

Bill of Complaint.

BILL OF COMPLAINT.

Filed June 6, 1932.

In Chancery of New Jersey

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*To his Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey.*

Complainant, CAROLYN McWHINNIE, who resides at No. 28 Lindsley avenue, in the Town of West Orange, County of Essex and State of New Jersey, says that:

1. On the 15th day of March, 1917, she was married to the defendant, William McWhinnie by Rev. D. Willmot Gateson, a Minister of the Chapel, at St. Thomas' Chapel, New York City, in the State of New York.

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2. Following said marriage, she and defendant resided at No. 20 Kingsley street, in the said Town of West Orange until on or about the 15th day of May, 1917, when the said defendant abandoned her as hereinafter set out.

3. No children were born of the marriage aforesaid.

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4. On or about the 15th day of May, 1918, the defendant left the home of complainant and defendant, and abandoned her and separated himself from her and has done so ever since that day until the present time, during which time defendant at irregular intervals sent sums of money to complainant, which sums were insufficient and inadequate in amount to properly support and maintain the complainant; and defendant since the 13th day of January, 1931 has

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Bill of Complaint.

utterly neglected and refused to provide and maintain for complainant.

10 5. Complainant is fifty-two years of age and is wholly without any money or property and is endeavoring to support and maintain herself by her own efforts, but she has not been able to do so adequately and properly.

6. Complainant shows and charges that ever since the 13th day of January, 1931, the said defendant has refused and neglected to support her and has abandoned her without justifiable cause and still does refuse and neglect to maintain and provide for her.

20 7. Complainant further shows and charges that on the 5th day of November, 1930, the defendant filed a duly verified petition for divorce on the ground of extreme cruelty in the Court of Common Pleas in the County of Cuyahoga and State of Ohio, and on the 4th day of April, 1931, a final decree upon said petition was duly entered in said court adjudging the complainant guilty of extreme cruelty and dissolving the marriage between complainant and the defendant herein.

30 8. Complainant further shows and charges that defendant falsely and fraudulently and with the intent to obtain a divorce from complainant, without giving her notice of the filing of his said petition for divorce or an opportunity to present a defense thereto, alleged in his said petition that the complainant's residence was unknown to him, the defendant well knowing that complainant was at the time of the filing of his said petition and for many years prior thereto had been a resident of the said Town of West Orange.

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Bill of Complaint.

9. Complainant further charges and alleges that defendant filed in said suit for divorce an affidavit for service by publication, wherein he fraudulently and falsely deposed that the last known place of residence of complainant was New York City, New York, and that defendant had exercised reasonable diligence to ascertain the residence of complainant, and that the residence of complainant other than therein set forth, was unknown and could not with reasonable diligence be ascertained. 10

10. Complainant further shows and charges that since her said marriage with the defendant, she has resided in the said Town of West Orange and has many friends and relatives in the said Town of West Orange and elsewhere known to the defendant herein, who were familiar with complainant's address at the time of the filing of the said petition and affidavit; and that defendant with the exercise of reasonable diligence could have ascertained complainant's correct address so that service of the summons and the said petition could have been made upon her. 20

11. Complainant was not served with process in said suit for divorce instituted by the defendant in the Court of the State of Ohio, and had no notice, actual or otherwise, of the pendency of the said suit and no opportunity was afforded to the complainant to put in a defense thereto. 30

12. On or about the first day of September, 1930, the exact date being at this time unknown to the complainant, the defendant for the purpose of establishing a residence whereon to base an application for a divorce against complainant, went to the State of Ohio. 40

Bill of Complaint.

13. The said defendant never had a residence in the State of Ohio, but the residence there claimed was fictitious and not such bona fide residence as is required by the statute confirming jurisdiction upon the court of the State of Ohio, over the subject-matter of the defendant's petition. Defendant has never ceased to be a resident of the State of New Jersey since the marriage of the complainant and the defendant, and the defendant never intended to and did not acquire a bona fide residence in the State of Ohio.

14. Within one month from the entry of the said decree, the defendant returned to the State of New Jersey; defendant is by occupation a Sea Captain and his employment takes him over the seven seas and consequently he spends very little time in the State of New Jersey; he is at present temporarily residing at No. 2844 Hudson Boulevard, Jersey City, N. J.

15. The defendant by fraud, and the suppression of the truth as aforesaid induced the Court of Common Pleas of the County of Cuyahoga and State of Ohio, to assume that service of a summons of the said petition could not be made personally upon complainant and to adjudicate that the residence of the said defendant had been in said State and within the jurisdiction of said court for more than one year before the filing of the said petition.

16. That said decree of divorce was granted for a cause not recognized by the law of this State as a ground for divorce and the petition filed by the defendant herein in the said Cuyahoga County Court of Common Pleas of the State of Ohio recites acts which were alleged therein to have taken place within this State.

Bill of Complaint.

17. Complainant charges the facts to be that the courts of the State of Ohio did not have jurisdiction over the subject-matter of the petition of the defendant herein and never acquired jurisdiction over either this complainant or the defendant herein.

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18. That the decree of divorce obtained by the defendant against complainant in the Court of Common Pleas of the State of Ohio was and is a nullity and injuriously affects the marital rights and status of the complainant.

19. That the defendant is by profession a sailor, and complainant believes that the said defendant intends to quickly depart this State for the purpose of avoiding the payment of maintenance.

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20. Defendant has no property within the state out of which any decree for maintenance could be satisfied and if defendant is suffered to depart the State, complainant's claim for support and maintenance will be defeated.

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

1. That the defendant may answer this bill of complaint.

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2. That the said decree of divorce fraudulently procured by the said defendant in the Court of Common Pleas of the County of Cuyahoga and State of Ohio be declared to be null and void.

3. That the said defendant may be perpetually enjoined and restrained from setting up the said decree or making use of the same in any matter or manner in this or any other jurisdic-

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Bill of Complaint.

tion to defeat or affect the marital rights of complainant.

10 4. That the defendant be enjoined and commanded to present the truth of the matters alleged and shown in this bill of complaint to the said Common Pleas Court of the State of Ohio, in good faith, to urge the said Common Pleas Court of the State of Ohio to set aside its aforesaid decree of divorce and that complainant may have such further and other relief as to your Honor may seem equitable and just.

20 5. That the State's writ of injunction may be granted unto complainant, issuing out of and under the seal of this Honorable Court, commanding and enjoining the said defendant from setting up the aforesaid decree and commanding and enjoining the defendant to show to the said Common Pleas Court of the State of Ohio, the truth of the matters contained in this bill of complaint and to urge the said court to set aside its said decree for divorce, and also that a writ of subpoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as the court may make in the premises.

30 6. That the said defendant may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him or made out of his property for the support and maintenance of complainant.

40 7. That the said defendant may be compelled to give reasonable security for such maintenance and to pay the same from time to time under the compulsory order of this Court as provided by statute; that the said defendant may be com-

*Bill of Complaint—**Affidavit of Carolyn McWhinnie*

pelled to pay the said complainant a proper amount for counsel fees and that she may have such other relief as the circumstances of her case may require.

8. Complainant therefore prays that the defendant, William McWhinnie, may be restrained from going out of the jurisdiction of this Court, and that for that purpose a writ of *ne exeat* may be issued out of and under the seal of this Court restraining the said defendant from going out of the State of New Jersey without leave of this Court, and that the complainant may have such further relief in the premises as may be necessary or equitable. 10

GROSSO, BRUNDAGE & ANDERSON, 20
Solicitors for Complainant.

IN CHANCERY OF NEW JERSEY.

CAROLYN McWHINNIE,
Complainant,

vs.

WILLIAM McWHINNIE,
Defendant.

On Bill, etc.

Affidavit.

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STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

CAROLYN McWHINNIE, being duly sworn on her oath, deposes and says:

1. I am the complainant in the foregoing bill of complaint.

2. The foregoing bill of complaint was filed by me against the defendant, William McWhin- 40

*Bill of Complaint—**Affidavit of Carolyn McWhinnie*

nie, for the purpose of obtaining support and maintenance from my said husband, in accordance with the statute in such case made and provided.

10 3. The said defendant, William McWhinnie, has abandoned and separated himself from me and since the 13th day of January, 1931 has utterly neglected and refused to provide and maintain me. I am fifty-two years of age and am wholly without any money or property wherewith to support and maintain myself, except such as I am able to earn by taking boarders, which is inadequate for my support and maintenance.

20 4. Said defendant is by occupation a sailor in the merchant marine and is frequently absent on voyages for months at a time.

5. I verily believe that the defendant designs to quickly depart out of this State and the jurisdiction of the Honorable Court on a voyage, and that if he is suffered to do so, he will not return and my just claim for support and maintenance will be defeated.

30 6. I therefore ask that a writ of *ne exeat re-publica* be issued out of this Honorable Court to restrain the defendant, William McWhinnie, from departing out of the jurisdiction of this Court.

CAROLYN McWHINNIE.

Sworn and subscribed to before me
this 4th day of June, 1932.

CURTIS R. BRUNDAGE,
An Attorney at Law of N. J.

Bill of Complaint—Affidavit of William J. Lorch.

IN CHANCERY OF NEW JERSEY.

CAROLYN McWHINNIE, <i>Complainant,</i> <i>vs.</i> WILLIAM McWHINNIE, <i>Defendant.</i>	}	<i>On Bill, etc.</i> <i>Affidavit.</i>	10
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. }ss.:

WILLIAM J. LORCH, being duly sworn on his oath, deposes and says:

1. I have known William McWhinnie, the defendant in the above entitled cause, for the past sixteen years. 20

2. I know that the said defendant has abandoned the complainant, Carolyn McWhinnie, and separated himself from her and since the 13th day of January, 1931 has utterly neglected and refused to provide and maintain her. The said complainant is fifty-two years of age and is wholly without any money or property where-with to support and maintain herself, except such as she is able to earn by taking boarders, which is inadequate for her support and main-tenance. 30

3. Said defendant, William McWhinnie, is by occupation an officer in the merchant marine, and is frequently absent on voyages for long periods of time.

4. I verily believe that if the said defendant is served with process in this cause, he will quickly depart out of this State and the juris- 40

Defendant's Answer.

diction of this Honorable Court on a voyage, and that if he is suffered so to do, he will not return.

WILLIAM LORCH.

10 Subscribed and sworn to before me
this 6th day of June, 1932.

CURTIS R. BRUNDAGE,
An Attorney at Law of N. J.

DEFENDANT'S ANSWER.

Filed December 14, 1934.

IN CHANCERY OF NEW JERSEY.

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90/469.

Between

CAROLYN McWHINNIE,
Complainant,

and

WILLIAM McWHINNIE,
Defendant.

On Bill, etc.

*Defendant's
Answer.*

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1. The allegations in paragraphs 1 and 3 and 7 are admitted.

2. The allegations in paragraphs 5 and 8 and 11 and 12 and 13 and 14 and 15 and 16 and 17 and 18, insofar as such allegations raise the issue of fraud or lack of jurisdiction in the Court of Common Pleas of Cuyahoga County, Ohio, are denied.

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Defendant's Answer.

3. Defendant leaves complainant to her proof of the allegations in paragraphs 2 and 6 and 10 and 20.

4. Defendant denies generally that he abandoned complainant; that he ever had a domicile in the State of New Jersey; that he went to Ohio for the purpose of fraudulently setting up an alleged domicile for the purposes of divorce; that complainant had no notice of defendant's action of divorce; that defendant returned to the State of New Jersey and had his residence or domicile in that state; and further denies that this Court has jurisdiction over him in this proceeding. 10

BENJAMIN GORDON,
Solicitor of Defendant. 20

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Exhibit C. 11.

Exhibit C. 11.

WOLF & KRUCHKOFF,
Attorneys & Counselors at Law
810 Ulmer Bldg.
Cleveland, Ohio.

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Sept. 16th, 1930.

Thomas Fahey, Esq.,
99 Nassau Street,
New York, N. Y.

Dear Mr. Fahey:—

This office represents Mr. McWhinnie in his divorce action against Caroline McWhinnie.

20 We are informed that you represent Mrs. McWhinnie and that you would be in a position to furnish us with her present address so that we may serve her with a copy of the petition.

Thanking you for your courtesy, we are,

Very truly yours,

(Signed) WOLF & KRUCHKOFF.

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Exhibit C. 12.

Exhibit C. 12.

Filed July 21, 1932.

Messrs. Wolf & Krutchkoff,
810 Ulmer Building,
Cleveland, Ohio.

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Dear Sirs:

In re McWhinnie.

Mrs. Carrie McWhinnie's consent must first be had before I can advise you.

Your letter has been sent to Mrs. McWhinnie without comment.

Yours truly,

(Signed) THOMAS FAHEY

Twenty-third
September, 1930.

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Filed July 21, 1932.

Messrs. Wolf & Krutchkoff,
810 Ulmer Building,
Cleveland, Ohio.

Dear Sirs:

In re McWhinnie.

I recently had a brief interview with Mrs. Carrie McWhinnie, and she suggested that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind—I cannot see much point in it, but think it well, as far as possible, to oblige her and respect her wishes. I assume it does not make much difference where the papers are served, so that

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Exhibit C. 12A.

they are served as required by the laws of your State.

Yours truly,

(Signed) Thomas Fahey

Thirtieth

10 September, 1930.

Exhibit C. 12A.

Messrs. Wolf and Kruckhoff,
810 Ulmer Building
Cleveland, Ohio

Dear Sirs:—

20 Your letter bearing date 16 September, 1930,
and my reply thereto dated the 23 September,
1930.

30 I recently had a brief interview with Mrs. Car-
rie McWhinnie, and she suggested that if there
was any way of perfecting the service of papers
without same being served upon her at her resi-
dence, she would prefer that same be adopted.
I do not know what Mrs. McWhinnie had in mind
—I cannot see much point in it, but think it well,
as far as possible, to oblige her and respect her
wishes. I assume it does not make much differ-
ence where the papers are served, so that they
are served as required by the laws of your State.

40 Mrs. McWhinnie is very much wrought up over
the statement in your letter as herein mentioned,
and at the prospect of her husband bringing an
action against her for divorce. She claims that
she has never done anything to merit or warrant
a divorce being sought against her, except the ex-
treme suffering and privation she has endured.
She cannot understand why it is that after doing

Exhibit C. 13.

everything possible upon her part she should be penalized for trying to live an upright, straight-forward life. She is of opinion that something must be done to protect her name in this instance. Both she and her sister have been very ill.

Yours very truly

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30 September, 1930

THOMAS FAHEY

Exhibit C. 13.

WOLF & KRUCHKOFF
Attorneys and Counselors at Law
810 Ulmer Building
Cleveland, Ohio

M. H. Wolf
M. Kruchkoff

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May 28, 1931

Mr. Thomas Fahey,
Counselor at Law,
99 Nassau Street,
New York, N. Y.

Re: McWhinnie

Dear Sir:—

Please be informed that at the January term, 1931, of our Court of Common Pleas, a divorce was granted to William McWhinnie from Caroline McWhinnie, and that in accordance with the decree Mr. McWhinnie is to make a final payment of Fifty Dollars, which is considered as the final installment of alimony to Mrs. McWhinnie, and upon this payment being made he is discharged of further liability for her support.

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Accordingly, we enclose herein our check in the sum of Fifty Dollars payable to Mrs. Caroline McWhinnie.

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Exhibit C. 1.

Please acknowledge receipt of this check and oblige

Yours very truly,

(Sgd.) Max Kruckhoff.

MK:G

10 Enc.)

Exhibit C. 1.

99 Nassau Street,
New York, June 1st, 1931.

My dear Mrs. McWhinnie:—

I'm sorry to send you bad news—and yet perhaps it isn't *bad* news, except from a financial standpoint—and that's bad enough.

The enclosed copy of letter received this morning, addressed to Mr. Fahey, was returned by me, together with accompanying check, to the writer. I am enclosing herewith copy of my reply.

I have done this, believing it to be best for your interests, and to give you an opportunity to consult a New Jersey attorney, so that your interests may be protected. You may have already consulted someone in the matter, as I know it was your intention to do so several months ago. If so, it would be well to hand him this correspondence.

I am so sorry you must be troubled in this way, and would gladly help, if it were in my power to do so.

Best wishes to both your sister and yourself.

Sincerely,

Agnes Kennedy.

*Exhibit D. 1.***Exhibit D. 1.****COURT OF CHANCERY OF NEW JERSEY**

Chambers of
Maja Leon Berry
Vice Chancellor

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Toms River, N. J.
June 29, 1932.

Mr. Benjamin Gordon
125 Broad Street
Elizabeth, N. J.

Grosso, Brundage & Anderson
Orange National Bank Building
Orange, N. J.

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Dear Sirs:

I have examined the petition, affidavits and answering affidavits left with me yesterday in connection with the motion to discharge the writ of ne exeat in McWHINNIE v. McWHINNIE and I am writing to say that I have advised the order to set aside the writ of ne exeat and discharge the bond in the form submitted by counsel for the defendant. Under the circumstances disclosed by the affidavits I think the order should be entered without condition. I think it is quite apparent that the complainant in this suit was aware of the Ohio divorce proceedings and evaded service. It is quite plain that she could have been fully informed had she not instructed her then solicitor to give her husband no information as to her whereabouts.

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Very truly yours,

(Signed) Maja Leon Berry

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*Exhibit D. 5.***Exhibit D. 5.**DEPARTMENT OF COMMERCE.
NAVIGATION SERVICE.Office of U. S. Shipping
Commissioner
New York, N. Y.

10

June 17, 1932

To whom it may concern:

This is to certify that the records of this office show that on July 3, 1928, one W. McWhinnie signed shipping articles as Mate on the SS CHILORE, bound for Cruz Grande, Chile, and at that time stated the address of his wife or next of kin to be:

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wife—Box 107
Macedonia, OhioE. W. VOORHISS
Commissioner
(SEAL)S. H. WARING,
Deputy

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Filed July 21, 1932.

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Exhibit D. 3.

Exhibit D. 3.

IN THE COURT OF COMMON PLEAS.

No. 347, 141.

STATE OF OHIO, }
COUNTY OF CUYAHOGA. } SS.: 10

WILLIAM McWHINNIE, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> CAROLINE McWHINNIE, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Partial Record of Proceeding.</i>
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Before the Honorable Samuel Silbert, Judge 20
of the Court of Common Pleas of Cuyahoga
County.

Testimony of Mrs. Bridget Corona:

Thereupon further to maintain his issue, plain-
tiff called Bridget Corona, who, being duly
sworn, testified as follows:

Q What is your name?

A Bridget Corona. 30

Q Where do you live?

A In Macedonia, Ohio.

Q Do you know the plaintiff herein, Mr.
William McWhinnie?

A Yes.

Q How long have you known him?

A Several years.

Q How do you happen to know him?

A He maintained his residence in my home
up until last year when he moved to Cleveland. 40

Exhibit D. 3.

Q What do you mean he maintained his residence?

A He received all his mail; he lived with us whenever he was not sailing, Mr. McWhinnie being a Captain of a steamer. He had his personal belongings in my home and all the mail
10 addressed to him was addressed care of my home in Macedonia.

Thereupon, further to maintain his issue, plaintiff called Mary Columbi, 2284 Murray Hill Road, Cleveland, Ohio, who, being duly sworn, testified as follows:

Q What is your name?

A Mary Columbi.

Q Where do you live?

A 2284 Murray Hill Road, Cleveland, Ohio.
20

Q Do you know the plaintiff herein, Mr. William McWhinnie?

A Yes.

Q How long have you known him?

A For several years.

Q Do you know where he lives now?

A He lives at my home at 2284 Murray Hill Road, Cleveland, Ohio.

Q How long has he resided with you?

A For about a year.
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Q Is he in your home all the time?

A No, he is only home between trips, but he receives all of his mail at our home, he has his personal belongings there; he has his bank account at The Cleveland Trust Company, Cleveland, and all his mail in the last year has come addressed to our home in Cleveland, and, of course, as I said, he lives with us between trips.

Exhibit D. 3.

Thereupon, further to maintain his issue, plaintiff called Carl Columbi, who, being duly sworn, testified as follows:

Q What is your name?

A Carl Columbi.

Q Where do you live?

A 4567 East 49th street, Cleveland, Ohio. 10

Q Do you know the plaintiff herein, Mr. William McWhinnie?

A Yes.

Q How long have you known him?

A Several years.

Q Do you know where he lives?

A Yes.

Q Where does he live?

A He lives at my mother's home at 2284 Murray Hill Road, Cleveland. 20

Q How long has he lived there?

A About a year.

Q Do you know where he lived before that?

A He lived in Macedonia with Mrs. Corona.

There being no transcript of testimony in this case, I herewith certify that from the Court records, my recollection, and evidence adduced to me by attorneys Wolf and Kruckhoff, that the within proceedings were had before me, a Judge of the Court of Common Pleas on the 4th day of April 1931, and that testimony was in substance given as herein indicated. 30

SAMUEL H. SILBERT,
Judge of the Court of Common Pleas.

Approved

WOLF & KRUCKHOFF,
Attorneys for Plaintiff.

Exhibit D. 3.

STATE OF OHIO, }
 CUYAHOGA COUNTY. }SS.:

10 I, JOHN J. BUSHER, Clerk of Court of Common
 Pleas of Cuyahoga County, Ohio, hereby certify
 that the signature on the within page above the
 line Judge of the Court of Common Pleas is the
 signature of the Hon. Samuel H. Silbert, duly
 elected and qualified and acting Judge of the
 Court of Common Pleas, Cuyahoga County, Ohio
 and I further certify that the said Samuel H.
 Silbert was serving in the same capacity as
 Common Pleas Judge of Cuyahoga County, Ohio
 during the January term of 1931.

20 JOHN J. BUSHER,
 Clerk of the Court of Common Pleas.

R. F. FINAN,
 Deputy Clerk.

Dated at Cleveland, Ohio, this 15th
 day of Sept. 1934.

(SEAL)

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Decree of Divorce.

DECREE OF DIVORCE.

THE STATE OF OHIO }
 CUYAHOGA COUNTY } ss.:

Be it Remembered, That on the 5th day of
 January in the year of our Lord One Thousand
 nine Hundred and Thirty-one, the COURT OF
 COMMON PLEAS within and for the County
 of Cuyahoga and State of Ohio, convened at the
 Court House, in the City of Cleveland, pursuant
 to law. Present: 10

Hon. Samuel E. Kramer	Hon. James B. Ruhl	
Hon. George B. Harris	Hon. George P. Baer	
Hon. Thomas M. Kennedy	Hon. Alvah R. Corlett	
Hon. Harrison W. Ewing	Hon. Virgil J. Terrell	
Hon. A. J. Pearson	Hon. Walter E. McMahon	
Hon. Samuel Silbert	Hon. Lee E. Skeel	
Hon. Frederick P. Walther	Hon. Homer G. Powell, C.J.	20
Hon. John P. Dempsey		

JUDGES, also present THOMAS C. COOK,
 CLERK of said Court, and JOHN M. SULZ-
 MANN, SHERIFF of said County: His Honor,
 Judge Samuel H. Silbert presiding for the trial
 of Divorce causes, at said term, Court being open
 according to law, the Divorce business is dis-
 posed of as follows, to-wit:

THE STATE OF OHIO }
 CUYAHOGA COUNTY } ss.:

IN THE COURT OF COMMON PLEAS

No. 347141

William McWhinnie Plaintiff,	}	Divorce
vs.		
Caroline McWhinnie Defendant.		

On April 4th, A. D. 1931, being
 a day in said January Term of said Court. 40

Decree of Divorce.

This cause came on to be heard on the petition and evidence, the defendant being in default of answer or demurrer, although duly served with process. Upon due consideration of the pleadings and evidence, the Court finds that the allegations of the petition are true; that the defendant has been guilty of EXTREME CRUELTY and that by reason thereof, the plaintiff is entitled to a divorce as prayed for. It is therefore adjudged and decreed that the marriage contract heretofore existing between the parties hereto be, and the same is hereby dissolved and both parties are released therefrom. Coming now to consider the matter of alimony, the Court finds that plaintiff and defendant have not been living together for a number of years, but that plaintiff has been supporting defendant out of his earnings; that there are no children as a result of said marriage; that plaintiff is possessed of no property or money of any kind to a share of which defendant would be entitled. It is therefore adjudged and decreed that plaintiff pay to defendant the sum of FIFTY DOLLARS (\$50.00) as final installment of alimony and that upon the payment of said sum plaintiff be discharged from any liability to said defendant by way of support of alimony.

Journal 262—Page 2505

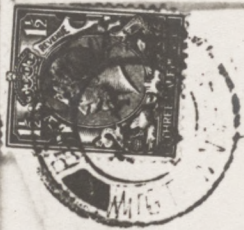
PHILADELPHIA, PA. 34
SEP 21 10-AM
1934

Mr. William McWhinnie,
% Colombi,

2480 East 126th Street,
Cleveland, Ohio.

Mr. William McWhinnie
% Colombi
2480 East 126th Street
Cleveland, Ohio.

ALAMEDA
JUL 8
9:30 AM
1934
CALIF.



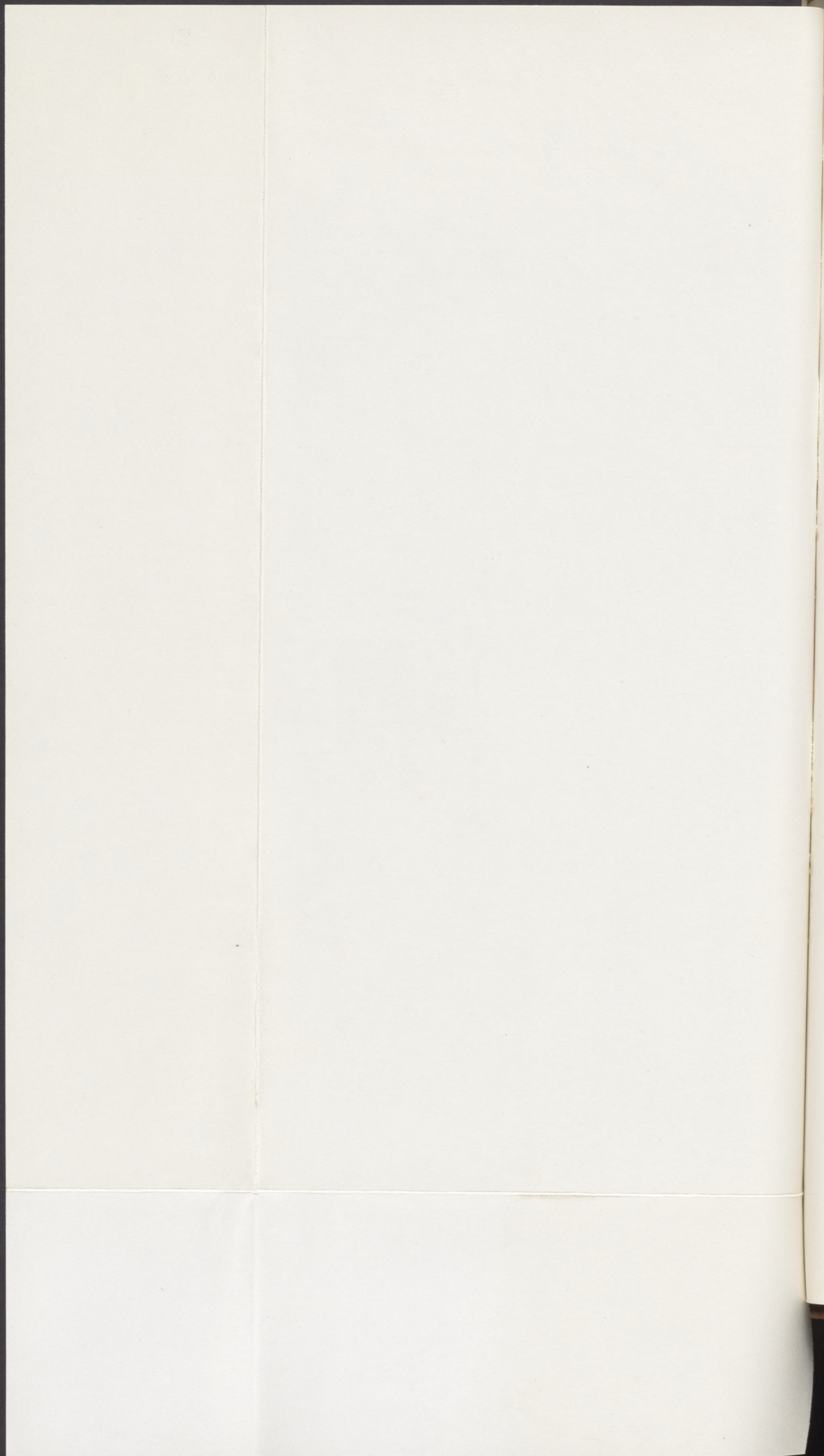
2480 East 126th Street,
Cleveland, Ohio, U.S.A.

Mr. William McWhinnie
% Colombi,
2480 East 126th Street,
Cleveland, Ohio, U.S.A.

Capt W. McWhinnie
% Colombi Hill Rd.
2284. Murray Hill Rd.
Cleveland Ohio U.S.A.

MINNEAPOLIS
SEP 25 10-AM
1934
MINN.

Mr. William McWhinnie
% Mrs. Colombi
1666 East 118th St.
Cleveland Ohio



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TESTIMONY

Mr. ...

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The Court: ...

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Alfred J. Grosso, for Complainant, Direct.

TESTIMONY.

Mr. Merrill: The matter having been reopened for hearing and answer having been filed, I assume—

The Court: I do not care how you do it.

10 Mr. Merrill: I assume it would go through in the regular way, and the complainant would prove her allegations.

The Court: No. We are not going to try this thing over again. There is one issue: whether or not Mr. McWhinnie was a resident of the State of Ohio. If he was, these proceedings are void.

Mr. Merrill: So far as that is concerned, I am willing to proceed on that basis.

20 The Court: If he was not, these proceedings stand.

Mr. Brundage: If the Court please, I do not want to unduly attack this proceeding, but it seems to me that it is not solely a question whether Mr. McWhinnie was domiciled in Ohio. The question is whether Mrs. McWhinnie had a separate domicile by reason of the misconduct of the husband in this State.

30 The Court: Let us see where the domiciles of these people were.

Mr. Brundage: I would like to call Mr. Grosso. He wants to get off.

The Court: All right, if you both agree.

ALFRED J. GROSSO, is sworn.

Direct examination by Mr. Brundage.

40 Q You are a solicitor of this State? A I am.

Alfred J. Grosso, for Complainant, Direct.

Q Do you know Mrs. McWhinnie, the complainant in this cause? A I do.

Q When did you first have occasion to see Mrs. McWhinnie? A I don't remember the exact date, but I think it was in 1931; in June of 1931, as I recall it.

Q What was the purpose of Mrs. McWhinnie's call to your office? A Mrs. McWhinnie came to my office with a letter which she had received from a Miss Kennedy. 10

Q I show you a letter signed by Agnes Kennedy, and ask you if that is the letter Mrs. McWhinnie presented to you in June, 1931? A It is.

Mr. Brundage: I ask to have it marked, your Honor. 20

The Court: All right.

(The letter is marked Exhibit C. 1.)

Mr. Brundage: I am not introducing this. I am merely having it marked.

Q What was the purpose of Mrs. McWhinnie's visit to your office? A As I recall it, she brought this letter with her and she wanted to consult me with regard to her rights. The letter indicated that definite proceedings had been started against her by her husband, and she claimed that she did not know anything about it. She wanted to know if I would look into the matter, and wanted to know just what her status was and what she could do to protect herself. 30

Q What, if anything did you do by way of investigation as to what had occurred in Ohio? A I wrote to the attorneys in Ohio. Enclosed with that letter from Miss Kennedy was also a carbon copy—a copy of a letter which the at- 40

Alfred J. Grosso, for Complainant, Direct.

torneys in Ohio had written to a Thomas Fahey, who had represented Mrs. McWhinnie in the past, but who had died.

Q Was he a New Jersey attorney, do you know? A No. He was a New York attorney. He had died. And Mrs. Kennedy was in his
10 employ, and was winding up his affairs. When this letter came addressed to Thomas Fahey, she opened it and enclosed the copy to Mrs. McWhinnie along with a copy of her reply to this Ohio law firm. So that I communicated with them to inquire whether or not it was true that divorce proceedings had been started, and, if so, if they would be good enough to send me a copy of the papers so that I could advise Mrs. McWhinnie.

Q Did you subsequently obtain a certified
20 copy of the proceedings? A I received a letter from them and they stated that the divorce was completed. No— In my letter to them, I stated that Mrs. McWhinnie claimed she never had received any notice of the divorce action, and it was for that reason that I was writing to them, and I wanted to get all the particulars. They stated that the divorce proceedings were completed; that they had served her by publication, and that if I wanted to get a copy of the papers
30 I could write to the clerk of the court, which I did. And I subsequently got a copy of the divorce papers from the—I think it was the Court of Common Pleas, there in Ohio.

Q What did you next do in Mrs. McWhinnie's behalf? A I then tried to locate Mr. McWhinnie. I wrote numerous letters to steamship authorities. I was informed by Mrs. McWhinnie that he was a seafaring man, and a captain, a master, on some ship. I wrote to shipping
40 authorities, various steamship companies. At

Alfred J. Grosso, for Complainant, Direct.

my request the police department of West Orange communicated with the police department of Macedonia, Ohio, that being the address, I believe, that I had gotten from the papers.

Q Would this file indicate what you did? A Yes, it would.

Q And those papers are the file of what case? 10
A This is a file of McWhinnie versus McWhinnie.

Q In your office? A Yes. Well, as I said before I wrote to Wolf & Kruckhoff—that is the name of the Ohio law firm for Mr. McWhinnie—asking them if they would be good enough to send me a copy of the petition.

The Court: And the date?

The Witness: June 2nd, 1931. That was 20
within—I believe that was the same day that Mrs. McWhinnie came in to see me. I asked them also if they would let me know in what manner Mrs. McWhinnie had been served. They replied to me under date of June 17th, and they stated—

The Court: 1932?

The Witness: Yes. June 17, 1931.

The Court: 1931?

