over the statutory period without any legal justification, that nevertheless, the petitioner was not entitled to a decree for the reason that he had not made proper efforts to have her return to him.

Before the decree was signed Vice-Chancellor BENTLEY died and the decree was advised by Vice-Chancellor BIGELOW. From that portion of the decree which dismissed the petition of the petitioner this appeal has been taken. (See Notice of Appeal, p. 138.)

Grounds of Appeal.

The grounds of appeal are found in the petition of appeal printed in the record on page 139. Briefly they are: that the decree dismissing petitioner's petition was erroneous and that the Chancellor should have adjudged that the defendant was guilty of wilful, continued and obstinate desertion of the petitioner for the term of two years as alleged in the petition, and that petitioner was en-

titled to a decree of divorce. Further, that the proofs show that the petitioner made *bona fide* efforts to have his wife, the defendant, return to him, and that the proofs further show that any efforts on behalf of the petitioner to have his wife, the defendant, return to him would have been unavailing and fruitless.

BRIEF OF THE ARGUMENT.

Under the evidence petitioner was entitled to a decree for divorce on the ground of desertion.

In commenting on the testimony I have refrained from referring to the testimony respecting allegations of cruelty extended toward the defendant by petitioner except in so far as may be necessary in a discussion of the questions involved for the reason that the Vice-Chancellor determined that there was no "legal justification" for the wife's leaving and remaining away from her husband, and no appeal has been taken from this determination, and for the further reason that unquestionably there is no proof of any extreme cruelty which would justify the defendant in leaving her husband and remaining away from him.

In this connection I desire to refer to that portion of the Vice-Chancellor's conclusions wherein he said: "nor can I help whether she proved before me that he was guilty of extreme cruelty prior to their reconciliation. These were condoned, and neither one of them, so far as the proofs before me show, have been guilty of any matrimonial wrong" (p. 130). I do not think that the Vice-Chancellor intended by this statement to convey the impression that he was convinced that there

was proof of extreme cruelty prior to the reconciliation for a reading of the record will indicate that this issue was not tried before the Vice-Chancellor nor was the defendant cross examined on this point, and no evidence was offered on behalf of the petitioner in respect to this question. *It cannot therefore be conceded that there was proof in this case of extreme cruelty prior to the reconciliation.*

Likewise, there is no question as to the fact that the wife did leave the petitioner and did remain away from him for the statutory period of two years prior to the institution of this suit. The real points in this case simmer down to the following two propositions:

(1) Did the petitioner make the necessary *bona fide* efforts to have his wife return to him?

(2) Did the evidence disclose that any efforts on the part of the petitioner to have the defendant return to him would have been unavailing?

Therefore, there is no question as to the continuance or the wilfulness of the desertion. The only question remaining is as to whether or not the desertion was obstinate.

I.

The desertion of petitioner by defendant was wilful, continued and obstinate for a period of two years.

As stated before, there is no question as to the wilfulness or the continuity of the desertion. The only question is as to its *obstinacy*. On this question a brief reference to the evidence bearing on this point is helpful.

It appears from the evidence that the parties were married on May 21, 1895. That up to the time the defendant moved to Rutherford, N. J., with the exception of a period of two or three years, the parties always lived in Jersey City, N. J. There were two prior divorce cases between the parties. One in 1911, which was started by the petitioner against the defendant on the ground of desertion, which was heard by Vice-Chancellor GARRISON, and which resulted in a dismissal of the petition. Following that another suit was started by the petitioner against the defendant for desertion in 1914, which suit was dismissed without prejudice upon the parties resuming cohabitation together. After the dismissal of the second suit the parties resided together until the first of September, 1926, when the defendant left the home, taking with her the unmarried children, *against the protests of the husband*, and that she has since refused to live with the husband. That the husband owns the home in which they lived and has continued residing in the home up to the time of the trial but that the wife has refused to return to the home. Furthermore, she has refused to sign a deed so that the house could be sold. The Vice-Chancellor after hearing the case determined that the wife left without any legal justification. The husband, before the institution of this suit, both by letters and personally, attempted to effect a reconciliation and have his wife return to him. These offers on his part were persistently refused by the wife. The testimony clearly shows not only that the husband made *bona fide* efforts to have his wife return to him, but that any efforts on his part would have been unavailing.

TESTIMONY.**A.****On the Question of Obstnacy Solely.**

Benjamin D. Van Beuren:

The testimony of Mr. Van Beuren is contained on pages 13-18. He testified on direct examination that on the 28th day of September, 1928, he went to the home of the defendant with the petitioner; that they got out of their automobile and walked up he stoop, and Mr. Reich rang the bell; that Mrs. Reich came to the door; that Mr. Reich started to talk to her and she said, through the door—she didn't open the door, "I refuse to talk to you; you have had a chance and I have none." That Mr. Reich answered, "I understand; I merely wanted to ask you to come back," but Mrs. Reich walked away and made no answer, and they left (p. 14). That on September 29th, the next day, Mr. Van Beuren, Mr. Reich and his brother drove out to Mrs. Reich's house in an automobile; that Mr. Van Beuren got out of the car and walked up and rang the bell. Mrs. Reich came to the door and Mr. Van Beuren said, "Mr. Reich is in the car; will you talk to him now?" and she said "No." Mr. Van Beuren asked her when she would talk to him and Mrs. Reich said she would see him on October 2nd in the evening, and said that her children, who were away for the week-end, would then be present (pp. 14-15).

They did not go back on October 2nd for the reason that Mrs. Reich wrote a letter to Mr. Reich (Exhibit P-4, p. 134), in which she cancelled the appointment.

Frank J. Reich:

The testimony of Frank J. Reich, a brother of the petitioner, is found on pages 18-19 and is

simply to the effect that Mr. Reich had continued to reside at his home in Jersey City since the separation, and also that he was a witness to the mailing of the letters written by Mr. Reich to his wife (Exhibits P-2 and P-3). It is admitted that the defendant received these letters (p. 19).

Frederick W. Reich (petitioner):

Mr. Reich testified as to the marriage in 1895 in Jersey City; that his wife moved away on September 1, 1926, and that since that time they had not cohabited together (p. 19); that they had been living at that time at No. 39 Charles Street, Jersey City; that he had owned the house since 1897 and had lived in the house continuously since 1897 with the exception of a period of three and one-half years about thirteen or fourteen years ago, when they had lived in Newark (p. 20).

That on September 1, 1926 Mr. Reich went to work in the morning and when he came back from work at night he found a note on the table (Exhibit P-6); that a couple of weeks before, Mrs. Reich asked him if he would go to Rutherford and look at a place out there and he refused to go. That a few days after that Mrs. Reich told him that she and the children had looked at the place and decided to take it, and he said, "Well, I didn't intend to move; I intended to stay here; our home is here and if you want to desert me that's up to you." That she replied, "We are not deserting you; we want you to come." That he replied, "I don't intend to come; I'm going to stay here" (p. 22).

That his wife and children were going to go on September 1st and that he didn't know whether they meant it or not, and didn't think that they would go without him going with them (p. 22).

