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New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed August 2nd, 1917.)

20

IN CHANCERY OF NEW JERSEY

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,

Petitioner,

and

JEAN BENEDICT EUGSTER,

Defendant.

On Petition, &c.,
Decree *Nisi*

30

JEAN BENEDICT EUGSTER, the above named defendant, hereby appeals from the Decree *nisi* filed in this cause, and dated June 27th, Nineteen hundred and Seventeen, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, July 31, 1917.

QUEEN & STOUT,
Solicitors for and of
Counsel with Defendant.

40

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

EDWARD P. STOUT,
Of Counsel with Defendant.

(Service acknowledged July 31, 1917.)

10

Petition of Appeal*(Filed August 21, 1917)*NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

20	Between MARIA A. EUGSTER, and BENEDICT EUGSTER, 	Respondent, Appellant.	}	On Appeal from Chancery.
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TO THE HONORABLE COURT OF ERRORS AND APPEALS,
 in the last resort in all causes :

30 The petition of Benedict Eugster, appellant, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 27th day of June, A. D., 1917, in that said decree recites and adjudges that your petitioner is guilty of willful, continued and obstinate desertion of the respondent for the term of two years, as alleged in her petition and doth decree that the marriage existing between your petitioner and the respondent, Maria A. Eugster, be dissolved for the cause aforesaid; and that the said decree recites and adjudges that your petitioner has not sustained the allegations of his cross-petition and is not entitled to the relief therein prayed, and doth decree that your petitioner's said cross petition be dismissed. And your petitioner appeals from said decree and

from every part thereof, on the ground that the same is erroneous and that the Chancellor should have decided and adjudged that your petitioner is not guilty of desertion, and should have dismissed the petition of the respondent; and that the Chancellor should have found and adjudged the several allegations of your petitioner's cross petition to have been proved and the respondent, Maria A. Eugster, to have been guilty of willful, 20 continued and obstinate desertion by her of your petitioner for the term alleged in your petitioner's cross petition, and should have ordered, adjudged and decreed that your petitioner be divorced from the bonds of matrimony with the respondent for the cause aforesaid, and that your petitioner should have the other relief prayed for in and by his said cross petition.

Your petitioner, therefore, prays that said decree may be reversed, rescinded and for nothing 30 holden, and that your petitioner may have such further relief as shall be meet.

QUEEN & STOUT,
Solicitors for and of
Counsel with Appellant.

(Service acknowledged August 24, 1917.)

10

Answer to Petition of Appeal*(Filed September 10th, 1917)*

IN CHANCERY OF NEW JERSEY

20	Between MARIA A. EUGSTER, and BENEDICT EUGSTER,	Respondent, Appellant.	} On Appeal from Chancery.
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The answer of the respondent to the petition of appeal of the appellant.

30 The respondent admits it to be true that a certain decree *nisi* was on the 27th day of June, 1917, made and entered in the Court of Chancery as in the Petition of Appeal has stated; but as to the substance and sum thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that said decree is agreeable to law and equity and she prays that the same may be affirmed with costs to be adjudged to this respondent.

ISIDOR H. BRAND,
 Solicitor of Respondent.

Petition for Divorce*(Filed March 1st, 1916.)*

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

The petition of Maria A. Eugster of the Town 20
of West Hoboken, County of Hudson, State of New
Jersey, respectfully shows:

First: Your petitioner was lawfully joined in
the bonds of matrimony to her present husband,
Benedict Eugster, the defendant in this suit, on
the 23rd day of November, A. D., 1910; by Rev. Mr.
Meury, then a Minister of the Gospel at Jersey
City, in the County of Hudson aforesaid.

Second: The defendant deserted your petition- 30
er in the month of March, nineteen hundred and
thirteen; ever since which time, and for more than
two years last past, said defendant has willfully,
continuedly and obstinately deserted your peti-
tioner.

Third: Your petitioner and defendant have
been bona fide residents of the State of New Jer-
sey continuedly since their marriage.

Fourth: That there was no issue of said mar- 40
riage between petitioner and defendant.

Fifth: That your petitioner's name before said
marriage was Maria A. Cantzlaar, she being the
widow of one Cantzlaar.

Sixth: Your petitioner prays, that the mar-
riage between your petitioner and the defendant

Answer and Cross-Petition*(Filed April 20th, 1916.)*

IN CHANCERY OF NEW JERSEY

Between MARIA A. EUGSTER, and BENEDICT EUGSTER, Petitioner, Defendant.	}	On Petition For Divorce. 20
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The answer of Benedict Eugster, defendant, to the petition of Maria A. Eugster, petitioner.

1. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged. 30

2. This defendant denies that he deserted the petitioner in the month of March, 1913, and he denies that ever since that time, and for more than two years next preceding the commencement of this action, he has willfully, continuedly and obstinately deserted the petitioner; but on the contrary this defendant says that the petitioner deserted this defendant in manner particularly stated in the succeeding part of this answer which is in the nature of a cross-petition. 40

3. This defendant admits it to be true that the petitioner and this defendant were bona fide residents of the State of New Jersey when this supposed cause of action arose as alleged in the pe-

tition, and that the petitioner and this defendant have ever since continued to be bona fide residents of this State down to the time of the commencement of this action, residing at West Hoboken, New Jersey.

4. This defendant admits it to be true that no children were born of the marriage aforesaid.

20 5. This defendant admits it to be true that petitioner's name before said marriage was Maria Cantzlaar, she being the widow of one Cantzlaar.

This defendant prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

AND THIS DEFENDANT BY WAY OF CROSS-PETITION EXHIBITED AGAINST THE PETITIONER, SAYS :

30 1. Defendant cohabited with the petitioner for about one year after their marriage; and on November 7th, 1911, the petitioner deserted this defendant, ever since which time and for more than two years last past, said petitioner has willfully, continuedly and obstinately deserted this defendant.

2. Petitioner and defendant have been bona fide residents of the State of New Jersey for the period stated in petitioner's petition, and as admitted in the preceding part of this answer.

40 3. No children were born of the marriage, as stated in the petitioner's petition and as admitted in the preceding part of this answer.

Answer and Cross-Petition

10

Defendant prays that the marriage between this defendant (as cross-petitioner) and the petitioner (as defendant to said cross-petition) 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 as may be just.

And this defendant will ever pray, etc.

BENEDICT EUGSTER,
Defendant.

20

and

QUEEN & STOUT,
Solicitors of Defendant.

State of New Jersey, }
County of Hudson. }

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

30

BENEDICT EUGSTER.

Subscribed and sworn to before
me, at Jersey City, N. J., this
19th day of April, 1916.

Wm. R. Barricklo,
Master in Chancery of N. J.

40

Answer to Cross-Petition*(Filed May 8th, 1917)*

IN CHANCERY OF NEW JERSEY

	Between		} On Petition, etc.
	MARIA A. EUGSTER,	Petitioner,	
	and		
20	BENEDICT EUGSTER	Defendant.	

The answer of Maria A. Eugster, the above named petitioner, to so much of the answer of Benedict Eugster, the above named defendant, as in the nature of a cross-petition.

This petitioner, as defendant in the said cross-petition denies that on the 7th day of November, 30 1911, she deserted this defendant, ever since which time and for more than two years last past she has wilfully, continuedly and obstinately deserted this defendant.

And this petitioner denies that she has deserted this defendant and cross-petitioner as aforesaid, but on the contrary she says that the cross-petitioner has been guilty of a wilfull, continued and obstinate desertion of this petitioner in the manner and form as before alleged by this petitioner 40 in her petition.

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

MARIA A. EUGSTER.
Petitioner.

ISIDOR H. BRAND,
Solicitor for Petitioner.

Memorandum of Conclusion

10

(Filed July 11th, 1917)

IN CHANCERY OF NEW JERSEY

Between
MARIA A. EUGSTER,

Petitioner,

and

BENEDICT EUGSTER,

Defendant.

20

On petition for divorce on the ground of desertion, answer and cross-petition for divorce on the ground of desertion.

Heard on pleadings and proofs taken in open court.

30

Mr. Henry L. Slobodin, of New York, for petitioner.

Mr. Edward P. Stout for defendant.
STEVENSON, V. C.

It was the second marriage of each. Both were in middle life. The wife had property. The husband apparently had only his capacity to earn wages at his trade. Quarrels soon occurred. The husband apparently desired to get possession of his wife's property. Very soon the parties separated.

40

The case of the husband on his cross-petition in my judgment entirely fails. The only question, and it is a somewhat close one, is whether the pe-

petitioner consented to the separation—acquiesced in it to such an extent and with such a mind as to deprive the desertion of the husband of the element of obstinacy. In undertaking the solution of this problem I start with the conviction that the defendant, the husband, is utterly unreliable as a witness. His untruthfulness was manifested on the stand, and his deposition as read from the
 20 printed page in respect of various matters is improbable if not incredible.

On the other hand I was strongly impressed with the honesty and accuracy of the petitioner's testimony. She told her story just as she recollected the facts without regard to whether what she said helped or hurt her cause. The doubtful feature of the petitioner's case above referred to is disclosed by her own testimony.

Although I followed the testimony of the wit-
 30 nesses closely I found it necessary to have the entire testimony written out by the stenographer. This testimony I have perused with care.

My conclusion is that the consenting mind of the petitioner was caused by the violations of duty on the part of the defendant—that the petitioner would have been willing to live with the defendant if he had done his duty. A wife is not to be blamed for acquiescing in the separation from her of a husband who shows her that he married her in
 40 order to plunder her, beats her and treats her otherwise with cruelty. *Smith v. Smith*, 55 N. J. Eq. 222. *Wilson v. Wilson*, 66 N. J. Eq. 237. *Martin v. Martin*, 78 N. J. Eq. 423. *Kip v. Kip*, 78 Atl. Rep. 682.

A decree *nisi* in favor of petitioner will be advised.

Decree Nisi*(Filed June 27, 1917.)*

IN CHANCERY OF NEW JERSEY

 Between
 MARIA A. EUGSTER,

Petitioner,

and

BENEDICT EUGSTER,

Defendant.

 On Petition for
 Divorce

20

This cause coming on to be heard in the presence of Henry L. Slobodin, of Counsel with the Petitioner, and Edward P. Stout, Esq., of Counsel with the Defendant, upon petition, answer and cross-petition and answer thereto, and upon proofs taken in open Court; and the Court having read, heard and considered the pleadings and proofs in the cause and the arguments of counsel; and it appearing that the petitioner and the defendant were joined in the bond of matrimony on or about the 23rd day of November, A. D., 1910, and that the defendant has been guilty of willful continued and obstinate desertion of the petitioner for the term of two years, as alleged in the said petition and that at the time cause of action for divorce for the said desertion arose the petitioner and defendant were bona fide residents of this State, and the said petitioner has continued so to be down to the time of the commencement of this action, and it further appearing that jurisdic-

30

40

tion herein has been acquired by personal service of process upon the defendant within this State, as well as by an appearance and an answer of the defendant and his cross-petition filed against the petitioner; and it further appearing that the defendant has failed by his proofs to sustain the allegation of his cross-petition and that the same should be dismissed;

- 20 It is thereupon on this 27th day of June, A. D., Nineteen Hundred and Seventeen, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, hereby ordered, adjudged and decreed that the cross-petition of the said defendant, Benedict Eugster, be dismissed with costs and that the said petitioner, Maria A. Eugster, and the said defendant, Benedict Eugster, be divorced from the bond of matrimony for the cause aforesaid as charged in the petition of the said Maria
- 30 A. Eugster, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute, within six months from the date hereof.

E. R. WALKER,

C.

Respectfully Advised:

Eugene Stevenson, V. C.

Testimony

IN CHANCERY OF NEW JERSEY

Between MARIA A. EUGSTER, and BENEDICT EUGSTER, 	Petitioner, Defendant.	}	On Petition for Divorce.	20
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Before HON. EUGENE STEVENSON, Vice Chancellor, at Jersey City, New Jersey, on Thursday, March 8, 1917.

Appearances:

Henry L. Slobodin, Esq., (of the New York Bar)
for the Petitioner. 30

Edward P. Stout, Esq., (Queen & Stout) for the
Defendant.

MARIA A. EUGSTER, the petitioner, being
duly sworn, testified as follows:

Direct-examination by Mr. Slobodin.

Q. What is your name? A. Maria A. Eugster.

Q. Where do you live? A. 327 Mountain Road,
West Hoboken. 40

Q. You are the wife of the defendant, Bene-
dict Eugster? A. Yes, sir.

Q. When were you married? A. November 23,
1910.

Q. Where? A. In West Hoboken.

Q. By whom? A. Pastor Meury. He is dead
now.

10 Petitioner's: Maria A. Eugster—Direct

Q. Where did you live at that time? A. 421 Spring Street, West Hoboken.

Q. Did you have an apartment? A. My own room.

Q. How many rooms did you have there? A. Five.

Q. Furnished by yourself? A. Yes.

Q. With whom did you live there at the time of
20 your marriage? A. Myself and my son and daughter.

Q. What is his name A. Frederick Cantzlaar.

Q. What was your name before you were married? A. Maria A. Cantzlaar.

Q. That was the name of your first husband? A. It was.

Q. You say your daughter lived with you at that time? A. Until I was married. She married at the same time I married.

30 Q. And after your marriage with Mr. Eugster— A. My son lived with me.

Q. After your marriage with Mr. Eugster where did you go to live with him? A. I first lived in Spring Street in the home where I was married.

Q. He went to live with you in your apartment? A. He went to live with me in my apartment.

Q. How long did you live together there? A. After I lived there, in my own home—

40 Q. How long did you live in your Spring Street apartment with Mr. Eugster A. About two months.

Q. Then did you go out? A. I moved in my own house.

Q. You and Mr. Eugster? A. Yes.

Petitioner's: Maria A. Eugster—Direct

10

Q. Where was that? A. 327 Mountain Road.

Q. You own the house? A. Yes.

By the Vice Chancellor: Q. What was your husband's business, Mr. Eugster's business? A. He was in the dry goods business and I started to build a shop and put up money to buy an embroidering machine.

Q. What was his age? A. Fifty.

By Mr. Slobodin: Q. At the same place where your home is, 327 Mountain Road, you have a shop? A. Yes.

20

Q. The building belongs to you? A. Yes.

Q. And you put up some embroidering machinery there? A. I did.

Q. And Mr. Eugster was in business after your moving there? A. Yes, sir.

Q. What happened if anything after you moved with Mr. Eugster to 327 Mountain Road? A. Until 1911.

30

Q. How long after your marriage did you live together there? A. About nine months.

Q. What happened then, the first time after nine months. A. He came home and said he wanted to have his own room. He thought he would not live with me.

Q. You mean his own bed room? A. In his own room where he had his own furniture.

Q. You occupied one bed room during the nine months? A. Yes, sir.

40

Q. With Mr. Eugster? A. Yes, sir.

Q. And then after the nine months he preferred to have his own bed room? A. He did.

Q. What did you do then? A. He came home one night and he said I just looked like a gypsy to

10 Petitioner's: Maria A. Eugster—Direct

him; that he had enough gypsy life with me and he didn't think I could poison it any longer, and from then on he wanted his own bed room.

Q. What did you do then? A. He said he doesn't want to have anything more to do with me.

Q. What did you do then? A. Then he went to his own room and locked himself in there and he stayed in that room until 1913.

20 Q. About what month of the year was it that he stated all that? A. Well, I guess it was about October. I am not quite sure whether it was October or November 1911.

Q. And he continued to occupy his own bed room— A. Until 1913.

Q. About what month? A. I guess it was April. It was Easter Monday.

30 Q. What happened in April 1913. A. A wagon came and moved all his stuff out and he went to live somewhere else. He moved all his furniture out and lived somewhere else.

Q. He moved out in April, 1913. A. Yes.

Q. Did he come back since then? A. He never did come back.

Q. You continued to live— A. In the same place I live now.

Q. Three hundred twenty-seven Mountain Road? A. 327 Mountain Road.

Q. Did he move out with your consent?

40 Mr. Stout: I object to that as leading, and it also calls for a conclusion.

The Vice Chancellor: How could the question be put otherwise, Mr. Stout? It is part of the petitioner's case.

Petitioner's: Maria A. Eugster—Direct 10

Mr. Stout: What she said to him at the time of the leaving?

The Vice Chancellor: The question is proper.

Q. What, if anything was said by Mr. Eugster at the time he moved out? A. Nothing.

Q. What happened when he came into the house on the day he moved out? How did he act and what did he do? A. He simply moved his furniture. 20

Q. Were you there? A. I was there.

By the Vice Chancellor: Q. Do I understand, Mrs. Eugster, that after you had lived together and occupied the same room for about nine months — A. Yes.

