

New Jersey Court of Errors and Appeals

Between

JAMES H. MARSH,
Petitioner-Appellant,
and

HELEN BENNETT MARSH,
Defendant-Respondent.

*On Appeal
from Court
of Chancery.*

Brief for Appellant.

Abstract of the Case.

The petition in this case was filed May 18, 1914, and seeks to have the marriage between the petitioner-appellant and the defendant-respondent dissolved on the ground that the defendant wilfully, continuously and obstinately deserted the petitioner for more than two years last past before the filing of the petition.

The petitioner and defendant were joined in the bonds of matrimony on April 10, 1900, by a Justice of the Peace in Paterson, N. J. Subsequently, the petitioner and defendant were remarried at Jersey City, N. J., on March 1, 1912, by the Rev. Wilbert Westcott, Exhibit P. 1.

The petitioner and defendant were both counsellors-at-law of the State of New York, at the time of the first marriage and entered into the practice of law with a brother of the defendant, under the firm name of Bennett, Marsh & Bennett. Later on the firm was dissolved and the petitioner and defendant continued to practice for several years under the firm name of Marsh & Bennett.

The petitioner rented a house in West Twelfth St., New York City. The petitioner says the defendant left the home on West Twelfth Street and went to live at Cooley, New York, and he was obliged to sell the furniture in the Twelfth Street house at auction. The defendant continued to live at Cooley until a warrant was issued for her arrest on account of troubles with some neighbors. A house was acquired at Long Branch, New Jersey, and the residence was established at that place. The defendant lived at Long Branch for about four years when this property was sold. In 1911, the petitioner bought ten houses in Jersey City and asked the defendant to live there with him, but she refused to do this (p. 24) and took a furnished room in New York City. The petitioner went to live with her in the furnished room, although she had refused his request to live in Jersey City in one of the houses which he owned.

During these years, the wife had been demanding that the property be put in her name and claimed that the husband had taken her money. Finally, in June, 1911, the husband conveyed to the wife about ten acres of land on Staten Island which he says was worth \$15,000 at that time. He says he conveyed this property to her, because she was always claiming that he owed her money. At this time the defendant executed and delivered to the husband the writing, Exhibit P. 5, (p. 172).

Immediately on receiving the title to the Staten Island property, the wife left her husband and went to Staten Island to live (p. 25). The defendant continued to live at Staten Island until the latter part of February, 1912, when she returned to New York City. The petitioner again went to live with her. The next day, March 1, 1912, the petitioner and defendant went to Jersey City and were remarried. The petitioner re-

turned to the house in New York with the defendant after the marriage ceremony. The wife excused herself, and the landlady came out and told the petitioner that she would not have him in the house. The petitioner requested the wife to go with him and live elsewhere, but she refused to go with the petitioner (p. 26).

On March 19, 1912, the petitioner was arrested and locked up over night on a charge of desertion made by the defendant. She appeared against him the next morning. The case was adjourned one week. In the meantime, the petitioner saw her brother, John S. Bennett, and tried to have the wife discontinue the complaint. Before the adjourned day of the hearing, the husband came to Newark and arranged with a Mrs. Elizabeth Rothenburg for rooms in which the petitioner, the wife and the child were to live. On March 27, 1912, the defendant appeared in court and the petitioner appealed to the defendant to have the case dismissed and to go to Newark to live with him. The petitioner's mother tried to dissuade her from appearing in court, but the defendant told the petitioner's mother to mind her business and that she would make such sensational disclosures that the petitioner would not be able to see his friends again. The defendant insisted on appearing in court and pressing the complaint. This complaint of desertion that the wife, the defendant, made against the petitioner was dismissed. The wife then made a second complaint against the petitioner, but shortly afterwards she left for Kentucky before the case came up.

The defendant began the practice of law in Kentucky and remained there until she returned to New York in June, 1914, where she was served with the papers in this action.

One child, a son, was born of the marriage. The petitioner's mother says she took care of the boy after he became four years of age, except during the time that he was at Long Branch, and that on the return of the mother from Long Branch, the boy lived at her home up to one week before the mother had the petitioner arrested in New York on the ground of desertion. The boy even after his father's arrest took his meals at his grandmother's until he was taken to Kentucky by his mother (p. 58).

The answer of the defendant denies that she wilfully, continuously and obstinately deserted the petitioner, and denies that the petitioner has been a resident in the State of New Jersey for more than two years next preceding the filing of the petition. The defendant also filed a cross petition for separate support and maintenance, alleging that the petitioner had deserted her.

At the hearing the wife accused the petitioner of taking her money and property and of not supporting her. The wife also claimed that the husband had been guilty of misconduct with different women where he had boarded.

The advisory master before whom the cause was heard found that the wife did not establish this statement of non-support by any competent proof. In fact, a large number of checks were produced which the wife admitted were signed by her in the firm name of Marsh & Bennett, and that she had a right to draw on the joint bank account.

As to the wife's allegations about the women where the petitioner boarded, the advisory master found that the women were entirely free from the insinuations against them.

The advisory master also finds that "during this period Mrs. Marsh, the defendant, did not seem to have desired her husband to live with her, although

she seems to have followed and annoyed him in every way she could while he boarded apart from her."

The advisory master also finds that the defendant went to Kentucky, went without the husband's consent, and probably against his will, and that the letters written by her indicate a doubtful intent on her part to ever return to him again.

The master, however, finds that the petitioner was not sorry she had gone and that he never made any honest and sincere efforts to secure her to return and, therefore, finds that the desertion was not obstinate.

The master finds (p. 181) "The 'Hound of Hell' letter, on which the petitioner much relies, was written in reply to the typewritten letter claimed by the defendant to have been sent to her by the petitioner. It is not necessary to decide here that it was. That letter asked her to divorce him or consent to a divorce. It is evident it was written in answer to some letter of the petitioner which made such a suggestion, if not to the typewritten one as the defendant contends. In any event, such a letter as the 'Hound of Hell' letter called for a request on the part of the husband for an explanation of its cause and for a denial of his ever having written her asking her to give him a divorce. No such letter or personal request for an explanation was ever written by petitioner, and no fair and honorable attempt is shown to have been made by him to straighten out the situation which lead to the writing of the 'Hound of Hell' letter. Without such an attempt to explain the error causing that letter or any effort to get her to return and live with him, he cannot be said to have made any effort for a reconciliation which all the cases seem to require."

Hall vs. Hall, 59 N. J. E. 402.

The master in dismissing the cross petition of the defendant found that at the time of filing the petition, the petitioner and defendant were both residents of New York.

The letters produced by the petitioner and one of them referred to as the "Hound of Hell" letter, are admitted to have been written by the defendant and they are Exhibits P. 2 and P. 3.

The typewritten letter referred to by the advisory master is entirely typewritten and the petitioner denies ever having seen or heard of it. No envelope was produced; no one saw the defendant get the letter; in fact, the defendant says she does not know whether the letter was addressed in typewriting or not. The defendant admits she got letters from the petitioner, but says they were destroyed by fire and, therefore, does not produce them. Moreover, she does not account how this one was saved from destruction by fire and even says the typewriting does not look like her husband's typewriting, (p. 102).

Specifications of Grounds of Appeal.

1. Because the evidence in the case shows that the defendant deserted the petitioner-appellant.
2. Because the evidence shows that the desertion was wilful.
3. Because the evidence shows that the desertion was continuous.
4. Because the evidence shows that the desertion was obstinate.
5. Because the evidence shows that the petitioner was a resident of the State of New Jersey for more than two years last past before the filing of the petition, and was a resident at the time of the hearing of the petition.

6. Because the court erroneously allowed the defendant costs and counsel fee.

Brief of Argument.

DESERTION.

Before and after the sale of the house at Long Branch, the wife had been claiming that the petitioner had taken her money, which had been earned by the firm of Marsh & Bennett, to buy property, although the title of the property at Cooley had been placed in the joint names and the house at Long Branch had been put in her name. After the Long Branch house was sold in 1911, the husband bought property in Jersey City and wished to establish his home there. This the wife refused to do, and went to New York City to live. The wife does not deny this. The husband, notwithstanding the wife had refused to live with him in Jersey City, went to live with her in New York. On June 28, 1911, the husband conveyed ten acres of land to the defendant worth then \$15,000, because he says she kept insisting and claiming that he had taken her money (p. 160). He says he insisted that the wife put the statement that he did not owe her any money in writing, and that the wife in her own handwriting wrote Exhibit P. 5 (p. 172). In this document she addressed the petitioner as "My dear husband" and signed it "Your loving wife."

As soon as she got the Staten Island land she immediately left the husband and her boy and went to Staten Island to live. During the time they were in New York, the husband and boy went to the petitioner's mother's because the son says his mother would not get up until eleven o'clock in the morning (p. 132). The husband, the wife knew, could not go to Staten Island to live and the boy said he stayed at his grandmother's, because he could not

get up to school from Staten Island. The boy lived at his grandmother's until a week before his mother had the petitioner arrested.

The wife returned to New York City in February, 1912. The husband went to live with her again. He stayed one night. The next day they went to Jersey City and were remarried on March 1, 1912. The wife says (p. 108) they were remarried because the husband insisted that the first marriage was defective. On the return to the house in New York the landlady refused to permit the petitioner to live there and the wife refused to go to live elsewhere. (p. 26).

On March 19, 1912, at night, Mrs. Marsh had her husband arrested charged with deserting her. On March 27, in the Court House, the petitioner testifies (p. 27) "He told her that he had arranged to live in Newark and requested her to go with him, but that she refused to do so." He is corroborated by the witness Meyer and by his mother. At this hearing in New York she made the same disgraceful charges against her husband as she did in the hearing of this cause, but the New York Court dismissed her complaint of desertion on the part of the husband.

CONTINUOUS.

The petitioner says he never saw his wife after this time in the Court House. Mrs. Marsh says she went to Kentucky in April, 1912, and returned in June, 1914. This was after the petition had been filed in this case.

OBSTINATE.

In determining whether or not the defendant's desertion was obstinate and with the consent of the petitioner, the court should keep in mind her temper, disposition and conduct towards her husband for the past years. When the house at Long Branch

was sold, the husband endeavored to get her to live in Jersey City with him, but she refused. Nevertheless, the husband went to her in New York to live. Then she got the Staten Island property and left him. She returned to New York, the husband went to her again to live and according to the wife insisted on a remarriage. That very night she had the landlady turn him out and refused to go with him. Less than three weeks later she had him arrested and locked up and refused to go to Newark, where her husband had gone to get her away from the influence of her brother, John S. Bennett. Her conversations and disposition towards her husband is corroborated by the witness, Meyer, and petitioner's mother, whom the master designated as two reputable witnesses, (p. 179). Furthermore, after the first complaint was dismissed, on March 27, 1912, and after her husband had appealed to her to come to Newark with the boy and live with him, she made a second complaint for desertion on his part and left for Kentucky before the second complaint was heard.

The advisory master says (p. 180) "that both before she went and after her return he was hopeful of procuring a divorce from her and anxious that a situation might arise whereby he could divorce her." If the husband had been desirous of divorcing the wife, would it be reasonable to believe that he would have insisted on the remarriage on March 1, 1912?

Moreover, the advisory master, if he had followed the testimony, would have noticed that the wife did not return from Kentucky to New York in a few months, as he says on page 180. She did not return to New York from Kentucky until in June, 1914, which was after the filing of the petition. The advisory master says (p. 181) that he is convinced the petitioner never made any honest or sincere

efforts to secure her to return. The advisory master must have forgotten her previous conduct in leaving her husband and refusing to live with him; first, when she refused to live in Jersey City and went to New York; second, when she refused to continue to live with him in New York, and went to Staten Island; third, when she refused to live with him after the remarriage on March 1, 1912, and when she refused to go to Newark on March 27, 1912, and the wanton and malicious conduct on her part in making two criminal complaints.

The advisory master (p. 179, l. 19) in his conclusion finds "During this period, Mrs. Marsh does not seem to have desired her husband to live with her, although she seems to have followed and annoyed him in every way she could while he boarded apart from her."

The Court of Errors and Appeals has laid down the rule that a wife cannot dictate to her husband their mode of living or determine where they shall live and compel him to come to her, but it is her duty to go to him.

Purnell vs. Purnell, 70 Atl. 189.

This defendant, as Vice-Chancellor Stevenson said of the wife in *Purnell vs. Purnell*, has persistently during a long period of time obstinately maintained the position that she would not come to him. She wanted him to provide for her somewhere else.

The husband though had three times besought her to live with him. He tried to get her to live in Jersey City, but she refused; he wanted to live with her in New York, but she insisted on going to Staten Island, where neither her husband or her boy could be with her. When she returned to New York in February, 1912, the husband went where she was rooming and the wife says he insisted on the remarriage in Jersey City; on the return to New York she refused to live with him; seventeen

days later she had him arrested for desertion. This case was dismissed. He again besought her to go to live with him in Newark, but she refused. She made a second complaint against him and then went to Kentucky and began practicing law.

Chief Justice Gummere in *Hall vs. Hall*, 60 N. J. Eq., 469, states that

“when the husband by his conduct towards his wife contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return. But the law does not impose this duty upon the husband in every case arbitrarily, and without regard to the facts and circumstances by which it is surrounded. The husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife’s desertion.”

Trall vs. Trall, 32 N. J. Eq. 231.

Lammertz vs. Lammertz, 45 Atl. 271.

It is true that the wife made serious accusations against her husband of misconduct with two nieces of the woman where he boarded. The advisory master, however, found as to these accusations (p. 179, l. 9). “The two women in the house where Marsh boarded in New York and with whom the defendant claims he was intimate were not proven in any way to be other than reputable. I am compelled to find that so far as the proof discloses, these two women were entirely free from the insinuations against them. If a woman’s reputation for chastity and respectability could be injured by such evidence as is given in this case against these women, it would indeed be unfortunate for woman kind.”

The evidence that the advisory master refers to and which he rejects with these remarks as unworthy of belief is the testimony of the defendant and her brother, John S. Bennett. There is no corroboration of any accusations of the wife against the husband to justify her desertion.

Rogers vs. Rogers, 81 Eq. 479; 86 Atl. 935.

Nowhere does the advisory master find any conduct on the part of the husband that would contribute to the original desertion by the wife. Therefore, this case does not fall in the class of cases like *Bowlby vs. Bowlby*, 10 C. E. Gr. 406, *Van Wart vs. Van Wart*, 12 Dick. 598, where the advisory master puts it. Rather, this case belongs to the class like *Hall vs. Hall*, 60 N. J. Eq. 469; 46 Atl. 866; *Purnell vs. Purnell*, 70 Atl. 187; *Trall vs. Trall*, 32 Eq. 231.

In this class of cases the burden is on the wife to show that she changed her attitude and notified the husband of her willingness to return.

It is well to keep in mind the attitude, temper and disposition of the petitioner and the defendant during this time.

The petitioner's mother (p. 62) says she told the petitioner that his son had been in and was going to Kentucky. The petitioner's mother says the petitioner felt badly about it but could not see what their object was in going to Kentucky. The defendant went to Kentucky leaving a criminal complaint pending against her husband and began practicing law. Although she says the boy loved his father and wanted to return to his father, she did not return until after this suit was started.

The defendant says she received letters from the petitioner. Without accounting for their loss or failure to produce them, the advisory master permitted her to state what were their contents.

Later (p. 104) she gave as her excuse for not producing the letters received from her husband, that the letters had been destroyed at a fire in Kentucky. There is no corroboration that there was any such fire.

The petitioner says he wrote her letters in his own handwriting, and that he never wrote her or sent her any typewritten letter. Notwithstanding that the defendant says that the letters were destroyed in a fire, the defendant produced a typewritten letter which the advisory master received in evidence as Exhibit D. I. As to this letter the defendant says it came through the mail. She does not produce the envelope; she says she does not remember whether the envelope was addressed in typewriting or not (p. 102); as to who wrote it, judging from its appearance, the defendant says, "I wouldn't swear positively that this is his writing. I don't think that looks quite as good as Mr. Marsh's own writing" (p. 102, l. 11). The petitioner denied that he ever saw or heard of this letter before it was produced at the hearing. There is no corroborative testimony that the wife ever received such a letter or that the letter was genuine, and should not have been considered.

Smith vs. Smith, 65 Atl. 986.

The Court must remember that the defendant in this case, though a woman, is a counsellor at law. The testimony shows her to be a scheming, desperate and despicable character. In this line of work and testimony she is ably assisted by her brother, the witness, John S. Bennett, also a lawyer. Between the two they have endeavored to construct a defense based on alleged confessions of the petitioner to them. In these confessions the petitioner is supposed to have made admissions of his misconduct with different women—the very

women the advisory master found from the testimony were reputable and free from insinuations of the defendant and her brother, John S. Bennett. If the Court will compare this alleged typewritten letter, it will see that it contains practically the same line of thought that the wife testified (p. 97) the petitioner told her, and the same line of thought shown by the testimony of John S. Bennett (p. 67) which John S. Bennett says the petitioner told him.

No man would confess what the wife says the petitioner did (p. 97-99). It is evident that she and John S. Bennett are falsifying. She is continually accusing the petitioner of robbing her and her brother. The evidence shows simply the loss of money in investments and that the brother, John S. Bennett, lost seven hundred dollars in a real estate transaction. A man cannot be convicted on a confession until the *corpus delicti* is first proven.

The petitioner testifies (p. 159) as to what he wrote to his wife: "I told her I would not give her any aid while she remained in Kentucky, but if she returned I would send her the railroad tickets." In reply to his letter the defendant admits she wrote the letter Exhibit P. 2.

The contents of Exhibit P. 2 corroborates what she alleges he wrote. This letter of the petitioner she does not produce. In the letter, Exhibit P. 2, the defendant shows her intention of not returning to the petitioner by saying she will take the risk of divorcing him.

On page 159, the petitioner says: "I wrote her that I had received her letter asking for payment of \$1,000; that I did not have any such amount; that it did not look as though I would have any such amount. As to her statements regarding that Red Head I thought she was laboring under some hallucination. I also thought it was scandalous

and that it was entirely unjust the scandalous attacks she made on the Roach family and there was no justification for it, and I would like to know what she was doing down in Kentucky anyway, and if she would return I would straighten out the Staten Island taxes, and I was still living at Rothenburg's—that's about the answer I made."

To this letter the petitioner says he received in reply Exhibit P. 3, which is as follows:

EXHIBIT P. 3.

6, 17, 1913.

"Hound of Hell.

"How dare you write me such a letter! Have you no fear? Robber of your child and of me, if I were seeking vengeance, I would permit the degenerate to marry the manipulator of sick organs and 'gloat' over the result.

One of your —s is about to obtain \$175,000.00 through your treachery to those who loved you best, but you cannot repay a small part of the money that you embezzled from the wife that you starved. Even the tax searches that cost me seven dollars of charity money, you refused to give back to me, so that I could pay the taxes when I had the power. Now you say you will clear the title. If. Do you claim any favors from those to whom you have given the best that was ours, even to my ring that you kissed a thousand times? Who has it now? Who has your son's beautiful picture? I would have treasured it. You robbed me of it. I bought and paid for it with John's money, that old standby. You even robbed me of that, by advising your bedpan to send my letters to my brother. Treachery and vengeance emanate from your every move toward us, but benefit

and service and sacrifice, even to the elimination of self, are extended to the scavengers that a little money could hire.

How did you keep faith with me and our son? My brother bought what little luxuries I enjoyed and practically all of my necessities. You then robbed him of six hundred dollars. You told your shaver of sick hair a lie which would have robbed him, your son, of the only thing you ever gave him, an honest entry into life. Infamy! Was there no little drop of manliness hidden in the sap that gave you being? Ingrate! I have not asked you for payment. I ask you to return a part of what you stole. You would conspire to steal my womanly honor, would you? Shame on you! I have been told of your attempts in that direction. Shame on you again! Strangers are more trusty than you. Where would you stop? I am 'in Kentucky' for the sole purpose of avoiding injury to you. The only decent thing for you to do is to die. H. T. M."

The contents of the letter, Exhibit 3, admitted to have been written by the defendant is an answer to a letter such as the petitioner says he wrote. In no way does it answer the matter in the alleged typewritten letter, Exhibit D. 1.

The wife shows her disposition towards the husband conclusively by saying in the letter "the only decent thing for you to do is to die." At the hearing she testified she hated and despised him (p. 109, l. 19).

The petitioner says he never wrote to her after the receipt of this letter, because he did not think it was worth while, trying to get his wife to live with him.

The advisory master, however, finds that the "Hound of Hell" letter, Exhibit P. 3, called for a request on the part of the husband for an explanation of its cause and for a denial of his having written her asking her to give him a divorce, and concludes without such an attempt to explain the error causing that letter, or any effort to get her to return and live with him, he cannot be said to have made any effort for a reconciliation, which all the cases seem to require, citing *Hall vs. Hall*, 59 E. 402. The advisory master, however, must have overlooked the fact that the decision of the Vice-Chancellor in that case dismissing the cross-petition was reversed by the decision of the Court of Errors and Appeals, reported in 60 New Jersey Equity 469, which was written by Chief Justice Gummere and lays down the rule which has previously been cited and which was followed by the Court of Errors and Appeals in *Purnell vs. Purnell*.

The advisory master must have overlooked the rule of law laid down in this line of cases in *Sterling vs. Sterling*, 63 At. 548, and *Rogers vs. Rogers*, 81 Eq. 479, that the husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife's desertion.

The petitioner says that about a month before he instituted the suit for divorce he wrote Exhibit D. 2 to her brother, John S. Bennett, notifying him of his intention to sever the legal bonds of marriage on account of the disloyalty of his wife. Not even then did the defendant, who had deserted her husband without cause or excuse signify any intention of her willingness to return to her husband.

RESIDENCE.

The advisory master stated in his opinion dismissing the cross petition for separate support and maintenance that both the petitioner and the de-

feudant at the time of filing the petition were residents of New York. As to the residence of the defendant at the time of filing the petition, the court will see, if they read the evidence, that the wife left New York in April, 1912, and did not return from Kentucky, where she was practicing law, until in June, 1914, and that the petition was filed in May, 1914.

This testimony the advisory master must have forgotten as he says in his findings (p. 180, l. 25) "she did not remain, however, in Kentucky, but after a few months there returned to New York."

As to the residence of the petitioner, Mrs. Rothenburg, who owned the property at 687 Ridge Street, says that "in the latter part of March, 1912, (p. 15) my husband came over with him and told me that Mr. Marsh was going to make his home with us, and probably later on could get his wife and child there, and he took a room and began paying her \$2.50 a week and that he occupied an entire room at her home and continued to live with her until she sold her property and returned to New York." She says he was there except when away on business trips.

Sophie Klug testified that the petitioner came to live at her house in Hoboken in April, 1914, and was living there at the time of the hearing on December 6, 1915. She says he was continually there every night for months at a time.

His mother says she knew he lived in Newark and then in Hoboken; that she was to the house in Hoboken and saw mail that had been sent to him in Jersey.

It will be remembered also that the petitioner had been twice married in New Jersey; lived in Long Branch for a period of four years; had bought property in Jersey City, where he tried to establish

a home for the wife to live after leaving Long Branch in 1911.

After the arrest by his wife in March, 1912, he says he came to New Jersey to get away from the influence of John S. Bennett. He, no doubt, realized John S. Bennett was the cause of his wife making the complaint against him. He was to get a position with the American Locomotive Company. If he boarded in New York he would be open to the charges by his wife of abandonment. His wife knew that he was to get the position with the American Locomotive Company, as she says (p. 126) he told of his having the position.

Irving J. Meyer says (p. 155) Mr. Marsh said "I have made arrangements to take you to live in Newark." This was on March 27, 1912, the morning before her charge was dismissed in court. At the time of his arrest by Mrs. Marsh, petitioner, was living with Mrs. Lewis. After the arrest he says he went to live with the Rothenburgs, at 687 Ridge Street, Newark, and remained there until Mrs. Rothenburg sold the property and returned to New York, and then he moved to Hoboken in April, 1914, and was living there at the time of the hearing.

His work was that of a claim agent and legal adjuster and it was necessary for him to go away on business trips to settle claims, but Mrs. Rothenburg and Mrs. Klug says he was at their places every night for months at a time.

The petitioner says he voted in Newark at the election of 1913, and voted in Hoboken. The Court will take, I think judicial notice of the requirements of the Geran election law as to the necessity for registration and the giving of the voter's place of residence, name of landlord, employer and length of residence in the State and County and the mailing of sample ballots and

the official canvass by the police in different cities.

The landlady says the mail came at election time and the police made inquiries as to his residence.

The petitioner exercised all the prerogatives of a citizen. His acts as a citizen are better evidence of his intention as a citizen than would be mere words.

There was an attempt by the defendant to prove by one David Steckler, who was at the time of the hearing attorney for Eva P. Conlon, who had previously been a client of the petitioner and with whom the petitioner had had legal difficulties about the land in Kentucky and who was then suing the petitioner to prove that the petitioner had stated in October, 1912, that he was living at some number in West Twelfth street, New York. I simply ask the Court to read Steckler's testimony and his admissions as to his information being hearsay to determine how much weight to give it. The petitioner denies the statements of Steckler.

The petitioner's mother and sister say he never lived at the mother's house after the marriage. He came there merely to visit and he was stepping into a carriage at his father's funeral when Steckler's agent served him with a subpoena.

The petitioner's son lived at the grandmother's and surely his mother could have gotten him to tell the truth if the petitioner had ever lived there. The boy says he met his father there on Sundays.

The petitioner says he never lived at his mother's since the marriage. He denies he came to New Jersey with any idea of a divorce. The evidence shows on the contrary he tried to get his wife to come to New Jersey to live with him.

The petitioner was living in New Jersey at the time the wife went to Kentucky; he was living in New Jersey at the time of the filing of the petition and was living in New Jersey at the time of the hearing, nearly four years after the wife went to Kentucky.

This evidence abundantly proves the *factum* of residence and the *animus manendi* proves the domicile.

Herr vs. Herr, 65 Atl. 1013.

Wallace vs. Wallace, 54 Atl. 433, and cases cited.

It is respectfully contended that the allegations of the petitioner were sustained in every particular by reputable witnesses. The defendant has put in a desperate defense attacking the character of the petitioner, but every allegation by the defendant and her brother, John S. Bennett, are based on alleged confessions by the petitioner and not once is there any proof of the *corpus delicti*.

The witness Anita Hanson testified as to the acts and conversations she says took place with Mrs. Marsh in September and October, 1912, when as a matter of fact Mrs. Marsh admits she went to Kentucky in April, 1912.

Mrs. Lillian Bishop attempts to tell of alleged conversations with Mr. Marsh, but she says (p. 140, l. 40): "I cannot fix a time and I cannot tell you what place." She tells of a conversation with the petitioner, but says (p. 149, l. 13): "I cannot tell whether it was 1914, 1911 or 1899 or when it was," but says it was after Mrs. Marsh came home (p. 149, l. 26).

That the defendant refused to live with the petitioner and did not desire to live with the petitioner, the advisory master found to be true. That the desertion was continuous is admitted.

Can there be any doubt from the defendant's temper, conduct and disposition that the desertion was obstinate?

If the defendant refused to live with the petitioner and deserted the petitioner without any fault on his part and that desertion continued to the time of the hearing without any effort on her part to return to her husband, the wife should not have been allowed costs or a counsel fee even though the husband may not have been entitled to a decree against her, especially as she had property.

Suydam vs. Suydam, 79 N. J. E. 144, 80 A. 1057.

The appellant, therefore, prays that the decree in this case may be reversed and the petition of the petitioner be granted.

Respectfully submitted,

CHARLES M. MASON,
Solicitor for and of Counsel with Petitioner-Appellant.

New Jersey Court of Errors and Appeals

Between JAMES H. MARSH, Petitioner-Appellant, and HELEN B. MARSH, Defendant-Respondent.	}	On Petition for Divorce.
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BRIEF FOR DEFENDANT-RESPOND- ENT

This case was heard and decided by former Governor Fort, sitting for the Chancellor.

Two questions are presented: First, was the alleged desertion wilful, continued and obstinate; and secondly, did the Court have jurisdiction to hear the case.

POINTS

I

The desertion was not wilful, continued and obstinate.

The learned and experienced judge who heard the case summed up his conclusions on this phase of the matter as follows (p. 180, l. 26):

“That the defendant went to Kentucky without the consent, at least, of the petitioner, and probably against his wish, seems clear. I think also that the letters she wrote him from there are indications of a doubtful intent on her part to ever return to him again. But I am also forced to the conviction that the petitioner was not sorry she had gone. Nor was he desirous of her return. I believe that both before she went and after her return he was hopeful of procuring a divorce from her, and was anxious that a situation might arise whereby he could divorce her. That she ever desired to divorce him, I question. All our cases hold it to be incumbent upon the husband to endeavor to secure his wife to return to him. The duty is upon him to make the first advances looking to reconciliation, unless such an effort would be evidently useless. I am fully convinced that the petitioner never made any honest and sincere effort to secure her to return to him, notwithstanding the recitals hereinafter made; and I am equally clear that it is not shown that such an honest and sincere effort on his part would not have been accepted by the defendant. At this point is where the petitioner’s case, in my opinion, fails. The authorities on this point are numerous and the rule here stated is well settled. Under such circumstances the desertion is not obstinate. *Bowlby v. Bowlby*, 10 C. E. Gr., 406; Affirmed 570. *Van Wart v. Van Wart*, 12 Dick. Ch., 598. In this last case, Stevens, V. C., cites all the cases on this point which fully establish the rule here stated.”

The defendant went to Kentucky the latter part of March, 1912 (p. 59, l. 10). The complaint alleges (p. 1, l. 25) and the answer admits (p. 3, l. 27) that the petitioner and defendant cohabited until the 27th day of March, 1912. Although the petitioner claimed that the defendant moved around in various furnished rooms (p. 42, l. 35) he admitted that she always received him well whenever he called upon her at these furnished rooms, and that they continued their marital relations (p. 43, ll. 1-4). The learned Master finds that the petitioner knew that the defendant contemplated going to Kentucky (p. 180, l. 1) and was satisfied to have her go.

There is no doubt that the petitioner knew it, although he himself denies it (p. 51, l. 40).

His own mother, Helen M. Marsh, describes how the boy Harry came in one morning the latter part of March and told her that he was going to Kentucky, and the petitioner "just happened to come in that morning that he was going to Kentucky, just a few minutes before they started" (p. 59, l. 18), and she says that she told him that the boy was going to Kentucky (p. 59, l. 21). She also testified (p. 62, l. 29):

"Q. You told him the boy had been in and was going to Kentucky? A. Yes.

"Q. Did he express sorrow or surprise? A. He felt badly about it. I said, 'Let the child go with his mother if she wants to go to Kentucky.'

"Q. What did he say? A. He didn't say very much; he felt badly about it; he couldn't see what their object was in going to Kentucky."

The defendant says that she did not tell her husband she was going to Kentucky, but did tell

him she was going away with the boy (p. 99, l. 40), and that "he didn't object at all; he said he didn't care where I went" (p. 100, l. 1).

The boy Harry corroborates the petitioner's mother that he told the petitioner that he was going to Kentucky with his mother. His testimony is as follows (p. 129, l. 33):

"Q. Were you at your grandmother's on the morning of the day you went to Kentucky? A. Yes.

"Q. Did you say anything to your father that you were going? A. Yes.

"Q. Did you tell him with whom you were going? A. My mother.

"Q. Remember what time of day that was? A. That was in the morning.

"Q. The morning of the day you left? A. Yes.

"Q. How long were you there, all told, you and your father and grandmother together? A. About a half an hour.

"Q. And you were talking about this trip to Kentucky? A. Yes.

"Q. And you told him your mother was going? A. Yes.

"Q. Whom did you tell him you were going with? A. My mother."

Very evidently, therefore, the petitioner knew that his wife was going to Kentucky.

The petitioner's interests were all centered in New York. His business was there; his mother was there. Prior to their leaving for Kentucky, his wife and boy had been there, and his boarding place had been there. He received his mail there. Nevertheless about the time Mrs. Marsh went to Kentucky he started in to establish a New Jersey

residence. According to Mrs. Rothenburg he came to live at her house at 687 Ridge Street, Newark, in March, 1912 (p. 14, l. 1). He filed his petition about two years afterwards—May 18th, 1914 (p. 1), as a New Jersey resident, seeking a divorce on the ground of desertion; a ground of action not allowed by the laws of the State of New York.

While it appears that there was some correspondence between the petitioner and his wife while she was in Kentucky, none of it tends to show the slightest effort on his part to induce her to return. He says that he wrote her a letter asking her to return (p. 157, l. 1), but although he is a trained lawyer and must have known the importance of such correspondence in a suit of this character, he did not keep any copy of his letter (p. 156, l. 40), and Mrs. Marsh denied ever having received any such letter (p. 103, l. 34).

In the summer of 1913 (p. 64, l. 33) the petitioner wrote a letter to John S. Bennett, the brother of the defendant, in which he urged Mr. Bennett to use his influence with his sister, the defendant, Mrs. Marsh, to induce her to divorce him. This letter appears as Exhibit D-2 (p. 176), and we urge upon the Court a reading of it. This was written while the defendant was still in Kentucky, she having been there over a year at the time it was written. Instead of evidencing a desire on the part of the petitioner to get her back, it shows his keen desire to be rid of her, and have her divorce him. He says that he has absolutely no love for her (p. 176, l. 25) and claims that she has none for him (p. 176, l. 31):

“I am not vindictive and hold no grudge whatever. I simply desire my freedom. If Nell will grant me that I will try to settle down somewhere” etc.

