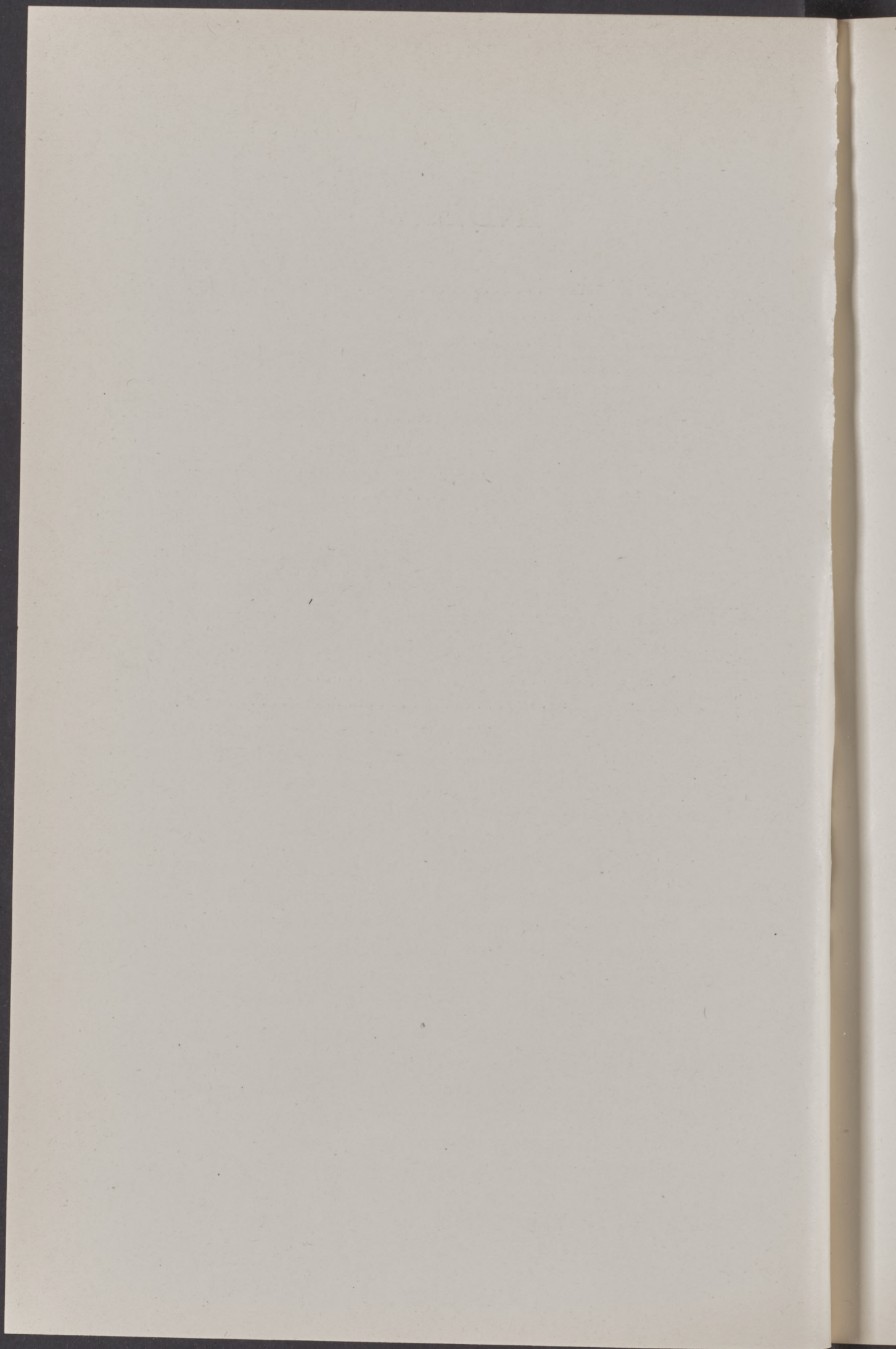


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Petition for Divorce.

PETITION FOR DIVORCE.

Filed.

In Chancery of New Jersey

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

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The petition of Roy H. Knibb, of the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Modesta Helen Knibb, on October 6, 1919, by Michael J. Cruise, Deputy City Clerk, in the City of New York at Municipal Building, in the State of New York.

20

2. Petitioner and defendant did not live together or cohabit after their said marriage, but on the 6th day of October, 1919, the defendant deserted the petitioner and ever since which time and for more than two years last past said defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner was a bona fide resident of this State, having his permanent home at Newark, in the County of Essex, when this cause of action arose as aforesaid and for more than two years next preceding the commencement of this action continued to be such resident, residing continuously at the Robert Treat Hotel in Newark, N. J.

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4. Defendant was a bona fide resident of this State, having her permanent home at No. 1113 Mary street, Elizabeth, N. J., when this cause of action arose as aforesaid and has ever since and for more than two years next preceding the commencement of this action continued to be such resident, residing continuously at said address.

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Petition for Divorce.

5. One child was born after the marriage of petitioner and defendant, to wit, Helen Elise Knibb, age twenty-five months.

6. Your petitioner prays that the marriage between your petitioner and defendant may be dissolved for the cause aforesaid according to the statute in such case made and provided and that he may have such further relief
10 as may be just. And your petitioner will ever pray, &c.

HEINE, BOSTWICK & BRADNER,
Solicitors for Petitioner.

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

Roy H. Knibb, being duly sworn according to law, upon his oath deposes and says:

20 That he is the petitioner in the foregoing petition; that his said petition is not made by any collusion between him and the defendant but in truth and good faith for the causes set forth in the petition.

ROY H. KNIBB.

Subscribed and sworn to before
me this 31st day of December,
1921.

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Master's Report.

MASTER'S REPORT AND TESTIMONY.

Filed March 28, 1922.

IN CHANCERY OF NEW JERSEY

Between

ROY H. KNIBB,

Petitioner,

and

MODESTA HELEN KNIBB,

Defendant.

*On Petition for
Divorce.*

Master's Report.

10

1. In pursuance of an order of this Court made in the above-entitled cause bearing date the 7th day of February, 1922, whereby it was referred to me, the subscriber, one of the special masters, to ascertain and report as to the truth of the petition and my opinion thereon and directing the petitioner to proceed to take depositions and other evidence before me to substantiate and prove the allegations in said petition and to bring on the hearing of the cause *ex parte*.

20

2. I do respectfully report that I have assigned a time and place for hearing, namely Friday, February 17, 1922, at 10:00 A. M., at my office No. 519 Clinton Building, 20 Clinton street, Newark, N. J.; that I have then and there been attended by John W. Bostwick, Esquire, of Heine, Bostwick and Bradner, solicitors for the petitioner and have taken the depositions of the witnesses produced before me. It being in my judgment advisable that it should be taken so, I have caused the testimony to be taken stenographically by Miss Anna M. Osborne, a stenographer selected and sworn by me as appears by her oath and by my certificate accompanying the testimony. So far as the testimony was the result of my own

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Master's Report.

examination I have deemed it wise to have it taken question and answer and afterward written out in full.

10 3. I have examined into the matters referred to me and I find and report that the petitioner, Roy H. Knibb and the defendant, Modesta Helen Knibb, whose maiden name was Modesta Helen Engel, were married October 6, 1919, by M. J. Cruise, Deputy City Clerk, City of New York; at the Municipal Building in said city. This was testified to in a general way by the petitioner, and was corroborated in detail by a certified copy of the marriage record as filed and recorded in the Department of Health in the City of New York, N. Y. Said certified copy was not exemplified according to the Act of Congress, but I received the same in evidence for what it is worth, and marked it Exhibit P. 2 for the petitioner. The petitioner's solicitor on a subsequent date, namely, March 27, 1922, at 9:30 A. M., produced at my office an exemplified copy of the marriage record certificate. Exhibit P. 3.

20 4. I find and report respecting the residence of the parties that at the date of their marriage they were residents of the State of New Jersey, but went to New York City because of their desire to prevent publicity, as to the marriage and as to the occasion for marriage, the parties being unwilling to have the ceremony take place in Elizabeth, New Jersey, where the defendant resided, and being unable legally to obtain a marriage license elsewhere in New Jersey. The residence of the parties since that time has probably been in the State of New Jersey, that of the petitioner at least being here, since I find the Robert Treat Hotel in Newark, where he stops when in the East, to be his *bona fide* residence. That this has been his headquarters for more than two years next preceding the commencement of this suit is corroborated by the evidence both of Mr. Van Seggern and Mr. Calhoun.