Q. —your husband said he had enough gypsy life and he was going to take another room? A. Yes.

Q. This was when? A. I am not sure whether 30 it was October or November.

Q. What year? A. 1911.

Q. Did he then take another room in your house? A. He did, in my apartment.

Q. Where was that room? A. It was a private hall right next to the private parlor, and I had the room inside. I had a six room apartment.

Q. Was that adjoining yours? A. It did not. A private hall separated the rooms.

Q. Then there was no way of getting directly 40 from his room to your room? A. No.

Q. Did he put his own furniture in? A. Yes; he had his own furniture from his first marriage.

Q. How long did he live there? A. Until 1913.

Q. During that time did he have his meals there?

10 Petitioner's: Maria A. Eugster—Direct

A. He had his breakfast there.

Q. Did you get it for him? A. For a time, until the beginning of 1912, he ate there, and then he refused to eat there because he could not force me to put out my own son out of the home, and he refused to eat home. He had his breakfast until 1912 and in 1912 he asked me to make up with him and I said I would be willing to start all over
20 with him if he proved he wanted me and not my money, and he wanted me also to give him six hundred dollars for his working, and he claimed the machine I put up with my own money all belonged to him and he would throw me out of the business and I didn't think it fair I should pay him and put up all the money and afterward he should throw me out, and he said if I would not give him the six hundred dollars he would force me to go to Court and he would not give me one cent
30 whatever I put in the business, and that was the last we spoke together. He lived there from 1912 to 1913, I guess it was April, it was Easter Monday when he moved out. He had moved in the same room and had his breakfast and did not pay one cent for himself. He never paid a cent for my support, although he made good money in the business. He managed to take all the money in.

Q. Who has got that business now? A. Well, the machinery belonged to me until last summer
40 and I sold it. I had to go to court.

By Mr. Slobodin: Q. You had a case in court?

A. Yes.

Q. Litigated in this matter? A. Yes.

Q. And the case is still pending in the courts?

A. It is still not altogether settled.

Petitioner's: Maria A. Eugster—Direct

10

Q. Coming back to the period between 1911 and 1913 when he was living in the same apartment but in a separate room, did he live with you there as husband and wife? A. Never.

Q. Coming back to the day when he moved out, did he tell you why he moved out? A. We never spoke together.

Q. Do you mean to say for a period before that, for a long time, he did not speak? A. We never 20 spoke together.

Q. How long didn't you speak before that? A. Since 1912 when he asked me to make up with him.

Q. Now, after you married him did Mr. Eugster ask you to sign some papers in reference to the property which you own? A. Yes. About three weeks after we were married he came home one day and threw himself on the couch and did not speak and I thought he felt sick and I wanted 30 to go and ask him what was the matter and he pushed me away and said I should not come near him or touch him, that he couldn't be my real husband, that he was thinking too much of his other wife, and after a few days he came and handed me a piece of paper written in his own handwriting, that I should sign the paper or else he would leave me immediately, and in the paper he wanted twenty-five dollars a week and half the profit and he wanted power to sell the machinery 40 and house and everything that belonged to me whenever he felt like it. In case I should die, within three years after my death my children could not touch my real estate, whatever I had,

10 Petitioner's: Maria A. Eugster—Direct

and he could manage things as he pleased; and I was not willing to sign that paper.

Q. That was how long after you were married?

A. Three weeks.

Q. What happened then? A. He quarreled and knocked his fist around and when I saw him put a revolver under the pillow I got afraid and I signed the paper.

20 Q. You did sign the paper? A. Yes sir; I did sign the paper.

Q. After he moved out did you ever cohabit with him as husband and wife? A. Never.

Q. Did you consent to his leaving your bed room and going to a separate bed room? A. I did not. He did that by his own accord.

Q. Was there any time beside the one you mention, any conversation between you about making up—any other time? A. Not since 1912. That
30 was the last time.

By the Vice Chancellor: Q. When was this paper executed that you have told us about? A. Well, that was home.

Q. When? A. This agreement you mean?

Q. No; this paper you signed? A. It was about in January, the beginning, or the end of December. I could not say exactly the date, but it was about three weeks after I was married. I do not know whether it was the end of December or the first
40 of January.

By Mr. Slobodin: Q. 1911. A. 1911, December, or January, 1912.

Q. You were married, you said, November 23, 1910? A. Oh, I made a mistake. It must have been December 1910 or January 1911, either one. I don't know exactly.

Petitioner's: Maria A. Eugster—Direct 10

Q. What became of the paper? A. I don't know.

(At this point a recess was taken until two o'clock in the afternoon.)

Q. During the nine months that you lived with Mr. Eugster did you have any other quarrels, bad words, beside the one you spoke about when you signed the paper? A. Yes. 20

Q. Well, just state some of the conversation that you had with him on those occasions? A. When he wanted to force me to put my son out.

Q. When was that? A. That was in 1912, June or August; I don't remember exactly which.

Q. Was that before he took his own room? A. It was before that.

Q. What did he tell you? A. I got a letter from a lawyer and he said I had to put my son out or he would not eat home any longer and would make all kinds of trouble. He went to his lawyer and complained that I would not obey him and put my son out. 30

Q. Do you remember the name of the lawyer? A. Lichtenstein.

By the Vice Chancellor: Q. How old was your son? A. He was about twenty at that time. He is married now.

By Mr. Slobodin: Q. Did you speak to Mr. Eugster about that letter you received from the lawyer? A. I did. 40

Q. What did you say and what did he say? A. He insisted that I had to put him out; that he was the man and he had the right in the house

10 Petitioner's: Maria A. Eugster—Direct

and he wanted me to put my son out and I absolutely refused to do it.

Q. How many times did you have talks about that subject with him? A. Why, it was many times during the nine months; many times, and other trouble came up beside that.

Q. For instance, what other trouble? A. He had some fight with my son because I was not
20 willing to sign over my house to him. On account of that he was against my son and wanted me to put my son out because he thought he could get what he wanted then.

Q. What did he ask you to do about signing the house over? A. He said I wasn't his wife unless I would sign the house over to him.

Q. When was that, how soon after you were married? A. It started a few weeks after I was married.

30 Q. You said you signed a paper? A. That was including and after that too.

Q. After that too? A. Yes, many times.

Q. Referring to the house 327 Mountain Road? A. Yes sir.

Q. Did you sign over a house to him? A. I did not.

Q. Now you say you had the house and the shop and machinery at the time you were married to Mr. Eugster? A. I had that. It was in the
40 building; it was not finished.

By the Vice Chancellor: Q. Do you own the land. A. I do.

By Mr. Slobodin: Q. You own the house still? A. I do.

By the Vice Chancellor: Q. It was separate

Petitioner's: Maria A. Eugster—Direct 10

from the house, was it? A. The shop and the house is built together. The shop is built on to the house and there is where the machines are which I put in and started the business with—every penny of my own money.

Q. How wide is the lot? A. It is one hundred and eleven feet. It starts with six feet and ends with forty-two. It is a corner, a tri-angle.

By Mr. Slobodin: Q. After the marriage Mr. Eugster went into the business of embroidery in your shop? A. He did. 20

Q. And you managed it? A. He did.

Q. You had the business together? A. Yes.

Q. Did he have complete control of the business? A. He had complete control and would not let me look into the book, and he throwed me out and I was not allowed to enter the place.

Q. In whose name was the business? A. Under both. 30

Q. How was the firm name? A. On the door it was Eugster—Cantzlaar, and after the business was going on he had all the stationery under his name and put the name away from the door—only under his name.

Q. Did you ever speak to him, did you ever talk to him, to know something about the business?

A. When I did he only called me bad names. I could not do anything with him.

Q. Did you go into the shop? A. I did for about a year and after that he drove me out and would not allow me in. 40

Q. Did he use physical force? A. He did.

Q. When was that? Was that after he took his own room or before? A. It was after he took his own room.

10 Petitioner's: Maria A. Eugster—Direct

Q. Will you please describe the occasion, what occurred, how it happened? A. It was so many times that he called me out that I had to get out and lock the door where the entry was, so, of course, one time—If I could remember—It was in 1912; maybe in the beginning; I do not remember just exactly, and one time I went out, going into the business entrance and I wanted to look
20 up the telephone book and look up an address and he ordered me out.

Q. What did he say? A. That I had to get out; that I had nothing to do in his place and everything belonged to him and I only come to make him trouble.

Q. Everything belonged to who? A. To him, and if I wouldn't get out quick he would call a policeman and put me out, and I said I would wait there until he got the policeman and see if
30 he could put me out of my own place, and he looked and no policeman was around and he tackled the thing himself and he grabbed me and threwed me on the floor three times and my daughter-in-law and my daughter upstairs heard the noise and they came down and wanted to know what was the matter and they picked me up from the floor and took me upstairs and, of course, after that I never tried to enter from the employes' entrance.
40

Q. Did you go to court on that occasion and complain about it? A. I had him arrested.

By the Vice Chancellor: Q. When was this? How long ago? A. It was in 1912, if I am right. I cannot exactly remember that because so many things happened. It was nothing but trouble and

it is very hard for me to keep the dates and I am afraid I get mixed up with the dates. It was nothing but trouble from the first week of my marriage.

By Mr. Slobodin: Q. What were the subjects upon which you talked about with him? A. That I didn't sign over the house to him and I didn't put out my son. That was the main object.

Q. How many machines did you have in that shop when you started? A. Two. 20

Q. Chiefly embroidering machines? A. Yes.

Q. What was the value of those machines? A. They were at that time each about three thousand dollars worth.

Q. Did you have any other machinery beside that? A. Mending and sewing and motors; whatever belongs to the business.

Q. How was the household supported? Who gave the money to buy things for the house? A. 30 From 1910, the time we were married, up until 1911 in March I paid all the expenses. I supported him and paid the rent and paid even the drinks for him.

Q. During that time that you just mentioned was he working? A. No; he was not working. He said that he—

Q. Did he have any income that you know of during that time? A. Not that I know of.

Q. Do you know what was his occupation before he married you? A. Stitcher. 40

Q. Did he have his own business or work for others? A. He worked for others.

Q. So far as you knew his income was from his wages? A. So far as I know.

10 Petitioner's: Maria A. Eugster—Direct

Q. And during the time you mentioned he was not working? A. He was not working.

By the Vice Chancellor: Q. What is a stitcher—on embroidery? A. Yes.

Q. He works a machine? A. Yes.

By Mr. Slobodin: Q. After March 1911 what happened with reference to giving you money for support? A. Then he took fifteen dollars a week
20 out of the business for household expenses.

Q. At that time he was managing the business? A. Yes.

Q. And giving you personally fifteen dollars a week? A. Yes.

Q. How long did that continue? A. Until 1912; maybe until June or July; until I got the letter from the lawyer that I had to put out my son, and I refused to and he said he would only give me ten dollars.

30 Q. Did he give you ten dollars? A. He did pay ten dollars until 1912 in October. He asked me to make up with him again. He asked me for six hundred dollars.

Q. For what did he ask six hundred dollars? A. He said for his work.

Q. What did he mean? That is, what did he say about the work? A. To attend to everything, and the business, keeping it going.

40 Q. For his work in your business? Yes. Well, he claimed it was his own.

Q. Did you have money at that time in the bank? A. Certainly I had money in the bank.

Q. Did he know about it? A. Yes; he did.

Q. What did you answer to him about this request for six hundred dollars? A. I said that

Petitioner's: Maria A. Eugster—Direct 10

I did not think it fair for him to ask me always for money. He claimed the business belonged to him. He wanted every cent the business brought in and didn't pay me a cent either, and I didn't think it fair I should pay him and after putting up the business for him to claim it was all his own.

By the Vice Chancellor: Q. You say you bought the machinery? A. Yes, sir. 20

Q. And put it in your own building? A. Yes, sir.

Q. Who furnished the money with which the business was begun? A. I did.

Q. How much capital did you furnish? A. I put in to start the business \$3700.00. These machines were not paid in full; there was just the first two payments and the other payments has to be paid from the business, what it brought in.

Q. What did you do with this \$3700.00? How did you put it in—give it to your husband or what? A. Some I gave him and some I made a check and paid for everything in checks. 30

Q. What was the name under which the business was started? A. Eugster—Cantzlaar; in the both names.

Q. How did you come to use the name Cantzlaar—just for convenience? A. First I thought I put all the money in and sometimes it used to be put in both names, like in Switzerland. 40

By Mr. Slobodin: Q. You are Swiss? A. I am.

Q. And Mr. Eugster is Swiss? A. Yes.

Q. All the talks you had were in the Swiss language? A. In the Swiss Language.

10 Petitioner's: Maria A. Eugster—Direct

By the Vice Chancellor: Q. You mean German? A. It is a little different from German. It is all written down in German, but it is different; it is just like a patios.

By Mr. Slobodin: Q. You translated it into English and then you kept these books? A. Yes.

Q. Did you give Mr. Eugster any money before he asked you for the six hundred dollars, any
20 time? A. One time I did give him four hundred dollars to make a payment on the machines and he always said I never did give him this four hundred dollars and called me bad names and when he come and wanted the six hundred dollars I told him about this four hundred dollars and he always denied it and I said how can I have confidence in him after he simply denied it, that I give him any money, which he knows I did.

Q. You have mentioned several times that he
30 called you bad names. What names did he use?

A. All the bad names under the sun; most everything he called me.

Q. Well, some of them. A. He told me that I was an immoral woman; that I was a swindler.

Q. After 1912, up to the time when you received the lawyer's letter, you said he gave you ten dollars a week, and after that? A. After that he gave me ten dollars a week until 1912, in October.

40 Q. After October, 1912 what happened then?

A. He said he would not give me one cent whatever I put in the business and he would force me to go to court if I ever wanted a cent out of the business.

Q. Since then did you receive any money for

Petitioner's: Maria A. Eugster—Direct 10

the household? A. Not a cent. He lived there until 1913; he had a room there that he occupied and had his breakfast, and he didn't pay one cent for it.

Q. After he moved out did he continue occupying the shop? A. He did.

Q. And he had the office there in the building? A. Upstairs in the building.

Q. Besides the shop? A. Yes. 20

Q. How long did he continue occupying the shop and that office. A. Until 1914, March.

By the Vice Chancellor: Q. What happened then? A. Then he had to get out because the case came to court and the court decided that he had to get out; that everything belonged to me.

Q. Was there a receiver appointed? A. No; there was no receiver appointed.

By Mr. Slobodin: Q. Do you know what a receiver is? A. I know what a receiver is. There was no receiver appointed because it was proved in court I put up every cent for the business. 30

Q. Who was your attorney? A. Mr. Walscheid.

Q. Do you know who was the attorney for Mr. Eugster? A. Mr. Lichtenstein.

Q. Was the case tried? A. It was tried.

By the Vice Chancellor: Q. Where? A. Here in Judge Lewis' court, I guess.

By Mr. Slobodin: Q. Mr. Eugster boarded with you during the nine months you lived together? A. He did. 40

Q. After he moved out into his own room did he continue to eat at the table? A. Only breakfast.

Q. Before that he would eat all his meals there? A. Yes.

10 Petitioner's: Maria A. Eugster—Direct

Q. How long did he continue eating breakfast at the table? A. Until 1913, April, Easter Monday; I don't know what date it was.

Q. That is until the time he moved out? A. Until he moved out, 1913.

Q. And did he give you any money except the money you described, fifteen dollars and ten dollars a week, at any time? A. Never.

20 Q. Do you know whether he had put in any money of his own into the business? A. Nothing; just what he made from the business, because that he said belonged to him, and otherwise he had no money.

Q. Do you know whether there was any bank account kept by him of the business money, of the firm money, I mean, out of the business? A. I heard that he did keep an account, a bank account, in New York.

30 Q. During the trial of the case was it not disclosed that he had a bank account of \$1200?

Mr. Stout: Objected to as leading and based on hearsay.

(Question withdrawn.)

Q. Do you know of any bank money he has? A. There is still \$1200 tied up in the Commonwealth Bank on account of his business affairs.

40 Q. That was money made from the business?

Mr. Stout: Objected to.

The Vice Chancellor: Yes. It is hardly worth while to go into all the details of the business disputes between this couple.

Mr. Slobodin: It is only my desire to disclose the property of the defendant in

Petitioner's: Maria A. Eugster—Direct 10

the event any application is made for alimony and counsel fee, whether he has anything or not.

The Vice Chancellor: That inquiry can be better made afterwards.

Q. Did you receive from him any communication whatsoever, personally or through a third party, or any writing, after he moved out, after Mr. Eugster left? A. I do not understand you. 20
What do you mean by "application"?