There is also in evidence as Exhibit D-1 (pp. 174-176) a typewritten letter received by Mrs. Marsh, and it was in reply to this letter (p. 102, l. 30) that she wrote to the petitioner the so-called "Hound of Hell" letter, Exhibit P-3 (pp. 170-171). This "Hound of Hell" letter is obviously the outpouring of a very jealous and sensitive woman, and as Mrs. Marsh frankly admitted,

"I wrote that because I was very, very angry" (p. 109, l. 30).

In appreciating the defendant's state of mind at the time that letter was written, it must be remembered that she believed that he had gone to Europe with a woman, Mrs. Conlan, she having been so informed through a letter which she had received about that time (p. 85, ll. 20-40), and this is corroborated by Mrs. Bishop (p. 145, l. 25); also that she believed that the petitioner had subsequently lived with a Miss Roach (p. 124, ll. 30-40), and that she wanted to disgust him with this woman if she could (p. 125, l. 30). It is admitted that Mrs. Marsh called at the Roach home, 176 Ninety-fifth Street, New York, where there was more or less of a scene (p. 95, ll. 10-30). The boy, Harry, corroborates the defendant that she went to this house, for he was with her on one occasion (p. 129, l. 25). The petitioner himself admits that she came to the house and went upstairs (p. 45, ll. 10-30). It was this cumulation of matters, calculated to enrage the wife with jealousy, that were fanned into flame by receipt of the letter D-1 (p. 124), and resulted in her writing the "Hound of Hell" letter, Exhibit P-3 (p. 170).

The petitioner denies that he wrote the letter Exhibit D-1 (p. 48, ll. 10-20), although he admits he was expert in the use of a typewriter. Mrs.

Marsh, however, said that it was received by her in Kentucky through the mail (p. 101, ll. 38-40), and a comparison between it and the letter Exhibit D-2 (p. 176), which was admittedly written by the petitioner in his own handwriting, shows that both were written by the same person. The style is the same, the subject-matter is the same, and some of the expressions are the same. For example, both letters express distress at the condition of the boy, Harry, as result of the estrangement (p. 174, l. 25; p. 176, l. 20). Each letter expresses the hope that if divorced the petitioner could make better provision for Harry (p. 175, l. 10; p. 176, l. 35). Each letter expresses the idea that there is no love between them, and that they are tied by a mere legal bond (p. 175, ll. 15-30; p. 176, l. 26). Each letter expresses the view that the cure for the situation is a divorce (p. 175, l. 37; p. 176, l. 32).

The internal evidence, on a comparison of the admitted letter, D-2, with the disputed one, D-1, is too strong to give credence to the petitioner's denial. On the other hand it completely corroborates the defendant's claim that the letter was written by her husband.

The "Hound of Hell" letter, Exhibit P-3, was dated June 17, 1913 (p. 170, l. 29). Exhibit D-1, to which it was a reply, must have been written about that time, and John S. Bennett says that the letter (Exhibit D-2) in the petitioner's own handwriting was received by him in the summer of 1913 (p. 64, l. 33). Mrs. Marsh had left for Kentucky the latter part of March, 1912, and had been away, therefore, over a year when these various letters were written. Instead of showing a desire on the part of the husband to have her return, they show his keen effort to have her divorce him.

Not only do these letters demonstrate his state of mind, but other evidence in the case corroborates them.

John S. Bennett described a conversation with the petitioner following the receipt of the letter D-2, in which the petitioner said (p. 66, l. 17):

“ ‘ John, I cannot get along with your sister; I married a woman that is a lot older than myself; I am not finding any fault about that, but she and I can never get along; we don't agree, and we are not of the same temperament.’ I said ‘Harry, you should have looked out for that before you had a boy, if you didn't care anything about her. You will admit she is a virtuous woman.’ He said, ‘Yes, I have nothing to say about that.’ ”

Counsel for the petitioner has laid stress upon the fact that the defendant had the petitioner arrested in March for non support, prior to her going to Kentucky. The petitioner produced evidence tending to show that he had at that time endeavored to adjust the matter, and asked his wife to go to New Jersey and live with him, and she refused (p. 55, l. 25). This invitation, if it was ever given, was made prior to Mrs. Marsh's going to Kentucky, and prior to the taking up of the alleged New Jersey residence. Mrs. Marsh denies that any such request was made to her and the other evidence bears her out. John S. Bennett describes a conversation which he had with the petitioner about the matter, which shows how bitter the petitioner was on account of that arrest (p. 67, l. 40, to p. 68, l. 10). Marsh complained of the arrest and the conversation as given by Mr. Bennett was (p. 68, l. 14):

“I said, ‘I won’t tell her not to appear in Court. That is against the law. But, I said, ‘I will see my sister and tell her not to press the complaint and bring her witnesses to Court.’ I said, ‘Surely you cannot expect a woman to go without support and neglect the way you have done with her, and with the information she has about your running around with other women.’ But he found fault and said, ‘The idea of my wife having me arrested; I am through with her forever.’ I said, ‘You should not blame me; she has a right to have you arrested a thousand times.’ ”

And Mrs. Bishop, who was entirely disinterested and whose deposition was taken in Brooklyn, testified to a conversation with the petitioner, in which the petitioner said, “he couldn’t forget her having him arrested” (p. 142, l. 40).

Besides this there was abundant evidence that Mr. Marsh had requested his wife verbally to divorce him, and this bears out the statements contained in the letters. Mrs. Marsh testified (p. 90, l. 28) that he said to her,

“Give me a divorce and I will give you the evidence of it.”

And again on another occasion that he said (p. 97, l. 38):

“ ‘Nellie, be sensible, and don’t waste your time on me, because I am not worth it; get a divorce,’ and then he looked in the glass and counted the wrinkles in his face; he said, ‘I am getting old now and my hair is falling out; life is very short; I will give you the evidence; you won’t have any trouble getting it.’ ”

Mrs. Bishop says that Marsh said to her (p. 141, l. 20):

“He said to me one time if she didn’t get any divorce from him he would get one from her;”

and further (p. 141, l. 30):

“He said he would get a divorce from her if she didn’t from him, if he had to go in every State of the Union.”

And Mrs. Bishop further testified that Mr. Marsh expressed regret that she (Mrs. Bishop) had discouraged Mrs. Marsh from her thought that she might apply for a divorce on account of the petitioner’s having gone to Europe some years before with a woman (p. 148, ll. 20-30).

The situation, therefore, comes directly within the ruling of the Court in *Bowlby v. Bowlby*, 10 C. E. Gr., 406, and *Van Wart v. Van Wart*, 12 Dick., 598, where, as Vice Chancellor Stevens said (p. 599):

“Obstinate persistence on the part of the wife was wanting because the advances or concessions which the husband, as a just man, ought to have made to terminate it, were also wanting. Such advances and concessions were the prerequisite of any obstinate persistence against them.”

See also *Hall v. Hall*, 15 Dick., 469, p. 470.
The learned master found that

“it is not shown that such an honest and sincere effort on his part (the husband’s) would not have been accepted by the defendant.”

The master might have gone further with the evidence, and found that had advances been made they would have been accepted by the defendant.

Counsel for the petitioner tries to make capital out of the fact that about the first of March, 1912, when the petitioner accompanied his wife to where she was living on Second Avenue, the landlady came out and

“there was a row there with the landlady and the landlady said she wouldn't have me in the house and berated me and I left” (p. 25, l. 40).

The reason for that appeared in Mrs. Marsh's testimony from the fact that the petitioner had told his wife that if she would not give him a divorce he would murder her, and

“the woman in the house heard him say that and that is why it was testified she refused to let him in the house the next time he came” (p. 91, l. 16).

While it is true that Mrs. Marsh had had her husband arrested for non-support in March of 1912, the arrest was justified, for he had failed to support her. That fact, coupled with his attentions to other women, had goaded her into madness. Very evidently they had many quarrels over money matters in the course of which he transferred to her some Staten Island property which he says was valuable, but which John S. Bennett (pp. 69 and 70) says was of very little value. Apparently it was loaded up with taxes, and Mr. Bennett had lost about \$700 trying to rescue it from tax sales (p. 70, ll. 10-20).

Mrs. Marsh's testimony also shows that it was

heavily encumbered for taxes (p. 125, l. 10), and Exhibit P-3 refers to the same thing (p. 170, l. 39).

Nevertheless she undoubtedly continued to love him, and was most anxious to go back to him (p. 109, ll. 20-34). In one of the letters which she wrote him from Kentucky, and which he put in evidence as Exhibit P-2, she wrote (p. 169, l. 25):

“I love you with a love that increases with time, but I have done my best to forget you and drive you from my heart. These are the first tears I have shed and I hope that you will hereafter be very brief in your communications and above all, never let me see the dear handwriting that I once thought exclusively mine.”

She was then grieving over the fact that he had left her for another woman.

Mrs. Bishop throws an interesting sidelight on her state of mind, and described how relieved Mrs. Marsh was after her suspicions had been aroused by the information contained in the letter that her husband had gone to Europe with a woman, over the denial of that by her husband. Mrs. Bishop's testimony was (p. 146, l. 25):

“She said she got this letter and her brother told her if these things were true he would get a divorce, and she said that when he told her that she said she would have crawled ten miles on hands and knees rather than have him get in trouble, and when Mr. Marsh told her there was no truth in it, she believed it.”

She also testified to a conversation with the petitioner after Mrs. Marsh had had him arrested, and her testimony was (p. 142, l. 26):

“Q. Where was it that you had the conversation with him after Mrs. Marsh had him arrested? A. I think it was here, I don't know, and I told him I would never forget Mrs. Marsh the day she came there and said he told her that he cared more for her than any other woman on earth.

“Mr. Mason: Who told you that?

“Witness: She told me that, and I repeated it to Mr. Marsh, and she said no matter what came now, she was perfectly happy.

“Q. This is what you told Mr. Marsh? A. I did; she said as long as she knew Mr. Marsh cared for her and loved her she was perfectly happy.

“Q. What did he say? A. He said he couldn't forget her having him arrested.”

Remember that this is a suit by the husband against the wife, the foundation of which necessarily is that the wife has deserted him against his will. The evidence in the case clearly shows that the petitioner failed to measure up to the requirement as fixed by this Court in *Hall v. Hall*, 15 Dick., 469, p. 470, where this Court said:

“That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded is declared by all our cases; and, ordinarily, when the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him:

Cornish v. Cornish, 8 C. E. Gr., 218; *Bowlby v. Bowlby*, 10 C. E. Gr., 406 S. S. on error, 10 C. E. Gr., 570; *Rittenhouse v. Rittenhouse*, 2 Stew. Eq., 274; *Herold v. Herold*, 2 Dick. Ch. Rep., 210."

Nor does this case come within the proviso laid down in the *Hall* case, as counsel for the petitioner has argued, that the husband here was not bound to make such advances and concessions, because there was no reasonable ground to suppose that such action on his part would terminate the wife's desertion. The exception to the rule as stated in the *Hall* case requires an "honest effort on the husband's part to terminate the separation," and it is only when "it is manifest from the circumstances" that such efforts, if made, would be unavailing, that the duty of making the efforts is excused.

The evidence here abundantly shows not only that the petitioner, as husband, made no such honest effort, but that on the contrary if he had made such honest efforts they would have been reciprocated by his wife, the defendant; and further, that his whole thought and effort, instead of winning his wife back, were to divorce her. The letter, Exhibit D-2, in his own handwriting (p. 76), and which he admits he wrote, during the summer of 1913, conclusively demonstrates his state of mind toward his wife, without reference to the typewritten letter, Exhibit D-1 (p. 174), which he also undoubtedly wrote.

In the face of these letters, apart from anything else in the case, how can any other conclusion be reached than that which was reached by the learned advisory master under the law as laid down by the Courts of this State!

II

The Court had no jurisdiction to hear and determine the case because neither party was a resident of New Jersey.

There is no suggestion that the defendant was a resident of New Jersey. The petitioner claims to have acquired a residence beginning with the latter part of March, 1912.

While the learned master decided the case on the merits, he stated in his conclusions that he would have found against the petitioner on the question of residence if the case could not have been disposed of otherwise. He said:

“Both petitioner and defendant were in my opinion at the time of filing this petition residents of New York State” (p. 182, ll. 10-25).

It is obvious from a reading of the testimony that the so-called New Jersey residence, was acquired solely for the purpose of bringing this action. There is no doubt that the petitioner desired to divorce his wife. They were both residents of the State of New York, and New York, as is well known, decrees a divorce on the sole ground of adultery. The petitioner made no charge of misconduct whatever against his wife, and admitted to her brother, John S. Bennett, that she was a virtuous woman (p. 66, l. 25).

Mrs. March testified that prior to her going to Kentucky the latter part of March, 1912, she had had a number of conversations with the petitioner, her husband, in which he begged her to divorce him. On one occasion he spoke of the fact

that he loved two women—the defendant and another, and said:

“If you will let the situation go as it is I will give you the handsomest offices in New York” (p. 89, l. 38).

In connection with that same conversation he said:

“Give me a divorce and I will give you the evidence for it” (p. 90, l. 28).

Also that if she would not interfere with his affairs,

“that he would give me the evidence for a divorce, and I would get a divorce from him, and then he would give me money—pay me all back what he owed me, and would give me much more money besides” (p. 90, l. 34).

And in this same conversation her testimony was (p. 91, l. 10):

“And finally in front of the furnished room house where I lived he told me that if I wouldn't give him a divorce that he would murder me; that I would meet with an accident.”

Mrs. Marsh also testified that at the time she got into the Roach home at East Ninety-fifth Street (and Mr. Marsh admits that she was there, p. 45, ll. 10-20), a further discussion as to the question of her giving him a divorce was had (p. 95, l. 15).

Also at the time she had a conversation with him at his office on Liberty Street (p. 96, l. 30), he said:

“Nellie, be sensible and don't waste your time on me because I am not worth it; get a divorce” (p. 97, l. 40).

All these conversations were had before the defendant went to Kentucky. To be sure, the petitioner denied on cross-examination (pp. 45 and 46), that he had said these things, but they dove-tail in so exactly with the letters D-1 and D-2, that his denial can hardly be given credence.

To accomplish his desire to divorce her he was, therefore, compelled to go into a State which recognized some other ground, and he, therefore, endeavored to qualify himself to bring an action in the Courts of New Jersey, relying upon the alleged desertion growing out of her visit to Kentucky.

To substantiate his contention that he was a resident of New Jersey, he called as a witness, Mrs. Rothenburg, who testified that he came to live with her in Newark in March, 1912 (p. 14), and Mrs. Klug, who testified that he came to live with her in Hoboken, the latter part of March, or the beginning of April, 1914 (p. 20, l. 35).

His so-called residence at Mrs. Rothenburg's seems to have consisted in the fact that he hired a room there, although he spent very little time in it. Practically no mail came to him there (p. 15, l. 35; p. 21, l. 20). There is no pretence that he came out there every night to sleep (p. 15, l. 38). On the contrary he came very infrequently, and sometimes after intervals of several weeks (p. 16, ll. 1-10). In February, 1914 (p. 17, l. 27), Mrs. Rothenburg moved to New York, her husband having disappeared about the beginning of 1914 (p. 16, l. 35, etc.), and he hasn't been home since (p. 17, l. 2). Mrs. Rothenburg had no knowledge

of Marsh's whereabouts after February 1914 (p. 18, ll. 10-30), and they are unexplained in the testimony.

When he is supposed to have lived at Mrs. Klug's he received no mail at her house either (p. 21, l. 25).

The evidence on the other hand was that during this time he lived at 176 East Ninety-fifth Street, New York City, at the home of the Misses Roach, and he admits that he boarded there. Mrs. Hansen lived right across the street from that house up to about the 1st of October, 1912 (p. 72, l. 35), and previous to that time had seen him going in and out, doing chores around the house, and acting in every respect as though he permanently lived there. He had a door key (p. 74, l. 26; p. 75, l. 22). Mrs. Marsh testified to having seen him at the Ninety-fifth Street house (she having watched from Hansen's across the street), sweeping off the steps, bringing coal, bringing milk and rolls, going and coming with suit cases, etc. (p. 100, ll. 30-41).

David Steckler, a New York lawyer, also testified to some evidence which Marsh had given in a proceeding in New York in which he (Steckler) appeared as attorney, and in which Marsh was subpoenaed as a witness. The case was that of *Steinman & Co. v. Eva K. Conlan* (p. 135, l. 10). Marsh admits that he testified as a witness in such a case and that Mr. Steckler was the lawyer (p. 35, ll. 1-10). Mr. Steckler testified that in that case he had personally conducted the examination, and had asked Marsh where he resided, and that he stated some number on West Twelfth Street, New York (p. 135, l. 37), and further,

“he stated that that was his legal residence, although he had been away from

New York City for some part of the time previous" (p. 136, l. 20).

Helen M. Marsh, the petitioner's mother, lived at 129 West Twelfth Street, New York City (p. 57, l. 20), and Marsh spent a great deal of time there, and got mail there. This examination in which Marsh testified was in 1912 (p. 135, ll. 1-10).

Marsh on rebuttal claimed that he told Mrs. Marsh that he lived with Mrs. Rothenburg, and when asked when, made this answer (p. 159, l. 30):

"Q. When was that? A. That was February or March of 1911—no, February of 1912."

The testimony of Mrs. Rothenburg is that he did not go to live with her until March, 1912 (p. 14, l. 2), and there is no pretence that he went there until after March 27th, 1912, the day the arrest case came up in Court (petitioner's brief p. 19). This New Jersey residence was so attenuated that even Marsh himself could not twice in succession state when he was supposed to have begun it.

Petitioner claims to have voted in Newark at the election of 1913 (p. 30, l. 20), but he brings nothing to substantiate his statement. It would have been a simple matter to have subpoenaed the proper election officer with the official list, if he was in fact recorded as a voter.

The defendant lived in New York, and was served with process in New York. Our Divorce Act by Section 5 (2 C. S., 2029), provides for the jurisdiction of the Court when the defendant cannot be served personally with process in this State

“and when at the time of the commencement of the action the petitioner is a *bona fide* resident of this State, jurisdiction,”

etc., may be acquired by publication.

By Section 6 jurisdiction may be acquired by personal service upon the defendant,

“(a) when at the time the cause of action arose either party was a *bona fide* resident of this State and has continued to be so down to the time of the commencement of the action,”

and

“(b) when since the cause of action arose either party has become and for at least two years next preceding the commencement of the action has continued to be a *bona fide* resident of this State.”

The answer questions the jurisdiction of the Court (p. 4, ll. 10-20).

The petitioner was not a “*bona fide*” resident of the State of New Jersey, but attempted to acquire a residence in fraud of the statute for the purpose of carrying out his cherished desire of securing a divorce from his wife.

We respectfully submit that not only did the Court have no jurisdiction to hear the case, but that upon the merits the petitioner utterly failed to establish a wilful, continued and obstinate desertion as alleged in the petition, and that the decree of the Chancellor dismissing the petition should be in all things affirmed.

Respectfully submitted,

McCARTER & ENGLISH,

Solicitors of Defendant-Respondent.

Conover English,
Of Counsel.

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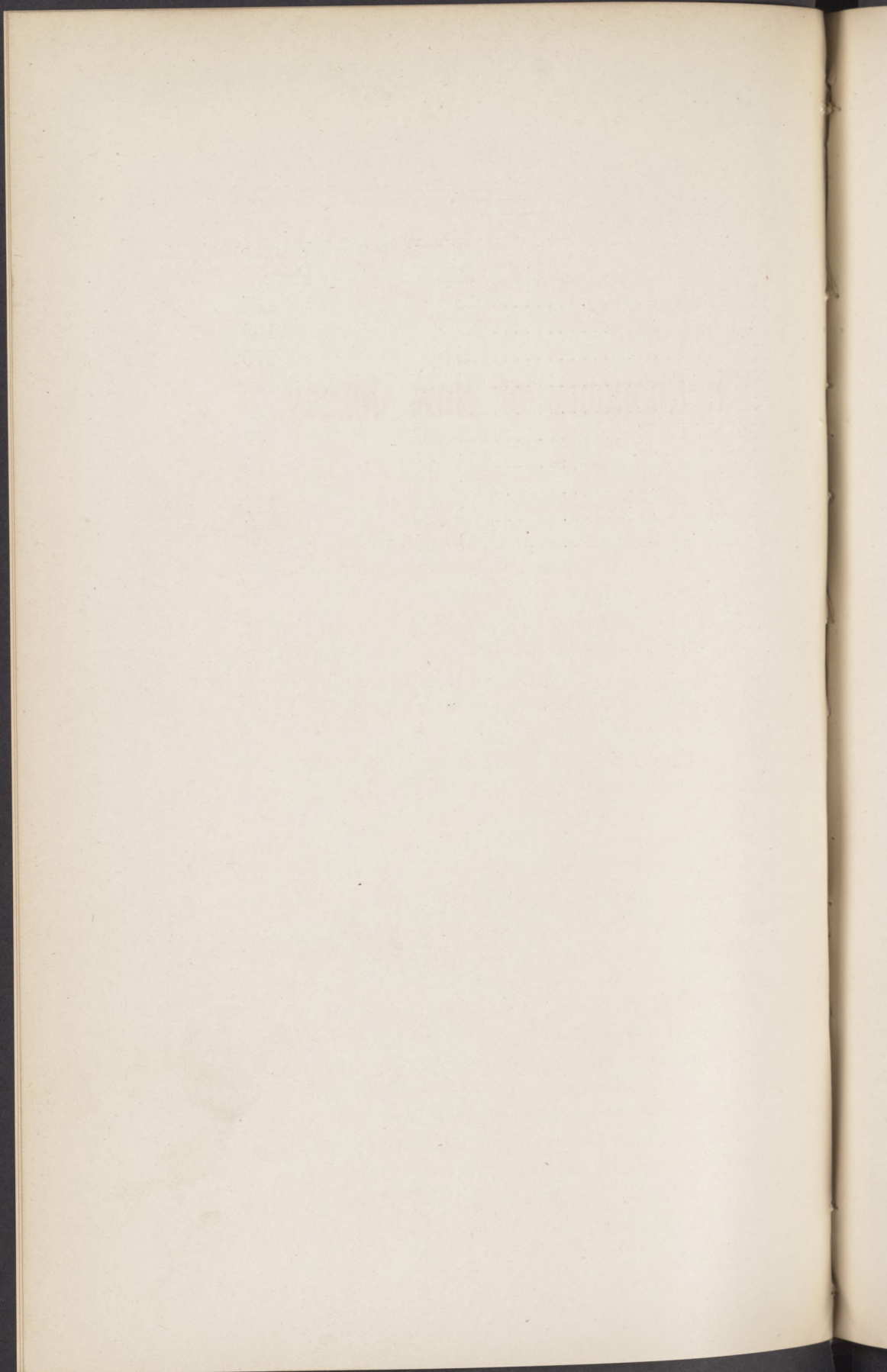
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Petition for Divorce.

Filed May 18, 1914.

In Chancery of New Jersey. 10

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

The petition of James H. Marsh, of the City of Hoboken in the County of Hudson and State of New Jersey respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife Helen Bennett Marsh on April tenth, nineteen hundred, 20
by a Justice of the Peace, at Paterson, in the State of New Jersey.

2. Petitioner and defendant, Helen Bennett Marsh, cohabitated after their said marriage until the twenty-seventh day of March, nineteen hundred and twelve, when said defendant deserted him; and for more than two years last past said defendant has wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner was a bona fide resident of this 30
State, having his permanent home at Newark, in the County of Essex, when this cause of action arose as aforesaid, and has ever since and for more than two years next preceeding the commencement of this action continued to be such resident, residing continuously at Newark aforesaid, and at Hoboken, at which latter place he has resided since April first, nineteen hundred and fourteen.

4. One child was born of the marriage aforesaid, to wit, James H. Marsh, Jr., July 4, 1901, 40

Petition for Divorce.

and that the said child is in the custody of said defendant.

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

And your petitioner will ever pray, etc.

CHAS. M. MASON,
Solicitor of Petitioner.

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

20 James H. Marsh, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition.

JAMES H. MARSH,

30 Sworn and subscribed before me at Newark, this 16th day of May, A. D., 1914.

CLYDE D. SOUTER,
M. C. C. of New Jersey.

*Answer and Cross-Petition.***Answer.**

Filed August 10, 1914.

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. MARSH,

*Petitioner,**and*

HELEN BENNETT MARSH,

Defendant.

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*On Petition
for Divorce.**Answer.*

The answer of Helen Bennett Marsh, defendant, to the petition of James H. Marsh, petitioner:

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1. This defendant admits it to be true that she and the petitioner were joined in the bonds of matrimony on April tenth, nineteen hundred, at Paterson, in the State of New Jersey.

2. The defendant admits that she and the petitioner cohabited after their marriage until the twenty-seventh day of March, nineteen hundred and twelve, and this defendant denies that she deserted the petitioner, and denies that ever since and for more than two years last past she has wilfully, continuously and obstinately deserted said petitioner, and this defendant says that the said petitioner deserted her and has ever since and prior to the 27th day of March, nineteen hundred and twelve, refused to live with this defendant and refused to permit this defendant to live with him, and has refused to make a home for this defendant or to support her.

30

3. This defendant denies the third paragraph of the petition and each and every part thereof,

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Answer and Cross-Petition.

and denies that any cause of action exists in favor of the said petitioner as against this defendant, and denies that ever since the twenty-seventh day of March, nineteen hundred and twelve, and for more than two years next preceding the filing of the said petition, the said petitioner has been resi-
 10 dent of the State of New Jersey, and denies that said petitioner has resided continuously at Newark and at Hoboken, as stated in said third paragraph of the petition. And this defendant says that this Honorable Court has no jurisdiction to hear and determine the petition of the said petitioner for a divorce from the defendant from the bond of matrimony for the cause set forth in the said petition or for any other cause.

4. This defendant admits the fourth paragraph
 20 of the petition.

And this defendant prays to be hence dismissed with her reasonable costs and charges in that behalf most wrongfully sustained.

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

1. This defendant and the said petitioner were joined in the bonds of matrimony at Paterson, New Jersey, on the tenth day of April, nineteen
 30 hundred.

2. Following their marriage on April tenth, nineteen hundred, this defendant and the said petitioner cohabited until on or about the fifteenth day of March, nineteen hundred and twelve.

3. On or about said fifteenth day of March, nineteen hundred and twelve, the said petitioner abandoned this defendant and separated himself from her without any justifiable cause, and has refused and neglected to maintain and provide for
 40 her ever since.

Answer and Cross-Petition.

4. One child was born of the marriage of the said petitioner and this defendant, to wit, James H. Marsh, Jr., who was born on July 4th, 1901, and who is now and ever since the said twenty-seventh day of March, nineteen hundred and twelve, has been in the custody of this defendant.

5. Said petitioner has partially provided for the support of the said child of said marriage by contributing the sum of six dollars per week to his support and maintenance. And this defendant shows that said contribution of six dollars per week is not sufficient to suitably support, clothe and educate the said child. And this defendant shows further that the said petitioner has absolutely refused and neglected in any manner to maintain or provide for her, although often requested so to do.

6. Said petitioner in various ways during the period following their marriage, and while they were still cohabiting, contrived to get possession of such property as this defendant had, and has appropriated the same to himself, so that this defendant is without any means of support and maintenance, and is dependent on charity of her friends or on her own exertions.

7. This defendant charges that the said petitioner is possessed of a large amount of real and personal property, that he is the real owner of property standing of record in the names of others, in whose names he has caused the title to said properties to be placed; that he is a member of the Bar of New York and successfully practices his profession, and that he is abundantly able to maintain and support her and her said child in a manner suitable to their position.

In tender consideration whereof and forasmuch as this defendant can only be relieved in this

Answer and Cross-Petition.

Court, to the end that the said James H. Marsh
 may answer the premises, but without oath, answer
 upon oath being hereby waived, and that he may
 be ordered and decreed to provide such suitable
 support and maintenance to be paid or provided
 by him, or made out of his property for
 10 this defendant and her said child, and for
 such time as the nature of the case and
 the circumstances of the parties render
 suitable and proper, and that the said peti-
 tioner may be compelled to give reasonable secur-
 ity for such maintenance and allowance, to pay
 the same from time to time under the compulsory
 orders of this Honorable Court as provided by the
 statute, and that the said petitioner may be re-
 20 quired to pay to this defendant a proper amount
 for counsel fees, and that she may have such fur-
 ther equity as to your Honor shall seem meet.

And this defendant will ever pray, etc.

McCARTER & ENGLISH,
*Solicitors for and of counsel with defendant, Helen
 Bennett Marsh.*

HELEN BENNETT MARSH,
Defendant.

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Answer and Cross-Petition.

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

HELEN BENNETT MARSH being duly sworn according to law, upon her oath deposes and says, that she is the defendant named in the foregoing answer, and the petitioner named in the foregoing cross-petition; that her said cross-petition is not made by any collusion between her and the petitioner, but in truth and good faith, for the causes set forth in the petition.

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HELEN BENNETT MARSH.

Sworn to and subscribed before me this 8th day of August, 1914.

AUGUSTUS C. STUDER, JR.
Attorney at Law.

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*Replication and Answer to Cross-Petition.***Replication and Answer to Cross-Petition.**

Filed August 28, 1914.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JAMES H. MARSH, <i>and</i> HELEN BENNETT MARSH, Petitioner, Defendant.	}	<i>On Petition for Divorce.</i>
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20 The petitioner joins issue on the answer of the defendant.

The answer of James H. Marsh, the above-named petitioner, to so much of the answer of Helen Bennett Marsh, the above-named defendant as in the nature of a cross-petition.

30 1. This petitioner, as defendant in said cross-petition, denies that this petitioner abandoned this defendant on the fifteenth day of March, nineteen hundred and twelve, and separated himself from her without any justifiable cause, and has refused and neglected to maintain and provide for her ever since.

2. This petitioner denies that he has failed to provide for the suitable support and education of his child, James H. Harsh, Junior, and that he has refused and neglected to maintain and provide for the defendant.

40 3. This petitioner denies that he has contrived to get possession of the property of the defendant and that he has appropriated the same to himself and that this defendant is without any means of

Replication and Answer to Cross-Petition.

support and maintenance and is dependent on charity of her friends or on her own exertions.

4. This petitioner denies that he is possessed of a large amount of real and personal property or that he is the owner of property standing of record in the names of others.

5. This petitioner further says that the defendant, Helen Bennett Marsh, has been a member of the Bar of the State of New York for a number of years and that at the demand and to please the defendant, Helen Bennett Marsh, he permitted the said defendant Helen Bennett Marsh to put her name on the office door of this petitioner and to have her name inserted as a member of the law firm which this petitioner formed with James J. Bennett, a brother of the defendant, and that subsequently when this petitioner was obliged to dissolve partnership with the said James J. Bennett, this defendant refused to take care of this petitioner's home and insisted on coming to the office of this petitioner, where he was practicing law, and interfered with the clients of this petitioner to such an extent that this petitioner was unable to continue an office of his own or to continue in the practice of law for himself. This petitioner further says that he was obliged to seek employment from other lawyers and that this defendant so annoyed the attorneys by whom he was employed by coming to the office and interfering with the duties of this petitioner that he was unable to secure employment as an attorney, and has been compelled to give up the practice of law and to secure a position as clerk. This petitioner further says that this defendant designedly and systematically interfered with the law practice of this petitioner in order to injure and ruin the business of this petitioner.

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Replication and Answer to Cross-Petition.

6. This petitioner further says that in the month of February, nineteen hundred and twelve, in order to provide support and maintenance for this defendant he conveyed to this defendant ten acres of land in Staten Island that is of the value of Twenty Thousand Dollars (\$20,000). This conveyance was made by this petitioner to endeavor to secure peace and quiet in his home.

7. This petitioner further says that after he had made the aforesaid conveyance to this defendant, the said defendant then insisted that this petitioner should again go through a marriage ceremony with her before a Minister of the Gospel and to appease and satisfy this defendant, he went to the City of Jersey City and took out a marriage license on the first day of March, nineteen hundred and twelve and was again married to this defendant by the Reverend Wilbert Westcott, Pastor of Trinity Hedding Church, Jersey City. This petitioner further says that after the performance of the second marriage defendant notified this petitioner that she did not care to and refused to live with him any longer.

8. On the twentieth day of March, nineteen hundred and twelve, this defendant procured a warrant to be issued out of the First Division City Magistrate's Court, Eleventh District of Domestic Relations of the City of New York, and caused this petitioner to be arrested at night, charging that this petitioner had abandoned this defendant without adequate support and that she was in danger of becoming a burden upon the public and that this petitioner had neglected to provide for his wife and child.

9. This petitioner further says that at a full hearing of this complaint against the petitioner the complaint of the defendant against this petitioner was dismissed.

Replication and Answer to Cross-Petition.

10. That this petitioner besought this defendant to come to his home in New Jersey and live with him as his wife, but this defendant refused to do this and shortly afterwards this defendant removed to the State of Kentucky, where the petitioner charges that she continued the practice of law until the institution of this suit: And this petitioner denies that ever since the fifteenth day of March, nineteen hundred and twelve, he has wilfully, continuedly and obstinately deserted the cross-petitioner; but on the contrary, he says that the said cross-petitioner has been guilty of a wilful, continued and obstinate desertion of this petitioner in manner and form as before alleged by this petitioner in his petition. This petitioner prays that said cross-petition of said defendant may be dismissed and that the petitioner may have the relief prayed for in his said petition.

CHARLES M. MASON,
Solicitor of Petitioner.

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Replication to Answer to Cross-Petition.

Replication to Answer to Cross-Petition.

Filed October 28, 1914.

IN CHANCERY OF NEW JERSEY.