30 5. I find and report that the petitioner and defendant
40 have never maintained a residence together, nor cohabited

Master's Report.

as husband and wife since the date of their said marriage. The defendant's refusal on that same day to live with him without a further ceremony, one performed by a Catholic priest, constitutes, according to petitioner's contention, a wilful continued and obstinate desertion. I report that each of these elements is proved upon the theory of the petitioner, which I feel compelled to accept. This matter I allude to in paragraph 10 below. 10

6. The wilfulness of the desertion is shown by the repeated refusals of the defendant to live with the petitioner without such religious ceremony, a situation not only testified to by the petitioner, but corroborated by the testimony of Palmer Bradner, Esquire, who at the petitioner's request had called upon the defendant to induce her to join the petitioner.

7. The obstinacy of the desertion is shown by the petitioner's frequent requests to the defendant to live with him, requests made at personal interviews and over the telephone. Mr. Van Seggern corroborated, as far as it was possible, the petitioner's testimony as to one of his telephone conversations with the defendant. Mr. Bradner's testimony also shows the same kind of obstinacy. 20

8. The continuedness of the desertion is shown by the testimony of the petitioner and is indicated in a negative way by the lack of knowledge of the defendant to which Mr. Calhoun and Mr. Van Seggern testify. Mr. Calhoun does not know the defendant; Mr. Van Seggern has met her in 1918. The testimony of Mr. Bradner also makes the continuedness of the desertion an almost inference. 30

9. The reason for the defendant's desertion I find to be her unwillingness to live with the petitioner, and apparently to count him her husband, without a ceremony performed according to the rites of her own faith. Her father, who is very insistent upon the same, has exerted 40

Master's Report.

a dominating influence over the defendant, who nevertheless, I find to make her own the condition just above mentioned.

10 10. The facts and circumstances connected with the defendant's desertion are these: The petitioner is a Baptist, the defendant a Catholic, and both appear to be very conscientious as to ceremonial matters. Their standards in matters of practice are not so high. Having been acquainted with each other in 1918 and having kept company with each other for a few months, the petitioner seduced the defendant, the idea being, as defendant testified, that nothing was to come of it. The petitioner was a travelling man and after his illicit relations with the defendant he was in the West from March to September, 1919. The defendant found herself pregnant and wrote to the petitioner as did also his employer in the French Battery and Carbon Company of New York, N. Y., and Newark, N. J. In response to these letters the petitioner came East and not wishing to expose the defendant by a marriage in Elizabeth, where she lived, and being unable to obtain a marriage license at Plainfield, they arranged to have a ceremony performed in New York City, and the defendant gave as her address the address of the hospital where she was staying until after the birth of the child, and the petitioner gave as his address, Terre Haute, Indiana. Immediately after 20 this legal ceremony, at which the defendant's father had been one of the witnesses, these three took luncheon in New York and discussed the subject of cohabitation and a further marriage ceremony. The position taken by each of the parties at that time seems to have been consistently maintained ever since, namely on the part of the petitioner that he would not submit to a Roman Catholic ceremony and on the part of the defendant and her father, that she would not live with the petitioner unless he would. The petitioner has gone to Elizabeth to see the defendant and at other times has sought to have 30
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Master's Report.

interviews with her, but the discussion between them only emphasized the difference of opinion and made matters worse, if anything. For a long time, if not until the present date, the parties have continued to be fond of each other, but are equally obstinate about the form of marriage. In June, 1921, the petitioner received a letter from the defendant (Exhibit P. 1) which corroborates all the facts and circumstances. 10

11. I find and report that I have inquired of the petitioner whether or not previous proceedings have been had between the parties respecting their marriage or its dissolution or the maintenance of the wife and the depositions of the petitioner (p. 7, ll. 192 to 200 inclusive), returned with this my report will show that this inquiry has been made by me and that no such proceedings have previously been had.

12. I find and report that there has been one child born of these parties, namely Helen Elise Knibb born December 7, 1919, who is in the custody of her mother, the defendant. 20

All which will more fully appear by the testimony of the witnesses produced before me, which testimony I annex to this my report and return herewith.

And I further report that I have to find that the material facts charged in the petition are true and that a decree for divorce should be made for the cause of desertion, pursuant to the prayer of the petition. 30

Respectfully submitted this twenty-seventh day of March, A. D, 1922.

SAMUEL W. BOARDMAN, JR.,
Special Master in Chancery of New Jersey.

Oath of Stenographer.

IN CHANCERY OF NEW JERSEY.

Between

ROY H. KNIBB,

Petitioner,

*On Petition
for Divorce.*

10

and

MODESTA HELEN KNIBB,

Defendant.

*Oath of
Stenographer.*

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

20 Anna M. Osborne, being duly sworn according to law, on her oath says that she will faithfully and truly take stenographically and reproduce in typewriting or manuscript the testimony to be given in the above-entitled cause.

ANNA M. OSBORNE.

Sworn February 17, 1922, and subscribed
March 9, 1922, at Newark, N. J., before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey.

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Deposition of Roy H. Knibb.

IN CHANCERY OF NEW JERSEY.

Between

ROY H. KNIBB,

*Petitioner,**and*

MODESTA HELEN KNIBB,

*Defendant.**On Petition
for Divorce.**Depositions.*

10

Transcript of testimony taken in the above-entitled cause before Samuel W. Boardman, Jr., Esquire, a Special Master in Chancery of New Jersey, at his office No. 519 Clinton Building, 20 Clinton street, Newark, N. J., on Friday, February 17, 1922, at 10:00 A. M.

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Appearances:

John W. Bostwick, Jr., Esq., of Heine, Bostwick and Bradner, solicitors for petitioner.

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

ROY H. KNIBB, the petitioner, being duly sworn according to law, on his oath says as follows:

I live in Newark, New Jersey, at the Robert Treat Hotel. The Robert Treat has been my home for approximately three years. Before that I lived at 31 Lincoln Park and 72 Clinton avenue, just across the street, for about two years. For the past five years I have resided at Newark, New Jersey. I think it was in the spring, I think in March, 1917, that I came here. I was married in New York on October 6, 1919, by the city clerk or the deputy city clerk, I do not know who it was, in the City of New York at the Municipal Building. My wife's maiden name was Modesta Helen Engel. Her residence at the

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Deposition of Roy H. Knibb.

time of marriage was 1113 Mary street, Elizabeth, N. J. Since the date of our marriage, my wife has lived for about two months in New York, at 130 East 69th street, and since that time has lived at her address in Elizabeth, already given, she lives there at the present time so far as I know. We were married in the Municipal Building, her father was with us, one of the witnesses, we went down to
10 Fulton street or some street, to a restaurant and had dinner, and at dinner her father said, "You know that you are not to live with my daughter unless you agree to another marriage by our faith, by the Catholic faith." I asked her if that was what she meant, if he was talking for her, I asked her if she wasn't going to be my wife. She said, "Yes," she said that she could not live with me or would not live with me unless I agreed to her wedding. After dinner she left me on the corner of
20 Fulton street and Broadway, and told me that she did not intend to live with me unless we had another wedding, and her father also informed me that I was not to see her again unless I agreed to what they wanted me to do. I came back to the Robert Treat and immediately 'phoned her at the address in New York, telling her that I wanted to come over and see her. She told me that I could not see her that day, but could see her the next afternoon, that was unbeknown to her father. The next afternoon I went to see her at the New York address, met her
30 in the office at which time we sat down and talked for several hours. I asked her at that time if she would come and live with me, but she obstinately refused to do so, she said that if I would agree to her marriage by her faith that she would, otherwise she could not and would not. At the time of our marriage I was prepared to provide a home for her. I was employed at that time by the Niagara French Battery Company, A Hall Berry, agent, as a salesman. After that interview I wrote to her on several occasions. I wrote to her and asked her how
40 she was getting along, just a nice sociable letter, telling

Deposition of Roy H. Knibb.

her that I was coming back East before very long, I had gone West, I left here after that, just on a business trip, that was all and returned again, I returned in January, about the 26th or 27th. During that trip I do not remember how many times I wrote her, I wrote a number of times. When I returned East I communicated with her from the Robert Treat Hotel to know if I could come down to see her, I communicated with her by telephone, she was living with her father at the Elizabeth address. There had been a child born in that time, it was in December, the 7th, if I am not mistaken, 1919. I asked permission at least to come down and see the baby. This was refused to me by her and referred to her father, that I would have to make my request to him, he told me a later date would be just as well as then, that he was going out that evening and that I could not see my wife unless he was with us. I was therefore not able to get in touch with her any other way then over the phone. I took another trip and returned to Newark. I came back in April and I telephoned her, I have never been in Newark yet that I did not call her up, and my calls were usually to come down to see her, or for her to come and see me. I did not, however, see her on this occasion. I do not remember our conversation at that time. There has never been a conversation between us but what the matter of her return was the basis of the conversation and for her to live with me and be my wife. She says that she likes me, but that she will not live with me unless we have a ceremony in her faith. The next time after April was in the latter part of June or in July in the year 1920, I was in Elizabeth and telephoned her and told her I was there and wanted to see her. She said that she would like to see me, but that she was afraid, I asked her of what, she said that her father may not approve of it, I said, "Your father has nothing to do with this, I want to see you and the baby." I jumped into a cab and went over and spent the afternoon, or from four o'clock on the porch with her until