Q. After Mr. Eugster moved out did you hear from him, any word at all? A. Through other people I heard all kinds of things, that he said all kinds of bad things.

Mr. Stout: I object to what other people said to her.

Q. Did he ask you anything or say anything personally to you after he moved out? A. We 30
never spoke together again.

By the Vice Chancellor: Q. After he moved out did he cease taking any meals? A. After he moved out he ceased.

Q. He ceased taking meals, his breakfast, at the time he moved out? A. Yes sir.

Q. And after that do you know where he lived? A. Yes; I found out where he lived.

Q. Did he continue in the possession of the shop, 40
in business? A. Until 1914.

Q. Now, give us the date or about the date when he went out, when he quit taking his meals and went away? A. On Easter Monday 1913. I do not know the date.

10 Petitioner's: Maria A. Eugster—Cross

Q. From Easter 1913 until 1914 he was running the business? A. Yes.

Q. And he ceased to run it only when the court took hold of it? A. Yes, sir.

By Mr. Slobodin: Q. State to the court whether or not you consented to his moving out at the time, in April 1913? A. I certainly did not consent. I didn't know what happened when I saw
20 the moving wagon coming and taking out his things.

CROSS-EXAMINATION by Mr. Stout:

Q. Mrs. Eugster, you instituted this suit in March 1914 against your husband? A. This divorce suit?

Q. No. I mean the other suit. A. That was in 1912.

Q. You started the other suit in 1912? A. 1912,
30 in the Fall. Maybe it was December; I do not know exactly now.

Q. Then this suit was pending against Mr. Eugster at the time he was still living in the house with you? A. Yes; he was there 1912, but I do not know whether it was November or December.

Q. You are quite sure the suit was begun in the Fall of 1912? A. 1912.

Q. And yet your husband had charge of your
40 business until 1914? A. Yes, sir.

Q. You say that the court took charge of the business. In what way? A. 1914.

Q. How did the court take charge of it, in what way? A. They just said he had to get out; that all belonged to me.

Q. And the court said in its opinion that you owed him something like \$3300, didn't it? Didn't the court say that? A. It was said that he could buy me out if he could get the money to buy me out, but the machines.

Q. Is it not a fact that the court made a decree that you owed Mr. Eugster \$3300 in the business and there is an appeal now pending in the New Jersey Court of Errors and Appeals? A. He 20
claimed—

Q. Answer my question? A. Well, that is the question. He claimed half the profit belonged to him, and this was the paper I was speaking about that he made me sign.

Q. The court said then that you owed him \$3300 or one half the profits of this business? A. Yes.

The Vice Chancellor: Mr. Stout, this is a very unsatisfactory way to prove what 30
the nature of the decree was between these parties and as yet I do not see any use in either side going into the details of business transactions between this couple.

Mr. Stout: I do not either, but the other side brought it out.

The Vice Chancellor: It is of importance to know there was litigation between them begun in 1912 and still continuing. 40

Mr. Stout: It is significant, Your Honor, that the woman claims Mr. Eugster deserted her in April 1913 and at that time she had a suit against him pending.

10

Petitioner's: Maria A. Eugster—Cross

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The Vice Chancellor: I just said that was important. I do not see that it aids us much as to the cause of the separation. I cannot exclude it, because as I had occasion to say this morning in a divorce suit where the issue is desertion, the whole matrimonial life is open to inspection because everything that occurs may have some influence upon the separation; but there is a limit beyond which it is useless to go. The defendant left the house in 1913, according to the evidence of the petitioner, or severed his cohabitation at that time. Now the question is was it a desertion on his part?

Q. Mrs. Eugster, you were married in November 1910? A. 1910.

30

Q. And you say you lived with your husband for nine months thereafter? A. About that.

Q. About nine months? A. Yes.

Q. Occupying the same bed? A. Yes.

Q. And living together as husband and wife?

A. Yes.

Q. For nine months. A. Yes.

40 Q. And is it not a fact that you told your husband that you would not sleep with him any longer and that he should take the bed room next to the toilet? A. That is an absolute untruth. That was his side that said that.

Q. When he said you were a gypsy and he would not sleep with you any longer—What did you say to him? A. Nothing. He just took this room. I couldn't speak to him. He only called me bad

Petitioner's: Maria A. Eugster—Cross 10

names and never gave me any attention. He threw things at me, and I couldn't speak to him any more.

Q. Have you spoken to your husband since that occasion in November 1911? A. I don't know what you mean.

Q. (Last question read.) A. Well, we have spoken. He still ate at the table at that time. He only separated himself in the room. 20

Q. Did you ever say anything to him in reference to his leaving you or going from the one room to the other? A. I never said anything.

Q. Never talked about that? A. I never talked about that.

Q. Were you willing that he should go? A. I never spoke anything about it.

Q. Were you willing? A. That was his doings. I was not willing. I was willing to make up with him. 30

Q. Did you ever tell him so? A. In 1912 when he came and asked me.

Q. He came and asked you to make up? A. In 1912 he asked me if I would be willing to make up.

Q. But you never asked him to make up? A. I never spoke to him.

By the Vice Chancellor: Q. When he asked you what did you say? A. I would be willing to start all over again with him if he proved he40 wanted me and not only my money.

Q. Did he make any effort to prove that to you? A. Yes; he wanted the \$600. He made me a bill and wanted me to pay the bill but I was not willing to pay the bill.

10 Petitioner's: Maria A. Eugster—Cross

Q. When you told him you were willing to make up with him if he proved to you that he wanted you and not your money, what did he say? A. Then he came in with the \$600 and wants me to give him the \$600 and if I would not give it to him he would force me to go to court.

By Mr. Stout: Q. When was that? A. October 1912.

20 Q. How long did you know Mr. Eugster before you married him? A. About half a year.

Q. Was the question of your going into this business discussed before you were married? A. It was.

Q. What was the arrangement between you and him in reference to this business? A. Why, he said it was so hard for him to work in the shops and he would get knocked out ever so much, and how he could make a lot of money if he had the
30 money to start his own business, so I told him after I knew him better I would be willing to invest my money that way and he could make a easy living.

Q. So you were willing to start him in business and you were to put up the capital? A. Yes.

Q. That was the understanding? A. It was.

Q. And he was to devote his time to it? He was experienced in that line of work? A. He was.

40 Q. What arrangement was there between you as to how much you should get out of the business and how much he should get out of the business? A. He said he wanted \$25 weekly and half the profits, whatever the business would bring, and he would be allowed to sell anything, whatever

he wanted and from everything one half of the profit was his.

Q. That was discussed before you were married? A. It wasn't altogether that way. That was in this paper.

Q. I am not talking about the paper. I am talking about before you were married. A. There wasn't anything said about profit before I was married. 20

Q. When the final arrangement was made between you and him how much interest did he have in the business, according to your agreement—one half? A. Why, it was understood—

Q. He was to have one half and you the other half? A. I wasn't willing to keep up this paper I had signed.

Q. Do you know whether he took anything out of the business? A. Sure he did.

Q. How do you know? A. It was proved when 30 the accountant went over the books and my son went over the books.

Q. Do you know of your own knowledge that he took anything out of this business? A. I don't know. He took everything himself. All I got was \$15.00 to run the household and otherwise I didn't know anything for he would not let me see the books.

Q. The money he gave you during the time you were living together, \$10.00 and \$15.00 a week, 40 was taken out of the business? A. Yes.

Q. But you don't know what he was taking out? A. I don't know what he did.

Q. After the suit was begun to get possession of the machinery, in the Court of Chancery, have you since then been willing to live with him? A.

10 Petitioner's: Maria A. Eugster—Cross

No; that was before that. I never asked him and he never asked me.

Q. Were you willing to live with him? A. He never spoke to me after that.

Q. If he had come to you would you be willing? A. If he would prove that he would deal fairly with me.

20 Q. You would still be willing to do that if he would deal fairly with you? A. Not now any more. It is impossible.

Q. When did you change your mind on that? Up to what time were you willing to live with him? A. Until 1912, and then it was enough to show me that he wanted nothing else but the money, and he played all kinds of tricks and said all kinds of things to press money out of me.

30 Q. Since 1912 you have not cared any more for him, have you, than you say he cared for you. Is that so? A. That is so.

Q. Then I understand after 1912 if he had returned to you you would not have accepted him as your husband? A. Well, I could not do it very well after he lived together with another one, and he had one to marry as soon as he was rid of me.

40 Q. He was ready to marry somebody else? A. He had another one he wanted to marry as soon as he had a divorce. He wanted to get the divorce before.

Q. But you started the proceedings for the divorce? A. That was long before. Knowing of this after 1912 I could not very well say I would be willing to live with him any more.

Q. You had several quarrels with Mr. Eugster in reference to your son? A. Yes I did.

Petitioner's: Maria A. Eugster—Cross 10

By the Vice Chancellor: Q. Let me see if I understand you, Mrs. Eugster. Do you say that until 1912 if your husband had come back and given your assurance he wanted to treat you fairly and rightly you would have taken him back? A. I would be willing to take him back and start all over with him.

Q. But you would not have been willing after 1912? A. After we had that talk. 20

Q. What talk? A. When he came to me and asked me if I would be willing to make up with him. After that he never spoke to me any more.

Q. That was in 1912? A. That was in 1912, in October.

Q. He came and wanted you to make up and you said you would make up if he proved he cared for you and not your money? A. Yes.

Q. Had you heard about the other woman that he wanted to marry then? A. Not that time. Afterward I heard that. 30

Q. I understand you to say he did not try to prove he cared for you and not the money? A. No; he did not. He just gave me to understand he wanted the money.

Q. After that you would not have taken him back, no matter what assurance he gave? A. No.

Q. If he came after that and talked of money and assured you he would be a good husband to you and that he would do the fair thing about the property and all that then you would not have taken him back? A. Your Honor, he has accused me of inhuman things. Under no circumstances could I live with him. It is so terrible I could not say it here—on account of me and my son. 40

10 Petitioner's: Maria A. Eugster—Cross

Q. Was that during 1912? A. It was right from 1911 to 1913.

Q. By Mr. Stout: Q. Who occupied the bed with you after your husband took this room along side of the toilet? A. Nobody.

Q. Wasn't there a woman by the name of Mrs. Burkhardt who shared the room with you? A. She was only a few days living with me.

20 Q. How long? A. I don't know; two weeks or three. She came from Europe and then she went to New York and found a place. Sometimes she still visits me today.

Q. Do you remember or recall saying in the presence of Mrs. Burkhardt that you did not want to have anything more to do with your husband? A. That is what he said.

30 Q. I am asking you whether you said it? A. I don't know anything about it. She heard enough—

Q. Don't volunteer anything. Just answer my questions, Mrs. Eugester? Do you remember in 1912 in the presence of Mrs. Burkhardt your husband asking you whether you would live with him again? A. He did not speak to me in front of her.

Q. He did not speak to you in October 1912? A. Not in front of her; but Mrs. Burkhardt was in the parlor and we spoke in the bed room. I do not know what she heard.

40 Q. I am asking whether you heard your husband— A. I did not hear anything.

Q. Or whether you said anything to him? A. Not that I know of.

Q. So you never said anything to your husband

in the presence of Mrs. Burkhardt? A. I did not.

Q. And you never referred to his leaving the room after he left it? A. I did not.

Q. Who got his breakfast? A. He got it himself, because he said he would not eat what I cooked. He could never know when we wouldn't put poison in his food.

Q. Isn't it a fact that you became estranged from your husband because he did not want your son to live there under the same roof with you and him? A. That was the beginning of all the trouble. 20

Q. You stuck by your son as against your husband, didn't you? A. He did not. My son never had any more to do—

Q. No, no. I did not say "Struck"; I say your affection was greater for your son than it was for your husband and you stood by your son? A. I certainly will always refuse to put out my own son out of my home against a husband that treated me in that way and showed how he only wanted money and not myself. That was always the trouble. 30

Q. So after you had these quarrels in reference to your son you did not care very much whether Mr. Eugester stayed or not, did you? A. I begged him time and again and reasoned with him that he should do right and stay there and whenever I tried to explain things, that I couldn't very well put my own son out of the house—he was always a good son to me and if he should say this thing he would make me unhappy if I put him out, the answer was nothing but to throw insults at me. 40

10 Petitioner's: Maria A. Eugster—Cross

Q. You had your husband arrested? A. Yes, because he threw me on the floor.

Q. When it came to Court the Court dismissed the matter, did it not? A. Because I did not want to press the charge.

Q. You had a hearing? A. Yes, but I let him go.

Q. You mean you did not tell the whole story?

A. I did not go any further because I had enough
20 trouble without it.

Q. You said on your direct testimony that he went in this room next to the toilet and locked himself in? A. Yes.

Q. For how long did he lock himself in? A. From 1911 to 1913.

Q. Do you mean every night he went to bed he locked the door? A. He did so.

Q. How do you know? A. Because I heard the key turning around.

30 Q. You listened every night to hear—A. Not every night. I surely didn't go to find out every night.

Q. Did he give any reason why he locked himself in? A. I don't know.

Q. Did he give you any reason why? A. He said he did not want to have anything more to do with me and he said I should never try to come in his room.

40 Q. Isn't it a matter of fact that you told him sometime in April 1913 to get out of the house and get out of the business? A. I never said anything like that. He said I had to get out of the business because it belonged all to him.

Q. But you wanted him to get out of the business? A. I did not, but after I started the suit—

Q. You started the suit in 1912? A. Yes.

Q. And that suit was to get possession of the machinery and this business, wasn't it? Wasn't that the object of it? A. Yes.

Q. And then you wanted him to get out of the business, didn't you? A. I wanted to have the the money. I didn't want him to get out of the business as long as I would get the money, and for a whole year he didn't pay anything and I 20 had to pay interest on the mortgage. I had to take a big mortgage on the house because I had to put the money into the business and if he didn't give me any money out of it I could not keep the house any more. I was willing to give him everything and willing to leave my own house if he only would come up with me to the lawyer and straighten these things out; but I was willing to leave my own place.

Q. In October 1912 you said you and your husband had a quarrel? A. Yes. 30

Q. And you have testified that from that time on you would not have accepted your husband if he had returned to you. You so testified. Is not that so? A. Not after that.

Q. You would not have accepted him after that? A. We never spoke together. I told him if he would show me he would deal fair—but he never showed me.

Q. After that talk you were through with him, weren't you? A. He has showed it to me that he 40 wanted only the money.

Q. Would you have accepted him in 1912 after you had this quarrel, after you heard all he said about you? A. I could not after I heard what he said about me.

10 Petitioner's: Maria A. Eugster—Cross

By the Vice Chancellor: Q. Suppose he had come and begged your pardon and told you he was sorry he had said these awful things about you and made you a promise that he would treat you fairly and be a good husband to you, would you then have given him a chance to try? A. I would be willing to give him a chance to try at that time.

20 By Mr. Stout: Q. After you had had this quarrel in 1912? A. If he had come, but he never did come to me.

Q. Up to what time would you have accepted him as your husband? A. Until he went out in 1913, until he left the house. After that—

Q. After he left in 1913 you were through with him? A. Yes.

Q. After that if he came back you would not have accepted him? A. Not after he had another woman he wanted to marry.

30 By the Vice Chancellor: Q. When was it you learned about the other woman he wanted to marry? A. It was after—It was between 1913 and 1914.

Q. When you had heard that, and he had gone away, suppose he had come back to you and assured you that he had quit having anything to do with this other woman, that he was done with her, and they had parted for good and all, and that he wanted to come back and be your husband and he would do everything that was fair and right; if he had made all those promises and you had upon inquiry found out that he had put away this other woman, would you then give him a trial? A. I would give him a trial if he had done that.

40 By Mr. Stout: Q. Would you be willing to do that today? A. No, sir.

Petitioner's: Maria A. Eugster—Re-direct 10

Q. When did you change your mind as to your husband? A. After five years not living with a husband how can I make up with a man for which I haven't and confidence in him?

Q. When did you lose confidence in him? A. Since 1912.

Q. Since 1912 you have not had any confidence in him? A. No.

Q. And you would rather that he live somewhere else than with you since 1912—Has not that been the attitude or your mind? 20

Mr. Slobodin: She did not say so.

A. He never came and said he would be a husband to me.

Mr. Slobodin: The question is unfair.

The Vice Chancellor: No. I will allow the question. It does not cover the ground by any means, but it is relevant. It has relation to the state of mind. 30

Mr. Slobodin: As to what her state of mind three or four years ago was? It infers her state of mind now as of then.

Q. (Last question read). A. If he would come and promise me he would do right I would be willing, yes; but he never came and promised me anything.

RE-DIRECT EXAMINATION by Mr. Slobodin: 40

Q. Mrs. Eugster, that conversation when he came back and said he wanted to make up—Mr. Eugster—and then asked for six hundred dollars, was that one conversation at the same time? A. That was the last conversation we had.