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Between

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

*On Petition
for Divorce.*

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The replication of the defendant, Helen Bennett Marsh, to the answer of the petitioner, James H. Marsh, to the cross petition of the defendant.

The defendant joins issue on the answer of the petitioner to the cross petition.

McCARTER & ENGLISH,
Solicitors of Defendant.

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Elizabeth Rothenburg, direct.

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

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Transcript of shorthand notes of proceedings in the above entitled cause, before John Franklin Fort, Esquire, Advisory Master, at his office, Essex Building, Newark, New Jersey, on Monday, December 6, 1915, at 10:30 A. M.

20

APPEARANCES:

MR. CHARLES M. MASON for petitioner.

MR. CONOVER ENGLISH, of McCarter & English, for defendant.

ELIZABETH ROTHENBURG, sworn for petitioner.

Direct examination by Mr. Mason.

Q You formerly lived in the city of Newark?

30

A Yes.

Q Where? A 687 Ridge street.

Q Who owned the property at 687 Ridge street? A I did.

Q Do you know James H. Marsh? A I do.

Q How long have you known him? A About ten years—eight or ten years.

Q Did Mr. Marsh ever live in Newark, as far as you know? A Yes.

40

Q Where? A 687 Ridge street, in my house.

Elizabeth Rothenburg, cross.

Q When did he first come to live in your house at 687 Ridge street, Newark? A In March, 1912.

Q How long did he continue to live there? A Until about April, 1914.

Q Did he have an entire separate room at your house? A Yes.

10 Q Do you know whether or not he made an arrangement for any other room there? A Yes, he said he would—

Mr. English. Objected to.

Q Did Mr. Marsh pay you any room rent? A Yes, he did.

Q How much? A \$2.50 a week.

Q Did anyone live there in the room with Mr. Marsh? A No.

20 *Cross examination by Mr. English.*

Q When did you first move to 687 Ridge street? A In September or October, 1911.

Q What is your husband's name? A Bruno.

Q Where did you live before you moved to Newark? A In 179 172nd street, in the Washington Heights, between Audubon proper.

Q And you lived there for some time previous to that? A I lived there for a couple of months.

30 Q You never lived in Jersey until you moved over here in September, 1911? A No, not that I remember.

Q Your husband and Mr. Marsh were quite friends, were they not? A Yes.

Q And Mr. Marsh used to have his office in your husband's office? A I understand they were together; they did business together and were friends.

40 Q Your husband disappeared about a couple of years or three years ago?

Elizabeth Rothenburg, cross.

Mr. Mason. Objected to.

Objection sustained.

Q Did Mr. Marsh live with you in New York?

A No.

Q Did he have the conversation with you or with your husband when he first came to take up a room with you in Newark? A My husband came over with him and told me that Mr. Marsh was going to make his home with us, and probably later on could get his wife and child there; we had a very nice house there and it was very pleasant. 10

Q And he paid \$2.50 a week? A Yes.

Q For a room and board? A Yes.

Q Rather cheap board? A Not board; no, for the room.

Q Was this an apartment or whole house? A A whole house. 20

Q When did he first begin to pay you \$2.50 a week? A In March, 1912.

Q Do you remember the date? A I could not say exactly the date, but it was the latter part of March.

Q How long did he continue to pay you that \$2.50 a week? A Until he moved away.

Q When was that? A The latter part of April, 1914. 30

Q You knew that he was trying to maintain a New Jersey residence for the purpose of getting a divorce? A I did not. 30

Q Did his mail come to your house? A Yes, very little though.

Q When it did come, what did you do with it? A I kept it there and he got the mail.

Q Did he come out there every night to sleep? A No.

Q Very infrequently, in fact? A In the beginning he came mostly every day; I cannot say if 40

Elizabeth Rothenburg, cross.

he was there every night then, and he came in week-ends, and once in awhile if he didn't come in week-ends, he would come in the middle of the week, but it was not often that he was there every week-end; sometimes there was an interval of two or three weeks.

10 Q Sometimes more? A No, I don't think it was ever more.

Q So that he was away more than he was there at night? A You couldn't say that, no; of course, he came in on Friday, and go away on Monday.

Q And sometimes he wouldn't come for two or three weeks? A That was on very rare occasions, but it happened once he was away for three weeks.

20 Q When he was there over Sundays that would be the only time he would be there during the week? A Once in awhile he would come during the middle of the week.

Q But usually he has been there only one or two nights every week? A Two or three nights.

Q Sometimes he would be away for two or three weeks? A That was very rare.

30 Q Did he always pay you that \$2.50? A He did, not every week but sometimes the middle of the week, he would send it by mail.

Q Did you get all the money that was coming to you? A I did.

Q Was your husband home during this time? A He was until the beginning of 1914 or end of 1913; to my best recollection, it was the beginning of 1914 he went away.

Q Where is he now?

40 *Mr. Mason.* I object.
Objection sustained.

Elizabeth Rothenburg, cross.

Q He hasn't been home since he left in the beginning of 1914? A No.

Q Did Mr. Marsh ever talk to you about his wife? A Very little.

Q You knew he was married? A I knew he was married, yes.

Q But you never saw his wife? A I never 10
saw his wife.

Q Or his child? A No.

Q Do you remember the exact date when Mr. Marsh went away or gave up this room? A In April, the end of April.

Q Did he say why he gave it up? A I told you I broke up my house then at the time and he took his things away.

Q Did he say why he gave up his room? A He could not very well stay in my house when I 20
gave up my house, could he?

Q When did you give up your house? A I started to move then part of the things away—I moved.

Q So you have no knowledge whether he lived there or not after you moved to New York in February, 1914? A I do, he had all his things there.

Q If you were not there you don't know whether he came out and slept in the bed? A I 30
saw the bed was occupied.

Q When was that? A When I was out there; I was out there a couple of times.

Q And the bed was mussed up? A Yes.

Q So you think from that that he was out there and mussed it up? A Of course, and I made the bed up, too, when I was there, but that wasn't so often.

Q So you think that you left for New York in February? A 1914, and this house was all shut 40
up.

Elizabeth Rothenburg, cross.

Q He used to go there and sleep in the room?

A Yes.

Q You don't know that, because you were not there? A I was there occasionally.

10 Q But you were not there at night; you went there during the day? A Yes; I was there at night, too.

Q Was he over there at night when you were, after February, 1914? A I don't know if I stayed that night; I had a conversation with him one night, but I don't know—I may have stayed out entirely in July, 1914.

Q He went away then in April, according to you? A Yes, because I took part of my stuff out.

20 Q There was enough for you to furnish his room yet? A Yes.

Q You stayed there until July, 1914? A No, he did not.

Q You? A I.

Q Now I want to know do you know why he gave up his room? A Because I couldn't keep the house in order; I couldn't be bothered.

30 Q Why was it impossible for you to be bothered? A Because I was in New York, because I went to New York to live.

Q When did you go to New York? A Before that; part of my stuff.

Q When was it that you went to New York to live? A In February or March I went to New York, to my best recollection.

Q 1914? A 1914.

40 Q Was your house closed after that? A Not entirely; he had access to the house, he had the key and he went in there; he had his things there and I had part of my things there.

Elizabeth Rothenburg, cross.

Q Nobody was living in the house? A No, I went there occasionally to get different things.

Q You cannot be sure about that? A No.

Q You don't want to swear to that, do you? A I think I did stay that night, yes; he was there that night.

Q Was he there? A Then I left very early in the morning. 10

Q Do you remember when that was? A I cannot fix the date of that, it was between that time, but I have been back and forth very often.

Q Did he come to see you in New York and tell you that he was going to give up that room? A Yes.

Q Where did he call on you in New York to tell you that? A In West End avenue. 20

Q He came there and told you? A Yes.

Q When was that? A Around in March, I think; we made an appointment and went over together and he took some of his things out, and he took down some of the chandeliers for me in the house and I packed up there and went away again, on Sunday afternoon.

Q Did he tell you why he was giving up that room? A Because I told him that I couldn't keep the house and he would have to give that up; he knew it was coming on. 30

Q You had been out of the house from the February previous, and you didn't get out until July following? A He negotiated for my house with the attorneys and knew I had to get out of the house.

Q But you didn't get out until July? A No.

Q Why couldn't he have stayed on until July if he had wanted to? A He might not have felt like it; maybe he didn't like it any more. 40

Sophie Klug, direct.

Q Did he give you any reason for giving up that room; what reason did he give you for giving up that room? A He didn't give any reason; he went away; he told me he is going away; the reason was the house was upset.

Q I want to know what he said to you about it.
10 A He did not tell me anything.

Re-direct by Mr. Mason.

Q Was your husband also a friend of Mrs. Marsh? A Yes.

Q Were you in Newark when Mr. Marsh's things were taken out? A Yes, I was.

SOPHIE KLUG, sworn for petitioner.

20 *Direct examination* by Mr. Mason.

Q Where do you live? A 215 Tenth street, Hoboken, New Jersey.

Q How long have you lived in Hoboken? A Fifteen years next February.

Q Do you know this man, James H. Marsh? A Yes, sir.

Q Has he ever lived in your house in Hoboken? A Yes, he is living with me now in 215 Tenth street; he has a room there.

30 Q Where did you live before you lived in Tenth street? A 722 Bloomfield street, Hoboken.

Q Where were you living at the time Mr. Marsh first came to live with you? A 722 Bloomfield street, Hoboken.

Q And when was that? A The latter part of March or beginning of April, of a Sunday he came there, in 1914.

Q Has he continuously resided with you since that time? A Yes, sir.

40 Q Has anyone else lived with him? A He has a room for himself.

Sophie Klug, cross.

Cross examination by Mr. English.

Q When did you move from Bloomfield street to Tenth street? A April 15, 1915.

Q Did he go with you? A Yes, sir.

Q Did you have on Bloomfield street a whole house or apartment? A A whole house. 10

Q How much of a family have you? A Only an old lady friend of the family and myself; I rented out the other rooms as furnished rooms.

Q You had other roomers there beside Mr. Marsh? A Yes.

Q How much did he pay you a week? A \$2 a week.

Q Did you get your money? A Certainly.

Q Did any mail come there for him? A No, 20
sir.

Q No mail at all? A No, sir; he went down to the postoffice.

Q No mail came to your house? A No, sir; he went to the postoffice.

Q You were not at the postoffice; you don't know. A Excuse me; by the way, last fall some mail came there around Election time, that was handed in.

Q What did you do with it? A I put it in 30
Mr. Marsh's room.

Q That is the only time? A Yes, sir.

Q Did you know that he was married? A Yes, sir; that is, he told me he was.

Q You never saw his wife? A No, sir.

Q Did he ever discuss his affairs with you? A Only just mentioned that he was having some trouble with his wife.

Q Did he say what the troubles were? A Well, 40
he didn't go into detail—just in a general way.

Sophie Klug, cross.

Q How much time did he spend in the room; was he there every night? A He was there every night when he was not out of town.

Q How often was he out of town? A Sometimes he would be away a week, sometimes ten days; he would be away for the business he was
10 working for.

Q He would be away a week or ten days, sometimes two weeks? A Yes.

Q And sometimes three weeks? A That I cannot remember.

Q He never slept in the house the whole seven days in the week any time he was there? A Oh, yes, he was there for months when he was there every night.

Q When was that? A That is off and on,
20 whenever he was called away; sometimes he would be called away, and say "I will be away for two or three days; I have got to go to Upper New York on account of the business."

Q Where did he say he went? A Schenectady.

Q Did he say what the business was? A Legal matters for the firm he was working for.

Q Would he sometimes be away without saying he was going to Schenectady? A Yes, once
30 he went to Boston.

Q Is he living there now at the present time? A Yes.

Q Was he there last night? A Yes.

Q (*By Mr. Mason*). Do you know whether or not inquiries for him were made there by the policemen around Election time?

Mr. English. Objected to.

A Yes, inquiries were made.

James H. Marsh, direct.

JAMES H. MARSH, petitioner, sworn.

Direct examination by Mr. Mason.

Q Your full name is James H. Marsh? A Yes.

Q You are the petitioner in this action for divorce against your wife Helen Bennett Marsh? A I am. 10

Q When were you first married to Helen Bennett Marsh? A April 10, 1900.

Q Where? A Paterson, New Jersey.

Q What is your business at the present time?

A Claim agent and assistant to the vice-president in the American Locomotive Company.

Q Where are you located? A 30 Church street, New York City.

Q Where did you first live with your wife after you were married? A Washington Heights, New York City. 20

Q Do you remember how long you lived there?

A Perhaps a year or so—a year or two.

Q Then where did you live? A I came down to West 9th street, New York City. From there we went to West 12th street, New York City, and lived there until about 1906 or 1907.

Q Then where did you live? A Then she went to Cooley, New York, and stayed for a few months; that is in the Catskill Mountains. 30

Q Did you have a whole house at the time you were living on West 12th street? A Yes, I had a whole house there; a furnished room house; we occupied a part and the rest we rented out in furnished rooms.

Q Who was supposed to take care of the house?

A Mrs. Marsh.

Q What happened when she went to Cooley, New York? A The house was left on my hands to take care of; then while she was there we got 40

James H. Marsh, direct.

into some troubles with the neighbors and a warrant was issued for her arrest and she came back to New York, and shortly after that I obtained a house in Long Branch, New Jersey, and the house in West 12th street, the stuff was sold out at auction, the greater part of it; some of it was put in
10 storage for a short time and then sent down to Long Branch, and we lived there until 1910 or 1911.

Q How did you come to give up the place in Long Branch? A The place in Long Branch was sold; the interest on the mortgage was coming due and we finally sold it and exchanged it for some property in New York; before that it was transferred to Mrs. Marsh.

20 Q In whose name was it first? A First in my name, then my father's name and then in her name. I transferred it to her through my father.

Q About that time did you purchase any property anywhere else in New Jersey? A Yes, I purchased ten houses in Armstrong avenue, Jersey City, near the Hudson County Boulevard.

30 Q Did you go there to live? A No, that was about the time we were giving up the Long Branch house. I asked Mrs. Marsh to go there to live and she said she wouldn't live there.

Q Do you know where Mrs. Marsh then went to? A Yes, she went to New York and took a furnished room when she came from Long Branch.

Q Did you live with her in this furnished room? A I did.

Q How long? A Some weeks.

40 Q Then what happened? A While we were living there I had some property on Staten Island, New York, and she had been bothering me for that, to convey it to her, and finally, in June, 1911, I did convey the property to her—the property then was

James H. Marsh, direct.

worth about \$15,000—and added a small mortgage of about \$400 against it, and at the same time I also procured a \$500 mortgage, which was on one piece of the property, and gave that to her also. Then when she left there she went down to Staten Island; she asked me to go down to live at Staten Island and I said I wouldn't, because it was too inconvenient, and she went down there and stayed all that summer and through the winter. 10

Q Mrs. Marsh returned to New York in the winter of 1912? A February, 1912, the latter part of February.

Q Did you go to live with her at that time? A Yes, I lived there one night with her. That was about March 1st, or the latter part of February; I think the last day in February, and she said that she had read in the newspaper that a marriage before a Justice of the Peace in New Jersey was not valid and wanted to be remarried. I told her there was no question about the validity of the marriage, but she persisted and insisted that I go over to Jersey and be married again, and for the sake of peace and to please her, I went over to Jersey again with her and we were married over in Jersey. 20

Mr. Mason. I offer in evidence certified copy of the certificate, showing marriage on March 1, 1912, by Reverend Wilbur Westcott, Pastor Trinity Church, 242 Montgomery street, Jersey City. 30

A (Continuing). After this second marriage on March 1, 1912, I went back with her to where she was living, on Seventh avenue at that time; I was going in the house and she excused herself for a moment and the landlady came out; there was a row there with the landlady and the land- 40

James H. Marsh, direct.

lady said she wouldn't have me in the house and berated me and I left. At that time I told her we could go somewhere else to live.

Q Did Mrs. Marsh go with you? A No.

Q Anything happen after that? A Yes, on the 19th of March, 1912. I was at 176 East 95th street, where we were stopping; my sister was there that evening, and Mrs. Marsh came to the door, and I came outside and was talking to her, and while I was talking to her there an officer came up with a warrant and said I was under arrest; I asked him what for and he said Mrs. Marsh had made a charge against me for abandonment.

Court. Do I understand you Mrs. Marsh was there at the time?

20 *Witness.* Yes.

Mr. English. Then it is immaterial.

A (Continuing). He asked Mrs. Marsh if this was her husband, and then he placed me under arrest; she said "Yes," and I asked him what the charge was, and he said Mrs. Marsh had made a charge against me for abandonment, and then she ran away.

30 Q Where were you taken that night? A I was taken to the police station and locked up in a cell downstairs over night. I sat there all night with my hat and overcoat and clothes on, and the next morning I was arraigned in the Domestic Relations Court or Police Court in East 57th street, near Third avenue. A trial was had there that morning. The case was adjourned one week and dismissed on the adjourned day.

Mr. English. I object to that, because the record is the way to prove that.

40 *Witness.* The Judge told me I was discharged.

James H. Marsh, direct.

Q Was that in her presence? A In her presence; Mrs. Marsh was in court.

Q Is that Court of Domestic Relations for the County of New York a court of record? A It is not.

Q What was the adjourned day? A March 27, 1912. 10

Q On that morning did you have any conversation with Mrs. Marsh? A Yes.

Q Where? A In the corridor of the Court House.

Q What was that conversation? A I saw her coming in for my son and asked her what she was "doing here;" I said, "I thought I had fixed this case up with your brother John, and you were not to be here." "I am going to the court room." I said, "Well, don't have any nonsense like this. I am living with the Rothenburgs now; I have made arrangements for you to go there; and I will have this dismissed." She said, "I am through with you; I am going in the court room." She did go in and ask the Judge for an adjournment; he said, "Madam, I have given an adjournment here to get the witnesses, and the only question is the value of the property on Staten Island, and if you have done with that property what you say you have, I will have a committee appointed of the property and have an inquiry made into your sanity." 20 30

Q After this case was dismissed did you see Mrs. Marsh again? A No, I never saw her after that.

Q After the case was dismissed did you get any letters from the Bureau of Domestic Relations of New York? A I did, I got two cards and a letter. 40

James H. Marsh, direct.

Q After you had gotten these cards and letters from the Bureau of Domestic Relations in the City of New York did you find out where Mrs. Marsh was? A Yes, she was then in Kentucky.

Q Had she told you anything about going to Kentucky, anything of the kind? A No, sir.

10 Q How did you learn that she was in Kentucky? A My mother told me that—

Mr. English. I object.

Q Do you know what became of your boy? A She took the boy with her.

Q How do you know that? A I received a postal card from him very shortly afterwards, from Kentucky.

20 Q Did you ever write to your wife while she was in Kentucky? A I did.

Q Did you receive any letters from her? A I did.

Q I show you a letter addressed to James H. Marsh; in whose handwriting is that letter? A In Mrs. Marsh's handwriting, all of it.

Q About when did you get that letter? A The early part of June, 1913.

Q The letter is not dated? A No.

30 Q Have you the envelope in which this letter came? A No, I have not.

Mr. English. Do you offer the letter in evidence?

Mr. Mason. Yes.

Mr. English. I have no objection.

Mr. Mason. I offer the letter in evidence. (Marked Exhibit P. 2).

Q Had you written to Mrs. Marsh prior to receiving this letter? A I had.

40 Q Was that the answer to your letter? A That was.

James H. Marsh, direct.

Q Subsequent to receiving that letter did you again write Mrs. Marsh? A I did.

Q And did you receive any other letter? A I did.

Q I show you a letter; is that the letter you received? A It is.

Q And when did you receive that letter? A This letter is dated 6/17/13 and I received it a few days after its date. 10

Q In whose handwriting is that letter? A It is all in Mrs. Marsh's handwriting.

Mr. Mason. I offer in evidence the letter dated 6/17/13.

M. English. No objection.

(Marked Exhibit P. 3). 20

Q About the time that Mrs. Marsh made the complaint against you and had you arrested in March, 1912, where did you go to live? A I went to live with the Rothenburgs at 687 Ridge street, Newark, New Jersey.

Q How long did you continue to live in 687 Ridge street, Newark, New Jersey? A I continued to live there until about April, 1914; from there I moved to 722 Bloomfield street, Hoboken, New Jersey; from there I moved to 215 10th street, Hoboken, where I am residing at the present time. 30

Q By whom are you now employed? A The American Locomotive Company.

Q How long have you been employed by them? A Since about April, 1912.

Q What is the character of your work? A Claim agent and sometimes legal matters and assisting the vice-president of the company.

Q And in your duties is it necessary for you ever to go away from New York and vicinity of New York? A It is; I travel quite frequently. 40

James H. Marsh, direct.

Q And at times have you been in other cities?

A Yes, I have been to Pittsburgh, Boston, Manchester, New Hampshire, Philadelphia, Schenectady, New York.

Q What were you doing in those different cities? A On business matters for the company.

10 Q What line of business? A Settling claims, for accidents that had occurred in the different works; attending to legal matters that might come up at the different works of the company; investigating all accidents for the company.

Q And did that work at times require you to be absent from Newark for a few days at a time? A It did, quite frequently.

Q Have you ever voted in the City of Newark?

20 A I have.

Q When? A In November, 1913.

Q Have you ever voted in New Jersey since then? A Yes, I voted in Hoboken at the last Election.

Q Do you know Mrs. Bishop in Brooklyn? A I do.

Q And were you over there Friday with Mr. English and Mr. Bindseil and myself? A I was; yes, sir.

30 Q Before Mrs. Marsh had gone to Kentucky did Mrs. Bishop ever tell you anything about what Mrs. Marsh had told her about getting a divorce? A Not before she went to Kentucky.

Q When did she tell you? A About September or October, 1914, at her house.

Q Just prior to the time your wife had you arrested where had your boy been living? A My boy had been living with my mother, at 127 West 12th street, New York City.

40 Q Who had been taking care of him? A My mother had.

James H. Marsh, cross.

Q Who had been buying the boy's clothing? A I had.

Q And who has continued to buy the boy's clothing since that time? A My mother has attended to the clothing of him, but I have paid his board and paid for the clothing.

10

Cross examination by Mr. English.

Q You are a member of the New York Bar, are you not? A I am.

Q How long have you been? A Since February, 1896.

Q And when did you give up active practice? A About 1910 or 1911; I went into the real estate business about that time.

Q So you gave up practising law then? A Yes; it might have been before that I went into the real estate business; that is, actively; I did maintain one or two actions incidentally.

20

Q Then when was it that you went with the American Locomotive Company? A In April, 1912.

Q You went from the real estate business to them? A Yes.

Q When was it you went to live with Mrs. Marsh in Long Branch? A In August, 1907.

30

Q That is the first you had lived outside of the State of New York after your marriage? A Yes.

Q You lived at Long Branch for how long? A 1910 or 1911; when we sold the house, whatever date that was.

Q Were you down there every night or only over Sunday? A No, I was down there during the week, sometimes over Sundays; it was rather inconvenient to go back and forth from New York to Long Branch every day.

40

James H. Marsh, cross.

Q So that you spent more time in New York than you did in Long Branch? A I guess about even, perhaps a little more.

Q And that time you were practising law, or were you in the real estate business? A I was in the real estate business then.

10 Q Then you must have gone in the real estate business as early as 1907? A Yes, I guess that is right.

Q Did you undertake to be down there over Sundays, the middle of the week or when? A I would be down there over Sundays, sometimes I would go down during the middle of the week.

Q Were you in New York more than in Long Branch, or less? A A little more in New York.

20 Q When you were in New York where did you stay? A West 93rd street.

Q Who lived there? A Mrs. Conlon.

Q For how long did you make your headquarters at West 93rd street with Mrs. Conlon? A Until the early part of 1911.

Q And that covered a period of about four years? A Yes.

Q Did you have a room there? A I did.

30 Q Mrs. Marsh didn't know that you were staying there? A She did.

Q Did you tell her? A I did.

Q Do you remember while you were living at Long Branch that Mrs. Marsh showed you a letter which she had received from a man named Martin, to the effect that you were living with another woman? A She showed me some letter; I don't remember whom it was sent by.

Q That was the purport of it? A Yes.

40 Q And the woman named was this Mrs. Conlon? A I don't recall.

James H. Marsh, cross.

Q You undertook to explain the situation to her in such a manner as to satisfy her mind? A Do you want me to tell what I said?

Q Answer my question. A I told her there was no truth in any such statement as that; I wasn't living with her there! I had a room there.

Q Who was in the Conlon family at that time? 10

Mr. Mason. Objected to.

Court. I will admit it.

A There were some other roomers there in the apartment at different times.

Q Mrs. Conlon and other roomers? A Yes.

Q Mrs. Conlon had originally been a client of yours? A She had, and was then.

Q That is how you became acquainted with her? A It is. 20

Q And for how long prior to your going there to live had she been a client? A Perhaps some months.

Q And was Mrs. Marsh living in Long Branch at the time she first became a client? A No, I think Mrs. Marsh was living at 37 West 12th street.

Q How long after you took the property in Long Branch was it you went to live with Mrs. Conlon? A It might have been that fall. 30

Q You went to Long Branch when? A In August.

Q Where did you make your headquarters in New York between the time you went to Long Branch in August and the time you went to live with Mrs. Conlon in the fall? A I went back and forth; when we first went down to Long Branch I stayed down there sometime; I went back and forth for a while and then I went up to Mrs. Conlon's; it might have been the next month, I cannot tell you just now; shortly thereafter, anyway. 40

James H. Marsh, cross.

Q Mrs. Conlon afterwards got in some litigation of some character, didn't she? A She was then in litigation, and has been in litigation for ten years.

Q Did you represent her in some of her litigations, professionally? A I did.

10 *Mr. Mason.* I object.

Mr. English. I think your Honor should permit me to go on; I will show that it is relevant.

Q You represented her in some of those litigations? A I did.

Q Was she plaintiff or defendant in the litigation you represented her in? A She was defendant in one action, and the other was a special proceeding in which she was the defendant as far as the papers went, but really prosecuting a claim to protect her rights, or clear the rights that she was entitled to under it.

20 Q Who were the plaintiffs in the suit against her in which she was defendant?

Mr. Mason. Objected to.

Court. I don't see how that is material.

30 Q Were you ever called to testify as a witness in any proceedings against Mrs. Conlon? A I was.

Q Do you remember the plaintiff in that case?

Mr. Mason. I object.

Court. He may be laying a foundation for something set out in the cross bill. I will hear the evidence.

A I don't recall it just now; I would know it if I heard it.

40 Q Were you ever called to testify in the case pending in the Supreme Court of New York County

James H. Marsh, cross.

in the matter of the supplementary proceedings in the case of Benjamin Steinman and Harry H. Meyers against Eva K. Conlon? A Yes.

Q Do you remember the lawyers for the plaintiff in that matter? A Yes, a lawyer named David Steckler.

Q Do you remember the lawyer who represented Mrs. Conlon in that matter? A Yes. 10

Q Clarence E. Mundy? A He was there on the first hearing; I don't know whether he actually represented her or represented the attorney that did represent her.

Q But he was in the case in some capacity? A Yes.

Q And you were summoned as a witness upon a subpoena issued by Judge Ford of the Supreme Court? A I don't know; I was subpoenaed. 20

Q Do you remember when it was you testified? A I was served with a subpoena as I was getting into a carriage to go to my father's funeral.

Q You testified in October, 1912? A Yes.

Q October 19th? A I cannot tell you the date.

Q Do you remember having testified in that proceeding? A I did.

Q You were asked where you lived, were you not? A I suppose I was.

Q And you answered the question? A I suppose I did. 30

Q Do you remember that you answered to the question, "Where do you reside," "129 West 12th street, New York City." A No, sir.

Q You didn't answer that? A No, sir, I did not, and it is not the fact, either.

Q Do you remember that you were asked this question: "How long have you resided there?" Do you remember that? A No.

Q And you answered, "Some years past?" A No. 40

James H. Marsh, cross.

Q You don't remember that either? A No.

Q Do you remember you were asked this question and answered it as follows: "Have you resided there continuously during the past year?"

A "It is according to what you mean by residing there; I have been out of town six months or more, but that is my legal residence?" A No, sir, I didn't testify to that.

Q Suppose a copy of the testimony shows that; what would you say to that? A I say I didn't testify to that, and it is not the fact; I never did live at 127 West 12th street at any time.

Q I didn't ask you that; I asked you whether you testified to it? A No, sir.

Q How do you explain a transcript of the testimony that shows that?

20 *Court.* You will have to prove that in another way.

Q Going back to the residence at Mrs. Conlon's house on West 93rd street, can you remember the names of any of the other roomers besides yourself?

Mr. Mason. I object.

30 *Court.* I think I will admit that; it may be used to identify persons and produce them here as witnesses.

A I don't recall the names; there was a young lady there, we used to call her "The Kid"; that is the way Mrs. Conlon usually described her; I did know her name, she was a Miss—I don't recall her name just now. There was another woman there who had a room, who was a nurse, and a young man there named Kelly, I think his name was.

40 Q What was the nurse's name? A I don't know.

James H. Marsh, cross.

Q You left there in 1911, you say? A Yes.

Q And where did you room after that? A At 176 East 95th street.

Q Who lived there? A Mrs. Margaret Lewis and her two nieces.

Q What were the names of the nieces? A 10
Roach.

Q First names? A Alice and Catherine.

Q One of them was a teacher? A Yes.

Q Which was that? A Alice Roach was a school teacher.

Q And one of them was a nurse? A Yes.

Q Which was that, Catherine? A Yes.

Q When was it you went to live at 176 East 95th street? A That was about the time that Mrs. Marsh went down to live in Staten Island, which was about early in July, I should say. 20

Q July, 1911? A Yes.

Q You had met Catherine Roach at Mrs. Conlon's house, had you not? A I had seen her there and seen her at my mother's house.

Q You first became acquainted with her at Mrs. Conlon's house, did you not? A I wouldn't say that. At my mother's house there resided two school teachers and her sister, Alice Roach, and once in awhile Catherine Roach used to call there, and I cannot tell you now if it was first at Mrs. Conlon's house, or whether through seeing them together at my mother's house, that I first saw her. 30

Q Who owned the property 176 East 95th street at the time you lived there? A Catherine Roach owned it.

Q Did you ever own it? A Never.

Q Did you pay the money to purchase it? A No, sir; I closed the deal.

Q Did you search the title? A No, sir. 40

James H. Marsh, cross.

Q You closed the deal? A Yes.

Q When was that? A I think it was the latter part of July or August, 1911.

Q About the time you went to live there? A Shortly afterwards.

10 Q Who did search the title? A I don't know that it was searched.

Q Where did the money come from that purchased it? A Catherine Roach paid it.

Q Do you remember how much? A I don't recall the exact amount now; it was some hundreds of dollars.

Q Was it a whole house? A A whole house; it was in litigation under foreclosure at the time.

20 Q Do you know who the previous owner was? A Yes, C. L. Nassamer Estates, a corporation of New York.

Q After that you continued to live at 176 East 95th street, did you? A I did.

Q For how long? A Until a few days after I was arrested.

Q You never lived there since? A Never lived there; I have been back and—I have visited there.

Q You visited there to some considerable extent? A Oh, no.

30 Q Spent the night there? A I have occasionally, once in awhile. My sisters and mother have visited there also.

Mr. English. I move to strike that out.

Q When did you give up residing there and go somewhere else? Can you fix that date? You say after the arrest? A Yes, it was before the second hearing.

Q That, you also testified to, was the 22nd of March, 1912? A Yes.

40 Q So you gave up your residence there somewhere around March, 1912? A Yes.

James H. Marsh, cross.

Q For how long after that did you continue to go there and visit? A I visit there occasionally now.

Q Did you used to visit there pretty frequently after March, 1912? A Yes.

Q Spent the night there? A I have.

Q Used to keep your slippers there? A No, 10
sir.

Q And other wearing apparel? A No, sir, I took my clothes away from there.

Q You had slippers when you went in March, 1912? A I don't know whether I had slippers there; I don't recollect now.

Q You had other wearing apparel there? A I had wearing apparel; I took it with me when I went.

Q When you used to visit there and spend the night, would you take your night garment with you? A When I would visit there it might be when I would come back from a trip or something and have my grip. 20

Q It might be, but not always? A Yes, that was usually the case.

Q Not always? A I wouldn't say that there was no other time when I did go there, except when I was coming in from a trip.

Q A word or two about this property; you say 30
you put the Long Branch property in your wife's name? A I did.

Q That was really her property? A No; it was after it was conveyed to her; she never put a penny into it, not a nickel.

Q She did own property at the time you married her? A No, not that I knew of; she didn't have a second stitch of underclothing when she married me.

Q She acquired property after she married you? 40
A I put property in her name once or twice.

James H. Marsh, cross.

Q She owned a farm up in Sullivan County, New York? A We owned it jointly, and I paid for it.

Q And when was that? A 1906, I think it was.

Q Mrs. Marsh was a lawyer also, wasn't she?

A She is.

10 Q And you two practised law together? A Yes.

Q Marsh & Bennett was the firm? A Yes.

Q That was a pretty successful firm for awhile?

A No.

Q Made some money? A We made money, yes.

Q And Mrs. Marsh was entitled to some of that money, wasn't she? A Undoubtedly.

20 Q And some of this money you spent in property had really included in it some of the share of the profits of that firm? A No, I never went into the real estate business until after I had given up the practice of law.

Q That may be, but the money which you used included some of the money which had been earned by that firm? A No, sir.

Q How did it come about that you put this Long Branch property in her name, then? A She persisted in asking me to do so.

30 Q So you did it? A For her sake, yes, sir.

Q Then you exchanged it for some Jersey City lots? A No.

Q I am wrong; you exchanged that for a farm house in New York? A Yes, with other property which wasn't in her name.