Deposition of Roy H. Knibb.

her father returned. He insisted that I stay for dinner, which I did. After dinner we spent the evening on the porch, by "we" I mean my wife and myself, never out of speaking distance of her father or some member of the family, and most of the time her father was directly in our company, not leaving us for a period of five minutes at any time together. She said that she would not live with me or could not live with me unless I was married in her faith, and her father also said that she could not live with me and refused to let her live with me unless we were married by his faith. That was in the end of my visit here at that time. I telephoned her several times during the next period of about a year. I was able again about May of 1921 to get her and a friend of hers to come to Newark and meet me and talk the thing over. She at that time remarked that the more we talked on the subject the further away we got, that she could never be my wife without me first marrying her by her faith. I met her on that occasion on the corner of Broad and Market streets, Newark, N. J., walked down to the Hotel St. Francis, sat in the lobby and discussed the thing. I do not remember the name of the girl friend with whom she came over here. This friend was sitting with us throughout the conversation, I just do not know whether she heard all the conversation or not, but that she tried to persuade me, this friend tried to persuade me to go and submit to her wedding, which I cannot do, I do not feel that it is necessary, and my own conscience will not allow me to. I saw my wife several times in June, 1920, the last time at the Robert Treat Hotel. In the party was her cousin Petronella Nolte and J. J. Hopkins. I have not seen her since. These two occasions when I saw my wife in June were in 1921. The interview was in May, 1921, I remember that I left here and was in Roanoke, Virginia, on the 25th of May, 1921, and the conversation that I have just spoken of as in June was in May, 1921. These

Deposition of Roy H. Knibb.

several interviews last referred to were in May, 1921, by the several interviews I mean the two that were just mentioned. There were persons present when I have had telephone conversations with my wife and with her father, Ray Van Seggern was present, he was present at my conversation in January, 1920, at the Robert Treat. Mr. Van Seggern lives at 79 Lincoln Park, Newark, N. J. There were persons present on other occasions, but I do not remember who they were. 10

Examination by the Solicitor.

Q I show you a letter dated Monday and signed Ditty, and inclosed in an envelope postmarked Elizabeth, June 6, 1921, bearing the address, 1113 Mary street, Elizabeth, N. J., on the back, and I ask you if you recognize that handwriting? A I do, yes, sir; this is my wife's handwriting. I received this letter at the Roanoke Hotel, Roanoke, Virginia. 20

Examination by the Master.

Q Was this letter actually received by you in this (indicating) envelope? A Yes, sir.

The solicitor for the petitioner offers in evidence the letter and envelope thus identified, which are received in evidence and marked Exhibit P. 1a and P. 1b for the petitioner.

I did not get a marriage certificate. 30

The solicitor for the petitioner offers in evidence a copy certified as a true copy by S. W. Wynne, M. D., Assistant Registrar, certifying that Roy H. Knibb and Modesta H. Engel, were married October 6, 1919, by M. J. Cruise, Deputy City Clerk, in the presence of Francis Engel, and H. C. Waterman; this certificate is dated December 30, 1921. Department of Health, City of New York. Received in evidence and marked Exhibit P. 2 for the petitioner. 40

*Deposition of Roy H. Knibb.**Examination* (continued) by the Solicitor.

Q Referring to this Exhibit P. 2, in which your address is given as being Terre Haute, Ind., and your wife's as 130 East 69th street, New York, I ask you do you remember those addresses as having been given at the time?

A I do.

- 10 Q What is the address 130 East 69th street, New York? A That is a hospital. My wife was there at that time. She was pregnant at that time and was living there, away from home to shelter it, or to keep from disclosing it, or people seeing her condition at home. I had just come in from Terre Haute to New York, due to the seriousness of her condition, and trying to shield her condition we wanted to marry as quietly as possible. We tried to secure a license in Plainfield, New Jersey, her father having acquaintances down there, and thought that
- 20 we could get a license and get married that day without any further delay, but we were informed by the clerk down there otherwise. As a result of what we heard there we applied for a license in New York, and both of us gave fictitious addresses to prevent the matter getting into the papers and to prevent publicity here. I have been willing to take my wife with me as husband and wife at all times down to the day of filing of petition in this suit.

Examination by the Master.

- 30 Q Have there ever been any previous proceedings between you and your wife respecting your marriage? A No, sir.

Q Have there ever been any previous proceedings between you and your wife respecting the dissolution of your marriage? A No, sir.

Q Have there been any proceedings between you and your wife respecting her maintenance, her support? A No, sir.

- 40 Q What, if anything, has she claimed from you in the way of support? A Nothing. I have asked her on sev-

Deposition of Roy H. Knibb.

eral occasions if she needed anything, if I might give her anything and I have been refused both by her and her father.

Q How long had you known your wife before your marriage? A A little over a year.

Q What had been your business at that time? A Salesman. 10

Q And was she in business of any kind? A A part of the time, and a part of the time no. She did not have to go to business, she wanted to break the monotony of the day, I guess.

Q Where did she work when she did? A At the Telephone Company, Plainfield, New Jersey.

Q How long before your marriage had you come from the West to New York? A Just several days, I got in on a Friday, if I remember correctly and we were married on a Monday. 20

Q Did you come in response to a letter? A I came in response to a letter from her.

Q Have you that letter? A I have not. I got a letter not only from her, but from my boss telling me that she was in this condition.

Q How much had you seen your wife and been with her during the preceding months, were you in the West most of the time? A I was in the West from March continuously from that time until October. 30

Q Had there ever been any discussion of a ceremonial marriage, a religious marriage, before the time of this civil marriage between you and your wife? A Yes, I have always said that I could not and would not be married in her faith.

Q What did she say? A Well, I just do not remember. The situation she was in required me to come and do what I ought to do. Before that I had asked her many times to marry me and she said that she would not do it unless we were married by a priest, but on account of the seriousness of her condition she agreed to be married the way we did marry. 40

Deposition of Roy H. Knibb.

Q Under what representation did she consent to the intercourse which I judge from your testimony? A Pleasant, I guess.

Q What was said as to marriage at that time? A Why nothing that I remember. I was just trying to get her ideas to coincide with mine along the lines of matrimony. I am a Baptist myself.

Q Was the sexual connection consented to on the basis of a future marriage, or was it on the idea that nothing was to come of it, or was it on some other basis? A It was the idea that nothing was to come of it.

Q Now the desertion which you claim she is guilty of you set as on the very day of the marriage, do you? A Yes, sir.

Q That is October 6, 1919? A Yes, sir.

Q Is the child still living? A Yes, sir.

Q In whose custody? A In her custody.

Q Do you know by what name that child goes? A Helen Elise.

Q And do you know by what last name that child is called in Elizabeth? A No, sir, I do not.

Q Have there been any other children born of this marriage? A No, sir.

Examination by the Solicitor.

Q Did you have a formal agreement or engagement with your wife to marry her? A Yes, we were engaged, I do not remember how long we were engaged, but I know it was before I went West. It was not formally announced. No time or date was definitely or temporarily fixed for our marriage.

Sworn and testified to this 17th day of February, 1922, at Newark, N. J., before me.

SAMUEL W. BOARDMAN, Jr.,

Special Master in Chancery of New Jersey.

Deposition of William Henry Calhoun.

WILLIAM HENRY CALHOUN, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath says as follows:

I live in Newark, New Jersey, 311 Mt. Prospect avenue. My business is manager of the New York office for the French Battery & Carbon Company. I know Mr. Knibb, the petitioner in this case. I have known him two years and one month. He has been working under me for the French Battery & Carbon Company, for two years. Prior to the time that he went to work for me he worked for the Niagara French Battery Company who were associated with the French Battery & Carbon Company, the Niagara French Battery Company was located at 161 Ogden street, Newark, N. J. His period of employment by the two companies was about three years. They were the past three years I think, except that he was not with us for a few months during this period of time. He is now employed by my company. We have considered Mr. Knibb's official residence at the Robert Treat Hotel, Newark, N. J., during this period that he has worked for us, for the last three years, he has not of course spent a great deal of his time in Newark, due to the fact that his position is a travelling salesman which requires him to be out of town a great deal. I do not know Mr. Knibb's wife. I do not know what his attitude has been except from conversation that I have had with him on the subject, I do not know anything of any other source. Those conversations indicated that he was willing to live with his wife, but it seemed that there was religious difficulties which he could not overcome. Yes, I understood the nature of those difficulties to be that his wife wanted him to be married again by a Catholic priest, which he was unwilling to do. His conversations have not indicated any other reason. I can say that his attitude has been consistent on this subject. The only thing that

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Deposition of William Henry Calhoun.