10 Petitioner's: Maria A. Eugster—Re-direct

Q. Did he ask at the same time for the six hundred dollars? A. It was the same time, and he asked me to make up with him. I told him I would be willing to start all over again, because my son was married then and I thought maybe—I was willing to do everything under the sun to make things go and we could live together right. I did anything I could and I told him I would be willing
 20 but he had to show me he would deal fairly with me, and he had to show he not only wanted money before I made up; and I said I didn't think it fair of him that he wanted me to give him six hundred dollars at that time and put up the money to support him from that time on the money that came in from the business, he said it was all his and he drove me out of the place and I didn't think it was fair and he said if I didn't give him
 30 six hundred dollars he was going to Court with me, and that was the last.

Q. Did Mr. Eugster continue to pay you then or did he want all the money too? A. Not after that. That was the last talk we ever had together.

Q. You said something about Mr. Eugster making a statement about you and your son. Do you care to say to the Court what it was? A. Well, if I have to do it I will say it.

Q. What was it? A. He said my son and I lived
 40 an immoral life together.

Q. When was that? A. That was right from the beginnig, and I know he said it around in saloons, not only to me.

Mr. Stout: I object to what was said in saloons unless she was there.

The Witness: He did say so a good many times.

Petitioner's: Maria A. Eugster—Re-cross 10

The Vice Chancellor: It will be stricken out.

Q. That was before your son was married? A. Yes.

Q. And was living in your house? A. Yes; he was only married a few months and the talk went around.

Q. The first quarrel you said was when he asked you to sign this paper? A. Yes. 20

Q. That was the first one? A. That was the first one.

Q. I want to know whether you first quarreled about your son or about money, property, and so on. A. It was about this agreement, about this paper.

The Vice Chancellor: I think counsel went all over that ground.

Mr. Slobodin: Yes; I have.

The Vice Chancellor: It is only repetition. 30

RE-CROSS EXAMINATION by Mr. Stout:

Q. You lived with Mr. Eugster after he made this statement about you and your son? A. I did.

Q. What did Mr. Eugster say when he left the house in April, 1913? A. Nothing. I didn't speak with him.

Q. Didn't say anything? A. I did not say anything. 40

10 Petitioner's: Mrs. Boris Rabinoff—Direct

MRS. BORIS RABINOFF, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct-examination by Mr. Slobodin:

Q. Where do you live now? A. Pittsburgh.

Q. Pennsylvania? A. Pennsylvania.

20 Q. You are on a visit here? A. Yes.

Q. You are the daughter of Mrs. Eugster? A. I am.

Q. And your maiden name was what? A. Cantzarr.

Q. Her first husband was your father? A. Yes.

Q. You lived with your mother during the time that Mr. Eugster was living with her? A. Yes. I lived in the same house.

Q. In the same apartment? A. Yes.

30 Q. And you lived at the first residence—where was it, on Spring Street? A. No. I lived at 327 Mountain Road.

Q. Didn't you live at the first residence? A. No, I was married then and went to my own home. Then I had an apartment in the same house with her.

Q. And you lived with your husband in the same house, 327 Mountain Road? A. Yes.

40 Q. And you were visiting, going down to your mother every day? A. Yes.

Q. And you passed a great deal of time in her apartment? A. Yes.

Q. Do you remember the time when Mr. and Mrs. Eugster first moved into 327 Mountain Road? A. I do.

Q. And when the shop was opened there? A. I do.

Petitioner's: Mrs. Boris Rabinoff—Direct 10

Q. Were you present at any time during any discussion between Mr. and Mrs. Eugster about property matters, or did you hear it? A. Why I heard some of it, yes.

Q. When was that? A. On several occasions.

Q. How soon after they were married? A. Well, it was, I think a few months after.

Q. What was said that you heard? A. Well, they always had arguments— 20

Mr. Stout: When was this and where was it?

Q. Where did you hear it? A. At 327 Mountain Road, mostly; and I heard discussions at their other place, at Spring Street also.

Q. What was said between them?

Mr. Stout: I object to this unless the time is fixed.

Mr. Slobodin: A few months after the marriage. 30

Mr. Stout: That is too indefinite.

Q. Do you remember when they were married? A. I do.

Q. What was the date of the marriage? A. The 23rd of November, 1910.

Q. In about how many months, as near as you can recollect, were these conversations you heard? A. They must have been about three months after. 40

Q. What was said? A. I don't remember exactly, but the arguments were always regarding money matters.

10 Petitioner's: Mrs. Boris Rabinoff—Direct

Q. Well for instance what? A. When he wanted to have some money—

Mr. Stout: I object to this.

The Vice Chancellor: It is really a matter of any consequence? The quarrels began right away over the property. The evidence seems to be clear. I do not think there is any difference of opinion between
20 counsel about it.

Mr. Stout: I think there must have been something going on in the way of quarrels.

The Vice Chancellor: And they ended in a lawsuit which is pending in the Court of Errors and Appeals. Why are the details of any consequence?

Mr. Slobodin: Merely to throw some side lights on the wrongs and the rights of the matter for your Honor.
30

The Vice Chancellor: That does not help us.

Q. How long did Mr. Eugester live there in 327 Mountain Road, do you remember? A. Until 1913.

Q. Do you know whether or not Mr. and Mrs. Eugster occupied the same bedroom? A. I know they did for a time, and I know he had his own room and locked himself in.

40 Q. What do you mean by "his own room"—in the same apartment? A. In the same apartment.

Q. How do you know he locked himself in? A. He used to come up occasionally and every time he went into his room he locked himself in.

Q. Would he come into the dining room or parlor and stay up there? A. No.

Petitioner's: Mrs. Boris Rabinoff—Direct 10

Q. That is, after he took his own room? A. After he took his own room.

Q. Were you there during the evening? A. Occasionally.

Q. Did you see at any time Mr. Eugster going into your mother's bed room?

Mr. Stout: I think that is testifying for the witness.

Q. Do you know whether or not the room Mr. Eugster occupied after he left your mother's bed room, whether it was locked or whether that room was locked in his absence? A. It was not locked in his absence. 20

Q. Did you have occasion to go into that room? A. Well, the door was always open during the day when he didn't occupy it.

Q. Who was cleaning the room? A. My mother took care of it.

Q. What was in that room? A. There was a bed, a dresser and a chair. 30

Q. Were you at any time present during any talks between your mother and Mr. Eugster as to why he left her bed room and went to occupy his own bed room? A. No.

Q. You say that he left the house sometime in April, 1913? A. Yes.

Q. Were you there when he left the house? A. Yes.

Q. Did you hear him say anything? A. No. 40

Q. Did you hear your mother say anything? A. No; I just saw the moving van come and get his things.

Q. You continued to stay in that house after that? A. I did.

10 Petitioner's: Mrs. Boris Rabinoff—Direct

Q. And Mr. Eugster continued to have his shop and office in the same house? A. Yes.

Q. And your mother was one flight up or two flights up? A. One flight.

Q. And you lived two flights up? A. Yes.

Q. You continued visiting your mother? A. Yes.

Q. Did you see at any time Mr. Eugster coming there? A. I did not.

Q. To your mother? A. I did not.

Q. Did Mr. Eugster, while he was staying with your mother, ever speak to you about anything or address you in any way? A. He never addressed me.

Q. Did he speak about you? A. Yes.

Q. To your mother? A. Yes.

Q. What did he say? A. She told me—

Mr. Stout: Objected to.

30 The Witness:—that he called me all kinds—

Mr. Stout: I object.

The Vice Chancellor: No, no.

Q. Was your mother present during the statements made by Mr. Eugster? A. Yes.

Q. And you were present? A. Yes.

Q. What did he say?

Mr. Stout: I object, unless Mr. Eugster was present.

The Witness: He said it to me.

40 Mr. Stout: Oh.

Q. What did he say? A. He used to classify me as a "Mench" which is the title for a very low woman in German.

By the Vice Chancellor: Q. He called you that? A. Yes.

Q. To your face? A. Yes.

Petitioner's: Mrs. Boris Rabinoff—Direct 10

Q. What was it, you were asked. What was it he said to you on this particular occasion? A. I think it was on one occasion when they had a quarrel and he said to my mother that "Das mench," meaning I, should go out, go out of the room."

Q. Did you leave the room then? A. I don't remember.

By Mr. Slobodin: Q. Did you hear him talk 20 about your brother to your mother? A. No.

Q. Do you remember the occasion when you went down to the shop and your mother had some quarrel with Mr. Eugster? A. I do.

Q. When you came down what did you see? A. I heard that he was making an awful noise down there and I knew my mother was there and I thought he was abusing her and I tried to get in and the door was locked so I went around in the street entrance and went in and there I saw that 30 my mother was laying in the corner on the floor crying and I asked her what was the trouble and she told me that he had threw her down.

By The Vice Chancellor: Q. Was he there? A. He walked out then into the factory. This was in the office. So he wanted to put me out and I would not go out—

Mr. Stout: I think this is not proper. If this statement made by this woman was 40 not made in the presence of Mr. Eugster.

The Vice Chancellor: She said then he walked out.

The Witness: After he threw her in the corner he left the office and walked in the shop and

10 Petitioner's: Mrs. Elsie Luthi—Direct

I called up the police. I wouldn't have it that he would abuse my mother in that way.

Mr. Stout: May I ask whether Mr. Eugster was present when your mother told you what you are testifying to?

The Witness: I saw that my mother was lying there.

20 The Vice Chancellor: What was done there has some relevancy, but it seems to amount to very little.

Q. Did you attend at the police Court when this matter was brought up before the magistrate?

A. I went up there, yes, and Mr. Eugster—

Q. That is enough. You have answered the question, proceed.

Mr. Slobodin: That is all.

30 Mr. Stout: I have no questions.

MRS. ELSIE LUTHI, a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

Direct-examination by Mr. Slobodin:

40 Q. Where do you live? A. I live 519 Union Street, West Hoboken.

Q. Do you know Mrs. Eugster? A. I do know her for thirty years.

Q. And you call at her home at 327 Mountain Road? A. Very often, yes.

Q. During the time she was living there with her husband, Mr. Eugster? A. Yes.

Petitioner's: Mrs. Elsie Luthi—Direct 10

Q. How often would you visit her? A. About once in a week.

Q. Do you remember visiting her prior to her marriage in 1911? A. Yes.

Q. Were you acquainted with Mr. Eugster? A. No.

Q. Did you see him there? A. Yes.

Q. In the living room? A. Yes.

Q. You were visiting her right along after her marriage to Mr. Eugster about once a week? A. Once a week, yes. 20

Q. How long after her marriage to Mr. Eugster did you see Mr. Eugster there in the living rooms? A. Well, I couldn't say. It was in 1912 and from that time on I didn't see him any more. I heard him coming up from the shop and I did not see him any more in the rooms.

Q. As you visited there you frequently met Mr. Eugster coming up? A. Yes, but not every time I was there; only occasionally. 30

Q. Where would he go? A. He went in his room and locked the door.

Q. Were you present when Mr. Eugster moved out? A. No. I came the next day. The next day I came and she told me about it; that he moved out "yesterday."

Q. Do you remember what month and year that was? A. It was after Easter Monday. I was there Tuesday. 40

Q. What year? A. 1913.

Q. And after that you were visiting Mrs. Eugster continuously? A. Yes.

Q. Did you ever see Mr. Eugster there? A. No.

10 Petitioner's: Mrs. Elsie Luthi—Cross

Q. As you were passing up to the apartment of Mrs. Eugster were you, passing Mr. Eugster's office? A. Yes.

Q. And the shop? A. Yes.

Q. And you never saw Mr. Engster in that apartment? A. No, sir.

Q. Were you ever present at any talks between Mr. and Mrs. Eugster? A. No, sir, never.

20 Q. You know nothing about the cause of the trouble except what you were told? A. No, sir.

CROSS-EXAMINATION by Mr. Stout:

Q How do you recall now that Mr. Eugster left these apartments the Monday following Easter, 1913? What fixes it in your mind? A. What is it?

Q. What fixes it in your mind? A. I don't know. What do you mean?

30 Q. How do you recollect now that it was Monday following Easter, 1913? A. Because I came the day after. I came Tuesday.

Q. Did you make any record of it? A. No. It was accidental that I went there. Mrs. Eugster told me "What do you think happened? Mr. Eugster left me yesterday. That is how it came.

Q. And you remember that through these years? A. Yes; very well.

40 Q. Where was his room situated that Mr. Eugster locked himself in? A. It was opposite the kitchen door, across a private hall, between them.

Q. And you could see it from the kitchen? A. Yes.

RE-DIRECT-EXAMINATION by Mr. Slobodin:

Q. You are Swiss A. Yes.

LUCIE GROD, a witness produced on behalf of the Petitioner, being duly sworn, testified as follows:

DIRECT-EXAMINATION by Mr. Slobodin:

Q. Where do you live? A. Broad Avenue, Fairview.

Q. Do you know Mrs. Eguster? A. I do about eight years. 20

Q. You visited her at 327 Mountain Road? A. Yes, occasionally.

Q. How often would you be there? A. I don't know. Once in two weeks or whenever I felt like getting around in the evening, you know.

Q. You were visiting her while she was living with Mr. Eugster? A. Yes.

Q. Were you acquainted with Mr. Eugster? A. I just met him here or there, but didn't see him very often. 30

Q. Did you talk to him occasionally? A. Well, I did, just at the time they were married, that is all.

Q. Do you remember the time they moved in and lived there together? A. Yes.

Q. That was 1911? A. Yes.

Q. For how long did you meet Mr. Eugster in the living rooms? A. I never saw him to speak to after they were married in the living rooms. I met him on the street and once in a while in the shop. I just passed him the time; that is all. 40

Q. When you were visiting Mrs. Eugster you never saw Mr. Eugster? A. No, never.

Q. Did you see him around there? A. Only

10 Defendant's: Benedict Eugster—Direct

when I was going upstairs to visit Mrs. Eugster I would see him sitting in the office.

Q. At the time Mr. Eugster was living there with Mrs. Eugster, did you ever see him or hear Mr. Eugster about the rooms? A. I never saw him, but I could hear him going upstairs. I was sitting in the dining room and he had to pass the door and you could hear him go into his room
20 right opposite the kitchen where his room was.

Q. And he would never come into the living-rooms? A. No.

Q. About how many times would that happen, that you heard him coming up? A. I could not say how many times.

Q. Often? A. Very often when I was there I used to hear him go inside in his room; that is all.

Q. Would you continue sitting there in the
30 rooms after you heard Mr. Eugster come in? A. I was sitting right where they were.

Q. And you never saw Mr. Eugster come in? A. Oh, no; I never saw him in person, no.

Q. You are Swiss also? A. No; I am not.

Q. You are an American? A. French-American.

Mr. Slobodin: We rest.

40

BENEDICT EUGSTER, the defendant, being duly sworn, testified as follows:

Direct-examination by Mr. Stout:

Q. How old are you? A. I cannot understand.

Defendant's: Benedict Eugster—Direct 10

By the Vice Chancellor? Q. Don't you understand that? How old are you? A. Oh, yes.

Q. Answer it. How old? A. (No response.)

Mr. Stout: I know it will not be intelligent—so we can get it. I have this gentleman here, or I am willing to take someone else who can speak Swiss.

(Augustus Siegrist was sworn as interpreter.) 20

By Mr. Stout: (Through the interpreter):

Q. How old are you? A. Fifty-five years.

Q. How long have you been in this country? A. Since November 18, 1908.

Q. Where were you born, what country? A. Switzerland.

Q. What part of Switezrland? A. Appenzell.

Q. How many times have you been married? A. Twice. 30

Q. Is your first wife living? A. No; she is dead.

Q. When did she die? A. 1910.

Q. March, 1910? A. February.

Q. When did you first meet Mrs. Eugester, your present wife? A. 1910.

Q. What month? A. May or June.

Q. And you were married to Mrs. Eugster in November, 1910? A. Yes.

Q. Where did you go to live after your marriage to her? A. 327 Mountain Road. 40

Q. Isn't it a fact that you lived at Springfield Avenue for a short time after your marriage—How long did you live at Springfield Avenue? A. In Spring Street.

10 Defendant's: Benedict Eugster—Direct

Q. Oh, in Spring Street A. From November until March the following year.

The Vice Councillor: There surely cannot be any dispute about the place where they lived. I do not suppose there is any substantial dispute as to the dates these things occurred. The cause of them is another matter.