Q In whose name was the farm house? A I put it in her name.

Q Then that afterwards was sold? A Foreclosed, yes, sir.

40 Q Are you sure about that? A I will tell you what the transaction was; I had a deal then for

James H. Marsh, cross.

some brewery stock and I got the stock, and it seems there was some question as to whether it had been stolen or not, and I transferred the title to a man and there was a receiver shortly after I got it, and the property was finally foreclosed; there was a \$200,000 first mortgage on it and a \$10,000 second mortgage, and the first mortgagee put a receiver in; the second mortgagee had the collection of the rents almost from the beginning. 10

Q Where did the Staten Island property come from? A That was the result of some money and straightening out of the title by myself; there were some tax titles and record titles outstanding, and I examined the records and straightened them out, and found out where the record title was and where the tax title was, and brought them both into the one title. 20

Q Did you have to pay any money on it?
A Yes.

Q Whose money was it? A My money.

Q Any of hers? A No, sir.

Q What check did you give for the purchase of that property? A Marsh & Bennett.

Q And Mrs. Marsh had an interest in the fund of Marsh & Bennett, didn't she? A Yes.

Q Was that conveyed from the grantor direct to Mrs. Marsh, or to you and afterwards transferred? 30

A I had it for years; it had been my property and finally in June, 1911, she had been persisting that she wanted the property transferred to her; she said I owed her money and I said I couldn't see how she could claim I owed her a cent; I never had a penny from her and she never had a penny, but for peace sake I gave her the property, and at that time she agreed not to bother me any more for money matters, and put it in writing. 40

James H. Marsh, cross.

Q It appeared there was a large amount of taxes on it? A No.

Q Some taxes? A Yes.

Q How much money did you put into the Staten Island property? A I cannot recall.

10 Q Only a few hundred dollars, wasn't it? A It might have been; it was done at different times; there were three parcels; it might have been \$1,500.

Q You are not prepared to swear to that? A No; that is years ago now.

Q And it had mortgages on it? A It had a \$500 mortgage on it at the time I acquired the property and turned it over to her. There is now a \$400 mortgage on it; that is all there was on it.

20 Q You and your wife left Long Branch in 1910? A I think it was in 1910 or 1911; the house was given up, but she stayed down there after that.

Q Anyway, sometime in 1910 she came back to New York? A I think that is right.

Q And then she lived in a furnished room with your son? A And myself, yes.

30 Q You said you were living with Mrs. Conlon up to 1911? A I lived with Mrs. Marsh at that time for a short time, for a few weeks, in West 13th street.

Q In a furnished room with the boy? A Yes, that was in 1911.

Q And she moved around in various furnished rooms? A Yes, two or three places.

40 Q The theory of that was that you couldn't afford to support her in a house? A No, she wouldn't live with me, and when I did ask her to come with me, she said she would take the boy down in the country, she just wanted to finish his school there, and there was no use of going to the responsibility of taking a house again.

James H. Marsh, cross.

Q She always received you well when you came to see her at these furnished rooms? A Yes.

Q You continued your marital relations? A Why yes.

Q You have sworn to it in your petition; do you want to change that? A No.

Q And you undertook to be living with your mother, didn't you? A Yes. 10

Q Didn't you so represent to her that you were living with your mother on West 12th street? A No, sir; I used to get my meals there, stop there occasionally, and stop in to see the boy there.

Q You had your mail delivered there? A Yes, that is done today.

Q You represented you had your mail sent there? A I didn't make any representations to her at all about my mail. 20

Q When you were living in Newark, where did your mail come? A Sometimes to Newark, sometimes to Schenectady, sometimes to 30 Church street, sometimes to West 12th street.

Q Mighty little of it to Newark? A I never have very voluminous mail anyway.

Q Mighty little of it came to Newark? A There is mighty little mail that I ever had. 30

Q When you lived in Hoboken, no mail came there at all? A I have a post box ever since I have been in Hoboken.

Q Did any mail go in it? A Yes, occasionally.

Q It didn't come to your boarding house? A No—it may have.

Q Do you remember having visited Mrs. Marsh in her furnished room in the early part of March, 1912? A Yes.

Q And in connection with that visit you made a remark to the effect that there was a letter 40

James H. Marsh, cross.

around at your mother's that you must go and get?

A No.

Q You don't remember that? A No.

Q And Mrs. Marsh expressed surprise that you hadn't been there? A No.

10 Q And she said that she had trapped you, or words to that effect? A No.

Q At that time you were living out in East 95th street? A Yes, I went to live there when she went to Staten Island in June or July, 1911.

Q That is where the Roach family lived? A Yes.

Q You were living there in March, 1912? A Yes; I was arrested there.

20 Q Don't you remember that Mrs. Marsh came to that house shortly after this conversation that I spoke of— A Yes.

30 Q —your conversation, in the furnished room, when you made some remark about a letter being at your mother's, and she expressed surprise that you were not living at your mother's and she said she would trap you? A It was on March first, or February 29 or 28, 1912, was the night I was there at the Seventh avenue house, in the furnished room house; that was the only time I was there; that was the date we went over to Jersey City to be re-married, and eighteen days after that she had me arrested, and sometime between that she did come up to the 95th street house.

Q And rang the bell? A Yes.

Q You discovered she was there? A No.

Q You saw her there? A Yes.

Q You came out on the sidewalk? A No, the night I was arrested I came out on the sidewalk.

40 Q Some other time you came out on the sidewalk? A No.

James H. Marsh, cross.

Q And shouted to the people in the house, "Don't anybody come out," or words to that effect?

A No.

Q Then Mrs. Marsh came another time, didn't she? A She may have.

Q And she got in the house? A That was the time she did get in the house. 10

Q Which time? A The time I am just talking about she came to the house, I was there.

Q She came in the house? A Yes.

Q And went upstairs? A Yes.

Q You were there? A Yes.

Q In the adjoining room; you were not in the room she was, you were in the room adjoining? A She came in the room where I was.

Q And she found evidence of the fact that you were living there and had your slippers under the bed and your garments in the closet, and all that sort of thing? A I don't know what she found; my clothes were there. 20

Q And she saw there one or the other of the Misses Roach? A Yes, Miss Roach was there and her aunt was there, a Mrs. Lewis.

Q Your picture was on Miss Roach's bureau? A No, sir.

Q You don't remember that? A No, sir. 30

Q On the mantel piece? A No, it was not.

Q Where was it? A It was in my room.

Q And your room adjoined that of Miss Roach?

A It adjoined the room of Miss Roach and her aunt; they both slept together.

Q And connecting door? A There is a passageway between, basins between, three doorways between in one consecutive order.

Q Do you remember having had a long conversation with Mrs. Marsh in which you walked up and down the streets of New York together? A I 40

James H. Marsh, cross.

remember going down the evening she called there; I was about to go downtown anyway, and she wouldn't get on the car; she walked all the way downtown with me—my boy was there—and she smashed me first on one side of the jaw and then on the other with her fist.

10 Q And the boy was finally taken to his grandmother's, wasn't he? A I don't think she took him there that night, no, sir.

Q Then you continued to walk and talk some more? A Oh, no.

Q Was it some other night then that that happened? A I don't know of any other night.

Q You had quite a conversation with her in the course of that evening about your domestic infelicities, didn't you? A No.

20 Q Didn't mention that subject? A No.

Q What were you talking about? A I wasn't talking about much of anything.

Q You asked her to get a divorce from you, didn't you? A No, I did not.

Q Did you ask her to let you stay with the Roach woman? A No.

Q You didn't do that either? A No.

Q And didn't you say if she would bring a divorce suit you would furnish the evidence? A
30 No.

Q You didn't say that? A No, sir.

Q Where was your office at that time? A I think it was 120 Liberty street.

Q Mr. Rothenburg there, too; is that his office? A Not at that time; he was never there.

Q But you had an office there? A Yes, I had an office there,—I had desk room there.

Q Mrs. Marsh came there at some time during the month of March, 1912? A Yes.

40 Q After this nocturnal perambulation of yours? A Yes.

James H. Marsh, cross.

Q And you and she had quite a wordy time of it? A No, sir, she didn't speak to me at all.

Q Did you speak to her? A I asked what she wanted; she said she came to see Mr. Wade there; that was the day she had me arrested in the evening.

Q Didn't you have a long conversation with her at that time? A No, sir. 10

Q In which you disclosed to her your relations with both the Conlon and Roach women? A No, sir.

Q That is not so? A No, sir.

Q That subject wasn't mentioned? A No, sir; I asked what she was there for, and she said she came there to see Mr. Wade.

Q Didn't you say that you and the Conlon woman lived like man and wife? A No, sir; I never said such a thing. 20

Q Didn't you tell her that you and the Roach woman lived like man and wife? A No, sir.

Q Didn't you tell her that the Roach woman was in trouble? A No.

Q And that you were the cause of the trouble? A No, sir.

Q And that her brothers were likely to do you some harm? A No, sir.

Q Didn't you tell her notwithstanding your relations with these women you loved her better than anyone else? A No, sir. 30

Q You know how to write on the typewriter, don't you? A I can write on the typewriter.

Q You have written letters on the typewriter? A Yes.

Q You wrote a letter to Mrs. Marsh on the typewriter? A No, sir.

Q One of these letters which you wrote her, to which this letter which you have put in evidence 40

James H. Marsh, cross.

was a reply, was written by you on the typewriter?

A No, sir.

Q How was it written? A In my handwriting.

Q Before you read law what did you do? A Studied law in a law office.

Q You used to operate a typewriter? A Yes.

10 Q Pretty expert, were you not? A I can write on one.

Q I show you a letter addressed, "Mrs. James H. Marsh," on the typewriter, signed "James H. Marsh, 129 West 12th St., New York City"; did you ever see that before? A No, sir.

Q Who do you suppose wrote that letter to Mrs. Marsh if you didn't? A I don't know that it was written to her.

20 Q You swear that that was not written by you on your typewriter? A Yes, sir.

Mr. English. I would like to have that marked for identification.

(Marked Exhibit D 1 for identification).

Q Where were you when you received the letter which you put in evidence as Exhibit P 3, beginning "Hound of Hell?" A I think that was forwarded to me at Manchester, New Hampshire.

30 Q And that letter was in reply to this letter D 1 for identification? A No, sir.

Q Sure about that, are you? A Yes, sir.

Q Do you know Mr. John S. Bennett, this gentleman sitting by me? A I do.

Q He is a brother of Mrs. Marsh? A Yes.

Q And a member of the New York Bar? A I believe so.

Q Have you ever had any conversations with him about your domestic affairs? A Yes.

40 Q You also wrote him a letter about the same subject? A I think I did at one time.

James H. Marsh, cross.

Q I show you a letter addressed "Dear John" and signed "J. H. Marsh, 129 W. 12th St.;" that is your letter? Look at the signature. A One moment until I read the letter. Yes, I wrote that.

Mr. English. I ask to have that marked for identification.

(Marked Exhibit D 2 for identification).

10

Q After this letter was written you had a conversation with Mr. Bennett? A Yes, I did.

Q At his office? A Yes.

Q You told him, among other things, that you wanted a divorce, didn't you? A No.

Q You told him that you had married a woman older than yourself and couldn't get along with her? A No.

Q Did you tell Mr. Bennett that you had met somebody and say, in effect, "I cannot help it; I don't love your sister?" A No, I did not.

20

Q At Mr. Bennett's office, shortly after the receipt of this letter? A No, I wouldn't say shortly after the receipt of the letter.

Q I said so, and you said "Yes" to the question? A It wasn't shortly after.

Q How long after? A It was at the time or about the time that I brought the action in this court—this present action; it might have been just before or just after. I was there to straighten out—

30

Q Did you ever go to Europe? A I did.

Q When? A About eight years ago, I think it was.

Q Who went with you? A Mrs. Conlon.

Q You say you supported your boy while your wife lived in these various rooms—bought his clothes and board? A Yes.

Q For how long did that keep up prior to your filing this petition in 1914? A Since the time she

40

James H. Marsh, cross.

had me arrested and took the boy away from my father's; I first paid five and then six dollars a week for his board, and clothed him.

Q You paid six dollars a week since? A I am paying six now.

10 Q Your boy goes to your mother's and you see him there right along? A Yes, that is where I go to see him.

Q That six dollars doesn't take care of that boy, does it?

Mr. Mason. Objected to.

A I said I paid \$6 and clothed him.

Q Someone else has to help support him? A I don't know that they do.

20 Q You know your little six dollars a week doesn't take care of that boy, board and clothe him and educate him? A You ask for my opinion?

Q No, I am asking for the facts; don't you know that as a matter of fact? A No.

Q Where does he go to school? A He told me he went to school in Brooklyn.

Q Erasmus High School? A Public High School.

Q You had some property interests in Kentucky? A Yes.

30 Q Where was the property? A Perry County, Kentucky.

Q What did it consist of? A 25,000 acres of timber lands.

Q Did you buy it? A I got it in exchange.

Q For what? A Some property in New York.

Q Whereabouts in New York, New York State or City? A New York City.

Q What property was it; any that has been mentioned here this morning? A No.

40 Q What property was it? A There were two houses in the Bronx; I don't recall the street now.

James H. Marsh, cross.

There was a house on 137th street and another house on Topping avenue.

Q Did they belong to you? A They did.

Q And they were exchanged for this property in Kentucky? A They were.

Q Some of Mrs. Marsh's money went into that property, too, in Kentucky? A No, sir, not one penny, nothing whatever. 10

Q But the property which you exchanged for it had some of her money in it? A No, sir.

Q You knew Mrs. Marsh was going down to Kentucky to look after that property? A I did not.

Q Didn't she tell you that she would go down to Kentucky? A No, sir.

Q You said you would be very glad to have her go? A No, sir, nothing of the kind, and no conversation whatsoever about it. 20

Q She went on to where the property was, didn't she? A Yes.

Q How did she happen to light just on that property if she didn't know anything about it? A She was inquiring of my friends and running around here and there and everywhere before she went away.

Q That doesn't answer the question? A Inquiring about the property; she knew I had the property; I had a blue print of it, and perhaps she saw some of my papers. 30

Q She claimed to have an interest in it? A No, sir, she never claimed to have an interest, and she hasn't any foundation for claiming any interest in it.

Q Before she went, she discussed with you the fact that she intended to go down? A Never discussed about going there; she went away and I didn't know she had gone. 40

James H. Marsh, cross.

Q At the time you had the conversation with her at 120 Liberty street? A No, I didn't have any conversation, except what I have stated.

Q In whose name is that Kentucky property now? A Mine.

Q Was it always in yours? A No, sir.

10 Q Whose was it in? A Eva Rutledge.

Q That is the same as Eva Conlon? A That was her maiden name.

Q How long did it stand in the name of Eva Rutledge? A From the time I got it up to shortly after I received these communications from my son from Kentucky in June, 1913.

Q You used to write to your boy down there in Kentucky? A Once in a while; I think I wrote him once or twice while he was down there; they
20 were changing addresses quite often.

Q You sent him some money down there? A No, my mother may have sent him some.

Q You gave it to your mother to be sent down there? A For him, yes, sir.

Q It first went to Mr. Bennett's office to be sent there? A This money was given to my mother, to be paid to Mr. Bennett, to be paid for the support of my boy wherever he was.

Q You knew he was down in Kentucky? A I
30 knew he went down there; I knew she took him there with her.

Q And you knew that she had gone down there? A I knew she was down there, yes, sir.

Q Did you have any other property in the name of Eva Rutledge or Eva Conlon? A I may have had, I cannot recall now.

Q Tell us where it was and what it was? A I think there was a house or two in Brooklyn; I cannot tell you where it was now.

40 Q How long ago was that? A That was about the same time as this other transaction.

James H. Marsh, re-direct.

Q Do you own any real estate now? A Except the Kentucky property, nothing; I don't know whether I own that, whether it has been sold for taxes or not.

Q Mrs. Conlon assigned her dower interest to you in consideration of some Buffalo property which you owned? A No. 10

Q She assigned the dower to you? A No.

Q And she afterwards sued you to get it back? A I understand I have been made a party defendant in some action; no papers were ever served on me.

Q Eva Conlon is the plaintiff? A I think so.

Q The assignment of dower was made to your father? A Yes.

Q For you? A Not for me. 20

Q Is you father a defendant in the suit, too? A My father is dead.

Q But you are a defendant in the suit? A I suppose so; I have been told so; I don't know.

Q What salary do you get with the American Locomotive Company? A \$1,800 a year.

Q Who owns the property, 176 East 95th street? A As far as I know, Catherine Roach owns it.

Re-direct by Mr. Mason. 30

Q How old is this famous Mrs. Conlon; older than your wife? A I should say she is sixty odd.

Q And why did you go to Europe with Mrs. Conlon? A I went there in connection with her litigation, on professional business, as an attorney.

Q You didn't travel in the same stateroom with her? A No, sir.

Q Why did you sometimes have letters sent to 129 West 12th street, New York? A So that they would be forwarded to me promptly. 40

Irving J. Meyer, direct.

Q Have you ever seen this property in Kentucky? A Never. When I got it, it was twenty miles from a railroad.

Q Has this Miss Roach that has been referred to as a teacher been teaching continuously in New York? A In New York City, yes, sir.

10 Q It has been insinuated here that you told your wife that you had gotten her in trouble; is that true? A No, sir; no such statement was ever made to her at any time.

Q Did you ever know of Miss Roach being in trouble? A No; the whole family are of high moral standing; she isn't that kind; they visit my folks and my folks visit them.

20 Q Was one of your sisters at the place in 95th street the time you were arrested? A Right there that very evening when I was arrested and saw the officer take me.

Re-cross by Mr. English.

Q Did your sisters spend every night there with you? A No.

30 Q You had a conversation with your boy and your mother, about the boy going down to Kentucky with his mother, just before he went? A No, sir.

IRVING J. MEYER, sworn for petitioner.

Direct examination by Mr. Mason.

Q What is your business? A Salesman with the Gordon Coal Company.

Q Where do you live? A 315 West 113th street, New York City.

Q Do you know a James H. Marsh? A Yes.

40 Q In March, 1912, were you asked by Mr. Marsh to meet him at any place? A Yes, sir.

Irving J. Meyer, direct.

Q Where? A Court.

Q What court? A 57th street, between Lexington and Third avenue.

Q And did you meet him there at any time? A Yes.

Q Do you remember when? A It was in March, 1912, the latter part of the month. 10

Q Did you see Mrs. Marsh there at that time? A Yes, sir.

Q Did you hear any conversation between Mr. and Mrs. Marsh at that time? A Yes, sir.

Q What was it?

Court. How is that material? Tell who was present.

A I was talking to Mr. Marsh and—

Mr. English. Was Mrs. Marsh there? 20

Witness. No, sir.

Q Did you hear a conversation between Mr. and Mrs. Marsh? A Yes.

Q What was that conversation? A Mr. Marsh said, "I have made arrangements to take you to live in Newark," and Mrs. Marsh said, "I won't live with you, I won't go to Newark, I won't have anything more to do with you."

Q Was anything said before that by Mr. Marsh to Mrs. Marsh? A No, sir. 30

Q Was anything said about the court room? A Mrs. Marsh went into the court room.

Q But before this conversation did Mr. Marsh say anything to Mrs. Marsh? A Mr. Marsh said, "I have arranged to have you come to Newark and live with me," and she said, "I am going in the court room."

Q Where did Mrs. Marsh go? A She went in the court. 40

Q And then where did Mr. Marsh go? A He went after her.

Irving J. Meyer, cross.

Cross examination by Mr. English.

Q Did Mrs. Marsh say more than one thing? A She said she wouldn't live with him and was through with him and wouldn't go to Newark to live with him.

10 Q Did she say she was going in the court room?
A Yes, sir.

Q Were you there; are you sure you were there?
A Positive.

Q What were you doing there? A Mr. Marsh asked me to come there in case he needed a bondsman.

Q Are you a friend of his? A Yes, sir.

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

Q Associated in business with him? A No,
sir.

Q Do you live near him? A No.

Q What is the source of your acquaintance? A
Both business and social.

Q You have business with him? A Yes.

Q What business? A He has given me advice in regard to contracts.

Q You consulted him when he was a practising
30 lawyer? A Yes.

Q You were a client of his when he was a lawyer? A Yes.

Q Any other business relation? A No.

Q Where did this conversation take place? A
In the court corridor.

Q Who else was there besides you and the two Marshs? A I saw Mr. Marsh's little boy.

Q How big was he? A So high (indicating).

Q How old would you judge him to be? A
40 About eleven or twelve years old.

Q A little boy? A Yes.

Helen M. Marsh, direct.

Q Small for his age or large? A No, I think large.

Q (*By Mr. Mason*) Did you see Mr. Marsh's mother there that morning? A No, sir.

Q Did you take any part in the conversation between the Marsh family? A No.

Q How close by were you; did you have a good opportunity to hear? A As close as I am now to Mrs. Marsh. 10

RECESS.

HELEN M. MARSH, sworn for petitioner.

Direct examination by Mr. Mason.

Q Mrs. Marsh, you are the mother of James H. Marsh, the petitioner in this action? A Yes, sir. 20

Q Where do you reside? A 129 West 12th street, New York City.

Q Do you remember the year your boy was first married? A I didn't know it until several months after; it was in 1900. When I first knew it I think he was married—in 1901 I think it was.

Q Miss Bennett, who became Mrs. Marsh, was living at your house at the time? A Yes.

Q At the time of the marriage to your son? A Oh, no; she had left my house before the marriage. 30

Q Where has your son been living, as far as your house is concerned, since the marriage? A I cannot name the places where he lived, because I didn't know where he moved after he was married.

Q Has he ever lived at your house? A He has never lived at my house since he was married; he has been at my house, stopped over night; Christmas time, he spent several days there with his son when he was in town; his business kept him out of town a good deal these few years past, and when 40

Helen M. Marsh, direct:

he was in town he came in to meet his boy over Friday and Saturday, and sometimes he came on Sunday to spend the day, and has been in the habit of doing that right along. Sometimes I didn't see my son for weeks at a time.

10 Q During this time who was taking care of the boy, after he became about four years of age? A He was with me a good part of the time; he was with his mother; in what way do you mean?

Q When they were living in these furnished rooms, who was looking after the boy? A I had him for a good many months; he would come in the morning and stay until night.

20 Q Do you remember just before your son was arrested in March, 1912, where the boy had been staying? A He had been with me from the opening of school in September, I think it was, until a week before his mother had his father arrested; then she took him around with her in the furnished room and kept him a week before she had him arrested; previous to that he had been with me—fed and bathed and cared for. His mother was down at Staten Island a good part of the time; he went down there week ends and come back to go to school in Thirteenth street, where he attended.

30 Q And it was not until about a week before—
A Just about a week.

Q —before the father was arrested, that the boy was taken from your place? A Yes, and he came just to get his meals with me.

Q Did you go to the court on the adjourned day, at the trial of your son? A I did.

40 Q Before the trial did you meet Mrs. Marsh? A I did, with her little boy, and I said it was a shame to bring the child to a place like that; she told me to mind my business, that she would make such sensational disclosures that he would not be able to

Helen M. Marsh, direct.

see his friends again, he would be so disgraced. I don't know what her threats were.

Q After that do you know what became of the boy? A He came to my house and had lunch after the court proceedings; he came to get his meals; I don't know just what time it was, I think it was the latter part of March, he came in the morning between eight and nine, and said, "I am going to Kentucky." 10

Q Was his father there at the time when he said, "I am going to Kentucky?" A His father came in a few minutes after he went.

Mr. English. His father was there then?

Witness. He just happened to come in that morning that he was going to Kentucky—just a few minutes before they started. 20

Q Did your son see the boy that day? A I think he did; I am not sure about that. I know I told him that the child was going, and he felt very much upset about it, and I think they had started at that time; they told me they were going on the ten o'clock train. The boy came in and had his breakfast with me, and in the meantime my son came in and I said to him, "Harry tells me he is going to Kentucky." I laughed at it and didn't think it was true, because his clothes were all wet in the wash; I had been doing his laundry work and he had nothing to take with him. 30

Q How long was it before you saw the boy again? A I didn't see him until he came back from Kentucky; he went in 1912; I think they came back in July, if I remember right, a few years after.

Q Do you know a Miss Catherine Roach? A I know Miss Catherine Roach and Miss Mary Roach and Miss Alice Roach, three sisters.

Q We have only heard of two; where did you meet them? A I met Miss Alice Roach when she 40

Helen M. Marsh, direct.

called at our house to see some young ladies that boarded with me—one young lady that came from the same town she did.

Q And what was the occupation of those young ladies? A Teachers.

10 Q Have you ever been to the home of the Misses Roach on West 19th street? A I have; I visited her aunt, Mrs. Lewis, that kept the house, and Miss Roach lived with her; I met her mother there.

Q Do you know anything against the reputation of these young ladies? A Not at all; they boarded with me and are of the highest respectability, and they couldn't have boarded with any one that was not the same.

Mr. English. I move to strike that out.

20 *Court.* Strike out the last part of it.

Q Do you know where your son used to get his meals most of the time during the marriage? A He got them with me a good part of the time for about four years when they kept house; both he and the child used to take their meals with me.

Q That was during what years, do you remember? A 1907, I guess, or 1906.

30 Q Do you know why they took their meals at your house? A I suppose they didn't get them home; I don't know any other reason. I don't think his wife was very fond of keeping house.

Mr. English. I object.

Q Did you ever have any conversation with Mrs. Marsh about the preparing of the meals? A Not at that time.

Q Did you afterwards? A No, I don't know that we ever had any conversation about preparing meals.

40 Q Did she ever tell you what time she liked the meals? A No, he maybe told me that.

Helen M. Marsh, cross.

Cross examination by Mr. English.

Q Your son used to get his meals at your house during 1907, 1908, 1909 and 1910? A No, I said I thought it was 1906 or 1907; I cannot be just sure of the time.

Q You said about four years? A He did more or less take his meals there, and the child for a long time took his meals with me. 10

Q And you say that began about 1906? A I cannot just remember; I know it was a long time—until I sold my house.

Q And when did you sell your house? A I sold my house in—I think it was 1908, in April.

Q Mr. Marsh used to have his mail sent to your house, didn't he? A Sometimes his mail came there, and also had his mail sent to Jersey, most of it; occasionally there were letters came. 20

Q You don't know that unless someone told you. A I saw letters that came from there; that is the only way I know.

Q Forwarded from Jersey to your house? A No, I have seen letters that were sent to Jersey, and every time mail came to my house I held it for him when he was out of town, and sometimes I would forward it to him—sometimes to Schenectady, and sometimes to Boston, when he was there. 30

Q Do you know where he lived in Jersey? A I knew he lived in Newark; I never visited him there.

Q You didn't have his address? A I did.

Q But you don't remember where it was? A Not without referring to my book.

Q Did he live anywhere in Jersey beside in Newark? A He lived in Hoboken for a long time.

Q You don't know his address there? A I did know; I have been to the house, but I cannot carry 40

Helen M. Marsh, cross.

the numbers with me; my memory is not good that way; I could get it by referring to my note book.

Q What was the occasion of your visiting Mrs. Lewis? A Friendly, that is all.

Q What would be the occasion? A I don't know; what does any person visit another for; 10 it is usually that they are friendly.

Q Have you met Mrs. Lewis before you called on her there? A Yes, I was down there with her niece and seen her there.

Q You got acquainted with the niece through the young lady boarders at your house? A Yes.

Q The boy spent more or less time at your house? A Yes.

Q He thought a great deal of you and does yet? A Yes, I am very fond of him.

20 Q And he came around to say good-bye the morning he went to Kentucky? A He came to get his breakfast and said he was going to Kentucky.

Q Was his mother going? A He told me she was going.

Q And it so happened that Mr. Marsh came along that morning while the boy was still there? A No, I don't think he was there.

30 Q You told him the boy had been in and was going to Kentucky? A Yes.

Q Did he express sorrow or surprise? A He felt badly about it. I said, "Let the child go with his mother if she wants to go to Kentucky."

Q What did he say? A He didn't say very much; he felt badly about it; he couldn't see what their object was in going to Kentucky.

PETITIONER RESTS.

John S. Bennett, direct.

JOHN S. BENNETT, sworn for defendant.

Direct examination by Mr. English.

Q Where do you live? A 117 Montague street, Brooklyn, New York.

Q You are a member of the New York Bar? A Yes, sir. 10

Q And have been how long? A Since 1899.

Q You know your brother-in-law, James H. Marsh? A I do.

Q For how long? A Since he has been married to my sister.

Q When did you first become aware of any matrimonial infelicities between him and his wife? A I think that it started in Sullivan County—Marsh was a man that was—

Q You said you became aware of these domestic infelicities; when did you first become aware of them? A I think it was—it started in Sullivan County. 20

Q And when did you first hear of it? A I went up to visit my sister there.

Q Was Marsh up there at the time? A Yes, he was there and then went away.

Mr. Mason. When was it?

Witness. That was something like five or six years ago; I don't know—some years ago. 30

Q When next did you learn anything about their troubles? A They had bickerings all the time—that is the Sullivan County affair—so he would leave her up there all alone with the boy, and I complained to him about it. I said that there was a saw mill across the way. Harry used to come in to see me usually; I was friendly toward him. I believed then that he was an expert in real estate, and I said, "Harry, if you find a bargain in real estate I will furnish the money, and I will let you 40

John S. Bennett, direct.

manipulate and go fifty-fifty; I want to be different from other brother-in-laws," and he took me up to Sullivan County to see this farm, and he and I slept in the same bed together over night. I went up to visit my sister; I was going away on a vacation. I complained to him about leaving them all alone,
10 and I said, "There is a saw mill—"

Q Tell us about the saw mill. A There was a saw mill across the way that employed a lot of men, and the farm was just perhaps 100 to 200 feet from there, and when I saw the condition up there, I said to him, "Don't you think of your boy and your wife, to leave them there all alone week after week, month after month, and never going up to see what becomes of them; don't you think that is a dangerous thing to do? Don't you think
20 some of those men might get in there?" I said, "Bring them down to the city," and he said, "I want them to stay until I dispose of it." I said, "Don't leave her there; she is apt to go insane—just the boy and her; I don't see how you can be as heartless as that." He said, "John, I have got to stay down in the city and got to get rid of it, and as soon as I get rid of it, I will bring them down." That was the commencement of the trouble.

Q It appears he wrote you a letter which is
30 marked Exhibit D 2 for identification; about when did you receive that letter? A That was about in the summer of 1913.

Q Had you had any conversation with him previous to receiving that letter? A No, I received this letter from him and when I read the tenor of the letter I didn't even respond to it.

Q Later on did he come and see you? A He did.

40 *Mr. English.* I offer the letter in evidence. (Letter heretofore marked Exhibit D 2 for identification, now marked Exhibit D 2).

John S. Bennett, direct.

Q You say after receiving that letter he called on you? A I didn't reply to this letter when I read the tone of it, and sometimes after that he called.

Q What was the conversation? A I cannot place the time; it was around the fall of 1913; I am not sure, I think it was.

10

Q The fall following the receipt of that letter? A My sister was in Kentucky. I wrote him a letter. It wasn't in response to this letter that he came, that I sent for him, but he had deeded some lots over in Staten Island that he had title to, to my sister, and I considered them a lot of junk, but, however—

Court. Just state facts.

A (Continuing) —anyway, they served a summons and complaint in a tax suit for non-payment of some more money, a year's taxes, and I drew a check for it, some sixty or seventy dollars, so my sister wouldn't lose the title, and I sent for him then and asked him. I said, "Harry, don't you think—

20

Q You sent for him about that? A Yes.

Q And he came in? A Yes.

Q Tell us the conversation? A Then he came in and I asked my nephew to get the papers out of the safe, and Harry and I went into the other office—

30

Q I want the conversation between you and the petitioner, Mr. Marsh, in your office. A He came into my office and we first spoke about the Staten Island lots; I told him what I thought about the Staten Island lots and I told him I didn't think they were worth the \$70 I had expended on them. He said he had gone to a great deal of trouble in getting the title, and that in time they would be worth something. I said, "She will deed them back to you;

40

John S. Bennett, direct.

she has always done that, and I am throwing \$70 away," and I said, "You ought to protect yourself"; he said, "I haven't any money, I cannot do it, but these lots will amount to something in time." I said, "She cannot keep them in the meantime," and the result was that he then said, "Well, John, I
10 wrote you a letter some time ago and you did not reply to that." I said, "Harry, I don't think I should have replied to that; if I wanted to be mean with you. I think I could have you disbarred for writing me a letter like that. You know you cannot go into an unlawful divorce in the State of New York. You know the marriage ceremony is a little more than that." He said, "John, I cannot get along with your sister; I married a woman that is a lot older than myself; I am not finding any fault
20 about that, but she and I can never get along; we don't agree and we are not of the same temperament." I said, "Harry, you should have looked out for that before you had a boy, if you didn't care anything about her. You will admit she is a virtuous woman." He said, "Yes, I have nothing to say about that." I said, "You have got the grandest boy you ever met," and he started to cry, and I said, "Save those tears and be a man; you have a splendid woman; she is a woman that you
30 could stick 300 miles away and tell her to stay, and like a big doll she would stay until you came back. When you didn't make a living, she went in your office and stayed morning, noon and night. Every dollar she made, she gave you. She ran a furnished room house; left her law office and swept out the furnished room house. The farm in Sullivan County, you were able to sell it for the Long Branch property. She went out in the field and plowed potatoes, and they were the biggest potatoes
40 that were ever seen in Sullivan County, and when a woman, who is a lawyer, with a brilliant

John S. Bennett, direct.

education, will go out and plow a field, she thinks well of you." He said, "Understand that our temperaments are not the same. I do not want you to find fault with me. If someone came into your life that you felt that you could be happy with, and when you never could be happy with your wife, do you think I want to ruin my whole life; I am a young man." I said, "How about this Roach woman? I care nothing about it, but why couldn't you be decent enough to keep it out of your home? You have got a boy; even though you don't consider my sister, don't you consider that boy?" "Yes," he said, "I love that boy, but my life must be protected, and I am not going to ruin my life." 10

Q Any other conversation apropos of this situation? A That was all at that time. 20

Q Did you have any other conversation? A I said then, "I am willing to contribute half with you." At that time they were paying \$5 a week and I was sending \$7 a week, and I believe then I did take up with him that he should contribute a little more, and he did say something about \$6 a week for the boy and my sister, and so his mother, through him, has been sending \$6 ever since, and I have been adding the other six to it, making \$12 a week, and buying her clothes besides. 30

Q Did you have any further conversation with him about this situation? A At the time that she got out a warrant for his arrest and she went up and discovered—

Q Tell us the next conversation. A He called at my home—

Q Where is that? A I was living then 77 Johnson street, Brooklyn.