The Witness: 1931. And they stated, if 30
I wanted a copy of the proceedings, I could get them from the clerk of the court. I then wrote to the clerk of the court on June 23rd, 1931; and they wrote me that, if I wanted a copy of the papers, I would have to send them a check for two dollars. Their reply was on June 27th, I then notified Mrs. McWhinnie that I had heard from the court. And on July 1st, 1931 I sent a check to the 40

Alfred J. Grosso, for Complainant, Direct.

clerk of the court for the papers. Mrs. McWhinnie then asked me if I would take proceedings to have this divorce action set aside. And I told her that it might be that it could be set aside, especially if she had not been served and had no knowledge of the proceedings. Then it became necessary to ascertain where Mr. McWhinnie could be found. So that on August 28th, 1931, I wrote to the United States Shipping Commissioners, Port of the City of New York, to obtain information regarding Mr. McWhinnie's whereabouts. I received a reply to that letter on September 1st, in which they stated they had no record of his whereabouts. I then wrote to the Mutual Life Insurance Company of New York on September 24th, 1931, because I was informed by Mrs. McWhinnie that a premium notice of a life insurance policy had been sent to her home, and that if I wrote I might be able to ascertain Mr. McWhinnie's whereabouts through that insurance company. I wrote to the Chief of Police of Macedonia, Ohio—or, I had the Commissioner of Police at West Orange. I have got a carbon copy. I dictated the letter, but I had the Commissioner of West Orange write to the Chief of Police of Macedonia, Ohio, regarding Mr. McWhinnie's whereabouts, because the petition stated that he was a resident of Macedonia, Ohio. I wrote to the Department of Commerce and Navigation Service in September, 1931, for the same purpose.

The Court: What reply did you get from Macedonia, Ohio?

Alfred J. Grosso, for Complainant, Direct.

The Witness: I was just looking for that. Oh, the first reply I got was from the Commissioner of Navigation, in October of 1931, and that stated that they had no record of Captain William McWhinnie's shipping out through that office. That is, I wrote to the Commissioner of Navigation for the Port of Baltimore, Maryland, because I had been informed by Mrs. McWhinnie that the run that he had been on frequently stopped at Baltimore. So I thought I might get information from that source. I received a reply from the Mutual Life Insurance Company in which they stated they could not furnish me with the address. I have not come to the reply from Macedonia yet, but I will just take it in chronological order, the same as I have it here. I then wrote to the Neptune Association—that is an association of seafaring men—at 2082 Broad street, New York, on November 7th. And to the United States Local Inspector of the Customs House on November 7th of 1931. And to the Masters, Mates and Pilots Association of 24 Moore street, New York. I understood that he was a member of that organization. For the same purpose. And was informed that he was not a member of the association. I received a reply from the Steamboat Inspection Service of the Department of Commerce on November 10th, 1931, in which they stated that, according to their records, the address of William McWhinnie, Master Pilot, was 2844 Hudson Boulevard, Jersey City, New Jersey. That was on November 10th, 1931. I then sent for Mrs. McWhinnie and started to make an investigation as to whether or

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Alfred J. Grosso, for Complainant, Direct.

not Mr. McWhinnie was living at that address. That investigation took quite some time, and the information that I received was that he was at that address. I then got a writ of *ne exeat* from Vice-Chancellor Backes, and delivered it to the sheriff of Hudson County.

10 Q Did you at the same time file a bill of complaint in this cause? A Yes, I filed the bill of complaint. That was in, I think, the early part of 1931. And having obtained the writ, I delivered it to the sheriff of Hudson County. And when the sheriff went to serve it, he informed me that he could not locate Mr. McWhinnie; that Mr. McWhinnie had left that address, or was not there at that time; so that the writ could not be served before its return date. I had the sheriff return it marked "non est." I subsequently learned that—I don't know from what source—that Mr. McWhinnie was on a steamship that was making a run—I don't remember the name of the ship—and that it was due to arrive—

20 Q Kearny, New Jersey, near Perth Amboy? A Yes. Down near Perth Amboy, at some port. I applied for another writ of *ne exeat*, and obtained it from Vice-Chancellor Berry. Then I arranged to have it served, and I believe it was served at that time.

30 Q Did you ever get any communication from the Chief of Police of Macedonia, Ohio? A I have looked through the correspondence to—there may be—I don't know. Is there a letter in here? I may have skipped it in going over.

40 Q May I suggest that you look at the bottom of the letter that you sent? If you find that, I think you will find the answer. A Yes. There

Alfred J. Grosso, for Complainant, Cross.

is a reply on the bottom of the letter that was sent by the West Orange Police to this effect: William McWhinnie was boarding at the Zappolo home, but left there about one month ago, and left no forwarding address. He passed as a seafaring man while here.

Q What was the date of that letter? A The date of that letter is September 5, 1931. 10

Mr. Brundage: Take the witness.

Cross examination by Mr. Merrill.

Q What was the result of the *ne exeat* proceeding, Mr. Grosso? A I am testifying now purely from memory, because at that stage of the proceedings, Mr. Curtis Brundage of the office, and Mr. Norman Brundage, were working on the case, but I believe he was placed under arrest, and I believe that he filed a bond. I am not positive of it, because at that stage of the proceeding, why, my partner and Mr. Curtis Brundage were working on the case, too. 20

Q Aside from the details, what was the result? A Do you mean, what happened in the proceeding?

Q No. What disposition was finally made of it? 30

The Court: That is all in the record, isn't it, Mr. Merrill?

A I am not in a position to say without looking at the file. If you will permit me to look at the file, I can tell you what disposition was made.

Mr. Merrill: It is a fact; it is in the record that his bond was discharged and the *ne exeat* was discharged. 40

Alfred J. Grosso, for Complainant, Cross.

The Witness: All right. If you say that happened, that is my answer.

Q Did you get that letter from Vice-Chancellor Berry (handing a letter to the witness)?

A This letter?

10 Q Yes. A That is dated June 29, 1932, isn't it?

Mr. Brundage: That is right. If the Court please, I can't see the materiality of this letter. It is merely a letter that the Vice-Chancellor is going to dismiss the writ of *ne exeat*.

The Court: Let it go in.

20 The Witness: I do not seem to have a copy of it here in the file, Mr. Merrill.

Mr. Merrill: Perhaps Mr. Brundage will admit that such a letter was received.

Mr. Brundage: Yes. I will admit that a letter from Vice-Chancellor Berry dated June 29, 1932 was received, addressed to Benjamin Gordon and Grosso, Brundage & Anderson.

30 Mr. Merrill: Then I offer it now as part of my case.

The Court: Have it marked for identification.

(The letter is marked Exhibit D. 1 for identification.)

Mr. Merrill: That is all, Mr. Grosso. Thank you.

(Witness excused.)

Carolyn McWhinnie, for Complainant, Direct.

CAROLYN McWHINNIE, is sworn.

Direct examination by Mr. Brundage.

Q Where do you live, Mrs. McWhinnie? A
28 Lindsay avenue, West Orange.

Q You are the complainant in this matter? A 10
I am.

Q And you were married to William Mc-
Whinnie, the defendant in this matter? A I
was.

Q I show you what purports to be a mar-
riage certificate, and ask you if that is the cer-
tificate that is issued to you at the time of your
marriage.

Mr. Merrill: That, your Honor, will be 20
admitted, yes.

(The marriage certificate is marked Ex-
hibit C. 2.)

Q Following your marriage to Mr. McWhin-
nie, where did you and your husband live? A
We lived at 511 East 84th street, New York City.

Q What was your husband's occupation? A
He was second mate on one of the Fruit Liners.

Q United Fruit Company Line? A Yes. 30

Q How long had you known your husband
prior to your marriage? A Ten years.

Q How well had you known him during that
time? A Well, for about five years he made
his home with us.

Q At that address you just gave? A Well,
46th street. We lived at 46th street before that.
But we lived on 84th street for about three and
a half years, and at that time he was with us. 40

Carolyn McWhinnie, for Complainant, Direct.

Q How long did you continue to live at the last named address? A At 84th street?

Q Yes. A I lived there until the 15th of June, 1917. That was three months after we were married.

10 Q To where did you move? A 20 Kingsley street, West Orange.

Q Whose idea was it that you move to West Orange? A Well, before we were married, we had talked about moving out of the city, and we had visited in Jersey and in Roseville, and in Orange, and it was convenient to my husband's ship. And we decided on going there.

Q You had friends in the Oranges? A Yes. In Orange and in Roseville.

20 Q What objection, if any, did your husband make to moving to West Orange? A None. He was as anxious to go as I was.

Q Who selected the apartment, or your residence, in West Orange? A Mrs. Lorch and I. We were looking for an apartment almost three months and we found this by chance. We found a place in April, and my husband went over to Mrs. Lorch's with me that day. That afternoon we went to look at that place. It was on Central avenue.

30 Q In West Orange? A In Orange, right opposite the play ground. He said if we did not find anything else by the time he got back, to take that place, but he thought we could find a place that the rent was a little less than that, because he was not earning very much. And he said, all right, to look a little longer and see if we could find something by the time he got back. Just by chance we found this place at 20 Kingsley street.

40 Q In West Orange? A In West Orange.

Carolyn McWhinnie, for Complainant, Direct.

Q Before you rented that place, what did you do? A I could have rented the place and moved there, but I would not take it without he saw it. And I waited until he came back.

Q Then what did you do? A He and I went over to Mrs. Lorch's again, and had dinner. And she went with us to 20 Kingsley street when we took the place. 10

Q And your husband went with you? A My husband, Mrs. Lorch, and I, were there.

Q At that time, did you and he engage this apartment— A Yes.

Q —at 20 Kingsley street, West Orange? A Kingsley street, West Orange.

Q What conversation had you had with your husband regarding living in the Oranges, prior to your marriage? A Well, at that time my husband was considerate of me, and he thought it would be better for us to live outside the city, and have a family; and thought that would be a better place to have children than a small apartment in the city, and it was convenient to his ship, and I thought it was better for him to travel back and forth from the train than in the crowded subway. 20

Q And in moving to West Orange you were getting near your friends, were you not? A Yes. And he thought it would be well for me to be near Mrs. Lorch, because he was away twenty-eight days, and was only in port a few days; and I would not be alone. 30

Q Who was Mrs. Lorch? A Mrs. Lorch—she was related to me.

Q She was related to you? A Yes.

Q How intimate were you and she? A We had known each other all our lives. I used to 40

Carolyn McWhinnie, for Complainant, Direct.

visit there quite frequently, and she came to see us.

Q Before you moved to West Orange, what furniture did you and your husband purchase? What household furniture? A We did not have anything except what was in our own home there.

10 Q Prior to moving to West Orange, what did you and your husband do regarding the purchase of some furniture? A Well, I went with him to select some furniture.

Q You went with Mr. McWhinnie to select some furniture? A I went with him, yes.

Q Where did you go? A We went to Wana-maker's first, and went to Kelner, 152nd street and 6th avenue.

20 Q Did you purchase furniture from Kelner? A Yes. We purchased furniture from Kelner.

Q Your husband was there at that time? A He bought it and I was with him.

Q Your husband bought it and you were with him? A Yes.

Q What direction did your husband make as to the delivery? A He said we were looking for an apartment and as soon as we found one, we would let them know where to send it.

30 Q And the furniture was purchased on that condition? A Yes.

Q (Continuing.) That they would retain the furniture? A That they would retain the furniture until we were ready for it.

40 Q I show you what purports to be a bill of Kelner Brothers, New York City, dated May 7, 1917, and ask you if that is the bill for the furniture that you purchased for your home in West Orange? A Yes, that was it.

Carolyn McWhinnie, for Complainant, Direct.

Mr. Brundage: I offer it in evidence, if the Court please. Any objection to this bill? (The bill is marked Exhibit C. 3.)

Q You say, when you ordered this furniture, you told the salesman you wanted the furniture retained until you got an apartment? A Yes. 10

Q What payments were made on account of this purchase? A I think he made a small payment in the office, and then another time he went there and made another payment.

Q Did you go with him at the time he made these payments? A I was with him when he made the first payment but not the second. Then he gave me the balance of the money and told me to pay it and to tell them to send it over to West Orange, after we had found a place. 20

Q Do you recall the date when you paid the balance? A No, I don't recall the date.

Q Will you look at the bill and see if that will refresh your recollection as to when you paid it—about? A June 6th.

Q Of what year? A 1917.

Q You paid the balance of how much, amounting to how much? A I haven't my glasses. I can't see very well. 30

Q It does not make any difference. A I can't see very well.

Q You paid the balance? A I paid the balance.

Q On June 6, 1917? A Yes.

Q And at that time you directed the furniture company to send the furniture to— A 20 Kingsley street.

Q (Continuing.) —20 Kingsley street, West Orange? A Yes. 40

Carolyn McWhinnie, for Complainant, Direct.

Q What was your husband's attitude toward you prior to May 1917? A Prior to May 1917?

Q Yes. A He was most affectionate, kind and considerate.

10 Q And you and he—how did you get along as husband and wife? A Very well. He was everything a woman would want a man to be.

Q And when he was on a voyage, how frequently would you hear from him? A Oh, two or three times; from each of the ports, I would get a letter from him. Some of the ports he stopped at he could not write, because he would have to bring the letter right back on the same ship.

20 Q By the way, what ports did your husband touch, do you know? A He went to Kingston, Colon, and then South America.

Q And from what ports would you ordinarily receive letters from him? A Usually Havana, Kingston, or Colon.

Q And you got how many letters, on an average, on each trip? A Two or three letters.

Q Three letters? A Two or three letters.

30 Q Two or three letters. I show you a letter dated April 27, 1917, and ask you if that is one of your husband's letters to you? A Yes.

Mr. Brundage: I would like to offer it in evidence, your Honor. Any objection?

Mr. Merrill: Except this, your Honor. I am just wondering if that is laying any foundation on this question of jurisdiction.

The Court: I suppose the letter was sent to West Orange.

40 Mr. Brundage: It was, your Honor, but I am not only concerned with the question of

Carolyn McWhinnie, for Complainant, Direct.

jurisdiction; there are other matters of fact that I have got to prove in order to sustain the allegations of my bill.

Mr. Merrill: No objection to it, but I simply wanted to know if there was anything in it concerning the question of jurisdiction.

10

Mr. Brundage: I am not trying this case solely on the question of jurisdiction. The case is reopened.

(The letter is marked Exhibit C. 4.)

Q And in that letter, Mrs. McWhinnie, of April 21st, which has been marked Exhibit C. 4, did your husband say, "I wonder if you have been over to Orange and decided on our little wooden hut. I hope so, Pet, because I want us to get settled down." Did he say that in that letter? A Yes.

20

The Court: You have got the letters?

Mr. Brundage: Yes. I would like to have you read that, your Honor.

Q I show you a letter dated April 6, 1917, and ask you if you received that letter from your husband? A Yes.

30

Mr. Brundage: I would like to mark that too; any objection?

(The letter is marked Exhibit C. 5.)

Q I show you a letter of March 26, 1917, and ask you if you received that letter from your husband? A Yes.

Mr. Brundage: I offer that. Any objection?

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Carolyn McWhinnie, for Complainant, Direct.

Mr. Merrill: I want to ask you this, is there anything in this letter concerning the question of residence?

Mr. Brundage: Not in that letter. And even if there were, I don't see what difference it would make.

10 Mr. Merrill: Any letter of that kind I would like to look at the original—all letters prior to their moving.

Mr. Brundage: No objection to this letter?

Mr. Merrill: No.

(The letter is marked Exhibit C. 6.)

20 Q I show you a letter dated May 16, 1917, and ask you if you received that letter from your husband? A Yes.

Q Did you receive any further letters from your husband in addition to that letter of May 16, 1917? A Only one.

Q Only one? A Only one after that.

Mr. Brundage: I offer this. Any objection to this? There is nothing in there about residence.

30 (The letter is marked Exhibit C. 7.)

Q I show you an envelope addressed to Mrs. William McWhinnie, 20 Kingsley street, Orange, New Jersey, and the letter on the letter head of the United Fruit Company Steamship Service, and ask you from whom you received that? A From my husband.

40 Q Is that the letter that you just referred to? A Yes. That is the only letter I had after that.

Carolyn McWhinnie, for Complainant, Direct.

Q The only other letter you received from your husband? A Yes.

Mr. Brundage: I offer that.

(The letter is marked Exhibit C. 8.)

Q Now, Mrs. McWhinnie, what change, if any, did you observe in your husband's attitude toward you in May, 1917? A On that trip south—on that trip, on the way back, my husband met a woman, Myrtle McGuire. 10

Q Did you meet Myrtle McGuire? A When I went down to meet him, he was standing talking with her on the dock. When he saw me, he came toward me, and kissed me; told me he had met this woman; she was beautiful and had been very nice to him; her husband was interested in gold mines; she was a rich woman. 20

Q Did he introduce you to— A He introduced me to her.

Q (Continuing.) —Mrs. McGuire at that time? A Yes. We went on together, and we reached her. He introduced me to her. Then he called a cab for her.

Q Then you and Mr. McWhinnie went home?

A Then we went home, yes. 30

The Court: Home, where?

The Witness: To 84th street.

Q Can you fix the approximate date of that meeting? A It was the end of May. I could not tell you when.

Q In 1917? A Yes.

Q And this letter was written—this letter (indicating)— A That was written on that trip. 40

Carolyn McWhinnie, for Complainant, Direct.

Q This letter of May 16, 1917, Exhibit C. 7, was written when with respect to the time that—

A On that trip, just before he met her.

Q What do you mean “just before?” A Well, that was sent from Colon, wasn't it—Cristobal. Yes. And he met her in South America

10 Colombia.

Q Which way was the ship going then? A It was going south.

Q It was going south? A Yes.

Q And you met her on the dock in New York?

A I met her on the dock in New York.

Q Did you ever meet Mrs. McGuire again? A I went to see her once.

Q And the day or two following your introduction to Mrs. McGuire, what did your husband have to say in regard to her? A We went home that night after I met her and the following morning he told me he had to go to the Navy Yard. He was in the Naval Reserve. And he did not know just what time he would be home. And in the afternoon, between three and four I received a telegram from him saying he could not come home that night; he had to stay at the Navy Yard. And on the following night he came home about half past six or seven o'clock and

20
30
kissed me and for the first time I smelled he had been drinking.

Q Had your husband been a drinking man before you married him? A Never touched liquor, to my knowledge, before.

Q Had you ever smelled liquor on his breath prior to that time? A No, never.

Q Did he say where he had been that night? A Yes. He said he did not have to stay at the Navy Yard; that he was at the hotel with Myrt McGuire. He did not come home that night.

40

Carolyn McWhinnie, for Complainant, Direct.

Q What was the condition of your husband when he came home that night? A He had been drinking.

Q What was his conduct? A He was very ugly.

Q What did he do? A He did not want to eat. And he went to the window. We were living on the third floor in the apartment house. And he sat with one leg out of the window and one in. And there were awnings on the windows, and, of course, the people in the street could not see him. He was smoking cigarets, one after the other, and throwing matches on the awnings down below. After a little while he came and sat down, and then told me he had not been at the Navy Yard the night before; he had been at the hotel with Myrt McGuire.

Q What other change did you notice in your husband's conduct toward you after this introduction to Mrs. McGuire? How did he act around the house? A He sulked. After we got to Orange he did that. He sulked, and did not speak to me half the time. And he was brutal.

Q Did you and he go out together after this Myrtle McGuire appeared on the scene? A Yes. The first trip he came home after we moved to West Orange, we went over to Mr. Lorch's and Mrs. Lorch's one night, and another night he took Mrs. Lorch and I to the movies down in Orange. Then one Sunday, that Sunday he was home, he and Mrs. Lorch and I went to Lake Hopatcong together.

Q You have just said that Mr. McWhinnie was brutal. Will you tell the Court what you mean by that?

The Court: Before you do that, tell me when it was you moved to West Orange.

Carolyn McWhinnie, for Complainant, Direct.

Mr. Brundage: I am going to bring that out, your Honor.

The Court: You have got her in West Orange. You have not told me when.

Q What day did you move to West Orange?

10 A The 15th of June, 1917.

Q You have said that Mr. McWhinnie was brutal to you. Will you tell us what you had in mind? A Well, the first trip he came home—that was the trip we went out—then the following trip, he came in one day from New York, and he went into the kitchen. Just as I turned to go to my room, he came up to me and gave me a terrific blow across the face. I fell, and my head hit the tap on the boiler, and the hat was
20 the only thing that saved me from a fractured skull.

Q Can you give us the approximate time of that incident? A I think it was July; the latter part of July.

Q What year? A 1917.

Q Did he thereafter strike you? A Yes.

Mr. Merrill: If the Court please, I don't want to unnecessarily interrupt, but I don't
30 see that these incidents, whether they are true or untrue, have anything to do with the particular case we are trying.

The Court: It may be this: their home was in West Orange, or his home was elsewhere, and he, by his conduct, made it possible for this lady to set up a separate residence. A woman does not have to live with a man who half kills her.

Mr. Brundage: That is the point exactly.

40 The Court: I will allow it. Go ahead.

Carolyn McWhinnie, for Complainant, Direct.

Q When did he thereafter strike you? A Another day we came in and we just reached the dining room, and he took my arm and almost twisted it out of the socket. I screamed, and I ran out to the back, and Mr. McManus, the landlord, and Mrs. Sayers, a neighbor—they were standing, talking at the back fence. And I told them he had struck me again. And he went upstairs and Mrs. Sayers went into her home then. Neither of them said anything to me. 10

Q You lived in a two-family house then? A We lived in a two-family house then, and Mr. McManus was the landlord.

Q Mr. McManus was the landlord? A Lived upstairs. Mrs. Sayers lived next door.

Q Where is Mr. McManus? A Mr. McManus is dead now. 20

Q How about Mrs. McManus? A Mrs. McManus is also dead.

Q When did he strike you after that? A Another time he struck me and almost threw me to the floor. And when he did that, I told him I had been to the doctor, and what the doctor had said.

Q What had the doctor said? A That there were indications I might become a mother. 30

Mr. Merrill: I object to that, if the Court please.

The Court: Don't tell us what the doctor said. What was your condition at the time?

Q Why did you go to the doctor?

The Court: Ask her what her condition was. 40

Carolyn McWhinnie, for Complainant, Direct.

A The doctor had been treating me for nerves. I had been going there for some time.

Q Did you go to see him in connection with—

Mr. Merrill: Isn't that a bit leading?

The Court: Ask her: What was your
10 physical condition at the time, Mrs. McWhinnie? You know that, don't you?

The Witness: Well, I thought there might be a possibility that I would become a mother. I wanted to find out. The doctor said there were indications of it; it was a little too soon to tell positively. Then the next day I got that letter from my husband.

Q What letter do you refer to? A The last
20 one. The only one I got after that.

Q Exhibit C. 8? A Yes.

Mr. Merrill: Have I seen that?

Mr. Brundage: I don't know. I don't think you have. I will show it to you.

Q When did Mr. McWhinnie strike you again?
A I went to see Mr. Fahey. We both went there to see if we could not straighten things out. And coming out of his office one day, he was close
30 behind me, and he struck me in the corridor, and my hat flew down the corridor. And I turned and opened the door, and Mr. Fahey saw me standing there, and he asked what had happened, and I told him. So he called my husband in.

Q Who was Mr. Fahey? A Mr. Fahey was an attorney.

Q Retained by whom? A Me.

Q You and your husband had been there that day for what purpose? A To have him
40 try to straighten out things for us.

Carolyn McWhinnie, for Complainant, Direct.

Q At that conference, what, if anything, did Mr. McWhinnie say as to how he felt about you?

A He said to Mr. Fahey, "I know I am married to the finest little woman on earth, but I am fond of this other woman." He says, "I can't divorce Carrie, she has done nothing wrong."

Q When did Mr. McWhinnie strike you again? A He struck me one night. In the middle of the night he woke up and tried to smother me with a pillow; held my head until I was almost suffocated. Then he gave me a shove, and said, "Now, go to the God you prayed to and let Him help you." 10

Q Did he strike you again after that? A The last night he came home.

The Court: When was this?

The Witness: That was in May. I think it was May 14, 1918. He came home and I opened the door for him. He rang the bell. And I greeted him. He did not answer me. He went right in and sat down at the dining room table. He had his dinner. So I tried to start a conversation, but he would not speak to me at all. Then I cleared the table; carried the dishes into the kitchen. While I was washing them I heard a sound at my back. I turned around. He stood in the door and looked wild; had his hands up this way (indicating). And I screamed. A few minutes later he had me by the throat. He said, "In two minutes I will kill you." And I heard the landlady's voice say, "What are you doing to that girl?" The next I knew, she was bending over me on the floor. 20 30

Q Who was the landlady? A Mrs. McManus. 40

Carolyn McWhinnie, for Complainant, Direct.

Q Following that occurrence, what did you do? A The following morning I went into see Mr. Fahey, and I showed him my throat and my face. It was terribly discolored.

Q What did you then do? A He advised me to go to the nearest police station and tell
10 them my story.

Mr. Merrill: Mr. Fahey isn't here. I will object to that.

Mr. Brundage: I will consent to have it stricken.

Q What did you then do after you went to see Mr. Fahey? A Then I went to Mrs. Sayers, a neighbor and told her about my troubles.

Q Then what did you do? A And she sent
20 two of her girls with me to Judge McLaughlin.

Q And Judge McLaughlin was who? A He was Recorder at the time.

Q Where? A In West Orange.

Q And that assault, you say, occurred on May 14, 1918? A Yes.

Q After that, did Mr. McWhinnie return to you? A He did not. He never came back again.

Q He never came back again? A No.

Q What was the effect upon your health of
30 these assaults that Mr. McWhinnie made upon your person? A I was a wreck. Dr. Howlan said I was the worse case of nerves he ever saw.

Mr. Merrill: I object.

Mr. Brundage: Yes. I will consent to having that stricken out.

The Court: You cannot tell what anyone said. Just describe your condition as you
40 knew it. Where have you lived since?

Carolyn McWhinnie, for Complainant, Direct.

Mr. Brundage: I was going to bring that out, your Honor.

The Court: Where have you lived since?

The Witness: I lived a year and eight months at 90 Wood street, in Orange, and for the last twelve years I have been living at 28 Lindsay avenue, West Orange.

10

The Court: Do you vote there?

The Witness: Yes.

The Court: Did you vote back in—when was the first time you voted over here?

The Witness: I voted, I think, in 1928—was the first time I voted.

Q What notice, after that, did you receive that your husband had instituted a suit against you in the Court of Common Pleas in Ohio for divorce on the ground of extreme cruelty? A I received a note from Mr. Fahey one day.

20

Q I mean, from your husband. A From my husband? Nothing.

Q What notice, if any, did you receive from your husband's attorney— A Nothing.

Q (Continuing.) —that a suit had been instituted against you? A Nothing.

30

The Court: You knew that a suit had been instituted because of what Mr. Fahey told you?

The Witness: Mr. Fahey sent me this note, and I went in to see him, and he said—

Mr. Merrill: I object.

The Witness: (Continuing.) —“Those people should never have asked me for your address.”

40

Carolyn McWhinnie, for Complainant, Direct.

The Court: It makes no difference. We have no jury here.

The Witness: He said there were other sources through which he could obtain that information.

10 The Court: You knew that your husband had instituted suit for divorce in Ohio?

The Witness: I did not know that he had gone on with it. They knew where to serve me. I heard nothing more. Mr. Fahey told me that I would be served with papers and to bring the papers to him. And I waited to be served. I was never served; never heard any more about it.

20 Q Have you ever had difficulty receiving mail at your present address? A No.

Q By the way, what mail, if any, came to your Kingsley street address, addressed to your husband? A He got a check from the Navy. Small checks used to come. I don't know how frequently they came. Then there were some more letters, and those letters I took in to Mr. Fahey and he forwarded them to my husband.

30 Q When you changed your residence what, if anything, did you do by way of notifying the post office authorities? A Always had my address changed at the post office.

Q And you had no notice whatever of the pendency of this suit in Ohio? A Absolutely nothing more. I understood that I could do nothing until I was served, and I was waiting to be served.

40 Q When did you first learn that a suit had actually been instituted? A The end of May or the beginning of June. I don't recall the date.

Carolyn McWhinnie, for Complainant, Direct.

Q What year? A 1931.

Q What did you do when you got that news?
A I called Mr. Grosso and made an appointment for that afternoon, and I went right down to see him.

Q Why didn't you go to the State of Ohio and contest the action there? A I did not have any money. 10

Q What income have you had, Mrs. McWhinnie, during your marriage?

Mr. Merrill: I don't think that is important.

Mr. Brundage: It is important.

The Witness: My husband signed an agreement in 1919 in Mr. Fahey's office. 20

Q What income have you had? What has been the source of your income since you were married? A I rented rooms and gave board.

Q Did you have any independent means? A No.

Q (Continuing.) At the time of your marriage— A No.

Q (Continuing.) —or later, and how are you presently maintaining yourself? A I have just one boarder there, that is all. I haven't been able to get anyone for over a year. 30

Q You have maintained yourself by taking boarders? A Yes.

Q What other income have you in addition to that, if any? A Just now?

Q Yes. A None.

Q Nothing? A No.

Q Did your husband ever ask you to move to the State of Ohio with him? A He never 40

Carolyn McWhinnie, for Complainant, Direct.

asked me to leave West Orange to go anywhere. I would have gone anywhere with him.

Q As a matter of fact, did you at any time seek your husband out of the State of New Jersey when he had left, or after he had left? A I don't understand.

10

The Court: Did you try to locate your husband?

The Witness: Yes. Mr. Fahey tried and I tried.

Q Did you ever curse your husband, Mrs. McWhinnie, in the presence of his friends? A No, I never cursed or swore in my life.

Q Did you ever curse him? A No, never.

20

Q What can you say as to whether you ever struck your husband? A No. I loved my husband.

Q Did you ever strike him? A No.

Q What can you say as to whether you were the cause of his losing his employment? A That was his own folly. I had nothing to do with him losing his job. He was in that woman's room on board ship. He admitted that.

30

The Court: Admitted it to whom?

The Witness: To me. And everybody on board knew it.

The Court: Was that why he lost his job?

The Witness: I don't know. The captain said in his presence and mine, that Mr. McWhinnie does not realize that the McWhinnie that was was the better man and the McWhinnie of today has lost the respect of every one. He said, "In all my life, I never

40

Carolyn McWhinnie, for Complainant, Direct.

heard of anything like this." He said that in our presence.

Q That was the captain of his ship? A Yes. He has lost other jobs since. I have had nothing to do with it.

Q Did you have occasion to go to New Orleans? A Yes. 10

Q When was that? A In February of 1918.

Q What was the occasion of your going there? A I used to go to meet my husband when he came in, and during the war time there was not any publication in the papers about arrival of the ships, so I would go to the company to find out when the ship was due. I went down one day and they informed me that the ship was not coming back to New York, it was going on the New Orleans run. I asked if my husband knew that before it went away. He said, "Yes, he knew it." So I went down there. 20

Q You went down where? A To New Orleans.

Q Did you meet your husband there? A I met my husband there, yes.

Q How did he treat you when you met him? A He was not terribly pleased to see me. 30

The Court: What did he say?

The Witness: He was quite surprised. He came up and stayed at the house where I was. I had intended to go there to live if he was going to be on that run steadily. Was there only two months, and had an accident; he was thrown overboard. He was sent back to New York. I went back before he got back. I was there when he got back. 40

Carolyn McWhinnie, for Complainant, Direct.

Q Will you tell the Court what money, if any, your husband has paid to you since May 1918?

A I had nothing when he left me. And I was a wreck. I was not able to do any work.

Q You went then to— A I went to see Judge McLaughlin. He tried to get some money
10 for me.

Mr. Merrill: I object to that. Is Judge McLaughlin here?

Mr. Brundage: Yes. He will testify.

The Witness: He could not get any. Then I took it up with Mr. Fahey. After almost a year, my husband signed an agreement to pay me ninety dollars a month and some of the back money that I owed for
20 rent and different things.

The Court: That was some time in 1919?

The Witness: That was in 1919.

The Court: Where is that agreement?

Mr. Brundage: I have it here.

The Court: Let her identify it and put it in evidence.

The Witness: He only lived up to that for a short time.

30 Q How long did Mr. McWhinnie continue to make payments to you under that agreement?
A I can't tell you just how long. It was while he was in that one company I got the money regularly. Then after that he would disappear, and Mr. Fahey would have to look for him and remind him. He is thousands of dollars in arrears on that.

40 Mr. Brundage: That is all.

Carolyn McWhinnie, for Complainant, Direct.

The Court: Have you the agreement?

Mr. Brundage: We are looking for it, your Honor.

Q Mrs. McWhinnie, I show you what purports to be a letter to "Will" and ask you if you have even seen these papers before? A Yes. 10

Q And also some telegrams and post cards. Please examine them and tell me whether you have seen them before? A Yes.

Q Will you tell the Court how you obtained possession of these papers? A One day we were invited to spend the day in Brooklyn. It was arranged that I was to go over to meet my husband. We were going on to Brooklyn from there. He went in at his usual time, and I went in on a later train. As I was walking from the ferry to the ship, something urged me to hurry ahead. And just as I reached the dock a man came along with a suit case in his hand; almost knocked me over. It was my husband. I walked along with him for a few minutes and said, "Did you intend to take the suit case to Brooklyn, Mack?" He turned around and said, "We will go back." We went back to the ship. The third mate was just coming out. My husband handed him the suit case and spoke to him. I learned later he had asked him to send a telegram to Myrtle McGuire to tell her things looked very black. 20 30

The Court: Wait a minute. How did you learn of that?

The Witness: The third mate told me.

The Court: In the presence of your husband? 40

Carolyn McWhinnie, for Complainant, Direct.

The Witness: No.

The Court: Strike it out.

10 The Witness: Then we went, as I thought, toward the subway. Instead, my husband went into a saloon and came out with a package, and said, "We will go home now." I said, "Very well." We went home. And when we got home, he opened the package. It was a bottle of Black and White whiskey. He got a tumbler, sat on the kitchen tubs and began drinking this whiskey by the tumbler-fuls. When he had emptied it about two inches, he fell over in a heap. There was not much room. There were only two tubs. He lay there twisting and turning for about half an hour, then became terribly sick, and after that he went to sleep. I had to sit there with him until six o'clock. I was afraid he would fall off the tubs and hurt himself. While he was twisting and turning something fell to the floor. I picked it up. It was this packet of letters. I opened the first one and in it it said she was taking him—

20

Mr. Merrill: I object.

30 The Court: Why do you object?

Mr. Merrill: I thought she was going to state what she saw in the letters.

The Court: They are here.

Mr. Merrill: Yes, but they are not in evidence yet.