20

Q. You and your wife went to 327 Mountain Road to live sometime in 1911? A. Yes.

Q. And you lived together there as husband and wife? A. Yes.

Q. How long did you occupy the same bed? A. The seventh of November, 1911.

Q. Why did you leave her bed then? A. Because I had to?

Q. Why did you have to? A. Her son, Mrs. Eugster's son, ordered me out.

30

Q. Did your wife say anything to you about leaving her bed? A. More than fifty times.

Q. Why did you leave her bed room in November 1911? A. He says he had to leave.

Q. Did you after that speak to your wife about returning to her bed room and sleeping with her? A. Yes, sir, after her son got married, some time in 1912.

Q. When you left her bed room in November 1911 did she say anything to you about leaving?

40

A. He says yes, she told him she would not have anything to do with him.

Mr. Slobodin: That is not the correct interpretation.

Defendant's: Benedict Eugster—Direct 10

The Vice Chancellor: What was the error?

Mr. Slobodin: Mr. Eugster said, or the answer was, "She told me she wanted to live with her son and not with me." And the interpretation was, "She would not have anything to do with me."

The Vice Chancellor: What do you say, Mr. Interpreter? Counsel says that 20 what the witness answered was that she said she wanted to live with her son and not "with me." Is that what the witness said?

The Interpreter: Yes.

The Vice Chancellor: Now be sure and give the answer just as the witness gives them.

The Interpreter: The question was I should ask him whether she had told him to leave? 30

The Vice Chancellor: Yes.

The Interpreter: And he said yes.

The Vice Chancellor: It is said that he also stated what she said, that she told him she wanted to live with her son and not with him. Now did he say that or didn't you hear it?

The Interpreter: Well, I heard what I said. What do you ask me now?

The Vice Chancellor: You put the ques- 40 tion to the witness.

"Previous question and answer read as follows: "Q. When you left the bed room in November, 1911 did she say anything to you about leaving? A. She says yes, she

10 Defendant's: Benedict Eugster—Direct

told him she would not have nothing to do with him.")

The Vice Chancellor: That is what you say he said. Counsel says the witness replied, "She said she wanted to live with her son and not with me."

The Interpreter: He did not tell me that.

20 The Vice Chancellor: He did not?

The Interpreter: No, I didn't hear that.

The Vice Chancellor: Put this question to him.

By The Vice Chancellor: Q. What did your wife say about your leaving her bed room? A. She notified him in two letters that she would have nothing to do with him any more.

30 The Interpreter: That is what I understand from his German.

Q. Did she say she wanted to live with her son and not with you? A. She said several times that she wanted to live with her son rather than with him.

Mr. Stout: Put this question: What did she say to him in November 1911 when he left her bed room?

40 The Vice Chancellor: "To you." "What did she say to you?" Let the interpreter put it in the first person.

By Mr. Stout: Q. What did she say to you when you left her bed room in 1911? A. He said that she would not sleep with him any more.

Defendant's: Benedict Eugster—Direct 10

Q. Did she tell you where you should sleep?

Mr. Slobodin: I do not object, because we want to get through. It is leading.

A. Yes; she told me to sleep in the toilet bed room.

Q. How long did you sleep in that room? A. From 1911 to 1913.

Q. April 1913? A. Yes.

Q. Previous to your leaving this bed room had you had any quarrels with your wife? A. No, no quarrel at all.

Q. Never quarreled?

The Interpreter: No.

Q. Didn't you have discussions with your wife about her son previous to this time? A. Yes.

Q. What were those discussions about? A. She came to him and told him that she did not want to live with her son any more and wanted to go back to him. 30

Mr. Slobodin: He said the date.

The Interpreter: The fifth of November.

Q. The fifth of November 1911? A. Yes.

Q. Previous to—

Mr. Slobodin: Maybe it does not do justice even to the defendant, because the translation is not correct, because a very vital point here is not given, whether it is in his favor or against him I do not know. I do not know whether your Honor knows German. It is such scandalous matter that I do not care to bring it in unless the defendant brings it in. 40

10 Defendant's: Benedict Eugster—Direct

Mr. Stout: If his answers are not properly interpreted—

20 The Vice Chancellor: The witness certainly spoke for quite a while and he uttered a great many sentences and we had a very brief answer. It is important that what the witness said should have been interpreted, and as counsel for the petitioner is not satisfied with this interpretation, and it is evident that it is not complete, and the gentleman is not accustomed to acting as an interpreter, we will have to suspend this examination unless both sides agree to proceed.

Mr. Slobodin: I do not want to interpose any objection. I simply state it to Your Honor.

30 The Vice Chancellor: There is no reason stating it if you do not object to the interpreter.

Mr. Stout: I wish my adversary would keep it straight. We only want the facts, and I would be willing he should act as interpreter.

The Vice Chancellor: Are you willing to accept counsel's statements of the matter that was omitted?

Mr. Stout: Yes, sir.

40 The Vice Chancellor: What was it then?

Mr. Slobodin: To the last question the defendant answered that on November 5th, "My wife came to my shop and told me that she don't want to have her son any more; that she wanted to have me as her

Defendant's: Benedict Eugster—Direct 10

husband, and we made up and we were very happy until November 7th."

Mr. Stout: Are you willing to do the interpreting?

Mr. Slobodin: I have no objection, to help out the proceedings.

Mr. Stout: And I will put our friend, the interpreter, as a governor on you.

Mr. Slobodin: Alright. 20

Q. Then what happened on November 7th? A. On November 7th when I came to breakfast my wife was excited—it was Election Day—and she told me that from now on he must fix his bed room in the toilet bed room.

Q. What do you mean by that, the room next to the toilet? A. Next to the toilet.

Q. And previous to November 7, 1911 did your wife get your meals for you? A. Yes.

Q. Did she get your meals for you after November 7, 1911? A. Not always. 30

Q. What did she get for you after November 7, 1911? A. I ate there. I paid shop rent and for my board.

Q. That is not responsive. What meals did your wife get for you after November 7, 1911? A. Mostly dinner.

Q. Did you have any conversation with your wife after November 7, 1911 up to Easter 1913? A. She would begin many times. One lives together in the same apartment and I didn't want to hear it, so I would go away to the office. 40

Q. What would she talk about? A. What I told you just now.

10 Defendant's: Benedict Eugster—Direct

Q. What was that? A. That she does not want me any more; that she would not give me enough to eat and that I must go out.

Q. You left her house Easter, 1913? A. Yes, sir.

Q. Why did you leave? A. Because the daughter who got the divorce about the same time we were married, she came down to the apartment and made a great deal of trouble, and I said,
20 "That is enough."

Q. Did you tell her that you were going to leave? A. Yes, sir.

Q. What did you say to her? A. Eight days before I told her that if the son will move into a house and the daughter will go out it may go better—

Mr. Slobodin: Maybe he means "go out."

30 Q. From November 1911 until April 1913 did you have any intercourse with your wife? A. No.

Q. Did you ask her to be your wife during that time? A. Yes, October 12, 1912, after her son's marriage.

Q. And what did she say? A. She told me many times that she will have nothing to do with me, that it was my fault that the son got married and she will have nothing to do with me.

40 Q. Then she refused to be your wife? A. Yes, she refused.

Mr. Stout: I have two witnesses here or subpoena and their testimony is very short. I do not think they know much about this matter.

Defendant's: Theresa Rauzau—Direct 10

The Vice Chancellor: Let this witness step aside then.

(The defendant left the witness stand.)

THERESA RAUZAU, a witness produced on behalf of the defendant, being duly sworn testified as follows:

Direct-examination by Mr. Stout: 20

Q. Where do you live? A. 392 Spring Street.

Q. West Hoboken? A. Yes.

Q. Did you know Mr. and Mrs. Eugster? A. Yes.

Q. How long have you known them? A. Well, I know Mrs. Eugster about ten years.

Q. How long have you known Mr. Eugster? A. I knew him three years.

Q. You know nothing about their domestic life? A. No, sir. 30

Q. Were you employed by Mr. Eugster in the embroidery business that he was running in West Hoboken? A. Yes, sir.

Q. When did you go into his employ there? A. When they opened up.

Q. When was that, in 1912? A. I don't remember.

Q. Have you any recollection? A. No.

Q. You do not know whether it was 1912 or 1915? Well, you went there when they opened up? A. Yes. 40

Q. How long did you stay there? A. For three years.

Q. Do you know when you got out, what year? A. No.

Q. You have no recollection of when you got out? A. No; I don't remember.

10 Defendant's: Katherine Rauzau—Direct

Q. Was it last year? A. No; I guess I am out three years now. It is about three years ago.

Q. During that time did you see Mrs. Eugster at the plant, at the place of business? A. Yes.

Q. Did you ever hear any quarrels between Mr. and Mrs. Eugster? A. No.

Q. During all that time—and were you there every day? A. Yes.

20 Q. What position did you occupy? A. Forelady.

Q. And you saw her there on several occasions? A. Yes.

CROSS-EXAMINATION by Mr. Slobodin.

Q. About how many times did you see Mrs. Eugster there? A. Well, when she came down in the shop.

Q. How often would it be? A. I cannot say.

Q. Did you see her once a week? A. I guess so.

30 Q. And what would she do when she came down—anything? A. No, just walk around.

Q. Did she ever give you orders? A. No.

Q. She had nothing to do with running the shop? A. No; she never said anything.

40 KATHERINE RAUZAU, a witness produced on behalf of the defendant, being duly sworn testified as follows:

Direct-examination by Mr. Stout.

Q. Where do you live? A. 392 Spring Street.

Q. You are a sister of the witness who just testified? A. Yes, sir.

Q. Do you know Mr. and Mrs. Eugster? A. Yes, sir.

Defendant's: Benedict Eugster—Direct 10

Q. You were in the employ of Mr. Eugster? A. Yes.

Q. When did you go into his employ? A. When he started in business.

Q. And you stayed there until when? A. Oh, until they closed up.

Q. When was that? A. I don't remember.

Q. What do you mean, when they closed up—
When Mr. Eugster got out? A. Yes. 20

Q. Did you ever see Mrs. Eugster at the place of business? A. Yes.

Q. Who gave you the orders? A. Mr. Eugster.

Q. What position did you occupy? A. Mender.

Q. Did you ever hear any quarrels or discussions there between Mr. and Mrs. Eugster? A. No.

Q. You did not visit at their home? A. No.

Mr. Stout: That is all.

Mr. Slobodin: No questions. 30

BENEDICT EUGSTER, the defendant, resumes the stand.

Direct-examination continued by Mr. Stout through the interpreter.

Q. During the period from November 1910 until 1911 did you contribute anything towards the support of your wife? A. Until March I was with her, because I was attending to the shop, and from March we made an arrangement by which I was to pay twenty-five dollars a month and fifteen dollars a week towards the board. 40

Q. March of what year? A. 1911.

10 Defendant's: Benedict Eugster—Direct

Q. Did you make those payments? A. Yes.

Q. This room which you occupied next to the toilet from November 1911, did you always lock yourself in when you entered the room? A. Not always; sometimes.

Q. You were arrested by your wife, were you not? A. Yes.

Q. Do you know what the charge was against
20 you? A. Yes.

Q. What was it? A. She came into the shop and told me that I must get out of the shop and—

The Interpreter: He indicated by the neck, the collar,

A. (Continuing) she wanted to push me out; I must go out.

Q. When the case was heard before the Magistrate what did he do? A. In the police station
30 they asked me if I had beaten my wife. I answered, no, I had not beaten any one during my life. I was always an honest man. Then they discharged me.

By the Vice Chancellor: Q. Did you throw your wife on the floor in the shop? A. No. She laid down on the floor herself; she laid down herself.

Q. Was his the floor of the office she laid down on or of the factory? A. In the room between the office and the factory.

40 Q. Was there anyone else in the room when this happened? A. No; nobody was there. They might have heard it, but nobody was there but us.

Q. Do you know what made your wife lie down on the floor? A. That was the reason. The daughter must have been waiting outside and

Defendant's: Benedict Eugster—Direct 10

that was the reason: they wanted to arrest me and make me out bad.

Q. Did the daughter come into the room while you were there? A. That is the day when she made that motion picture show; she came into the office and wanted to be a witness.

The Interpreter: I suppose he means staging it.

Q. Did the daughter come into the room in the office while you were there? A. I was in the shop, yes. 20

By Mr. Stout: Q. Was the daughter there? A. Yes.

Q. When did she come in, after it was over or before? A. After.

By the Vice Chancellor: Q. When she came in the door were you in the office or the factory? A. I was in the factory.

Q. Where was your wife? A. She was in the office; she lie down on the floor. 30

Q. How long after she laid down on the floor did you go out into the factory? A. About five minutes. I thought she would get up, as nothing was the matter with her.

Q. Did the daughter enter through the door into the factory or the door into the office? A. Of the office.

Q. After May, 1912, where did you get your meals? A. In the saloons. 40

Q. Why didn't you get your meals at home? A. I couldn't eat cold. I would become sick through my nervous trouble and I couldn't eat cold.

10 Defendant's: Benedict Eugster—Direct

Q. Did your wife, after May, 1912, refuse to get meals for you? A. No more; not after the twelfth of October, no more.

Q. Your wife would not get meals for you? A. She gave me nothing to eat any more.

Q. Who occupied the room with your wife after you left? A. Mrs. Burkhardt, and the moving man came to move the bed which I had from my
20 first wife—

The Interpreter: He must be confused or something here.

The Vice Chancellor: We will pause here.

(Adjourned until Friday, March 9, 1917, at Chancery Chambers, Paterson, N. J. at eleven o'clock in the forenoon.)

30

Paterson, N. J. Friday, March 9, 1917.

Hearing resumed.

Appearances as before noted.

BENEDICT EUGSTER, resumes the stand.

Direct-examination resumed by Mr. Stout:

40 Q. Who moved the furniture into this bedroom by the toilet? A. My wife.

Q. Did you tell her to do it or did she do it of her own free will? A. No, sir.

Q. How long did Mrs. Burkhardt occupy with your wife the room, which you vacated? A.

Defendant's: Benedict Eugster—Direct

10

About three months; I do not know just what it was.

Q. Was Mrs. Burkhardt at the residence of your wife when you left on Easter Monday, 1913?

A. She was there until that day; then she had to make room for a boarder.

Q. For whom? A. For the boarder, Miss Carpenter.

Q. Who was the boarder? A. It was Mrs. 20
Carpenter upstairs.

Q. Who is Mrs. Carpenter, a daughter of your wife? A. Yes, sir.

Q. Where had Mrs. Burkhardt been rooming previous to Easter Monday, 1913? A. Until October 12, 1912 she was in my wife's room and after the marriage of the son she occupied the son's room.

Q. When was the son married? A. The 9th or the 10th of October, 1912.

Q. Do you know where Mrs. Burkhardt is? A. 30
I could not find her. I was told that she lived in Hoboken but I could not find her.

Q. Did you call Mrs. Eugster's daughter a—
What is it? "Mench?"

Mr. Slobodin: Yes.

A. I have never scolded her that way.

By the Vice Chancellor: Q. Did you ever use that word to her? A. I cannot remember to have said that word. 40

Q. Do you remember referring to her as "Das mench?" A. I cannot recall that.

By Mr. Stout: Q. Do you think you ever did? A. Who knows if I have said it? It might have been.

By the Vice Chancellor: Q. Did you ever say

10 Defendant's: Benedict Eugster—Direct

that your wife had improper relations with her son? A. No.

By Mr. Stout: Q. Did you tell your wife that you cared for another woman? A. Oh, no; never.

Q. Did you tell her that you wanted to get a divorce from her so you could marry another woman? A. No.

20 Q. Did you say anything to your wife when you left the home on Easter Monday, 1913? A. Yes. I said I would not stand it any more.

Q. Did you call her a gipsy or say that you were tired of living a gipsy life? A. It might have been that I called her a gipsy because she always wanted to quarrel. It might have been. I could not recall it.

Q. How long have you lived in New Jersey? A. Seven years.

30 Q. Continuously? A. I lived in the Bronx.

Q. When did you come to Jersey? A. 1909.

Q. And did you live here continuously since then? A. Yes, sir. Last summer I was two months to Philadelphia.

Q. But you made Jersey your home? A. Yes; New Jersey is my home.

Q. In October, 1912, when you asked your wife to make up with you did you say anything to her at that time about money? A. Oh, no. My business was good and I had no need for her money.

40 Q. Did you ask her for six hundred dollars then? A. Absolutely not. It is not true.

Q. When you asked her in October, 1912 to make up with you what did she say? A. She did not want to.

Q. What else did she say? A. She did not want to live with me she said. She wanted to live only with her son.

Defendant's: Benedict Eugster—Cross 10

CROSS-EXAMINATION by Mr. Slobodin:

Q. You said her son was married on October 9th or 10th, 1912? A. Yes.

Q. And immediately after the marriage he went with his wife to live—Where did he live? A. In Palisade Avenue. I cannot remember the number.