Q When was this? A This was, I think, the day before they were to have a hearing, or two days before, in the Domestic Relations Court. He 40

John S. Bennett, direct.

called to see me; I said, "I don't know that I ought to talk to you." He said, "John, there are two sides to every story, and I came over to see you; if you don't care anything about me, you like my boy, and for pity sake consider the boy. Just think of it, the father of that boy being arrested." And
 10 he started to cry again. I said, "Your game is a crying game, but you have come to my home; I am going to try to see if I cannot unravel this for you." He said, "Let her not appear there." I said, "I won't tell her not to appear in court. That is against the law. "But," I said, "I will see my sister and tell her not to press the complaint and bring her witnesses to court." I said, "Surely you cannot expect a woman to go without support and neglect the way you have done with her, and
 20 with the information she has about your running around with other women." But he found fault and said, "The idea of my wife having me arrested; I am through with her forever." I said, "You should not blame me; she has a right to have you arrested a thousand times." I said, "I know nothing about the arrest, and if she had told me, I would have tried to stop it." "But," I said, "I will see her." In view of what he said, I did see her.

30 Q Did he say anything else about his attitude toward her? A He said that he would continue to send the support, but that he would never— I said, "Why don't you let me effect a reconciliation; I can do it; even after all you have done, your wife will take you back; you know she loves you and thinks a lot of you. She has no other man in her life. She has only that boy." He said, "No, John, please don't; I can never live with your sister
 40 again."

John S. Bennett, direct.

Q Did you ever have any other conversation with him in reference to his attitude towards his wife? A Those are the two last.

Q Are you familiar with the Staten Island property? A I am.

Q What is it worth?

Mr. Mason. What do you know about it? 10

Witness. I am an expert in real estate.

Mr. Mason. Besides criminal law?

Witness. Yes. I never bought a piece of property; I have searched titles to property; I have investigated the values of property, and I think I am as good an expert on real estate as any lawyer in Brooklyn. It is one of my hobbies, real estate; I have done a lot of investigating in real estate. 20

Mr. Mason. Although you never bought any?

Witness. Yes.

Mr. Mason. What do you know about Staten Island?

Witness. Staten Island today is about the same as it was before.

Court. I will take the evidence for what it is worth. 30

Q What do you think it is worth? A My honest opinion, it has no value of any amount at the present time.

Q What does it consist of? A I think it consists of—

Mr. Mason. Have you ever seen the property?

Witness. No. One piece is 100x100, another 80x100; I didnt' think enough of the property to go and see it. 40

John S. Bennett, cross.

Q Is it in lots? A I have my tax title to my sister.

Q He got it through a tax title? A No; I think he searched back and found there were some absentees and some quit claim deeds, and the title isn't cleared up to date. "I am only holding it for them." I said, "and will make you a present of the \$70 I put in it, but," I said, "I don't want to pay any more taxes." I said I didn't buy any real estate, but I did.

Q Do you know whether any taxes are on the property at present, or whether it is clear? A I don't believe—

Q Do you know? A Yes; there are taxes on the property; there was only one piece they sued on, but I did buy a piece of property that Mr. Marsh came to me about, under our agreement. I dropped \$700 on it.

Cross examination by Mr. Mason.

Q You have never gotten over dropping that \$700? A Yes; I even forgot about it, when I was testifying, that I bought the piece, but Harry could have had \$7000, if he wanted to play fair with me.

Q You don't know where this property in Staten Island is? A No; Staten Island is not a small place.

Q How near Tottenville is it? A I think it is near there.

Q You don't even know where it is? A No; I paid no attention to it, except I thought it was junk.

Q You don't know anything about the value of property down there? A I do.

Q What is the value of property in Tottenville? A I don't know about Tottenville, itself, but I would say lots in Staten Island—

John S. Bennett, re-direct.

Q I am asking about Tottenville; what is the value; you have never seen this property and don't know where it is? A No; but I have a general idea of values there, from people who live there.

Q As a matter of fact, didn't Mr. Marsh tell you about your sister leaving him and going up to Cooley, and his being left alone and being compelled to sell out the house over in New York? A No. 10

Q He never told you a thing about that? A No.

Q He never told you anything about your sister being arrested up in Sullivan County? A Yes; he sent me up there on that.

Q Didn't Mrs. Marsh tell you that she wanted to live in Cooley for the boy's sake? A No. 20

Re-direct examination by Mr. English.

Q What is this story about your sister having been arrested in Cooley? A This farm up there, there was only \$250 in the purchase price; when I went up and looked at it, I said, "I don't care for this farm; it is too many miles from Broadway." He sent my sister up there and there was a caretaker in charge, and it seems the caretaker was a fellow that was a little bit obstreperous, and Marsh was afraid to put him out, and he said, "Nell will get him out." Finally, Nell did go up and took charge and he left then. Nell was up there with her boy, and it seems one day this man came along with his team, and deliberately ran in off the road to ride over her boy, and when he did it, she had a gun there, that she had for protection, and fired a couple of shots in the air. She always carried it when she was out plowing the field; she carried it in her belt, on account of the 30 40

Anita Hanson, direct.

loneliness and threats that were made from this saw mill. The result was that this man then went and had her arrested, charging her with felonious assault. He came in my office laughing about it and he said, "Nell is in a hell of a pickle." I said, "What is that?" And he told me. I said, 10 "Why don't you go up?" He said, "No, I don't want to get in it," and it was dismissed. We gave them a cow to settle the whole thing. He said, "Give us the cow." He had taken everything else on the farm—the live stock—but there was one cow left.

ANITA HANSON, sworn for defendant.

Direct examination by Mr. English.

20 Q Where do you live? A 529 West 111th street.

Q And before living there where did you live?
A 131 West 104th street; in fact, I live in both of them yet.

Q And before the 104th street address where did you live? A 131 East 82nd street.

Q Did you ever live near No. 176 East 95th street? A Yes, sir; I lived right opposite, in 1912.

30 Q For how long did you live opposite? A One year and one month.

Q You left there when? A I cannot say positively, but it was the thirty-first of September or the first of October, 1912.

Q And for a year previous you lived there?
A Yes; that was my first residence.

40 Q Do you know who lived at 176 East 95th street? A I really don't make any acquaintances of my neighbors, and I didn't bother about neighbors' business; I have seen there a party known by the name of Roach.

Anita Hanson, direct.

Q Do you know this gentleman here — Mr. Marsh? A No; but I know Mr. Marsh—I must know him, because he introduced himself by ringing my bell and coming and insulting me in a manner that I wouldn't have expected.

Q Did you ever see him in the vicinity of 176 East 95th street? A I couldn't help but seeing him, because I have the whole house there, and I have seen Mr. Marsh sweeping the sidewalk; I have seen Mr. Marsh quite a few times with a milk pitcher, and going in the morning after bread and milk; and many times I saw Mr. Marsh going out there with some women—I suppose the ladies who are living there. 10

Q Did you see all that during the year you lived there? A I seen it in the last part of the year. 20

Q That is, how long before you moved away the first of October, 1912, did you see these things? A I lived there since September, 1911.

Q And until the end of September, 1912? A Yes.

Q What part of your stay in that house was it that you saw these things that you described, the first or last part? A It was the last part. It was maybe—I cannot swear to this exactly, but it maybe was between August and September and October—that is, three months—when I really noticed these things, and I would not have noticed them, if there were not some incidents which made me sometime look over. 30

Q What were those incidents? A It was one evening when I sat in the front of the house; there were people gathered together, and I heard a woman on the basement of the house there, and I saw a woman and I saw a child, and, of course, 40

Anita Hanson, direct.

I asked one of my neighbors; I wondered what happened over there.

Q Tell what you saw. A I went to see, and there was a woman who come to beg her husband to come back to her; she is living in the—

10 Q Tell us what you saw. A Then I saw Mrs. Marsh; I saw that boy and Mrs. Marsh crying.

Q And her son? A Yes, a little boy, and I didn't remember anything else about it until some time in the morning when I went out. I saw Mrs. Marsh, and sometimes the boy, standing on the street in the morning. Many times I have seen her on the walk, going up and down, and I heard from some people that she is— I spoke to Mrs. Marsh—

20 *Mr. Mason.* Was that before or after this?

Witness. After that affair where she was crying.

Q You spoke to Mrs. Marsh; was Mr. Marsh there at the time? A I didn't see him at this time.

30 Q What else did you see that attracted your attention; anything else? A I have seen the ladies going out, up and down; I saw Mr. Marsh sweeping the sidewalk; I have seen him sometime attending to some kind of work—nailing pictures.

Q You saw him through the window? A Yes; I just lived in the whole house and I couldn't help, sometime, looking; I didn't watch Mr. Marsh. I have seen Mrs. Marsh on the street when it was very cold, but I called her in and I let her sit in my parlor and watch, because I did see that she was out on the street freezing, and the little boy. That was the only thing Mr. Marsh had against me.

40 Q You let Mrs. Marsh into your house? A Yes; I offered it.

Anita Hanson, cross.

Q For what purpose? A Because I felt sorry for her and the boy to walk up and down the street in the cold and nasty weather, as it was so often, and I gave her the privilege to look—

Q What did she do when she got in your house? A I suppose she has watched Mr. Marsh, and she has watched on the street. 10

Q Did you ever see Mr. Marsh come out of the house with these women who lived there? A I have seen Mr. Marsh come out with a red-headed woman, bringing a valise in the house, and another woman, coming from a trip.

Q You saw them go out with a bag or valise or come in with one? A Come in with one.

Q And he carrying the bag or valise? A Yes.

Q Had you seen him immediately before that or not—a day or two before that, or had he been away? A I saw him open the door with a key and go in and come out. That is all I could have seen. 20

Q You said he came to your house on one occasion; what was that? A He rang my bell and said, "Listen, here, Madam, if you mix up in my family affair, I will fix you up," and what I replied, I will leave Mr. Marsh to say.

Q When was that? A It was just after Mr. Marsh found out that Mrs. Marsh— 30

Court. When was it?

Witness. I cannot exactly say.

Q After this crying time that you heard? A It was after, yes.

Cross examination by Mr. Mason.

Q You say that you saw Mrs. Marsh many times after this crying spell she had on the house across the street? A Yes; many times. 40

Anita Hanson, cross.

Q How many times after that did you see her?
A You mean up until now.

Q Yes. A I don't know; what did you mean; ever since Mrs. Marsh was given the hospitality in my house?

Q What year did this crying spell take place?
10 A 1912.

Q What month? A I don't remember the exact date, but it must have been three months before I left the house.

Q And you left the house in September or October, 1912? A Yes; I don't know if it was the first or second of October or last of September.

Q You are positive of that? A Yes.

Q And that was how long a time after this so-called crying spell? A You mean until Oc-
20 tober, 1912?

Q Yes. A Until yet.

Q How long a time after the crying spell was it that you used to see Mrs. Marsh walking up and down in front of the house? A At least a dozen times I have seen her.

Q You are sure of that? A Yes.

Q And that was when you were living across the street? A Yes.

Q Madam, suppose I told you that Mrs. Marsh
30 went to Kentucky in April, 1912, would you still contend you were telling the truth? A I leave this to Mrs. Marsh, if I ain't mistaken.

Q You leave it to yourself. A You cannot
40 make me, because I do not notice what other people do, and don't put this on record; I have seen what I have seen, and I swear just as any person. I was living there and I know I have seen Mr. Marsh the last part of this time until I went away from that place, because every time he saw me in the window he has made a face at me, as if he wants to eat me up. That was the truth.

Anita Hanson, cross.

Q Don't you know that Mrs. Marsh went down to Kentucky in April, 1912? A When Mrs. Marsh came from Kentucky I lived in another place.

Q Don't you know that Mrs. Marsh went down to Kentucky in April, 1912? A That I don't know; I cannot say positively, as I tell you; I just say as near as I can say. 10

Q Can you tell when this so-called crying spell took place by Mrs. Marsh? A It must be at the time when it was very cold, because I wouldn't have called Mrs. Marsh in, and I have seen her in front of the tailor store, and it was so shivering and cold, I say, "Madam, just come in."

Q When was it you saw Mr. Marsh there? A I claim I have seen Mr. Marsh until September 31st; maybe not exactly this date, but until the latter part of September, around there; that is the truth. 20

Q When was the last time you saw Mrs. Marsh there? A I didn't put it in the book, but I am sure that I saw her shortly before I moved away.

Q You are sure that you saw her, that would be either in August or September, 1912? A Yes.

Q You are positive of that? A Yes, I think I am positive of that. 30

Q You think you are? A As nearly as I could remember.

Q You cannot be mistaken about it? A I told you as nearly as I could remember.

Q You wouldn't be apt to make a mistake in these months? A No; I don't think so.

Q You are positive of that? A You know that is four years ago; it is the fifth year.

Q How did Mrs. Marsh find out where you lived? A Mrs. Marsh has lived in one of my 40

Anita Hanson, cross.

apartments; I have given her that apartment to stay there a month; I didn't charge her anything.

Q When did she live in the apartment of yours? A Sometime this summer; then she used to live on 104th street.

10 Q How did Mrs. Marsh find out where you had moved from 176 East 95th street? A No; I didn't live there; I lived at 179 East 95th street.

Q When did you move from there? A That was easy to be found out, because I don't keep it secret where I go.

Q Where did you move from there? A I told you I lived 131 East 82nd street, and I lived there a year.

20 Q And then you moved to where? A I have one residence, and I have another residence on 111th street.

Q When did you move from 131 82nd street? A I didn't move there; I have my apartments rented; that is my business.

Q Didn't you just say that you lived at 529 West 111th street? A Yes.

Q You lived in both places? A Yes.

Q And you still live at 131 East 82nd street? A No; that house is broken down.

30 Q I ask you now where did you live? A I lived a year, after I left that other apartment, on the other house.

Q I ask you where did you move when you left the house 131 East 82nd street? A 135 West 104th street.

A 133 and 135 it is; 131 was 82nd street East, and 135 was West 104th street.

Q You also lived at 529 West 111th street? A Yes.

40 Q Which one do you live in? A I live at present at 529 West 111th street, if it is so hard

Anita Hanson, cross.

to make you understand, but I told you that I rent apartments, and I live in it when one is vacant.

Q Are you a married woman? A Yes, sir.

Q And live with your husband? A I should say so.

Q What is his business? A I told you that we have furnished apartments; is that sufficient for you? That is my business, and my husband's business just the same. 10

Q Will you tell me how Mrs. Marsh kept track of you during these four years? A Wouldn't it be better when you ask Mrs. Marsh this? I don't know if I have to find out this for you; is it not better to ask Mrs. Marsh?

Q Is there any reason why you don't want to answer the question? A I told you that Mrs. Marsh, ever since this time, was a friend of mine and came to my house, and I took her in with her child to stay in my apartment, simply because I know the misery she lived in, in Brooklyn. 20

Q You knew the misery she lived in, in Brooklyn? A She told me this.

Q When did she ever live in Brooklyn? A I went so many times to Mrs. Marsh in Brooklyn where she lives, and you cannot tell me that that isn't true. 30

Q She told you about the misery she lived in, in Brooklyn with her husband? A No; I didn't say anything of the kind.

Q When was it you took Mrs. Marsh in? A I told you that it was June or July this year, for one month; I have Mrs. Marsh for one week with her child in my apartment.

Q Which apartment was that? A 135 West 104th street.

Q You say Mrs. Marsh today is your dearest friend? A Yes. 40

Helen Bennett Marsh, direct.

Q You are coming over here as a witness because she is a dear friend of yours? A I come as a married woman and mother of children, to testify to something to which I was a witness; I don't know if I can help one or the other. I came here not to be insulted from you; I came here only
10 to tell the truth.

Q You say Mrs. Marsh came into your house in September, 1912; that is telling the truth, is it? A I didn't say anything of the kind. I think you mix very much what I say. I say I went in September to move to 131 East 82nd street, and I couldn't have said anything different.

Q You didn't know any of these people that lived at 176 East 95th street? A I told you I didn't mix in anyone's affairs, and didn't know
20 the people and don't care to know them.

Q You don't know anything about them? A Only from passing by, from hearing from the neighbors; that is all I want to know.

HELEN BENNETT MARSH, defendant, sworn.

Direct examination by Mr. English.

Q You are the defendant in this case? A Yes.

Q You are the cross complainant in the application for maintenance and support? A Yes.
30

Q It already appears you were married back in 1900? A Tenth of April, 1900.

Q Prior to your marriage had you had any profession or occupation? A Yes; I was an attorney and counsellor at law of the State of New York.

Q Where did you practice? A New York City.

Q With whom were you at the time? A Bennett, Bennett & Bennett—my two brothers and myself. My brother who was here was one.
40

Helen Bennett Marsh, direct.

Q Was Mr. Marsh in that office? A No.

Q Was he in an adjoining office? A No; I met him at his mother's.

Q After your marriage it already appears you lived in various places in New York and then went to Long Branch; when was that you went to Long Branch? A I went from Sullivan County down there; I was in Sullivan County in 1907 when my troubles first began. 10

Q In Cooley? A Yes; Cooley, Sullivan County.

Q Who owned that farm? A I should have owned it.

Q In whose name was the title? A He put his name and mine in it.

Q Whose money was it? A My money, every penny. 20

Q How did it come about that you went from Cooley, Sullivan County, down to Long Branch? A It was this way: Mr. Marsh had induced me to go to Sullivan County first, and told me that his health was broken down and that he needed a rest, and that he would go up there and do some farming; in fact, he induced me to buy the farm, and I was very strong and very healthy at that time, and he allowed me to do the business alone; I was always glad to do it. I massaged him and built up the flesh on him; he was a skeleton. He had stomach cramps and rolled on the floor in agony. I nursed him. 30

Mr. Mason. When did he roll on the floor; which place?

Witness. At his home.

A (Continuing) I cared for him, massaged him, bathed him, and built the flesh that is on his bones now, with a scientific course of treatment. Then when he told me that he was getting nervous—we 40

Helen Bennett Marsh, direct.

10 had had several heavy cases—I did all the court work myself; he was a very lazy man, and he would leave me when he felt like it; everyone called me the man of the firm, and when he told me he wanted to go to Cooley to restore his nerves, I gladly consented, and I said, “I will go up first and put it in shape for you, and you and the boy can spend your summer there.” I had sent them away before, and stayed in town and worked, because I was very strong. So we went up there and he kept us there then; he didn’t come up at all, and left me up there all alone with the boy.

20 Q How did it come about that you left there to go to Long Branch? A When I was going up there, he said, “Don’t let them get that cow and calf, that belongs to me; Herbert sold me that cow and calf and I want to start the cattle raising with them.” “I didn’t undersand it very well; I said, “All right.” If he told me to do anything, I would follow it out. I was faithful. And I kept that up; I held onto the cow and calf. There were savage people up there; they were very wild.

Q That is this affair that your brother talked about? A I wasn’t hurt; I never shot a pistol.

30 Q All I am concerned is why you left Sullivan County. A These people grew very savage when I kept the cow and calf. Mr. Marsh prepared the papers, and this woman, who did process serving for Mr. Marsh, brought the papers up and served them in Cooley, enjoining the court from going on with the proceedings to recover that cow and calf. It was on account of the row over the cow and calf we left.

40 Q Did you sell the place or exchange it? A Mr. Marsh brought the deeds to me to be signed, and I signed them, as I understood, deeding that farm for a beautiful cottage down in Long Branch.

Helen Bennett Marsh, direct.

It was a beautiful cottage, too, and I signed those deeds, and the cottage, I understood, was to be placed in my name.

Mr. Mason. You saw the deed.

Witness. I never looked into anything that my husband did; what he told me was always law. I always believed everything he told me. I trusted him as I would my God. I never doubted a word he said to me. 10

Q It came about there was a transfer made of the farm for the Long Branch property? A Yes, and instead of placing it in my name—his father and mother have similar names to ours, and he put it in the name of his father and mother.

Q You didn't find that out until after? A No; long after. 20

Q After this transfer you moved to Long Branch? A He took us down to Long Branch.

Q You and the boy? A Yes.

Q And the furniture? A The house was furnished; he sent some furniture down after we lived there four years.

Q Did he support you down there? A He never supported me all my life.

Q Where did you get the money to live on in Long Branch? A When I was in necessity, I would write to one of my brothers or my sister; my sister, mostly. 30

Q Your family helped you out? A Yes.

Q Was he down there very much while you lived in Long Branch? A He would come regularly.

Q How regularly? A Every week end.

Q Do you know where he stayed in the meantime? A He told me that he was at his mother's, and she told me. 40

Helen Bennett Marsh, direct.

Q Where did she live at that time? A On West 11th street, during part of the time, and West 12th street—no, West 12th street entirely. I think she had moved from West 11th street. I thought he was at his mother's when he was not with me.

10 Q Did you at that time know anything about this Mrs. Conlon? A Oh, my, no.

Q He came down first every week end and then later on what? A After a time he told me that he was going to Europe, and my father was with me at the time and he wasn't well, and I couldn't send him home, and he asked me to go to Europe with him; I said, "I cannot manage papa very well, Harry"; I said, "How can I do it?" "I am so sorry," he said, and he put his arms around
20 me and hugged me and kissed me and told me what a dear, sweet creature I was, and I was the loveliest woman on earth, and no matter what anybody told me, never to believe that he ever loved anybody but me, and that no woman could ever come between us. I said, "Harry, I am not jealous of you; what makes you talk like that?" And he went away to Europe, and this Rothenburg, the husband of this woman who was here today, who used to perform juggling tricks in real estate with him, told me not to trust him.
30

Q There is some evidence in the case about a letter which you received while you were at Long Branch? A Yes.

Mr. English. This is the letter I cross-examined Mr. Marsh about and which he admitted having seen.

Q Did you show that letter to Mr. Marsh? A Yes.

40 Q By whom was the letter signed, anybody that you knew? A It was signed by a gentle-

Helen Bennett Marsh, direct.

man named Martin, a man I knew of and knew slightly.

Q What were the contents of this letter that you showed Mr. Marsh?

Mr. Mason. I object.

Court. Mr. Marsh read the letter?

10

Witness. Yes, and we discussed it.

Court. What became of it?

Witness. I gave it to him.

Court. Has there been any notice to produce it?

Q The last you saw of it, it was in Mr. Marsh's possession? A Yes.

Q What were the contents of this letter, the gist of it?

20

Mr. Mason. Objected to.

Court. I will take it.

A "Dear Mrs. Marsh: Do you know that your husband is living with another woman at a number on Amsterdam avenue; the telephone number is so and so. The janitor of the building will tell you all about their behavior and so on," and then the final sentence was—

Mr. Mason. I object.

30

Court. She may testify to it.

A (Continuing) It gave the name Eva K. Conlon. It continued, "This woman's name is Eva K. Conlon; she is the common law widow of John P. Conlon, and she is the same woman who went to Ireland." As I read that I fell to the ground unconscious, because I knew he had been to Ireland.

Q Was this after his trip to Europe? A Yes; he was shortly home, and I fell unconscious to the ground, and when I woke up I—

40

Helen Bennett Marsh, direct.

Mr. Mason. Who was present when you did all this?

Witness. My boy brought me the letter; I was in my own hall, in my house; my boy brought me the letter.

10 Q Get to the point where you had your conversation with Mr. Marsh about it; you showed it to him afterwards? A Yes.

Q Where were you when you showed this letter to Mr. Marsh? A I ran out on the ground, as I always did, to meet him, and threw my arms about him; I said, "Oh, Harry, tell me it is not true." "What?" he said, and I just handed him the letter.

Q What did he do? A He brought me in.

20 Q Did he read the letter? A Yes; he read the letter.

Q What did he say? A He said that is the same party wrote that letter that broke up the household of another man. He said "he stole \$1,500 from me and I had him arrested for it, and now, to get spite, he is going to break up my family affairs," and he stood by and I believed him. He said, "I will go the full limit with him."

30 Q That was when, what year? A 1909, and at the close of Harry's school in June.

Q Then you didn't have any more suspicions after that, as I understand it? A No more such suspicions, but my health never came back.

40 Q When after that was it that you first learned everything, or he said anything which made you suspicious of his fidelity? A Never until—he always neglected us; he spent the money and told us had been unfortunate in speculation, but I had suspicions of his money dealings; but, of his fidelity as a husband, I had no suspicion until about

Helen Bennett Marsh, direct.

the middle of March—the forepart of March, in 1912.

Q Between that time had you moved from Long Branch? A Oh, yes; I had been every place that I could find shelter, rooming around.

Q It appears, from the testimony, that you lived in this and that furnished room in New York? A Yes. 10

Q Why didn't you live together in one house? A He said, "Nellie, wait a little while, and if you let me alone, just let me have my way, and don't butt in"—that was always his expression—"wait a little while longer"—"I will be able to take a handsome home," and he described a home somewhat like the home on East 95th street, and he said, "Mr. Nasuer has your furniture in storage, and we can have that prepared," and I waited and waited. 20

Q You were living in these furnished rooms meanwhile? A Yes.

Q Did he live there with you? A No; but he came there to see me.

Q Where was he living in the meantime? A At his mother's, he told me, and she told me, when I was there to see him; she would say, "He isn't in now, but he was in to supper last night," and I would go around supper time, and she would say, "He didn't come in yet," and for months I tried to see him that way. 30

Q How often did he come to your furnished room? A Until the time that he told me not to butt in, that he was in difficulty of some sort and not to follow him, and not to look for him; he used to come regularly.

Q When was that? A In February, 1912; January and February, 1912, I think. 40

Helen Bennett Marsh, direct.

Q How often did he come regularly? A At that time, not at all.

Q Before that, previously? A Up to that time he always came wherever we were.

10 Q How often? A He would run in all the afternoon; he would stay an hour and maybe take me for a walk, and maybe he would come in of an evening, and just stay, but never stay all night.

Q Then, beginning with January and February, 1912, he ceased to come? A During January and February; after that he came again.

Q When? A He came again; I know the last time he was with me was in March—one Sunday in early March.

20 Q Was it at that time something developed that made you suspicious? A Yes.

30 Q What was it? A I was never happier in my life; we were talking and laughing there, and I was—we were all alone in the room and he had sent Harry around to his grandmother's, and all of a sudden he threw up his hand that way (indicating) and said, "By the way, there is a letter around at mother's that has been there for two or three weeks; I must go around and get it." I said, "Harry, do you mean to say you are not at your mother's?" and he said, "Now, girlie, don't butt in for a little while, and everything will be all right in a very few days; don't ask me where I am or anything about it." And I laughed and said, "You fox, I will track you where you live" so I thought I would just have fun, see what he was doing, because the more I thought of it, the more I thought there was reason, so I tracked him to East 95th street.

40 Q What is the number? A 176 East 95th street.

Helen Bennett Marsh, direct.

Q Did you find him there? A When I finally saw him go into 176 East 95th street, I went down to his mother's to get the boy, and I told his mother, and she had his telephone number, as I discovered afterwards, and telephoned up to him. When I went up with the boy he was out on the sidewalk waiting for me and the house was all bolted and barred, every door and window; I went up to ring the bell; I passed him by and went up to ring the bell, and he went to pull me off the stop; he said, "Don't go up there" and pulled me down, and I slapped his face; I went on up the steps and pulled the bell out of the socket, and he called in "Nobody don't come out; don't nobody come out," and he kept shouting that and then I cried and went on like a wild woman, and, finally, on account of the boy—he went around and telephoned my brother John, and my brother John—this gentleman that was here today—asked me to come to the telephone; I went to the telephone and he said, "Your sister is nearly crazy up here and you come right home," and so I started right down town, and he walked with me; we walked all the way down, several miles, down to his mother's.

Q What did you do with the boy? A I went to his mother's and left the boy there, to go to bed, and then we walked the street for the rest of the night.

Q Was anything said about the domestic situation? A Yes; he said, "If you will let the situation go as it is—I don't know how it is that I can love two women as I love you and her," and he said, "If you will let the situation go as it is, I will give you the handsomest offices in New York." I was always very fond of handsome offices, and he was always promising them to me, with my own money; all I wanted was my own.

Helen Bennett Marsh, direct.

Q I want this conversation. A And he said, "I will give you the handsomest offices in New York, and will do anything in the world for you, and I will be with you more than I am now."

Q Did he say anything else? A I slapped his face again.

10 Q What for? A Because I was wild; I don't know why I did it; he isn't worth it.

Q Did you go to this 176 East 95th street again after that? A I lived there; night and day I was there.

Mr. Mason. When was this slapping episode?

Witness. It was shortly after I had him arrested for non-support.

20 Q What month? A It was in March; it all happened in March, 1912.

Q Before you had him arrested did you ever go into the house, 176 East 95th street? A Yes.

Q How did you get in and what did you say? A I didn't finish the conversation that night.

Q Go ahead with that. A Then he said, "Well, if you are going to do that, then give me a divorce, and I will give you the evidence for it," and I told him I wouldn't do that.

30 *Mr. Mason.* He wanted to do what?

Witness. If I wouldn't let things go as they were and not interfere in his affairs, that he would give me the evidence for a divorce, and I would get a divorce from him, and then he would give me money—pay me all back what he owed me and would give me much more money besides, and would also be better able to do for the boy, and all this kind of talk. So I cried and begged him; I
40 told him that I would do anything for him;

Helen Bennett Marsh, direct.

I cried on the street and told him I would do anything for him—let by-gones be by-gones, and he said “No.” He said that he was in trouble with this woman, and that he would have to do something about it, or he would be hurt, and he gave me several arguments why I should give him a divorce, and, finally, in front of the furnished room house where I lived, he told me that if I wouldn’t give him a divorce, that he would murder me; that I would meet with an accident. The woman in the house heard him say that, and that is why it was testified she refused to let him in the house the next time he came. 10

Mr. Mason. What woman testified to that?

Witness. That the woman didn’t let him into the house; she heard him telling me that he would murder me. 20

Mr. Mason. Did you hear her testify to that?

Court. Mr. Marsh testified the woman wouldn’t let him in, today.

Witness. She never let him in after that.

Mr. Mason. Who was the woman?

Witness. I don’t remember; he knows; it was 25 Seventh avenue. 30

Q Did that finish the conversation that night?

A That was the gist of it.

Q Did you ever succeed in getting in 176 East 95th street? A I did.

Q When was it, before or after the arrest? A It was before the arrest.

Q And what time of the year; what month and year? A Sometime in the early March.

Q 1912? A Yes. 40

Helen Bennett Marsh, direct.

Q Tell us how you happened to get in? A I would go up there and ring the bell and nobody would come to the door; I would ring and ring, and I don't know everything that did happen, but I wanted to talk to the woman, because I didn't know what story he had told them, and I thought if I would explain matters to them—

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Q Tell us how you got in. A By ringing the bell.

Q Someone came to the door? A I went in.

Q How did you go in; walk in yourself? A I walked in, but how I got the door open, I don't know, because they were always bolted.

Q You got in, and where did you go? A When I got in this woman that said she was the sister, was there, and I said, "I wish to speak to you." She said, "Well, I don't wish to speak to you." Walking in past her and sitting on the hall rack there, I said, "I am going to speak to you whether you wish to speak to me or not."

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Mr. Mason. Was Mr. Marsh there?

Witness. No.

Mr. English. He said on cross-examination he was there.

30

Witness. Mr. Marsh was there, but not where I saw him, but he was there, because he went down the basement steps and went out the basement way.

Mr. Mason. Where was he?

Witness. Listening in the hall at the back of the stairs, and I saw him go out of the basement way.

Mr. Mason. How far away from you was he while you were speaking to the woman?

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Court. What did you do?

Helen Bennett Marsh, direct.

Witness. I said, "I am going to tell you, whether you wish to hear it or not," so I went on and told her the usual story that every wife tells, and she said, "Well, you know I am not the one that Mr. Marsh is in love with; it is my sister, the nurse." I said, "Is she here now," and she said, "She is away," mentioning the place, and she said, "Of course, if I could prevent it, I wouldn't have him here, and as it is, I will do my best for you," and she talked very nicely, and I thought she would; I believed she would do what she said. 10

Q Did you see the sister? A I never saw the sister at that time.

Q Did you get in the house more than once? A Yes, several times. 20

Q Tell us any time you went upstairs. A Then I went in again.

Mr. Mason. Was Mr. Marsh there on the other occasions when you went in?

Witness. No, but his belongings were.

Court. What she saw there she may tell.

Q I want you to tell me the time when you went upstairs in the house; did you go in? A Yes.

Q Was Mr. Marsh there? A Mr. Marsh was upstairs on the top floor, they told me. 30

Q Did you see him? A No, I didn't see him.

Q What did you see when you got upstairs? A It was on a Sunday morning, church time; I went up and she came to the door—this teacher.

Court. Mr. English is asking you a plain question.