The Witness: In the first one I saw she was taking him to Philadelphia and Atlantic City to be happy.

40

Carolyn McWhinnie, for Complainant, Direct.

Q These letters I have just shown you—are they the letters that fell from his pocket? A Yes.

Q In whose custody have these letters since been? A Mr. Fahey had them until I brought them over to you.

10

Mr. Brundage: I offer these, your Honor.

The Court: I do not expect you to read those letters now. Can't you say whether or not they came from his pocket? Have you seen them before?

Take a recess for a few minutes.

Mr. Brundage: Can we dispose of these letters?

The Court: She is not very comfortable. Take a recess and come back.

20

(At this point a short recess was taken.)

Mr. Brundage: Do you consent to these? (The letters are marked Exhibit C. 9.)

Q You have referred to an agreement between yourself and your husband. A Yes.

Q I show you what purports to be an agreement dated May 9, 1919, and ask you if that is the agreement you refer to? A Yes.

30

Mr. Brundage: I offer this.

(The agreement is marked Exhibit C. 10.)

The Court: What is the date of it?

Mr. Brundage: May 9, 1919.

Q What friends did you have in Jersey who were mutual friends of yourself and your husband? A Well, he knew the Lorches.

40

Carolyn McWhinnie, for Complainant, Cross.

Mr. Merrill: I don't think you can add the "mutual" there. I do not think she is familiar with who were mutual friends. I object to the term "mutual."

10 The Court: Mutual friends are his friends and her friends. That is what you want to know, isn't it?

Mr. Brundage: Yes.

The Court: I will allow it.

The Witness: He knew the Lorches, and Mrs. Reilly in Roseville.

20 Q And who in the City of New York? A The landlady, Mrs. Paganza, of the house we lived in on 84th street. And in Newark, the Gehrens—in New York. And Judge McLaughlin knew him.

Q What communications, if any, had you had with these friends since May 1918? A I have been in touch with them. I have seen them and I have been in touch with them.

Q What information, if any, have you received from them of the pendency or institution of the suit for divorce by your husband in the State of Ohio? A None.

30 Mr. Brundage: Take the witness.

Cross examination by Mr. Merrill.

Q Was there any written lease? A No. There never was.

Q And at the time that this furniture was ordered, you were still living on 84th street? A Yes.

40 Q You simply had in mind that you might move out somewhere into the country, but no

Carolyn McWhinnie, for Complainant, Cross.

particular place. A We had Jersey in mind. We were looking for a place there.

Q And the goods were shipped out there finally at your request, and not at Mr. McWhinnie's request? A Well, he gave me the money to pay the balance, and told me to have them sent there. 10

Q He told you to have them sent there? A Told me to have them sent to where we had selected the apartment.

Q You spoke of having a telephone message from Mr. McWhinnie concerning some hotel in New York with Mrs. McGuire, was it? A A telephone message?

Q Yes. A No.

Q Did you have a telegram from him? A I had a telegram from him, yes. 20

Q No telephone call? A No.

Q Have you that telegram? A No, I have not.

Q So, it is nothing but your recollection of that? A That is all.

Q You did receive a letter—you did have a conversation with Mr. Fahey concerning the matter of service in a divorce suit? A Yes.

Q Have you seen a copy of the letter he wrote to the attorneys in Cleveland as to your residence? A I did not see— 30

Q Please answer the question.

The Court: Did you see it?

The Witness: Yes. I saw that letter.

Q So you were aware then that he advised them that you preferred that you should not be served at your residence. 40

Carolyn McWhinnie, for Complainant, Cross.

Mr. Brundage: I object to that, your Honor. The letter will speak for itself.

The Court: I will allow it.

10 A I did not see that letter until I brought the papers over to Mr. Brundage's office. Mr. Fahey did not write it when I was there.

The Court: Did you tell Mr. Fahey to communicate that message to them?

The Witness: No. I asked Mr. Fahey if I could be served at his—

The Court: Wait. (Continuing.) To Mr. McWhinnie's counsel in Ohio? Did you tell him to communicate that message to them?

20 The Witness: No. I asked Mr. Fahey if I could be served at his office. I did that to avoid publicity, because I had an embarrassing experience once before through my husband's folly. I wished to avoid a repetition of that. I said, "Couldn't I be served here?" He said, "I will write the Ohio attorneys and ask them." But he did not write the letter when I was there.

30 Q As a matter of fact, he apparently did not suggest any other form of service than according to the laws of the State of Ohio. A According to what Mr. Fahey said, I understood there was nothing I could do until they served me, and I was waiting for service.

Mr. Merrill: That letter is in evidence, so I do not need to go into it.

40 Mr. Brundage: What letter is in evidence?

Carolyn McWhinnie, for Complainant, Cross.

Mr. Merrill: The letter from Mr. Fahey to Wolf & Kruckhoff.

The Court: Did you put that in evidence?

Mr. Brundage: I did not put it in.

The Court: Put it in. Let us get it all in.

10

Mr. Brundage: I have not put that letter in.

The Court: Why don't you put that letter in? You referred to it and had it marked as an exhibit.

Mr. Brundage: Not in this proceeding.

The Court: I thought you did.

Mr. Brundage: No. I haven't got the original. I have got a copy.

The Court: Do you want the original?

20

Mr. Brundage: They have the original.

Mr. Merrill: I don't think we have it.

The Court: Have you got a copy here? Don't let us quibble about this. I want the facts.

Mr. Brundage: I am not quibbling. I would have marked it on my examination, but I only have a copy.

The Court: They have no objection to the copy.

30

Mr. Merrill: I offer this letter to Wolf & Kruckhoff from Thomas Fahey, dated September 30th, 1930.

The Court: All right.

Q Will you please read the letter?

The Court: Why do you want Mrs. McWhinnie to read the letter?

40

Carolyn McWhinnie, for Complainant, Cross.

Mr. Merrill: I want her to read it and then ask her if that, in fact, was the substance of her conversation with Mr. Fahey.

The Court: All right. Read it.

The Witness: I haven't my glasses.

10 Mr. Merrill: May I read it to her?

(Reading). "I recently had a brief interview with Mrs. Carolyn McWhinnie, and she suggested that, if there was any way to perfect the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind. I cannot see much point to it, but think it well, so far as possible, to oblige her and respect her wishes. I assume it does not
20 make much difference where the papers are served so that they are served as required by the laws of your State."

The Witness: I did not say anything to Mr. Fahey about that.

The Court: In other words, you asked him if you could be served at his office instead of your home, to avoid this publicity?

30 The Witness: That is all.

The Court: All right.

Mr. Brundage: I would like also to offer in evidence a copy of the letter to Mr. Fahey of Mr. McWhinnie's attorneys in Ohio, and also Mr. Fahey's reply to that letter.

Mr. Merrill: Yes.

Mr. Brundage: I would like to offer those.

40 The Court: Show them to her.

Carolyn McWhinnie, for Complainant, Cross.

(The letters are marked Exhibits C. 11 and C. 12.)

Mr. Merrill: I will ask counsel if they have a letter dated June 1st, 1931, addressed to Mrs. McWhinnie by Agnes Kennedy.

Mr. Brundage: Have you a copy of it? 10

Mr. Merrill: Yes. It is attached.

The Court: Put the copy in.

Mr. Brundage: I have that.

Mr. Merrill: I offer it in evidence.

(The letter is marked Exhibit D. 2.)

Mr. Merrill: May I read from this letter? This is a letter to you sent by Agnes Kennedy, and dated June 1st, 1931. (Reading.) "I am sorry to send you bad news, yet perhaps it is not bad news except from a financial standpoint, and that is bad enough." May we infer from that that you did not regard the fact of the divorce as being bad news? 20

Mr. Brundage: If the Court please, this is a letter written by Mr. Fahey's secretary. How can that possibly bind this party?

Mr. Merrill: It is not a matter of binding her. 30

The Court: That is merely an expression of Miss Kennedy's.

Mr. Merrill: Yes. I am asking Mrs. McWhinnie if it is a fact that it was not bad news as to the divorce.

The Court: How can that have any bearing upon the issues here?

Mr. Merrill: It seems to me it has the same bearing that a great deal else that has gone in has. I will read the next clause. 40

Carolyn McWhinnie, for Complainant, Cross.

The Court: Read the whole thing.

Mr. Brundage: I wonder if you could use my glasses? We might save time.

The Court: Can you read with them?

The Witness: No.

10 Q Well, now, in this letter it said this: "I am enclosing herewith copy of my reply—"

The Court: You are reading from what exhibit?

Mr. Merrill: C. 1.

(Reading.) "I have done this believing it to be best for your interests and to give you an opportunity to consult a New Jersey attorney so that your interests may be protected. You may have already consulted someone in the matter, as I know it was your intention to do so several months ago."

20

The Court: What letter is that? From whom to whom?

Mr. Merrill: This is a letter to Mrs. McWhinnie from Agnes Kennedy, secretary to her attorney, Mr. Fahey.

The Court: Dated when?

30 Mr. Merrill: June 1, 1931. Right after the notification that the divorce had been granted.

The Court: All right. Go ahead.

Q So that you had consulted someone just a few months before receipt of this letter. A No. I had not consulted anyone.

Q She is mistaken in that then, although she says "I know it was it your intention to do so."

40 A I had not consulted anyone.

Carolyn McWhinnie, for Complainant, Cross.

Q But you did have in mind to consult someone. A I don't recall that.

Q How do you happen to know that in letters sent to the New Jersey address, there were any checks from the Navy Department? A Well, they came in the Navy envelope.

Q That is all you know? A No. One day one came, and it got mixed with Mr. McManus' mail. The children carried it upstairs and Mr. McManus, without looking at the name, opened it, and he found a check in it for my husband, and saw he had made a mistake. So he brought it down to me, and apologized. I carried that check around to Judge McLaughlin, and he sent that check to my husband. That is how I know what was in it. 10

Q That was only one. 20

The Court: When was that, about?

The Witness: You could tell by the letter Judge McLaughlin has because my husband mentioned in that letter that someone was trying to steal the check, and nobody was trying to steal the check.

Q You spoke of having tried to locate Mr. McWhinnie didn't you? A Yes, I did try to locate Mr. McWhinnie. 30

Q Wasn't Mr. Fahey in constant touch with Mr. McWhinnie? A No. He disappeared occasionally and he had to look him up again.

Q Disappeared in what way? A I mean we could not locate him. He would leave a company or leave a ship and we would have to try to locate him again.

Q But Mr. McWhinnie frequently wrote to Mr. Fahey and money was sent through Mr. 40

Carolyn McWhinnie, for Complainant, Re-direct.

Fahey. A Only after Mr. Fahey located him and reminded him.

Mr. Merrill: That is all.

Re-direct examination by Mr. Brundage.

10

Q What would you have done had you been served with process in the Ohio proceedings?

Mr. Merrill: That is purely speculative, what she would have done had something which was not done been done.

20

Mr. Brundage: The only point of that question, your Honor—he is trying to bring out on cross examination the question of intention, and I am merely trying to show what the intention was.

The Court: It has no bearing on this case.

Mr. Brundage: I would like to introduce a copy of a letter—I do not know what became of the original—it was introduced at the former hearing. It is a letter dated May 28, 1931, to Mr. Fahey, from the Ohio attorneys, advising her of the divorce decree.

30

The Court: Show it to them.

Mr. Merrill: Yes, that is right.

The Court: Put it in.

(The letter is marked Exhibit C. 13.)

The Court: Did your husband have any relatives out in Ohio?

The Witness: No.

The Court: (Continuing) That you know of.

40

The Witness: No.

Carolyn McWhinnie, for Complainant, Re-direct.

The Court: Do you know anything about his relatives or friends?

The Witness: Yes, I know he had a mother and sister in England.

The Court: In England?

The Witness: Yes. And his cousins, I think were in Boston, but he had no relatives in Ohio. 10

The Court: Did he never mention the name of anyone in Ohio?

The Witness: Not that I know of. I did not know he knew anyone there at all until—

The Court: Do you know how he happened to go out there?

The Witness: No, I do not. All I know is about an insurance policy. 20

The Court: What about an insurance policy?

Q Is this the policy you speak of (handing a policy to the witness)— A Yes. About five years before we were married, my husband got this policy and he gave it to me. I don't remember just when, but it was before we were married. He gave me the policy with a letter and said, "Put these away. If ever anything happens to me, take them to an attorney." I put them away. Then after he began running around with Myrtle McGuire, he said to me one day, "I am going to drop this policy. I won't pay any more premiums." I thought he was doing something he would regret later; so I decided to keep up the payments. He had paid in five years. 30

The Court: What has that to do with my question? 40

Carolyn McWhinnie, for Complainant, Re-direct.

The Witness: This brings it in.

The Court: Make it short.

10 The Witness: I paid the premiums for ten years. Then one day I sent in my quarterly premium and the insurance company returned a check to me for the same amount, and said that a loan had been made on this policy through the New York office, and the premium discounted. Mr. Fahey had the policy in his office, so I went over to see him and told him about it. Then I went down to the insurance company and asked them about it and they said my husband had been there and had told them he had lost the original policy.

20 Mr. Merrill: I object.

The Court: You cannot tell us what your husband told them. You are not allowed to say that.

Q Is this the policy you refer to, Mrs. McWhinnie? A Yes.

The Court: She has already identified it.

The Witness: Yes.

The Court: Is that the same?

30 Mr. Brundage: Yes. I want to mark that.

The Court: Tell me what this has to do with that.

The Witness: He got a duplicate policy and as soon as he got it he sent this duplicate policy to a woman in Ohio, Celeste Zappolo.

Mr. Brundage: That is all, Mrs. McWhinnie.

40 (Witness excused.)

Thomas McLaughlin, for Complainant, Direct.

THOMAS McLAUGHLIN is sworn.

Direct examination by Mr. Brundage.

Q Where do you live, Judge McLaughlin? A 15 Yale Terrace, West Orange. 10

Q How long have you lived there? A Oh, twenty-five years. 10

Q How many? A Twenty-five years.

Q 1917 and 1918 you were recorder of the Town of West Orange? A I was.

Q Do you recall an occasion of a complaint being made by Mrs. McWhinnie against her husband? A Yes.

Q What was the nature of that complaint? A Assault and battery. 20

Q It was made by whom? A Mrs. McWhinnie.

Q In person? A Yes.

Q When she came to you, what was her appearance? A Why, she was in very bad shape. She was all—her face was black and blue, and she seemed to be in great pain.

Q What was the state of her nerves?

Mr. Merrill: I don't know that this witness is qualified to pass on the state of her nerves. 30

The Court: So far as he was able to see. He is not a doctor.

So far as you were able to see, Judge.

The Witness: She was in a very pitiful condition, and her eyes were all red.

The Court: Was she nervous or not?

The Witness: Very nervous. 40

Thomas McLaughlin, for Complainant, Direct.

Q What did you do on that complaint, Judge?

A I tried to get in touch with Mr. McWhinnie.

Q Did you succeed? A I did.

Q What was his attitude?

10 Mr. Merrill: I think that is objectionable.
What did he do or say?

The Court: What did he do?

The Witness: He came to the court one day.

The Court: How long after the complaint was made?

The Witness: Shortly after.

The Court: The same day or the next day?

20 The Witness: No. Within a week's time, or so. He came in and was very, very much put out about having to come to court.

The Court: What did he say about this alleged beating he gave his wife?

The Witness: He told us it was none of our business.

The Court: Did he deny it?

The Witness: Yes, Judge.

30 Q Did you impose any sentence? A Why, the case was disposed of then. We tried to settle it and have them get some money—she was trying to get some money from him.

Q Did you receive any communication from Mr. McWhinnie? A I did.

Q I show you a letter dated December 25, 1918, and ask you if you received that letter? A Yes.

40 Mr. Brundage: I offer that.
(The letter is marked Exhibit C. 14.)

Thomas McLaughlin, for Complainant, Direct.

Q I also show you a telegram addressed to you, dated December 17, 1918, and ask you if you received that? A Yes.

Q And another one dated December 20th. The year does not appear on the telegram. A Yes.

Q Do you remember what year that came, Judge? A It was all in the one year. 10

Q All in the same year? A Yes, a short time.

Mr. Brundage: I offer these telegrams. Have you any objection to that letter?

Q What success did you have in getting money for Mrs. McWhinnie? A Very little success. 20

Q At the time Mrs. McWhinnie came to you and made the complaint, did she tell you in what manner her husband had assaulted her? A Yes.

The Court: Did you have a trial?

The Witness: No, Judge. It never went—

The Court: Did you have a hearing?

The Witness: No, because Mrs. McWhinnie was making a charge that she was afraid to put in court; wanted to try to settle it without publicity. 30

The Court: Did you have both of these people before you at one time?

The Witness: Yes.

The Court: What was said at that time?

The Witness: He was a hard man to handle at the time; could not do anything with him, so they went away together. 40

Thomas McLaughlin, for Complainant, Direct.

Mr. Brundage: I offer in evidence these telegrams, your Honor.

Mr. Merrill: I object to one as between Mr. McWhinnie and Mr. McLaughlin. The other one I have no objection to.

10 The Witness: Mrs. McWhinnie or I; either one of us got it.

Mr. Brundage: What is the objection?

Mr. Merrill: It seems to be a personal matter and does not seem to have anything to do with this issue.

Mr. Brundage: It has this to do with it: regarding opening the Navy letter enclosing the check.

20 Mr. Merrill: She is not accused of opening any letters.

The Court: I will allow it.

(The telegrams are marked Exhibits C. 15 and C. 16.)

Q Did Mrs. McWhinnie tell you in what manner her husband had assaulted her?

The Court: No.

30 Can you tell me where her residence was at that time?

The Witness: Kingsley street.

The Court: West Orange?

The Witness: Yes, sir.

The Court: Where did you reach Mr. McWhinnie?

The Witness: Through an address that Mrs. McWhinnie gave me.

The Court: Where?

40 The Witness: I don't recall now, Judge.

Mrs. Anne Sayers, for Complainant, Direct.

The Court: Out of the State?

The Witness: Yes.

The Court: You did not find him at Kingsley street.

The Witness: No.

Mr. Brundage: That is all. 10

(Witness excused.)

MRS. ANNE SAYERS, is sworn.

Direct examination by Mr. Brundage.

Q Mrs. Sayers, where do you live? A 18
Kingsley street, West Orange.

Q How long have you been living there? A 20
Twenty-three years.

Q Do you know Mrs. McWhinnie? A Yes.

Q How long have you known her? A I
have known her since 1917.

Q Do you also know Mr. McWhinnie? A
Slightly.

Q And where did the McWhinnies live with
reference to your home? A That I don't know
—they lived next door to me.

Q They lived next door to you? A Yes. 30

Q Do you recall an incident which occurred
in July 1917, in which Mrs. McWhinnie was in-
volved, that happened in the back part of their
home—in the rear of their home? A Yes.

Q Will you tell the Court what you witnessed
at that time? A I happened to be down in the
back yard talking to Mr. McManus. That was
their landlord. And I saw Mr. and Mrs. Mc-
Whinnie going in, and they had not been very
long in the apartment when she ran out on the 40

Mrs. Anne Sayers, for Complainant, Direct.

back porch crying. She said he was beating her. I turned around and went into my own home, and Mr. Mac went into his place.

Q How was Mrs. McWhinnie dressed at that time? A She had her hat and coat on.

10 Q She had her hat and coat on. How long had they been in the house before that incident occurred? A Just a short while.

Q Would you estimate about how long? A Well, no, I could not say. She had not been in long enough to have her things taken off.

The Court: How long did you observe Mr. McWhinnie around the house there?

The Witness: Very little. I saw him very little.

20

Q Did you know these people when they moved there? A No, I did not know them then.

Q You met them there; when they came there? A Yes.

Q You lived next door? A I lived next door, yes.

Q You say they moved there sometime in 1917? A Yes.

30 Q How long did she continue to live there? A A little over three years.

Q During those three years, how often did you see Mr. McWhinnie there? A I did not see him over twice or three times.

Q Twice or three times. Did you ever speak to him? A No.

Q After the incident in July, 1917, what incident occurred in May, 1918?

Mr. Merrill: That seems to be rather leading.

40

James E. Coffey, for Complainant, Direct.

Mr. Brundage: I am asking her regarding an incident that occurred in 1918.

The Court: Did anything happen in May, 1918 that you recall?

The Witness: I don't remember anything.

Q Do you recall Mrs. McWhinnie came to your home? A Yes. At that time she came. 10

Q Will you state to the Court what her condition was? A She came in to me and was very nervous and upset, and was telling he how he had been beating her and how he had been abusing her.

The Court: Was he at home at that time?

The Witness: Yes.

The Court: You saw him around? 20

The Witness: No, I did not see him, but then he was at home. She came in, and she told me, and I said to her, "Why put up with it any longer? Why don't you go to see Judge McLaughlin and see what he can do for you." So my two girls went out with her to see the judge.

Mr. Brundage: That is all.

(Witness excused.) 30

JAMES E. COFFEY, is sworn.

Direct examination by Mr. Brundage.

Q Where do you live, Mr. Coffey? A 5
Wheeler street, West Orange.

Q Do you know Mrs. McWhinnie? A Yes,
I do. 40

Agnes Kennedy, for Complainant, Direct.

Q Where do you live with respect to her home? A Why, her house is on Lindsay avenue. Her back yard runs into the side fence of my yard.

Q How long have you known her? A About twelve years.

10 Q Do you know Mr. McWhinnie? A No, I do not.

Q Have you ever seen him about the premises of Lindsay avenue? A No.

Q At Mrs. McWhinnie's home? A No, I did not.

Q (Continuing.) During any of that time? A No, sir.

Q Do you know how Mrs. McWhinnie is getting along—how she maintains herself? A I
20 think she had boarders.

Q How long has Mrs. McWhinnie lived there on Lindsay avenue?

The Court: He says about twelve years.

The Witness: About twelve years.

Mr. Brundage: That is all.

Mr. Merrill: No questions.

(Witness excused.)

30

AGNES KENNEDY, is sworn.

Direct examination by Mr. Brundage.

Q Miss Kennedy, where do you live? A
19507 Woodhall avenue, Hollis, Long Island.

Q You were Mr. Fahey's secretary? A I
was.

40 Q For how long? A Over thirty years.

Agnes Kennedy, for Complainant, Direct.

Q Up until what time? A Until the 14th of February, 1931, when he died.

Q Do you recall what efforts Mr. Fahey made to obtain money for Mrs. McWhinnie from her husband?

The Court: How is that material? How do you think that is material? 10

Mr. Brundage: Only that, from time to time Mrs. McWhinnie would come to the office in an effort to have Mr. Fahey locate her husband for the purpose of—

The Court: Ask her what she knows about this Ohio divorce suit.

Mr. Brundage: I am going to ask her that. 20

The Court: Ask her that and save time.

Q Do you remember Mrs. McWhinnie coming to your office, or Mr. Fahey's office, on or about May 14, 1918? A 1918?

Q Yes. A I know it was about that time. I could not say the exact date.

Q Describe her appearance at the time she came to your office. A Well, it is hard for me to say as to exact dates, but I know she was very much troubled, and she had come to ask Mr. Fahey's advice. And there was one occasion she came when she was in very bad shape; very bad. 30

The Court: What do you mean by that?

The Witness: She was like a person who had received an awful shock. She was shaking as if she had palsy, and she was terribly bruised and battered, her face was 40

Agnes Kennedy, for Complainant, Direct.

discolored, and there were marks on her throat. She really looked sick and she was sick.

Q What was the condition of Mr. Fahey's health in 1931?

10

Mr. Merrill: I object.

A He had been ill for almost a year before that.

Q He had been ill? A He had.

Q Was he able to go to work? A Yes. He came to the office, well, not regularly. He came regularly up to August, 1930, and after that time he was away days at a time; sometimes three or four days at a time.

20

Q Did you notice any change in his—

The Court: Do not let us go into that. That has no bearing on this case. The man was sick and subsequently died.

Mr. Brundage: It has this bearing: that at the time this letter was written by Mr. Fahey to the Ohio attorneys he was a sick man.

30

The Court: What difference does it make? If this lady was domiciled in New Jersey she did not have to do a thing about that Ohio divorce.

Mr. Brundage: I withdraw the question.

The Court: Any questions?

Mr. Merrill: No questions.

(Witness excused.)

40

Annie Riley, for Complainant, Direct.

ANNIE RILEY, is sworn.

Direct examination by Mr. Brundage.

Q Where do you live, Mrs. Riley? A 214
North 9th street, Newark, New Jersey.

Q How long have you lived there? A 10
Twenty-two years.

Q During those twenty-two years, you have
not changed your name? A Not a bit.

Q Do you know Mrs. McWhinnie, the com-
plainant in this case? A Yes, I do.

Q How long have you known her? A Thirty-
nine years.

Q Have you also known Mr. McWhinnie, the
defendant? A Yes, I do.

Q How long have you known him? A Well, 20
since before Mrs. McWhinnie's marriage.

Q Just before Mrs. McWhinnie's marriage?
A About two years before.

Q About two years before. Where did you
meet him? A At Mrs. McWhinnie's.

Q At Mrs. McWhinnie's? A Yes.

The Court: Where? What city?

The Witness: New York City. 30

Q Did you ever have occasion to meet Mr.
McWhinnie in New Jersey at your home? A
Yes. He has been to my home three or four
times.

Q Did you ever receive a letter from Messrs.
Wolf & Kruckhoff, the attorneys— A No.

Q (Continuing.) —requesting Mrs. McWhin-
nie's address— A No.

Q (Continuing.) —or her whereabouts? A
No. 40

Annie Riley, for Complainant, Cross.

Q Did you ever have any knowledge of the pendency or institution of a suit by Mr. McWhinnie in Ohio for a divorce from his wife?

A No.

Mr. Brundage: That is all.

10

Cross examination by Mr. Merrill.

Q Mrs. Riley, when Mr. McWhinnie visited you at your home, where was your home or place? A 214 North 9th street, Newark, New Jersey.

Q What year was that? What year was it?

A Well, I could not go back to years.

20

The Court: Before or after they were married?

The Witness: It was before they were married. That is all I can tell you.

The Court: Did they ever visit you after they were married?

The Witness: No. I haven't seen them since they were married.

The Court: You haven't seen her, you mean?

30

The Witness: Oh, yes, I have seen Mrs. McWhinnie.

The Court: But you have not seen him?

The Witness: But I have not seen him since they were married.

(Witness excused.)

Mr. Brundage: I would like to ask Judge McLaughlin one more question, if I may.

40

William Lorch, for Complainant, Direct.

THOMAS McLAUGHLIN, recalled.

Direct examination by Mr. Brundage.

Q Judge, have you had any request on the part of Mr. McWhinnie's attorneys in Ohio to be informed as to Mrs. McWhinnie's whereabouts? A No. 10

Q Do you have any knowledge or any information that came to you from Mr. McWhinnie's Ohio attorneys that a suit for divorce was about to be instituted? A No.

Mr. Brundage: That is all.

(Witness excused.)

20

WILLIAM LORCH is sworn.

Direct examination by Mr. Brundage.

Q Mr. Lorch, where do you live? A 379 Northfield avenue, West Orange.

Q Do you know Mrs. McWhinnie? A Yes, I do.

Q And Mr. McWhinnie? A Yes, I do. 30

Q How long have you known Mrs. McWhinnie? A Oh, at least twenty-five years.

Q How long have you known Mr. McWhinnie? A I met Mr. McWhinnie, I believe, the first time, in 1917.

Q Where? A At 218 Mt. Vernon avenue, when we lived in Orange.

Q When who lived in Orange? A My wife and myself. 40

William Lorch, for Complainant, Direct.

Q How long did you continue to live there, Mr. Lorch? A I believe I lived there until 1928.

Q And thereafter where did you move to? A Well, my wife died then, and I went to board with Mrs. McWhinnie for a few years.

10 Q When did you leave Mrs. McWhinnie? A I think in 1931.

Q And to where? A To 379 Northfield avenue.

Q And what did you do about notifying the postal authorities of your change in address? A When I moved I went down and notified the post office I had moved, and they would send me all of my mail.

20 Q Have you had any difficulty in getting your mail? A No.

Q At any time? A No.

Q Did you ever meet Mr. McWhinnie in New Jersey? A Yes, I did.

Q Where? A I met him at Mt. Vernon avenue, Orange.

Q At your home? A Yes.

Q Have you entertained them? A Yes, I entertained them and went out in an automobile together.

30

The Court: Do you know where they lived at that time?

The Witness: Yes. Kingsley avenue.

The Court: Both of them?

The Witness: Yes.

Q Did you ever receive any request from Mr. McWhinnie's Ohio attorneys— A No.

40 Q (Continuing)—to be informed as to where Mrs. McWhinnie lived? A No, never.

William Lorch, for Complainant, Cross.

Q Did you ever have any information from Mr. McWhinnie's Ohio attorneys— A No.

Q (Continuing)—that a suit for divorce had been instituted? A No. Never heard of it.

Q (Continuing.) By him against his wife? A No. Never heard of that.

10

The Court: All these years have you known where Mrs. McWhinnie was living?

The Witness: Oh, yes, certainly.

Q You lived with her for several years? A Yes. I lived with her three years after my wife died.

Cross examination by Mr. Merrill.

Q Mr. Lorch, did you ever see Mr. McWhinnie in New Jersey more than once? A Why, yes.

20

Q How many times? A Three or four times, at least.

Q And in what year or in what month—or what year, if you can state it? A Why, I believe it was in 1917. I met him once before he was married and two or three times afterwards.

Q The time you met him after his marriage, was that when Mrs. McWhinnie was looking for a house over here? A No. She already had her house.

30

Q What? A She already had her house. My wife went out and helped her find a place. They were already living on Kingsley street.

Q You never saw him in this house you speak of? A No. Only at our home.

Q And you don't remember the month? A Oh, it was the year 1917, during the summer time. I remember that plainly.

40

William McWhinnie, for Defendant, Direct.

Mr. Merrill: That is all.

(Witness excused.)

Mr. Brundage: If the Court please, I offer in evidence an exemplified copy of the record of divorce in the Court of Common Pleas in the State of Ohio.

10

The Court: Show it to counsel.

Mr. Merrill: That is all right.

The Court: Let it be marked.

(The exemplified copy of the record is marked Exhibit C. 10.)

Mr. Brundage: That is our case, your Honor.

20

WILLIAM McWHINNIE is sworn.

Direct examination by Mr. Merrill.

Q Where do you live, Mr. McWhinnie? A 1666 East 118 street, Cleveland, Ohio.

Q Did you ever consent that Mrs. McWhinnie should take up a separate domicile in New Jersey? A No, sir.

30

Mr. Brundage: If the Court please— Just a minute.

The Court: I will allow it. Go ahead.

Mr. Brundage: It seems to me that it calls for a conclusion.

Q State what the circumstances were under which Mrs. McWhinnie went to West Orange.

A I know we had a home in New York; got furniture, and the only idea I had that she was

40

William McWhinnie, for Defendant, Direct.

going to move into Jersey was that we went over to visit with people by the name of Lorch, and they met us with an automobile and we drove around places in the Oranges; looked at a couple of houses, but I never gave my consent to taking that house.

Q Did you ever sign any lease? A No, sir. 10

Q Did you ever pay any rent? A No, sir.
All the money was given to my wife.

Q How was the house furnished, if you know?

A I don't know anything about the furniture.
Bedroom suite and kitchen and dining room suite.
Just the usual home.

Q You saw this bill from Kelner Brothers, Exhibit C. 3, dated May 9th, 1917. Was that the furniture purchased for the Orange house? A
It was purchased in New York and we were living in New York. 20

Q Did you ever give any instructions that it should be moved to New Jersey? A No, sir.

Q Did you ever pay any taxes in New Jersey?
A No, sir.

Q Or receive any tax bills? A No, sir.

Q Did you ever have a permanent address in New Jersey? A No, sir.

Mr. Brundage: I object to that. It calls for a conclusion. 30

The Court: I will allow it. Do not object so much. Let us get the facts. I told you, we have no jury here.

Q Will you please explain the circumstances under which you were in New Jersey in November 1931? A Yes. I was out of work, and a friend of mine told me, instead of using the little money I had while I was looking for a position in 40

William McWhinnie, for Defendant, Direct.

New York, I could come and pay for board with him, which I did.

Q How long were you there? A It might have been three months. Things were very bad at that time.

10 Q How did you happen to take up your residence in Ohio? A Because I liked to be among my own friends, and I had no friends in New York or Jersey that really appealed to me. For my time off from ship—they were long voyages—and for the little time the ship was in—it was only twenty-four hours at a time—I wanted to get away from the shipping world altogether, and be with people who were congenial to me and my friends. I had met them in New York and had visited Ohio several times, and decided
20 to make my home there.

Q Was it customary, on voyages where the designation was outside of the country, to sign articles giving your residence? A Yes, sir.

Mr. Merrill: I think, your Honor, you will find filed the original of a certificate as to Mr. McWhinnie's address in July, 1928, and if there is no objection, I will put a copy of it in evidence.

30 Mr. Brundage: What is the purpose of it? I don't understand.

The Court: To prove residence.

Mr. Brundage: It seems to me that it is self-serving, your Honor.

The Court: Let it go in for what it is worth.

40 Mr. Merrill: That is a certificate signed by the Commissioner of the Department of Commerce & Navigation Service, showing

William McWhinnie, for Defendant, Direct.

that, on July 3rd, 1928, one W. McWhinnie signed articles as mate on the S. S. Chilore bound for Cruz Grande, Chile, and at that time stated the address of his wife or next of kin to be: wife—Box 107 Macedonia, Ohio. The original is in the file.

(The paper is marked Exhibit D. 5.) 10

Q Have you ever signed articles giving a New Jersey address? A No, sir.

Mr. Brundage: I object to that as leading. Pardon me. I withdraw the objection.

Q Who drew this agreement that has been put in evidence between yourself and Mrs. McWhinnie? A The \$90 a month agreement? 20

Q Yes. A Mr. Fahey, a mutual friend of us both.

The Court: Now you are referring to the agreement C. 10?

Q Unless there is objection from counsel, will you state here Mr. Fahey's instructions to you at the time that agreement was signed, with respect to your relations with Mrs. McWhinnie? 30

Mr. Brundage: I object to that, your Honor.

The Court: How can that be binding? The agreement speaks for itself.

Mr. Brundage: Exactly. That is the agreement.