Q. From the day of his marriage you went to live there? A. Yes, sir. 20

Q. And you had a talk with your wife on October 12, 1912? A. Yes, sir.

Q. And that was about two or three days after his marriage? A. Yes.

Q. So that at that time your wife's son did not live there any more with her? A. No; he did not.

Q. And yet she said, "I don't want to live with you. I want to live with my son." A. Yes, sir.

Q. Do you mean to say that your wife was opposed to her son's marriage? A. Yes; she was 30 against it.

Q. Do you know the name of the girl whom your wife's son married? A. I cannot recall.

Q. Did she visit your wife before marriage? A. Oh, yes.

Q. How often? A. Each week.

Q. When she was visiting your wife the girl would talk to your wife? A. Yes.

Q. And their relations were friendly, weren't they? A. Oh, yes; they were always friendly. 40

Q. Did your wife ever say that she did not want her son to marry? A. It was in 1911 and 1912 when she said that she did not want her son to marry.

10 Defendant's: Benedict Eugster—Cross

Q. Where was the marriage celebrated? A. I don't know.

Q. Weren't you at the marriage ceremony? A. I was not there; I was not invited.

Q. It was not at your home, was it? A. No.

Q. After the marriage did you see her son with his wife coming to see her mother? A. No. They might have come when I did not see them. From
20 the office I saw them come.

Q. Did you ever hear your wife and her son's wife quarrel? A. No.

Q. And yet you say that your wife was opposed for two years to her son's marriage? A. Yes; 1911 and 1912, at the beginning.

Q. You had never had a factory before you were married to your present wife?

Mr. Stout: Does not Your Honor think
30 we have gone into this business matter far enough?

Mr. Slobodin: Well, I will withdraw that question because that is not disputed.

Q. You did not give any money into the business after you married your wife?

Mr. Stout: I object to that as immaterial. I tried to avoid all that in my examination, and it seems to me it is getting a good way from the issue in this case. It
40 is too remote.

The Vice Chancellor: Isn't it quite remote, Mr. Slobodin? Why should we try this over again? It has been tried once, I understand.

Mr. Slobodin: As I understand, we do not want to try the property here, but we have to prove the intention to abandon.

The Vice Chancellor: Yes; but is it not sufficient to know they quarreled about this business and the wife instituted a suit against the husband away back in 1912 and that suit was pending for a year. I think, while they were living in the same house, 20 and finally it came to trial and now, on the appeal of one—I do not know which, and I think it is immaterial—the case is pending in the Court of Appeals? I do not see that we can be aided in arriving at any conclusion regarding the cause of the separation if we undertake to find out who was in the wrong. They quarreled; that is enough; they did not agree and they went to law with each other. 30

Q. You testified that you left your wife's bed room because her son demanded it. A. Yes, sir.

Q. What did he say? What did your wife's son say to you? A. The son did not tell me that. My wife told me that.

Q. Did your wife tell you that her son demanded that you should leave her bed room? A. She told me that she will have nothing to do with me. We were very happy before.

Q. Did she tell you that her son demanded it? 40
A. She told me "We," meaning the children and her.

Q. I ask again whether she ever told you that her son demanded it. A. Yes. Nobody was there. The daughter was married.

10 Defendant's: Benedict Eugster—Cross

Q. You say that your wife wrote you letters in which she said she would rather live with her son than with you? A. Yes. My lawyer, Lichtenstein wrote a letter in reference to it either to my wife or to her lawyer, Walscheid.

Q. Have you got that letter which your wife wrote to you?

Mr. Stout: He did not testify to that.

20 A. I think Mr. Stout has the letter.

Mr. Stout: I haven't any letters. He never wrote any letters. I do not think he understands you, because he never wrote any letters. Mr. Lichtenstein wrote to Mr. Walscheid and Mr. Walscheid replied, but I do not see the evidential value and the letters are not here. He never sent them.

30 By the Vice Chancellor: Q. Did your wife ever write you letters? A. No.

By Mr. Slobodin: Q. You have never received letters from your wife during your marriage? A. My lawyer received letters.

Q. Did your lawyer receive letters from your wife? A. Either from my wife or from Mr. Walscheid. I did not see the letters.

Q. You said that you left your wife's bedroom on November 7, 1911? A. Yes, sir.

40 Q. And you said that before that you never quarreled with your wife? A. It was not quarreling; they were disputes.

Q. What were the disputes about? A. Every day when it came to a meal she would say, "Oh, what did I do that I have married?"

Q. Did she ever tell you before November 7, 1911, to leave her bed room? A. No.

Q. That was the first time? A. The first time; yes.

Q. And you did it at once? A. Yes.

Q. She demanded of you certain property which you had in your possession? A. Yes, she demanded it; yes.

Q. And did you give it to her? A. Excepting 20 eighteen hundred dollars I gave her everything.

Q. After you moved out into the toilet bedroom as you call it, you never had any intercourse with your wife, any cohabitation? A. No.

Q. And did you have any conversation with her occasionally? A. Yes; I have spoken to her.

Q. How often? A. When she was well disposed she talked to me.

Q. And they were the only occasions when she spoke to you? A. Yes. 30

Q. And so it continued until Easter, 1913? A. Yes.

Q. Then what caused you to say on Easter, 1913 "I couldn't stand it any more." A. I was sick and I could not stand it; the daughter moved in and I had to make room for her furniture.

Q. Did the daughter move in in the same apartment with you? A. Yes, sir; in the room in which I slept and then there was another room in which Mrs. Carpenter slept. 40

Mr. Stout: Didn't he say Mrs. Carpenter took his room?

Mr. Slobodin: I imagine so. I gave it a fair interpretation that she went into his room to sleep.

10 Defendant's: Benedict Eugster—Re-direct

Mr. Stout: I think he said he moved out so she could come in.

Q. When Mrs. Carpenter came did she move in to your room? A. When I was out she moved in.

Q. How many times did your wife, during this period while you were in a separate room speak to you nicely? A. I cannot recall; I cannot tell you.

20

RE-DIRECT EXAMINATION by Mr. Stout:

Q. Did she from November 1911 up to Easter Monday, 1913, say to you that she wanted to live with you again as husband and wife?

Mr. Slobodin: I object to that as leading and going over the same ground.

The Vice Chancellor: Yes, Mr. Stout; he is your witness; it is very leading. If you have not interrogated him on the subject you can suggest the topic and ask if his wife said anything about the matter.

30

Mr. Stout: All right.

Q. From November, 1911 to Easter Monday, 1913, did your wife ever say anything to you about resuming your marriage relations? A. No.

Q. Your wife was not opposed to the woman which her son married, but she was opposed to him marrying anyone?

40

Mr. Slobodin: I object to that as leading.

The Vice Chancellor: It is very leading.

Mr. Stout: It was brought out on cross-examination.

Petitioner's: Mrs. Maria A. Eugster—Direct 10

The Vice Chancellor: This is your witness and you must not lead him.

Mr. Stout: True, but haven't I a right to use subject matter brought out by my adversary on cross-examination.

The Vice Chancellor: Undoubtedly, but that does not justify you in putting a leading question.

Mr. Stout: I will withdraw it. That 20 is all.

Defendant Rests.

MRS. MARIA A. EUGSTER, the petitioner, recalled in rebuttal.

Direct examination by Mr. Slobodin: 30

Q. Did you during either the nine months period when you lived with your husband in one room, or subsequent to that while he lived in the same apartment with you, ever tell your husband, "I don't want to live with you. I want to live with my son." A. I never said anything like that.

Q. Did you ever tell him "We", meaning you, yourself, and your son and daughter, "don't want to have you in my bed room." A. I never said anything like that. 40

Q. Did you say to him anything at all about his leaving your bed room? A. Never.

Q. Did Mr. Eugster on November 5, 1911 ask you to make up? A. In 1912 that was when he asked me to make up.

10 Petitioner's: Mrs. Maria A. Eugster—Direct

Q. It was at the same conversation he asked for six hundred dollars? A. It was.

Q. And after you refused to give him the six hundred dollars what did he say?

Mr. Stout: I object to this. We went all over this yesterday.

The Vice Chancellor: Did we not? I think we went over it.

20 Mr. Slobodin: All right. I will withdraw it.

Q. Did you ever write letters to Mr. Eugster or to his attorney?

Mr. Stout: I object to that. There is no testimony letters were written by this woman to Mr. Eugster.

Mr. Slobodin: All right.

30 Q. Or to Mr. Eugster's lawyer, that you don't want to live with Mr. Eugster; you want to live with your son? A. I did not. I received a letter from Mr. Lichtenstein that I had to put out my son.

Q. Who moved Mr. Eugster's things into that separate bedroom? A. They were moved in right in the beginning. I moved in the house, the moving man did. It was his own furniture which he wanted one room to furnish with his own furniture from the first marriage and he had that all in there and in 1911 when he said he wanted not to live with me any more he went into this room.

40 Q. Was there any moving of furniture into his room on the day when he went to live there? A. There was not. It was always the way it was until they moved it out.

Petitioner's: Mrs. Maria A. Eugster—Direct 10

Q. How long did Mrs. Burkhardt stop with you? A. About two weeks.

Q. When was that, as nearly as you can remember? A. Well, she was there that time when Mr. Eugster moved out in 1913. Around that time she was with me.

Q. Did Mr. Eugster, at the time he moved out, tell you, "I couldn't stand it any more?" A. He did not. We never spoke together. 20

Q. Did you say to him or indicate to Mr. Eugster in any way that you were opposed to your son's marriage? A. I never said anything like that. We always were and still are very friendly.

Q. What was the name of the girl? A. Lillian Grod.

Q. Where does your son live now? A. In Fairview.

Q. He lived for sometime in your house? A. In Palisade avenue he lived first when he married for about a year. 30

Q. And your relations were always friendly? A. Always friendly.

By the Vice Chancellor Q. He lived in your house with his wife? A. After my husband left.

Q. What room did they occupy? A. The top floor, a floor for themselves.

By Mr. Slobodin: Q. And he paid you rent for it? A. He paid me rent.

Q. Did you say or know of anything that was said either by your son or by your daughter to Mr. Eugster or to yourself in reference to him leaving your bed room or leaving the house? A. I never said anything. 40

10 Petitioner's: Mrs. Boris Rabinoff—Direct

CROSS-EXAMINATION by Mr. Stout:

Q. What did you say in reply to this letter that you received from Mr. Lichtenstein? A. That I refused to put my son out.

Q. Did you say you wanted to live with your husband? A. I did not say anything like that.

20

MRS. BORIS RABINOFF, recalled for the Petitioner in rebuttal:

Direct-examination by Mr. Slobodin:

Q. You knew your brother's wife before she was married? A. Yes; five years.

Q. And was she visiting at your mother's home?

A. Very often.

30 Q. What were the relations between your mother and the girl before they were married?

A. They were always very friendly.

Q. Did you notice or see or hear anything that would indicate that your mother was opposed to your brother's marriage? A. No.

Mr. Stout: I object to that as leading and immaterial.

The Vice Chancellor: I will let it stand.

40

Proceed.

Q. After marriage did your brother and his wife continue to visit his mother? A. They did.

Q. And the same relations continued as before? A. They did.

Petitioner's: Mrs. Maria A. Eugster—Direct 10

By the Vice Chancellor: Q. Did you live with your mother or in your mother's house while your brother and his wife were living there?

A. I lived with my mother after Mr. Eugster left.

Q. How long after he left did you come to your mother? A. It was a few days.

Q. Where had you been living? A. I had been occupying the top apartment.

Q. In the same house? A. In the same house. 20

Q. Your husband and you were separated then? A. With my husband.

Q. When you went to live with your mother did your husband go with you? A. No; I was separated then.

Mr. Slobodin: That is all.

CROSS-EXAMINATION by Mr. Stout:

Q. What room did you occupy in your mother's 30 apartments? A. I occupied the room that Mr. Eugster had.

Q. By the toilet? A. Yes.

Q. Do you live with your husband now? A. Yes.

Mr. Stout: That is all.

MRS. MARIA A. EUGSTER, the petitioner, 40 recalled.

Direct-examination by Mr. Slobodin:

Q. Mr. Eugster said that at the time when you went to the shop and you say he laid his hands

10 Petitioner's: Mrs. Maria A. Eugster—Cross

on you violently, that as a matter of fact you threw yourself down on the floor, without him doing anything to you, in order to make others believe that he assaulted you. Did you throw yourself down on the floor? A. I certainly did not. He pushed me with his fist in my stomach three times and I fell on the floor and my daughter-in-law and my daughter heard the noise and
20 came down and my daughter in law picked me up from the floor and I was black and blue on the body and I had to lay in bed three days.

Q. He said that you prepared it, you staged it and that you apparently had agreed with your daughter before hand and she should come in when you were on the floor. Did you speak to your daughter before about it? A. They did not know I was down in the shop until they heard the noise.

30

CROSS-EXAMINATION by Mr. Stout:

Q. Where is your daughter in law? A. She lives in Fairview.

Q. In New Jersey? A. Yes.

Q. And your son lives there? A. He does.

Q. Why didn't you have them here in Court?
A. Her mother was here, Mrs. Grod.

Q. Why didn't you have your son? A. I thought it was not necessary.

40 Q. And yet you realize that most of the disputes you had with your husband were in reference to your son, and you did not think he was a material witness? A. No; I thought it was enough without him. He had enough trouble and I don't want to drag him into any more trouble than

Defendant's: Benedict Eugster—Direct 10
 necessary. He had enough disgrace through the
 marriage and I don't want to make him any
 more trouble.

By the Vice Chancellor: Q. What is that?
 A. All this talk Mr. Eugster said about myself
 and my son—I think he had enough disgrace, but
 if it is necessary he will come and testify. If it
 is not necessary I would like to have him out.

Mr. Slobodin: Petitioner rests. 20

(Testimony closed)

(Counsel proceeded with argument and
 Mr. Stout moved to open the case and put
 in further evidence.)

The Vice Chancellor. Can you produce
 the paper that was signed?

Mr. Stout: I do not know that any such 30
 paper was signed.

The Vice Chancellor: You can put your
 client on the stand. The probative force
 of his testimony, of course, is affected by
 the way it is taken.

BENEDICT EUGSTER, the defendant, re-
 called. 40

Direct-examination by Mr. Stout.

Q. Mr. Eugster, did you compel your wife to
 sign a paper shortly after you were married
 whereby you would have full control of this busi-
 ness?

10 Defendant's: Benedict Eugster—Direct

Mr. Slobodin: I object to the part which applies to the word "whereby," because that characterizes the paper.

The Vice Chancellor: Yes, I think you should ask him—

Mr. Stout: That is the testimony on the other side.

20 The Vice Chancellor: Well, there was no objection made.

Q. Did you, shortly after you were married, compel your wife to sign a paper relative to the business? A. Not compelled, but we have agreed in March 1911.

By the Vice Chancellor: Q. Have you got that paper? A. No; she burned it in the stove.

Q. When did she burn it? A. It must have been the middle of March. It was in reference to payment for machines.

30 By Mr. Stout: Q. March of what year? A. 1911.

Q. Do you mean it was burned then?

Mr. Slobodin: That is the answer to the question.

Q. When was this agreement made? A. It was no contract; it was on papers made.

Q. When were those papers made? A. The middle of March 1911.

40 Q. When was it burned? A. Because her son did not—

Q. When, when? A. The next day.

Q. Did you ask her to convey her property to you? A. We were in partnership at the beginning, in the house, and then we established a

Petitioner's: Mrs. Maria A. Eugster—Direct 10

business and I separated. I said, "You have the house and I have the business."

Q. Did you ask her to convey the building, the house to you? A. No.

Mr. Stout: That is all.

CROSS-EXAMINATION by Mr. Slobodin.

Q. Did your wife at any time sign a paper for you? A. No. 20

Q. Did you give any paper signed by your wife to your lawyer? A. No; I have none.

By the Vice Chancellor: Q. Did you and your wife ever talk about making an agreement and signing a paper? A. Yes.

Q. Did you sign such a paper? A. I made it myself and signed it?

Q. Did she sign it? A. No.

Q. Did she burn that paper? A. Yes.

Q. How did she get it so as to be able to burn it? A. I gave it to her. 30

The Vice Chancellor: Now you may put Mrs. Eugster on if you desire.

MRS. MARIA A. EUGSTER, the petitioner, recalled.

40

Direct-examination by Mr. Slobodin.

Q. Mr. Eugster testified that in the middle of March, 1911, he gave a paper made up and signed by himself to you. A. He never did give me any paper.