A (Continuing). I saw first the Roach woman who came to the door, and then a big fat woman on the stairs, who tried to hold me down, who I thought 40

Helen Bennett Marsh, direct.

was her sister; I pushed past her and I went upstairs, and I saw this room that Miss Roach told me was her room.

Q Did you see anything in that room belonging to your husband? A I saw the slippers that I bought him under the bed; I saw the picture that I framed on the mantelpiece; I saw his clothes and her clothes mingled together in the wardrobe—or a woman's clothes and his clothes hanging in the wardrobe, and I saw him in the front room, with sliding door—one single sliding door between open—no, it wasn't that time he was in the front room, it was the other time. This time I saw those things, and I took the picture off the mantelpiece and I said, "This is my picture; he gave me the picture."

Q If he wasn't there, don't say what was said.
20 Were you there a second time or any other time when he was there? A Several times; he was there one time.

Q Tell us about the time he was there. A He was in the front room and I was in the back room.

Mr. Mason. Can you fix this date?

Witness. Early March; I went to Kentucky in early March.

Mr. Mason. Are you sure about that?

30 *Witness.* Or early in April. Anyway, this was early March.

Q Direct your mind to the time when you were upstairs and he was in the front room. A I went into the back room and she was there.

Q Who is "she?" A This redhaired woman; she said she was a teacher and taught in the Eldridge Street School; I never saw the other sister until lately; she went to him, she went into the other room, and with her arm around his waist, she brought him out to me, to settle the question of
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Helen Bennett Marsh, direct.

whether he really intended to get a divorce from me.

Q What did she say in his presence and yours?

A She said, "Come now, Harry, and settle the question right here and now; I want to know the ins and outs of it, and I want you to come right out and face Mrs. Marsh and tell me if she promised to get a divorce from you." He came out and he had the sliding door in his hand like that (indicating), and he called out to me and she said, "Nell, didn't you promise to give me a divorce?" and I went to slap him when he said that; I was wild, and he pulled the folding door shut and I struck my hand on the folding door and crippled my hand for a long time; then he put his nose out again and opened the door and said, "Didn't you promise to give me a divorce?" And it went on that way, I screaming and saying how he robbed me, and told her of how he took my money away from me and starved me, and how I had to live on charity, while I was earning big money, how he took every dollar of it and speculated with it, and left me to depend on my people for the necessaries of life; I didn't ask them for any more, and the money they would give me for luxuries, I used for necessities, and many times bought his underwear and things out of my luxury and kept him well dressed. I often went myself—

Q Is this what you said at the time? A Yes— I often went myself with one little vest and washed it, while that man was spending a hundred dollars. I said, one time I earned \$500 in a murder case in court beside \$700 costs and brought it in to him and I bought a \$35 coat out of it, and he stormed and raised the biggest row and said what was I thinking of, that I was a millionaire; and another time, in the Frank Schubel case—

Helen Bennett Marsh, direct.

Mr. Mason. You told this to her?

Witness. For three hours I talked to her.

10 A (Continuing)—and another time, I said, Frank Schubel paid me \$500 for going to the United States Court with him in his bankruptcy case; paid us both and then he gave me \$50 extra, on a little
 20 10 wager with him, and he brought the \$50 in the next day and handed it to Mr. Marsh to give to me. I never had an ice cream soda out of it. We were passing a window one night where there were red apples, and I longed for an apple, and he pulled me on quickly, so I wouldn't see the red apples, and the baby didn't live—I didn't have it; fortunately, I suppose—and I told her how he owed me money, and he said, "Now, Nell, I will borrow this money
 20 20 and buy this Staten Island property; it is only a few hundred, and I will pay it back to you out of the next money that comes in." I said, "All right. Harry," and then when he bought the property, he put the property in his own name, and never paid me back the money, and never put the property in my name until he had made up his mind to go with this other woman in June, 1910—he said it is 1911, but I think it is 1910.

30 Q Did you have any conversation with him in his office on Liberty street? A Yes.

Q Was that before or after the arrest? A That was before the arrest; that was after I found him out, though.

Q That was after you found him out in East 95th street? A Yes.

Q Who was present at the conversation that you had with him? A No one but him and me.

Q The two of you together? A Yes.

40 Q What did he tell you at that time, if anything, with reference to the Conlon and Roach woman?
 A He said, "I am not fit to live with you; you are

Helen Bennett Marsh, direct.

a pure, good woman, and you are made for public life, and I would rob my own father; there is no use of your trusting me any longer, because I would rob my own father," and he said, "I have borrowed money from my cousins; my cousins state I took that money; and I have taken money from my mother that works hard for it in a boarding house, and I have taken money from my father, and my Uncle Al and your brother, you and everybody else that I could get it from; you will not get a square deal from me; it is all rot; you will never get it." He said, "Why don't you leave me; let me go my way; there is a bright future before you, and I wish you well," and he said, "You are better off without me hanging about your neck." I cried and I said, "I cannot live without you. I would like to satisfy you, but I cannot do so; even if I promised you, it would be of no avail," which was true. "I cannot get a divorce from you; I don't know what it is; I despise you, but I think I love you, or I am hypnotized; I don't know. But I never had any experience with any other lover and I suppose that is the reason," and then he said, "I am besides unclean; I live like a beast." He said, "I am unclean and unfit to come near you; I lived like a beast with Mrs. Conlon for years." I understand that it was true. And he said, "I drank like a fish"—I thought he was a sober man; I never knew him to take a glass—"and lay under the table like a hog in my own vomit, and then she drugged me and I put my property in her name as a dummy, and after she drugged me she stole the deeds back from me, and that is the way she got the deed to the Kentucky property, and she has that now, d— her, and I could cut her heart out," and he said, "Nellie, be sensible, and don't waste your time on me, because I am not worth it; get a divorce," and then he looked in the

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Helen Bennett Marsh, direct.

glass and counted the wrinkles in his face; he said, "I am getting old now and my hair is falling out; life is very short; I will give you the evidence; you won't have any trouble getting it," so I knocked his head through the glass partition.

10 Q Did he say anything at that time about the Roach woman?

Mr. Mason. I think she has been very full in her statements.

A We went out then and walked the street again.

20 Q My question is whether in the office on Liberty street he said anything about the Roach woman? A Yes, he said that the Roach woman was a friend of Mrs. Conlon; she came to Mrs. Conlon's house and saw him there and said "What a shame it is that a handsome young fellow like you should be in such a bestial condition," and that she took him away from Mrs. Conlon, and that Mrs. Conlon went up there to the house and turned the house inside out—

Mr. Mason. Who told you this?

30 *Witness.* Mr. Marsh—and that the Roach woman took him away from Mrs. Conlon's, and that Mrs. Conlon went up there to the house and turned the house inside out, running after him, and he laughed about that, and he said he was since living with her.

Q Which "her?" A I don't know which it is; it is one of these two sisters.

Q The Roach woman? A I think it is the nurse, and he said that she was in trouble and that she had a brother who would kill him if he didn't do something about it.

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Helen Bennett Marsh, direct.

Q Did he ever say to you that he had lived with the Conlon woman as man and wife? A Several times in that conversation.

Objected to.

Court. That is competent.

Q Did he say in the conversation in the Liberty street office that he had lived with the Roach woman as man and wife? A He told me that she was to have a child; I asked him that question. 10

Q Was anything said in this Liberty street conversation about your going down to Kentucky? A No, not at that time.

Q When, if at any time, was anything said to him by you about your going to Kentucky? A This Mr. Rothenburg, the husband of the woman who was here today, had an office, and Mr. Marsh used to be in that office a great deal, and in trying to see Mr. Marsh, I went to Mr. Rothenburg's office and waited there to see when Mr. Marsh came in. He was not a friend of mine, as was stated; he is a swindler, and is under—I think he is in prison now; he is under indictment in New York. They operated together in what they called "deals," and I went into Mr. Rothenburg's office and waited to see would Mr. Marsh come in, and told Mr. Rothenburg what I wanted. Finally, late in the evening, Mr. Marsh came in, and I was waiting there in his office; when Mr. Marsh came in and saw me he flew at me, and I got excited, too, and Mr. Rothenburg tried to calm us both, and so I told him, I said, "I am going down to Kentucky; I am going away and take the boy with me." 20 30

Mr. Mason. Which did you say?

Witness. I don't think I told him I was going to Kentucky, but I told him I was going away and take the boy with me. 40

Helen Bennett Marsh, direct.

Q What did he say, if anything? A He didn't object at all; he said he didn't care where I went.

Q Why did you decide to go to Kentucky?

Court. Unless she told it to him, it is not competent.

10 Q Did you know that Mr. Marsh claimed to own property in Kentucky? A He told me that day for the first time, in Liberty street; not the first time about the property, but the first time he told me it was in Eva Conlon's name, and before that he told me that was in my name, and my property went in exchange, the property that my own money bought.

Q And he led you to believe that that was in your name? A Yes.

20 Q Then he told you at Liberty street it was in the Conlon woman's name? A Yes, and when I discovered about his duplicity, I said I would go down there and have the deed set aside.

Q That is why you went down? A To have the deed set aside and restored to my name, because there were my equities in it.

Q Going back to the time when he lived at 176 East 95th street—did you ever go to Mrs. Hanson's house? A Yes, she called me in from the street.

30 Q You went in her house? A Yes.

Q What did you see when you were in there? A I saw him going out and in with them on his arms, two of them sometimes; they were both red-haired women; I saw him washing off the steps with water and broom and pail; I saw him bringing coal up from the areaway in front of the house—not while I was in Hanson's, but from the sidewalk. I saw him coming out in the morning, as if he were bringing in milk or rolls; I saw him when they came in together, he and the two women, with suit-cases, from the Lexington avenue direction. I saw

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Helen Bennett Marsh, direct.

him going in and leaving the suitcases inside and then coming out again and going for milk and rolls and things like that all the time; it seems as though he went to a delicatessen store; then I saw him one day through the window, on a cold night, undress in the front room, with one of the women there, and he seemed to be capering around the room as if he had been—as if they had been massaging him; I cannot tell exactly what I thought, but anyway he was not dressed, and from his waist up he certainly had nothing on his person. 10

Mr. Mason. Where did you see this from?

Witness. From across the street.

Mr. Mason. Where were you at the time?

Witness. In the room just over the parlor in Mrs. Hanson's house. 20

Q Was anyone in the room that you saw? A One of these women.

Mr. Mason. In very cold weather?

Witness. A very windy cold day.

Q Then you went down to Kentucky; did you get any communications from him while you were in Kentucky? A Yes.

Q In what form? A Letters. 30

Q Have you ever seen Mr. Marsh write on the typewriter? A Oh, yes, he was an expert typist.

Q Are you familiar with the character of the type on his machine? A I can tell pretty well his typewriting; he is a very handsome typewriter.

Q I show you a typewriter letter which has been marked Exhibit D 1 for identification, and ask you when you first saw that? A I first saw it in Kentucky.

Q How did it come to you? A Through the mail. 40

Helen Bennett Marsh, direct.

Q In an envelope addressed to you? A Yes.

Q Was the envelope addressed in typewriting?

A I don't remember.

Q Can you say from the appearance of it who wrote it?

10 *Mr. Mason.* Objected to.

A I wouldn't positively swear that that is his writing; I don't think that looks quite as good as Mr. Marsh's own writing; it purports to be signed by my husband.

Court. In what way?

Witness. In typewriting, "James H. Marsh, 129 West 12th St.," all typewritten.

20 Q Did you on receiving that letter write a reply to it? A I started on the back of it.

Q Did you, on receiving that letter, write a reply to him? A Yes.

Q Did you start one that you didn't send? A I started one right on the back of it.

Q That is how all that ink blur on the bottom came to be there? A Yes.

Q Did you ever write another letter and send it—the "hound of hell" letter? A Yes, I wrote that.

30 Q I show you the letter, Exhibit P. 3; is that written in reply? A Yes, I wrote that in reply to this typewritten letter in June.

Q So this P. 3 was written in reply to this letter D. 1 for identification? A Yes.

Court. You mean by that, that when you got the typewritten letter, you wrote that P. 3 in answer?

Witness. Yes.

40 *Mr. English.* I offer in evidence Exhibit D. 1 for identification. If you will read it, you

Helen Bennett Marsh, direct.

will see the internal evidence is very clear where it came from.

Court. I may read it, but I am not quite sure that you have identified the letter. I will admit that letter in evidence to this extent, Mr. Mason, for the purpose of showing that it was the letter which induced her reply. It may affect the reply somewhat, and whether it is Mr. Marsh's letter, I don't have to pass upon at all. She said that letter was received by her down there. It purports to be written by Mr. Marsh; he denies he wrote it; but I think it should be admitted in order to show why she wrote that letter and that she wrote in reply to the letter. 10

(Marked Exhibit D. 1.)

Q After you got this typewritten letter you wrote the other letter? A Yes. 20

Q When did you come back from Kentucky?

A I think it was June, 1914.

Q While you were down there, did he write you any letters urging you to come back or anything of that character? A He wrote letters to Harry urging him to stay there.

Mr. Mason. Have you any such letters?

Witness. We had a fire— 30

Court. That will have to be stricken out.

Q Did he write to you urging you to come back? A Never.

Q Did you know that he was living in New Jersey, or going to live in New Jersey? A I know that he was never living in New Jersey.

Q When you were down in Kentucky did he write you or advise you in any way of the fact that he claimed to be living in New Jersey? A Never. 40

Helen Bennett Marsh, direct.

Q When did you first learn that he claimed to be living in New Jersey? A When I was served with papers in this action.

10 Q Where did you live after you came from Kentucky? A Another part of that conversation with Mr. Marsh just occurred to me, when you spoke of his mother.

Q What conversation is that? A What he said to me in his office.

Q At Liberty street? A At Mr. Rothenburg's office; it is not Liberty street. Mr. Marsh told me that day that there would never have been any trouble between us, only for his mother; that she had always nagged at him about me.

20 Q Where did you live when you moved back from Kentucky? A The first place was—

Q Well, what State? A I am trying to think. Oh, I have been so many places, I cannot say just where we lived when we first came back.

Q Where have you lived since? A I have lived in Staten Island, where I was served with the papers in this action.

Q Where else? A And after that, I came to 2423 Church Avenue, Brooklyn, and sent the boy to Erasmus High School.

30 Q Did Mr. Marsh support you while you were in Kentucky? A The first few months we were there he did not send me anything, but after that he sent us \$5.00, and then I wrote a letter to him telling him that we could not do with so little money and that he must send us more or I would come home. I knew he did not want me home, from his letters. He then sent us \$6.00.

40 Q Where are these letters? A The letters were destroyed at the fire; Mr. Marsh's picture was destroyed—the one that I had taken out of Miss Roach's house.

Helen Bennett Marsh, cross.

Q Did he send you more money? A He sent me then \$6.00.

Q A week? A \$6.00 a week; that is, his mother sent it, and that's all.

Q Other than this \$6.00 a week which he says was for the boy, have you ever received any money from him recently? A No, not a penny. 10

Q How are you managing to live now? A We have a furnished room; before I had a room, Harry and I—Harry and I both in one room.

Q Who supports you? A Well, anyone that will,—my two brothers; my brother did not so often as John and my sister.

Q And you took the \$6.00 a week and applied to the expenses of the boy? A I spent more than that on the boy. 20

Q I know, but you applied this \$6.00 a week for him and got the rest from your relations? A Yes.

Q Is that it? A Yes. The boy has no party suit now. He has nothing but the bare necessities.

Cross examination by Mr. Mason:

Q You stated in the beginning of your testimony that you were a very successful counsellor at law. A Successful? 30

Q Didn't you say so? A I don't remember, but I say it now.

Q You are and have been— A Everything I touched seemed to turn into money, seemed to be successful, I am rather lucky that way.

Q You have been lucky all your life? A Always.

Q And everything that you touched turned into money? A Why, of course not.

Q Didn't you say to me, Mrs. Marsh, that Mr. Marsh, at that rambling conversation he is 40

Helen Bennett Marsh, cross.

alleged to have had, which you have given once, promised to get you the handsomest offices possible? A Yes.

Q Why were you needing any handsome offices?

A To practice law.

10 Q When did he tell you he was going to get you these handsome offices? A That was the only time.

Q What year? A That was the early part of March, 1912.

Q When was the last time you have practiced any law? A Up to the present time.

Q When before 1912 was the last time you had practiced any law? A Well, the—

20 Q What year? A I couldn't just tell you that; in 1907.

Q About what year had you practiced any law? A Why, in 1907; I know that.

Q You practiced law in 1907? A Mr. Marsh got me out of the office in the Spring of 1907, got me up to Cooley's on that trick.

Q So you had not practiced law for five years? A No, I had not, considerable.

30 Q Yet you want us to believe that he told you, after you had given up law for five years, that he was going to give you the handsomest law offices— A I did not tell you I had given up law; I have not ever given up law; never have.

Q How long did you live in Long Branch? A Four years.

Q Did you practice any law? A Oh, yes, came up to the city and tried cases.

Q Name one case you tried? A I can't tell you without referring to my books.

40 Q Where are your books? A I haven't got them.

Helen Bennett Marsh, cross.

Q Where are they? A I don't know; Mr. Marsh disposed of everything when he was with the Conlon woman.

Q How do you know? A He told me so.

Q At the time he made this confession? A No, at the other time.

Q What other time? A I couldn't tell you. 10

Q Name the year. A I have not got that down on my book. You are talking what he did with his furniture.

Q You say you are a counsellor at law, and yet you say your husband tricked you in putting the name of someone else in the deed for the property that you owned. A I did not sign that deed.

Q Didn't you sign a deed conveying property to the Conlon party? A Yes. 20

Q Didn't you know to whom it was conveyed? A I never looked at it,—anything I signed over, Mr. Mason.

Q As a counsellor at law, you didn't? A As a woman, I didn't. If you had brought me a paper to sign, I would have looked at it, but simply my husband—that is a different person.

Q You made an acknowledgment of the deed? A Surely. 30

Q But you did not know what was going to be done with it? A I suppose not.

Q Mr. Marsh simply said. A Mr. Marsh simply said, "Nell, sign here,"—

Q And Nell signed? A Yes.

Q How old are you? A I will be 49 the 25th of next July.

Q How many years older are you than Mr. Marsh? A According to him, I would not be any older; according to his mother, I would be; well, 40

Helen Bennett Marsh, cross.

he told me that he was 46 several years ago, and told others when I was in Long Branch.

Q Did you sign a second certificate of marriage? A Did I sign a second certificate of marriage?

Q Yes. A No, I think not.

10 Q You insisted— A I don't remember.

Q You insisted upon being married the second time? A No, sir; I did not; never mentioned the subject.

Q Why did you go over to New Jersey in March, 1912, and marry the second time? A He asked me to go; he gave me various reasons.

20 Q Why? A He gave me various reasons. In the first place, he told me they had had a fire in Paterson; that was years ago, and we ought to have a second marriage because their records were gone. I said that would not matter, because the records were preserved at the State office, and I then refused to go, because our first marriage was sufficient. Then again, sometime in the winter before I was operated on—

Q What year was that? A I was operated on in June 1910, and that was the winter before—, that would be the winter of 1909-1910.

30 Q That is when he told you— A Then again, —no this was another time. He came to me and he told me again, and I told him that was foolish, that one marriage was all sufficient. Then again he came to me lately of late years; that is lately—

Q What year? A I don't know, and he told me that he—

Q What year was it? A Maybe 1911-1912, somewhere around there.

40 Q What part of 1912? A I think it would be maybe 1911—maybe '12; I couldn't say what time it was; sometime near there.

Helen Bennett Marsh, cross.

Q Near what? A Near the time we had the second marriage, and he told me then that the law was changed in New Jersey and that he would have to have another marriage.

Q And you as Counsellor at Law believed it? A No, I did not; it is not true, but he says that; I insisted the first marriage never bothered me about that question; that is not true. 10

Q Didn't you explain to the minister why you wanted to be married again? A No.

Q You did not? A No.

Q You said in your testimony just now— A I told this to the minister?

Q You said in your testimony just now "I despise him." A I do; I hate him.

Q You hate him? A No, I would die for him. 20

Q You would die for him? A To save his neck, I would climb out there (pointing to window) and try to climb that outside wall there.

Q That's the reason why in the letter of June 17th, 1913, you wrote him "the only decent thing for you to do is to die?" Is that the reason why you love him? A That is not the reason.

Q Why did you write to him "the only decent thing for you to do is to die?" A I tell you why I wrote that; because I was very, very angry. 30

Q And you loved him when you termed him as hound of hell? A Yes, indeed I did. I love him yet.

Q And you loved him when you called him a degenerate? A I certainly did; I love him still.

Q And you loved him when in the presence of all these stenographers and newspaper reporters you tell me that he has tricked you, and about these things he is alleged to have told you? A What? 40

Helen Bennett Marsh, cross.

Q About that conversation that you said took place in the office? A I had to tell the truth.

Q When did this conversation take place? A It took place in the early part of March, I think, of March, in the early part.

10 Q What year? A It was before I had him arrested.

Q What year? A 1912.

Q And all these same stories that you have told here today you told over in the court when you had him arrested, didn't you? A No.

Q You did not? A No; it was not necessary.

Q It all took place before hand. A That was merely a proceeding for non-support.

Q That was merely a proceeding for non-support? A Yes.

20 Q Isn't that the same thing you told his mother you were going to tell here? A I didn't tell his mother, I didn't tell her anything; that I was going to tell anything; then his mother lied when she said that.

Q His mother lied when she said that? A Yes; I never told that woman that; I can tell you exactly what I did tell her; never told her that.

30 Q And you accuse him of all these different things you accused him of in this letter, and yet you say you love him? A I love that man as I think no woman ever loved anybody. I have written a poem; I have written a poem about him, to be published soon. You can read that.

Q Have you a copy of it? A I can recite it for you.

Q All right.

A Oh, the harmonies of life's radiant dew,
In the paen of life's awakening,
While the stoic touch of the master's voice
40 Rises proudly o'er the best.

Helen Bennett Marsh, cross.

And my soul was swayed with the rapturous
thrills,
In the sweet wind's chant partaking,
Till within the clasp of his tender arms,
My bewildered soul was pressed.

Oh, to bide for aye in that bourne of bliss, 10
Lulled by zephyrs of music's laughter,
To respond to vows of fidelity,
In the ardor of untried youth.

Undefiled by the breath of distress and doubt,
With his black brood following after.
While the glad young sun on her guileless
head.
Shared its glorious lights of truth. 20

But the siren beckoned; my lord obeyed,
In the thrall of the great delusion,
And a barrier firm and fine she built,
To separate him and me.

For its walls of adamant she twined
Red roses in rich confusion,
Then securely locked the arched gate,
And hid the wondrous key. 30

Without star or crescent my night has fallen;
The fiends and furies assail me;
As they urge my shuddering footsteps on
To the slimy brink of despair.

But the cry leaps out from the echoing hills,
"Oh, my mother! Do not fail me."
Through the darkness pierced the saving
gloom,
'Tis our baby's golden hair. 40

Helen Bennett Marsh, cross.

In the exquisite presence of childhood's grace,
Foul mists on my path are lifted;
By the radiant smile of his winsome mouth,
By the light of his eyes so blue.

10 As his fond dependency recalls my powers,
With a resolute purpose I am gifted
To attend at the shrine of his glowing face,
With a zeal that is born anew.

But when evening's joys unfetter my thoughts,
They rejoice in the rythmical measures,
As they hoist the sails of the mystical barge
On the gale furrowed sea of fate.

20 And my bosom heaves with a rare delight,
For we are off on a cruise of pleasure
To the mystic shores of the dreamlike past,
And the joys undevoured by hate.

Q That is dedicated to your husband? A
That is written about my husband, my boy and
myself and his mistress.

Q Have you ever suffered from delusions? A
Delusions?

30 Q Yes. A Never in my life.

Q What? A Never. I wrote that recently
(indicating poem); judge for yourself. It is not
published yet.

Q You say that you saw your husband naked
in that house on East 95th street on a cold winter
day? A No; not a cold winter day. I didn't
say that. In March, not a winter day.

Q It was a cold day? A It was very cold.

40 Q It was very cold? A It was very cold.
It seemed very cold to me.

Helen Bennett Marsh, cross.

Q Were there any curtains in Mrs. Hanson's house? A Yes; they were there.

Q Now, were there any in the house across the street? A There were little lace curtains.

Q How could you see through those curtains? A I could not.

Q How could you see your husband was naked? 10

A The wind blew the curtains out.

Q The window was open? A The window was open; yes.

Q And he was running around naked? A He was capering around in front of this woman, whoever she was, naked—that is from his waist up he was naked.

Q Who was the woman? A I don't know. Someone in his room in the house where they lived.

Q You named two different occasions when you say you knocked your husband's head through a glass partition. A No; only one. I didn't knock it through, but against it. 20

Q When was the first time you knocked his head through a glass partition? A Only once.

Q Where was that? A That was on Liberty street, I think.

Q Didn't you say it was on 95th street you knocked his head against the glass partition? A No; he pulled the door suddenly and knocked my hand against it and hurt my hand. 30

Q Who is Mr. Martin? A He was—

Q Who is he now?

(Adjourned until 11:00 o'clock tomorrow morning, December 7th, 1915.)

Helen Bennett Marsh, cross.

IN CHANCERY OF NEW JERSEY.

	<p><i>Between</i></p> <p style="text-align: center;">JAMES H. MARSH,</p> <p style="text-align: right;"><i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HELEN BENNETT MARSH,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}
10		

Continuation of testimony in the above entitled cause, taken pursuant to adjournment, before John Franklin Fort, Esquire, Advisory Master, at his office, Essex Building, Newark, New Jersey, on Tuesday, December 7th, 1915, at 11 A. M.

20 *Appearances:*

Mr. Charles M. Mason for Petitioner.

Mr. Conover English, of McCarter & English, for Defendant.

HELEN BENNETT MARSH, resumes the stand for further

Cross examination by Mr. Mason.

30 Q Mrs. Marsh, just try to take up the threads of the story; when was it you left Long Branch?

A Do you mean, Mr. Mason, without Mr. Marsh?

Q When did you leave personally, you and the boy? A Well, I will explain to you; well, I have been there since I left.

Q When did you give up the home there? A Gave up the home; well, it was just after my operation, I think it was 1910; I think that was the summer of 1910.

40 Q And it was some time before that that you said that you had received some letter about one Miss Roach? A No; it was about Mrs. Conlon.

Helen Bennett Marsh, cross.

Q And when was it that Mr. Marsh went to Europe? A He went to Europe the winter before that and was gone about six months in Europe.

Q I think you said he asked you to go with him on that trip? A Yes.

Q Well, didn't you state yesterday that he asked you to go with him? A Yes. 10

Q And you knew he was going with his client, Mrs. Conlon? A Oh, no; he told me was going with me alone. If I knew there was a woman going with him, I would not have considered going with him.

Q You knew that he acted as counsel for Mrs. Conlon? A No; not until it was on record. Under the law of the state her common law husband had died before her first husband, Kennis—had died while Kennis was still living. 20

Q You knew all about that, didn't you? A No; I know it now.

Q You didn't know anything about Mrs. Conlon before? A No; but I know it now, to my sorrow.

Q Well, now; when was it you say he put you out of the office? A When Mrs. Conlon came in, in 1907, in June—no, April. 30

Q What year? A 1907. 30

Q But you had not left Long Branch until 1910? A I was in Long Branch then.

Q Well, haven't you said that you didn't leave Long Branch until 1910? A Yes; for that was the year I had my operation.

Q Well, now, I am trying to get you to try and fix some dates. A Well, I think that was about it.

Q He put you out of the office in 1907, in April? A He put me out of the office in 1907, in April. 40

Helen Bennett Marsh, cross.

Q You mean there had been another firm of Bennett, Marsh & Bennett? A There had been before that, but not at that time.

Q Well, who was the firm of Bennett, Marsh & Bennett? A That was one of my brothers.

Q Another brother? A Yes, James Bennett.

10 Q And Mr. Marsh was not friendly with your brother? A Oh, yes, he would do anything for him, he would lick my brother's foot.

Q What did you say, he would lick your brother's foot? A Yes, he was very fond of Jim.

Q Mr. Marsh, nevertheless, dissolved the firm? A No, he didn't.

Q What dissolved the firm? A Well, brother Jim went out of the firm himself.

20 Q You stated yesterday, Mrs. Marsh, that your husband has always starved you all during your married life? A While I was married, and during our entire married life, Mr. Marsh has not done anything at all toward the purchase of a pound of biscuit in the house, nothing whatever, with the exception of a little period in Long Branch when he sent some money down.

30 Q As a matter of fact, didn't Mr. Marsh agree to draw on his bank account? A My own bank account—my own and his jointly.

Q Your own and his jointly?—Yes, but didn't you have a right to draw on the account, and didn't you draw on that account right along? A Did I draw on the bank account?

Q Yes. A When I was afraid of my husband to do so, only with his previously obtained permission, just the same as I would ask him for the money, I had the legal right to do so.

40 Q You were a counsellor at law in New York at that time? A Yes.

Helen Bennett Marsh, cross.

Q And were you not drawing on the bank account right along? A I was drawing under his direction.

Q Didn't you sign the firm name to the checks?
A Oh, yes.

Q And you did that right along, didn't you? A
Not all the checks, no. 10

Q You didn't hesitate at different times, according to your testimony, to slap Mr. Marsh in the face, did you? A No, I had never slapped Mr. Marsh in the face in my life until I was beside myself with jealousy; I never harmed a hair of his head.

Q You never harmed a hair of his head? A No, and I would not slap his face.

Q You have quite a temper, haven't you? A
So Mr. Marsh testified to in court, but that is not true. 20

Q You are quite an actress, aren't you? A
Actress?

Q Yes. A Why, I don't know how to answer that question.

Q You have acted very innocent at times, haven't you? A If you mean to be insulting, Mr. Mason, I do not think you are the gentleman I thought you were. 30

Q You are quite a public speaker, aren't you?
A Yes, I was known as an orator.

Q And you went all over New York to make speeches as an orator?

Mr. English. I object to that.

Q Well, all right; are not the majority of these checks, over three years, signed by you? A I couldn't tell you that without looking at them; I signed a great many, but never for two cents without Mr. Marsh's permission; that check, 40

Helen Bennett Marsh, cross.

“Paid to the order of cash, Marsh & Bennett,” that would go right into his bank.

Q Why didn't he sign the checks himself? A He would always get me to sign the checks.

Q But aren't the majority of the checks signed by you? A That those are my signatures, Mr. Mason?

Court. Well, you can easily tell by the checks themselves.

Mr. Mason. I offer these checks in evidence.

Mr. English. I object, how are those material?

Court. I don't see how it can hurt you to put them in.

20 Q You have always gotten your money? A My money—yes, but I couldn't stand the torture very long; I am telling you I couldn't draw checks without his consent.

Q These checks drawn in 1904? A Covering four years.

Q And you had the right to draw checks? A I had the right to draw checks.

Q Is this in your handwriting?

30 *The Court.* Unless she can show that she received the money for these checks, I will not admit them.

Q Is that in your handwriting? A Decidedly not.

Q That is not in your handwriting? A That is decidedly not in my handwriting. I never wrote anything like that in my life.

40 Q Didn't you testify in the Court proceedings in New York when you had Mr. Marsh arrested, that this was in your handwriting? A I don't

Helen Bennett Marsh, cross.

think I did, Mr. Mason. I don't remember that writing at all. I don't remember writing that. My husband is an expert forger. I can say that is not my writing. Not that my husband is so clever, but he may have forged this. That is the picture of my writing; of course, I don't believe it, that's all.

10

Q Will you say that is not your handwriting?

A Well, I think—let me see it again. (Witness examines writing). There are certain little characteristics of my writing that are always—but they are not here. I don't find them, Mr. Mason, and I don't believe it is my writing.

Q I ask you, will you swear that is not your handwriting? A I don't believe I am prepared to swear definitely it is not. I don't believe I would swear definitely it is not. The characteristics are not there that are always in my handwriting.

20

Q Didn't you swear at the trial in New York, when you had your husband arrested, that this was in your handwriting? A Well, how could I answer that?

The Court. Don't you remember?

Witness. No, I don't remember that paper.

Q Did you not have the paper marked as Exhibit 1 for the defendant in the case where you had him arrested in New York City? A Well, I don't identify that paper. It may have been, but I don't remember that paper now as the paper. It is possible.

30

Q That after—in June, about June 28, 1911, your husband conveyed to you the Staten Island property, didn't he? A Yes, which should have been mine years ago, and that contains about ten acres almost, I believe.

40

Helen Bennett Marsh, cross.

Mr. Mason. I ask to have this marked for identification.

(Paper marked P. 5 for identification).

10 Q I show you another paper and ask you if that is in your handwriting? A That looks like the paper I read the other day.

Q Is that not the same as this? A I would think it was.

Q And that is also in your handwriting; is it not? A I would say that that is in my handwriting.

Q Are you not positive? A No, I am not positive. I did not look at the letter.

20 Q Look at it now and tell me. Take all the time you want. A Yes, that is in my handwriting.

Q And this is the enclosure that you put in the envelope? A That is the enclosure.

(Letter marked Exhibit P-6 and envelope marked Exhibit P-7 for identification).

Witness. P-5 I am positive that is not in my handwriting.

Q Do you find any traces of your handwriting in that note? A I remember reading it.

30 Q Do you find traces of your handwriting; is that your handwriting? A There is no doubt about it.

(Marked Exhibit P-8 for identification).

Q You wrote in one of your letters that you have a very bright future in Kentucky, did you not? A Yes.

Q A bright future practising law? A Practising law.