The Court: He can testify what was said between him and his wife, in Mr. Fahey's presence. 40

William McWhinnie, for Defendant, Direct.

Q Will you tell us as to what was said? A I wanted an explanation of the agreement; and the agreement for giving my wife money was the idea that she should leave me alone and my job on ship and to stop her interference with my company and my work. And she said this was
10 New York law: in no case could I give my wife money if I was separated from her; it had to go through a third party. And another understanding was that I was not to interfere with her or go to her home, or try to find out what she was doing or where she was. And it was just as binding on her to leave me alone.

Q While you were with the United Fruit Company, how were your checks of payment made to Mrs. McWhinnie? A I sent the money
20 from the United Fruit Company to Mr. Fahey.

Q And he sent them, presumably, to Mrs. McWhinnie. A Yes.

Q At the time you were before Judge McLaughlin, what occurred there, according to your recollection? A I was on a ship of the United Fruit Company which was in dry dock in New York, when Mrs. McWhinnie came down and gave me what I supposed, not knowing the law, was a summons. I did not know what it was
30 about so I—

Q Never mind about asking any attorney. What did you do? A I went over to Judge McLaughlin as I was ordered to do; to appear at eight o'clock one night. And Mr. McLaughlin came there. He called me up before him—his desk or something—like what his Honor is at—and said, "I have a good mind to send you up for as long as possible." I said, "In other words, I am condemned before I am heard?" So he
40 said, "You haven't given this woman any

William McWhinnie, for Defendant, Direct.

money." I denied the fact, and told him that I had. And one word led to another. Whatever it was I don't know. But he sent Mrs. McWhinnie away and told me I was a drunkard, hit her, and did all kinds of things, and did not give her any money. I said, "If I don't give her any money—my salary is \$70 a month. Here are receipts for money, money orders, which I have given my wife from the time we were married." I said, "If you will add them up and see how much money is there, and compare it with my salary, you will find that I have not much money to spend on liquor; when I have to buy my uniforms and keep myself as I should do on a passenger boat." 10

Q Was anything further done? A He said, "Won't you go home with your wife?" I said, "No. There is no use my going home with my wife as there is no use quarreling." I was given to understand that the law could not compel me to live with or love my wife so long as I keep her. 20

Q After this agreement with Mr. Fahey, did everything go through Mr. Fahey's hands? A Everything went through Mr. Fahey's hands.

Q And you had no communication with Mrs. McWhinnie after that? A No, sir. 30

Q Were you ever told where she was living? A No, sir. I inquired once and he told me it was none of my business.

Mr. Merrill: I would like to offer in evidence a certificate of the judge before whom the divorce case was tried, giving his abstract of the testimony with respect to the question of residence.

The Court: Isn't that in the transcript? 40

William McWhinnie, for Defendant, Direct.

Mr. Merrill: No. This is of the judge.

Mr. Brundage: I don't see any point to that certificate. This witness can testify as to what the testimony was.

10 The Court: Put it in. Let us have it all. It is part of the record out in Ohio.

Mr. Brundage: I don't know what it is.

Mr. Merrill: This is the testimony of three witnesses who testified as to Mr. McWhinnie's residence in Ohio.

The Court: Certified?

Mr. Merrill: Certified by the judge.

The Court: This is a transcript of the record.

20 Mr. Brundage: If that is introduced for the purpose of proving residence or corroborating this witness' testimony as to his residence in Ohio I object to it. I don't think it is the proper way to prove it.

The Court: I don't know why it is being offered. Why do you offer it? To show that three people appeared before a judge in Ohio and testified according to that record?

30 Mr. Merrill: That he was living in Ohio and his domicile was at the home of one of these witnesses.

The Court: Put it in.

Mr. Brundage: I object to that, because it seems to me it is not the way to prove it.

The Court: Overruled.

(The paper is marked Exhibit D. 3.)

Q Has your domicile been in Ohio ever since?

40 A My domicile has been in Ohio since early 1928.

William McWhinnie, for Defendant, Direct.

Q And nowhere else? A And nowhere else.

Q I show you some envelopes addressed to your Cleveland address. Were those received by you? A Yes, sir.

Mr. Merrill: I offer these in evidence.

The Court: Show them to counsel. 10

Mr. Merrill: Showing correspondence right down to date.

Mr. Brundage: No objection.

(The letters are marked Exhibit D. 4.)

Q Were you ever asked by Mr. Fahey or by Mrs. McWhinnie to give your consent to any domicile other than the New York domicile? A No, sir.

Q Did you ever cohabit with Mrs. McWhinnie in New Jersey? A No, sir. 20

Mr. Merrill: If the Court please, that is the testimony going to the question of domicile. I don't know whether you want me to go further with respect to these incidents or not.

The Court: It is up to you.

Mr. Merrill: I ask that because I do not want to take up too much time. 30

The Court: Don't worry about my time.

Mr. Merrill: Unless you think it is material and relevant on the question of domicile.

The Court: I cannot advise you.

Mr. Merrill: Then I will go over them, although it did not seem to me that they were relevant.

Q Will you state the circumstances of the discussion between yourself and Mrs. McWhinnie 40

William McWhinnie, for Defendant, Direct.

in New Orleans. Give the date first. A About—
I would not say the exact date, but, maybe, May
of 1918. We left New York and went to New
Orleans, but we did not know we were going
there. And I sent Mrs. McWhinnie money. We
sailed again and we went to New Orleans again.
10 And my wife was on the dock and I wanted to
know why she was there. I had not given any
consent for her to come down, or did not see
any reason for her living there—my salary was
small—or spending money for running around,
as I was sending her money. She came as far
as my door, and I told her not to come into my
room, as the room of an officer on shipboard
was one private place an officer had. With that
she went around to the captain and raised Cain
20 and told him I did not tell her where the ship
was going, and wanted to know from him the
how, why and wherefore of this matter. He came
to my room and told me he was sick and tired
of my wife being about the ship all the time, and
requested me to resign because he would not put
up with any nonsense.

Q Do you recall an incident in New York or
New Jersey where you and Mrs. McWhinnie
called on Mr. Fahey with reference to a discus-
30 sion? A I came back from Europe and we
docked in Jersey City, or one of the piers around
there. And word came up that there was a lady
on the dock to see me. I went down and saw
that it was my wife, and said, "I don't know
what you are doing here. I will go and call the
lawyer up." I called Mr. Fahey up, and he told
me to put her on the wire. And with that, she
went right off the dock.

Q Did you ever attempt to suffocate her with
40 a pillow? A No, sir.

William McWhinnie, for Defendant, Cross.

Q Did you ever knock her down so that she struck her head against the faucet? A She did not—it was in our sitting room, for that matter. She went to hit me with a broom, and I took it from her, and in the scuffle—that was the time Judge McLaughlin sent for me. Mr. McLaughlin asked me if I hit this woman. I said I really did not know, but if he wanted me to say I did, I did; I might have, during the scuffle, because if any man or woman was going to hit me, I would try to hit them back. But it was not intentional. 10

Q Do you recall ever being intoxicated and falling on the floor? A Not as I know of. I take a drink.

Q I beg your pardon? I did not get your answer. A I take a drink, yes.

Q Do you recall that particular incident? A Of taking a drink? 20

Q No. Of drinking so much that you fell on the floor and were there for hours. A No. I might have done so, but I don't recall it. It seems they got some letters out of my pocket.

The Court: Do you remember drinking Black & White and sitting on the bath tub?

The Witness: I prefer to sit in a chair, but Mrs. McWhinnie is right in saying we met at the dock and I went in a saloon and got a bottle of whiskey and took it over to the Jersey house. 30

Cross examination by Mr. Brundage.

Q Mr. McWhinnie, you know Mr. Lorch, do you not? A No, sir.

Q Didn't he take you around and try to find a house for you in West Orange? A I did not 40

William McWhinnie, for Defendant, Cross.

try to find anything. I arrived in Orange, and with my wife we drove around. I was introduced to him. I don't remember the name. I don't know a man just on introduction.

Q You were at his home? A Yes, I was at his home once.

10 Q On that same occasion. A Yes. Somewhere around that week.

Q Around what week? A That we visited—that time in the automobile.

Q Do you mean to say that you don't know him if you were introduced? A I don't know a man if I am just introduced and go around with him once. I meet a lot of men. I can't say that I know him. He is no friend of mine. I know a man if I call him my friend.

20 Q Can you give me the time it was when you met Mr. Lorch? A Give you the time?

Q Yes. A I could not say. We got off the train some time in the afternoon.

Q How long after that did you move to West Orange? A I did not move to West Orange.

30 Q How long after that did Mrs. McWhinnie move to West Orange? A I don't know when she moved. But it was during one of my voyages. When I came back she was in West Orange.

Q How long before was it that you met Mr. Lorch? A I don't know. It might have been two or three months. That is so long ago. It was years ago.

40 Q The only time you were in his house was the day that you came to Orange to look for a house. A No. I was there twice. I was there for a meal one time. But I don't know that we had a meal the day we drove around.

William McWhinnie, for Defendant, Cross.

Q Did you ever meet Mrs. Lorch? A Yes. I met her at the same time. She was with Mr. Lorch.

Q And those are the only two occasions you met them? A So far as I know, sir.

Q Whose idea was it—this moving to Orange? A My wife's. 10

Q Didn't you want to go to Orange? A There was no necessity why I should go to Orange.

Q Will you answer the question? You did not want to go to Orange? A No.

Q At that time you had in mind raising a family, did you not? A No, sir.

Q You never had that in mind? A No.

Q You preferred to stay in New York? A I preferred to stay in New York. 20

Q Did I understand you to say that you never gave New Jersey as a place of residence to any shipping office? A No, sir. I did not.

Q Did you ever give your place of residence as New Jersey to the Board of Navigation? A Yes, I did.

Q When did you do that? A Every five years my license had to be renewed, and because I was in New York looking for a job, I had to let them know where I was staying at that time. 30

Q What address did you give? A I gave Hudson Boulevard as the address where I could be found. I had to give that when making application for a job, so I could be easily found, instead of sending to Ohio.

Q Is that the only time you have given a New Jersey address? A That is the only time.

Q Did you ever give 20 Kingsley street as your place of address? A No, sir. 40

William McWhinnie, for Defendant, Cross.

Q I ask you to look at this letter, Mr. McWhinnie (handing a letter to the witness). A Yes.

The Court: Is it in evidence?

Mr. Brundage: Not yet, no.

10

The Witness: Yes. I am wrong, because I gave that to the Naval people.

Q I ask you to look at that order and ask you if you know anything about that? A Yes. Because the Navy knew I was married.

Q You did inform the Navy? A Yes.

Q You were in the Naval Reserve at the time, were you not? A Yes.

Q In 1918? A Yes.

20 Q And you did give the Navy a West Orange address, didn't you? A I had to give it because that was my wife's.

Q You did give it? A Yes.

Q As a matter of fact, you moved your clothing out to West Orange. A I did not move my clothing out to West Orange.

Q You found your clothing there? A That is another matter.

30 Q You say it was not in West Orange? A My wife moved my clothing to West Orange.

Q It was in West Orange? A Yes, sir.

Q Did you ever take it away? A I took all I could get my hands on, yes.

Q When did you take it? A The last time I was there.

Q In May 1918? A I could not tell you the date.

40 Q It was the time just before you were brought up before Judge McLaughlin? A Yes, sir.

William McWhinnie, for Defendant, Cross.

The Court: What do you want to do with those letters? Let me have them.

Mr. Brundage: I want to offer these.

Q You were content to let your clothing remain at 20 Kingsley street, West Orange, from May 1917 until July 1918. Is that right? A I don't know how much clothing I had. Most of my clothing. 10

Q I say, your clothing was there all that time? A Most of it.

Q Was it or wasn't it? A Yes.

Mr. Merrill: May I examine him on this?

The Court: You will be able to examine him.

Mr. Merrill: I object to that, because these letters are addressed to Mrs. McWhinnie. 20

The Court: I understand that the letter addressed to Mrs. McWhinnie was in pursuance to the fact that Mr. McWhinnie gave his address to the Navy Department as being in West Orange.

Mr. Brundage: This is an order of the Naval Auxilliary Reserve affecting a change of address. 30

The Court: How about the other letter?

Mr. Brundage: That letter was a letter of inquiry addressed to Mrs. McWhinnie.

The Court: By the Navy Department.

(The letter is marked Exhibit C. 17.)

Q It is not true, Mr. McWhinnie, that you never gave 20 Kingsley street, West Orange, as your place of address to any shipping authority? 40

William McWhinnie, for Defendant, Cross.

A I don't believe the Navy is a shipping authority.

Q Well, any Naval office, including the Supervisor of the Naval Auxilliary Reserve.

The Court: Don't quibble about it. You
10 have the letter there.

(The letter is marked Exhibit D. 1 in evidence.)

Q You say you did not know Mr. Lorch very well; that you were only there on one or two occasions. A Yes.

Q I show you a postal card dated May 14, 1917, and ask you if you will please tell me whether that is your writing or not? A Yes.
20 I have sent the Lorch's cards a couple of times no doubt.

Q Will you also look at that card (handing a card to the witness)? A Yes. That is what I say, a couple of times, yes.

Q So you were in the habit of sending cards to people you only met once or twice? A At that date. Picture post cards are sent around the world. I used to send them.

Q You were in the habit of sending postal
30 cards? A At that time, yes.

Q (Continuing.) To people—

The Court: I will draw my own inference.

Mr. Brundage: I am going to offer these. Any objection?

(The postal cards are marked Exhibits C. 18 and C. 19.)

Q Now, Mr. McWhinnie, I am reading from
40 Exhibit C. 19, postal card addressed to Mrs.

William McWhinnie, for Defendant, Cross.

William Lorch, and I am going to ask you what you meant when you said to her, "Dear Cousin May: Have you found a wee wooden hut for my wee wife and I?" Will you tell me what you meant by that? A No. I don't know.

Q You don't know what a wee hut means?

10

The Court: He said he does not know.

Q You say you do not know? A Yes.

Q Do you know Eva A. McGuinness? A Yes.

Q She is related to you? A Yes.

Q What is her relation? A Cousin. My mother's cousin, as a matter of fact.

Q Your mother's cousin? A Yes.

Q Do you remember getting a letter from her on or about May 27, 1917? A No I do not. I correspond with her every week.

20

Q Will you please look at that and see if it is a letter you received from her? A Yes. That is her writing.

Mr. Brundage: I am going to offer this.

The Court: For what purpose?

Mr. Brundage: To show that it was in the mind of this man, as it was in his wife's mind, that they move to Orange.

30

(The letter is marked Exhibit C. 20.)

The Court: That is a letter written by Miss McGuinness to Mr. McWhinnie?

Mr. Brundage: To Mr. McWhinnie. I quote from Exhibit C. 20. (Reading.) "My dear Willie: Yours of the 12th came on Tuesday, having been opened by the censors. But, of course, there was nothing for them to take out." Skipping the first paragraph. "I hope you have found a nice house in

40

William McWhinnie, for Defendant, Cross.

Orange. Did you take the forty dollar one which they would reduce to thirty-seven-fifty? Yes, everything is high and apparently not as good as when they were cheaper. Even Yeast cakes are now three cents instead of two." Did you say anything to Mrs. McGuinness regarding moving to Orange?

10

The Witness: I said we might move anywhere.

Q You said you might move anywhere? A Yes.

Q You did not mention Orange to her? A I don't know. I may have mentioned Jersey and Orange and the suburbs of New York.

Q Were you looking at a house in any other suburb but Orange? A No. Orange is the only place I know we went to in New Jersey.

20

Q When you wrote to Mrs. McGuinness, did you say anything about moving to Orange? A I did not say I was going to move to Orange, no.

Q Did you say you were looking— A At the time I met the Lorches was when we went and looked at a house. That is very likely the house they are referring to.

Q Did you say to Mrs. McGuinness that you intended to move to Orange? A I did not.

30

Q You did not. You say that you have lived at the Hudson Boulevard address for about three months? A I believe so. I don't know the exact time. I was looking for a position at that time. That is the only place I could live.

Q But it was about three months you were there? A I believe so. About that, yes.

Q Do you remember signing an affidavit in connection with the application to have the writ of *ne exeat* discharged? I show you an affidavit

40

William McWhinnie, for Defendant, Cross.

sworn to on June 16, 1932, and ask you if that is your signature? A That is my signature.

Q And the matters of fact stated in that affidavit are true? A I don't know unless I read it again—I would not know.

Q I say, they were true. A I believe so, to the best of my knowledge. 10

Q In that affidavit you said, "I have never lived in the State of New Jersey." Was that true at the time? A Yes.

Q It was true? A I don't know how you interpret it—"living."

Q Well, you know the purpose of this affidavit, do you not? A The purpose of living in a place, making a permanent home, I would say.

Q But you did not say that in your affidavit. A I am not a lawyer. I cannot draw up documents. 20

Q I know, but isn't it a fact that this affidavit, at the time you made it, was not true? A I can't say so.

Q You can't say so. I am quoting from paragraph 15 of that affidavit: "I have read the affidavit signed by one William Lorch, who stated in the first paragraph, 'I have known William McWhinnie, the defendant in the above entitled cause for the past sixteen years.' I do not know Mr. Lorch, and I have never heard of him, and I do not recall ever having met him." Was that true at the time you signed that affidavit? A I don't know. I did not know Mr. Lorch. I don't know him. I did not know him at the time of signing that affidavit. 30

Q You did not know him? A No. I did not know him.

Q But you say today that you remember two occasions when you were out with him. A Yes. 40

William McWhinnie, for Defendant, Cross.

Q And did you have dinner at his home? A Yes. But that does not say I know him.

Q You say you don't recall having met him. Which is true? A At that time it was true. At this time it is true. Now that Mr. Lorch is here I know of him, by that post card that you presented to me.

10

Q That is what refreshed your recollection? A Yes.

Q Do you remember, on direct examination, you also mentioned, before you even saw the card, that you were out with Mr. Lorch looking for a house in Orange? A I was not looking for a house with Mr. Lorch, except that he was in the car there.

Q I want you to see the affidavit.

20

The Court: To be used in this cause?

Mr. Brundage: Yes. I think the original is in your file.

Q Do you know Mrs. Riley, the woman that testified here? A I don't know Mrs. Riley.

Q You don't know her? A No, sir.

Q How long do you have to know a person before you really know her?

30

The Court: Ask him whether he has ever met her.

Q Did you ever meet her? A I don't know whether I ever have or not. I was never in her home.

Q Just a minute. You answer that question. You were never in her home? A No, sir.

Q Did you ever see that before (handing a photograph to the witness). A I don't know. I don't know where that was taken.

40

William McWhinnie, for Defendant, Cross.

Q Do you recognize it? A Sure.

Q If I tell you it was taken in Mrs. Riley's back yard would you deny it? A I would have to take your word for it.

The Court: What is it? Is his picture on it? 10

Mr. Brundage: Yes. It is right there, with his arm around a woman.

The Court: This man here (indicating)?

Mr. Brundage: Yes. I would like to offer that picture.

The Court: Your picture is on there, is it?

The Witness: Yes, sir.

Mr. Brundage: Any objection to this? 20

The Court: He says his picture is on there. I did not recognize him at first. How long ago was it taken?

The Witness: It was taken about eighteen or nineteen years ago.

Q Did you know Mrs. Paganza? A Not as I know of, sir.

Q Do you know of her? A I do not.

Q Never heard of her? A Not as I know of. 30

Q Would it refresh your recollection if I should tell you that she was your landlady at the 84th street address where you and Mrs. McWhinnie lived? A It would not. No, it would not. I lived at the 84th street address, but I would not recognize the name. I have no reason to deny doing so.

Q Did you know the Gehren girls in New York City? A Yes. I have met a couple of ladies from New York by the name of Gehren. 40

William McWhinnie, for Defendant, Cross.

Q You do know them? A I have met them. I don't know them.

Q You merely met them? A Yes.

Q Four or five times? A I would say three times. I think that is quite a lot, too,—to give you the benefit of the doubt.

10 Q Did you ever make any effort to ascertain that Mrs. McWhinnie lived in West Orange after you left her, outside of the one request of Mr. Fahey? A No, sir. I was told not to do so.

Q Please answer my question. The answer is no? You never did.

Mr. Brundage: That is all.

The Court: Let me see that certificate. Has this been marked in evidence? You
20 offered it. You say it is the original?

Mr. Merrill: The original is in the file.

Mr. Brundage: This is not true. It says the wife lived in Macedonia, Ohio. She never lived there.

The Court: Let it be marked.

(The certificate is marked Exhibit D. 5.)

Mr. Merrill: Just one question: Why
30 was the word "wife" placed on this notification?

The Court: Did you have a wife in Ohio on that date?

The Witness: No. But I could not deny that I had a wife, because I was still married, your Honor.

The Court: I know, but you say that you have a wife who evidently was to be reached at Box 107, Macedonia, Ohio.

40 The Witness: I gave that as my residence, and my friends, people there, could

William McWhinnie, for Defendant, Cross.

get in touch with Mr. Fahey if anything happened to me; if my wife had any claim for anything I had.

The Court: You say you had friends at Box 107, Macedonia, Ohio?

The Witness: Yes. Because mail is delivered to the Post Office box there. 10

The Court: Who are the friends at Box 107?

The Witness: Mrs. Corona.

The Court: Is she the lady named in that insurance policy?

The Witness: No, sir.

The Court: Is she the lady with whom you were living—Corona?

The Witness: That is the lady. I was living at her home, yes, your Honor. 20

The Court: You say you left word with her, in case any communication was received intended for your wife, she was to communicate with—

The Witness: Mr. Fahey, yes; my attorney in New York, yes, sir.

By Mr. Brundage.

Q Isn't it a fact that Box 107, Macedonia, Ohio, was the address of Celeste Zappolo? A That was the sister of Mrs. Corona. 30

Q You did not mention that to the judge when he was questioning you.

The Court: He did not deny it, nor did I ask him.

Q Isn't it a fact that you assigned a policy of insurance to Celeste Zappolo? A That is my privilege. 40

William McWhinnie, for Defendant, Cross.

The Court: Answer the question.

Q Just answer the question. A Yes.

Q You did that in 1927? A I don't know. Whatever date is there.

10 Q I show you what purports to be an assignment, and ask you if that is your signature.
A That is my signature.

Q And is that also the signature of Celeste Zappolo? A Yes, sir, so far as I know.

Q And is this also executed in New York? A In New York, sir.

Q Celeste was East at that time? A She happened to be East at that time, yes.

Q With you? A Not with me, no.

20 Q You met her here? A I met her in New York, yes.

Mr. Brundage: I am also offering the policy.

Q Isn't it a fact that Mrs. McWhinnie continued paying the premiums on this policy? A I don't know anything about what Mrs. McWhinnie did.

30 Q Didn't you make a loan on that policy? A I did.

Q How much did you borrow?

The Court: What difference does it make?

A I don't know the amount, but I took everything I could get.

Mr. Brundage: That is all.

40 The Court: Did you ever vote in the State of Ohio?

William McWhinnie, for Defendant, Cross.

The Witness: No, sir, I did not.

The Court: Did you ever pay taxes there?

The Witness: No, sir.

The Court: All right. Anything else?

Mr. Brundage: That is all.

(Witness excused.)

10

Mr. Brundage: If the Court please, I would like to have a little rebuttal on the part of Mrs. McWhinnie, if I may. Just a few questions. I would like to ask Mr. McWhinnie one question.

WILLIAM McWHINNIE is recalled.

By Mr. Brundage.

20

Q You testified that the captain of your ship requested your resignation in New Orleans? A He did, sir.

Q Did you resign? A I did.

Q Did you thereafter get employment? A Did I get employment?

Q With the same company? A No, sir. The arrangement was, as I was in New Orleans I was transferred to another ship in South America and come up to New York, and I left there.

30

Q You left there? A Yes, sir.

40

Carolyn McWhinnie, in Rebuttal, Direct.

CAROLYN McWHINNIE, recalled in rebuttal.

Direct examination by Mr. Brundage.

10 Q Were you present on the ship of your husband at New Orleans, in 1918, when the captain, yourself, and he were together? A I was there. And he would not let me in his room.

Q Who went up to his room? A Mack would not let me in his room, so I went around and told the captain, but I did not raise a racket. The captain came around and talked to him, and that is the time he told him that.

Q What, if anything, did the captain say?

The Court: What difference does it make?

20 Mr. Brundage: A ground they allege in the Ohio petition is that she caused him, by her conduct, to lose his job. I want to nullify that.

The Court: She has already said that she did not do anything of the sort.

The Witness: I never interfered with his work. That is untrue.

30 Q Did the captain there in your presence request Mr. McWhinnie's resignation? A Not in my presence, no, sir.

Q Did you ever attempt to strike Mr. McWhinnie with a broom? A No.

Q Is it or is it not true, that on May 14th, you were involved in a scuffle over a broom? A There was no broom there at all.

Mr. Brundage: That is all.

The Witness: I never struck him.

40 (Counsel sum up to the Court.)

*Final Decree.***FINAL DECREE.**

Filed January 17, 1935.

IN CHANCERY OF NEW JERSEY.

90/469

10

*Between*CAROLYN McWHINNIE,
*Complainant,**and*WILLIAM McWHINNIE,
*Defendant.**On Bill, etc.**Final
Decree.*

The court having in this cause by orders dated the 3rd day of December 1934 and the 14th day of December 1934 for the purpose of permitting defendant, William McWhinnie, to answer complainant's bill of complaint filed herein and to appear and to make his defense to this cause, opened and set aside a final decree entered in this cause and dated the 15th day of August 1934, which decree was entered on the exparte proofs adduced by complainant, Carolyn McWhinnie, and the cause coming on to be heard on the 14th day of December 1934 in the presence of Grosso, Brundage & Anderson, solicitors for and of counsel with Carolyn McWhinnie, and of Benjamin Gordon, Esq., by E. A. Merrill, Esq., solicitor of defendant, William McWhinnie, upon the pleadings and the proofs being taken in open court, the defendant having filed a general appearance in this cause and having answered and appeared and presented his defense in open court, and the court having heard and consid-

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30

40

Final Decree.

- ered the pleadings and proofs in this cause and the argument of counsel, and it appearing that complainant and defendant herein were lawfully married in the City of New York and State of New York on the 15th day of March 1917, and on the 15th day of June 1917 complainant and
- 10 defendant took up their residence in this State, at 20 Kingsley street, in the Town of West Orange and County of Essex, and continued to live at said residence together as man and wife, until the month of June 1918, during which time defendant was guilty of extreme cruelty toward complainant; and in the month of June 1918, without any justifiable cause defendant abandoned complainant and separated himself from her;
- 20 And it further appearing that complainant was at the time of the filing of the bill of complaint herein, and still is a bona fide resident of this State, residing at 28 Lindsley avenue, in the said Town of West Orange; and that defendant without any justifiable cause abandons complainant and refuses and neglects to maintain and provide for her;
- 30 And it further appearing that on or about the 5th day of November 1930, defendant filed a petition for divorce on the ground of extreme cruelty in the Court of Common Pleas of the County of Cuyahoga, in the State of Ohio, and on the 4th day of April 1931 a final decree upon said petition was duly entered in said court, adjudging complainant herein guilty of extreme cruelty toward defendant herein, and dissolving the marriage between the complainant and defendant herein, and which decree complainant in her bill of complaint prays may be set aside and decreed
- 40 to be null and void and of no effect as to her;

Final Decree.

And it further appearing that defendant filed in said suit for divorce an affidavit of service by publication, wherein he deposed and stated that the last known place of residence of complainant herein was New York City, New York, and that he, the defendant herein, had exercised reasonable diligence to ascertain the residence of complainant herein, and that the residence of said complainant was, other than in said affidavit set forth, unknown and could not with reasonable diligence be ascertained;

10

And it further appearing that complainant resided in said Town of West Orange continuously since 1917 to the date of the filing of the bill of complaint herein with the exception of one year when she resided in the City of Orange, in said County of Essex, and that she has many friends and relatives in said Town of West Orange and elsewhere, known to defendant, who were familiar with complainant's residence at the time of filing of said affidavit by defendant, and that defendant with the exercise of reasonable diligence could have ascertained complainant's post office address so that service of process and of the said petition could have been made upon her; and that, save for a single inquiry of one Thomas Fahey, of the City of New York, New York, defendant made no inquiry of said friends and relatives to ascertain complainant's residence and made no effort to learn whether complainant still resided in said Town of West Orange;

20

30

And it further appearing that defendant was not served with process in said suit for divorce instituted by defendant in the Court of Common Pleas of the County of Cuyahoga and State of Ohio as aforesaid, and had no notice that said suit had actually been instituted; and that de-

40

Final Decree.

10 defendant by fraud and suppression of the truth as aforesaid induced the Court of Common Pleas of Cuyahoga County, in the State of Ohio, to assume that service of process and of said petition could not be made upon defendant; and hence said Court of Common Pleas of Cuyahoga County in the State of Ohio, was without jurisdiction of complainant in said suit;

And it further appearing that defendant at the time of the filing of said petition in the Court of Common Pleas of Cuyahoga County in the State of Ohio, was a resident of the State of New Jersey, and was not a bona fide resident of the State of Ohio;

20 And it further appearing that defendant herein, being an inhabitant of the State of New Jersey, did go into the State of Ohio in order to obtain a decree of divorce for a cause which occurred, assuming it did occur, while he and the complainant herein resided in this State;

30 And it further appearing that the allegations in defendant's petition filed in the Court of Common Pleas of Cuyahoga County, in the State of Ohio, as aforesaid, that complainant herein was guilty of extreme cruelty to defendant are untrue;

40 It is thereupon on this 17th day of January 1935, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, ORDERED. ADJUDGED and DECREED that the decree of divorce entered in the Court of Common Pleas of the County of Cuyahoga and State of Ohio on the 4th day of April 1931, adjudging complainant, Carolyn McWhinnie, to be guilty of extreme cruelty to complainant, William McWhinnie, and dissolving the marriage between them, be and

Final Decree.

the same is hereby decreed to be null and void and of no effect, and

It is further ORDERED, ADJUDGED and DECREED that the defendant, William McWhinnie, be and he is hereby perpetually enjoined and restrained from setting up the said decree of divorce entered in the Court of Common Pleas of the County of Cuyahoga and State of Ohio on or about the 4th day of April 1931 dissolving the marriage between him and complainant, Carolyn McWhinnie, or making use of the same in any matter or manner in this or any other jurisdiction to defeat or affect the marital rights of complainant, Carolyn McWhinnie, and

10

It is further ORDERED, ADJUDGED and DECREED that the defendant, William McWhinnie, be and he is hereby enjoined and commanded to present the truth of the matters alleged and shown in the bill of complaint filed in this cause to the said Court of Common Pleas of the County of Cuyahoga in the State of Ohio, in good faith to urge the said Court of Common Pleas to set aside the said decree of divorce entered in said Court on or about the 4th day of April 1931 dissolving the marriage between complainant, Carolyn McWhinnie, and defendant, William McWhinnie, and

20

It is further ORDERED, ADJUDGED and DECREED that the defendant do pay to the complainant or to her solicitors the annual sum of \$520.00 (Five Hundred and Twenty Dollars) payable in equal weekly installments of \$10.00 (Ten Dollars) as and for complainant's support and maintenance; said weekly payments to commence within five days after service of a true but uncertified copy of this decree upon defendant, William McWhinnie, or his solicitor; and

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40

Final Decree.

It is further ORDERED, ADJUDGED and DECREED that the said defendant do further pay to the complainant or her solicitors the costs of this suit to be taxed and also the sum of \$350.00 (Three Hundred and Fifty Dollars) which is hereby adjudged and decreed to be a reasonable
 10 counsel fee for counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this court, and

It is further ORDERED, ADJUDGED and DECREED that either party be at liberty to apply upon a future change of circumstances of the parties for a variance or modification of this decree touching said maintenance as shall be just and equitable.

20

LUTHER A. CAMPBELL,
 C.

Respectfully advised,

ROBERT D. GROSMAN,
 A. M.

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40

Notice of Appeal.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

90/469

Between

CAROLYN McWHINNIE,
Complainant,

and

WILLIAM McWHINNIE,
Defendant.

10

On Bill, etc.
Notice of
Appeal.

The defendant, William McWhinnie, hereby
appeals from the final decree made by the Chan-
cellor, on the advice of Advisory Master Gros-
man, filed in the above cause on January 17,
1935, and from the whole and every part thereof,
to the Court of Errors and Appeals in the last
resort in all causes.

20

Dated January 19, 1935.

BENJAMIN GORDON,
Solicitor for and of Counsel
with Defendant.

30

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

BENJAMIN GORDON,
Solicitor for and of Counsel
with Defendant.

40

Petition and Grounds of Appeal.

PETITION AND GROUNDS OF APPEAL.

Filed January 23, 1935.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

10

Between

CAROLYN McWHINNIE,
Complainant-Respondent,

and

WILLIAM McWHINNIE,
Defendant-Appellant.

*On Bill, etc.
Petition and
Grounds of
Appeal.*

20

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

30

The petition of William McWhinnie, appellant, by his counsel, respectfully shows that your petitioner is aggrieved by a final decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, upon the advice of Advisory Master Grosman, in a cause wherein Carolyn McWhinnie was complainant and your petitioner was defendant, in these respects, to wit: that said decree declares the divorce granted appellant by the Court of Common Pleas of the County of Cuyahoga and State of Ohio on April 4, 1931, to be null and void; perpetually restrains appellant from setting up said divorce in this or any other jurisdiction; orders appellant to urge said Court of Common Pleas of Cuyahoga County, Ohio, to set aside said divorce so granted by it; orders appellant to pay to respondent, or to her solicitors, the annual sum of \$520.00; and awards against appellant

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Petition and Grounds of Appeal.

costs and a counsel fee of \$350.00. Whereas, the bill of complaint should have been dismissed for want of jurisdiction or equity, and no costs or counsel fee should have been allowed.

The grounds of appeal are as follows:

1. The complainant-respondent had actual notice that a divorce suit was about to be filed, and, through her attorney, requested that service should be made as required by the laws of Ohio in lieu of personal service. 10

2. There was no proof that the legal domicile of defendant-appellant was other than in the State of Ohio.

3. There was no proof of fraud on the part of defendant-appellant. 20

4. Defendant-appellant affirmatively proved that his legal domicile was established in the State of Ohio early in 1928, and continued there, uninterruptedly, down to the date of the hearing on December 14, 1934—a period of nearly seven years.