I can remember in the way of actual words he said is that he would not be married by a Catholic priest under any conditions.

Examination by the Master.

Q How much or how often have you heard him express himself as to his willingness to have his wife with him?
 10 A Well, we really seldom discussed the matter much, I might say three or four occasions.

Q How did it come to be discussed on those occasions?
 A He would have to come into the office, it was just casually discussed.

Q When, as nearly as you can locate the occasions, have you heard him discuss his attitude toward his wife? A
 On various occasions when he was in the office which I judge about every four months during the past two years and on occasions when I have met him out of town in
 20 his territory. One occasion was when I met him in Pittsburgh, which was around about December 3, 1921, another was when I met him in Roanoke, Virginia, about in September, 1921.

Q And were you able on those occasions to gather from him anything as to his attitude toward his wife?
 A I was able to gather from him that his attitude toward his wife was the same as it had always been, that he was willing to live with her provided she would live with him without being married by the Catholic faith. His attitude
 30 has always been the same all the time that he has been working for me and he has been working for me ever since two and a half months after he was married.

Examination by the Solicitor.

The conversation in Pittsburg was brought about by the fact that he advised me that he already had or was going to enter a petition for divorce, and therefore it would be necessary for him to come into the office some-time in the early part of 1922. He expressed himself that
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Deposition of Ray Van Seggern.

it was useless for him to make any further effort to have his wife live with him. The only thing was to attempt to secure a divorce.

Sworn and testified to this 17th day
of February, 1922, at Newark,
N. J., before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey.

10

RAY VAN SEGGERN, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath says as follows:

I live at 79 Lincoln Park, Newark, New Jersey. I have lived in Newark possibly fifteen years. I know Mr. Knibb, the petitioner, I have known him about four and a half years. During that period he has lived on the corner of Clinton avenue and Lincoln Park, that number has already been given, and 31 Lincoln Park and then later since his connection with the French Battery and Carbon Company at the Robert Treat Hotel. I have been introduced to his wife, the defendant. I was introduced to her in 1918. I did not know of their engagement. However, I knew that they were going together quite steadily. I have met Mrs. Knibb after the marriage, that is after I was told they were married. I have been present at telephone conversations between Mr. Knibb and his wife, but I have not been present at any personal conversation. I remember being in one of the rooms in the Robert Treat Hotel, calling on him preparatory to going out together at which time he said that he was going to make a call on the phone. I overheard that conversation. I heard him call an Elizabeth number, I cannot remember just the number. Who ever answered was evidently not the party that he wanted, he asked for Mrs. Knibb, after

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Deposition of Palmer Bradner.

a pause asked, "Is this you, Modesta?" and a long conversation followed, possibly 10 or 15 minutes, at which time he asked about her welfare, and for the child in question and expressed his desire that he would like to see the child, that he would like to come down and see her. After this conversation was over, he turned to me and said, "What do you think of that." I said, "What do you mean?" and then he demonstrated an attitude very plainly that he was disappointed and angry and sore. I am a friend of Mr. Knibb, and I have seen him more or less frequently in the past two or three years. I am able to testify to what Mr. Knibb's attitude has been toward his wife only from his conversations with me, and they at all times indicated that he was anxious to establish a home. These conversations were numerous.

Examination by the Master.

20 Q After you had met Miss Engel, now the defendant, did you ever meet her again? A Yes.

Q Did you ever have any conversation with her regarding her engagement or her marriage? A None whatever.

Sworn and testified to this 17th day of February, 1922, at Newark, N. J., before me.

SAMUEL W. BOARDMAN, JR.,

30 *Special Master in Chancery of New Jersey.*

PALMER BRADNER, a witness produced on behalf of the petitioner, being duly sworn according to law, on his oath says as follows:

I am a solicitor in Chancery. I am a member of the firm of Heine, Bostwick and Bradner, the solicitors for the petitioner in this case. I have since October 6, 1919, being the date of the marriage, seen the defendant, I believe that it was last fall that I saw the defendant. I saw her at

Deposition of Palmer Bradner.

her home in Elizabeth. I had a conversation of some length with her. It had to do with the question of the petitioner and defendant living together as man and wife, it was for that that I went down to see her. I have known Mr. Knibb as a friend for some time, as a man about town, we had talked the relationship of he and his wife over several times, and he asked me if I could possibly do something for him to bring them together and with that in mind I visited Mrs. Knibb. The first occasion I saw Mr. Engel, that was, I think, over a year ago, Mr. Engel being the defendant's father, and I told Mr. Engel that I came to him as a friend of Mr. Knibb and that Mr. Knibb was very desirous of living with his wife as man and wife and willing to make a home for her, and we talked the thing over for some length of time, and Mr. Engel repeated to me that he did not want Mr. Knibb to live with Mrs. Knibb unless they had what was to him the necessary ceremony. I did not see Mrs. Knibb; Mr. Engel did not let me see Mrs. Knibb on that occasion.

The Master calls attention to the fact that this evidence is hearsay, but admits it to the record under the insistence of the petitioner's solicitor that it is competent and proper testimony.

Later, last fall, I managed to arrange through Mr. Engel to see Mrs. Knibb, and I went down there one afternoon and talked to her, purely as a friend of Mr. Knibb, and told her that I was convinced that Mr. Knibb was very fond of her and was desirous of living with her as man and wife and wanted to make a home for her and personally I could not see why they should not live together as they were legally married, and she told me that she could not live with him and would not live with him unless they were married in accordance with her religious views. That conversation lasted about a half an hour, I think her father was present part of the time.

Deposition of Palmer Bradner.

Examination by the Master.

Q Have you had any conversation with her when her father was not present and was not within hearing? A During part of this conversation I know that he was not there.

Q And was her attitude and statement the same as it
10 was when he was present? A I am convinced that it was her will from the way she expressed it.

Sworn and testified to this 17th day of
February, 1922, at Newark, N. J., before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey.

(Exhibit P. 1b omitted.)

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Master's Certificate.

MASTER'S APPROVAL.
IN CHANCERY OF NEW JERSEY.

Between

ROY H. KNIBB,

Petitioner,

*On Petition
for Divorce.*

10

and

MODESTA HELEN KNIBB,

Defendant.

*Master's
Approval.*

I hereby certify that the foregoing depositions were taken by Anna M. Osborne, a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting or manuscript the testimony given, that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above-stated, and I believe that they accurately state the evidence given.

20

SAMUEL W. BOARDMAN, JR.,
Special Master in Chancery of New Jersey.

A true copy.

JESSE R. SALMON,

Clerk.

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Oath of Stenographer.

FURTHER DEPOSITIONS.

Filed October 9, 1922.

IN CHANCERY OF NEW JERSEY.

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Between

ROY H. KNIBB,

Petitioner,

*On Petition
for Divorce.*

and

MODESTA HELEN KNIBB,

Defendant.

*Oath of
Stenographer.*

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

Marie Schneider being duly sworn says that she will faithfully and truly take stenographically and reproduce in manuscript or typewriting the testimony to be given in the above-entitled cause.

MARIE SCHNEIDER.

Sworn September 22, 1922, and subscribed
October 5, 1922, before me.

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SAMUEL W. BOARDMAN, Jr.,

Special Master in Chancery of New Jersey.

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Deposition of Frederick J. McCloud.

IN CHANCERY OF NEW JERSEY.

Between

ROY H. KNIBB,

*Petitioner,
Complainant,**On Petition
for Divorce.*

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and

MODESTA HELEN KNIBB,

Defendant.

Further depositions taken before Samuel W. Boardman, Jr., Special Master, at his office, Room 519, Clinton Building, 20 Clinton street, Newark, N. J., on Friday, September 22, 1922, at 2:30 P. M.

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Appearances:

John W. Bostwick, Esq., solicitor for petitioner.

FREDERICK J. McCLOUD, a witness produced on behalf of the petitioner, being first duly sworn, testifies as follows:

I live at 532 Jefferson avenue, Elizabeth, N. J., and have lived there for about fifteen years or more. I know Mrs. Roy H. Knibb. I have known her for at least fifteen years. Her maiden name was Modesta Engel. She now lives at 1113 Mary street, Elizabeth, N. J. She has lived there to my knowledge at least ten years. She lives with her parents. I have seen her since October, 1919. I saw her at her home several times and various other places in Elizabeth. I met Mr. Knibb, the petitioner, once or twice. I have seen him at Elizabeth at the home of the defendant's parents before she was married. I have not seen him since the marriage. The home of the Engels is approximately one

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Deposition of Ray F. Van Seggern.