That back in 1906 Mrs. Reich had withdrawn herself sexually from him for years and that a reconciliation was subsequently effected by coun-

sel for him and for defendant about 1914. He was asked as to why he did not go to Rutherford with his wife and stated that he had one house; and another thing was that Mrs. Reich at various times would not agree to sell, and that another reason why he did not desire to go was because a son who had threatened and insulted him wanted to go.

At the bottom of page 23 he was asked as to whether or not he was desirous of having his wife come back and he testified that he was *even to the extent of stopping his suit then and there*. On page 24 he testified as to the attempts to see his wife personally when Mr. Van Beuren was with him in September, 1928, and on page 25, that he did not go on Tuesday evening, October 2nd, because of the receipt of the letter from Mrs. Reich cancelling the engagement (Exhibit P-4).

On cross examination he was asked as to whether he was not embittered against his wife and whether that feeling did not go back to 1911 when the first suit was dismissed by Vice-Chancellor GARRISON, and he replied, "Of course, in between the years had been forgotten and wiped out entirely, so far as I was concerned" (p. 26).

Also on page 31 he reiterated that he had refused to go up and look at the house in Rutherford.

Counsel for defendant on cross examination attempted to show that the embitterment between the wife and the husband was caused by his sisters who lived with him, but on page 35 he testified that they had not lived at that place for over twenty years. Further, that two weeks before his wife left, he painted the kitchen walls and that when he was painting them, Mrs. Reich looked up and said, "Oh, but we don't intend to stay."

Also, on page 36, that his wife did not suggest what they were to do with the house that he owned in Jersey City if they moved to Rutherford.

Miss Florence E. Reich:

Miss Reich, daughter of the petitioner, testified that she and her mother had been living in Rutherford since September 1, 1926, and that her father had not been living there.

The testimony showed and it was admitted that after the desertion, the petitioner wrote to the defendant three letters asking her to come back; one on September 23, 1926 (Exhibit P-1, p. 131), one on August 2, 1927 (Exhibit P-2, p. 132), and one on March 3, 1928 (Exhibit P-3, p. 133). The defendant wrote letter to the petitioner (Exhibit P-7, p. 136). In error it is stated that this letter was dated on September 26, 1926. As a matter of fact it appears from the record that this letter was sent just prior to the letter, Exhibit P-1, which was sent by petitioner to defendant on September 23, 1926, immediately in reply to Exhibit P-7 (see p. 23, l. 25).

Defendant's Case.

Florence E. Reich:

Miss Reich further testified when called as a witness for the defendant that the feeling between her father and mother had never been very friendly (p. 39), nor had he gotten along with her three brothers at all (p. 39). That she had never spoken to her father about going to live at Rutherford (p. 45). That her mother however had asked him to come to Rutherford and he refused (p. 46).

On page 49 she testified that she was determined to go with her mother to Rutherford whether her father was going or not.

On page 51 she testified that when her father and mother wanted to buy a house in Belleville that her father said they would buy the house, *if her mother would sell the other house*, and further, that she had heard her mother say that

she would not agree to sell the house (p. 51). At the foot of page 51 she testified that her father had been very good to her. On page 52 she admits that she never asked her father to go out and live with her. On page 54 she admitted knowing that her father had written her mother letters to come home, and also that they moved out the furniture when they left and that the house looked "rather bare."

Sarah E. Reich (defendant):

Mrs. Reich's testimony is found on pages 55-94. I will only refer to that portion of her testimony which reflects on the question of obstinacy.

On page 61 she admitted that she refused to sign to sell the house. She admitted that she wrote Mr. Reich the letter, Exhibit P-7 (p. 63). At the bottom of page 64 she stated that the reason she moved from 39 Charles Street was because she wasn't happy there with her husband; that he was cruel and did not speak to her. (The Vice-Chancellor decided that there was no sufficient cruelty to justify her in leaving) and this is entirely contradictory to her statement that she desired him to go out and live with her at Rutherford.

On page 64 she admitted that she did not answer Mr. Reich's second letter.

The testimony of Mr. Van Beuren and the petitioner as to the attempted visits in September, 1928, and as to her refusal to talk with her husband were corroborated by her on page 65.

On cross examination, Mrs. Reich testified that way back in 1911 she would not have sexual intercourse with her husband for about two years (p. 69); that after the reconciliation in 1914 she continued to live with her husband without much trouble until 1924 when her husband wanted her to sign the deed to the house which she refused.

On page 72 she testified that her husband had done some inside painting in the house after she told him that she was going house hunting; that she spoke to him about moving to Rutherford about the 10th of August; on page 75 she testified that when she asked him to move to Rutherford he said that he was not going; she said that when she left on September 1 she did expect her husband to go with her even though in the next breath she said that she knew that he was a very determined man.

Her testimony on page 77 shows that Mr. Reich did give his children a grammar and high school education, and two sons went to college.

On page 80 she testified that she did not tell Mr. Reich when the moving van was coming because he had told her that he was not going and that she had told him that she had paid the deposit for the place and she intended to go.

The following testimony appears on page 80:

“Q. Did you want him to go with you? A. Yes.

“Q. So his treatment of you was not so bad, on the whole, before this that you didn't want your husband to go with you? A. I thought the change would do him good.”

On page 83 she admitted receiving Exhibit P-1 (letter of September 23, 1926) *and that she did not answer it*. Likewise on page 84, *that she did not answer petitioner's letter dated August 2, 1927 (Exhibit P-2)* and her only reason was that she did not think they were sincere. Likewise, at the foot of page 84, *that she did not reply to his third letter dated March 3, 1928 (Exhibit P-3)*.

It is not clear from her testimony on page 86 as to whether she left the home because of the condition of the house or because of the petitioner's treatment of her. She admits, however, that petitioner's sisters had not been to the house since

the reconciliation in 1914. On page 87 in one breath she said that she had always loved her husband, and in another that she did not know:

“Q. Then you loved this man, did you, at that time, in September, 1926? A. I think I have always loved him.

“Q. And you loved him when you wouldn't even cohabit with him? A. I don't know, Mr. Lane.”

On pages 90 and 91 she testified to one occasion when she went back to the house at three o'clock in the afternoon and saw the tenant on the first floor. She testified she went there to get some dahlia bulbs which the tenant had been keeping for her. She testified that she expected to see her husband although a reading of the testimony shows that this statement does not ring true. She admits that he at that time asked her if she was coming back again.

At the foot of page 91 she was asked as to when she had made up her mind that she would not go back and live with her husband and she answered that she did not know that she ever made up her mind exactly.

The following testimony appearing on pages 92 and 93 as to why she cancelled the appointment in September, 1928, for her husband to come out and see her when her children were present is very important:

“Q. You were perfectly willing to talk with your husband, particularly in the presence of your children? A. Yes. Why not?

“Q. Then if you made this appointment to be out there on Tuesday night when your children would be present, why was it you sent him this belated notice to cancel the appointment? A. Because he insulted me the day Mr. Van Beuren was there and I feared he would do it again.

"Q. Which day? A. Friday, September 28.

"Q. Immediately the next day was the day of the appointment for Tuesday? A. Yes.