BENJAMIN GORDON,
Solicitor for and of Counsel
with Defendant-Appellant. 30

Notice of Argument.

NOTICE OF ARGUMENT.

Filed January 23, 1935.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between

CAROLYN McWHINNIE,
Complainant-Respondent,

and

WILLIAM McWHINNIE,
Defendant-Appellant.

On Appeal.

*Notice of
Argument.*

20

To Brundage & Brundage, Orange National Bank Building, Orange, New Jersey, solicitors for and of counsel with complainant-respondent.

TAKE NOTICE that the argument of this cause on appeal will be moved before the Court of Errors and Appeals at the State House, Trenton, New Jersey, on Tuesday, February 5, 1935, at 11:00 o'clock in the morning, or as soon thereafter as counsel may be heard.

30

BENJAMIN GORDON,
Solicitor for and of Counsel
with Defendant-Appellant.

40

Exhibit C. 10A.

Exhibit C. 10A.

In an interview had between Mr. William McWhinnie and Thomas Fahey, Counsel for Mrs. Carrie McWhinnie, on the Second day of May, 1919, and after going over the domestic affairs of Mr. McWhinnie, he agreed to pay the sum of Ninety dollars (\$90) per month, payment to be made to the order of Mrs. Carrie McWhinnie by the Nafra Company, and in addition to the first payment, the sum of Fifty dollars (\$50), and an additional sum of Fifty dollars (\$50) before sailing, the said sum of One hundred dollars (\$100) to be applied to indebtedness accrued for rental and other charges from the 18 December, 1918, to the first day of May, 1919, amounting to Four hundred and twenty-nine dollars (\$429); that of the remaining sum, namely, Three hundred and twenty-nine dollars (\$329), the same to be paid by the said William McWhinnie as soon as practicable out of his earnings until the full sum as herein mentioned shall be paid. And in addition, the said William McWhinnie agrees to make, execute and deliver a Bill of Sale to Mrs. Carrie McWhinnie of all the personal property now in the premises occupied by her at No. 20 Kingsley Street, West Orange, in the State of New Jersey.

In making the foregoing provisions between William McWhinnie and his wife Carrie McWhinnie, it is understood that the latter will not call upon the Nafra Company or interfere with Mr. McWhinnie in any wise as regards his employment by the said Company.

The foregoing is accepted by Mrs. McWhinnie, and Thomas Fahey, acting as her Counsel, is hereby authorized to accept said payments, upon

Exhibit C. 2.

condition, however, that the said William McWhinnie will not say anything prejudicial to Mrs. McWhinnie concerning her private character or otherwise, and any statements heretofore made are understood to be retracted, and the agreements and understanding as herein referred to shall be mutual and lived up to by both
 10 of the parties interested.

Dated New York City
 5 May, 1919

Witness:	William McWhinnie
Thomas Fahey	Carrie McWhinnie

20

Exhibit C. 2.

Certificate of marriage between William McWhinnie and Carolyn Englert dated March 15, 1917.

30

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*Exhibit C. 3.***Exhibit C. 3.**

KELLNER BROTHERS,
 Carpets and Furniture
 6th Ave. Cor. 15th St.
 New York

May 7, 1917. 10

Sold to Mr. M. C. Whinnie,
 511 E. 84th St.

1 Dresser	50.00	
1 Chiffonier	60.00	
1 Bed	35.00	
1 Dressing Table	36.00	
1 Chair	8.50	
1 Rocker	9.50	
1 Buffet	58.00	20
1 China	42.00	
1 Server	25.00	
1 Ext. Table	39.00	
5 Lea. Chairs 7.00.....	35.00	
1 " Arm-chair	11.00	

————— 409.00
 Pd 4/12/17 20.00

————— 389.00
 Pd 5/7/17 W P 100.— 30

————— 289.—

1 Box Spring	19	
1 Mattress	20	
1 Bolster Roll	2.50	
2 Pillows @ 4.50.....	9.—	
	—————	50.50

————— 339.50

(Stamp) Paid June 6 1917 40

Exhibit C. 4.

Exhibit C. 4.

UNITED FRUIT COMPANY
STEAMSHIP SERVICE

Steamship Metapan.
Port of Colon.

10

Sunday April 21 1917

My own darling Wee Wifey.

We arrived here at daybreak but were unable to enter the Port before 8.0 A M, owing to much red tape Etc from the Government authorities. They are working cargo this afternoon, as we are leaving here at Noon tomorrow for Carthagena, and then Santa Marta, and expect to sail from there some time Friday morning. So I have got my hands full of work to get ready for fruit in that time. However if all goes well we should be back in N. Y. on Thursday week. Just before we pulled out of Havana I rec'd your ever welcome & loving letter of Apr 13. Dearest I am so happy when I read your letters telling me you are happy, and hope you always will be, and it is up to us, you & I, to make the best of life as we only live once. So you are still getting presents, well every little helps and am sure the bed spread will look swell on our bed. Yes Pet I sure do enjoy going to bed at 8.30 & getting up at 4, but the heat down here is getting terrific, which keeps one tossing for a while before dropping off into the land of nod. We had quite a large passenger list from Havana, most of our passengers having crossed from Key West. They took two passengers off us here, suspected Germans, and yesterday they shot one right on spot, having found some plans of the Canal in his possession. I wonder if you have

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30

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Exhibit C. 4.

been over to Orange and decided on our little wooden hut, I hope so Pet for I want to get settled down. So Edith's baby is doing fine, I wonder when we will have our Little Lady Betty, I can imagine I see you sitting and making dresses for her before her arrival. It should be warm weather when we get back, if you have left Keisers how am I to let you know I have arrived, but you may be sure I will be up home to you, just as soon as ever I can get off. How did you enjoy the Circus? with your Very Very. I don't suppose he slept with you, if he does I might get jealous, but guess he huggs you all he wants without going to bed with you. He leaves the cuddling up to you, to his Uncle Mack. What do you say Auntie Mack.

10

* * * * *

20

Tuesday A. M. Dearest, I have just finished breakfast, and must slip up to P O & get this away, or I know somebody's little wife will get no letter. Had a pretty good sleep last night when the breeze sprang up. But today is going to be another swelter. However we will be away at Noon & will make a little breeze for ourselves. Just a few more days, Sweetheart and we will be in one another arms again. That will be on Thursday, May 3d (D V) I have been too busy to send any cards this trip. Give my love to all the family. Look after yourself Pet with all my love & kisses to you Darling

30

From your ever loving Husband & Sweeaheart
Will

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*Exhibit C. 5.***Exhibit C. 5.**

UNITED FRUIT COMPANY
STEAMSHIP SERVICE

Steamship "Metapan."
Port of Havana
April 6 1917

10

My own darling Wee Wifey

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Just a line as we are in an awful rush. We arrived here late last night, but I was awful glad to get your welcome & loving long letters. Dearest I am so glad you are happy and feeling better, and that you are 5 years younger. That will bring our ages nearer. Well no matter what our ages I love you Darling and we are going to keep the silver lining shining all the time for one another. Well war is declared I wonder what the outcome will be, but don't worry about us Darling, we will dodge the subs some how. All our passengers have cold feet and are leaving us here, but we have our life boats all cleared away in case of attack. I expect I will have to set for Navy Exam's when I get back, so don't make any dates, but if I am off Friday we will go over to May. Now dearest the 3d Mate says

30

I can have first night off, so I will be home, but will have to come down to ship to take her to dry dock, as he wants to go to dentist, & then he will relieve me for the evening, so cancell the dinner party until we are a little more settled. Oh Sweetheart I am longing to have you in my arms again, we will have such a happy time Tuesday evening together. You on my knee while I read all our letters and talk over the future. If you have gone to doctor I hope everything is going alright with you. I can hardly

40

Exhibit C. 6.

hold a pen my hands are so sore & blistered from testing life belts yesterday. Yes sweetheart have our bed ready for us, won't we cuddle up close to one another. I will call you up as soon as I get in. I wonder if this will get you before Tuesday. I hope so. Au Revoir Sweetheart in a few hours I will be with you. With all my love & kisses to you my own little Sweetheart & Wife. From your ever loving

Husband & Sweetheart

Mack

Exhibit C. 6.

UNITED FRUIT COMPANY
STEAMSHIP SERVICE

Steamship "Metapan"
Port of Colon
Monday March 26 1917

My own darling little Wife & Sweetheart Carrie.

We arrived off Colon at 4.0 A M this morning, but were unable to enter the Port until the net was taken away from the Breakwater at 6.0 A M Since then we have docked, had breakfast & boat & fire drill, so have had a pretty busy time seeing that it is only 9.0 A M now. In a little while I am going uptown with 3d Mate, as I have to get 30 P P C's and the photographs which I had taken on my way South last trip. This is one scorching hot day, so nobody will be sorry when evening comes, even if we have to work all night, which is just about how things look. The morning paper has just come out and I see the St. Louis has been sunk, so surely that means

Exhibit C. 6.

war, and if not I don't know what will. Yesterday I wrote a letter to my Bombay Sweetheart and told her all about my marriage, and that I had the best & dearest little Wife in the world. I suppose you spent the day addressing our announcements which would be quite a days work for you, but I knew it would be happy work for you. In Havana I speculated on a lottery ticket, so hope it brings us good luck as a Wedding present. Well Sweetheart and how are you keeping? Well & happy I hope, also that you are getting back your strength. You are ever in my thoughts, and I cannot keep from thinking of the operation you are going to have, which I hope will be successful and cause you as little pain as possible. But as I said in my Havana letter, if you would sooner wait until you are a little stronger, do so, we will get our Lady Betty yet sweetheart, and then we both will be very very proud and happy with her, and you will have no regrets about the operation. There is really very little news, I myself am looking forward to next Monday, when I get my first letter from you as my wife. I was a little disappointed at getting no letter at Havana on the way South. Saunders got two. How is Ma I hope she is still keeping in her good graces Etc., but I suppose she is jealous of you & I being married. You should get my Havana letter today, was it big enough for you. I can imagine I see Euphie when she gets my Havana letter in the morning, I hope you sent her one of the announcements as early as possible.

* * * * *

P. M. The photo's are anything but a success even if I do say it, however I will send you one of each. The Tenadores is awful late she should

Exhibit C. 6.

have sailed hours ago for Havana but she has not arrived from Lemin yet, and I believe has a large cargo of Coffee & sugar to discharge here. How are you getting on at Keiser's as Mrs. Mack, are they used to it. Just think of it Pet another week & I will be homeward bound to you Sweetheart, I do miss having you to cuddle up to at night. Well Sweetheart I may as well close as I have no news. Look after yourself & get well. 10

With all my love & kisses to you my own little Darling.

From your ever loving

Husband & Sweetheart

Will

Oh Sweetheart will you please get me a dozen pair of white socks, I didn't know I was out, until I started to count my laundry this morning. Size 10. Good night Sweetheart. Will be with you in a few days. Ever your loving hubby 20

Will

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*Exhibit C. 7.***Exhibit C. 7.**UNITED FRUIT COMPANY
STEAMSHIP SERVICE

On Board.

S. S. Metapan

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At Cristobal
May 16, 1917

My own darling Wee Wifey.

It is not 48 hours, since I posted you a letter, but suppose I must write you a few lines, as a Mail goes North tomorrow, and we sail at 6.0 A M for Cartagena. We have had most awful weather since leaving Kingston. Continuous heavy rain, and it looks as if it is going to keep on raining. However we arrived here at 10.0 A M today, and are now busy discharging cargo. Of course I am up to the eyes in work, but am glad I have a crew of 15 Colored Gentlemen to help me out, besides 6 others caulking the Promenade deck. So you can imagine there is plenty of noise with their hammering and the winches going. I was unable to see my old sweethearts at Kingston, Tilly was sick, and old John didn't come down. Your friend Charles is down for a free lunch with our old man, and then you talk about me being on the bum for a feed from our friends.

20

30

Well Darling I hope that when I get back here tomorrow week, I will have a letter from you telling me you have settled on our little wooden hut. I am not writing any more letters from here this trip, altho' I suppose I owe Mrs. Barlow one. The authorities in Kingston are awful strict, and all crew have to show pass-

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Exhibit C. 8.

ports, but my Citizenship Papers were sufficient for me. I took a drive and saw more of Kingston that I ever did before. I hope you wont forget to put 5 cents on your letter here or I will never get it. It is a good thing I went to Post Office with your letter and inquired, and was quite surprised when they told me a letter was 2½d. Well Sweetheart how are you keeping, well I hope & getting stronger & FATTER, but not Mrs. Pregenser 2nd. Helen should be over her sickness by this time & no doubt will be sporting her new socks you gave her. Oh I am wearing a pair of my new socks, had them on 24 hrs & not a hole in them yet, I must be getting economical. Now Sweetheart I have run dry for news so will close, with all love & kisses to you Darling. Just a few more days Pet & I will be home. Look after yourself. 10 20

I am as ever Pet your loving
Husband & Sweetheart Will

Exhibit C. 8.

UNITED FRUIT COMPANY
STEAMSHIP SERVICE 30

On Board
S. S. Metapan

Carrie

If you think there is anything the matter with you go to the hospital and save yourself and company untold misery. I cannot alter.

*Exhibit C. 9.***Exhibit C. 9.**

WESTERN UNION TELEGRAM

1917 JUL 3 PM 3 56

1917 JUL 3 PM 3 44

10 RECEIVED AT 16 BROAD ST. N.Y.
D 348P 6

BX PHILADELPHIA PENN 3 17P 3
WILL MCWHINNIE
CHIEF OFFICER SS METAPAN PIER
NINE NORTH RIVER NEW YORK NY
GOOD BYE LOTS OF LOVE
MYRT.

20 WESTERN UNION TELEGRAM

RECEIVED AT 195 BROADWAY, N. Y.
375MH CGY 24NL

MH ATLANTIC CITY NJ JULY 27—17
MR WM MCWHINNIE CHIEF OF-FICER
S S METAPAN
PIER 9 NORTH RIVER NEW YORK NY
DEAREST WILL JUST RECD MESSEAGES
WILL MEET YOU AT ONE SATURDAY AT
30 BROAD STREET STATION I LEAVE HERE
AT TEN OCLOCK IN MORNING LOVINGLY
MYRT

1010P

40

Exhibit C. 9.

WESTERN UNION TELEGRAM

1917 AUG 28 PM 5 35

1917 AUG 28 PM 5

RECEIVED AT 16 BROAD ST. N. Y.

D498P 17

TRENTON DEPOT NJ 442P 28

10

WM MCWHINNIE

CHIEF OFFICER S S METCHAN
PIER 9 NORTH RIVER NEW YORK NY
RECEIVED MONEY NEW YORK FOR
CHILDRENS TUITIONS WILL LEAVE FOR
COLOMBIA YOUR NEXT TRIP BYE BYE
WRITING LATER

M.

20

HOTEL MARTINIQUE

Broadway 32nd and 33rd Streets
New York

June 7-17.

Dear boy Will.

Today is Thursday so will write you a few lines to tell you how lonesome I am without you, oh, I miss you so much and the telephone doesn't ring so much since you left, and the music in the lobby seems to make me sad instead of gay, it all reminds me of you dear. How glad I was yesterday morning to get your sweet letter and then in the afternoon I received your nice postal card and was happily surprised to get it. Now my only pleasure will be to wait for the letter from Kingston which I will not get for some time and when one is anxiously waiting a letter the time goes so slow. So the Chief Steward said he had intended coming to see me, well it

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Exhibit C. 9.

was by no invitation of mine that he intended coming and if he had I should have told him a few things that probably would have done him good, I am sure he only said that to annoy you, don't pay any attention to it dear, you know who I like best, the rest don't worry me at all.

10 There is one boy with auburn hair and brown eyes that I like, no other. I was very busy yesterday, the gentleman came at 1 P. M. to have lunch with me and to talk about that machinery and we arranged a cablegram and sent it to Colombia S. A. and he never left until ten minutes of six he was here all afternoon and at six o'clock I had an engagement to go out with Gus to have dinner so we went to a French Restaurant and had a nice dinner with wine and

20 every thing that goes with a dinner, I spent a pleasant evening but was wishing for you all the time, we came back here to the Hotel at 9:30 P.M. and sat here talking until almost 12:00 so I was sleepy this A.M. and did not get up until 11:30 A.M. some lazy girl don't you think so? when I finish your letter then I am going out shopping and as I have nothing on for this evening I will probably go to bed early tonight. My other friend will be here tomorrow from

30 Philada I guess and then I think I will go to Atlantic City Saturday and come back here Monday. I am going there to see if I can get a furnished cottage for the summer, if I can then I will be near N. Y. and can run up here at any time, see. Dearest boy I hope you will soon get your affairs arranged so you can be happy and free from care, it is a terrible thing to have to live under the strain you are going through. I hope for your sake it will soon come

40 to an end. As yet I have received no letter

Exhibit C. 9.

from any one, if I do will keep it for you to see. I hope you will have a nice trip and good weather and many nice pleasant passengers. Give my best regards to all asking about me and please remember me to the Stewardess. I am glad you liked the flowers but I wanted you to keep them in your own room where you could enjoy them yourself, I didn't want the Chief Steward to even have the pleasure of seeing them, the little shrimp. I have read your letter so many times that I almost know it by heart. Oh! how I wish you were here, I miss you so much and just think I have to wait three weeks more, isn't it awful. Have a good time Will but don't forget your "Little Devil," will you? You know I am anxiously awaiting your return, so will close now wishing you a safe voyage and a pleasant return. 10 20

I am always the same—

M.

Atlantic City N. J.
July 21st, 17.

My Dearest Boy Will:—

Received your most loving letters, one from Kingston and one from Colon, useless to say I was very happy to hear from you, you sure are some letter writer and how I love to get them they are such a comfort and pleasure to me dear. As yet I have had no word from the south and don't care much if I never get one as my affections have turned elsewhere and I guess you know where they are, do you? I am sorry you will not go to Kingston on your return because there are two long letters there and some post cards that you will miss getting but any way you will get them on your next trip going south. 30 40

Exhibit C. 9.

I am very anxious to hear you have arrived in N. Y. and please send me a telegram as soon as possible and I will answer it. Oh, dearest boy I have so many things to talk over with you that I can hardly wait to see you and the days are so long, seems to me they will never pass, it seems
10 ages since you left but am living in hopes that a week from today we will be together, in our little cottage and can talk over our troubles together. I am sending you here the time tables so you can see the hours the trains leave from N. Y.—Philada & A. C. Now if you leave N. Y. at 11:A.M you get to Philada, Broad Street station at 1:00 P.M. and I will leave here at 10:00 A. M. and will get to Philada, Broad St. Station at 11:25 A. M. I will be there one hour and half
20 before you arrive but as I have some business to attend to there I will be busy and the time will soon go by then we can get a train at 1:34 and will get here at 3:00 P. M. and dearest I am going back with you to N. Y. are you glad, I have made arrangements to see a man there about some lithographing a week from Monday, so we can leave here Sunday evening at 6:45 get to Philada at 7:58 leave there at 8:14 get to N. Y. at 10:15 how is this for making time we will be
30 going some. If any body follows us they will be kept busy, dont you think so dear. Now if these arrangements suit you let me know by wire as soon as possible, you must get your lunch on the train as we will only have :30 minutes in Philada after you arrive until we take the other train and that isn't time enough to get a lunch. I will get a lunch at the station while waiting for you. Honey boy of course I will have some cards printed for you but dear you never said
40 how you wanted them printed do you want them

Exhibit C. 9.

Mr. Wm. McW. or just initials and do you want any address on them, let me know how you want them and I will see that you get them. So people tell you opals are bad luck, well I don't know, I could never see any difference in my luck when I wore them, they might be unlucky to some people I don't know. Well dearest boy I must close now and go to the grocery store to get some groceries for tomorrow and it is now 5 P.M. and I have to dress for the street. Now wire me as soon as you know if you are coming down Sat. at the time mentioned, just send the telegram the way you address my letters and to the Western Union office as I have given them my address and if any telegrams comes here I will get them, they will deliver them. Anxiously awaiting your message Oh! yes, give the Purser my very best wishes also 3rd Mate, tell the Purser I would like to see him to congratulate him and that we will be in bathing at the beach opposite Virginia Ave. so he will know where to look for us Sunday A.M. see. Well sweetheart I must close now with oceans of love to you

Affectionately

M

Atlantic City N. J.
July 23/17.

My Own Dearest Will:—

Each day now sweetheart you are nearer me and oh, how glad I am, if I could only send you a message I would do it but that is impossible I guess. I take the children and go down and walk on the Boardwalk almost every evening

Exhibit C. 9.

and watch the waves and think of you and wonder if you are thinking of me, and look out to sea towards the South and wonder where you are, if I could only be there with you how happy I would be. I sent you some post cards and one is for the Purser, I do not know his name so just
10 put on the card The Purser, will you please give it to him with my best wishes, this is the second letter also that I have written to you hope you will get every thing all right. I will send you a telegram Friday morning about eleven A.M. so if you are in by that time or before and get this letter you can expect the telegram about noon. I will send my address in the telegram then you can answer. I can hardly wait until Saturday and believe me I will have a small bottle of
20 Scotch on ice, does that sound good, and something else to go with it that we like. Dear boy I hope things will be more pleasant for you this time in N. Y. and that the Mrs. will have made up her mind to let you do as you wish, no doubt she will feel very glad to know I am not there this time to cause her any worry. I have never received the letter she was to write me, guess she changed her mind. Now sweetheart get rid of these letters and cards of mine, throw them
30 overboard as soon as you read them. Say dear I guess maybe it is best for you to wire me first and as soon as I get it I will answer then there will be no chance of any body else getting the telegram, see. just send it to me the way you address my letters and to this town and I will get it but not to Gen. Del. they have my address at the Western Union office and will send the message to me as soon as it comes. Dearest Will don't disapoint me about coming down will you,
40 for I do want to see you so bad every day is like

Exhibit C. 9.

a week the time drags so, if you don't come down
 I will be heart-broken, do wish you could come
 Friday. I will close now, have oh, so much to say
 but don't want to write it, so will wait until I see
 you and tell you, that will be better. Bye-bye
 Dearest boy, always sincerely

M.

10

Card:

TO A FRIEND OF MINE
 When you read this message
 From afar,
 Remember that my heart
 Is where you are.

20

To a sweetheart of mine—
 From a sweetheart of yours.

Picture Card:

Just a basket of roses I send to you, With loves
 own message ever so true.

M.

30

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*Exhibit C. 10.***Exhibit C. 10.**

THE STATE OF OHIO, }
 CUYAHOGA COUNTY. } ss.:

IN THE COURT OF COMMON PLEAS.

10

No. 347141.

WILLIAM MCWHINNIE, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> CAROLINE MCWHINNIE, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Divorce.</i>
--	---	-----------------

20 September
 Term
 1930.

30

BE IT REMEMBERED, That heretofore to wit:—
 At a term of the said Court of Common Pleas,
 begun and held at the Court House in the City
 of Cleveland, within and for the County of Cuya-
 hoga and the State of Ohio on the 8th day of
 September, in the year of our Lord, One Thou-
 sand Nine Hundred and Thirty, by and before
 their Honors to wit:—Samuel E. Kramer, Carl
 V. Weygandt, Thomas M. Kennedy, Harrison
 W. Ewing, A. J. Pearson, Walter E. McMahon,
 James B. Ruhl, George P. Baer, Frank C. Phil-
 lips, Samuel Silbert, Frederick P. Walther, and
 Homer G. Powell, C. J., Judges of the Court of
 Common Pleas of the State of Ohio and the

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Exhibit C. 10.

PETITION

County of Cuyahoga. PETITION filed on the 5th day of November, 1930, as following to wit:—

THE STATE OF OHIO: CUYAHOGA COUNTY: SS: IN THE COURT OF COMMON PLEAS. No.....

William McWhinnie, 2284 Murray Hill Road, Cleveland, Ohio, Plaintiff -vs- Caroline McWhinnie, Residence Unknown, Defendant. Plaintiff

10

says that he is and for thirty days last past has been a resident of the County of Cuyahoga; that he is and for more than one year last past has been a resident of the State of Ohio. Plaintiff,

for his cause of action against defendant, says that he was married to the defendant on or about the 15th day of March, 1916, at New York City, New York; that he is now thirty-nine years of

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age, and that the defendant is about forty-nine years of age; that ever since said marriage, defendant has been guilty towards plaintiff of Ex-

treme Cruelty in that she cursed him in the presence of friends; that she struck him on several occasions in the presence of friends and acquaintances; that she would approach his em-

ployers and in their presence accuse plaintiff of all sorts of improprieties, all of which were base-

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less and false, and that because of said persecution on the part of the defendant it was and is extremely difficult for the plaintiff to find regular

and permanent employment. Plaintiff says that shortly after said marriage, plaintiff and defendant have separated and have not lived to-

gether for a period of about fourteen (14) years. Plaintiff says that ever since said marriage he has conducted himself as a good and dutiful hus-

band should; that he supported the defendant properly, but that defendant was guilty of Ex-

treme Cruelty towards him, as aforesaid. WHERE-

40

Exhibit C. 10.

FORE, plaintiff prays that he may be divorced from defendant and for such other and further relief as is just and equitable. (sgd.) Wolf and Kruckhoff, Attorneys for Plaintiff, 810 Ulmer Building, Cherry 0492. THE STATE OF OHIO: CUYAHOGA COUNTY: ss: William McWhinnie, being first duly sworn, according to law, deposes and says that he is the plaintiff in the above entitled action and that the facts set forth in the foregoing petition are true, as he verily believes. (sgd.) William McWhinnie. Sworn to before me by the said William McWhinnie and by him subscribed in my presence, this 8th day of September, A. D. 1930. (sgd.) Mary Kruckhoff, Notary Public. Tax Fee. Seal. This Petition was endorsed as follows:— No. 347141. In the Court of Common Pleas. William McWhinnie -vs- Caroline McWhinnie, Defendant. Petition for Divorce and Equitable Relief. Wolf and Kruckhoff, Attorneys and Counselors at Law, 810 Ulmer Building, Cleveland, Ohio. Ch. 0492. Filed—November 5, 1930. Thomas C. Cook,

AFFIDAVIT

Clerk Pro Tem. AFFIDAVIT FOR SERVICE BY PUBLICATION filed as following to wit:— THE STATE OF OHIO: CUYAHOGA COUNTY: ss: IN THE COURT OF COMMON PLEAS. William McWhinnie, Plaintiff -vs- Caroline McWhinnie, Residence Unknown, Defendant. William McWhinnie, being first duly sworn, deposes and says that he is the plaintiff in the above entitled action for divorce; that service of summons cannot be made upon the defendant, Caroline McWhinnie, within the State of Ohio: that the last known place of residence of said defendant is as follows:— New York City, New York. that plaintiff has exercised reason-

Exhibit C. 10.

able diligence to ascertain the residence of the said defendant and that the residence of said defendant is, other than herein set forth, unknown, and cannot with reasonable diligence be ascertained; that this case is one of those mentioned in Section 11984 of the General Code of Ohio. (sgd.) William McWhinnie. Sworn to before me by the said William McWhinnie and by him subscribed in my presence, this 8th day of September, A. D. 1930. (sgd.) Moses Benjamin, Notary Public. Tax Fee. Seal. Endorsed as follows:— No. 347141. In the Court of Common Pleas. William McWhinnie, Plaintiff -vs- Caroline McWhinnie, Defendant. Affidavit for Service by Publication. Wolf and Kruckhoff, Attorneys and Counselors at Law, 810 Ulmer

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DOCKET

Building, Cleveland, Ohio. Filed—November 5, 1930, Thomas C. Cook, Clerk Pro Tem. DOCKET And thereupon on the said 10th day of November, 1930, there was duly entered upon the Docket, the following order as following to wit:— Copy of The Daily Legal News dated November 10, 1930, mailed to William McWhinnie, New York

30

PROOF OF
PUBLICATION

City, N. Y. PROOF OF PUBLICATION filed as following to wit:— THE STATE OF OHIO: CUYAHOGA COUNTY: ss: I, Florence Farnsworth, being duly sworn, upon my oath, depose and say that I am the agent of the Daily Legal News, and that the annexed advertisement attached hereto was published in the Daily Legal News, a daily newspaper of general circulation, printed in the City

40

Exhibit C. 10.

of Cleveland, County of Cuyahoga, Ohio, for a period of 6 consecutive weeks and on the same day of each week, on and after the 7th day of November, A. D. 1930. (sgd.) Florence Farnsworth. Sworn to and subscribed in my presence this 12th day of December, A. D. 1930. (sgd.) Ralph E. Karlovec, Notary Public. Seal. Printer's Fee \$6.00 Affidavit 80c Total—\$6.80. Received Payment—.....

10 *Copy of Divorce Notice.* No. 347141. William McWhinnie vs. Caroline McWhinnie. Caroline McWhinnie, whose place of residence is New York City, New York, otherwise whose place of residence is unknown, will take notice that on November 5, 1930, the undersigned, William McWhinnie, filed his petition against her in the
 20 Court of Common Pleas of Cuyahoga County, Ohio, praying for a divorce and relief, on the grounds of wilful absence for more than three years last past and extreme cruelty. Said cause will be for hearing on and after the 20th day of December, 1930. William McWhinnie. By—Wolf and Kruckkoff, his Attorneys. Nov. 7-14-21-28 Dec. 5-12. Endorsed as follows:—Cuyahoga Common Pleas Court. No. 347141. William McWhinnie -vs- Caroline McWhinnie. Proof of
 30 Publication—The Daily Legal News. Wolf and Kruckkoff, Attorneys. Filed—February 11, 1931,

Journal 262
 Page 2505
 Date 4/4/31

Thomas C. Cook, Clerk Pro Tem. JOURNAL ENTRY
 And thereupon on the said 4th day of April, 1931, being a day in the said January Term of the said Court, there was duly entered upon the Journal
 40 the following order as following to wit: This

Exhibit C. 10.

cause came on to be heard on the petition and evidence, the defendant being in default of answer or demurrer, although duly served with process. Upon due consideration of the pleadings and evidence, the court finds that the allegations of the petition are true; that the defendant has been guilty of EXTREME CRUELTY and that by reason thereof the plaintiff is entitled to a divorce as prayed for. It is therefore adjudged and decreed that the marriage contract heretofore existing between the parties hereto be, and the same is hereby dissolved and both parties are released therefrom. Coming now to consider the matter of alimony, the court finds that plaintiff and defendant have not been living together for a number of years, but that plaintiff has been supporting defendant out of his earnings; that there are no children as a result of said marriage; that plaintiff is possessed of no property or money of any kind to a share of which defendant would be entitled. It is therefore adjudged and decreed that plaintiff pay to defendant the sum of Fifty Dollars (\$50.00) as final installment of alimony and that upon the payment of said sum plaintiff be discharged from any liability to said defendant by way of support or alimony.

(sgd.) SAMUEL SILBERT,
Judge of the Court of Common Pleas.

Above exhibit exemplified.

10

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*Exhibit C. 14.***Exhibit C. 14.**

THE NAFRA COMPANY
 Incorporated
 120 Broadway
 New York

10

U.S.A.T. Santa Cecilia.
 Dec. 25th. 1918.
 Baltimore. Md.

To.

T. J. Mc Laughlin. Esq.
 Recorder.
 West Orange. N. J.

Dear Sir.

20 Not having received a reply to my letter of
 Nov. 8th. 1918. or my telegram of Dec. 16th. upon
 arrival at the above named port.

I write to inform you that I am quite ready for
 the case to go to Court.

As to Mrs Mc Whinnie or any one else, being
 able to stop any of my money, I can only say
 that Mrs. Mc Whinnie had better get better ad-
 visers, on the Seamans Law of the U.S.A.

30 You issued a summons against me, the which I
 answered, now it is up to you to bring this case
 to a settlement one way or the other.

I am quite ready to meet you or any other At-
 torney, to talk over the settlement of Mrs Mc
 Whinnies financial difficulties, but I will not con-
 sult with her.

40 As for Mrs. Whinnie going to the office, well
 that just makes my case the better I have in
 every way tried to make a settlement, and with
 her threatening letters and the undue inter-
 ference of you both, instead of putting me in a

Exhibit C. 15.

hole, it is *You*, who is going to be in the hole, for I hold the trump cards, and cards you dont at present know anything about.

Trusting that you will see your way to answer this letter.

I remain,

Yours respectfully,

William McWhinnie

10

Exhibit C. 15.

WESTERN UNION TELEGRAM

RECEIVED AT

COR MAIN ST & ESSEX AVE.,

ORANGE, N. J.

TELEPHONE ORANGE 4361

20

27 NY R 78 NLNL

B BALTIMORE MD DEC 17 1918

T J MCLAUGHLIN

RECORDER RECORDERS COURT

WEST ORANGE NJ

UNLESS I RECEIVE A REASONABLE
REPLY TO MY LETTERS OF NAVY FROM
FRANCE I WILL TELEGRAPH WAR DE-
PARTMENT WASHINGTON THAT THEIR
OFFICIAL MAIL TO ME IS BEING OPENED
BY PERSONS WHO HAVE NOT THAT
RIGHT ALSO THAT CHECK INCLOSED
WAS STOLEN ALSO THAT YOU PERSON-
ALLY WAS MAKING YOURSELF A NUIS-
ANCE TO ME IN THE FULFILMENT OF
MY DUTIES AND SEEKING INFORMATION
FOR YOURSELF AND OTHERS WHO HAVE
NO RIGHT TO INFORMATION

30

WILLIAM MCWHENNEL CARE NAPLA
LINE INC MUNSEY BALTO

40

Exhibits C. 16—C. 17.

Exhibit C. 16.

NIGHT LETTERGRAM

Delivery No. 2816 M

7NY Wx9am

45NL 6X

Balto Md Dec 20

10

Mrs William Mc Whinnie Cr T J Mc Laughlin
Recorders Court West Orange Yours received is
it dollars or nickels you are talking about if
nickels I might consider your petition. However
have your men-tal condition examined before
you find yourself in a hole go to it the sky is the
limit.

William Mc Whinnie,
Care The Nafra Co Inc Munsey Building Balto

20

Exhibit C. 17.

Supervisor, Naval Auxiliary Reserve
New York, N. Y.

SRU/G

June 14th 1917.

To: Disbursing Officer, Bureau of
Supplies & Accounts.

30

Subject: Change of address.

1. Please change the address of William
McWhinnie, Lieutenant, on the S. S. Metapan, in
the Naval Auxiliary Reserve, to 20 Kingsley
Street, West Orange, N. J.