10 block from where I live. Though I have met the defendant, Mrs. Knibb, several times I do not really know about her attitude about living with the petitioner. Since the time that Mrs. Knibb has had her baby to my knowledge she has resided at 1113 Mary street, Elizabeth, N. J., continuously with the probable exception of a short period during the summer months at which time she was at Sea Girt, N. J., at her uncle's home.

Sworn and testified to this 22nd day
of September, 1922, before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey.

20 RAY F. VAN SEGGERN, a witness produced on behalf of the petitioner, being first duly sworn, testifies as follows:

30 I am the Ray F. Van Seggern who testified at the previous hearing in this cause. By the "Robert Treat Hotel", in my former testimony, I mean the well-known hotel at Newark, New Jersey, located at Park Place in said city. I know that Mr. Knibb lived previously on Clinton avenue, Newark, N. J. I know where the house is although I do not off-hand recall the number. I know that the numbers on Clinton avenue begin at Broad street, Newark, and the house is located between Halsey street and Lincoln Park. This is only a block and a half from Broad street. I visited him while he lived there probably three or four times during a month. To my knowledge he lived at this address on Clinton avenue, Newark, N. J. prior to the war and for almost one year afterward. He lived at the Robert Treat Hotel only when he was unable to obtain his room and accommodations at the Clinton avenue address which he always occupied as his headquarters. For the following two years he made his

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Deposition of Ray F. Van Seggern.

headquarters at the Robert Treat Hotel, Newark, N. J. By his headquarters I mean that he lived there all the time when he was in Newark. His parents lived at Bluefield or somewhere in West Virginia and that was the only place aside from Newark which was in any way his home. Newark was the place from which he went out on all his trips and to which he returned from them. I have written to him while he was away on the road travelling. I would address him at the various hotels where he was accustomed to stop. The house that Mr. Knibb lived in on Clinton avenue, Newark, N. J., was next to a church. 10

Sworn and testified to this 22nd day
of September, 1922, before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey. 20

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Deposition of Harry Thomas.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ROY H. KNIBB,</p> <p style="text-align: center;"><i>and</i></p> <p>MODESTA HELEN KNIBB,</p>	<p><i>Petitioner,</i></p> <p><i>Defendant.</i></p>	<p><i>On Petition</i></p> <p><i>for Divorce.</i></p>
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Further depositions taken before Samuel W. Boardman, Jr., Special Master, at his office, Room 519, Clinton Building, 20 Clinton street, Newark, N. J., on Friday, October 7, 1922, at 4:30 P. M.

20 Appearances:

John W. Bostwick, Esq., solicitor for petitioner.

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

HARRY THOMAS, a witness produced on behalf of the petitioner, being first duly sworn according to law, testifies as follows:

30 I live at the Savoy Hotel on East Park street, Newark, N. J. I am a hotel detective. I am employed by the Robert Treat Hotel and have been so employed for the past four and a half years. I know Roy H. Knibb, the petitioner, in this case. I have known him for the past four years. I know him as having been a guest at the Robert Treat Hotel. Since I have known him four years ago Mr. Knibb had been a transient visitor making stays from a week to ten days at a time. The reports show that he was there monthly. I have found some of the reports, and each of these gives when he was there

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Deposition of Harry Thomas.

and the time he would stop for a week or ten days. This statement will cover all of the last four years. The last time I saw him was in July of this year. Then I saw him in the lobby at the desk. I know that he stopped there as a guest at that time. He was in the hotel from July 11th to July 16th, a five-day stop. I have not refreshed my memory by looking at the records of the hotel. I did not know Mr. Knibb's wife. 10

Examination by the Master.

Q How many times had you seen Mr. Knibb at the Robert Treat Hotel? A On all of his visits. I came in direct contact with all of our guests being on the lobby floor.

Q Do you know where Mr. Knibb spent his time when he was not at the hotel? A Travelling.

Examination by the Solicitor. 20

I never knew of his living elsewhere in Newark than at the Robert Treat Hotel.

Examination by the Master.

Q Do you know of his having a home anywhere else during these four years? A No, sir.

Q Was he old enough to vote? A Yes, sir.

Q Do you know where he did vote? A No, sir. 30

Sworn and testified this seventh day of October, 1922, before me.

SAMUEL W. BOARDMAN, Jr.,
Special Master in Chancery of New Jersey.

Master's Certificate.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>		
	ROY H. KNIBB,		
10		<i>and</i>	
	MODESTA HELEN KNIBB,		
		<i>Plaintiff,</i>	} <i>On Petition for Divorce.</i>
		<i>Defendant.</i>	

MASTER'S CERTIFICATE.

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

20 I, SAMUEL W. BOARDMAN, Jr., the Special Master to whom the above-entitled cause was referred, hereby certify that the depositions appearing above (2½ #1½ pages) were taken in my immediate presence and hearing by Miss Marie Schneider, a stenographer selected and sworn by me faithfully and truly to take stenographically and to reproduce in manuscript or typewriting the testimony given; and I believe that they accurately state the evidence given.

30 SAMUEL W. BOARDMAN, JR.,
Special Master in Chancery of New Jersey.

A true copy.

JESSE R. SALMON,
Clerk.

Memorandum by Advisory Master.

MEMORANDUM BY ADVISORY MASTER.

Filed October 25, 1922.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ROY H. KNIBB,</p> <p style="text-align: center;"><i>and</i></p> <p>MODESTA HELEN KNIBB,</p>	<p><i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p><i>Defendant.</i></p>	<p><i>On Petition for Divorce.</i></p> <p><i>Memorandum by Advisory Master.</i></p>	<p>10</p>
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JOLINE, A. M.:

The petition alleges that the parties were married on October 6, 1919; that the defendant deserted the petitioner on the same day, and that the said desertion has been wilful, continued and obstinate. The marriage took place in the State of New York, the ceremony being a civil one. The testimony of the petitioner is that after the marriage they went down to Fulton street, or some other street, to a restaurant and had dinner, and that the father of the defendant then said, "You know that you are not to live with my daughter unless you agree to another marriage by our faith, by the Catholic faith." The petitioner then asked the defendant if she was not going to be his wife. She replied yes, but added that she could not live with him or would not live with him unless he agreed to her wedding. I presume by this that she meant a ceremony by the Catholic faith. After dinner she left him at the corner of Fulton street and Broadway, and told him that she did not intend to live with him unless they had another wedding, and her father also informed him that he was not to see her again unless he agreed

Memorandum by Advisory Master.

to what they wanted him to do. He, the petitioner, came back to the Robert Treat Hotel, and immediately 'phoned to her at her address in New York, telling her that he wanted to come over and see her. She told him that he could not see her that day but could the next afternoon. The next afternoon he went to see her, at her
10 New York address, met her in the office and they sat down and talked for several hours. He asked her at that time if she would come and live with him, but she obstinately refused to do so, saying that if he would agree to her marriage by her faith she would, otherwise, she could not and would not.

He also testified that he telephoned to her and that on December 7, 1919, he asked permission to go down and see their baby, which was born December 7, 1919. That this was refused by her and she referred him to her
20 father; that he would have to make any request of him, and that the father told him that a later date would be just as well as then; that he was going out that evening and that he, the petitioner, could not see his wife unless he, the father, was with him; that he telephoned her in April, when he came back from a trip, but did not see her on that occasion and does not remember their conversation; that there was never any conversation between them, but that the matter of her return was the basis
30 of their conversation and for her to live with him and be his wife. He testified that she said she liked him but that she would not live with him unless they had a ceremony in her faith. He also says that he saw her in Elizabeth in the presence of her father in the latter part of June or July, 1920, and practically the same thing occurred; that her father also said the same. He also testified that he telephoned her several times during the next period of about a year; that he saw her again about May, 1921, with a friend in Newark, and she at that time remarked, the more they talked on the subject the further
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Memorandum by Advisory Master.

away they got; that she could never be his wife without his first marrying her by her faith; that her friend tried to persuade him to her wedding, which he could not do; that he did not feel that it was necessary and that his own conscience would not allow him to; that he saw his wife several times in June, 1920, the last time, at the Robert Treat Hotel, there being present at that time her cousin, Petronella Nolte and J. J. Hopkins; that he has not seen her since; that there were several persons present when he had telephone conversations with his wife and with her father and that Ray Van Seggern was present at the conversation in January, 1920. He also testified to having received a letter dated Monday, signed Ditty, enclosed in an envelope postmarked Elizabeth, June 6, 1921, bearing the address of 1113 Mary street, Elizabeth, New Jersey, on the back, which was in her handwriting and which letter he received at Roanoke Hotel, Roanoke, Virginia.

There is no date to said letter but it was evidently written on June 6, 1921, for that is the date upon the envelope. This was a year and nine months after the date of the marriage. The following is a copy of said letter:

#Monday.