"Q. Why was it you made the appointment for Tuesday if he insulted you the day before? A. Well, I am rather easy-going and I think I would let it go if it would be all right.

"Q. So you didn't want to shame your husband in the presence of your children? A. No, not exactly that, but my husband was very aggressive when he came.

"Q. You had no fear if your children were present? A. Well, if he said anything I knew there would be trouble, so far as I am concerned. I wouldn't care to have it happen.

"Q. What do you mean by 'trouble'? A. Well, if he insulted me again I knew my sons would resent it—both of them.

"Q. Is that the reason you cancelled the appointment? A. I didn't want to be insulted and I didn't want any trouble.

"Q. And because of that, you refused to talk with your husband or have him come there to talk with you in the presence of your children? A. Just what do you mean, Mr. Lane?

"Q. Because you didn't want to be insulted and you didn't want any trouble you refused to talk with your husband out in your house in the presence of your children? A. Yes. I was worrying about that strange man, too; he acted suspicious.

"Q. Why, then, didn't you write to Mr. Reich and say you would see him if he came alone? A. I don't know why I didn't.

"Q. So you consoled yourself by writing this letter and you did nothing further? A. No, nothing further."

Frederick Charles Reich:

The testimony of Frederick Charles Reich, a son, is found on pages 94-108.

He admitted on page 103 that his father had refused to go to Rutherford to live. Further, that his mother showed him the letters written by his

father to her to which she sent no reply (p. 106). Further, about the cancelling by his mother of the appointment with his father on October 2nd. He is the oldest child and a reading of his testimony on pages 106-7-8 shows that his mother talked over the matter and he was in accord with her decision not to reply to Mr. Reich's letters and to cancel the appointment for Tuesday night. Likewise, the same conclusion may be drawn from the testimony of Walter E. Reich, another son, on page 116. Also the testimony of the other son, George W. Reich, on page 123, is to the effect that his mother, when she moved, did not know whether Mr. Reich would go to Rutherford or not, and that his mother told him about receiving the letters to the effect that he would not go.

Mrs. Catherine Herzog:

Mrs. Herzog's testimony is found on pages 123-125. She is the lady who lived downstairs in Mr. Reich's house and overheard the conversation between Mr. Reich and Mrs. Reich when Mrs. Reich came back for the dahlia bulbs, and she heard Mr. Reich ask Mrs. Reich if she was coming back. Her testimony corroborates Mr. Reich's testimony on rebuttal on pages 126-127.

A consideration of the testimony on both the petitioner's and defendant's case shows conclusively that prior to the leaving in September, 1926, Mrs. Reich had on a previous occasion withdrawn herself from intercourse with her husband. That this had been patched up. That there were two previous divorce suits instituted by the petitioner, the last of which had been dismissed without prejudice when they became reconciled. That apparently when her children become self-supporting, she determined to separate herself from her husband and move to Rutherford with her un-

married children. That unquestionably she knew that her husband would not go with her and she made the effort to get him to go to Rutherford to live knowing that he would not come and simply as a gesture. She had been through two prior divorce suits and in this way attempted to show that there was no desertion on her part. The law is well settled that a husband has the right to determine the place to live. She attempted to prove that the home was not a proper home, but it had been their home for thirty years and was owned by the petitioner. She also attempted to prove that she was obliged to leave him because of his extreme cruelty. Her proof miserably failed in this respect and the Vice-Chancellor rightly held that she left the home *without legal justification*. There could be no question from the evidence but that she persistently refused to return to the petitioner; as a matter of fact she did not answer his letters and she cancelled an appointment made by her with her husband at his solicitation. *The petitioner even went so far as to state on the witness stand that if she would return, he would stop his suit right then.* There can be no question but that when the defendant left the home, she intended to leave her husband and not return to him, and that any efforts on his part would have been unavailing.

B.

The efforts of the petitioner to have the defendant return to him were *bona fide*.

The Vice-Chancellor dismissed the petition solely on the ground that he was not convinced that the efforts of the husband to have his wife return to him were *bona fide*. The Vice-Chancellor cites the case of *Hall v. Hall*, 60 N. J. Equity 469. We con-

tend that the opinion of Chief Justice GUMMERE in that case is squarely in our favor and will comment on it further under the following point.

The testimony shows that when the defendant brought up the subject of moving to Rutherford the petitioner said that he would not go. She admits that she did not tell him when the moving van was coming to move them and the van came and they moved while the petitioner was at work. The petitioner testified that he did not believe that the defendant would carry out her threat to move unless he went with her.

On September 23, 1926, he addressed a letter to his wife in which he asked her to come back, stating that when she told him she was going to move to Rutherford that he had told her that he would not go and further that he was never more determined in anything and that it would therefore only be wasting time for him to go and see the place. That their home was in Jersey City and he wished she had not moved away and sincerely hoped that she would come back (Exhibit P-1, p. 131).

The defendant made no answer to petitioner's letter, Exhibit P-1, which was sent immediately upon the receipt by him of her letter, Exhibit P-7, in which she asked him to go out and see the house in Rutherford. He immediately responded and said in Exhibit P-1 that he was determined not to move to Rutherford and it would therefore be only wasting time for him to go and see the place. He had told his wife before she moved that he would not move to Rutherford and immediately upon receipt of her letter asking him to go out and see the place, he again reiterated most emphatically that it would only be wasting time for him to go and see the place as he was never more determined in anything than that he would

not move to Rutherford. As stated before, she made no reply whatever to this letter. She did not make any response to his hope that she would come back and live with him in Jersey City. She did not make any reply to any of his other letters. *Can there be any question but that this letter (Exhibit P-7) was only written by the defendant in an effort to show that she was not deserting her husband and for effect?*

On page 83 Mrs. Reich was cross examined in respect to this letter and her reason for not replying to it. Her testimony is as follows:

“Q. In this letter he asked you to come back and sincerely hoped you would come back? Right? A. Yes.

“Q. Now, you didn't reply to that letter? A. No, sir.

“Q. Why not? A. Well, it didn't sound sincere to me. He said 'our home'; he never said 'our home.'

“Q. Is that the only reason, it didn't sound sincere? A. Yes. I thought he wasn't cooperating at all.”

On August 2, 1927, the petitioner again wrote his wife asking her to come back. This letter is couched in more endearing terms and in this letter he states that if she will come back he will try to forget that she ever left him alone (Exhibit P-2, p. 132). *To this letter there was absolutely no reply.*

On March 3, 1928 he again wrote to his wife and called attention to the fact that it was both his wife's duty and his earnest desire that she return, and also called attention to the marriage vows (Exhibit P-3, p. 133). *Again no reply.*

The evidence also shows that Mrs. Reich talked over these letters with her children and there can be no escape from the conclusion that she had

definitely determined that she would not return to her husband.

Also, when Mr. Reich happened to return to the home one day and found his wife there on the occasion when she went there to get her dahlia bulbs from the lady downstairs, he asked her to come back. A reading of her testimony shows that her attempt to have it believed that she went there to see her husband is ridiculous, and particularly when she went there at two or three o'clock in the afternoon, at a time when her husband would be at work.

Also her cancelling of the requested appointment made when he came to see her at Rutherford, for Tuesday evening, October 2, 1928.