R. T. Merrill, 2nd.

Navy Department
Bureau of Navigation.

7 September 1932.

A true copy.

Carl K. Fink,
By direction.

40

Exhibit C. 17.

NAVY DEPARTMENT
BUREAU OF NAVIGATION
Washington, D. C.

Refer to No.
10263-3
Nav-167a-GW

10

7 September 1932.

Dear Madam:

In compliance with your request of 29 August 1932, there is forwarded herewith a certified copy of letter dated 14 June 1917, from the Supervisor of Naval Auxiliary Reserve, New York, N. Y., to the Disbursing Officer, Bureau of Supplies and Accounts, Washington, D. C., requesting change of address of William McWhinnie to 20 Kingsley Street, West Orange, N. J. The Supervisor's letter was written upon receipt of a request from your husband, Lieutenant William McWhinnie, for change of address.

20

Very truly yours,

F. B. Upham,
Chief of Bureau.
Carl K. Fink,
By direction.

30

Mrs. W. McWhinnie,
28 Lindsley Ave.,
West Orange, N. J.

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*Exhibits C. 18—C. 19.***Exhibit C. 18.**

(Picture Postcard)

(Stamped) Jamaica, May 14-17, 9:30 AM

(Addressed) Mr Wm Lorch

26 Mount Vernon Avenue

10

Orange

N J

U. S. America

Dear Bill.

How are you. I expect to be back by May 31. Then if I come over to see you, we may be able to get pie or some other treat for dinner. Best wishes to all. From the cousin who is worse than those who talk about him. I get the dickens for not behaving myself while over at your place.

20 Just you wait & we will raise the dickens.

Cousin Bill

Exhibit C. 19.

(Picture Postcard)

(Stamped) Jamaica, May 14-17, 9:30 AM

(Addressed) Mrs Wm Lorch

26 Mount Vernon Av.

30

Orange

N. J.

U. S. America

Dear Cousin May.

Have you found a wooden hut for my Wee Wifey & I. See that it is near you, because then your Hubby & I will be able to hang our legs over the arm of the dining room chairs. You bet we will have a warm time of it in Orange. Tell all the landlords we have a large family. Best wishes.

40

Cousin Will

*Exhibit C. 20.***Exhibit C. 20.**

214 Somerset Av., Winthrop
 May 27, 1917

My dear Willie:—

Yours of the 12th came on Tuesday, having
 been opened by the censor, but of course there
 was nothing for them to take out. 10

* * * * *

Write us all about the new home when you can.
 Should like to peep in on you unawares and see
 how you look as a married man in your own
 home. Expect your Mother will be wanting to do
 so, only not unawares.

I hope Carrie will not overdo in getting the
 new home settled. 20

* * * * *

I hope you have found a nice house in Orange.
 Did you take the \$40 one which they would reduce
 to \$37.50? Yes, everything is high, and appar-
 ently not as good as when they were cheaper.
 Even the yeastcake is now three cents instead of
 two. You must describe it when you write,—
 house not yeastcake. It won't be the awful job
 it will be when you make your next move. Am
 glad you have received such needed articles for
 presents. 30

* * * * *

Your affectionate cousin,
 Euphie A. T. McInnes.

Exhibits C. 21—C. 22.

Exhibit C. 21.

Photograph (see p. 105).

10

Exhibit C. 22.

ORIGINAL ASSIGNMENT.

For One Dollar, to me/us in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) I/we hereby assign, transfer and set over to (*relationship, if any, should be stated*)

Celeste Zappolo

whose P. O. Address is Box 107 Macedonia, Ohio, (permanent address) *if living, if not living to the insured's executors, administrators or assigns*, all my/our right, title and interest in policy No. 2005938 issued by

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK,

and for the consideration above expressed I do also for myself my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above named assignee, her executors, administrators or assigns, and her title to the said policy will forever warrant and defend.

* * * * *

IN WITNESS WHEREOF, I have hereunto set my/our hand and seal, this 5 day of Dec. 1927.

WILLIAM McWHINNIE (L. S.)
CELESTE A. ZAPPOLO (L. S.)

40

Exhibit C. 23.

STATE OF NEW YORK, }
 COUNTY OF KINGS. }ss.:

On this 5th day of December in the year of our Lord 1927, before me the undersigned a Notary residing in Rockville Centre, N. Y., duly commissioned and thereunto authorized, came Wm. McWhinnie & Celeste A. Zappolo, to me known and known to me to be the individual described in and who executed the foregoing assignment and acknowledged that they executed the same. 10

(*Notary sign here*) ANTHONY PENNESI
 (Notarial Seal) Notary Public
 Nassau County
 Kings County Reg. No. 107
 Queens County Reg. No. 1098
 Commission Expires Mar. 30, 1928 20

Exhibit C. 23.

Insurance Policy of The Mutual Life Insurance Co. of New York, dated August 20, 1912, on the life of William McWhinnie in the principal sum of \$1,000. Payable to executors, administrators or assigns. 30

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Main body of faint, illegible text, appearing as several paragraphs.

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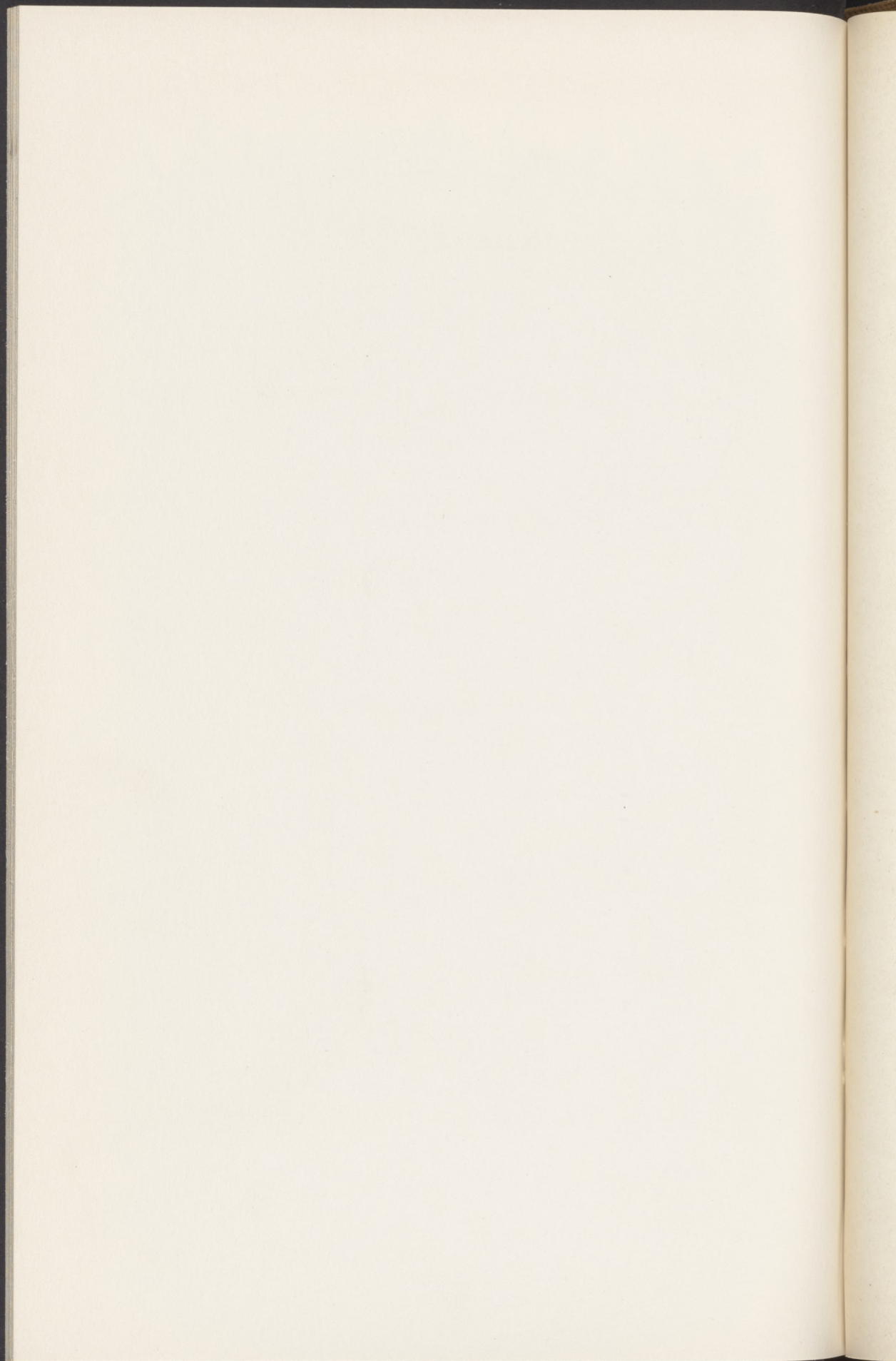
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Faint, illegible text in the lower middle section.

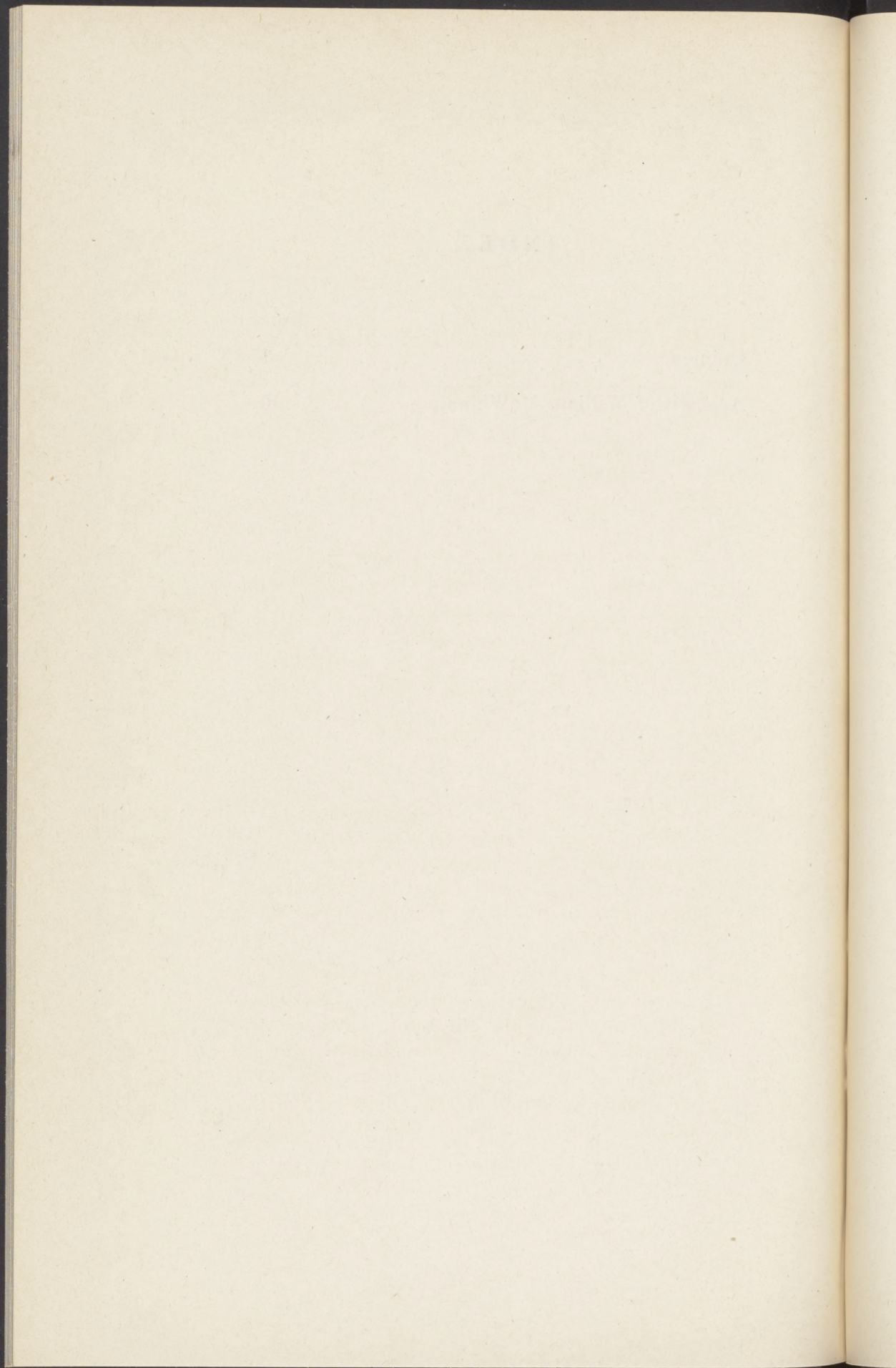
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INDEX



INDEX

	PAGE
Opinion	1
Affidavit of William McWhinnie	10



Opinion

90—469

IN CHANCERY OF NEW JERSEY

Between

CAROLYN McWHINNIE,
Complainant,

and

WILLIAM McWHINNIE,
Defendant.

Opinion

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20

BILL FOR SEPARATE MAINTENANCE AND TO NULLIFY
OHIO DECREE OF DIVORCE.

Decided: December 14, 1934.

SYLLABUS:

1. A foreign decree of divorce obtained against a person domiciled in New Jersey, without notice to the defendant and without giving her a reasonable opportunity to defend the suit, is without effect in this State and will be deemed void. 30
2. One who obtains a decree of divorce in a foreign state against a defendant domiciled in this State, upon the allegation that he is a bona fide resident of such foreign state, when in fact he is not, is guilty of having obtained such decree by fraud, and it will not be recognized as a valid decree in this State. 40

Opinion

- 10 3. Where a person domiciled in this State goes into the courts of one of our sister states for the purpose of obtaining a divorce against a defendant resident herein, on grounds which arose in this State, or which are not recognized as cause for divorce in this State, such decree is of no effect in this jurisdiction.
4. In order to entitle a foreign decree of divorce obtained against a defendant domiciled in this State to recognition herein, jurisdiction must have been acquired by the foreign tribunal in substantial conformity with the requirements of our Divorce Act and the rules of this court.

20 MESSRS. BRUNDAGE & BRUNDAGE, of Orange,
For the Complainant.

BENJAMIN GORDON, Esq., of Elizabeth,
For the Defendant.

GROSMAN, A. M.

30 Complainant sues for separate maintenance under Section 26 of our Divorce Act. The defendant sets up in bar a decree of divorce granted to him by an Ohio court.

The parties were married at the City of New York on the 15th day of March, 1917. They resided together at New York for some three and a half months and then moved to 20 Kingsley Street, West Orange, in this State, in which town the complainant has continued to reside since that date with the exception of a period of twenty months during which she lived in the City of Orange.

40 The defendant is a seafaring man presently employed as a second mate on an American ship.

Opinion

From the date of their marriage until about the 15th of May, 1918, he cohabited with the complainant both at New York and subsequently at West Orange during such times as his ship happened to be in port, usually every twenty-eight days. For a short time after his marriage he appears to have been what may truly be termed "a model husband." He did not drink, sent his wife as much of his wages as he could possibly spare, and from every port at which his ship touched, he wrote long letters replete with "passionate protestations of his undying affections." In May, 1917, on a return voyage from South America, he made the acquaintance of a woman passenger named Myrtle McGuire whom he described as a rich woman. He became infatuated with her. He took to drinking heavily and made no effort to conceal his interest in Mrs. McGuire and his utter lack of affection and disregard for the complainant. A number of telegrams and letters sent by this woman to the defendant clearly indicate that an illicit relationship existed between them. On at least one occasion he freely admitted to the complainant that he had spent the night at a hotel with Mrs. McGuire. He began to make murderous assaults upon the complainant with the stated intention of ridding himself of her. The last assault of this nature occurred about May 15, 1918 during the course of which the defendant rendered the complainant unconscious. She had him haled before the Police Recorder of West Orange. The defendant then abandoned her.

On the 2nd day of May, 1919 he entered into an agreement with the complainant whereby he undertook to pay her \$90.00 per month for her

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Opinion

10 maintenance and certain additional sums to be applied on account of then existing indebtedness. He defaulted on this agreement. On the 5th day of November, 1930, twelve years after his abandonment of complainant, he instituted suit for divorce on the ground of extreme cruelty in the Court of Common Pleas, Cuyahoga County, Ohio. Service was allegedly made upon the defendant by publication. His affidavit in the foreign proceedings discloses a statement under oath that the complainant's last known residence was New York City, New York. This is manifestly untrue. He was fully aware of the fact that the complainant was resident in West Orange. He made no effort to serve her with a copy of the petition and notice of the suit. The nearest approach to this was a letter written by his Ohio solicitors to one Thomas Fahey, 99 Nassau Street, New York City, an attorney, who had represented the complainant in the preparation of the agreement of May 2, 1919 (Ex. C-10 A), wherein Mr. Fahey was advised that the Ohio firm represented the defendant herein in a divorce suit; that they desired information as to the complainant's address to the end that they might serve her with a copy of the petition. This letter was called to the complainant's attention and in pursuance to her wish, Mr. Fahey advised the defendant's Ohio attorneys that the complainant preferred to be served at his office. Nothing more was heard of the matter.

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40 On June 6, 1932, the complainant instituted the present suit for separate maintenance and to nullify the Ohio decree. A writ of *ne exeat* was issued on her bill and the defendant apprehended thereunder at Perth Amboy, in this State. He furnished bail and then moved to quash the writ.

Opinion

He prevailed on this motion and the writ was vacated. He then left the State without answering the complainant's bill. Thereafter an order was made directing the defendant, personally or by his solicitor, to answer. He failed to do so and appealed therefrom to the Court of Errors and Appeals. Subsequently he abandoned his appeal and the same was dismissed. He then moved in this court to vacate the order directing him to answer, which application was denied. Benjamin Gordon, Esq., the defendant's solicitor, then filed an answer on his own behalf wherein he sets forth that he was retained by the defendant merely for the purpose of moving to vacate the writ of *ne exeat* and no other; that he was not authorized by the defendant to file an answer to the bill of complaint, and denying the jurisdiction of this court to compel him to file such an answer. On complainant's motion the answer was stricken as being unresponsive and a decree *pro confesso* taken against the defendant and the cause referred. A hearing was had on the bill *ex parte*. The Ohio decree was held to have been fraudulently obtained, to be of no effect in this State and a final decree of separate maintenance was awarded to the complainant.

Thereafter the defendant petitioned this court to reopen said final decree and to permit him to interpose a defense. This motion was granted on the following terms, viz.: That he enter a general appearance in this cause and file a bond in the sum of \$1,000.00 conditioned for the payment of accrued costs, counsel fees and alimony. He complied with these conditions. The decree was opened, he filed an answer, testimony of both sides was taken, and the cause is now ready for final determination.

Opinion

10 The defendant contends that he never consented to complainant's living in West Orange, and that, until he took up his residence in the State of Ohio, he considered the City of New York to be his domicile. This is manifestly untrue. His letters to the complainant clearly indicate not only that he knew that she lived in West Orange, but also that prior to her removal thereto, he made inquiries as to whether or not she had found a suitable residence in that town. He sent mail to her addressed to 20 Kingsley Street, West Orange, New Jersey. He cohabited with and assaulted her there and was summoned before the Police Recorder of that town. On December 25, 1918, he wrote from Baltimore, Maryland, to the Police Recorder at West Orange, New Jersey, concerning his domestic difficulties. He sent telegrams both to his wife and to the Police Recorder at West Orange. He was a member of the Naval Auxiliary Reserve and on June 14, 1917 he wrote requesting that his address be noted on the Navy Department's records as 20 Kingsley Street, West Orange. At the final hearing he swore unreservedly that he never considered West Orange to be his home. 20 30 When confronted with this mass of contradictory evidence, he was wholly unabashed. In an affidavit filed by him in this court on his application to vacate the writ of *ne exeat*, dated June 16, 1932, this defendant stated in paragraph 3 thereof, "I have never lived in the State of New Jersey. I have never paid rent or taxes or have been registered or had a permanent address in this State." This was manifestly perjurious.

40 It is admitted that no actual notice of the pendency of the Ohio suit for divorce was ever given to the complainant herein. The defend-

Opinion

ant swore in the Ohio court that the last known residence of the complainant herein was the City of New York and that he could not ascertain her then residence by the use of reasonable diligence. He knew this to be untrue. He knew that Mr. and Mrs. William Lorch, mutual friends of many years standing, lived in the Town of Orange. In paragraph 16 of his same affidavit filed in this court, he stated that he had read the affidavit of William Lorch, that he did not know Mr. Lorch, had never heard of him and did not recollect ever having met him. At the final hearing, a postcard (Ex. C-18) was produced addressed to William Lorch at 26 Mt. Vernon Avenue, Orange, New Jersey, signed by the defendant wherein he addresses this unknown deponent as "Dear Bill" and signs himself as "Cousin Bill." He also wrote a postcard (Ex. C-19) to Mrs. William Lorch wherein he addresses her as "Dear Cousin May" and signs himself "Cousin Bill." The Chief of Police of Macedonia, Ohio, where the defendant herein alleges that he established his domicile, reported that the defendant herein boarded for a time at the home of one Zappolo; that he left there about a month ago without leaving a forwarding address, and that he passed as a seafaring man while there. The report is dated the 5th day of September, 1931.

Suffice it to say that this defendant's testimony has been so thoroughly discredited as to be wholly worthless. I attach no importance whatever thereto.

I find that both he and the complainant were bona fide residents of the Town of West Orange in this State; that he was guilty of extreme

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Opinion

10 cruelty towards the complainant; that he abandoned her without justifiable cause on or about the 15th day of May, 1918, and that ever since said date he has continued to abandon the complainant without justifiable cause. I further find that he was never a bona fide resident of the State of Ohio; that he failed to give notice to the complainant herein of the pendency of said suit for divorce in the State of Ohio; that his last domicile was in this State and that while so domiciled, he went into the State of Ohio for the purpose of securing a decree of divorce from the complainant herein for a cause which arose, if at all, in this State and that said decree of divorce is a nullity and constitutes no bar to
20 complainant's relief.

The law is well settled in this State upon the issues presented herein.

In order to entitle a foreign decree of divorce to full force and effect against the defendant therein, who is resident in this State, it must appear, among other things, that the petitioner was a bona fide resident of the foreign state at the time he obtained his decree, *Jung v. Jung*, 85 N. J. Eq. 372; that jurisdiction was acquired
30 over the defendant in the manner and in substantial conformity with the requirements of our Divorce Act and the rules of this court, *Garabrant v. Garabrant*, 95 N. J. Eq. 136; that notice of the pendency of the suit and a reasonable opportunity to defend was given to the defendant if her whereabouts were known or could readily be ascertained by the use of reasonable diligence, *Doughty v. Doughty*, 28 N. J. Eq. 581; *Flower v. Flower*, 42 N. J. Eq. 152; and further,
40 that the petitioner, while domiciled in New Jer-

Opinion

sey, did not go into the foreign state for the purpose of obtaining a divorce on grounds which arose while he was domiciled in this State or on grounds which are not recognized as a cause for divorce in this State, *Thompson v. Thompson*, 89 N. J. Eq. 70; Divorce Act, Sec. 33, 2 C. S. 2041. A foreign decree of divorce obtained in violation of any of these rules, will be deemed void in this State as against a defendant domiciled herein.

10

In the case at bar, the conduct of the defendant herein violates all of these principles. He was never a bona fide resident of Ohio and in obtaining a decree of divorce in that state, he perpetrated a fraud upon its courts. He knew the whereabouts of the complainant herein but swore that he did not and in this manner obtained a decree of divorce without notice to the complainant herein and without giving her an opportunity to defend. His last domicile was in the Town of West Orange in this State and continued to be therein until changed. While so domiciled, he went into the State of Ohio and obtained a divorce for a cause which arose, if at all, while the parties resided in this State.

20

I hold that the Ohio decree is void as against the complainant and that she is entitled to be separately maintained.

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Affidavit of William McWhinnie

IN CHANCERY OF NEW JERSEY

10	Between CAROLYN McWHINNIE, <i>Complainant,</i> and WILLIAM McWHINNIE, <i>Defendant.</i>	} On Bill, Etc. Affidavit
----	--	---------------------------------

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

WILLIAM McWHINNIE, the defendant herein, being duly sworn, deposes and says:

1. I was married to the complainant on or about the fifteenth day of March, Nineteen Hundred and Seventeen, in the city of New York.

30 2. At the time of our marriage, both of us resided in that city, and we continued our residence in that city until after we had quarreled and practically separated, which was about two months after our marriage.

3. I have never lived in the state of New Jersey. I have never paid rent or taxes or been registered or had a mail address in that state.

40 4. Subsequent to our marriage and our quarrel my wife said that she preferred to have a place in New Jersey, and of her own motion she moved over to West Orange, but without my consent or urging or cooperation.

Affidavit of William McWhinnie

5. I never lived with my said wife in the West Orange house. To the best of my recollection I never was there but on two occasions when I escorted her there, and after she had called upon me at dock where my ship had docked in New York City.

10

6. My legal residence is in the state of Ohio, and has been in that state for the past five or six years. When I sign the articles required to be signed by all the officers and crew of the marines, I give the state of Ohio as the state of my residence. Each time the ship leaves port such articles are signed and each time I have signed as a resident of the state of Ohio, during that period. At no time and on no instrument and in no paper writing have I ever given the state of New Jersey as the state of my residence.

20

7. At the time of my marriage I was Chief Officer of the United Fruit Company, and was in line for promotion to full command. Because my wife made so much trouble in the office of the company and at the dock, when the ship was in port, I was finally compelled to resign my position in or about April, 1918. This was at the request of the captain of the boat to which I was attached, who told deponent that he couldn't stand any longer for so much trouble around the dock, and he told Mrs. McWhinnie that my resignation was being demanded because of the trouble she was making on the dock and on the ship.

30

8. I am a naval reserve man, and after my resignation from the United Fruit Company I entered the services of the U. S. Auxilary

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Affidavit of William McWhinnie

10 Transportation service, and during the war was employed in the transportation service between this country and France and Italy. After peace was declared I remained in the service of the U. S. Transportation Service as Chief Officer, until about 1924, when its business became so bad that I was laid off and was out of work for about a year.

9. I subsequently entered the employ of the Trans Marine Corporation as Chief Officer and remained there until 1928, and subsequently I entered the services of the Bethlehem Steel Corporation as Chief Officer on one of their boats.

20 10. In March 1930 I was laid off because of the lack of work and in November went with the Cities Service Transport Company, as third and after as second officer, running between New York, Philadelphia, Boston and Gulf Coast ports. After our separation Mrs. McWhinnie retained Thomas Fahey of 99 Nassau Street, New York and he drafted a written agreement under the terms of which I was to pay Mrs. 30 McWhinnie ninety (\$90) dollars per month, so long as my income was such as to make it possible. The agreement was made, as I understand, it, because we were married in New York, because we were subject to the jurisdiction and laws of New York and because that was considered even then as our legal residence, I having no attorney to represent my interest.

40 11. The agreement was that my employer was to deduct ninety (\$90) dollars per month from my salary and send it to Mr. Fahey, who in turn was to send it to Mrs. McWhinnie. I understood that this method was necessary because of the New York legal requirements.

Affidavit of William McWhinnie

12. So long as I could do so the ninety (\$90) dollars was forwarded and subsequently smaller amounts were remitted, and at more or less irregular intervals, but I conformed as closely as possible to the agreement. All payments were made direct to Mr. Fahey's office, and I haven't seen Mrs. McWhinnie probably for fourteen years, and I do not know where she has resided at any time, nor do I know where she resides at the present time. 10

13. Having finally concluded to bring an action for divorce I retained Kruckhoff and Wolffman of Cleveland, Ohio and I am informed and believe, they communicated with Thomas Fahey, as Mrs. McWhinnie's attorney for the purpose of ascertaining her address and how and where service might be made. 20

14. I am informed and believe, however, that Mr. Fahey declined to give any information, and on September 30th, 1930, Mr. Fahey wrote my attorneys as follows:

“I recently had a brief interview with Mrs. Carrie McWhinnie, and she suggested that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind—I cannot see much point in it, but think it well, as far as possible, to oblige her and respect her wishes. I assume it does not make much difference where the papers are served, so that they are served as required by the laws of your State.” 30 40

Affidavit of William McWhinnie

10 15. In compliance with the wishes of Mrs. McWhinnie, as expressed by her attorney, service was made, I am informed and believe, in accordance with the laws and requirements of the state of Ohio, and I was awarded a Decree of Divorce on April 4th, 1931. I have an exemplified copy of the Decree, which is attached hereto and made a part hereof.

20 16. I have read an affidavit signed by one William Lorch, who stated in the first paragraph "I have known William McWhinnie, the defendant in the above entitled cause, for the past sixteen years," I do not know Mr. Lorch, and I never heard of him and I do not recollect ever having met him.

30 17. I was arrested on June 9th, under a Writ of NeExeat and was lodged in the Union County Jail in Elizabeth. I was kept there for an entire day, until I could procure a Ne Exeat bond. Since that time and in accordance with the requirements of the writ I have remained in the state. Because of my arrest and because of the order of the court I am unable to go back to my work and I am under considerable expense. Furthermore I have been told by the manager of the company that I have been suspended and that I will not be put back in my position or restored to the pay-roll until this matter is completed.

WILLIAM MCWHINNIE.
(LS)

40 Subscribed and sworn to before me }
this 16 day of June, 1932. }

BENJ. FARBER,
A Notary Public of New Jersey.

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

New Jersey Court of Errors and Appeals

Between

CAROLYN McWHINNIE,
Complainant-Respondent,

and

WILLIAM McWHINNIE,
Defendant-Appellant.

On Appeal.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

Statement.

Complainant and defendant were married in 1917. They separated in 1918.

Subsequently the parties entered into a written separation Agreement, and voluntarily continued to live apart thereafter; the Agreement was drafted by, and executed in the office of, Mrs. McWhinnie's attorney—one Thomas Fahey—in New York City (Case, p. 121).

Apparently this Agreement was made upon the initiative of Mrs. McWhinnie. In response to a question as to what was said between Mr. and Mrs. McWhinnie in Mr. Fahey's presence when the Agreement was drafted and executed, Mr. McWhinnie replied (Case, p. 90, l. 3):

A I wanted an explanation of the agreement; and the agreement for giving my wife money was the idea that she should leave me alone and my job on ship and to stop her interference with my company and my work. And she said this was New York law: in no case could I give my wife money if I was separated from her; it had to go through a third party. And another understanding

was that I was not to interfere with her or go to her home, or try to find out what she was doing or where she was. And it was just as binding on her to leave me alone.

Q While you were with the United Fruit Company, how were your checks of payment made to Mrs. McWhinnie?

A I sent the money from the United Fruit Company to Mr. Fahey.

Q And he sent them, presumably, to Mrs. McWhinnie?

A Yes.

Early in 1928 defendant established his residence and domicile in Macedonia, Cuyahoga County, Ohio—a suburb of Cleveland—in the interim having had no settled domicile, and during that time never having resided in New Jersey. A year later he removed his domicile to Cleveland.

In November, 1930, almost three years after establishing his domicile in Ohio, defendant instituted an action for divorce in the Court of Common Pleas of Cuyahoga County. Complainant had knowledge of the contemplated action, but, through her New York attorney, Thomas Fahey, declined to disclose her address and suggested, through said attorney, that service be made as required by the law of Ohio. Mr. Fahey wrote counsel for Mr. McWhinnie that he thought it “well, as far as possible, to oblige her (Mrs. McWhinnie) and respect her wishes.” Service, following complainant’s express wish, was made by publication.

The divorce was granted on April 4, 1931.

Complainant never questioned, or made any attack upon, the divorce in the Ohio court; but over a year later—in June, 1932—filed in the Court of Chancery the instant bill for maintenance, attacked the Ohio divorce on the ground

of fraud, and had issued a writ of *ne exeat* under which the defendant was arrested while the ship to which he was attached, as an officer in the employ of Cities Service Transportation Co., was in a New Jersey port.

After a hearing before Vice-Chancellor Berry the writ was discharged *without condition*.

Following the divorce this defendant continued, and still maintains, his Cleveland domicile.

No subpoena was ever issued or served in the *ne exeat* proceeding, and after the writ was discharged defendant returned to his ship.

No subpoena having been issued or served no answer was filed. Subsequently, however, in what was practically an *ex parte* proceeding so far as defendant was concerned, it was held that defendant had made a general appearance in the *ne exeat* proceeding, but no copy of that decree was ever served on defendant. His counsel in the *ne exeat* proceeding declined to accept service as he had been retained merely to have the *ne exeat* writ discharged, and had long since fulfilled his obligation in that matter.

Under cover of this situation counsel for complainant subsequently proceeded to an *ex parte* hearing without notice either to defendant or to defendant's former solicitor, and a final decree was entered holding the Ohio divorce to be null and void, and charging defendant with maintenance of \$520 per year, costs, and counsel fee.

When this was brought to the attention of defendant he petitioned to have the decree set aside and for a further hearing. The petition was granted on condition, and an order entered setting aside the decree.

Following the hearing the decree now appealed from was made and filed (Case, p. 111).

The defendant-appellant appeals on the following grounds (Case, p. 118):

1. The complainant-respondent had actual notice that a divorce suit was about to be filed, and, through her attorney, requested that service should be made as required by the laws of Ohio in lieu of personal service.

2. There was no proof that the legal domicile of defendant-appellant was other than in the State of Ohio.

3. There was no proof of fraud on the part of defendant-appellant.

4. Defendant-appellant affirmatively proved that his legal domicile was established in the State of Ohio early in 1928, and continued there, uninterruptedly, down to the date of the final hearing on December 14, 1934—a period of nearly seven years.

At the hearing on December 14, 1934, the Advisory Master remarked that:

“There is one issue: Whether or not Mr. McWhinnie was a resident of the State of Ohio. If he was, these proceedings are void. * * * If he was not these proceedings stand” (Case, p. 26, l. 15).

He then proceeded, however, to admit voluminous testimony on the insistence of Mrs. McWhinnie's solicitors that a further question was “whether Mrs. McWhinnie had a separate domicile by reason of the misconduct of the husband in this state” (Case, p. 26, l. 25).