My dear Roy:

Many thanks for the letter, card and booklet. The caverns of Luray seemed quite wonderful and only wish I could have been with you to enjoy same.

Needless to say I was so pleased to hear from you, especially, when you were *as* terribly tired. I intended writing you last evening but didn't feel very well and I was all alone and felt so lonesome. I wouldn't dare write you. I feel pretty good today tho. Elise is also as well as ever. I know Roy you aren't happy and neither am I, altho I try my best to appear so. I understand how you feel and you won't feel happy until your mind is at ease. You at least can keep control of your nerves, for which you can be thankful, but you know what I am. It will

Memorandum by Advisory Master.

only take a couple of minutes to be married by a Priest. We won't have to be talking about religion. If you do what your conscience tells you you can't help but be happy and the same way with me. Life is nothing but a chance anyway. Any couple who gets married, they do not know if things are going to be happy do they? You know I do not believe in divorces. That is the cause of unhappy marriages. They are granted *to* easily and what do those people get out of life. They can't expect happiness and do not deserve it. You don't think I would ever marry another person no matter who or what he was. People would never get over talking about me, especially being what I am. Do you really think God has given us Elise to keep us apart or what? Probably I have been so awful I don't deserve happiness, but still I am fool enough to hope. What do we get out of arguing about that question. Nothing, do we? Roy, I do want you and I will make you happy. We can try anyway. Then if we aren't happy, you will be free to do what you want, and I can't be any more unhappy than I am. Please dear, don't say no. You promised me you wouldn't write anything that would make me feel unhappy or badly, don't you remember.

Petronella's beau is more attentive than ever. They were here for a few moments yesterday afternoon, both inquiring about you. Mr. Ryan said when I wrote you, to tell you to come home and they'll stand up for us and then they'll bring the baby down to us. He thinks Elise is wonderful. Petronella has everything and always will have. Some people are born lucky.

Be good dear and try and write me just as soon as you can. Hoping your wisdom tooth is alright by this time. With lots of love from your little baby and more from the same.

Ditty.

P. S. Elise just gave me two kisses for you.

Memorandum by Advisory Master.

William Henry Calhoun swears that he does not know the petitioner's wife and he does not know what his attitude has been except from conversations that he had had with him on the subject; that he does not know anything from other sources, so that it appears from his testimony that all he knows of the failure of the parties to live together was told him by the petitioner. Of course, this is not a corroboration. 10

Ray Van Seggern says that he was introduced to the defendant in 1918, and that he met her after the marriage, that is, after he was told of the marriage; that he has been present at telephone conversations between Mr. Knibb and his wife, but has not been present at any personal conversations; that he was present in one of the rooms at the Robert Treat Hotel, at which time the petitioner told him he was going to make a call on the 'phone, that he heard him call the Elizabeth number, but does not remember the answer; that he asked for Mrs. Knibb, and after a pause, asked "is that you, Modesta;" that a long conversation followed in which he asked about her welfare, about the child in question, expressed a desire that he would like to see the child and that he would like to go down and see her. After the conversation was over, he turned to Van Seggern and said "what do you think of that;" that Van Seggern asked him "what do you mean," and that he demonstrated an attitude very plainly that he was disappointed, angry and sore; that he was able to testify as to what Mr. Knibb's attitude had been toward his wife only through his conversations with him, and that they indicated that he was anxious to establish a home. 20 30

Clearly neither of these witnesses corroborates the petitioner as to the desertion nor as to the refusal of the defendant to live with the petitioner. Every material allegation in a divorce suit must be corroborated, and it is apparent that the petitioner is no corroborated except 40

Memorandum by Advisory Master.

10 from the letter. In it the defendant says that "it will only take a couple of minutes to get married by a Priest, we will not have to be talking religion." I do not think that this is a corroboration of a wilful desertion on October 6, 1919, the date of the marriage. That marriage was unquestionably legal, and it was the duty of the defendant to live with the petitioner, but I think that it can be gathered from a fair reading of the petitioner's testimony, that, when the parties were married in New York, although the petitioner did ask the defendant to go home and live with him as his wife, and she declined to do so unless married by the Catholic faith, he tacitly coincided and did not refuse to be married by the Catholic faith until afterwards.

20 For this reason I do not think that the failure of the defendant to go that night with the petitioner and live with him was a wilful desertion. Even if it were a wilful desertion, it was the duty of the husband to do all in his power to induce his wife to return to him and this must be corroborated. *Sterling v Sterling*, 1st Buch. 59, unless the circumstances under which she left were such as to make this unavailing. *Marsh vs. Marsh*, 1st Buch. 419. The latest case upon this subject is, I believe, that of *Schmidt vs. Schmidt*, 117 Atlantic, p. 400. The court therein held that the petitioner did not make a reasonable effort toward reconciliation. He wrote a number of
30 letters to his wife, asking to be taken back, only one of which was answered, which letter he does not produce, and after a lapse of time, he sent two women acquaintances to solicit her to do so, and she refused. Letter writing, says the court, was not the way; personal contact, heart to heart talks, might have brought favorable results. The use of women missionaries was tactless, and an affront which any spirited wife would resent, which this one undoubtedly did. The petitioner is not corroborated in this respect except by the testimony of Mr. Bradner, who
40 went to see the defendant in the fall of 1821. This date

Memorandum by Advisory Master.

must be correct because the testimony was taken on Friday, the 17th day of February, 1922.

He further testified that he saw her at her home in Elizabeth; that he had a conversation of some length with her; that his conversation had to do with the question of the petitioner and the defendant living together as husband and wife and that it was for that purpose that he went down to see her; that the petitioner was a friend of his, a man about town; that he had talked about the relationship of the parties and that the petitioner asked him if he could not possibly do something for him to bring them together, and with that in mind, he visited the defendant; that on the first occasion he saw the defendant's father, and told him that he came as a friend of Mr. Knibb; that Mr. Knibb was desirous of living with his wife, willing to make a home for her; that they talked the matter over, and the father repeated to him that he did not want the petitioner to live with the defendant unless they did what was to him the necessary ceremony; that he did not see Mrs. Knibb on this occasion and that the father would not let him see her.

The special master stated that this evidence was hearsay, but that he admitted it at the instance of the petitioner's solicitor, that it was competent and proper testimony. While I do not agree with the master in this respect, the evidence is of no avail in this case. It was the statement of a third person made in the absence of the defendant and she is not bound by it. Mr. Bradner also testified that late last fall he arranged with the father to see the defendant, and that he went down there one evening and talked with her simply as a friend of the petitioner; that he told her that Mr. Knibb was very fond of her; very anxious to live with her as man and wife, and wanted to make a home for her, and personally, he, the defendant, could not see why they should not

Memorandum by Advisory Master.

live together, as they were legally married; that she told him that she could not live with the petitioner unless they were married in accordance with her religious views; that the conversation lasted about a half an hour, and that the father was present part of the time, and that during a part of this conversation the father was not present; that he, the witness, was convinced that it was her will as the way she expressed it; that the attitude and statement were the same as it was when the father was not present.

The petitioner does not produce any witness to corroborate him except Mr. Bradner, and I think that if Mr. Bradner's testimony is of any avail, it must be to cause the desertion to start in the fall of 1921. I look upon Mr. Bradner's testimony as an effort on the part of the petitioner to create a status. He was sent to the defendant to ask her to return just before this suit was commenced. See *Arrowsmith vs. Arrowsmith*, 71 Atlantic 702-704, *Fraser vs. Fraser*, 2 B. Stockton 635, wherein the court held that a certain letter was evidently written to lay the basis for a divorce in this state.

While I do not think that the petitioner has established his case, it is to be regretted that the parties are separated. The marriage was legal and the petitioner is strictly right in his unwillingness to agree to another ceremony of marriage. The law looks upon the marriage contract as a civil one and a religious ceremony is not necessary, but I think that the petitioner should accede to the wishes of the defendant. Such a matter is generally more sacred to a woman than to a man. The state is always a third party to every divorce suit, and it is its purpose and desire that the sanctity of the marriage ceremony should remain unbroken. It is doubly so in a case like this because of a child, who should have the support, care and attention both of the father and mother.

Memorandum by Advisory Master.

Each of these parties seems to be fond of the other. Mr. Bradner testifies to that of the husband and the husband's testimony shows it. The letter of the defendant in almost every line breathes affection, esteem and love, and it is a pity that a religious ceremony should separate them.

I feel obliged to advise a decree denying the divorce for failure of proof. 10

A true copy,

JESSE R. SALMON,
Clerk.

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Decree of Dismissal.

DECREE OF DISMISSAL.