Even at the time of the trial she would not accept his offer to stop the case if she would return to him.

It is hard to say how there could be a more clear intent on the part of a wife to desert her husband and refuse his efforts to have her return to him. What else could the petitioner do than he did do? While the law favors a wife, nevertheless the law is well settled that *a husband has some rights*. The cases are uniform to the effect that the husband has the right to pick out the place to live in. Particularly is this so when the husband had purchased a home and the family had resided in it for nearly thirty years. And particularly when the wife refused to sign a deed so that he could sell the home.

“The law of this State as construed by the Courts has imposed upon a deserted husband the duty to endeavor in good faith to induce his wife to return, and until this duty is performed or a good cause shown for its non-performance, the desertion is not obstinate. Our law has not laid down any set rule in regard to the duty imposed upon the husband

of inviting the return of a wife, who has separated herself from him, where she is to blame for the separation. When this question comes before the Court, it is said that the only test of any practical value in a large number of cases, is taking all the conditions and circumstances into consideration—"Has the man acted like a just man?" (Child's New Jersey Divorce Practice, p. 122, citing numerous cases.)

In the case of *Symon v. Symon*, 94 N. J. Equity 353, Vice-Chancellor BENTLEY granted a decree for divorce to a husband and held that a letter much colder and more formal than any of the letters in the case at bar was a sufficient *bona fide* effort on his part to have her return to him.

His comment on the *Purnell* case, where the letter simply stated that the husband was willing to support his wife only at the home that he has provided, is as follows:

"If this cold invitation, if it may be so dignified, was sufficient to discharge the burden that the law cast upon the petitioner in that case, it seems to me that the letter written by Symon went far beyond what it was his duty to do" (p. 356).

The syllabus in the *Symon* case is as follows:

"Where a husband establishes a proper home for his wife, and so notifies her, and she refuses for more than two years without just cause to live with him there, she is guilty of desertion."

In the case of *Purnell v. Purnell*, 70 Atl. Rep. 187, this Court affirmed the opinion of Vice-Chancellor STEVENSON granting a decree in favor of the husband. It appears that the only letter written by the husband to the wife is as follows:

"Maud Purnell—I am willing to support you only at the home I have provided. James W. Purnell."

The first and fifth syllabi in that case are as follows:

"1. A wife cannot dictate to her husband their mode of living, or determine where they shall live, and compel him to come to her, but it is her duty to go to him."

"5. In a suit by a husband for divorce on the ground of desertion, evidence examined, and held not to require the husband to make concessions with a view of terminating the separation caused by the wife wilfully and obstinately remaining away from the home which he had provided, authorizing a decree of divorce."

In the case of *Rogers v. Rogers*, 81 N. J. Equity 311, Vice-Chancellor STEVENSON, at page 313, states the practical test of the duty of the husband to invite the wife back as follows:

"Our law has refrained from laying down any hard and fast rule in regard to the duty which is imposed upon a husband, whose wife is separated from him where she is to blame, of inviting her to return. It would be difficult to frame any hard and fast rule. It is not a matter that can be dealt with in that way. When the question comes before the Court where a husband was under a duty to invite his wife to come back to his home before her continued separation could be adjudged to be obstinate on her part, the only test of any practical value in a large number of cases is the test of a reasonably kind and just man."

The Vice-Chancellor construed the evidence and held that the petitioner had not made the necessary efforts to have her return to him. The decree was reversed by the Court of Errors and Appeals

(Opinion reported in 81 N. J. Equity 479; Opinion by the Chancellor). A decree was granted to the husband upon the ground that any overtures or efforts made by the husband to induce the wife to return would have been entirely futile.

In the case of *Newing v. Newing*, 45 N. J. Equity 498, Vice-Chancellor VAN FLEET denied a divorce but upon the ground that not only did the husband not make any efforts to have his wife return to him, but he made no response to efforts made by the wife to effect a reconciliation.

To the same effect is the case of *Bowlby v. Bowlby*, 25 N. J. Equity 406. In that case the wife as a matter of fact sought to return to the home but was refused admission.

It was held in the case of *Hunt v. Hunt*, 29 N. J. Equity 96, that a husband has the right to choose the place of residence for his family and refusal by the wife to live with her husband in the place of residence chosen by him, without a justifying cause, constitutes desertion.

C.

Any efforts on the part of the petitioner to have the defendant return to him would have been unavailing.

The evidence clearly shows that it would be futile for the petitioner to endeavor to have his wife return to his home and live with him. It is not necessary to go any further than her own testimony. They had lived in a house in Jersey City which the petitioner had purchased and owned for a long number of years. At a time when their children had become self-supporting she and they determined to move to Rutherford. The petitioner, as was his right, refused to move from his home which he owned. He was more justified in refus-

ing to move from his home by the fact that his wife had refused to sign a deed so that he could sell the home. The law as set forth in all of the cases is to the effect that the husband has the right to choose the place of residence. A wife cannot insist upon moving away from a home to a different city and because her husband refuses to move with her claim that her desertion is not obstinate. He wrote letters asking her to come back, and further, went out to see her, and at his solicitation she made an appointment when he could call and they could talk it over in the presence of the children. Perhaps it might be said that she was somewhat justified in insisting on talking with the petitioner in the presence of her children because he had someone with him. However, it cannot be said that where the children were aligned against him, as the proofs in this case show, that he was not justified in insisting upon having a third party with him if he was to talk with her in the presence of the children. It will be noted that she simply cancelled the appointment. *She did not make any objections to the petitioner to the effect that she did not want to talk with him in front of a third party, nor did she in her note cancelling the appointment suggest that she would see him alone anywhere.* She simply cancelled the appointment.

As stated before, what else could the petitioner do? He had written his wife letters asking her to come back to which she made no reply. He had attempted to see her personally and talk with her and even after she had made an appointment, she, after talking with her children, *cancelled the appointment.*

There can be no question whatever but that any efforts on the part of the petitioner to have the defendant return to him would have been unavailing. As stated by Vice-Chancellor BENTLEY in the

Symon case, the petitioner in writing the letters and in going to see his wife personally "went far beyond what it was his duty to do."

In the case of *Hall v. Hall*, 60 N. J. Equity 469 (the case to which the learned Vice-Chancellor in his opinion below referred), this Court held that where it is manifest from the facts in the case that honest effort by the husband to bring the separation to an end would be unavailing or only temporarily successful, the duty of making it ceases to exist. In that case this Court affirmed the decree dismissing the petition of the wife, but reversed the dismissal of the cross petition of the husband and remitted the record to the Court of Chancery in order that a decree of divorce might be there entered in favor of the husband.

On page 470 Chief Justice GUMMERE writing the opinion of this Court says:

"But the law does not impose this duty upon the husband in every case arbitrarily and without regard to the facts and circumstances by which it is surrounded. The husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife's desertion. Where it is manifest from the circumstances under which the desertion took place, or from her temper and disposition, or from any other fact in the case, that honest effort on the husband's part to terminate the separation would be unavailing; or, if successful in bringing the desertion to an end, would be so only temporarily, the duty of making it does not exist. *Trall v. Trall*, 5 Stew. Eq. 231; *Lammertz v. Lammertz*, 45 Atl. Rep. 271."