Counsel for the defendant is of the opinion that the sole issue is as stated by the Advisory

Master: "Whether or not Mr. McWhinnie was a resident of the State of Ohio," and his argument is confined to that question, and the question of notice. The state of case, therefore, divides itself into three parts: First, pages 1 to 25 and page 121 containing nearly all the matter relevant and material to the issue; Second, pages 26 to 110 containing matter only in small part germane to the issue, and such parts will be found in appellant's brief; Third, pages 123 to 153 containing exhibits having to do, for the most part, with events prior to 1919, and having nothing whatever to do with the divorce proceedings in Ohio twelve years later.

POINT I.

Complainant had notice that a divorce suit was about to be brought, and knew that it was being proceeded with.

On September 16, 1930 (Case, p. 12), Wolf & Kruckkoff, the Cleveland solicitors of Mr. McWhinnie, wrote Mr. Fahey, the New York attorney of Mrs. McWhinnie:

"This office represents Mr. McWhinnie in his divorce action against Caroline McWhinnie.

We are informed that you represent Mrs. McWhinnie and that you would be in a position to furnish us with her present address so that we may serve her with a copy of the petition.

Thanking you for your courtesy, we are."

On September 23, 1930, Mr. Fahey replied (Case, p. 13, l. 5):

"Mrs. Carrie McWhinnie's consent must first be had before I can advise you.

Your letter has been sent to Mrs. McWhinnie without comment."

On September 30, 1930, Mr. Fahey further wrote Mr. McWhinnie's solicitors (Case, p. 13, l. 23):

"I recently had a brief interview with Mrs. Carrie McWhinnie, and she suggested that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind—I cannot see much point in it, but *think it well, as far as possible, to oblige her and respect her wishes.* I assume it does not make much difference where the papers are served, *so that they are served as required by the laws of your State.*" (Italics mine.)

There was not only no disclosure of Mrs. McWhinnie's address, but no suggestion of how or where service might be had otherwise than through substituted service by publication "as required by the laws of your state" (Ohio).

In his letter to counsel dated June 29, 1932, upon discharging the writ of *ne exeat*, Vice-Chancellor Berry said (Case, p. 14, l. 15):

"I think it is quite apparent that the complainant in this suit was aware of the Ohio divorce proceedings and evaded service. It is quite plain that she could have been fully informed had she not instructed her then solicitor to give her husband no information as to her whereabouts."

Wolf & Kruckhoff, Mr. McWhinnie's Ohio solicitors, wrote counsel, in response to an inquiry as to notice:

"At the time of the trial we submitted, in the course of the examination, the entire correspondence, and the court held that a reasonable diligence to ascertain the residence of the defendant had been made; that the defendant could not be found, and that service by publication had been properly made

as provided by law. Under the Ohio law this verdict and judgment is conclusive and can not be collaterally attacked."

Clearly, the Ohio court was not imposed upon in any way.

In a letter to Mrs. McWhinnie from Agnes Kennedy, Mr. Fahey's secretary, dated June 1, 1931, two months after the divorce was granted (Case, p. 16, l. 16) there is the clearest implication of actual knowledge on the part of Mrs. McWhinnie. Miss Kennedy wrote, referring to the divorce:

"You may have already consulted someone in the matter, *as I know it was your intention to do so several months ago.*" (Italics mine.)

The notice by publication under the laws of the State of Ohio, as requested by complainant through her solicitor, was due and legal notice. There has never been any attack upon the divorce in the State of Ohio, and the further proceedings by complainant seem to have been actuated solely by a desire to retain the monetary advantages incident to maintenance.

Furthermore, the charge of abandonment cannot be sustained. A voluntary, written, agreement of separation, acquiesced in by both parties over a period of years, does not constitute abandonment.

Mr. McWhinnie testified:

Q After this agreement with Mr. Fahey, did everything go through Mr. Fahey's hands?

A Everything went through Mr. Fahey's hands.

Q And you had no communication with Mrs. McWhinnie after that?

A No, sir.

Q Were you ever told where she was living?

A No, sir. I inquired once and he told me it was none of my business (Case, p. 91, l. 26).

The charge of fraud under this Point is not sustained.

POINT II.

Notwithstanding it was incumbent upon complainant to affirmatively prove, "clearly and convincingly," that defendant's allegation of an Ohio domicile was fraudulent, she not only failed to prove fraud, but failed to introduce any testimony whatsoever which would tend even to cast doubt upon the bona fides of such domicile.

In the entire testimony by or on behalf of complainant, the only reference relative to defendant's domicile immediately before, during, or subsequent to the divorce proceeding will be found in the following excerpts.

At a date undisclosed, but which may have been in November, 1931, Mrs. McWhinnie's then solicitors, Grosso, Brundage & Anderson, had the police commissioner of West Orange write the chief of police of Macedonia, Ohio, for Mr. McWhinnie's address (Case, p. 30, l. 26). The reply was that Mr. McWhinnie "was boarding at the Zappolo home, but left there about one month ago, and left no forwarding address" (Case, p. 33, l. 6).

A letter to the Steamboat Inspection Service of the Department of Commerce brought the reply that, "according to their records the address of William McWhinnie, Master Pilot, was 2844 Hudson Boulevard, Jersey City, New Jer-

sey. That was on November 10th, 1931'' (Case, p. 31, l. 36).

An effort to locate Mr. McWhinnie at that address through the office of the sheriff of Hudson County brought the reply that the sheriff "could not locate Mr. McWhinnie; that Mr. McWhinnie had left that address, or was not there at that time" (Case, p. 32, l. 17).

Mr. McWhinnie's explanation is clear and specific:

Q Will you please explain the circumstances under which you were in New Jersey in November, 1931?

A Yes. I was out of work, and a friend of mine told me, instead of using the little money I had while I was looking for a position in New York, I could come and pay for board with him, which I did.

Q How long were you there?

A It might have been three months. Things were very bad at that time (Case, p. 87, l. 36).

On cross examination, and referring, apparently, to this same period (Case, p. 97, l. 25):

Q Did you ever give your place of residence as New Jersey to the Board of Navigation?

A Yes, I did.

Q When did you do that?

A Every five years my license had to be renewed, and because I was in New York looking for a job, I had to let them know where I was staying at that time.

Q What address did you give?

A I gave Hudson Boulevard as the address where I could be found. I had to give that when making application for a job, so I could be easily found, instead of sending to Ohio.

This temporary residence of perhaps three months in the winter of 1931-1932; while "look-

ing for a job," is the only reference to a New Jersey residence from 1919 to the end of 1934, and is a denial of an *animus manendi*.

In *Ballentine v. Ballentine*, 112 N. J. E. 222, this Court quotes from *Pahy v. Pahy*, 107 N. J. E. 538-540, as follows:

"The law is well settled in this state that, where the court in which the divorce was obtained has jurisdiction over the subject matter and its powers are limited to the granting of relief to a citizen of the state, its adjudication that the complainant is such resident is final, unless it is made to appear that the court was led to this conclusion by fraud perpetrated upon it by the complainant; and that fraud is a fact that will never be presumed, but must always be clearly and convincingly proved."

See, also, *Feickert v. Feickert*, 98 N. J. E. 444; *Mcgowan v. McGowan*, 57 N. J. E. 322; and *Fairchild v. Fairchild*, 53 N. J. E. 678.

In *Wilson v. Anthony*, 72 N. J. E. 836, Vice-Chancellor Howell said that:

"The fraud referred to in *Fairchild v. Fairchild*, *supra*, does not and cannot relate to the cause of action or to evidence adduced before the court in the foreign jurisdiction, but does relate to deception and downright fraud in procuring jurisdiction or in preventing the defendant by fraudulent means from presenting his defense."

The defendant's testimony as to his Ohio domicile was not impeached. There was put in evidence the certificate of the Department of Commerce Navigation Service showing that his address as early as July 3, 1928, was Macedonia, Ohio (Case, p. 18). There was also put in evidence the certificate of the judge by whom the divorce was granted as to the testimony of the three witnesses who testified, at the hearing on April 4,

1931, as to petitioner's Ohio residence (Case, p. 19).

Bridget Corona testified that she had known William McWhinnie "several years," and that "he maintained his residence in my home up until last year (which would be in 1930) when he moved to Cleveland." "He received all his mail; he lived with us whenever he was not sailing, Mr. McWhinnie being captain of a steamer. He had his personal belongings in my home and all the mail addressed care of my home in Macedonia."

Mary Columbi testified that she lived in Cleveland, Ohio; that she had known Mr. McWhinnie for several years; that he lived in her house. Asked if Mr. Whinnie was in her home "all the time" she said:

"No, he is only home between trips, but he receives all of his mail at our home; he has his personal belongings there; he has his bank account at the Cleveland Trust Company, Cleveland, and all his mail in the last year has come addressed to our home in Cleveland, and, of course, as I have said, he lives with us between trips."

Carl Columbi, a son of Mary Columbi, testified that Mr. McWhinnie had then lived at his mother's house in Cleveland for about a year.

As proof that his *present* domicile was in Cleveland, and in corroboration of his direct testimony, defendant produced five envelopes addressed to him at Cleveland, Ohio, during 1931 and 1934 from various points (Case, p. 25); the last one contained a letter from his mother in Glasgow, Scotland, dated in August of this year. All of the envelopes are to the address, and in the care of Mary Columbi.

Defendant's direct testimony as to his domicile was not contradicted:

Q Has your domicile been in Ohio ever since? (The divorce.)

A My domicile has been in Ohio since early 1928.

Q And nowhere else?

A And nowhere else (Case, p. 92, l. 38).

The charge of fraud under this Point is not sustained.

Complainant having failed to produce any evidence whatsoever of fraud, it clearly appearing that complainant had knowledge of the Ohio divorce proceedings, and that service by publication in accordance with the laws of Ohio was made at complainant's request; it further appearing that defendant was domiciled in Ohio from early in 1928, long ante-dating the institution of the divorce action in November, 1930, and up to as late as December 14, 1934, that defendant was within the jurisdiction of the Court of Common Pleas of Cuyahoga County, Ohio, and that there have been no proceedings of any kind directly attacking the Ohio decree, the judgment of the Ohio court must be given "*full faith and credit.*"

The Decree of the Court of Chancery should be, in all things, set aside and reversed, with costs to appellant.

Respectfully submitted,

BENJAMIN GORDON,
Solicitor for and of Counsel
with Appellant.

New Jersey Court of Errors and Appeals

Between

CAROLYN McWHINNIE,
Complainant-Respondent,

and

WILLIAM McWHINNIE,
Defendant-Appellant.

On Appeal

BRIEF ON BEHALF OF COMPLAINANT-RESPONDENT

Statement of Case

This is a suit for maintenance under Section 26 of the Divorce Act. The parties were married in New York City on March 15, 1917. Appellant was then and still is a sea-faring man. At the time of his marriage he was an officer on a ship of the United Fruit Company. In June 1917 the parties moved to this State and went to live at No. 20 Kingsley Street, in the Town of West Orange. There they cohabited together until June 1918, when appellant left respondent. They have not lived together since.

The parties had known each other for a period of about ten years prior to their marriage, during the last five years of which time appellant lived in respondent's home (Case, p. 35, ll. 30-36).

NOTE.—S. C. herein refers to supplementary state of case.

That the relationship between the parties was a happy one prior to June 1917 is amply attested by the letters written by appellant to his wife (Case, Exhibits C-4-5-6-7, pp. 123-130). According to respondent appellant "was most affectionate, kind and considerate—he was everything a woman would want a man to be" (Case, p. 40, ll. 1-11).

In the latter part of May, 1917, appellant on a trip from South America met on his ship one Myrtle McGuire. From that time on appellant's attitude toward his wife underwent a gradual change. His acquaintance with the McGuire woman continued after his ship reached New York. He admitted to his wife that after reaching New York he spent a night at a hotel with Myrtle McGuire (Case, p. 45, ll. 1-20). The letters and telegrams from this woman to appellant point to a meretricious relationship (Case, Exhibit C-9, pp. 132-139). Whereas before meeting the McGuire woman, appellant, when away on voyage, habitually wrote his wife from every port his ship touched, and after that time he ceased writing her altogether (Case, p. 40, ll. 10-20; Case, p. 42, ll. 22-25). He had previously been abstemious in his habits; he now took to drinking (Case, p. 44, ll. 32-38). He sulked about the house (Case, p. 45, ll. 20-25). On numerous occasions he severely and brutally assaulted his wife (Case, p. 46, ll. 10-20; p. 47, ll. 1-15; p. 47, ll. 23-30; p. 48, ll. 25-30; p. 49, ll. 10-18; p. 49, ll. 20-40). Illustrative of his attitude toward his wife is the occasion when he struck her and almost threw her to the floor; she remonstrated with him and told him that the doctor had said there were indications that she might become a mother. He left their home and the next day she received from him the following letter:

“Carrie:

If there is anything the matter with you, go to the hospital and save yourself and company untold misery. I cannot alter” (Case, Exhibit C-8, p. 131).

On May 14, 1918, without provocation, appellant seized his wife by the throat with great force and violence, saying: “In two minutes I will kill you” (Case, p. 49, ll. 20-40). As a result of this assault her throat and face were terribly discolored (Case, p. 50, ll. 1-8). Respondent made a complaint of assault and battery against her husband to the Recorder of West Orange. Appellant never returned to his wife thereafter (Case, p. 50, ll. 15-30). Appellant’s conduct toward his wife rendered her life utterly miserable; she was a nervous wreck (Case, p. 50, ll. 30-35).

Shortly thereafter respondent engaged Mr. Thomas Fahey, a New York attorney, to obtain support from her husband. On May 15, 1919, an agreement was made between the parties whereunder appellant agreed to pay his wife for her support and maintenance the sum of \$90.00 per month (Case, p. 53, l. 20). Payment of various sums were made intermittently by appellant pursuant to this agreement until June 1931, since which time appellant has failed and neglected to support and maintain his wife (Case, p. 56, ll. 30-40).

On November 5, 1930, appellant filed a petition in the Court of Common Pleas of Cuyahoga County, in the State of Ohio, for a divorce *a vinculo* on the ground of extreme cruelty, and on April 4, 1931, a final decree was entered in said court, dissolving the marriage of the parties hereto. It was about June 1, 1931, when respon-

dent first learned that the husband had instituted divorce proceedings against her and that a decree of divorce had been entered. This information came to her from Mr. Fahey's secretary (he being then deceased) who forwarded to her a letter from appellant's attorneys in Ohio, advising that a decree had been entered in that State (Case, p. 52, ll. 38-40; Exhibit C-13, p. 15). She at once went to see Mr. Alfred J. Grosso, a counsellor at law of this State (Case, p. 53, ll. 1-10). Mr. Grosso undertook to ascertain appellant's whereabouts (Case, p. 28, ll. 1-40; pp. 28-29, 30, 31, 32). In November 1931 he learned that appellant was living in Jersey City in this State. Efforts to serve the appellant, however, failed. Subsequently, appellant was taken into custody under a writ of *ne exeat* and at the time of service of said writ, was served with a copy of the bill of complaint in this cause. He moved to quash the writ and in this was successful. Certain of the statements contained in appellant's affidavit used for the purpose of quashing the writ were characterized in the written opinion of the Advisory Master who heard this cause as "perjurious" (S. C. p. 6).

In moving to quash the writ appellant made a general appearance in the cause, having failed to obtain leave of the Court to appear specially. Subsequently, an order was allowed by Vice-Chancellor BERRY requiring defendant to show cause why he should not file an answer to the bill of complaint. Appellant states in his brief that he had no notice of this order. A copy of this order was served upon appellant's solicitor of record on November 23rd, 1932. On the return of the order to show cause appellant's solicitor of record appeared and argued the merits of the question, and on December 30, 1932,

an order was advised by Vice-Chancellor STEIN that appellant, through his solicitor, answer the bill of complaint within 15 days after payment of costs and counsel fees allowed to appellant on the motion to quash the writ of *ne exeat*.

Appellant's solicitor on this appeal has represented him throughout the entire proceedings.

Subsequently, on the 1st day of February 1933 appellant's solicitor gave notice of his intention to apply for a rule to show cause why the order of December 30, 1932, requiring appellant to file an answer, should not be set aside, or in the alternative, that appellant be given more time in which to file his answer and why the order to file an answer should not be made subject to a condition. Appellant brought on this application before Vice-Chancellor BERRY, who refused to hear the matter, inasmuch as the order of December 30, 1932, had been advised by Vice-Chancellor STEIN. On March 12, 1933, appellant gave notice that he would apply to the Court of Chancery for an order to show cause why the order advised by Vice-Chancellor STEIN dated December 30, 1932, should not be set aside "on the ground that the order was made without sufficient consideration of the bill of complainant, or the order discharging the writ of *ne exeat*, and of the limited appearance of counsel upon the argument of the motion to discharge the writ." This application came on to be heard before Vice-Chancellor STEIN, who on April 18, 1932, advised an order dismissing the said application.

On or about the 24th day of April, 1933, appellant's solicitor served notice of an appeal to this Court, from the said several orders advised by Vice-Chancellor STEIN dated December 30,

1932 and April 18, 1933, respectively. The appeal, however, was not prosecuted and on December 20, 1933, an order was entered in this Court dismissing said appeal. Thereafter, appellant's solicitor filed an answer in his own behalf wherein he set forth that he was retained by appellant merely for the purpose of vacating the writ of *ne exeat* and no other; that he was not authorized by appellant to file an answer to the bill of complaint and denying the jurisdiction of the Court of Chancery to compel him to file such answer. This answer was stricken as being unresponsive to the bill of complaint. A decree *pro confesso* was then taken against appellant. The matter was referred, and came on for hearing *ex parte* without notice to appellant, notice not being required by law under the circumstances. A final decree dated August 15, 1934, was entered in favor of the respondent, adjudging that the decree of divorce obtained by appellant in the State of Ohio was void and of no effect in this State and awarding maintenance to respondent. Appellant petitioned to have the said decree of the Court of Chancery opened and set aside and to permit him to answer and make his defense to the bill of complaint, which petition was granted on condition that he file a general appearance in the cause and give bond in the sum of \$1,000 conditioned to pay the costs and counsel fees theretofore allowed and accrued and which might thereafter be allowed and accrue. Appellant filed a general appearance and also an answer and gave bond in accordance with the provisions of said order; the matter came on for hearing in the presence of appellant and his solicitor and testimony was taken in behalf of both parties to the suit, resulting in the decree appealed from.

In her bill of complaint respondent charged that the decree of divorce obtained by appellant in the State of Ohio was void and of no effect because:

(a) In the affidavit of service by publication filed by appellant in said suit, he falsely and fraudulently deposed that respondent's residence was unknown to him; that the last known place of residence of his wife was New York City, New York, and that appellant had exercised reasonable diligence to ascertain the residence of respondent.

(b) That respondent was not served with process in said suit and had no notice actual or otherwise of the institution or pendency of said suit, and no opportunity was afforded her to put in a defense thereto.

(c) Appellant was not a bona fide resident of the State of Ohio at the time of the institution of his said suit for divorce.

(d) The Court of the State of Ohio did not have jurisdiction over the subject matter of the petition of the appellant herein and said Court did not acquire jurisdiction over the appellant or the respondent herein.

(e) Appellant, being an inhabitant of this State, did go to the State of Ohio in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State.

These allegations were denied in appellant's answer. The issues thus raised were resolved in favor of the respondent by the Court of Chancery. The same issues are presented for determination upon this appeal.

POINT ONE

The decree of the Ohio Court is void because appellant falsely and fraudulently induced said Court to assume that service of process could not be made upon respondent.

Appellant filed in the Ohio proceedings, the following affidavit for service by publication:

“Clerk Pro Tem. Affidavit for service by publication filed as following to wit: The State of Ohio: Cuyahoga County: ss: In the Court of Common Pleas. William McWhinnie, Plaintiff *vs.* Caroline McWhinnie Residence Unknown, Defendant. William McWhinnie, being first duly sworn, deposes and says that he is the plaintiff in the above entitled action for divorce; that service of summons cannot be made upon the defendant, Caroline McWhinnie, within the State of Ohio; that the last known place of residence of said defendant is as follows: New York City, New York. that plaintiff has exercised reasonable diligence to ascertain the residence of the said defendant and that the residence of said defendant is, other than herein set forth, unknown, and cannot with reasonable diligence be ascertained; that this case is one of those mentioned in Section 11984 of the General Code of Ohio. (sgd.) William McWhinnie. Sworn to before me by the said William McWhinnie and by him subscribed in my presence, this 8th day of September, A. D. 193 . (sgd.) Moses Benjamin, Notary Public.” *case p. 142 ll 30-40 p 143 ll 1-10*

The statement made by appellant in said affidavit that “the last known place of residence of said defendant, is as follows: New York City, New York” is palpably false. Appellant and

respondent had lived together for more than a year in West Orange, in this State, and appellant knew that when he left his wife in 1918 she lived in West Orange. It was there that on the night of May 14, 1918, he so cruelly assaulted her that she made a complaint to the Recorder of the Town. Following that assault upon her he never returned (Case, p. 49, ll. 18-40; p. 50, ll. 1-30). Thereafter he communicated with the Recorder of the Town of West Orange regarding maintenance of his wife (Case, Exhibit C-14, p. 146; Exhibit C-15, p. 147; Exhibit C-16, p. 148).

It will be observed that on or about June 14, 1917, he arranged to have his address changed on the records of the Naval Auxiliary Reserve to 20 Kingsley Street, West Orange, New Jersey (Case, Exhibit C-17, pp. 148-149). On cross examination he testified regarding this change of address, as follows:

“Q. And you did give the Navy a West Orange address, didn't you? A. I had to give it because that was my wife's” (Case, p. 98, ll. 20-22).

It is obvious from the foregoing that appellant knew the last known place of residence was West Orange and not New York City, and that his affidavit in this respect was utterly false.

False, too, is the statement in said affidavit that he had exercised reasonable diligence to ascertain respondent's address. Appellant admittedly made no effort to ascertain whether his wife still resided in West Orange.

On direct examination appellant was asked if he were ever told where his wife was living and he replied “No”; that he had inquired once of Mr. Fahey and was told that it was none of his

business (Case, p. 91, ll. 30-32). On cross examination he testified as follows:

“Q. Did you ever make any effort to ascertain that Mrs. McWhinnie lived in West Orange after you left her, outside of the one request of Mr. Fahey? A. No, sir. I was told not to do so” (Case, p. 106, ll. 10-12).

Equally false is appellant's statement in his affidavit that respondent's address could not be obtained with reasonable diligence. Respondent has been a resident of the Town of West Orange continually since appellant left her, with the exception of a period of about a little more than a year when she lived in the City of Orange, an adjoining municipality. When she changed her residence she notified the post office authorities thereof and had no difficulty in receiving mail (Case, p. 52, ll. 19-32). She received no notice of the pendency of the appellant's suit in Ohio (Case, p. 52, ll. 32-35). Appellant could have ascertained respondent's address through the Lorchs. Mrs. Lorch was a relative of respondent and a life-long friend (Case, p. 37, ll. 35-40). The Lorchs were known to appellant. He had been at their home several times and had been out with them on pleasure (Case, p. 45, ll. 27-37). Appellant was on friendly terms with the Lorchs, for we find that he addressed a postal card to Mr. Lorch as “Dear Bill” and signed it “Cousin Bill”; and a card to Mrs. Lorch he addressed as “Dear Cousin May” and signed it “Cousin Will” (Case, Exhibits C-18-19, p. 150). Mrs. Lorch died in 1928 and thereafter Mr. Lorch went to live with Mrs. McWhinnie for a few years, and now resides in the Town of West Orange. He has had no difficulty receiving mail addressed to him. He never received any re-

quest to furnish appellant or his Ohio attorneys with respondent's address (Case, p. 84, ll. 1-40; p. 85, ll. 1-10).

Then there was Recorder McLaughlin of West Orange, from whom appellant might have requested information as to respondent's address, but no such request was ever made of the Recorder (Case, p. 83, ll. 1-15). He surely cannot have forgotten the Recorder, for his recollection at the hearing of this cause of what transpired when he was summoned and appeared before the Recorder is full and distinct (Case, p. 90, ll. 31-40; p. 91, ll. 1-25). Appellant also knew Mrs. Reilly, who lived in the Roseville section of Newark, and the Gehrens in New York City, with all of whom respondent had been in communication since 1918. Not one of these was sought out by appellant for the purpose of furnishing him with respondent's address (Case, p. 60, ll. 15-30); any one of them would have been able to have furnished respondent's post office address. It thus appears that with the exercise of reasonable diligence, appellant could have ascertained respondent's address, and that the statement in the affidavit that the same could not be ascertained is untrue.

The general falsity and fraudulent nature of this affidavit is manifest when it is remembered that appellant admittedly made no effort to discover whether his wife still resided in the Town of West Orange, and when it is observed that the affidavit was signed and sworn on September 8th, 1930—the same day on which appellant signed and swore to his petition—and that the only letter of inquiry made by appellant's Ohio counsel to ascertain respondent's address was mailed eight days later—on September 16, 1930

(Case, p. 142, l. 16; p. 143, l. 12; Exhibit C-11, p. 127). In other words, this affidavit was executed before any effort was made by either appellant or his Ohio counsel to discover respondent's whereabouts.

Appellant's Ohio counsel on September 16, 1930, mailed to Mr. Thomas Fahey, respondent's New York attorney, the only letter of inquiry as to respondent's whereabouts, as follows:

"WOLF & KRUCHKOFF,
Attorneys & Counselors at Law
810 Ulmer Bldg.
Cleveland, Ohio

Sept. 16th, 1930.

Thomas Fahey, Esq.
99 Nassau Street,
New York City, N. Y.

Dear Mr. Fahey:

This office represents Mr. McWhinnie in his divorce action against Caroline McWhinnie.

We are informed that you represent Mrs. McWhinnie and that you would be in a position to furnish us with her present address so that we may serve her with a copy of the petition.

Thanking you for your courtesy, we are,

Very truly yours,

(Signed) WOLF & KRUCHKOFF"

(Case, Exhibit C-11, p. 12).

Mr. Fahey replied on the 23rd day of September, as follows:

“Messrs. Wolf & Krutchkoff,
810 Ulmer Building
Cleveland, Ohio.

In re McWhinnie.

Dear Sirs:

Mrs. Carrie McWhinnie's consent must first be had before I can advise you.

Your letter has been sent to Mrs. McWhinnie without comment.

Yours truly,

(Signed) THOMAS FAHEY

Twenty-third
September, 1930”

(Case, p. 13, Exhibit C-12).

And again on the 30th day of September, as follows:

“Messrs. Wolf and Kruchkoff,
810 Ulmer Building
Cleveland, Ohio

Dear Sir:

Your letter bearing date 16 September, 1930 and my reply thereto dated the 23 September, 1930.

I recently had a brief interview with Mrs. Carrie McWhinnie, and she suggested that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind—I cannot see much point in it, but think it well, as far as possible, to oblige her and respect her wishes. I assume it does not make much difference where the papers are served, so that they are served as required by the laws of your State.

Mrs. McWhinnie is very much wrought up over the statement in your letter as herein mentioned, and at the prospect of her husband bringing an action against her for divorce. She claims that she has never done anything to merit or warrant a divorce being sought against her, except the extreme suffering and privation she has endured. She cannot understand why it is that after doing everything possible upon her part she should be penalized for trying to live an upright, straightforward life. She is of the opinion that something must be done to protect her name in this instance. Both she and her sister have been very ill.

Yours very truly,

30 September 1930

THOMAS FAHEY''

(Case, Exhibit C-12-A, p. 14).

There is in Mr. Fahey's letter of September 30, no refusal to furnish appellant's Ohio counsel with respondent's address. There is merely the *suggestion* "that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted." Indeed, a fair reading of this letter indicates that service of papers was anticipated at respondent's home if service could not be made elsewhere in accordance with the laws of the State of Ohio, for Mr. Fahey goes on to say "I assume that it does not make much difference where the papers are served, so long as they are served as required by the laws of your state." The reason for the request that service be made elsewhere than at respondent's home, will be pointed out later. Appellant's counsel did not reply to this letter of Mr. Fahey, and nothing further was done to find respondent's address.

And the reason nothing further was done is obvious. In the third paragraph of Mr. Fahey's letter of September 30, 1930,—appellant has repeatedly omitted to cite the third paragraph throughout the entire proceedings—he made it known that respondent would contest appellant's proceedings, saying: "She is of the opinion that something must be done to protect her name in this instance." Appellant did not want respondent to contest this suit. He did not have, and he knew he did not have, a bona fide cause of action for divorce on the ground of extreme cruelty. He knew that he did not have a cause of action, because at the conference called by Mr. Fahey for the purpose of attempting to straighten things out between the parties some time after appellant left his wife, appellant stated in the presence of respondent "I know I am married to the finest little woman on earth, but I am fond of this other woman * * * I can't divorce Carrie, she has done nothing wrong." The uncontradicted testimony of this case is conclusive that respondent was not guilty of extreme cruelty. Indeed, the uncontradicted testimony demonstrates that appellant was guilty in this respect. Appellant knew that if respondent contested his suit he must certainly fail. That he did not wish to have his suit contested is apparent from the fact that no attempt was made to serve respondent with process at any place. The only attempted service was by publication in the Daily Legal News of Cleveland, which is said to be a daily newspaper of general circulation (Case, p. 143, ll. 30-40; p. 144, ll. 10-12).

Had appellant been really desirous of serving respondent with process in his suit, he could

have served her at Mr. Fahey's office. If such service would not have been legal under the laws of the State of Ohio, he could and in fairness should, have inquired further of Mr. Fahey for respondent's address, and explained to him that service could not, under the laws of Ohio, be made elsewhere than at respondent's home address. There is nothing in Mr. Fahey's letter that even suggests that if such further request had been made, respondent's address would not have been forthcoming. But, as we have said, appellant and his attorneys were satisfied with this single letter of inquiry, and did not comply with Mr. Fahey's letter that service of papers be made.

In short, appellant falsely and fraudulently stated in his affidavit for service by publication that respondent's last known address was New York City, New York, when he knew that it was the Town of West Orange, New Jersey; that he had exercised reasonable diligence to ascertain her last known address, when as a matter of fact he made no effort whatsoever to ascertain whether she still resided in West Orange; and that by the exercise of reasonable diligence her address could not be ascertained, when a letter to the Recorder of West Orange, Mr. Lorch, Mrs. Reilly or the Gehrens would have furnished him with the information he desired. He, moreover, fraudulently withheld from the Court information that service could have been made upon the respondent at Mr. Fahey's office. If such service were not legal under the laws of Ohio, he failed to exercise any diligence whatever in an effort to obtain respondent's address from Mr. Fahey other than the single letter of September 16th. By his false statements and his failure to disclose the true facts to the Ohio

Court, he induced that Court to assume that service of process upon the respondent could not be made.

It is the well settled law of this State that a decree of divorce granted by default upon a service by publication where the petitioner, in order to obtain the authority to serve defendant by publication, knowingly and wilfully makes a false affidavit that defendant's residence and whereabouts are unknown and could not with diligence be ascertained, will be set aside. In *Dyot v. Henderson*, 85 N. J. Eq. 338, Vice-Chancellor ^ULEWING said, in a similar quotation, at page 342:

“From the testimony above reviewed, exclusive of that of complainant touching transactions with the deceased, I deem it clearly established in this suit, not only that the affidavit on which this court permitted the petitioner in the divorce suit to proceed to hearing ex parte without service of process or notice of the suit on the defendant therein was false, but necessarily was intentionally false and falsified to conceal the pendency of the divorce suit from the defendant therein, and was effective for that purpose. The mere existence of a substantial doubt whether the divorce decree was procured through fraud in the manner stated should lead this court to deny relief in a suit of this nature; but the evidence already referred to leaves no reasonable doubt. The petitioner obviously testified to what he knew to be false and made no honest effort to ascertain the address of his wife. It is reasonably certain that his wife's address could have been ascertained had he disclosed the truth to his solicitors. It is also certain that if petitioner had testified before the master that he had resided with his wife as late as 1903, instead of testifying that he

last resided with her in 1891, no decree of divorce could have been entered for an act of adultery which had been brought to his knowledge in 1891. That testimony would not only have demanded further inquiry for the address of the wife, but would have presented an issue of condonation which would have barred a decree until the apparent condonation should have been overcome by evidence. Petitioner deceived the court and deceived his own solicitors. In such circumstances it follows that the decree of divorce was procured by fraud—by fraud imposed upon the court and the defendant.”

To the same effect are: *Flower v. Flower*, 42 N. J. Eq. 152; *Doughty v. Doughty*, 27 N. J. Eq. 35; affirmed 28 N. J. Eq. 581; *Britton v. Britton*, 45 N. J. Eq. 88; *Voorhees v. Voorhees*, 46 N. J. Eq. 411; and see also L. R. A. 1917-B p. 447 for a complete annotation on this subject.

On page six of his brief appellant quotes from a letter of Vice-Chancellor Berry discharging the writ of *ne exeat* in which the Vice-Chancellor stated that respondent had evaded service of process. It is submitted that if the Vice-Chancellor had had all the facts presented to him, this opinion would be untenable. The matter was submitted on affidavits in accordance with the practice. The affidavit of appellant used in that motion is printed in the Supplemental State of Case. It will be observed that the last paragraph of Mr. Fahey's letter of September 30th is there omitted. The last paragraph of Mr. Fahey's letter indicates that upon service of the papers Mrs. McWhinnie intended "to protect her name in this instance." Whether that omission was called to the attention of the Vice-Chancellor, it is impossible to say at this time, but it can be

confidently asserted that there is nothing whatsoever in the record which even suggests that respondent desired or intended to evade service. As was shown above, Mr. Fahey merely suggested that service upon respondent be made elsewhere than at her residence "if there was any way of perfecting the service of papers" * * * that respondent "would prefer that same be adopted."

Respondent desired to avoid the publicity of service. Shortly after appellant separated from her he placed the usual notice in a New York paper that he would not be responsible for her debts, as a result of which notice respondent was for a long time bothered by newspaper reporters. That is what she wished to avoid in this instance. She testified:

"Q. What notice, if any, did you receive from your husband's attorney— A. Nothing.

"Q. (Continuing.) —that a suit had been instituted against you? A. Nothing.

"The Court: You knew that a suit had been instituted because of what Mr. Fahey told you?

"The Witness: Mr. Fahey sent me this note, and I went to see him, and he said—

"Mr. Merrill: I object.

"The Witness (continuing): —'Those people should never have asked me for your address.'

"The Court: It makes no difference. We have no jury here.

"The Witness: He said there were other sources through which he could obtain that information.