Filed November 2, 1922.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> ROY H. KNIBB, <i>and</i> MODESTA H. KNIBB,</p>	<p><i>Petitioner,</i> <i>Defendant.</i></p>	<p><i>On Petition for Divorce. Decree of Dismissal.</i></p>
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20 This matter being opened to the court by Heine, Bostwick & Bradner, the solicitors of the petitioner, and the Court being of the opinion that the petitioner has failed to sustain the allegations of his petition.

It is thereupon on this 1st day of November, 1922, ordered, adjudged and decreed that the petitioner's petition be and the same is hereby dismissed.

E. R. WALKER,

C.

30 Respectfully advised.

C. V. D. JOLINE,
A. M.

A true copy.

JESSE R. SALMON,
Clerk.

Notice of Appeal.

NOTICE OF APPEAL.

Filed January 7, 1923.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> ROY H. KNIBB, <i>and</i> MODESTA H. KNIBB,</p>	<p><i>Petitioner,</i> <i>Defendant.</i></p>	}	<p><i>Notice of On Petition for Divorce. Appeal.</i></p>	<p>10</p>
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To the above-named defendant:

Please take notice the petitioner, Roy H. Knibb, hereby
appeals from the whole and every part of the final decree
made in the above-stated cause on the first day of No-
vember, 1922, to the Court of Errors and Appeals, the
last resort in all causes.

HEINE, BOSTWICK & BRADNER,
Solicitors for Petitioner.

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

M. CASEWELL HEINE,
Of Counsel.

Notice of Appeal.

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

William B. Johnson, being duly sworn according to law,
 deposes and says that on January 3, 1923, he served a copy
 of the above notice on Modesta H. Knibb, the defendant,
 by handing the same personally to her at her residence,
 10 No. 1113 Mary street, Elizabeth, N. J.

WILLIAM B. JOHNSON.

Subscribed and sworn to before me
 this , day of January, 1923.

ISIDOR KALISCH,
Master in Chancery of N. J.

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Petition of Appeal.

PETITION OF APPEAL.

Filed Jan. 7, 1923.

*To the Honorable, the Court of Errors and Appeals, and
the last resort in all causes:*

The petition of Roy H. Knibb, the appellant in the
above-stated cause, respectfully shows that your peti- 10
tioner finds himself aggrieved by a final decree made in the
Court of Chancery by his Honor, Edwin Robert Walker,
Chancellor of the State of New Jersey, bearing date the
first day of November, 1922, wherein the said Roy H.
Knibb was complainant and the said Modesta H. Knibb
was defendant, in this respect, to wit, that the said decree
adjudged that the petitioner's petition be dismissed. And
your petitioner humbly appeals from that part of the
decree of the Chancellor which decrees as aforesaid on 20
the ground that the same is erroneous for that the said
petitioner fully sustained the allegations of his petition.
Your petitioner, therefore, prays that the said decree of
the said Chancellor may be in the particulars aforesaid
reversed, set aside and for nothing holden and that your
petitioner may have such relief in the premises as to this
Honorable Court shall seem meet.

HEINE, BOSTWICK & BRADNER,
Solicitors of Appellant.

M. CASEWELL HEINE, 30
Of Counsel.

Dated, December 1, 1922.

Petition of Appeal.

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

10 William B. Johnson, being duly sworn according to law, deposes and says that on January 3, 1923, he served a copy of the above petition on Modesta H. Knibb, the defendant, by handing the same personally to her at her residence, No. 1113 Mary street, Elizabeth, N. J.

WILLIAM B. JOHNSON.

Subscribed and sworn to before me this
 day of January, 1923.

ISIDOR KALISCH,
Master in Chancery of N. J.

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New Jersey Court of Errors and Appeals

Between

ROY H. KNIBB,

Petitioner-Appellant,

and

MODESTA H. KNIBB,

Defendant-Respondent.

*On Petition
for Divorce.*

APPELLANT'S BRIEF.

Facts.

This is an appeal from the decision of the Court of Chancery dismissing petitioner's divorce petition on the ground of failure of proof.

Statement.

The petitioner and defendant were married on October 6, 1919, having been engaged for some year or so prior to the marriage. The parties were married in New York, by a civil ceremony. For the reason that they were desirous of concealing their relationship and her pregnant condition from people in the defendant's neighborhood at her home in Elizabeth, the defendant at that time resided in a hospital in New York. The petitioner was a Protestant and the defendant a Roman Catholic and immediately after the ceremony the father of the defendant, who was a witness to the marriage ceremony, stated that it would be necessary for the parties to go through with a religious ceremony before they might live together as husband and wife, the daughter concurring in this statement. The petitioner refused to go through with the religious ceremony and husband and wife thereupon separated and have never lived together. Two months after

this marriage ceremony a child was born to the defendant, the petitioner being the admitted and acknowledged father. Thereafter, the petitioner made numerous efforts to induce the defendant to take up her wifely duties, to which she objected unless he would consent to the religious ceremony. This he declined to do and the parties have continued to reside apart, the defendant residing at the home of her parents, having the custody of the child and refusing to accept support from the petitioner. A decree was advised by the Special Master but the petition was dismissed by Advisory Master Joline for alleged failure of proof.

POINT I.

The petitioner has fully substantiated the allegations of the petition by corroborative testimony.

The Advisory Master in this case has seen fit to advise a dismissal of the petition for alleged failure of proof and by this is meant, as a reading of his opinion makes apparent, a lack of corroboration of the petitioner's story on two points, namely, lack of corroboration of petitioner's dissent to the separation and lack of corroboration of his efforts looking toward a reconciliation.

The doctrine of corroboration in divorce cases is not a creature of statute but is the result of a long line of cases in this State, as is pointed out by Chancellor Walker in the case of *Rodgers v. Rodgers*, 89 Equity 1, 104 Atlantic 32. The *raison d'être* of this rule is founded undoubtedly on considerations of public policy connected with the interest of the State in such matters, as an "interested third party." It is to protect this interest of the State and to guard against collusive divorces that the doctrine of corroboration of material allegations was evolved. As the case points out—see conclusion of Advisory Master (now Vice-Chancellor) Church in *Rodgers v. Rodgers, supra*, each case must be separately considered on its own facts, and corroboration means merely the

introduction of evidence which will convince the Court that the petitioner's story is the truth and may consist, not necessarily of testimony, but of surrounding facts and circumstances which cast light on the affair and make the truth apparent. Thus, it has been held that failure to submit to a physical examination may be the corroboration required, the Court taking into consideration the difficulty and often impossibility of producing corroborative testimony ("testimony" as distinguished from evidence). See *Bissell v. Bissell*, N. J. Equity , 117 Atlantic 252.

The Advisory Master indicates that in order to establish a desertion it is necessary to establish by positive evidence that the precise date named in the petition was the date of the desertion. It is respectfully submitted that this is not the law and is an extension of the doctrine of corroboration as laid down by the cases, for corroboration is the introduction of evidence not to independently prove the truth of the allegations of the bill, but to furnish a basis from which its truth may be inferred. As we understand the law, the question in the case is this: Are there enough surrounding facts and circumstances to convince the Court that the petitioner is telling the truth when he says that he was deserted by the defendant and that he made *bona fide* efforts to induce her to return? (*Meek v. Meek*, 92 N. J. Eq. 23, 112 Atl. 409.) We recognize that the mere difficulty or even impossibility of producing corroborative testimony will not justify a decree, but we confidently assert that this difficulty is something to be taken into consideration in determining the amount of corroboration necessary to establish a case. Very obviously, the petitioner could not have called the defendant as his witness in this case, for even were she to testify favorably to his contention it would (apart from the question of collusiveness) not be the corroboration necessary. See *Garrett v. Garrett*, 86 Equity 293.

The gravamen of the offense charged is the deserting mind continuing for two years next preceding the commencement of the action. So that even if the Advisory Master is correct in his assertion that the separation on October 6, 1919, was by consent (though not for one moment do we admit that any such interpretation may fairly be made from a reading of the testimony in this case), if within three months petitioner desired to have defendant return to him and made her acquainted with that fact a desertion took place continuing for two years before the commencement of the action (the petition was filed January, 1922). In this contention we find support in the recently reported decision of *Orcutt v. Orcutt*, N. J. Equity , 119 Atlantic 377.

It is necessary to scrutinize the testimony of the petitioner and the other witnesses on the whole case in order to determine the credibility of the petitioner's story. The Special Master was at first dissatisfied with the proof of petitioner's residence. Petitioner produced a witness, one Harry Thomas, who completely corroborates him on that point. Petitioner was proven truthful as to this testimony. The Advisory Master was likewise dissatisfied with petitioner's statement regarding the civil ceremony of marriage and the certified copy of the marriage certificate. Petitioner produced an exemplified copy of this certificate and was proven truthful as to that testimony. He further testified that he was a salesman connected with the French Carbon & Battery Co., and traveled extensively. He was corroborated and proven truthful in this by the testimony of W. H. Calhoun, manager of the company (Case, p. 17). He testified that when he returned from a business trip he got in touch with his wife and was anxious to establish a home for her. In this he is corroborated and proven truthful by the testimony of Ray Van Seggern and Calhoun (Case, pp. 17 and 20). He testified that his wife at the time of the marriage resided at #1113 Mary street, Elizabeth, and that she was still residing with her father at that address. In

this he was corroborated by Frederick McCloud and thereby proven truthful in that regard (Case, p. 25).