And on page 471:

"Our examination of it has led us to the conclusion that when the petitioner left her husband she did so with a fixed determination not

to return to him, and that any effort on his part to induce her to do so would have been unavailing. This being so, her desertion was obstinate, notwithstanding her husband's failure to take steps looking to its termination."

In the case of *Sterling v. Sterling*, 71 N. J. Equity 59, Chancellor MAGIE held that a demand for the return of the wife is not essential where the circumstances justify the inference that such a demand would be wholly ineffective. It is true that in that case the Chancellor denied a divorce but this was because he held that the only evidence produced on behalf of the petitioner to show that a demand in the case would have been ineffective was the *uncorroborated* testimony of the complainant that the defendant told him that she had deserted him for another person.

The law in this respect is again enunciated by Chancellor WALKER, speaking for this Court in the case of *Rogers v. Rogers*, 81 N. J. Equity 479, where this Court reversed the decree below denying a divorce and decided that the evidence showed a wilful, continued and obstinate desertion by the wife of her husband under such circumstances as excused him from making approaches to her and an effort to induce her to return to him, because it was apparent that any such inducement or effect would have been futile and unavailing, and directed the granting of a decree for divorce.

It was held by the Chancellor in the case of *Danielly v. Danielly*, 93 N. J. Equity 556, that under the facts and circumstances in that case no duty whatever rested upon the petitioner to induce his erring wife to return to him.

CONCLUSION.

In conclusion we respectfully submit that the evidence in this case shows that the defendant deserted the petitioner; that her desertion continued for a period of over two years, and that her desertion was wilful and obstinate. That any efforts on the part of the petitioner to have his wife return to him would have been unavailing. Further, that in view of this fact the petitioner went beyond the duty imposed upon him by law and made numerous *bona fide* efforts to have his wife return to him.

It is respectfully submitted that the decree of the Court below should be reversed and the record remitted to the Court of Chancery with directions that a decree be entered granting a divorce to the petitioner on the ground of desertion.

Respectfully submitted,

CAREY & LANE,
*Of Counsel with Petitioner-
below, Appellant.*

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New Jersey Court of Errors and Appeals

Between

FREDERICK W. REICH,
Petitioner-below,
Appellant,

and

SARAH ELIZABETH REICH,
Defendant-below,
Respondent.

On Petition
for Divorce.

On Appeal
from
Chancery.

BRIEF OF RESPONDENT.

Statement.

Appellant appeals from a decree of the Court of Chancery, dismissing his petition for divorce from respondent. This is the third petition filed by the appellant husband and comes after thirty-four years of married life, during which the wife went out to work for ten years (p. 57, l. 19) and managed to rear four children, two of whom have worked their way through college and a third is now so engaged, all without any financial assistance from the appellant (p. 55, l. 35, and p. 56) and against his sneering attitude (p. 59, ll. 30, 40). The first action was started by him in 1911 and, after hearing, was dismissed by Vice-Chancellor Garrison. In 1914 suit was again started by the husband and when it came on to be heard counsel for both parties brought about a reconciliation.

The parties resided together after this without serious incident until about 1924, when the attitude of the husband changed and from thence on-

ward, until the final separation of September 1, 1926, the primitively physical conditions of the home and the studiedly silent contempt with which he treated his wife combined to make it impossible for her to live with him any longer and retain her health and self-respect.

Of the wife's contemplated separation, the appellant had a half month's notice, as he had been invited to accompany her and the children (p. 50, l. 29) to a new home in Rutherford, where the living conditions would benefit her health, which had been impaired by the rigors and defects of the Jersey City house (p. 57, ll. 30 to 40, and p. 58). The appellant refused his wife's invitation, saying "I am not going; no woman is going to lead me around by the nose" (p. 75, l. 22). After the separation had taken place the wife visited the appellant to renew her invitation to have him live with her in Rutherford (p. 90, l. 32, and p. 91). The appellant's answer was to turn his back to his wife and walk up the stoop (p. 124, l. 20).

Vice-Chancellor Bentley, who heard the case, announced his conclusions orally from the bench, when the testimony was closed, dismissing both the petition and counterclaim, the latter because he found the wife's leaving was without full legal justification; the former because, although the leaving lacked legal justification, it was in some degree the result of his conduct, which, though not amounting to a matrimonial offense, was conduct which contributed in bringing about the result, and, therefore, required the husband to make "such effort as a reasonably just man would have made to secure her return" (p. 129, l. 38).

This decision was announced on October 14, 1929. Nothing further was done by either side until April 17, 1931, when Vice-Chancellor Bigelow (Vice-Chancellor Bentley having died in the interim), over the protest of the respondent

that the appeal had been waived because of the laches of the respondent, advised a decree dismissing both the petition and counterclaim, which said decree he refused to *nunc pro tunc* to show the actual date when announced (*Vide* Order, p. 141).

In addition to arguing the merits, it will be contended by the respondent under a separate heading hereafter, that the lack of diligence on the part of the appellant in presenting a draft of the decision announced orally, worked a waiver of the appeal under the rules and, therefore, should be dismissed here.

POINT I.

Respondent's desertion was caused by appellant.

The following describes the "home" which the appellant provided for the fifty-eight year old wife to operate, manage and control single-handed (p. 94, l. 40):

"Q. Well, describe, if you will, the condition of the household that you lived in with your mother and your father at 39 Charles Street. A. 39 Charles Street, Jersey City, was not in good condition.

Q. I am referring to the years 1924 to 1926. A. '24 to '26 in detail. In the first place, let's take the outside condition of the house. The house had been painted but my father had not repaired the fence. It was in a dilapidated condition, and the back stoop was in poor condition; one of the posts had rotted and the banisters were loose. My father had sawed off this and nailed a little piece of white pine over. The other banister was shaky. Coming to the inside of the house, the hall gas jet, even when turned on full,

was less than an inch in length, the pipes were so stuffed up; in fact, when my mother went to the door she failed to recognize people because the gas was so dim.

Q. Did the house have a bath-room? A. The house had no bath-room. My sister's room had no door on it. There was no clothes closet in my sister's bed-room. There was no clothes closet in my father and mother's bed-room in the rear of the house.

Q. Let me ask you, what were the living conditions there during the years 1924 and 1925? A. During the winter of 1924 and 1925 the place was very difficult to keep warm on cold days.

Q. What were the means provided by your father for heat? A. Three coal stoves were provided and with an oil heater for my room we tried to keep warm.

Q. Who took care of the place and did the housework? A. My mother."

The above testimony is that of the son who worked his way through Wesleyan University. Whenever he wanted to take a bath he would have to take turns with his brothers. Their sister, Florence, who is now earning her way through New York University, had to bathe in her own room (p. 42, l. 10). How she did this is a mystery because there were no facilities provided, the only bathtub being in the kitchen. The toilet also was in the kitchen, "a little boxed in affair with no outside ventilation, nothing other than opening a door which did not allow any privacy (p. 111, l. 17).

The three coal stoves and the oil stove which furnished the only heat to the apartments never kept the place warm, which resulted in the family having colds all winter (p. 59, l. 5).