40 Q And were you allowed to practise law in Kentucky? A Yes.

Helen Bennett Marsh, cross.

Q And how long did you continue to practise law? A Well, fifteen months.

Q Fifteen months? A Yes; when my health permitted; I was very, very ill.

Q During that period of fifteen months, what practise did you have? A Maybe half a dozen cases. 10

Q You practised in murder cases? A Five or six of them; nearly all the cases there were murder cases.

Q And nearly all the defendants were acquitted? A I was not for the defendants; I was for the prosecution in some and not in others. Each one would have half a dozen lawyers there; each side.

Q And you intended to live in Kentucky, didn't you? A Well, I could not answer that, Mr. Mason, I intended to stay away from these parts because I was suffering so much. 20

Q How long did you intend to live in Kentucky? A My intentions were according to my feelings, I suppose. I don't know. I thought I would stay there until such time as I might come back. The boy always wanted to come back.

Q The boy wanted to return to his father and remain? A Yes. 30

Q And the boy always spoke very well of his father? A Oh, yes.

Q And the boy loved his father and mother very much? A Yes, indeed.

Q Now what did you mean by saying in your letter, Exhibit P-2, "It is not safe for me to divorce you but I shall take the risk?" A I could not tell you now. My mind was so upset at that time that I said things perhaps I would not say them now. 40

Helen Bennett Marsh, cross.

Q You would not say them now because Mr. Marsh instituted proceedings against you for divorce? A I don't think that made very much difference. I was very badly hurt at that time.

Q And now you want to testify differently? A No, but I don't feel quite as bad as I did then. In
10 other words, I forget now what I was going to do.

Q And yet you come here and call your husband an expert forger? A Well, in looking at that letter, and you examined me, why I hesitated, and if you ask me a question I must answer it. I would doubt any writing that came from Mr. Marsh.

Q But you did not hesitate to intimate here in public that your husband is a forger. You know he is a forger? A Yes.

20 Q And with that knowledge, you write that beautiful poem? A Yes.

Q And you know he is a drunkard? A Yes.

Q And addicted to the practice of opium and most degenerate? A I still say "yes."

Q And run around with prostitutes? A Yes.

Q And you say he confessed to you that he ran around with prostitutes? A Yes, indeed, he did. He confessed it all.

30 Q You operate a typewriter a great deal yourself? A No, I could scarcely write. It would take me a long time to write one letter.

Q Don't you operate a typewriter for your brother? A Oh, my, no.

Q In the firm of Marsh & Bennett didn't you do the typewriting? A Mr. Marsh did the typewriting.

Q He did the typewriting and you did the legal work? A No.

40 Q As a matter of fact, didn't he try to keep you down? A He did not try; my brother has been there and seen him rush me out of court.

Helen Bennett Marsh, re-direct.

Q Is that your son Harry's writing? A Mr. Mason, I don't know.

Q You know your boy's handwriting, don't you? A Why, I could not be sure of it.

Q Does that resemble your boy's handwriting? A It does.

Q Are you not positive that is your boy's handwriting? A Not unless I know the contents of the letter. No, I would not be positive of Harry's writing. 10

Q If you knew the contents of the letter, would you be positive? A Oh, yes, I could tell then. That is, I would if I remember his writing the letter.

Q Is that your handwriting?

The Court. You mean just the signature? 20

Mr. Mason. Yes.

A Mr. Mason, it looks very much like it.

Q Well, now, is it not your handwriting? A I would think that it is. There are other things in there that make me positive that it is not.

Q That make you positive it is not? A Yes.

Re-direct examination by Mr. English.

Q Mrs. Marsh, you say your husband put you out of the office; up to that time had you been living at Cooley? A No, that is the occasion I went out there. 30

Q Did you receive any compensation in Kentucky for practising law? A Very little. They were very poor people.

Q Now in this letter, Exhibit P-2, which you wrote to Mr. Marsh, you said this:

“My last word to you is not to marry that red head bat”——

(what is that word, bat or——

40

Helen Bennett Marsh, re-direct.

A That is meant for bat.

“—but if you wish to still stick your nose in the fire of hell itself, I shall not stand in your way.”

10 Q Whom did you refer to? A The Roach woman.

Q Why did you think he wanted to marry her? A Because he had told me he wanted to marry the Roach woman; and he had called up Alice on the 'phone a number of times.

Q And because of what he told you, you wrote what you did in this letter, Exhibit P-2? A Yes.

Q What did she tell you in his presence? A She told me that I had told him I had promised a divorce.

20 Q Now this letter, P-3, you say was written in answer to the typewritten letter D-1; in the typewritten letter, D-1, he asked that you secure a decree of absolute divorce against him, did he not? A Of course, that letter—

Mr. Mason. I object, your Honor.

Q Just look at the signature? A Yes.

Q Is that what you refer to when you wrote this letter, “Hound of hell?” A Yes.

30 Q You were evidently referring to some person when you wrote this letter, P-3; who was the person you referred to? A That's Alice M. Roach; told me it was her sister.

Q Just answer my question? A The sister of Alice M. Roach.

40 Q And where did you get information from upon which you based the characteristics of this person, as stated in that letter. A Well, I did not get it entirely from my husband. I got it from Mr. Marsh and Alice Roach.

Helen Bennett Marsh, re-cross.

Q You refer in this letter to the title of some property: what property was that? A That was Kentucky property; I don't remember exactly. I don't remember what is in the letter.

Q The last half of that first page? (Handing witness letter). A That is the Staten Island property. Mr. Marsh had tax bills that I had paid for and he would not give them up to me. 10

Q How did you get that money? A My brother gave me money for flowers and theaters and I used that money for necessities.

Re-cross examination by Mr. Mason.

Q You say in this letter, "I am in Kentucky for the sole purpose of——" A I wanted this very minute to proceed against him and put him in jail, and all my friends—I say friends—they would influence me to do it. That is why I stayed down there. To keep from doing bodily harm. 20

Q In this same letter you say something about your womanly honor. What do you mean by that? A I can't explain that.

Q Whom are you referring to in this letter? A I refer to Alice M. Roach's sister.

Q Why did you describe her in that way? A Because she——. I wanted to disgust him with her if I could, if she was the woman he was after. 30

Q Alice M. Roach's sister is the person referred to all through this letter? A Yes.

Q This woman was a poor little thing with one hip higher than the other? A The cheapest dress on her and she looked like a scrub woman. She had fiery red hair.

Q That is the woman you referred to? A I had never seen her. I wrote that letter on the strength of what her sister told me. 40

Helen Bennett Marsh, re-direct.

Re-direct examination by Mr. English.

Q Did Mr. Marsh ever tell you how much salary he got from the American Locomotive Works? A He did not tell me how much he got, but how much he expected.

10 Q Let's fix the time. A It was in March, the day of the night he was arrested.

Q What day was that? A Some time in March, around—. I don't know the date, the latter part of March.

Q What did he say then? A He told me he expected—I can't answer that question without saying just what he did say.

20 Q That is just what we want. A I met him at the Pennsylvania Railroad, and I said—. I had a warrant out for his arrest and I went down to find him, and he said, "What do you want now," and I said, "I would like to speak to you—"

The Court. What has this to do with the answer?

Q You claim to be a member of the bar; you can answer yes or no. How much did he tell you? A He did not tell me what he had gotten.

30 Q How much did he tell you he expected to get? A Six thousand dollars a year.

Mr. Mason. He did not have the position then?

Witness. No.

Q And after he told you that he was to get six thousand dollars a year, you had him arrested? A I had the warrant out then.

Q And you appeared that day in court against him? A Whenever it came up.

40 Q And the second time? A Yes.

Helen Bennett Marsh, re-direct.

Q And you told practically the same fact that you have told here today? A I don't remember.

Q Didn't you tell the Court that he was running around with the sister of Alice Roach? A I may have.

Q And now, didn't you say she was a cripple? A No, not cripple. 10

Q You say now that she is a cripple? A No. One hip was higher than the other.

Q You accused him of going around with this woman? A I don't know, I don't believe I did. I do not know.

Q Didn't you say just now you were referring to the sister of Alice Roach? A When we went to court, I believe, I thought it was Alice herself. 20

Q Having believed in March, of nineteen twelve, it was Alice, why in June nineteen twelve, did you think it was a sister of Alice? A I had seen Alice in the meantime and she told me it was her sister.

Q When did you see Alice Roach after Mr. Marsh's arrest, March twenty seven, nineteen twelve? A I could not say.

Q Have you ever? A Yes.

Q When? A Several times.

Q When? A I could not place the time. 30

Q When did you leave for Kentucky? A Some-time in April, of nineteen twelve.

Q And you made a second complaint after the first was dismissed, didn't you? A I don't remember that.

Q But notwithstanding one Judge had thrown the matter out of court, you went back and tried to make a second complaint against Mr. Marsh? A Yes, sir. You say one Judge threw me out of court? 40

Helen Bennett Marsh, re-direct.

Q Didn't Judge Harris throw the matter out of court? A Because I had so much property—

Q What was this property? A Mr. Marsh referred to the Staten Island property.

10 Q And didn't the Judge tell you, that you were a counsel in the State of New York, and what you said there he would not believe you? A He did not tell me that, Judge Harris did not tell me that.

Q He dismissed the case? A He did.

Q And then you went around to another Judge, and tried to make another complaint? A No, I did not go to a Judge.

20 Q Didn't you go to Mrs. Bishop and have her write to Mr. Marsh you went to Kentucky? A No. That was sometime before I went to Kentucky.

Q Didn't you go there leaving a charge pending? A Not that I know of, that was sometime before I went. I did not know there was any charge pending.

Q Didn't you make a charge, and then leave for Kentucky? A Not that I knew of at the time, I didn't know there was any charge pending. I had been talking for some time to her, and she said she would take up the matter and look into it.

30 Q And in the meantime you went to Kentucky? A I went very suddenly to Kentucky. Made up my mind in the afternoon before I went, because I could not stay here any longer.

Harry Marsh, direct.

HARRY MARSH, first being duly sworn according to law, testified as follows:
(Harry Marsh is fourteen years of age).

Direct examination by Mr. English.

Q You live with your mother? A Yes.

Q How long have you lived with your mother? 10

A Ever since I was born.

Q Where were you living? A 2423 Church avenue, Brooklyn.

Q What kind of a house? A A room.

Q You and your mother had a furnished room?
A Yes.

Q Your mother gets meals? A Not in the room.

Q She got them in the kitchen? A She got them downstairs, and brings them up to the room. 20

Q Did you ever go with your mother to the house on Ninety-fifth street? A Yes.

Q When was that? A About a week before I went to Kentucky.

Q And did you see your father there? A Yes.

Q Where was he when you saw him? A On the street.

Q What did you hear him say; did he say anything? A Yes.

Q What did you hear him say? A Well, he told mother to come away from there, and told somebody inside to open the door. 30

Q Were you at your grandmother's on the morning of the day you went to Kentucky? A Yes.

Q Did you say anything to your father that you were going? A Yes.

Q Did you tell him with whom you were going?
A My mother.

Q Remember what time of day that was? A That was in the morning. 40

Harry Marsh, cross.

Q The morning of the day you left? A Yes.

Q How long were you there, all told, you and your father and grandmother together? A About a half an hour.

Q And you were talking about this trip to Kentucky? A Yes.

10 Q And you told him your mother was going? A Yes.

Q Whom did you tell him you were going with? A My mother.

Q Where do you get the money; where does the money come from that supports you, do you know? A I believe six dollars a week comes from my father, and six dollars from my uncle.

20 Q Have you got any other suit of clothes than that you have on? A An old suit.

Cross examination by Mr. Mason.

Q You remember when you went to Kentucky? A Yes.

Q When? A It was in April, nineteen twelve.

Q What part of April? A I can't say.

Q About the middle? A I could not say.

Q Did you write your father a postal card on the way down there? A I may have.

30 Q Don't you remember doing it? A Can't say that I do, I probably did, I suppose.

Q Now then, you are sure this time your mother went there with you was a week before you went to Kentucky? A Can't exactly; it was about a week.

Q Somewhere around a week? A It was before we went.

40 Q Do you know whether it was before or after you went to court with your mother against your father? A I can't say that. I think it was before.

Harry Marsh, cross.

Q You think it was before you went to court with your mother? A I can't remember.

Q Do you remember when you went to court with your mother? A I don't know.

Q When did you go? A I think it was after I went to Ninety-fifth street, I am not sure.

Q You think it was after? A I am not sure. 10

Q When was it, what month was it that you went to Ninety-fifth street with your mother? A Why, I really don't know. It must have been in April, if we went to Kentucky, because it was shortly before I went to Kentucky.

Q You don't know when? A I don't know when it was.

Q How old were you at that time? A I am fourteen now. I must have been ten or eleven then. 20

Q Which were you? A Give me a piece of paper and I will figure it out.

Q What year did you go to Kentucky? A Nineteen twelve.

Q How old were you at that time? A I was born in July, and that—. I must have been ten.

Q Remember meeting your grandmother there in the court corridor the day that you came up there with your mother? A No.

Q Don't remember your grandmother being there? A I remember my grandmother went there, yes. 30

Q Don't remember meeting her in the corridor? A No.

Q Every time you asked your father for a pair of shoes, or wrote him, you generally got it?

A I asked him once for a bicycle, and got it.

Q You wrote him other letters for other things, and got them; you wrote him for a football and got it? A I never asked him for a football; I know I did not get any football. 40

Harry Marsh, cross.

Q Now, then, was there a football sent to you?

A Yes, but I was under the impression Aunt Laura sent that to me. That is what I was told.

Q You always come over to your grandmother's and she goes out and buys your clothes?

A My father bought a pair of shoes.

10 Q Your grandmother is the one who takes you out and furnishes you with clothes? A Probably, yes.

Q She does practically all the time? A No, my mother buys me some things, and my father does, too.

Q Whenever you need any clothes, you come over and see your grandmother, don't you? A Yes.

20 Q Now, then, you used to stay a great deal at your grandmother's, didn't you? A When I was smaller, yes.

Q In nineteen hundred and twelve you stayed quite a good deal with your grandmother, didn't you? A Not quite a good deal; no. I had my meals there, most of them.

Q And do you know where your mother got her meals? A My mother did not get much of anything, she would not get up until 11 o'clock in the morning.

30 *Mr. English.* That is not cross examination, your Honor.

The Court. Yes, I think so.

Q You know your mother's handwriting? A Yes, I do.

Q You know your own? A I can't say that I do. My handwriting has changed.

Q Do you know whether or not that is yours? A Yes, that is mine.

40

Harry Marsh, cross.

Mr. Mason. I would like to have that marked for identification.

(Paper received and marked P-8, for identification).

Q Do you know whether or not that is your mother's writing? (Referring to paper marked P-5). A I can't say that it is. 10

Q Can you say whether or not that is your mother's handwriting?

Mr. English. I object to his seeing that.

Mr. Mason. I don't blame you; I will take it away myself.

Q Do you know whether that is your mother's handwriting? A I would say it is. It looks like it. 20

Q Can you say that this is not your mother's? A I can't say it is not, and I can't say it is.

Q When your mother was down at Staten Island, where did you stay when you were going to school, during the week? A At my grandmother's, because I could not get up from Staten Island. During the week end I stayed with my mother.

Q You stayed there when your mother was in Staten Island, from the time school opened until about a week before your mother had your father arrested, didn't you? A I don't know what time it was. I remember that I used to stay at my grandmother's, and my mother lived at Staten Island, and I would spend the week-end with her, and going to school, with my grandmother; I could not say when it was. 30

Q You did not leave your grandmother's until two or three weeks before you went to Kentucky, did you? A Well, I think I stayed with her 40

David Steckler, direct.

nearly all the time I went to school. It was not long before I went to Kentucky.

Q And how often do you go over to your grandmother's now? A Why, practically every week.

10 Q You go over to meet your father, don't you?
A Whenever he is there, yes.

Q And your father has never mentioned this case to you, has he? A Nor I to him.

Q Did you ever talk it over with your mother?
A Oh, my mother has asked me some questions about what I remember.

Q You were talking it over out here in the office yesterday, were you not? A My mother told me some things that had happened.

20 *Re-direct examination* by Mr. English.

Q What things? A She said that—she practically told me the whole case, I suppose, that happened here yesterday.

Q Out here? A Yes.

Q Did she talk over with you what you were going to say? A No, she did not, but she asked me some questions; she did not tell me what to say.

30 DAVID STECKLER, first being duly sworn according to law, testified as follows:

Direct examination by Mr. English.

Q You are a member of the Bar of New York?
A I am.

Q Where is your office? A One thirty-five Broadway, New York City.

40 Q Are you a member of the firm now, or by yourself? A I am practising alone.

David Steckler, direct.

Q In nineteen twelve, were you a member of the firm of Rosendale & Steckler? A Yes.

Q Did your firm at that time represent any party in the proceeding in which Mr. James H. Marsh was a witness? A I did.

Q In what case? A Steinman & Company against Eva K. Conlon. 10

Q In what court was that pending? A Supreme.

Q Do you know whether Mr. Marsh appeared there as a witness? A Under subpoena issued by me.

Q Before who was he examined? A He was examined, I think, before Greenbaum.

Q Did you personally examine Mr. Marsh? A I did.

Q Did you ask him where he resided? A I did. 20

Q What did he say? A (Witness hesitates).

Q Was this testimony taken down by a stenographer? A Yes, sir.

Mr. Mason. I wish to have my objection noted that the stenographer who took the minutes is not here as primary evidence to prove the court proceeding or the court record.

The Court. I don't really know that that makes any difference; he may testify to it. 30

Mr. Mason. I wish to have my objection noted.

Q The question is, whether you asked him in this examination, where he resided? A I did.

Q And where did he say? A He gave me some number on West Twelfth street.

Q Did you ask him how long he had resided there? A Well, I don't recall without refreshing my memory. 40

David Steckler, cross.

Mr. Mason. I think this is leading, "did you ask him?"

Mr. English. He only asked Mr. Marsh one question, how can I help to refresh this man's memory?

10 *Mr. Mason.* You asked him at least a half a dozen questions. I wish to have my objection noted on the record.

Q Did you ask him whether he resided continually at this address during the past year? A I remember asking that question.

Q What did he say? A He stated, if I recall correctly, he wanted to know what I meant by whether he resided there, and he stated that that was his legal residence, although he had been
20 away from New York City for some part of the time previous.

Cross examination by Mr. Mason.

Q What was your object of asking him if he resided there continually?

Mr. English. I object to that, your Honor.

Q That was the purpose of inquiring into the detail of his residence, and whether he resided there continually, there continually in New York?

30 A Yes.

Q And you know as a matter of fact, that Mr. Marsh had lived at one twenty-nine West Twelfth street, right along? A Yes.

Q And you could never find Mr. Marsh there? A No.

Q How long had you been there looking for Mr. Marsh at one twenty-nine West Twelfth street? A I was there several weeks.

40 Q And you had the house watched continually? A Yes.

David Steckler, cross.

Q And you never saw him in there? A Yes, he was seen going in there, sometime before that.

Q Are you testifying now from what somebody told you? A We were told by people in the house who lived there.

Q Did you ever go there? A No.

Q You are a counsellor at law of the State of New York? A Yes. 10

Q Then why do you continually say these things? Who is paying you for coming over here? A No one. I am here in the interest of justice. Mrs. Marsh explained the situation and I thought it my duty to come.

Q Then you don't expect to be compensated? A Of course not.

Q And would not take it? A No, not from Mrs. Marsh. 20

Q Have you talked with John S. Bennett? A No.

Q Did you talk with Mrs. Marsh? A All this thing has been with Mrs. Marsh direct.

Q You said just now that Mr. Marsh raised some question about the question of residence? A I did not say that.

Q Didn't you say that in the first part of your testimony? A I did not. 30

Q After you were asked what Mr. Marsh asked you what you meant by continually? A Yes, in the examination I think he asked what do you mean by that.

Q And you served Mr. Marsh at his office, you had him served, and the so-called examination was heard the next day? A I would not say it was the next day. It was a few days after.

Q Do you remember when it was? A It was within one or two or three days afterwards. 40

David Steckler, cross.

Q Who was the stenographer who took down these notes? A A stenographer from my office.

10 Q Where is the stenographer? A I really don't recall the stenographer to tell you where she is. I don't recall what stenographer took the record.

Q Have you any way of finding out? A Well, I had examined that record this morning, and brought it here.

Q Is the stenographer still in your employ? A I would not say that, I think so.

Q You have not made any effort to find out the stenographer? A I have not been asked to do that.

20 Q Was it a man or a woman? A I could not answer that.

Q At that time there was some dispute between you and Mr. Marsh? A No dispute at all.

Q And didn't Mr. Marsh call you some name for coming there and serving on him? A I did not serve him. I think there was some dispute in that examination.

30 Q Didn't you have trouble in getting him out and having him sworn that day? A He was brought to court under subpoena and testified there.

Q Wasn't there trouble there about taking this deposition? A The Judge ordered the question answered that he would not answer.

Q You represented Mrs. Conlon in that? A Mrs. Conlon had asked me to try the action for her as counsel through Mr. Tours, which action resulted from the suit that I had brought against Mr. Marsh.

40 Q And you knew there had been trouble between Mr. Marsh and Mrs. Conlon? A I did not

Lillian Bishop, direct.

know anything about that. I had tried to keep him out of the case.

Q In the interest of justice?

A In the interest of my client.

Mr. English. I will offer in evidence and read into the record the deposition of Mrs. Lillian Bishop in this case, taken before Nicholas W. Bindseil, as Master in Chancery, in Brooklyn, New York, on December 3, 1915. 10

IN CHANCERY OF NEW JERSEY.

Bewteen

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

20

Deposition of Lillian Bishop taken by consent before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at 25 DeKalb avenue, Brooklyn, New York, on Friday, December 3, 1915, at 3 P. M., in the presence of Conover English, Esquire, for defendant, and Charles M. Mason, Esquire for petitioner. 30

It is stipulated and agreed by and between the counsel for the respective parties that the testimony of the witness may be taken down in shorthand by the Master and afterwards reduced to typewriting, the signature of the witness to her said testimony being waived. 40

Lillian Bishop, direct.

LILLIAN BISHOP, being duly sworn according to law, on behalf of defendant, on her oath says:

Direct examination by Mr. English.

Q Mrs. Bishop, you live in Brooklyn? A I do.

10 Q You do not live in the State of New Jersey?
A No.

Q Do you know Mr. James H. Marsh, the petitioner? A Yes.

Q Do you know Helen Bennett Marsh, the defendant? A Yes.

Q How long have you known them? A I have known them for a number of years, I don't remember how long, but for ten or twelve years or longer.

20 Q Mr. Marsh is a lawyer? A Yes.

Q You knew him first in some professional capacity; you had some business with him and got acquainted with him that way? A Yes.

Q And became very good friends with him and Mrs. Marsh? A Yes.

Q Have you ever talked with Mr. Marsh about his relations with Mrs. Marsh?

Mr. Mason. When?

30 Q Ever? A Several times I talked with him about it.

Q Mrs. Marsh, I think, went to Kentucky about the year 1912? A I know she went, but I don't know what time.

Q About the time she went to Kentucky, or shortly after, did you have any talk with Mr. Marsh about his relations with Mrs. Marsh or his attitude toward her? A Yes.

40 Q Where was that? A I cannot fix the time, and I cannot tell you what place; I think it was in

Lillian Bishop, direct.

my own house; I don't know whether it was or not.

Q And the time you fix as about the time Mrs. Marsh went to Kentucky? A I cannot tell you what time it was, what year or anything of the kind, but I simply know this, Mrs. Marsh and I were out one time and something was brought up about him and she said she would get a divorce; I said, "I wouldn't do nothing of the kind;" I said, "I wouldn't get no divorce from him at all," and then sometime after that, after she had gone away, Mr. Marsh was talking about it and I said to him—he spoke about it and wished she would get a divorce from him, and I said she would have got a divorce from him only for me, I told her not to. 10

Q Did he ever say anything to you about his desire to get a divorce? A He said to me one time if she didn't get any divorce from him, he would get one from her. 20

Q When did he say that to you, at the time she went to Kentucky? A I don't remember whether she was in Kentucky or where she was.

Q Did he say where he would apply for that divorce or try to get it?

Mr. Mason. Objected to as leading.

A He said he would get a divorce from her if she didn't from him, if he had to go in every state in the Union. 30

Mr. Mason. I ask that that be stricken out because no time or place is fixed.

Q Do you remember where you were when he said that to you? A No, I do not.

Q In his house or your house? A No, it wasn't in his house, for he didn't have one.

Q Was it in your house? A I think probably it was. 40

Lillian Bishop, direct.

Q Here on DeKalb avenue? A I think probably it was, because he had some business with Mr. Bishop and he called here, and I asked concerning Mrs. Marsh; the conversation came up.

Q Do you remember approximately when that was? A No.

10 Q Do you remember whether Mrs. Marsh was in New York then or out? A No, I don't remember, but I think she was in Kentucky.

Q Do you remember that Mrs. Marsh had Mr. Marsh arrested? A Yes.

Q Did you talk to him about her attitude toward him? A I was talking about that.

Mr. Mason. Fix the time and place.

20 Q How soon after the arrest did you have that conversation? A I cannot tell you.

Q Immediately after? A I cannot tell you, because I talked to Mrs. Marsh the same as I did to a sister, and I did the same with Mr. Marsh, and I looked on both of them the same as I would a brother and sister.

30 Q Where was it that you had the conversation with him after Mrs. Marsh had him arrested? A I think it was here, I don't know, and I told him I would never forget Mrs. Marsh the day she come there and said he told her that he cared more for her than any other woman on earth.

Mr. Mason. Who told you that?

Witness. She told me that, and I repeated it to Mr. Marsh, and she said no matter what come now, she was perfectly happy.

Q This is what you told Mr. Marsh? A I did; she said as long as she knew Mr. Marsh cared for her and loved her she was perfectly happy.

40 Q What did he say? A He said he couldn't forget her having him arrested, and I said, "Of

Lillian Bishop, cross.

course you know very well you think as much of her now as you ever did," and he had tears in his eyes. I said to her, "You are both making a big mistake, for Mr. Marsh loves you today just as much as he ever did, and you both made a mistake," and I told them for Harry's sake, if nothing else, they ought to put their troubles aside, and I think they are killing that child. 10

Q Did Mr. Marsh ever mention a woman named Roach to you? A I don't know as he ever mentioned a Roach to me; I spoke to him one time about her.

Q What did you say to him about her? A I asked him who she was and what she was.

Q What did he say? A He said they were people he boarded with one time.

Q Did he say anything else about her? A No. 20

Q Did he ever say whether she loved him, speaking of the Roach woman? A I said, "Do you think I would give you a divorce and let you get married," and he said, "Who wants to get married?" He said if he ever married he would marry someone who was rich.

Q Did he say whether the Roach woman was rich? A No, he didn't speak to me as if he was going to the Roach woman or wanted to marry her. 30

Q You say you told Mr. Marsh that, as you expressed it, you had stopped Mrs. Marsh from getting a divorce from him; what did he say? A He said he wished I didn't.

Cross examination by Mr. Mason.

Q You don't recall the time when this conversation was? A No, I don't recall it.

Q Nor the place? A I sat down and talked to Mr. Marsh, and never gave it a thought; it was simply talking to him the same as I did to her. 40

Lillian Bishop, cross.

Q When you talked with him about Mrs. Marsh you say Mr. Marsh cried? A Yes, he had tears in his eyes the last time I spoke to Mr. Marsh about it.

10 Q And sometime previous to that Mrs. Marsh told you she was going to get a divorce? A At one time.

Q Did she tell you why she was going to get a divorce? A She said she would get a divorce.

Q Do you remember when Mrs. Marsh went to Kentucky? A No, I don't know anything about that.

20 Q Didn't Mrs. Marsh tell you she was going to Kentucky to get a divorce? A No, she never told me she was going to Kentucky; I didn't know she was going until after she was there.

Q Did you see Mrs. Marsh after she had had her husband arrested? A No.

Q You never saw her after that? A No.

Q You saw Mr. Marsh after that? A I did, yes.

Q And that was the time he cried? A The next time I saw him and talked to him, he did.

30 Q And Mrs. Marsh after she returned from Kentucky came to your house and told you that Mr. Marsh had made a vile statement about you, didn't she? A No, she didn't, not Mrs. Marsh, but her sister told me.

Q Mrs. Marsh's sister came here and told you that Mr. Marsh had made a vile statement about your two nieces?

40 *Mr. English.* I object to any conversation with Mrs. Marsh's sister as not cross examination and immaterial, and I move to strike it out.

A Yes.

Lillian Bishop, cross.

Mr. Mason. If it is from Mrs. Marsh's sister, I will consent that it be stricken out.

Q There were some reports made to you that Mr. Marsh had made remarks respecting you?

Mr. English. I object to that as mere gossip.

10

A There were reports made to me about that, and I asked Mr. Marsh in the presence of my husband, and he told me that he had never said so; then he asked me if I didn't know that it was a lawyer's trick to get people angry so they would say things; I said, "I know nothing to tell for either side," and I don't.

Q When did Mrs. Marsh tell you she was going to get a divorce? A As near as I can remember, she and I went down to look at some lots down in—I forget the name of the place—

20

Q That was sometime before she went to Kentucky? A She had received a letter from someone saying that Mr. Marsh was living with a woman.

Q That was sometime before she went to Kentucky? A Yes.

Mr. Mason. I move that the other answer be stricken out as not responsive to the question.

30

Q And after that time you never saw Mrs. Marsh again, did you? A I think I did; I don't know, but I think I did.

Q Some time after that or soon after that you heard that Mr. Marsh had been arrested, didn't you? A Oh, no, I don't know that it was some time.

Q Sometime after that Mrs. Marsh went to Kentucky, didn't she? A Yes, after that she went to Kentucky.

40

Lillian Bishop, re-direct.

Re-direct by Mr. English.

Q Did Mrs. Marsh show you that letter? A No, she never showed me the letter.

Q She talked to you shortly after she received the letter? A I don't know how soon after she received the letter; she had received it.

10 Q And she told you about it? A She had received a letter—someone had written her a letter.

Mr. Mason. I object.

Q Where was Mrs. Marsh living at the time you had that conversation about the letter, down at Long Branch? A I don't know whether she lived there at that time, but that is where she received the letter and she told me after she received the letter Mr. Marsh came down to see her; she said she asked Mr. Marsh and he denied it; she told me this after.

20

Mr. Mason. I object to anything Marsh told her.

A (Continuing). She said she got this letter and her brother told her if these things were true he would get a divorce, and she said that when he told her that she said she would have crawled ten miles on hands and knees rather than have him get in trouble, and when Mr. Marsh told her there was no truth in it, she believed it.

30

Q What you said now is what she said she told Mr. Marsh? A Yes, she believed him; he said the letter wasn't true and she believed what he said.

Q That is the only talk about getting a divorce? A Yes, that time when we were out, and I said, "Don't you do it."

40

Q That is when she was talking about that letter? A I think so.

Lillian Bishop, re-cross.

Q And so, except as she spoke in connection with that letter, that was the only time she ever mentioned such a subject? A That is the only time she ever said it.

Q And that was long before she went down to Kentucky? A Yes, that was before she went to Kentucky; I don't know when she did go to Kentucky, but I know that was early in the summer. 10

Mr. Mason. What summer?

Witness. I think Mr. Marsh could answer that.

Q 1911 or 1912? A Yes.

Re-cross by Mr. Mason.

Q What month was it that you had this talk with Mrs. Marsh when Mrs. Marsh told you she was going to get a divorce? A I cannot tell you; I don't remember. 20

Q 1911 or 1912? A I don't remember when it was. As to remembering the year or date, I cannot possibly tell.

Q How long was it before she went to Kentucky? A I don't know.

Q Say she went to Kentucky in 1912; would that help you in placing the date? A No, I don't know anything about when she went to Kentucky; I don't remember. 30

Q You know she wasn't living at Long Branch when she talked with you about getting a divorce? A I don't think she was; I don't really know.

Q Did you go down and look at some lots at Staten Island; were they lots supposed to be owned by Mrs. Marsh? A No, there were some real estate men that wanted to sell me some lots, and I asked Mrs. Marsh and her sister to go out and take a trip down to see the lots. 40

Lillian Bishop, re-direct.

Q And that is when she told you she was going to get a divorce? A She said it in a kind of a laughing way, and I said, "I wouldn't get any divorce from him."

Q You have been going around with Mrs. Marsh to different courts since she returned from Kentucky? A No; I went once.

Re-direct by Mr. English.

Q How long after you had had the conversation with Mrs. Marsh about that letter was it that you told Mr. Marsh about the conversation? A When she was in Kentucky.

Q And that was several years after?

Mr. Mason. I object.

Q A I don't know that it was.

Q How long after was it? A I don't know. She was in Kentucky and I said that to him; I said, "It is my fault that she didn't get a divorce from you;" I said, "She would get a divorce from you if it wasn't for me." He said, "Don't interfere; let her get it."

Q Did he say he wanted a divorce from her? A Yes, he wanted a divorce from her; he wanted her to get a divorce.

Q He said that on the occasion of that conversation? A I think so.

Q Was it then that he said that he would go in every State of the Union? A No, it wasn't then when he said that.

Mr. Mason. I object to your leading the witness.

Q Was it after or before that conversation that he made the remark about going in every State in the Union? A I don't know.

Lillian Bishop, re-cross.

Q Either before or after, you don't remember which? A Any conversation we had, it was all after that, what I said, because such a thing as that was never spoken of before.

Q That was the first time the subject came up?
A Yes.

Re-cross by Mr. Mason.

10

Q As a matter of fact, wasn't it in 1914 that you had this conversation with Mr. Marsh? A I cannot tell you whether it was 1914 or 1911 or 1899 or what it was.