"The Court: You knew that your husband had instituted suit for divorce in Ohio?

"The Witness: I did not know that he had gone on with it. They knew where to serve me. I heard nothing more. Mr. Fahey told me that I would be served with papers

and to bring the papers to him. And I waited to be served. I was never served; never heard any more about it" (Case, p. 51, ll. 25-40; p. 52, ll. 1-18).

And again, on cross examination, she testified:

"Q. You did receive a letter—you did have a conversation with Mr. Fahey concerning the matter of service in a divorce suit? A. Yes.

"Q. Have you seen a copy of the letter he wrote to the attorneys in Cleveland as to your residence? A. I did not see—

"Q. Please answer the question.

"The Court: Did you see it?

"The Witness: Yes. I saw that letter.

"Q. So you were aware then that he advised them that you preferred that you should not be served at your residence?

"Mr. Brundage: I object to that, your Honor. The letter will speak for itself.

"The Court: I will allow it.

"A. I did not see that letter until I brought the papers over to Mr. Brundage's office. Mr. Fahey did not write it when I was there.

"The Court: Did you tell Mr. Fahey to communicate that message to them?

"The Witness: No. I asked Mr. Fahey if I could be served at his—

"The Court: Wait (continuing). To Mr. McWhinnie's counsel in Ohio? Did you tell him to communicate that message to them?

"The Witness: No. I asked Mr. Fahey if I could be served at his office. I did that to avoid publicity, because I had an embarrassing experience once before through my husband's folly. I wished to avoid a repetition of that. I said, 'couldn't I be served here?' He said, 'I will write the Ohio attorneys and ask them.' But he did not write the letter when I was there.

"Q. As a matter of fact, he apparently did not suggest any other form of service

than according to the laws of the State of Ohio. A. According to what Mr. Fahey said, I understood there was nothing I could do until they served me, and I was waiting for service.

"Mr. Merrill: That letter is in evidence, so I do not need to go into it.

"Mr. Brundage: What letter is in evidence?

"Mr. Merrill: The letter from Mr. Fahey to Wolf & Kruchkoff.

"Mr. Merrill: May I read it to her?

"Counsel then proceeded to read the second paragraph of Mr. Fahey's letter of Sept. 30th.

"The Witness: I did not say anything to Mr. Fahey about that.

"The Court: In other words, you asked him if you could be served at his office instead of your home, to avoid this publicity?

"The Witness: That is all.

"The Court: All right." (Case, p. 61, ll. 26-40; p. 62, ll. 1-40; p. 64, ll. 10-30.)

Again, on page six of his brief, appellant attempts to inject ~~in~~ the case a portion of the letter from his Ohio attorneys that the correspondence between them and Mr. Fahey was submitted to the court in Ohio at the divorce hearing. This letter was never offered in evidence and if offered would have been objected to. It is purely hearsay. It is not properly a part of the record in this case. Passing over the question of the propriety of inserting this matter into the case, in this manner and at this stage of the proceedings, it is perhaps sufficient to observe that the general falsity of appellant's affidavit submitted to the court for the purpose of obtaining service by publication, was not made known to the Ohio Court.

POINT TWO

The decree of the Ohio Court is void because respondent was not served with process in said suit and had no notice that suit had actually been instituted and no opportunity was given her to appear and defend.

Respondent was not a resident of the State of Ohio; she was and had been a resident of this State continuously since June 1917. She resided in West Orange in this State when she was abandoned by appellant (Case, p. 50, ll. 20-30). She was not served with process in the Ohio suit. Indeed, the only service attempted in that suit was service by publication which was made in the Daily Legal News of Cleveland, Ohio (Case, p. 143, ll. 30-40). She had no notice that the husband's suit had been instituted or was pending in Ohio (Case, p. 52, ll. 32-37). She first learned that suit had been instituted at the end of May or beginning of June 1931—more than a month after the final decree had been entered (Case, p. 52, ll. 37-40).

Appellant urges that the letter of inquiry written by his Ohio attorneys on September 16th to Mr. Fahey constitutes notice. Notice of what? Surely not of the suit, for the suit had not yet been commenced when that letter was written—it was not in fact actually commenced until a month and a half later. At the most, that letter was notice merely of appellant's intention to commence a suit. Jurisdiction certainly cannot be obtained over a non-resident by a mere letter of inquiry and certainly not by a letter of inquiry ~~within~~ a month and a half

written

before the suit was actually instituted. In *Garabrant v. Garabrant*, 95 N. J. Eq. 136, where the facts presented were very similar with those in this case, Vice-Chancellor FIELDER said at page 137:

“It is essential to the validity of the Oklahoma decree that jurisdiction over the defendant therein was acquired by service of process in the manner and in substantial conformity with the requirements of our statute and the rules of this court. Our Chancery act (Comp. Stat. p. 408), sections 12, 13 and 14, as amended (Supp. Comp. Stat. p. 121, @ 10) and chancery rules 35, 36, 37, 38, 257 and 258, are applicable. Under them where it appears that defendant in a divorce suit cannot be found within the state to be served with process, the chancellor may, by order, direct such defendant to appear and answer within a time fixed by the order and notice of such order, with a certified copy of the petition for divorce, must be served personally on the defendant, or be published in a newspaper, and, in case of publication, a copy of the notice and petition must be mailed to the defendant at his post-office address, if the same be known, or can be ascertained by inquiry. If the defendant fails to appear and answer within the time fixed by the order and notice, after proof of service, the practice is for the chancellor to order the petitioner to produce evidence to prove the allegations of his petition and thereafter such decree is entered as the chancellor shall think just.

“It has been held that when a decree of divorce granted by a court of a sister state is attacked in our courts it must appear, among other things, that actual notice of the suit has been given to the defendant and a reasonable opportunity afforded to put in a defense. *Felt v. Felt*, 59 N. J. Eq. 606, 610;

Lake *v.* Lake, 65 N. J. Eq. 544; Davenport *v.* Davenport, 67 N. J. Eq. 320, 341.

“Complainant was at all times before, during and after the pendency of the Oklahoma suit, and still is, a resident of Morristown, and her place of residence and post-office address were known to, or could have been ascertained readily, by her husband. The decree of the Oklahoma court, which is the only proof offered to establish jurisdiction over the complainant herein, recites merely that she was ‘duly and legally served by publication,’ which can mean no more than that some sort of notice was published in an Oklahoma newspaper and cannot mean that such notice and a copy of the petition for divorce were mailed to her at her post office address in this state. Complainant’s uncontradicted testimony is that she never received any notice of the Oklahoma suit and that such suit proceeded to final decree without her knowledge. I hold that the decree of divorce is founded upon insufficient service of process on complainant, and that it is therefore not entitled to full force and effect in this court and is void as against complainant.”

And, in *Thompson v. Thompson*, 89 N. J. Eq. 70, Vice-Chancellor BACKES, at page 75, said (italics ours):

“That a foreign court assumes jurisdiction over the subject matter within its state, under the provision of its laws, and that its adjudication is there valid and effectual, are matters wholly irrelevant to the test fixed by our statute, *which necessarily limits the inquiry to the ascertainment of whether the foreign jurisdiction was obtained in the manner and in substantial conformity with the requirements imposed by the legislature upon this court in acquiring jurisdiction in such cases*, of which the principal and governing

one is, except in causes for adultery, that the petitioner 'has been for the two years next preceding the commencement of the action a bona fide resident of this state.' The defendant was, admittedly, not a resident of New York for that period, and consequently, the judgment is impotent here. It is possible to suppose a case where the rigidity of the statutory rule of comity would be relaxed, but this is not one of them."

These cases do but give effect to Section 33 of our Divorce Act, 2 Compiled Statutes, 2041, which provides in fact:

"Full faith and credit shall be given in all courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in Sections 5, 6, and 7 of this Act * * *."

Section 7 of the Divorce Act provides in part as follows:

"When the defendant cannot be served personally with process in this state, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this State, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this state, or by additional substituted service upon the defendant within this state, as prescribed by rule of law or rules of the court, under the following conditions * * *"

Particularly applicable to this situation are the provisions of Chancery Rule #258 that "service upon the defendant of a certified copy of the petition and of the order to answer (or notice of that order) as service substituted for personal service of process in this state may be made"—

(1) By personal service upon the defendant;

(2) By leaving the said paper at the residence or usual place of abode or usual place of business of defendant within or without this State;

(3) By mailing the said papers to the post office address of the defendant;

(4) By such service as the Court may direct for special substituted service in the cause.

It needs no argument to demonstrate that service was not made upon the respondent in the Ohio proceeding in substantial conformity with the law and rules of the Court of Chancery, providing for substituted service upon non-resident defendants. Our courts have been particular to insist that our statute and the rules of court regarding substituted service upon non-resident defendants be strictly complied with. Thus, a proof of mailing which states that the solicitor was informed that the address to which the notice was sent was the defendant's address without stating the source of information or that he was "credibly informed" and "verily believes" is not sufficient. *Rogers v. Rogers*, 18 N. J. Eq. 445. And where it did not appear that the defendant had received the notice and the proof of mailing did not show that the postage thereon was prepaid as required by the statute, the service was held to be insufficient. *Barker v. Barker*, 63 N. J. Eq. 593. And in *Karr v. Karr*, 19 N. J. Eq. 427, where the notice required to be given to the absent defendant

was entitled in the cause and not directed to the defendant, nor mailed within 20 days after the date of the order, the defendant was held not to be within the jurisdiction of the Court and no decree could be made against him.

It is respectfully submitted that the Court of Ohio dissolving the marriage between the parties to this suit did not have jurisdiction over respondent because service or process was not made upon her in substantial conformity with the law and rules of our Court of Chancery regarding the service of process upon non-resident defendants.

POINT THREE

The decree of the Court of Ohio was void because appellant was not a bona fide resident of that State.

In 1917 appellant acquired a domicile in the State of New Jersey. Although in his affidavit to discharge the writ of *ne exeat*, he stated that he had never lived in New Jersey and that respondent moved to West Orange without his consent, urging or cooperation, the letters written by appellant at the time show conclusively that he intended and desired to move to this State. Thus, in his letter to respondent of April 21, 1917 (Exhibit C-4, p. 124), he says, "I wonder if you have been over to Orange and decided on our little wooden hut. I hope so Pet, for I want to get settled down. So Edith's baby is doing fine, I wonder when we will have our Little Lady Betty, I can image I see you sitting and making dresses for her before her arrival."

Again on May 16, 1917, he writes to respondent, "Well, Darling, I hope that when I get back here tomorrow a week, I will have a letter from you telling me that you have settled on our little wooden hut."

On May 14, in a card to Mrs. Lorch, he says: "Have you found a wooden hut for my Wee Wifey and I. See that it is near you, because then your hubby and I will be able to hang our legs over the arm of the dining room chairs, * * *."

Respondent testified that even before their marriage the parties had talked about moving out of the City and had visited in Jersey, in Roseville and in Orange. West Orange was convenient to appellant's ship. They had friends in the Oranges and in Roseville. Appellant was as anxious to go to West Orange as respondent was. Respondent had selected first a house in Orange but appellant thought a place for less rent could be found. He had apparently written to his cousin of his efforts to find a suitable apartment in the Oranges, for on May 27, 1917, she writes him in reply to his letter of the 12th that she hopes he has found a nice house in Orange (Exhibit C-20, p. 151). Respondent then located the apartment at 20 Kingsley Street in West Orange, but before renting it she took appellant to see the place and he approved it (Case, p. 36, ll. 20-40; p. 37, ll. 1-15).

That both appellant and his wife had the intent and desire to move to the Oranges is apparent not only from the expressions in his letters and postal cards, but also from the testimony of respondent, as follows:

"Q. What conversation had you had with your husband regarding living in the Oranges, prior to your marriage? A. Well,

at that time my husband was considerate of me, and he thought it would be better for us to live outside the city, and have a family; and thought that would be a better place to have children than a small apartment in the city, and it was convenient to his ship, and I thought it was better for him to travel back and forth from the train than in the crowded subway.”

Moreover, it was decided to purchase additional furniture for the new apartment. On May 7, 1917, the parties went to Kellner Bros., furniture dealers in New York City, and purchased several articles of household furniture and instructed the dealer to hold the furniture; that they were looking for an apartment and as soon as one was found, they would let the dealer know where to send it (Case, p. 38, ll. 2-40; Exhibit C-3, p. 123).

On or about June 6th final payment was made on the furniture and then appellant told respondent to arrange with the furniture dealer to send the furniture to West Orange (Case, p. 39, ll. 15-40).

On June 15, 1917, the move was made to West Orange (Case, p. 36, l. 9). And there the parties continued to live until May of 1918 when appellant separated himself from his wife.

On or about June 14th, appellant, who was a lieutenant in the Naval Auxiliary Reserve, requested that a change of address be noted in the records of the Supervisor of the Naval Auxiliary Reserve in New York, to 20 Kingslèy Street, West Orange (Exhibit C-17, pp. 148-149). Appellant admits that he had most of his clothes at that address (Case, p. 98, ll. 30-40; p. 99, ll. 1-15). And it was at that address that he on several occasions beat and assaulted his wife.

From the foregoing it is clear that appellant acquired a domicile in the State of New Jersey. There were present the two necessary elements to acquire domicile: (a) The fact of residence, and (b) the *animus manendi*. In *State v. Collector of Bordentown*, 32 N. J. L. 192, the court approved and adopted the following as a definition of "domicile":

"A residence at a particular place accompanied with positive or presumptive proof of continuing there for an unlimited time."

And in *Herral v. Herral*, 39 N. J. Eq. 279, Justice DEPUE, speaking for the Court of Errors and Appeals, at page 285, said:

"A person sui juris may change his domicile as often as he pleases. To effect such a change, naturalization in the country he adopts as his domicile is not essential. He need not do all that is necessary to divest himself of his original nationality. There must be a voluntary change of residence, the residence at the place chosen for the domicile must be actual; to the factum of residence there must be added the *animus manendi*; and that place is the domicile of a person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with a present intention of making it his home, unless or until something which is uncertain or unexpected shall happen to induce him to adopt some other permanent home."

See also *Hess v. Kimble*, 79 N. J. Eq. 454, and *Rinaldi v. Rinaldi*, 94 N. J. Eq. 14, wherein Chancellor WALKER said:

"The best evidence of intention is to be ascertained from the parties' declarations, which are always available in a suit for

divorce or nullity because the parties are alive.”

It is fundamental that a domicile once acquired remains the domicile until a new one is acquired. *Cadalader v. Howel*, 18 N. J. L. 138; *Clark v. Leinkens*, 26 N. J. L. 207; *Firth v. Firth*, 50 N. J. Eq. 137.

Admittedly, the burden of proving that appellant was not a bona fide resident in the State of Ohio was upon respondent in these proceedings, but appellant undertook to prove a bona fide residence in that State, and the Advisory Master was justified in considering all the testimony in the case in arriving at a decision on this question. *Esler v. Camden & Suburban Railway Company*, 71 N. J. L. 180; *Seffler, Administratrix v. Vanderbeek & Sons, Inc.*, 88 N. J. L. 637, 639; and *Benoliel v. Homack*, 87 N. J. L. 375, 376.

We proceed now to a consideration of appellant's testimony regarding the acquisition of an Ohio domicile. When asked by his counsel how he happened to take up his residence in Ohio, his answer was: “Because I liked to be among my own friends, and I had no friends in New York or vicinity that really appealed to me. For my time off from ship—they were long voyages—and for the little time the ship was in—it was only twenty-four hours at a time—I wanted to get away from the shipping world altogether, and be with people who were congenial to me and my friends. I had met them in New York and had visited Ohio several times and decided to make my home there.”

It will be remembered that appellant lived in New York for some ten years prior to his marriage. Certainly he must have acquired some friendships in New York in that time who ap-

pealed to him. And it is difficult to understand why, with only twenty-four hours between cruises, he should select as his domicile a place which would take from 10 to 12 hours to reach. He would necessarily have a very few hurried hours to spent with the friends in Ohio who appealed so much to him.

Again, appellant endeavored to prove an Ohio domicile by introducing in evidence five envelopes addressed to him, each of which was stamped several years subsequent to the institution of his divorce suit (Exhibit D-4, p. 25). These envelopes established only that he had a mailing address at various places in Ohio between 1931 and 1934. Of course, after the commencement of this suit it was to appellant's advantage to make a show of having an address in the State of Ohio. It is significant, too, that not one of the envelopes offered shows a date prior to the institution of the Ohio proceedings.

Appellant introduced, over objection of respondent's counsel, what purports to be a transcript of the testimony of the witness in the Ohio divorce proceedings (Exhibit D-3, p. 19, C., p. 92, ll. 1-38). This transcript, of course, was purely hearsay and not properly admissible. But its want of probative force is all the more obvious upon examination of the following statement appended to the transcript:

“There being no transcript of testimony in this case, I herewith certify that from the Court records, my recollection, and evidence adduced to me by attorneys Wolf and Kruckhoff, that the within proceedings were had before me a Judge of the Court of Common Pleas on the 4th day of April 1931, and that testimony was in substance given as herein indicated.

SAMUEL H. SILBERT,
Judge of the Court of Common Pleas.”

Appellant admitted that he had never voted in the State of Ohio, and that he had never paid taxes in that State (Case, p. 108, ll. 38-40; p. 109, ll. 1-8).

The foregoing summarizes the testimony adduced by appellant to sustain his contention of an Ohio domicile. Except for the uncorroborated testimony of appellant, there is no legal evidence in the record showing either the fact of residence or the *animus manendi*. As a matter of fact, we find that within three or four months after the final decree of divorce in Ohio, he was living again in Jersey City in this State, with a friend (Case, p. 87, ll. 36-40; p. 102, ll. 30-38).

It is surprising that appellant's testimony on this point is so meager because one of the principal grounds urged by appellant in seeking to set aside the final decree of the Court dated August 15, 1934, was that he had an Ohio domicile at the time of the commencement of his Ohio suit.

The picture here is clear. Appellant wanted to be free of his wife. He chose Ohio because it was sufficiently distant from this State that he thought his wife would be financially unable to contest his suit, and because it was a more liberal state in which to obtain a divorce so far as the element of residence is concerned. He got his decree and returned to this State. When his wife brought this present suit, he makes a show of having a residence in Ohio by having a mailing address there. Had he been able to prove by substantial evidence the fact of residence in Ohio he could have done so by depositions, but obviously he was not willing to put that question to the test of cross examination.

as to the Advisory Master's opinion of appellants' credibility on this question see Supplemental State of Case § 7 ll 33-37

It is respectfully submitted that the evidence establishes that appellant was domiciled in this State; that he did not thereafter acquire a domicile in the State of Ohio; that he was not a bona fide resident of that State at the commencement of the suit, and, therefore, the decree of divorce obtained in that State is void. *Jung v. Jung*, 85 N. J. Eq. 322; *Thompson v. Thompson*, 89 *id.* 70; *Rinaldi v. Rinaldi*, 94 *id.* 14.

POINT FOUR

The decree of the Court of Ohio is void because appellant being an inhabitant of this State did go into the State of Ohio in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State.

The charge here is that appellant, being an inhabitant of this State, did go into the State of Ohio, in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, in contravention of Section 33 of our Divorce Act, which is as follows:

“Full faith and credit shall be given in all courts of this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, Territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections five, six and seven of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce

by a court of a foreign country as may be justified by the rules of international comity; provided, that if any inhabitant of this State shall go into another State, Territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State."

Was appellant an inhabitant of this State at the time of the commencement of the Ohio proceedings? It does not appear that the word "inhabitant" has been judiciously defined in this State. In *The Century Dictionary* the word is defined as "a resident; one who dwells in a place as distinguished from a transient or occasional lodger or visitor." An inhabitant, therefore, is one who has an established residence at a given place. *Kennedy v. Ryall*, 67 N. Y. 379. In *Hess v. Kimble*, *supra*, it was held that the residence required by our statute of divorce is the equivalent of domicile. That inhabitant, as used in this section of the act, means one who has a residence or domicile in this State, is obvious upon a consideration of the purpose of the proviso in this section. The proviso was designed to prevent "migratory divorces"—to prevent bona fide residents of this State from going into more liberal States to procure a divorce. As to persons living in this State but not domiciled here, the courts of this State would not have jurisdiction over their suit for divorce; it is only as to bona fide residents that this State has jurisdiction. It is clear, therefore, that the word "inhabitant" means one who is domiciled in this State.

It has been shown that appellant was domiciled in this State when he instituted the proceedings in Ohio.

If the charge of extreme cruelty made by appellant against his wife had been well founded, full and complete redress would have been available to him in the courts of this State, for as has been pointed out above, appellant knew that he did not have a cause of action which he could prosecute successfully in this State. He and not she was the party guilty of extreme cruelty. He knew that if he should bring his suit in this State he could not succeed. In order to obtain a divorce he went to the courts of the State of Ohio where he sought to obtain his decree upon a fraudulent affidavit of service by publication, and without giving notice to respondent of the institution of his suit, and without perfecting service of a petition and order to answer upon the respondent. As was pointed out in *Thompson v. Thompson, supra*, at page 75, the term "in order to obtain a divorce" is not quite so limited to a case of actual intent and purpose as if the phrase had been "for the purpose of obtaining a divorce."

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the decree of the Court of Chancery be affirmed, with costs.

BRUNDAGE & BRUNDAGE,
Solicitors for Respondent.

NORMAN L. BRUNDAGE,
Of Counsel.

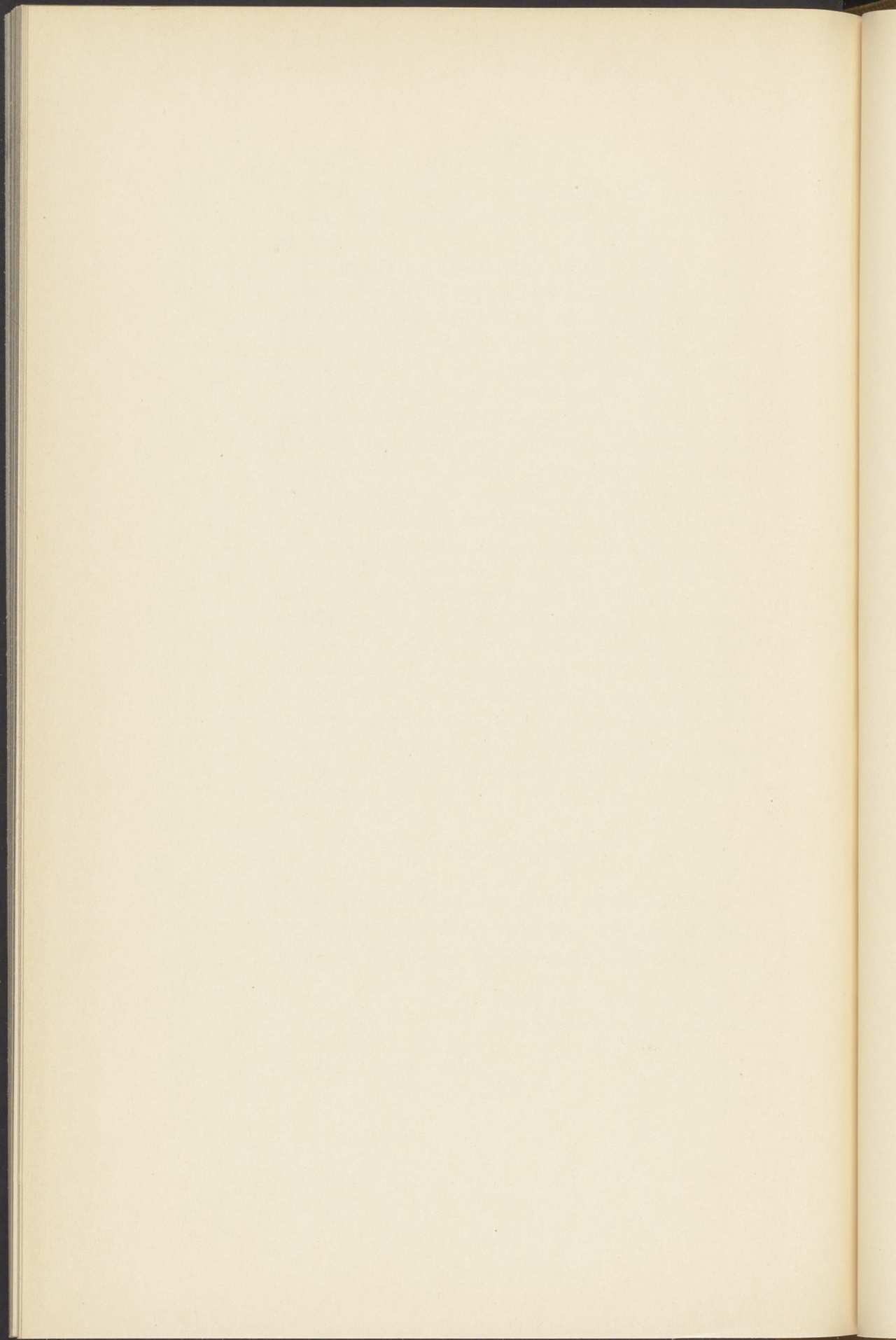
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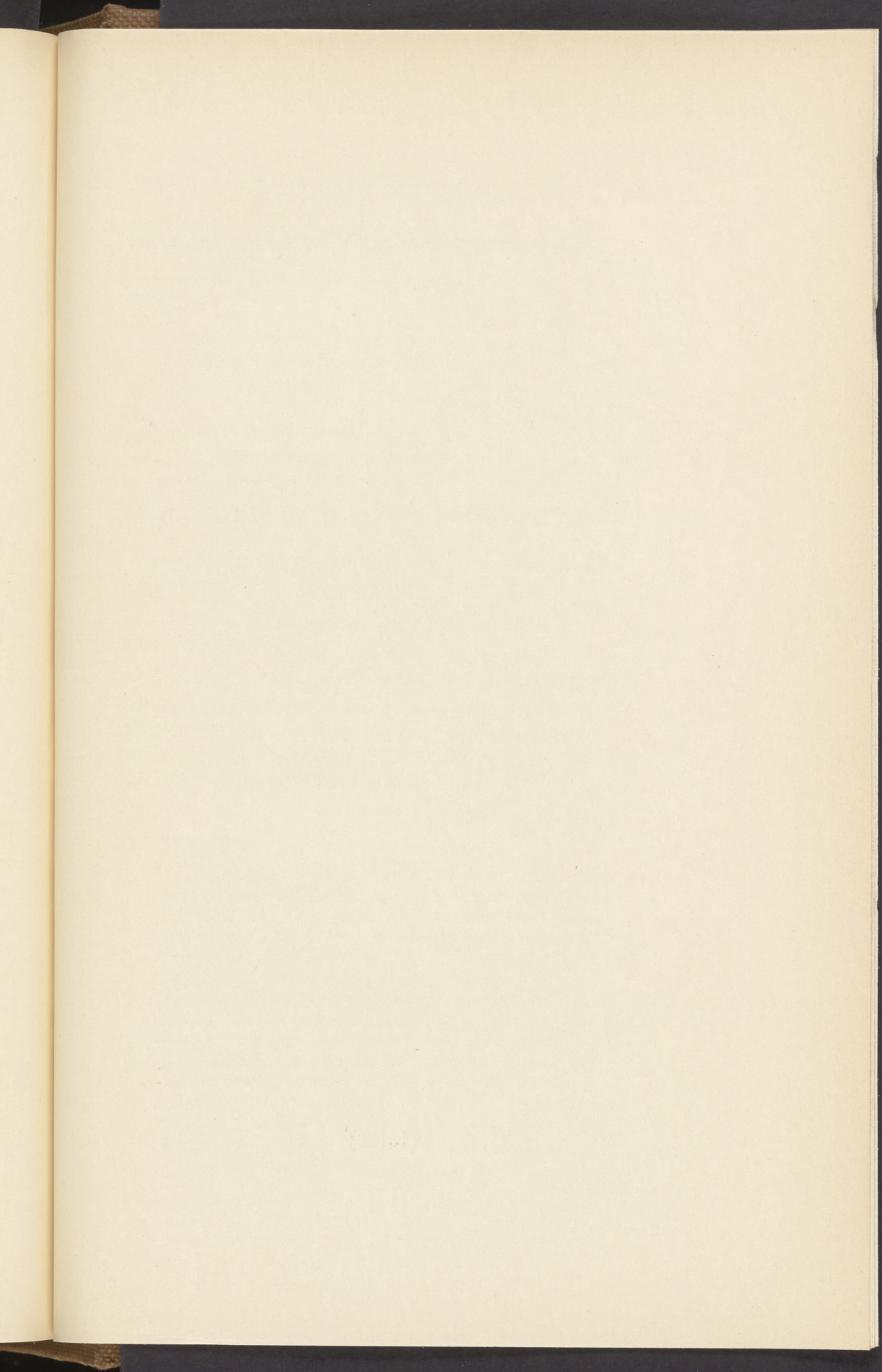
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[5168]

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

New Jersey Court of Errors and Appeals

Between

CAROLYN McWHINNIE,
Complainant-Respondent,

and

WILLIAM McWHINNIE,
Defendant-Appellant.

On Appeal.

**No. 94,
Feb. Term.**

DEFENDANT-APPELLANT'S REPLY BRIEF.

Appellant's brief and state of case were filed on February 5th—the opening day of the term.

At that time no opinion had been filed by the Advisory Master.

Counsel for appellant received the Supplemental State of Case and respondent's brief on February 16th, and noted in the opinion a harmful error which was called to the attention of the Advisory Master, who replied:

“February 20, 1935.

Dear Sir: re: McWhinnie

Replying to your favor of the 18th instant, please be advised that I have not the exhibits in this case before me, nor the testimony. It is my recollection that if not from this particular letter, from some other exhibit as well as from the testimony, it appeared that Mrs. McWhinnie desired to avoid having service made upon her at her home because she feared some unpleasantness and therefore desired to have the service of papers made upon her at Mr. Fahey's office.

If the record does not bear this out, you have my permission to call the discrepancy to the attention of the Court of Appeals. My

personal impression, however, is as I have stated in my opinion, that Mrs. McWhinnie wished to be served with process in the Ohio case at her solicitor's office and that this fact was made known to Mr. McWhinnie's Ohio representative.

Very truly yours,
Robert D. Grosman."

That there was error appears from the record, and makes a reply brief necessary.

To avoid cross-references counsel repeats some of the references which are in the main brief.

At page 4 of the supplemental case, at line 21, the Advisory Master refers to the following letter:

"WOLF & KRUCHKOFF,
Attorneys & Counselors at Law
810 Ulmer Bldg.
Cleveland, Ohio.

Sept. 16th, 1930.

Thomas Fahey, Esq.,
99 Nassau Street,
New York, N. Y.

Dear Mr. Fahey:

This office represents Mr. McWhinnie in his divorce action against Caroline McWhinnie.

We are informed that you represent Mrs. McWhinnie and that you would be in a position to furnish us with her present address so that we may serve her with a copy of the petition.

Thanking you for your courtesy, we are,
Very truly yours,

(Signed) WOLF & KRUCHKOFF."

At line 31, also on page 4 of the supplemental case, the Advisory Master comments on the above letter as follows:

“This letter was called to the complainant’s attention and in pursuance to her wish, Mr. Fahey advised the defendant’s Ohio attorneys that the complainant preferred to be served at his office. Nothing more was heard of the matter.”

The Advisory Master is in error. Neither then, nor at any other time, did Mr. Fahey advise Wolf & Kruckkoff that complainant “preferred to be served at his office.”

On the contrary he replied that:

“Mrs. Carrie McWhinnie’s consent must first be had before I can advise you” (Case, p. 13, l. 7).

Mrs. McWhinnie evidently did not consent, and a week later Mr. Fahey further wrote Wolf & Kruckkoff (Case, p. 14, l. 22):

“I recently had a brief interview with Mrs. Carrie McWhinnie, and she suggested that if there was any way of perfecting the service of papers without same being served upon her at her residence, she would prefer that same be adopted. I do not know what Mrs. McWhinnie had in mind—I cannot see much point in it, but think it well, as far as possible, to oblige her and respect her wishes. I assume it does not make much difference where the papers are served, so that they are served as required by the laws of your State.”

Mr. Fahey never gave Wolf & Kruckkoff the address of Mrs. McWhinnie, or made any suggestion or request other than that the papers “be served as required by the laws of your state” (Ohio).

In order "to oblige her and respect her wishes" (Mrs. McWhinnie's) service was by publication.

Upon this inadvertent, but harmful, error the Advisory Master bases the conclusion expressed in the first paragraph of his syllabus, and voids the Ohio decree.

The fact is as expressed by Vice-Chancellor Berry in his letter of June 22, 1932, to counsel:

"I think it is quite apparent that the complainant in this suit was aware of the Ohio divorce proceedings and evaded service. It is quite plain that she could have been fully informed had she not instructed her then solicitor to give her husband no information as to her whereabouts."

* * * * *

At page 9 of his Opinion, at line 16, the Advisory Master asserts that defendant:

"was never a *bona fide* resident of Ohio and in obtaining a decree of divorce in that state he perpetrated a fraud upon its courts."

But the record gives no support to this assertion, and the Advisory Master is bound by the testimony and evidence to the contrary in the record.

There is not a scintilla of proof that defendant was ever in the State of New Jersey from the summer of 1918 to the date of the hearing on December 14, 1934 (a period of more than 16 years), except during the few days he was detained here on the writ of *ne exeat*, and about three months in the winter of 1931-1932 when he stayed with a friend in Jersey City while looking for a position.

Supporting defendant's testimony that he was domiciled in Ohio from "early in 1928" to the date of the hearing, "*and nowhere else*" (Case, p. 92, l. 38), a period of nearly seven years, was the testimony of his three witnesses and the envelopes showing his present address. That is where he had his personal belongings *and his bank account*, and that is where he spent his time when on shore leave.

The second paragraph of the syllabus cannot stand.

* * * * *

There is, as stated by the Advisory Master, but one issue—was the divorce of this defendant in the State of Ohio obtained through his fraudulent misrepresentation of domicile? The proof is to the contrary. Fraud was not only not "clearly and convincingly proved" by the respondent, but the record contains not even the suggestion of fraud.

The decree of the Court of Common Pleas of the County of Cuyahoga, Ohio, is entitled to "full faith and credit," and the decree of the Court of Chancery should be reversed.

Respectfully submitted,

BENJAMIN GORDON,
Solicitor of, and of Counsel
with, Defendant-Appellant.