Another son, Walter, cross-examined as to why the mother and children left the home testified as follows (p. 114, l. 3):

“Q. Why did you leave the house, then in September, 1926? A. Well, I knew that my mother had been suffering, due to overwork; that these things were brought on her shoulders and my father wouldn’t help her to bring up the coal and do the heavy work taking care of three stoves, and I knew her feet was bad; of course, we would do it when we were home. That, with the fact that the kitchen stove was broken and the ashes blew all over the place, dirtied the place and making it unhealthy; and the fact that we had no modern improvements whatever, no running hot water, no bath and no electric light; and I knew that my sister had no door leading into her room for privacy, and the only way we could take a bath was to heat the water in a little tub which was two and one-half feet long and the same width; we had to stand erect in it; and I knew the condition of the home in general was poor, and I do know I remember my mother asking my father to replace the furniture in the parlor. *We were willing to contribute for new furniture to replace the dilapidated furniture that was there, and he said if we moved that old furniture out he would put it back again; that it was good enough for him, or words to that effect.*”

The “home” was filled with coal gas (p. 59, l. 10). Even the appellant admitted this (p. 127, l. 10). All the while this gas was leaking the wife was suffering from articular rheumatism according to the testimony of the third son, George (p. 119, l. 20, *et seq.*):

“Q. What was your mother’s physical condition? A. My mother’s physical condition was *bad, especially her feet.*

Q. Tell us what it was, what you observed, what you saw? A. Mother’s feet were in poor condition. I observed it in this way: She was bathing her feet after being on her feet in the daytime, and I saw her rubbing her feet with witch-hazel in the kitchen.

Q. Do you know whether she was suffering with anything; if so, what? A. Rheumatism.

Q. What sort of rheumatism did she have? A. Articular rheumatism.

Q. What part did it affect her? A. *Her feet and hands and knuckles would swell.*

Q. Did that incapacitate her from doing housework or make the housework difficult?

A. It certain interfered."

Unfortunately, it has not been shown medically, what the therapeutic effect of leaking coal gas is upon one who is suffering from articular rheumatism of the painful variety. Certainly it cannot be said to be a happy or healthy one. If it be urged that the children were *all* biased against the father, and were trying to depict the home conditions in the worst possible light as to healthfulness, recourse may be had to the testimony of the only independent witness called, the tenant who occupied the house with the Reich family, Mrs. Herzog. Under cross-examination she testified (p. 125, l. 30):

"Q. There was heat in the hall, wasn't there? A. *It wasn't a very healthy place. They had gas heat, as far as I know, and there wasn't any bathroom.*"

It should be borne in mind that she was not asked to describe what the home conditions were in any way. What she said was the result of a fishing expedition on the part of Mr. Lane, into territory irrelevant to her direct examination.

So much for the "home" respondent left. What was the attitude of the husband toward the respondent and his conduct toward her? It can only be described by those who made their life with him day in and day out. The daughter, Florence, asked to describe appellant's attitude and conduct said (p. 39, l. 8, *et seq.*):

“A. Well, when my father came in in the evening, mother would call ‘Fred’ or some greeting of that kind, *and my father never made any response at all*. And at the table he had very little to say. Now, he might have put in a word here and there, but he never carried on a real conversation; and when he was at the table, sitting in the evening reading a paper, he would sit with his side to my mother instead of facing her.

Q. How long a period of time prior to September 1, 1926, had that condition existed?
A. Well, as long as I can remember, my father never had been very friendly toward my mother, never.”

One of the sons, Frederick, as to this point said (p. 96, l. 1):

“A. My father frequently would not talk to my mother. I do not say he did not converse with her at all; he did occasionally, but the conversation was rare. There were long *stretches of time when he would not notice her; when he was sitting at the table*, for instance, if he wanted to have a row there was certain telltale sentences you could see in my father’s face. If he was looking at a piece of steak he would make some remarks and take a knife and carve out the bone, and so on. He didn’t often say anything; *he often did things to indicate his feelings without saying anything*. That was just one instance. I could write a whole book of instances if you would permit me, to detail a few.”

And again (p. 98, l. 1):

“Q. Did you ever hear your father, in the course of his conversation with her, call your mother by her first name? A. *My father absolutely strove, apparently to the utmost of his ability, to get by without calling her by her first name*. When he wanted food he would sit there and fidget in his chair and he would not speak, and frequently he would

lounge the whole length of time rather than ask to have it passed. If Florence wouldn't pass it to him he wouldn't ask anybody else. Q. What was your mother's attitude in the way of greeting your father when he came home? A. My mother never failed to say 'Hello, Fred' to my father, and he would stare at her and he would look as though he was going to cry and then turn his back upon her."

Another son, Walter, as to the father's conduct towards the mother in the presence of strangers, said (p. 110, l. 19, *et seq.*):

"A. Why yes, I know one night a gentleman who we have known all our lives by the name of Taylor came in and greeted my father and asked him how his wife was, and he did not answer; he just turned his shoulder to my mother; that is, he always turned his shoulder to my mother when she was talking to guests at all times; *he just tried to ignore her.*

Q. So that we can get it on the record, will you say just how he turned his shoulder; explain that a little more what you mean by it? A. If someone said, 'How is your wife', and you wouldn't answer and if my mother was there with my father talking to some person he would look at that person and he would not look at my mother, and he would turn his shoulder to the side and talk to that person until my mother got through and talk again."

George, the oldest and the last of all the sons to testify, described the father's attitude in these words (p. 118, l. 24):

"A. Father would never carry on a conversation with mother; I would say 'very seldom' instead of never. He would come home nights and mother *would say, 'Hello, Fred', and he would sit down or go to his room—sit down at the table; and then he would finish before the others and he would take his chair*

when he had finished and turn his back directly to my mother and read his newspaper.

Q. After you married in the fall of 1924, did you return home? A. Very frequently.

Q. Did you notice then, up to the first day of September, 1926, his course of conduct and treatment of your mother? A. The same condition continued.

Q. What do you mean by that? A. *That he wouldn't converse with mother; he wouldn't talk even to me; after I was married he was half-way decent to me and talked with me, but he wouldn't talk to mother. The boys would be to school and mother would be without coal and I would go down and get the coal."*

In order to escape any charge of bias, none of the wife's testimony in her own behalf, either on direct or cross-examination, is quoted here.

Upon all the testimony adduced the Court's reaction was decisive and immediate, because, without further wait or reflection of any kind and before leaving the bench, Vice-Chancellor Bentley announced that (Conclusions, p. 128, l. 40):

"The defendant justifies her having left him in that way, and I have no doubt that this man had known for weeks, if not months, that she was going to leave. She explains her leaving by saying that the physical condition of the household and the conduct of the petitioner made it impossible for her to live there. She says that he would not talk to her for long periods of time; that he would not answer questions nor engage in conversation; that he would turn his back on her when he did respond to any of her questions; and it was in a disagreeable manner. I am convinced that she left because the woman's pride was injured. I don't suppose that any decent woman would continue to live with a man and merely take his bread and butter after she felt his affection for her was gone. I think that was the situation here."