10 Petitioner's: Mrs. Maria A. Eugster—Cross

Q. Did you ever receive any paper from him?

A. Never.

By the Vice Chancellor: Q. Did you burn any paper? A. I did not. But this paper I spoke about, this agreement, this was proved to exist in the Chancery Court By Judge Lewis.

Q. Do you mean to say that paper is there? A. The testimony of the witness that he witnessed
20 the paper, that I had to sign it.

Q. Did you sign it? A. I did.

Q. And after you signed it who got the paper?

A. He got the paper, and I never saw it after that.

Q. Did you burn it? A. I did not burn it because I never saw it.

CROSS-EXAMINATION by Mr. Stout:

Q. Was that paper produced before Vice Chan-
30 cellor Lewis? A. Not the paper, but the witness was there and it was proved that the paper existed.

Q. But is was not produced? A. It was not produced but the witnesses were there.

By the Vice Chancellor: Q. Why was it not produced, do you know? A. Why, he got the paper and he tore it up, or whatever he did with it; I do not know; because he took the paper in his
40 possession and I do not know what became of the paper.

Q. Did he sign it as well as you? A. I don't know. I only know I signed it.

Q. Who was the witness? A. Mr. Fritzschi.

Q. Do you know his first name? A. Jacob, I guess.

Petitioner's: Mrs. Maria A. Eugster—Cross 10

Q. What is his office, do you know? A. He lives in West New York. I could look up the address.

Q. Do you mean to say he witnessed that paper? A. He witnessed that paper and he was present when I signed it, and he testified to that effect in court.

Q. And he witnessed your signature? A. Yes.

20

Mr. Stout: That is all.

The Vice Chancellor: Does either side wish to produce Mr. Fritschi?

Mr. Slobodin: I consider it material and I would produce Mr. Fritschi, if he is produceable, yes.

The Vice Chancellor: What do you say Mr. Stout?

Mr. Stout: Well, it is immaterial to me. I am willing to give my friend a chance to have him produced. It does seem to me that the case is so weak that such testimony would not save it. It would go to the credibility of probably the defendant, but, as your Honor knows, he is so scattered and indefinite that it is pretty hard to tell just what his recollection of these matters is.

30

Mr. Slobodin: It seems to me, if your Honor please, it is a very important point and affects his motive in abandoning her when he found he would get no more property out of her, and his contention is he was compelled to abandon her so she could have her son there. In March they

40

10

Argument

had a paper made out, apparently, but he denies under oath, and he realizes it is necessary to deny it, and if he did that it would be a very material point.

20

Mr. Stout: My understanding of the law is that the motives of the parties are immaterial. It is a question of whether there was a desertion under justifiable circumstances.

The Vice Chancellor: The motives are all important. It is the central point of every divorce suit, to find out with what intent the separation was made—with what intent on both sides.

Mr. Stout: Intent as to the act of desertion?

30

The Vice Chancellor: Yes and as to the permanency of it and as to the cause. The rule of the court requires the Master in an ex parte case to inquire into the cause of desertion, and he has to report on that. The central part is the state of mind of the parties. I will lay this matter over until Mr. Fritschi may be produced, until next Tuesday, March 13th, at Jersey City, at ten o'clock in the morning, merely for the production of Mr. Fritschi.

40

(Adjourned until Tuesday, March 13, 1917 at ten o'clock in the forenoon at Jersey City, N. J.)

Petitioner's: Jacob Fritschi—Direct 10

Jersey City, N. J., March 13, 1917.

Hearing resumed pursuant to adjournment.

Appearances as before noted.

JACOB FRITSCHI, a witness produced on behalf of the petitioner, being duly sworn testified as follows: 20

The Witness: I get too nervous; I can't talk English.

The Vice Chancellor: Don't you think that if you are quietly interrogated you can answer?

The Witness: No; I don't like to because I get too nervous in English. 30

Mr. Slobodin: He told me he testified to the same point in Court and he is afraid he might not say the same thing if he speaks in English.

The Vice Chancellor: That is not a sufficient reason. You must speak in English if you can.

Mr. Slobodin: You take your time, and if you do not understand the question you can ask me. 40

Direct-examination by Mr. Slobodin:

Q. Do you know Mrs. Eugster, the lady here?

A. Yes.

10 Petitioner's: Jacob Fritschi—Direct

Q. AId you know Mr. Eugster? A. Yes.

Q. Do you remember an occasion when you were present when Mr. and Mrs. Eugster had some business transaction and Mrs. Eugster signed a paper or Mr. Eugster signed a paper?

Mr. Stout: I object to that. It seems to me he is testifying for the witness.

20

The Vice Chancellor: The question is whether he was present when Mr. and Mrs. Eugster signed the paper.

Mr. Slobodin: Yes.

The Vice Chancellor: It is just to call his attention to the transaction.

Q. Do you remember? A. Yes.

Q. About when was that, the date as near as you can recall? A. I cannot tell you. I don't know the date.

30 Q. You knew Mr. and Mrs. Eugster when they were married? Did you know them before? A. Yes sir.

Q. That was in 1910, in November 1910? A. Yes.

Q. Now about how soon after they were married did this transaction take place? A. About four or three months after that, I think.

40 Q. Where was it that happened A. It was—I don't know the number from the house where it was.

Q. Where Mr. and Mrs. Eugster lived at that time? A. Yes.

Q. Do you remember the name of the street A. I guess—I don't know for sure.

Q. Anyhow it was at their house A. Spring Street.

Petitioner's: Jacob Fritschi—Direct 10

Q. It was at their home, in the home of Mr. and Mrs. Eugster? A. Yes.

Q. How did you happen to go there? A. Mr. Eugster, he told me I should be a witness for this.

Q. Did he telephone to you or did he come to see you? A. Yes, he came to see me.

Q. To your home? A. No. He told me some day he would like to see me. 20

Q. Where did he see you first on that day? A. On Monastery Street.

Q. In West Hoboken? A. Yes.

Q. Then what did you do with him? Did you go anywhere? A. Yes; we go to his house.

Q. And there you met Mrs. Eugster? A. Yes, sir.

Q. What did he say to you or she to you—anything at all, before you went home? A. He told me an agreement— 30

Q. Was it a paper? A. Yes, a paper.

Q. What did he say it was? A. He would like to have a witness about this paper.

Q. Did he tell you what the paper was? A. Yes, he told me outside on the street.

Q. What did he say it was? A. I cannot tell you that in English right.

Q. Well, was it a printed paper or a written paper? A. It was a written paper.

Q. It was one piece of paper? A. Yes. 40

Q. Do you know whose handwriting it was? A. It was his handwriting.

Q. Mr. Eugster's? A. Mr. Eugster's.

Q. Did you read the paper? A. Yes, outside.

Q. And so far as you can remember tell the

10 Petitioner's: Jacob Fritschi—Direct

Court what you remember was on that paper?

A. That he wanted—I can't tell you that right in English. You see that is the trouble.

Q. Oh, well, try Mr. Fritschi. You went along very nicely so far.

A. He wanted to give fifteen dollars a week and he wanted to have twenty-five dollars for himself.

20 Q. He wanted to give fifteen dollars a week to whom? A. To Mrs. Eugster.

Q. Do you remember what it was for? A. For living.

Q. Twenty-five dollars a week he wanted? A. He wanted to have for himself.

Q. That was in the paper? A. That was in the paper.

Q. What else, if you remember, was in the paper? A. That the profit go half and half.

30 Q. The profit of their business? A. Yes.

Q. All their business? A. Yes.

Q. About the embroidery business? A. Yes.

Q. Is there anything else you remember? A. And if she was going to die—I can't—

Q. That is alright. You are talking very nicely. A. If she was going to die—

Q. If Mrs. Eugster was going to die, then what? A. Two or three years after she died nobody could touch the money. You know?

40 Q. The property? A. And money what they make in the business, that nobody can take money out.

Q. Was there anything else in that paper that you remember? A. There was more in there but I can't remember it.

Petitioner's: Jacob Fritschi—Direct 10

Q. You cannot remember? A. No.

Q. When you came to the home of Mr. and Mrs. Eugster, what happened there? A. Mrs. Eugster, she signed the paper, and Mr. Eugster too.

Q. They both signed the paper? A. Yes.

Q. You were there? A. Yes.

Q. And you saw them signing it? A. I saw them sign it, yes. 20

Q. What happened to that paper when you saw it? A. He put it in his pocket.

Q. Was there any talk between Mr. and Mrs. Eugster at that time that you heard? A. No. they didn't talk much.

Q. She was simply asked by Mr. Eugster to sign the paper? A. That was nearly all.

Q. Did you used to visit the people, Mr. and Mrs. Eugster, at their home, as a friend? Did you go to see them once in a while? A. Yes, Mr. Eugster was a friend to me. 30

Q. And he is a friend of yours still? He is a friend of yours?

Mr. Stout: Your Honor, I thought this witness was called on a certain point—

Mr. Slobodin: I simply want to show whether he is biased or not.

The Vice Chancellor: The witness was to be called as to the transaction in which 40 the paper was signed, and that involves the relations of the parties.

Q. You are now a friend of Mr. Eugster. Do you see him? A. I never see him any more.

Q. No more? A. No, not any more.

10 Petitioner's: Joseph Fritschi—Cross

CROSS-EXAMINATION by Mr. Stout:

Q. You came here at the request of Mrs. Eugster? A. I don't understand you.

Q. Who asked you to come here this morning?

A. Mrs. Eugster.

Q. You were not served with any paper to come here? No paper was given to you? A. No.

20 Q. You are very friendly to her, Are you and she good friends? A. (No response).

Q. Are you and she friendly? A. (No response.)

Mr. Slobodin: Are you friends with Mrs. Eugster?

The Witness: Yes, just like to Mr. Eugster.

Q. The same to Mr. Eugster? A. Yes.

Q. When did you last talk to Mr. Eugster? A. I cannot tell you that for sure.

30 Q. Have you talked to him within the last year? A. No. I never see him.

Q. Within the last two years? A. No. I never see him.

Q. When did you last see him? A. That was about five years ago in a Ball in the Turn Hall.

Q. About five years ago? A. About five years ago.

Q. That is the last time you saw him? A. Yes.

40 Q. What did Mr. Eugster say to you on the street before he signed this paper? A. He liked to have a witness for this paper.

Q. Did he tell you what the paper was about? A. He gave me the paper, and I looked in the paper, what it was.

Q. You read the paper over? A. Yes, on the street.

By the Vice Chancellor: Q. Was it English or in German? A. In German.

By Mr. Stout: Q. And you say that by that paper Mrs. Eugster was to get fifteen dollars a week and he was to get twenty-five? A. Yes.

Q. That was in the paper? A. That was in the paper.

Q. Did that paper say anything about the money that Mr. Eugster put in the business? A. No; 20 it did not say anything about that.

Q. Did that paper say anything about the money that Mrs. Eugster put in the business? A. No.

Q. It was on a division of the profits of the business? A. Yes.

Q. Who signed the paper first? A. Mrs. Eugster signed the paper first.

Q. And then Mr. Eugster signed it? A. Yes.

Q. And then you signed it? A. No; I did not 30 sign it.

Q. You did not sign it? A. No.

Q. You just saw them sign it. Is that the idea? A. Yes, sir, I saw them sign it but I did not sign it.

Q. You did not put your name on the paper? A. No.

Q. How long were you there on that occasion? A. What is that?

Q. How long were you at the house at this 40 time? A. In the house?

Q. Yes, when this paper was signed. How long were you there? A. Why, it was about fifteen minutes. I guess.

10 Petitioner's: Joseph Fritschi—Cross

Q. Fifteen minutes? A. Yes; that was all.

Q. When the paper was signed what was done with it? A. Well, we go out and drink a beer; that is all.

Q. What is that? A. We went outside the house.

Q. You went outside? A. Yes.

Q. Where was the paper when you went out?

20 A. He put it in his pocket.

By the Vice Chancellor: Q. Did they seem to be friendly to each other? A. Yes; I was friends to Mr. and Mrs. Eugster.

Q. No. Did Mr. and Mrs. Eugster seem friendly to each other? A. (No response.)

Q. Did they quarrel any on this occasion? A. I don't know.

Q. You went with Mr. Eugster to his house and he showed you the paper out doors? A. Yes.

30 Q. And you read it? A. Yes.

Q. And then you went into the house? A. Yes.

Q. How did Mrs. Eugster behave, herself? A. Well, Mrs. Eugster said, "Well, here is your friend. Now tell him what you want."

Q. Who said that? A. Mrs. Eugster.

Q. She said what? A. "Here is your friend now." Then he took this paper out and Mrs. Eugster make an awful mad face in the house.

40 Q. A mad face? A. Yes.

Q. What did she say? A. She only say "Now here is your friend, now". That is all what she said.

By Mr. Stout: Q. She did not say that she did not want to sign the paper? A. What?

Petitioner's: Mrs. Maria A. Eugster—Direct 10

Q. She did not say that she did not want to sign the paper? A. No; she did not say anything like that.

Mr. Stout: That is all.

Mr. Slobodin: That is all. If your Honor, please, I want to ask one question of Mrs. Eugster.

20

MRS. MARIA A. EUGSTER, the petitioner, recalled.

Direct-examination by Mr. Slobodin.

Q. I want to ask you one question, Mrs. Eugster, in reference to a point which is not clear in my mind.

Mr. Stout: Well, your Honor, it seems to me it is a question of whether it is clear in your Honor's mind. 30

The Vice Chancellor: I will hear it.

Q. If at any time before you brought the action for a divorce Mr. Eugster had come to you and wanted to make up all the questions of property and to live with you as husband and wife, would you have been willing to receive him and live with him as his wife?

Mr. Stout: I object to that. She has already testified that from 1913 on she would not. 40

Mr. Slobodin: She testified, it seems to me, both ways.

Mr. Stout: Here is the testimony as I recall it—

10

Argument

The Vice Chancellor: I think we all agree, Mr. Stout. The witness testified first positively that she would not have gone back after a certain time, and then, in answer to two questions which I put to her myself—and one of them was substantially the same question which Mr. Slobodin put—she then said that if he had come back and had asked forgiveness and had promised her fair treatment in respect to herself and her property that she would have received him and given him a chance. That was her testimony.

20

Mr. Stout: Yes, your Honor, and then I asked her—

The Vice Chancellor: I am sustaining your objection, Mr. Stout because this question, it seems to me, is a mere repetition.

30

Mr. Slobodin: I am not sure what is on the record and I wanted to get it out. Your Honor sustains that objection?

The Vice Chancellor: Yes, if that is the objection, on the ground the question has been asked before.

Mr. Slobodin: There is no harm if it is asked and answered again, is there?

40

The Vice Chancellor: No, but you will find, however, that she covered that ground. If this were her original examination the case would be different.

Mr. Slobodin: I have here some corroborating witnesses. I want to call the daughter-in-law and the son in reference

to some phases of the case about which there was contradictory testimony.

The Vice Chancellor: Why didn't you have them in court the last time?

Mr. Slobodin: That is the reason I ask the favor now.

Mr. Stout: It seems to me it is eminently unfair, after the case has been tried, and these witnesses could be consulted and 20 talk over the phases of the case, to bring them here at this late day.

The Vice Chancellor: These are new witnesses?

Mr. Stout: Yes, and there has been an opportunity to talk over with the witnesses what the case is about.

The Vice Chancellor: That goes to the probative force of the testimony.

Mr. Stout: And they had an opportunity to be here before. 30

The Vice Chancellor: The fact they were not produced is a fact to be taken against them. But I recall that this case would have been argued on both sides, submitted and decided, necessarily, because I took no notes on the day of the last hearing, if it had not been that counsel for the defendant desired a postponement in order that he might have an opportunity to take testimony. 40

Mr. Stout: The counsel for the petitioner made that request; not I.

The Vice Chancellor: My recollection, Mr. Stout, is that you proceeded to argue

10

Argument

20

your case. Mr. Slobodin finished the argument and said nothing about more testimony, and you proceeded to argue your case and you indicated in your argument that if such and such a thing were the case you would like to show so and so, and I asked you if you meant to apply for leave to take other proof and you said you did and you never completed your argument. You did not argue ten minutes.

Mr. Stout: I think my adversary will state to you that it was at his request the matter was adjourned.

30

The Vice Chancellor: That is before the proofs were opened at your request, and when it seemed important to have Mr. Fritschi here, then I think, upon Mr. Slobodin's application, perhaps upon the suggestion of the court, the case was laid over to bring this witness, and the two witnesses went on the stand after the case had been reopened, at Mr. Stout's request, and contradicted each other.

40

Mr. Slobodin: I withdraw my application.

The Vice Chancellor: I shall allow this testimony to be taken and if Mr. Stout has any witnesses here present, or if he desires to take any further opportunity I will give it.