He testified that he was anxious to live with Mrs. Knibb as man and wife and in this he is corroborated by the testimony of Palmer Bradner. This latter testimony is dismissed by the Advisory Master as an attempt to create a status, which opinion is, we believe, based on a misreading of the testimony, for whereas the Advisory Master states that Mr. Bradner's visit was "late last fall" and "just before the commencement of this suit" the witness' testimony in point of fact is that he made a trip to Elizabeth for the purpose of inducing the defendant to take up her residence with the petitioner "over a year ago" (Case, p. 21). This certainly is corroboration, not only of the desire of the petitioner to have the defendant live with him and his lack of consent to the separation, but also of efforts made in that direction. This visit of the witness Bradner did not result in an interview with the defendant, it is true, but only because her father would not permit the witness to interview her. "Mr. Engel (the father) would not let me see Mrs. Knibb on that occasion" (Case, p. 21). It is respectfully submitted that whether the learned Masters are respectively right or wrong as to the admissibility of or the binding force upon defendant of her father's statements (Case, p.) regarding the necessity of a religious ceremony, the testimony of this witness as to an attempt to see defendant to induce her to take up her duties as the wife of petitioner is full and ample corroboration of the petitioner's efforts toward reconciliation and of his state of mind. The witness Bradner made a later visit, another visit, in the fall before the filing of the petition, at which time he did interview the defendant and again attempted to induce her to take up her wifely duties and this visit, far from showing an attempt to create a status, seems to us to show that the petitioner was continuing his *bona fide* attempt to effect a reconciliation and to induce the defendant's return and that the positiveness of this final refusal was what induced the conviction that further efforts were hopeless.

The Advisory Master cites two cases supporting his contention that the visits of this witness were for the purpose of creating a status. The cases referred to are *Frazer v. Frazer*, 2 B. Stockton 635, and *Arrowsmith v. Arrowsmith*, 71 Atlantic 702. In the latter case a wife had been driven out of the house by a long continued course of brutality on the part of the husband. He wrote her upon advice of counsel a letter containing palpable falsehoods and stating among other things that he was "willing to forgive" past differences. The Court held that his words, even if they indicated a desire for a reconciliation, were insufficient in view of his acts indicating the contrary. In the *Frazer* case the defendant wife had been driven from the home by the conduct of the petitioner's mother, the wife's departure being apparently agreeable to the petitioner. After removing to this State from New York petitioner wrote defendant a letter stating that she could return if she so desired under the old conditions. The Court held that this letter *taken in connection with the petitioner's conduct* was written for the purpose of creating a status.

It requires no comment to indicate that these cases are not comparable or analogous to the present situation.

In addition, petitioner testifies as to letters written and telephone calls made with the same intent, and visits made for the same purpose (Case, p. 11), and efforts to see the defendant for the same purpose when her father prevented his actually seeing her (Case, p. 11). In this testimony he is corroborated in so far as corroboration is possible by the testimony of Ray Van Seggern heretofore referred to (Case, p. 19), and by the letter introduced in evidence and marked P. 1A and written June 6, 1921, as appears from the envelope marked in evidence P. 1B, which letter is identified by him as being in the handwriting of and signed by the defendant. This letter refers in terms to the fact of their separation and contains the following statement: "I know, Roy, you aren't happy and neither am I, although I try my best

to appear so. I understand how you feel and you won't feel happy until your mind is at ease." This it seems to us is a clear recognition and corroboration of petitioner's state of mind and of the fact that he desired her to be his wife in actuality. The letter then goes on to say: "It will only take a couple of minutes to be married by a priest." Here is corroboration of petitioner's story of the cause of the separation, *i. e.*, petitioner's failure to accede to defendant's request for a religious ceremony and defendant's refusal to live with him without it. That this refusal was unjustified and as such constitutes a wilful and obstinate desertion is clear and is admitted in the opinion of the Advisory Master.

We have dealt, we believe, sufficiently at length on the propositions contained in this case with the exception of the petitioner's lack of consent to the separation. We confess that we can see no distinction or no rule of reason that would make the evidence showing corroboration of lack of consent to a separation different when the deserting party is the wife than when the deserting party is the defendant. The duty of the husband to induce his wife's return is an additional duty imposed upon the man, and his efforts to induce a wife to return may be at times a factor in determining his state of mind as to the separation, that is to say, that it either is against his will or with his consent, but we know of no case holding that the date of the desertion is fixed by the date at which the husband can show by corroborated testimony that he made a *bona fide* effort to have his wife return. It is in fact obvious that this cannot be the law for the reason that the duty to make overtures does not exist if the "temper or disposition" of the deserting party shows that such efforts would be unavailing. *Hall v. Hall*, 60 Equity 470. We believe the cases show that efforts to induce a deserting spouse to return at any time within the two-year period is sufficient as corroboration to show petitioner's state of mind at the time of the desertion. *Alward v. Alward*, 65 Equity 28; *Hunt v. Hunt*, 29 Equity

96; *Klein v. Klein*, N. J. Equity , 110 Atlantic 570. In the Klein case, for instance, it would appear that the first effort of the husband to have his wife return was made eleven months after the desertion, and the first corroborated testimony to that effect even later, and that at this later time petitioner remarked that he was through with defendant.

In the case of *Heer v. Heer*, 72 Equity 617, the corroborated testimony of the wife regarding acts of cruelty tending to show a loss of regard and affection for the wife, together with statements of the defendant that he did not intend to return, were held to be sufficient evidence to show a desertion. Nothing is here said about the state of mind of the petitioner, and this in spite of the fact that the deserting husband's conduct was well tended to induce a feeling of relief at his departure rather than to create an inference that the separation was against the wife's will. Nothing is so difficult to prove as a state of mind, and we believe that the principle is correctly laid down in the case of *Treacy v. Treacy*, 62 Equity 807, a Court of Errors and Appeals case, to the effect that where there is nothing improbable about the petitioner's story, that story is what should and must govern the Court where the question of a state of mind, which is of itself practically impossible of proof, becomes a material element. (See also *Carroll v. Carroll*, 68 Equity 724.)

The decision of the Advisory Master in this case seems to be based on the theory as stated by him that "It can be gathered from a fair reading of the petitioner's testimony" that when his wife declined to live with him as his wife that "he tacitly coincided and did not refuse to be married by the Catholic faith until afterwards." How the Advisory Master reaches this conclusion we do not know, and as the Advisory Master has not seen fit to point to what testimony he refers to as being susceptible to such an interpretation by a fair reading we are entirely at a loss as to what this conclusion is based upon.

Petitioner's own testimony on this point is that on the day of the marriage after defendant and her father had made the positive declaration that she would not live with petitioner, he, the petitioner, immediately after arriving home telephoned the defendant (her father being absent) and stated that he wished to come over and see her (Case, p. 10). *Does a fair reading of this indicate that the separation was by his consent?*

The defendant told him that he might come to see her the following day "unbeknown to her father." This he did. He testifies he talked with her for several hours. "I asked her at that time to come and live with me, but she obstinately refused to do so, she said that if I would agree to her marriage by her faith she would, otherwise she could not and would not" (Case, p. 10). Does the fact that the petitioner says "*she obstinately refused*" indicate by a fair reading that this refusal was with his consent?

Petitioner was shortly thereafter forced to leave on a business trip. He wrote numerous letters to the defendant. On his return he tried to see her but was referred to her father (Case, p. 11), who refused permission. On this occasion he asked her over the telephone to come to live with him. He was away again and on his return was again refused permission to see the defendant. He went to see her without this permission and was with her for several hours seeking her return to him. *Does a fair reading of this indicate that this refusal was with petitioner's consent?*

This case as before stated resolves itself into a question of the credibility of the petitioner's story. We feel that the facts and circumstances surrounding this case can lead to no other just conclusion but that the petitioner's story is the whole truth, and in this regard desire to point out that the Special Master who heard the case and who had an opportunity of seeing the witnesses and judging of their character and general credibility by their

demeanor and manner of testifying upon the stand was convinced of the truth and reliability of the petitioner's case and the justice of his contention.

POINT II.

It is respectfully submitted that the decree of the Court of Chancery dismissing the petition be reversed.

Respectfully submitted,

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M. CASEWELL HEINE,
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JOHN A. LAIRD,
On the Brief.