POINT II.

Petitioner made no just advances seeking wife's return.

In *Hall v. Hall*, 60 N. J. E. 469, the doctrine is laid down that:

“Ordinarily when the husband, has by his conduct toward his wife, contributed in any degree to her original desertion the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him.”

In *Davenport v. Davenport*, 97 N. J. E. 15, Vice-Chancellor Leaming enunciated the same rule in these words:

“The wife's desertion though wilfull cannot be adjudged obstinate unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end, under the particular circumstances of the case.”

No considerate mind can read the testimony set forth under Point I concerning the wife's leaving without concluding that the husband contributed in some degree to her original desertion. This being so, it was the duty of the appellant to seek her return in a genuine, whole-hearted way. The only effort he made during the entire separation was to write Exhibits P-1, P-2 and P-3. Vice-Chancellor Bentley described this situation in the following apt language (p. 129, l. 40 and p. 130):

“The only effort that has been made to meet that situation, as far as I can recall now, are three letters that were first admitted in evidence, Exhibits P-1, P-2 and P-3. The first one *expressed the hope that she*

would return. Not one word in it asking her to come back; there was not one thing said to indicate to her that conditions would be changed and he would in the future endeavor to make her happy and agree to make up to her in the future any trouble he had caused her. *There was not a thing calculated to bring back the happy relation that had existed before the trouble arose.* The other two letters were no more effective in that regard. I think if this man had in the slightest degree wanted to change the situation he would have accepted her invitation *to at least come out and see the place where she was living.* That might have brought back the days when they had been happier before their troubles broke out in the first place."

The psychology of deserted husbands is peculiarly hard to understand. Whenever they take pen in hand to invite "the erring one's" return, all their thoughts seem to dwell upon "wifely duties"—"the marriage vows", etc. The idea that those duties and vows are mutual and reciprocal or that their own conduct has been off-color never seems to occur to them. So in the case *sub judice*. In P-3, appellant wrote:

"I wish to impress on you that it is both your duty and my earnest desire that you return to our home. Would also like to remind you of the vow you took when we were married. 'Until death do us part.'"

The most recent case in which language of this kind has been construed is that of *Baxter v. Baxter*, 101 N. J. E., page 238, where the language was:

"I would like to have you return to the home and fulfill your duties as a wife."

On the same day the husband's lawyer wrote the wife "in the vein usual in such cases". Justice

Parker, in writing the opinion for the Court of Errors, determined that these letters were not of the kind calculated to encourage a wife to return.

After the two-year period had expired the husband called upon the wife for the first time, accompanied by a stranger, who denied that he was an "investigator", but who later "reported" to appellant's attorney (p. 14, l. 28). Asked upon cross-examination what the purpose of this visit was, he said (p. 25, l. 30):

"A. Proof to show that I went there and asked her to come back.

Q. In other words, you went there for the purpose of securing evidence, as you say, corroborating— A. Corroborating that she refused to come back.

Q. You love your wife, of course? A. *Yes, I do, in a way.*"

If the appellant had been sincere in his desire to have his wife return, he would have treated her in a kind, friendly way when she called upon him on June 1, 1927, at the old Jersey City house (p. 65, l. 40). That would have been the time for him to have made promises and concessions concerning the matters that had caused her going.

The wife says she called there expressly to invite him to go with her to her house in Rutherford. The appellant says that she called there not to see him, but to obtain dahlias. Mrs. Herzog, the tenant, an independent witness, whose testimony stands unimpeached, testified as follows concerning this interview (p. 124, l. 3):

"Q. Come right down to the conversation you heard between the two of them when he came home. A. She said 'hello'—

By the Court:

Q. Who said it? A. Mrs. Reich.

By Mr. Brown:

Q. What did he say? A. He didn't say anything; *he didn't answer, but he said 'coming back?' and she said: 'Why not come back to us; we have a nice place', and he didn't answer. He turned his back and went up the stoop. Then I heard no more said about it.'*

Whatever the reason may have been for her calling, the fact remains that she was there, the appellant saw her, and had the opportunity to be kind, to smile, to make promises and concessions. Instead of embracing this opportunity, he never even invited the wife to go inside to discuss their differences. Is this the conduct of a just husband who genuinely wants his wife to return?

The Purnell case, 70 At. Rep. 187, cited by appellant in his brief, is not in point, because there the wife having left the husband, who, in the language of Vice-Chancellor Stevenson, had provided "a good home—a nice little home in this country place", sought to have the husband support her in a home of her own choosing in New York, which was some distance away from Pine Brook, where the husband had established their domicile, and where he was employed teaching school. Vice-Chancellor Stevenson went on to observe that there might have been great risk in his going elsewhere; that the absence of the wife was without justification and naturally brought about the estrangement, which resulted in the husband's writing the note quoted by appellant. Concerning the note, the Vice-Chancellor says (70 At. Rep. 188):

"This note unmistakably shows what the position of this man was. 'You come to me, and live in the house that I have provided, and I will receive you. I will not support you elsewhere.' The note strongly indicates that she was seeking to compel her husband to support her where she wanted to live, apart from him."

Viewed in this light this note (characterized as a cold invitation in *Symon v. Symon*, 94 N. J. E. 353, which was decided four years before the Baxter case, above cited, and not by the Court of Errors) assumes a totally different aspect. It is not to be expected in this world of men, and not angels, that a deeply wronged husband, who was being "jacked up" for support by the wrongdoing wife, would write anything but a cold invitation.

In the case *sub judice*, the wife did not ask any support from her husband. Her leaving was caused directly by her husband's conduct and was partly motivated by the hope that a change of scene would change his conduct for the better towards her (p. 86, l. 10). And when she left the Jersey City house it cannot be said by any stretch of the imagination that she was walking out from "a nice little home in this country place". She left a mouldering ruin which had broken her physically. Nor would the husband have been endangered by moving with his wife to Rutherford, because that place was just as near geographically and just as accessible to his work, which was in Newark.

POINT III.

Petitioner has not shown that just advances seeking wife's return would have been futile.

It is the settled law of New Jersey that before a decree can go for a husband who has contributed by his conduct to a wife's desertion, it must be shown that he made the advances of a just man to bring about her return, except where it appears that such advances would have been futile.

The burden of showing this is upon him, according to *Hall v. Hall*, 60 Equity, where on page 470 it is said:

“The burden rests upon the husband of showing the futility of making the effort which the law ordinarily requires of him; for it will not be presumed, in the absence of proof, that the wife will persist in continuing her desertion against the honest attempt of the husband to bring it to a conclusion.”

It is respectfully insisted that nowhere in this record can it be shown that the appellant has sustained this burden.

When the wife told him she was going to leave and asked him to go along with her and the rest of the family, he refused to answer and deliberately walked out of her hearing. On the trial he sought to excuse this conduct by saying that he wished to avoid argument (p. 31, l. 30), forgetting momentarily that it takes two to make “any argument”.

“Q. Didn't you say on direct examination that your wife did ask you to go to Rutherford? Yes or no. A. Yes.