Mr. Slobodin: In view of that, imagining there will be another application for an adjournment, and that would be undesirable on our part, I beg leave to with-

Defendant's: Benedict Eugster—Direct 10

draw my application and rest the case as it stands now.

The Vice Chancellor: Have you anything further on the other side?

Mr. Stout: Except that I want to call Mr. Eugster.

20

BENEDICT EUGSTER, the defendant, recalled.

Direct-examination by Mr. Stout.

Q. Mr. Eugster, were you present on an occasion about four months after your marriage, when Mr. Fritschi, the last witness was present?

A. I don't understand.

The Interpreter: I just translated the question. 30

Q. After your marriage did Mr. Fritschi ever call at your home?

Mr. Slobodin: I object to it, as Mr. Fritschi did not testify to having called at the home. He said they met on Monastery Street.

Mr. Stout: And went to the home afterward. 40

Q. The question is whether Mr. Fritschi called at your home after you were married? A. Yes.

Q. Was there a paper signed on that occasion? A. I told him that my wife and I wanted to make the contract.

10 Defendant's: Benedict Eugster—Direct

Q. Was there an agreement signed there that day? A. Oh, no.

Q. Did you ever give to Mr. Fritschi a paper to read about the business? A. I cannot recall.

Q. Well, did you draw up an agreement about the business? A. Yes. I made a proposition. The machines had to be paid out and then I wanted the machines should belong to me after
20 they were paid out.

The Interpreter: I am not sure that is the correct translation.

The Vice Chancellor: After they were paid for?

The Interpreter: Yes, sir. "They were installment machines and I wanted to make a contract."

Q. Did she ever sign this contract? A. Oh, no.
30 I wanted to make an agreement, but not a contract.

Q. Did she sign the agreement? A. No.

Q. Did you put any money in this business?
A. We were in the building of the house partners and I have used the money in the building of the house.

Q. How much of your money went into it? A. About four hundred dollars.

By the Vice Chancellor: Q. Where did you
40 have that money? A. In the bank.

Q. What bank? A. In a German Bank in New York.

Mr. Slobodin: German Bank or German Exchange Bank? Have you got the bank book?

Defendant's: Benedict Eugster—Cross 10

A. I have withdrawn my money. It is in the bank now.

Mr. Stout: I think that is all.

CROSS-EXAMINATION by Mr. Slobodin:

Q. Whom did you give the money, the four hundred dollars to—to whom? A. I have spent it in the expenses in the building.

Q. Who kept the books about expenses in the building of the house? A. I, myself. 20

Q. Have you got those books? A. No.

The Interpreter: Pointing to Mr. Cantzlaar, he says, "He broke into my office and stole my book."

Mr. Slobodin: Can I put on in rebuttal Mr. Cantzlaar on that point and the four hundred dollars point.

Mr. Stout: I do not think that is very material. 30

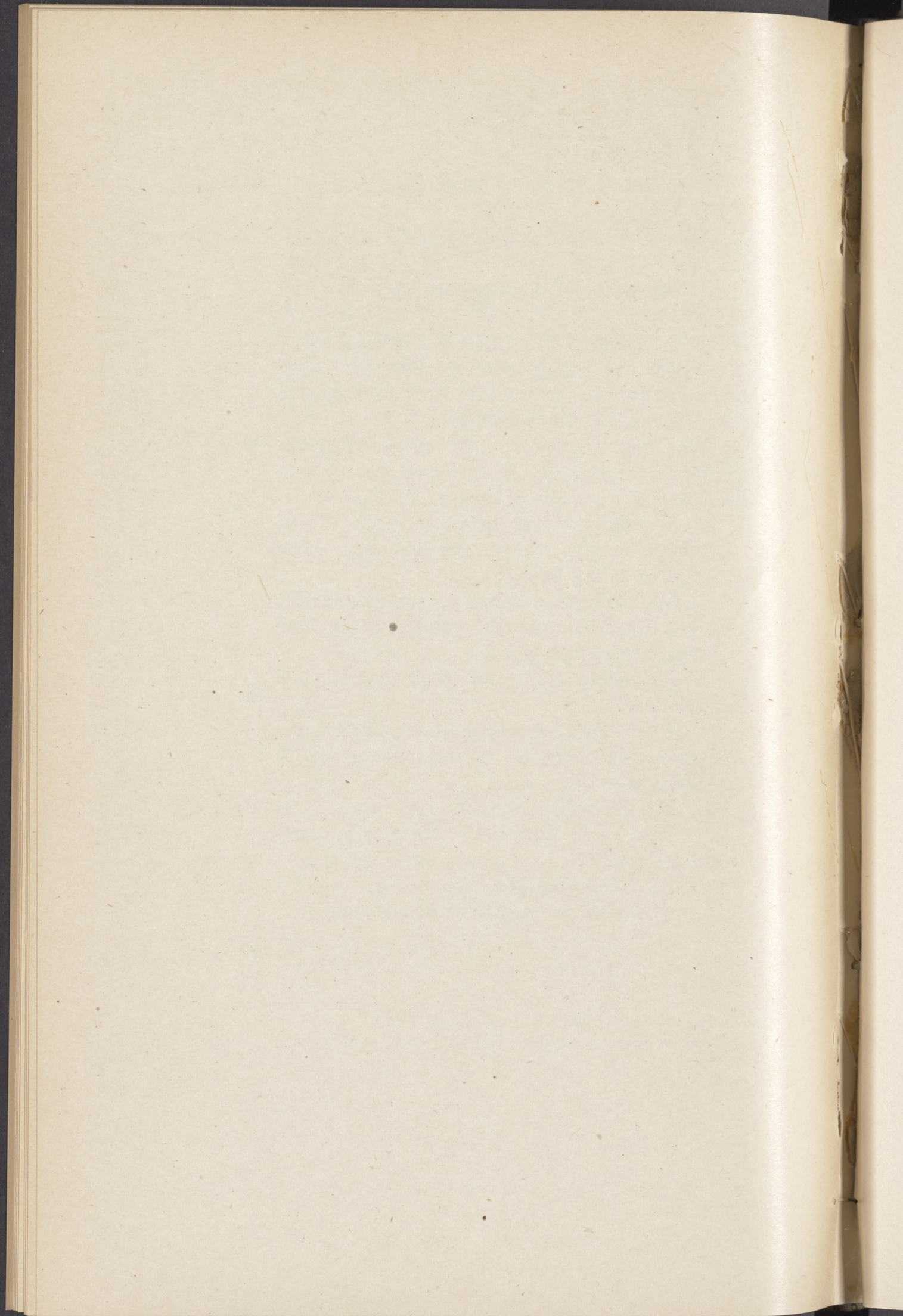
The Vice Chancellor: It is pretty remote, Mr. Slobodin. It does not seem to help us at all.

Mr. Slobodin: Alright.

The Vice Chancellor: Have you anything further?

Mr. Slobodin: We rest.

(Counsel proceeded with argument.)



New Jersey Court of Errors and Appeals

Between

MARIA A. EUGSTER,
Respondent,

v.

BENEDICT EUGSTER,
Appellant.

ON PETITION FOR
DIVORCE 10
on Appeal from the
Court of Chancery

BRIEF FOR APPELLANT.

Maria A. Eugster, the respondent, petitioned the Court of Chancery for a divorce from Benedict Eugster, the appellant, on the ground of desertion. He denied the desertion and filed a cross petition for divorce against her on the same ground. 20

The Court of Chancery dismissed the cross petition for lack of proof, and ordered a decree *nisi* in favor of the respondent.

Statement of the Case.

30

The parties to this suit were married in November, 1910, after a brief courtship. Each had been married before, and was about 50 years of age. In November, 1911, they moved to an apartment of a building at No. 327 Mountain Road, West Hoboken, N. J., owned by Mrs. Eugster. They engaged in an embroidery business in that building. Mrs. Eugster furnished the capital for the business and Mr. Eugster, who was skilled in embroidery work, took entire charge of the business. 40

Quarrels soon arose between them about this business and about her son (by a previous marriage) who was living in the apartment with them. On November 7th, 1911, Mr. Eugster left the bedroom which he and Mrs. Eugster had previously occupied together, and took another bedroom in the same apartment.

10 Mr. Eugster testified that Mrs. Eugster told him to leave her bedroom and that she didn't want anything more to do with him. Mrs. Eugster testified that Mr. Eugster said he had had enough of a gypsy life with her and wanted his own bedroom. At the time of the separation, she did not ask him to continue to live with her, and made no objection to the separation. She never spoke to him thereafter about resuming their marital relations. She testified that in October, 1912, he sought a reconciliation, but she refused because she believed he wanted her money and not her. In November, 20 1911, she brought suit against him in the Court of Chancery of New Jersey, to get possession of the embroidery business, and the Court decreed it to her, subject to a claim of Mr. Eugster, of one half of the profits which amounted to approximately \$3300.00. She then took an appeal from this decree, to the New Jersey Court of Errors and Appeals, which suit is still pending.

30 On Easter Monday, 1913, Mr. Eugster left the apartment. He testified that he could not endure her treatment any longer and was forced to leave. She testified that he said nothing at the time of his departure and that she did not ask him to stay. She also testified that from that time on she would not have consented to live with him as his wife if he had returned to her.

40 On March 1st, 1916, she filed her petition for divorce, alleging that Mr. Eugster deserted her in the month of March, 1913. Mr. Eugster denied the desertion in his answer, and filed a cross petition, alleging that Mrs. Eugster deserted him on November 7th, 1911.

The Court of Chancery decreed that Mr. Eugster had failed by his proofs to sustain the allegation of his cross petition and dismissed the same, and further decreed that Mr. Eugster was guilty of desertion of Mrs. Eugster, as alleged in her petition.

The questions involved are:

1. Was there proof of the cause of appellant's desertion?

2. Was the desertion of the appellant obstinate? 10

3. Was the respondent guilty of desertion?

Grounds of Appeal

1. The Court below erred in decreeing that the appellant was guilty of wilful, continued and obstinate desertion of the respondent.

2. The Court below erred in decreeing that the appellant had not sustained the allegations of his cross-petition for divorce against the respondent. 20

ARGUMENT.

POINT I.

The cause of appellant's alleged desertion was not proven. 30

There was no evidence that the appellant intended to desert the respondent in April, 1913, the date she alleges in her petition for divorce that he deserted her (Case, p. 5, ll. 29-34). The respondent testified that she and her daughter were present at that time (Case p. 53, lls. 36-39), but that neither they nor he said anything (Case p. 49, ll. 34-40). The appellant testified that he left because he could no longer endure her treatment of him (Case, p. 81, ll. 33-36). 40

The only evidence as to his cause for leaving her is the uncorroborated testimony of the respondent that the appellant told her, when they separated in November, 1911, that he was tired of a gypsy life with her and wanted his own bedroom (Case, p. 17, ll. 44-45; p. 18, ll. 12-14). The respondent's son was present at the time of this separation, but he was not called to testify (Case, p. 62, ll. 27-30).

Obviously, the separation in November, 1911,
 10 and in March, 1913, was the result of their domestic infelicity and quarrels about business matters.

In *McShane v. McShane*, 45 N. J. Eq. 341 at 343, the Court said: "Furthermore, there is no sufficient legal proof of the causes of the desertion. A divorce is never granted in this State upon the unsupported testimony of the petitioner as to the causes of the desertion. The decisions on this point are very numerous and the law on the point is too well established for argument."

20 It is submitted that no cause for the appellant's desertion was shown.

POINT II.

The appellant's desertion was not obstinate.

In November, 1911, respondent and appellant
 30 ceased marital relations but continued to live in the same apartment. The respondent testified that the appellant said that he had had enough of gypsy life with her and that he wanted his own bedroom (Case, p. 17, ll. 44-45; p. 18, ll. 12-14). He testified that he was told by the respondent to leave her bedroom and that she wanted nothing more to do with him (Case, p. 68, ll. 36-41). She made no objection to the cessation of cohabitation, and never asked him to return to her. They seldom spoke to
 40 each other, even though they lived in the same

apartment. Previous to this, they had quarreled about money matters.

In October, 1912, appellant solicited the respondent to return to him as his wife (Case, p. 68, ll. 30-40). She deliberately refused. Her testimony is that she believed he wanted her money and not her (Case, p. 37, ll. 38-41), but there is no evidence to substantiate her belief. The following month, she brought suit in the Court of Chancery of New Jersey, against him to obtain possession of the embroidery business (Case, p. 34, ll. 37-38). They continued to live in the same apartment, each occupying separate bedrooms, until March, 1913, when he departed (Case, p. 33, ll. 41-44). 10

The respondent and her daughter were present at the time of his departure, but they did not ask him why he was leaving. In fact, there was no conversation between them.

He testified that her attitude towards him was such that he was *forced* to leave her (Case, p. 81, ll. 31-36). She testified that she would not have resumed marital relations with him, had he returned to her, subsequent to this (Case, p. 40, ll. 22-30). In March, 1916, she filed her petition for divorce, alleging that the appellant deserted her in March, 1913. 20

In *McGean v. McGean*, 63 N. J. Eq. 285, it was held: "A case of obstinate desertion is not made out against the husband if it appears that the separation was not against the will of the wife." 30

The Court of Errors and Appeals, in *Kipp v. Kipp*, 77 N. J. Eq., 585, affirming the opinion of Vice Chancellor Leaming in 78 Atl. (N. J.) 682, said: "It is, however, the well-recognized duty of a wife to make every reasonable effort to prevent or terminate a cessation of cohabitation and, in the absence of such reasonable effort on her part, the element of obstinacy, which is required by our statute, is necessarily wanting. While the reasonableness of her conduct must be largely depend- 40

ent upon the circumstances of the individual case, yet it is undoubtedly true that the husband may fall far below the ideals of the wife and her duty to prevent cessation of cohabitation remain unimpaired."

Defendant's desertion in the Kipp case was the result of a quarrel over money matters. This and the other facts in the Kipp case are very similar to the facts in the instant case. The Court there
 10 held that the wife acquiesced in her husband's desertion and deprived it of the element of obstinacy.

It is inconceivable that the respondent would have been willing to live with the appellant subsequent to March, 1913, if he had returned to her, when she had a suit pending against him to obtain possession of the embroidery business, and in view of the fact that she had made up her mind, in March, 1913, that their marital relations were at
 20 an end.

There is no evidence in the case that the appellant married the respondent in order to "plunder her," or that his conduct towards her was such as to relieve her of her duty to induce him to return to her.

The Court below concluded (Case, p. 12, ll. 33-41) that the consenting mind of the respondent was caused by the violations of duty on the part of the appellant—that the respondent would have
 30 been willing to live with the appellant if he had done his duty. The Court does not point out what these violations of duty are, but holds that a wife is not to be blamed for acquiescing in the separation from her of a husband who shows her that he married her in order to plunder her, beats her and treats her otherwise with cruelty.

The most that can be said in favor of her consenting mind to the desertion is, that they frequently quarreled about the embroidery business
 40 and about her son who was living with them; that

from the time the appellant first left her, the separation was by mutual consent; and that neither cared to live with the other.

As stated above, there is no evidence in the case at bar that the appellant married the respondent to plunder her, or that he was cruel to her. The authorities cited by the Court below are not in point.

10

POINT III.

The respondent deserted the appellant.

The appellant left the respondent's bedroom in November, 1911, because the respondent told him she would have nothing more to do with him and that he must occupy another bedroom. The appellant says that from that time on, the respondent paid no attention to him; that in October, 1912, he endeavored to induce her to return to him but she refused, and immediately thereafter brought suit against him to obtain possession of the embroidery business; and that he left her apartment in March, 1913, because he could no longer endure her treatment. 20

In *Hooper v. Hooper*, 34 N. J. Eq., 93, it was held: Although a wife leaves her husband's house, through his fault, yet if he afterwards sincerely solicits her to return and she deliberately and persistently refuses to do so, her conduct constitutes desertion within the meaning of the divorce act. 30

In *Rector v. Rector*, 78 N. J. Eq., 386, it was held: Unjustified refusal of one's spouse for the statutory desertion period to have sexual intercourse with the other and withdrawal from other marital duties against the other's will, constitutes desertion though they continue to reside in the same house.

It is insisted that the respondent deserted the 40

petitioner in November, 1911, as alleged in his cross petition, and the fact that she refused to return to him is proof that she intended to desert the appellant when she told him, in November, 1911, to leave her bedroom.

It is respectfully submitted that the decree *nisi* in favor of the respondent should be reversed, and that a decree *nisi* should be granted in favor of
10 the appellant.

QUEEN & STOUT,
Counsel for Appellant.

November Term, 1917.

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BOND



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