Q. Didn't you say that you didn't give her any answer? A. Yes.

Q. And instead of coming out openly and frankly you went on out of the house? A. Yes; naturally.

Q. And you made no effort— A. *No, I had no intention of going away. She knew by my actions. I didn't want to bring up any argument and I said nothing. I had too much of that already.*”

His statement that he had no intention of going away with his wife shows his determination come weal or woe, to remain at the “home”, and from this determination he never wavered for a single instant thereafter. Through every effort he made, and they have all been discussed in Point II, can be seen the impress of this determination to remain at the “home” which he spoke of as—my house—my furniture (p. 64, ll. 23, *et seq.*). His

proprietary sense was so strong that he cared more for his home than he did for his wife and children, because in writing Exhibit P-2 (p. 132, l. 25) he says that the reason he would not join the wife and the family in Rutherford is because, "*It would not be my home and this fact would act on my mind at all times,*" etc. "Would act on my mind at all times," he says, thereby expressing unequivocally a frame of mind as fixed and immutable as the stars, amounting almost to what is known in psychiatry as a fixation. In view of this, how can it be said that such a mind would make concessions, or to use the language of the cases, would make "just advances to seek his wife's return"?

To claim in the face of this determined state of mind which the husband harbored, that it has been shown that the making of just advances on his part would have been futile, without showing that the wife was equally determined, and was the offender originally, is little short of effrontery on the part of those asserting it.

If, according to the *Hall* case cited by appellant on this point, "the husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife's desertion", then manifestly there is every reason to believe that if the husband had made such advances and concessions the wife would have become reconciled to him. The best proof of what she might have done is to point out what she had done before. There is no doubt that she did become reconciled to him when the second action came on for trial. She then put their differences behind her and started off with renewed hope. Not so with the appellant. Always in his mind rankled a something which he would not put in words except to say "you know; you know what you said" (p. 70, l. 25). And while we attempt to

consider the future in terms of the past it should be noted that Vice-Chancellor Garrison threw out the very first action instituted by the husband on this very ground, *i. e.*, "because he had made no robust efforts to get his wife to come back" (p. 12, l. 28, *et seq.*).

There is not a shred of evidence in the entire testimony from which it can be honestly inferred that when the wife left appellant she did so with a fixed determination not to return to him. To say that she did, would be to negative every inference and implication from her journey to the old home on June 1, 1927, after she had left. This cannot be said as to the husband's state of mind.

Respondent respectfully insists that returning to him cannot be distorted to mean that she should have come back to him to the Charles Street house as he was and as it was when she gathered her brood around her and left him. A Court of Equity which affects to have charge of the wife's personal safety should not allow the husband to retain his power over his wife and compel her to remain subject to him when her life or her health will be endangered, or when the husband will render her life one of such discomfort and wretchedness as to incapacitate her to discharge her duties as a wife.

POINT IV.

Appellant's laches worked a waiver of appeal herein.

Rule 132a, of the Court of Chancery, provides as follows:

"132a. Within thirty days from the date of announcement (orally or in writing) of the granting of any order or decree, a draft of such order or decree shall be presented to the Chancellor, Vice-Chancellor or Advisory Master, before whom the matter shall have

been heard; in default whereof the party to whom such order or decree be granted shall be deemed to have waived the entry thereof and all benefit and advantage therefrom, unless the court in its discretion otherwise order" (May 1st, 1926).

Vice-Chancellor Bentley announced his conclusions orally from the bench upon the termination of the case on October 14, 1929. He died some time during the year of 1930. No draft of a decree pursuant to his original decision was presented to him for signature during his lifetime nor was any draft of said decision presented to any other member of the Court until April 17, 1931, at which time Vice-Chancellor Bigelow advised a decree, which became the decree herein when signed by the Chancellor. Solicitor for the respondent thereupon moved Vice-Chancellor Bigelow to resettle the decree *nunc pro tunc* so that it would show the actual date when the decision was announced orally, which motion the Vice-Chancellor denied (*Vide Order*, p. 141).

Respondent respectfully insists that the laches of the appellant in his failing to take any action whatever towards having the decree settled until April 17, 1931, works a waiver of any benefit accruing to him pursuant to the Chancery rule cited above.

Whether the Statute of Limitations shall begin to run from the moment a decision is announced by the Court verbally or when it is reduced to writing and signed by the Court has never been decided in this State. All that the statute says concerning the time within which to appeal is that an appeal from a final decree shall be taken within one year "after making such decree" (Sec. 111, Comp. Stat., p. 450).

This presents the question: When is a decree said to be made? Specifically, in our State we

have no decided precedents. Generally, it has been held as follows (3 C. J., p. 1058):

“(1055) (2) Actual rendition or entry. Whether the statute begins to run from the time of rendition or entry of judgment, it is the time of actual rendition or entry which determines the commencement of the period of limitation, and the judgment, having been once actually rendered or entered, the statute runs despite the action of the court or the stipulation or agreement of the parties.” (Citing cases in footnote.)

From this it would appear that the time begins either when actually rendered or when entered. Entering a decree, with us, is making it of record—enrolling it. Chancellor Walker pointed out, in *Hudson Trust v. Boyd*, 80 N. J. E., page 267, that a decree can be appealed from irrespective of any enrollment; that it becomes effective immediately upon being signed; an execution may issue without waiting for enrollment. He refused to decide whether it could be considered “as of record” before it was enrolled.

If it be urged that no decree, therefore, becomes effective for purposes of appeal until it is actually signed, then all one has to do to suspend the running of the statute is to refrain from presenting a decree for signature. In the present case this was not done from October 14, 1929, until April 17, 1931—a period of one year, seven months and three days. And, by the same token, if by mere inaction the statute can be suspended for this period it can be done *ad infinitum*, a conclusion which nullifies the true intent of the statute; to wit, that the party appealing have one year to do it in. To permit a party to evade the plain intent of the statute by disregarding the announcement of the decision in this manner would make a mockery of the pronouncement of judgment and leave his ad-

versary without any assurance of his property, besides withholding the vesting of his rights.

The only provision which prevents the suspension of the statute by the inaction above described and punishes the lack of diligence on the part of the party to whom a benefit accrues by the decision verbally announced is Chancery rule 132a above. In the enactment of this rule the Court has taken a position and declared a policy in line with its oldest and most fundamental doctrine, *vigilantibus non dormientibus aequitas subvenit*. It is a rule designed to provoke diligence and to punish laches. In *Norfolk & New Brunswick Hosiery Co. v. Arnold*, 49 N. J. E. 397, Chancellor McGill, in aid of another female defendant, said:

“Complainant’s great delay may have inflicted injuries upon the female defendant which can be neither seen, appreciated nor measured now.”

And it is respectfully urged that the truth of that statement is applicable herein. It is declared that these rules are designed to advance justice and facilitate business. Neither of these objects will be achieved by permitting the appeal herein. The very opposite will result, a prolongation of litigation started seventeen years ago and pursued intermittently ever since by the same party.

Conclusion.

In conclusion, it is respectfully submitted that the appeal herein should be denied for the reasons above set forth and the parties left as they were.

Respectfully submitted,

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Solicitor for and of Counsel
with Respondent.

FRANK J. V. GIMINO,
On the Brief.