Q Didn't Mr. Marsh tell you that he had started an action for divorce? A No, I never saw Mr. Marsh, I don't think, since he started the action.

Q Didn't you see Mr. Marsh here in your house when you accused him in the presence of your husband of having stated that you ran a disorderly house here? A Yes, I saw him in my house.

20

Q Wasn't that after Mrs. Marsh had gone to Kentucky? A That was after she came home.

Q And you know she didn't come home until after Mr. Marsh had started the action for divorce, don't you? A No, I don't know that.

30

Testimony Closed.

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

I hereby certify that the foregoing deposition of Lillian Bishop was taken by consent before me as a Master in Chancery, at 25 Dekalb avenue, Brooklyn, New York, on Friday, December 3rd, 1915, at 3 P. M., in the presence of Conover English, Esquire, for defendant, and Charles M.

40

Helen M. Marsh, direct.

Mason, Esquire, for petitioner; that it was stipulated and agreed by and between the counsel for the respective parties that the deposition should be taken down in shorthand by me and afterwards reduced to typewriting, the signature of the witness to her said deposition being waived, and I
 10 further certify that the foregoing is a true and correct transcript of the testimony of the witness given before me.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

Dated December 4th, 1915.

DEFENDANT RESTS.

20 HELEN M. MARSH, recalled in rebuttal for petitioner.

Direct examination by Mr. Mason.

Q Mrs. Marsh, the defendant, twice stated yesterday that you told her that your son was living at your house at 129 West 12th street; is that right? A I never told her that. I would not have her in my house; I have reason.

30 Q Did she ever come to you and ask if your son was living there? A Never. On the contrary, I met her on the street and I told her he was not living there.

Q Was the boy Harry coming to the house during a number of years? A He was.

Q When did Harry cease coming to your house? A When he went to Kentucky. Since he came back he has been in the habit of coming to my house from Friday to Sunday night.

40 Q The defendant testified yesterday, that when she married your son, he was very sickly, very

Mrs. Lovejoy, direct.

thin, and she had to take care of him and put the flesh on his bones; is that true? A I never knew him to be ill, to have a doctor; I never knew him to be ill. I never knew him to have a doctor since he was a child.

Q Did they call him "fatty" when he was grown up? A No; he certainly was big and healthy when he was married. 10

Q He never was thinner than he is now? A Yes, a little; only about one hundred and eighty pounds, I should judge; he weighs about one hundred and eighty pounds now, I should judge.

Q Mr. Marsh used to get mail at your house? A Yes; his boy wrote him at my house, and I used to hold that until he came down.

Q Other letters used to come there beside from the boy? A I don't know of any other. 20

Q He used to come and spend the night there from time to time? A Occasionally, yes. Sometimes if he came in late at night he would stop there.

MRS. LOVEJOY, sworn in rebuttal for petitioner.

Direct examination by Mr. Mason.

Q Where have you lived for the last four years? A With my mother. 30

Q What number? A One twenty-seven and one twenty-nine West Twelfth street.

Q Has your brother, the petitioner in this case, been living there? A No.

Q During any of that time, the last four years? A No.

Q Do you know if he ever lived there before? A No; he never lived there.

Q Have you been living there all the time during the last four years? A The last four years. 40

Mrs. Lovejoy, cross.

Q Do you know a Miss Katherine, or Miss Alice Roach? A Yes.

Q Where did you meet them? A I met them by their boarding at the house.

Q At what house? A At my mother's house in Twelfth street, and I know the three sisters,
10 Mary, Alice and Katherine.

Q Do you know whether they have any brothers? A Yes; they have a brother.

Mr. English. I object to that. That has nothing to do with this case.

Q Now, then, did you ever visit at the house on East Ninety-fifth street, where the Roach's lived? A I have, and stayed over night.

Q And were these Roach girls friends of yours?
20 A Yes; friends of mine. They visit us at the house.

Q Did you go up into their bedrooms? A I have been all through the house.

Q Did you ever see any picture of your brother on either of the Roach girls' bureaus or anywheres in the room? A No.

Q Were you there the night your brother was arrested? A Yes.

Q Where? A At Ninety-fifth street; I was
30 there the night the officers came up and arrested my brother.

Q Did you see Mrs. Marsh? A Yes.

Cross examination by Mr. English.

Q You say you lived at West Twelfth street for the last four years? A Yes.

Q Is your husband living? A Yes.

Q Did he live there with you? A No. I left
40 him four years ago, and went home to my mother.

Q Do you know where he is now? A Yes.

James H. Marsh, direct.

Q Did you live with him before he left you?
A I left five months after; I was married in June and left in December. We lived in New York City.

Q Do you remember when it was you went back to your mother? A This month in December.

10

Q Lived there ever since? A Yes.

Q How many Roach girls are there living at home? A Two, Katharine and Alice.

Q When was the last time before your brother's arrest, that you spent the night at the Roach home? A That was— I can't tell the month; it was in the fall of the year.

Q Of what year? A Was previous to his arrest. He was arrested in March or April of nineteen twelve.

20

Q So the last you were there was in nineteen eleven? A It was before.

Q The fall before? A The fall before his arrest, as far as I can say.

Q You were there in the room with them, is that true? A In their room.

Q That was in the fall of nineteen eleven? A Yes.

Q So any knowledge you have about pictures would be on this visit of nineteen eleven? A Yes.

30

JAMES H. MARSH, recalled in rebuttal.

Direct examination by Mr. Mason.

Q Mr. Marsh, Mr. John Bennett testified as to a statement which was supposed to have been made to him at your office—in Mr. Bennett's office. What have you to say as to the testimony that Mr. Bennett gave on the witness stand as to that conversation? A I never had any such conversation; never any word of it.

40

James H. Marsh, direct.

Q Did you once go to Mr. Bennett's office? A I did.

Q What was the purpose?

Mr. English. I object to the purpose.

10 Q What for? A He asked me to tell him about the taxes on the Staten Island property. And called in a stenographer and I dictated to him just what the taxes were, and at that time I told him she was about to bring action for divorce and he says—he threatened in this way: “You better not do it or I will take a hand in it.” That is all that was said. I was going at that time. All I dictated was the statement about the property. That's about all that was said. I never had any conversation with him about the Kentucky
20 land and never even mentioned it.

Q Now, then, your wife testified here yesterday that you had told her that you had been a drunk, and had vomited under the table and lay in your vomit. Did you ever tell her any such thing? A Never.

Q She testified this morning that you were degenerate and most of the time were under the influence of liquor. A I have not taken a drink within the last—I have, maybe, one or two drinks,
30 within the last year, yes.

Q Now, then, she testified here yesterday that you confided to her that you had lived with one Eva K. Conlon? A I never so stated to her at any time and it is not a fact.

Q She testified here that you admitted you had lived, I think she said Kate A.—one of the Roaches; did you ever make any such statement? A I never made any such statement that I was
40 living at the Roaches'.

James H. Marsh, direct.

Q Did you, as a matter of fact, have any intercourse with any of the Roaches? A No; certainly not.

Q Did you ever tell her you got one of the Roach girls in the family way? A I never made any such statement to her or nobody else.

Q Is it true? A No; it is not true. 10

Q I show you a paper marked Exhibit P. 5 for identification, and ask you if it is in your hand writing—that paper? A It is not my hand-writing, except the last words “Defendant Exhibit 1.”

Q When were they put on there? A March 20th, 1912.

Q Why were they put on there? A This paper was offered in evidence and received in that case.

Q By whom? A Put in by our side while Mrs. Marsh was on the stand. 20

Q Now, then, did you see that paper written? A I saw that paper written. It was written in my presence by Mrs. Marsh.

Q And how did that paper come to be written by Mrs. Marsh? A Mrs. Marsh was all the time nagging me for money that I owed her. I said I never owed her a penny, but for peace sake, why I gave her the property. It was the last property I had and I gave it to her. I got this paper in consideration of it. I insisted upon her putting it in writing and that is what she gave me at the time. 30

Mr. Mason. I offer that in evidence.

(Received and marked Exhibit P.5.)

Q I show you identification P: 8, which your boy testified was in his handwriting and ask you if you received that letter? A I did.

Q When you received this letter, what did you do, if anything? 40

James H. Marsh, direct.

Mr. English. I object to that—that is not rebuttal.

Q On receipt of this letter from your son and from information contained therein, did you write to Mrs. Marsh? A I did.

10 Q Was the letter that you wrote to Mrs. Marsh this typewritten letter which they have produced there? A No, sir.

Mr. English. I object to that.

Q Have you ever seen that so-called typewritten letter before it was produced in court? A Never saw it before until yesterday.

Q Did you ever know anything about such a letter being written? A No.

20 Q Did you ever write to Mrs. Marsh on the topic that is referred to in that letter? A In which letter?

Q In the so-called typewritten letter? A No, sir.

Q What did you write to Mrs. Marsh in your letter?

Mr. English. I object to that.

30 Q Did you write any other letter besides the so-called typewritten letter to Mrs. Marsh? A Not besides. I wrote a letter in my handwriting.

Q And in answer to that letter in your handwriting, did you receive any letter? A I did.

Q And is that the letter? A No; it is the other letter.

Q Exhibit P. 2? A Yes; that is the letter I received in answer to it.

Q And then did you subsequently write in answer to that letter, and then— A I received this.

40 *Court.* Did you keep any copy at all, Mr. Marsh?

Witness. No, sir.

James H. Marsh, direct.

Q In your letter to Mrs. Marsh, did you ask her to return to New York? A I did.

Q Mrs. Bishop testified that she told you that Mrs. Marsh was going to get a divorce. When did she tell you that? Before or after Mrs. Marsh had gone to Kentucky? A It was after I started my action.

10

Q It was after you started your action that Mrs. Bishop told you that Mrs. Marsh was going to get a divorce? A After I started this suit.

Q What was your purpose of taking your residence in New Jersey?

Mr. English. I object to that.

Court. A question of intention. I will permit you to ask that.

Q What was your intention? A I came over to New Jersey to get away from the influence of John Bennett, who was on the stand here yesterday, her brother.

20

Court. Did you bring your wife there with you at the time?

Witness. I had asked her the day in the Police Court and I thought she would come.

Q Had you belonged to any organization in New Jersey before this time? A Yes; back in 1899, 1900, I belonged to the Hoboken Glee Club. I lived in Long Branch from 1907 to '10 or '11.

30

Q You had no other residence at the time you were in Long Branch? A I had a room in New York.

Q Where did you vote? A I did not vote.

Q Paid taxes at Long Branch? A Personal taxes and taxes on real estate, school tax and water tax.

40

James H. Marsh, direct.

Q Since you have been here—since you have come to New Jersey, where have you been boarding?

Mr. English. We had all that, Mr. Mason.

10 Q What is your intention of remaining in New Jersey?

Mr. English. I object to that. It is not material and it is not rebuttal.

Q Where did you receive your wages from the American Locomotive Company? A At the main office, 30 Church street, New York City.

Q I show you Exhibit P. 7, and ask you where you received this? A At the Post Office, Hoboken, New Jersey.

20 Q And was Exhibit P. 6 enclosed in Exhibit P. 7? A It was.

Mr. Mason. I now offer Exhibit P. 6 and P. 7 for identification in evidence.

Mr. English. I have no objection to it.
(Received in evidence.)

30 Q Mr. Marsh, when you wrote to your wife in Kentucky, in answer to which you received Exhibit P. 3, did you say anything about returning to your wife?

Mr. English. I object to this line of testimony.

Court. He may testify of writing to his wife, asking her to come back. But it should be part of your direct case. I will allow it.

Q Tell the Court what you did write to your wife in the letter to which you received Exhibit P. 3 in answer. A Which is P. 3?

40 Q "Hound of hell." A I did not write any letter in reference to P. 3 at all.

James H. Marsh, cross.

Q To which it was the answer? A I wrote her that I had received her letter asking for payment of one thousand dollars; that I did not have any such amount; that it did not look as though I would have any such amount. As to her statements regarding that Red Head, I thought she was laboring under some hallucination. I also thought it was scandalous and that it was entirely unjust; the scandalous attacks she made on the Roach family, and there was no justification for it and I would like to know what she was doing down in Kentucky any way, and if she would return I would straighten out the Staten Island taxes, and I was still living at Rothenberg's—that's about the answer I made. 10

Q There was no question about support mentioned? A In the previous letter I told her I would not give her any aid while she remained in Kentucky, but if she would return I would send her the railroad tickets. 20

Cross examination by Mr. English.

Q You say you told Mrs. Marsh that you were living with Rothenberg? A Yes.

Q When did you tell her that? A When she returned from Staten Island.

Q When was that? A That was February or March of nineteen eleven—no, February of nineteen twelve. 30

Q Where was it that you told her? A Twenty-three Seventh avenue.

Q That is where she lived in a room? A Yes.

Q Told her you were living with the Roach family? A Where I was stopping at the time.

Q Tell her how long you had been there? A Yes; for sometime.

Q And you discussed, more or less, your relations with the Roach family? A No. 40

James H. Marsh, cross.

Q Do you want to change your testimony? A I do not wish to change my testimony.

Q Have you talked with your wife? A I spoke to my wife; I did not say I had quite the conversation that you did.

Q I am asking you. A No; I did not.

10 Q What was the date that this Exhibit P. 5 was written? A On the date it states.

Q Where was it written? A On West Thirteenth street, in the house on the south side of the street near Seventh avenue, near Seventh avenue. Mrs. Marsh and I were stopping there at the time. She had been bothering me, and told me before that, I had taken her money. I told her she never had
20 any money to take from her, and she was bothering me for money all the time, and she wanted to know if I would not give her the Staten Island property, and, finally, I consented to do so, and gave her the deed for that.

Q Did you think at that time you were taking a release from your wife, that would release you from any support thereafter? A Why, yes.

Q You did? A Yes; she was in business and I was in business at that time, and I did not want to be bothered with her.

30 Q Your intention was to turn over that Staten Island property, and relieve yourself from any further obligation? A As a matter of fact, I lived there a week or two after that, and gave her money.

Q Answer my question, please; in giving this paper to your wife, you intended to relieve yourself of your obligation to support your wife? A (Witness does not answer.)

40 Q Why did you sign this paper? A Because she said I owed her money.

James H. Marsh, cross.

Q This paper says, "I hereby agree to release you from liability of my support and maintenance"; you asked her to write this paper? A I told her I wanted her promise in writing, that I did not owe any money, and I told her I would not take her word for it.

Q Now, in the attempt to get her down in writing, you wanted to be relieved from obligation of her support? A I told her I would not do it unless she did that. 10

Q You wanted to relieve yourself from your wife as husband? Was that your object that you had in mind? A I don't just exactly recall what my object was at the time. Evidently, it was stated in the paper.

Q You had been at the bar ten years at that time? A Since 1896. 20

Q You knew a release had been executed and been drawn up and signed; didn't you know that, as a counsel of the State of New York? A Did I know what? I did not know it had been signed.

Q Been fifteen years at the bar? A Yes.

Q You are in the habit of taking releases from clients, aren't you? A All depends what is to be released. I told her I would not take her word for it; I wanted it in writing. 30

Q Did you divest yourself as legal supporter of a husband to your wife? A I don't know whether it did or not.

Q You did not intend this to figure in any subsequent maintenance suit, which she might bring against you? A I would not say that.

Q Did you think this relieved you of your legal obligation as husband to support your wife; did you intend this to? A I did not do much thinking at the time. 40

James H. Marsh, cross.

Q Why did you take it at all? A Because she relieved me from money obligation.

Q You were content to take this kind of paper? A Yes.

Q You swear that was written by your wife? A I swear positively it was written by my wife
10 in my presence while I was in the room.

Q Now, you have written typewritten letters to your wife? A I have.

Q To your wife? A I don't recall any typewritten letters to my wife.

Q You said you wrote a typewritten letter? A No; I did not. I said in my handwriting.

Q Have you read this typewritten letter? A I saw it.

Q Well, is it a fact that you desired to obtain
20 a decree of divorce from your wife? A At the present time.

Q It was true the summer of nineteen twelve? A No.

Q It is true that in the summer of nineteen thirteen you wanted your wife to get a divorce from you? A No.

Q Why did you write—that was not written at the time John Bennett said it was? A Yes.

Q And you wanted your freedom when you
30 wrote it? A Yes.

Q That was written before this suit was begun? A Just about before the suit was begun.

Q Is it a fact you wanted her to obtain a divorce against you? A When?

Q Summer of nineteen thirteen? A No, sir.

Q When did it become true? A I determined about the time I saw John Bennett over in the office. The time I wrote John Bennett the letter.

Q You claim to have affection for your boy?
40 A I certainly have.

James H. Marsh, cross.

Q You think now that his happiness is impaired by your present matrimonial condition? A I think so.

Q You thought so in nineteen thirteen? A Yes.

Q So the statement in this typewritten note is true? A It is true.

10

Q It is true that this is for his best interest? A Yes.

Q It was true in nineteen thirteen? A I guess it was, yes.

Q What were you working at in nineteen thirteen? A Same as I am working at now.

Q You were out of New York a great deal? A Back and forth all the time.

Q How lately did you find that you had made a mistake in marrying your wife? A I never gave it a thought.

20

Q After this letter of nineteen twelve, when she had you arrested and went to Kentucky, is it not true you found in nineteen thirteen you made a mistake in marrying her? A I thought it pretty cruel treatment.

Q In nineteen thirteen you found you had made a mistake in marrying her? A I don't know; I never gave that subject a thought.

Q You were willing to get a divorce if one could be obtained? A No, sir.

30

Q Now, why did you write these letters to Kentucky, asking your wife to return, that you say you wrote? A Why, at that time, I thought we could patch things up.

Q When did you write these letters? A June, nineteen thirteen.

Q You thought you could patch things up? A Yes.

Q Did you keep a copy of them? A No, sir.

40

James H. Marsh, cross.

Q Are you not in the habit of keeping copies of papers you write? A No.

Q Never did in your life? A Oh, yes; kept copies of it.

10 Q And you knew also, as counsellor of law in the State of New York, that letters you wrote to your wife in nineteen thirteen, may have some significance later on? A No; I never gave it a thought.

Q Notwithstanding the fact, it never occurred to you in nineteen thirteen the letters might figure in some subsequent action? A No, sir.

Q And you are counsellor of law in the State of New York? A Yes, sir.

20 Q Where did John Bennett live in nineteen twelve or nineteen thirteen? A I don't know.

Q Where was his office? A Why, three seventy-one Fulton street, Brooklyn.

Q Where did John Bennett have his home? A I don't know.

Q Why did you think it was necessary to go to New Jersey, to get away from John Bennett, when he had his office in Brooklyn? Didn't you think you could conceal yourself in the great city of New York to get away from John Bennett? A No.

30 Q Who was this friend who had this house in New Jersey? A Mr. Rothenberg.

Q Where was the house? A That's eighty-seven Ridge street.

Q And that's the place you went from John Bennett? A I went there to live.

Q Did not think you could conceal yourself in New York; you were in New York every day? A Yes.

40 Q Did not fear evil influences then, did you? A I never knew what he might attempt.

James H. Marsh, cross.

Q You asked your wife to go to Jersey and live with you? A Yes; the morning before she went into court.

Q What was your language to her? A I saw her come in with the boy, and I said, "What are you doing here." I thought this had been all fixed up. I saw her brother John, in the meantime. 10

Q What I want now, what did you say to her in notifying her to come to Jersey to live with you? A I said, "I am going to get a room; in fact, I have, and I am going there to live," and she said, "I am through with you, and I am going now to court and have my say," and she went into the court room and had her say, until the Judge shut her off.

Q You say you got your wages at 30 Church street, New York? A Yes. 20

Q Is that the office of the American Locomotive Company? A Yes.

Q Who paid you the money? A The cashier.

Q What is his name? A I think Hale.

Q What is his first name? A I don't know.

Q Who signed the check? A Mr. Hobby.

Q What is his first name? A J. O. Hobby, Jr.

Q He signed in what capacity? A Treasurer.

Q The office at 30 Church street? A Yes. 30

Q Then handed you by Mr. Hale, the cashier?

A Sometimes, and sometimes it is mailed to me.

Q How often did you get your check? A Once a month.

Q For how much? A Now, it is a hundred and fifty a month.

Q How long has it been a hundred and fifty a month? A Well, for some months back, during a period of three or four months, when the company was laying off thousands of employees, it 40

James H. Marsh, cross.

was about sixty-two dollars and a half a month, and since then it has gone up.

Q How many months has it been a hundred and fifty dollars? A I should say six months; it may have been more or less.

Q You say you wrote in reply to Exhibit P. 2,
10 asking for a payment of one thousand dollars?

Mr. Mason. Here it is (producing paper).

Q Was that mailed to Jersey City, that demand for a thousand dollars? A No.

Q When was it you definitely made up your mind to file this petition for divorce? A Very shortly before I did.

Q Well, how long? A Why, I could not tell you exactly, a month or so.

Q You knew as a counsellor of law, that in
20 order to obtain a divorce, a man must first endeavor to get his wife back? A I don't know of any such law.

Q Don't you know that before a husband can secure a decree of divorce, he must make some effort to get his wife back? A I am not familiar with these matters.

Q Don't you know that? A No.

Q And you did not make any effort to bring
30 your wife back? A I wrote her.

Q Having in mind you were going to file a petition of divorce on the ground of separation, you wrote your wife a letter, and never kept a copy? A I heard that she was going to bring action for divorce.

Q You did have in mind a month or six weeks that you would bring it? A Yes.

Q Did you, between the time you thought you would bring action, and the time you brought
40 action, write any letters? A No; I never wrote her at all, after this letter here.

Exhibit P. 1.

Q (*By Mr. Mason.*) Did you think it worth while writing after you had received these letters from her? A No.

Q Did you know to whom she was referring? A No; I don't know.

Q That's all.

TESTIMONY CLOSES.

10

Exhibits.

EXHIBIT P. 1.

STATE OF NEW JERSEY. BUREAU OF VITAL STATISTICS.

20

CERTIFICATE AND RECORD OF MARRIAGE.

Full name of husband, James H. Marsh.
Maiden name of wife, Helen T. Bennett (Marsh).
Place of marriage, 242 Montgomery St., Jersey
City, N. J.

(City or township and county.)

Date of marriage, March 1st, 1912.

GROOM'S.

Residence, 25 7th Ave., New York City.
(If in city, give name, street number; if in town-
ship, give name and county.)

30

Age, 39 years.

Single, Widowed or Divorced, (Cross out words
not essential.)

Number of marriage.

1. Desire to be remarried. Married to present
party.

Color, white.

Occupation, Lawyer.

Birthplace, New York City.

40

Exhibit P. 1.

Father's name, James H. _____.

Mother's maiden name, Helen M. Hall.

BRIDE'S.

Residence, 25 7th Ave., New York City.

(If in city, give name, street number; if in
10 township, give name and county.)

Age, 44 years.

Single, widowed or divorced. (Cross out words
not essential.) Remarried.

Number of marriage, 1.

Color, white.

Name if a widow, _____.

Birthplace, London, England.

Father's name, Charles E.

Mother's maiden name, Marie De Courcy.

20 Witnesses: Marietta Westcott, Mildred Westcott.

Residence of witnesses, Jersey City, N. J.

Signature of person or officer of society officiating and P. O. Address, Wilbert Westcott, Pastor Trinity Hedding Ch., 242 Montgomery St., Jersey City.

No. of license, 5574.

STATE OF NEW JERSEY.

30

County of Hudson

City of Jersey City.

This is to Certify, That any person, religious
society, institution or organization authorized by
law to perform marriage ceremonies within the
State of New Jersey to whom this may come, he
or they, not knowing any lawful impediment there-
to, is hereby authorized and empowered to solemnize the rites of matrimony between James H.
40 Marsh, of New York, in the County and State of
New York, and Helen T. Bennett (Marsh), of

Exhibit P. 2.

New York, in the County of New York and State of New York, and to certify the same to be the said parties, or either of them, under his hand and seal in his ministerial or official capacity.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said town, township or city at Jersey City this 1st day of March, nineteen hundred and twelve. 10

JOSEPH A. CARLIN,
(Name and official title.)
Reg.

EXHIBIT P. 2.

James H. Marsh.

Yours received. Give me one thousand dollars of what you wrongfully appropriated and then command me. I could not bear the sight of New York. 20

I love you with a love that increases with time, but I have done my best to forget you and drive you from my heart. These are the first tears I have shed and I hope that you will hereafter be very brief in your communications and above all, never let me see the dear hand writing that I once thought exclusively mine. 30

Do not expect me to alter my terms. I am not asking aid, but merely exacting a very little justice from one who shamefully abused my trust. You were even too mean to give me the tax bills when I could have attended to the Staten Island property and I suppose that it is now involved. You ask a favor, it is granted on the payment of above paltry sum. I now ask you for the dear boy's sake to straighten the tax affairs of that property and let me pay the expenses. 40

Exhibit P. 3.

My last word to you is not to marry that redhead
 bat if after a year you still wish to stick your
 nose in the fire of Hell itself, I shall not stand in
 your way. I hope that it is not too late to pay
 the taxes on that property. We have nothing. I
 am not earning anything as yet but I have a shin-
 10 ing reputation here for virtue, bravery, loving
 kindness and medical skill. The leading two law-
 yers here have prevented me thus far from prac-
 tising, but the people are with me, and I have a
 very bright future.

While loving you 'as I do it is not safe for me
 to divorce you, but I shall take the risk as I took
 so many others with you.

Helen.

(Endorsed on back)

20

If you accept this as it stands, I shall be bound
 by its terms. Otherwise not.

H.

EXHIBIT P. 3.

6, 17, 1913.

Hound of Hell.

30 How dare you write me such a letter? Have
 you no fear? Robber of your child and me, if
 I were seeking vengeance, I would permit the de-
 generate to marry the manipulator of sick organs
 and "gloat" over the result.

40 One of your ———s is about to obtain
 \$175000.00 through your treachery to those who
 loved you best, but you cannot repay a small part
 of the money that you embezzled from the wife
 that you starved! Even the tax searches that cost
 me seven dollars of charity money, you refused
 to give back to me, so that I could pay the taxes

Exhibit P. 3.

when I had the power. Now you say that you will clear the title *If*. Do you claim any favors from those to whom you have given the best that was ours even to my ring that you kissed a thousand times? Who has it now? Who has your son's beautiful picture? I would have treasured it. You robbed me of it. I bought and paid for it with John's money, that old standby. You even robbed me of that, by advising your bedpan to send my letters to my brother. Treachery and vengeance emanate from your every move toward us, but benefit and service and sacrifice even to the elimination of self are extended to the scavengers that a little money could hire. 10

How did you keep faith with me and our son? My brother bought what little luxuries I enjoyed and practically all of my necessaries. You then robbed him of six hundred dollars. You told your shaver of sick hair a lie which would have robbed him, your son, of the only thing you ever gave him, an honest entry into life? Infamy! Was there no little drop of manliness hidden in the sap that gave you being? Ingrate. I have not asked you for a payment. I ask you to return a part of what you *stole*. You would now conspire to steal my womanly honor, would you? Shame on you! I have been told of your attempts in that direction. Shame on you again! Strangers are more trusty than you. Where would you stop? I am "in Kentucky" for the sole purpose of avoiding injury to you. The only decent thing for you to do is to die. 20 30

H. T. M.

Exhibits P. 5, P. 6, P. 7.

EXHIBIT P. 5.

June 28, 1911.

James H. Marsh, Esq.,
My dear husband.

10 In consideration of the title to the Staten Island
property, I hereby agree to release you from all
liability for my future support and maintenance
and from all monetary obligations whatsoever.

Your loving wife,

HELENA THERESA MARSH.

Defendant's Ex. 1).

EXHIBIT P. 6.

20 Where are you living now?

HELEN.

EXHIBIT P. 7.

REGISTERED

No. 3701

James H. Marsh, Esq.

Schenectady, N. Y.

Nov.

20

30

1915

Registered 11223

FIRST NOTICE.

Forwarded from Schenectady, N. Y.
Box 21.

Hoboken, N. J.

(Endorsed on back).

40 H. T. Marsh,
2423 Church Avenue,
Brooklyn, N. Y.

Exhibit P. 8.

Brooklyn (Flatbush Sta.)

Nov.

19

1915.

Registered

Brooklyn (Flatbush Sta.)

Nov.

19

1915.

Registered

10

HOBOKEN, N. J.

Nov.

22,

1915.

Registered

EXHIBIT P. 8.

Hazard, Ky.

June, 1913.

20

My dear Grandma, Tell papa as soon as possible that a contract has been filed in the record office here by which Eva K. Rutledge agrees to sell the 25,000 A. to E. J. Toby for (\$7) seven dollars per A, \$5,000. down. The contract was filed on June 1, 1913. Madeline Coffey is witness. Papa may be able to do something if he knows in time. Tell papa to buy me a cheap second hand bicycle if he cannot afford to buy me a new one and send it to me. I want one very much. I would like a coaster brake if possible. I cannot write very well because I am writing on a board. I would also like a foot-ball. My foot-ball and basket ball were burnt up. How are you? How is papa and the rest? I am well. Hoping you are all well, I remain, your loving grandson,

HARRY.

30

P. S. In case Grandma is not here give this letter to papa.

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Exhibit D. 1.

EXHIBIT P. 8.

Telephone 5821 Cortlandt.
Cable "Marbenet" New York.

Jan. 17, 1914.

Dear Mrs. Mundt.

10 Please give my clock and globe and books and things to Harry's grandma so that she can send them to us as we cannot come home for some time yet.

I thank you very much for keeping them for me so long.

Yours truly,
HELEN T. MARSH.

EXHIBIT D. 1.

20

Mrs. James H. Marsh:—

This letter is not written in a spirit of anger or ill will. I am asking a favor. Will you obtain a decree of absolute divorce against me.

I ask it because not only the future happiness of yourself and myself depends upon such separation but more important than all, Harry's future will be happier and better promoted by your obtaining such decree.

30 Under present conditions Harry is deprived of certain rights to which he is entitled. He is a boy of strong mind and strong affections but is inclined to keep his heart aches to himself. He should be permitted to see his father and his folks. He loved his father and I think he still does love him. His father loves him with all his heart and soul. To deprive Harry of that happiness would be wonton cruelty.

40 Under a decree of divorce you would have absolute custody and control over him and could say when and under what conditions I might see

Exhibit D. 1.

him. To such a decree I would submit and trust to your love for his happiness to let me see him occasionally.

At present I am earning a mere existence, and have little ambition. I am in New York now but seldom. If you would grant my request I could succeed and not only make better provision for Harry but of such accumulations as I might then be able to make during life he would have a liberal share. 10

In marrying we made a mistake and that mistake we can correct. In looking over the past I am convinced ours was an intellectual friendship and not that of love of husband and wife. Throughout I regard you more in the light of a sister than of a wife. 20

In fact you yourself have told me time and again you made a mistake in marrying me. I can now see that we did not do what was right and just and have the courage to acknowledge the mistake we made. 20

Having made a mistake why not correct it now by severing the mere legal tie which is nothing but a bondage of loneliness and dreariness for both of us so long as it continues. In all the world there is nothing more terrible and sorrowful. I am sure we would both be happier if it were broken. 30

Look at the facts with an honest mind and see if I am not right. To do this it is necessary first to put aside any prejudice or hatred there may be and then consider the facts carefully before passing judgment.

I humbly ask you to obtain the decree. And if you decide to do so I would suggest that it be obtained in New York State. By going to Buffalo, Richmond, Westchester or any county outside of 40

Exhibit D. 2.

New York or Kings counties, all publicity could be avoided and no one need know except such as you choose to tell. I have not been able to save any money but will somehow obtain it to defray the expenses.

Respectfully,

10

JAMES H. MARSH,
129 West 12th Street,
New York City.

EXHIBIT D. 2.

Dear John:

I thought I would write you this letter regarding your sister Nell and myself. She is the mother
20 of my son, a boy of whom any one could be proud, but his training is and has been such that in the end there will be little comfort in that fact for me. For him I will always do what I can.

Two people having absolutely no love one for the other, one going his way, the other hers—
under such conditions the mere legal tie which binds should be severed. For her to hold on to me under such circumstances and call it loyalty
30 would be to twist the meaning of the word beyond all recognition.

I am not vindictive and hold no grudge whatever, I simply desire my freedom. If Nell will grant me that I will try to settle down somewhere, away from New York and will then be able to contribute towards Harry's support and education.

Will you kindly let me hear from you in the matter.

40

Yours truly,
J. H. MARSH,
129 W. 12th St.

Conclusions of the Master.

Conclusions of the Master.

IN CHANCERY OF NEW JERSEY

Between

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

*On Petition
and Cross
Petition.*

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Heard before John Franklin Fort, Advisory Master.

Mr. Charles M. Mason for the Petitioner. 20

Messrs. McCarter & English for the Defendant.

The petitioner and defendant were joined in bonds of matrimony on April 10, 1900, by a Justice of the Peace at Paterson, New Jersey. Subsequently the defendant getting the impression (probably from ignorant advisers) that the marriage was not legal, prevailed upon the petitioner to have their marriage resolemnized before an ordained minister, and they were again remarried at Jersey City, in this State, by the Rev. Wilbert Wescott, on March 11, 1912. They resided at various places in New York after their marriage and cohabited together until sometime about March, 1912. On the night of the re-marriage they returned to their boarding place in New York and the landlady refused admission to Mr. Marsh and the landlady refused admission to Mr. Marsh and the landlady refused admission to Mr. Marsh and the landlady refused admission to Mr. Marsh was admitted. On March 19, 1912, Mrs. Marsh made complaint against Mr. Marsh of abandonment and

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Conclusions of the Master.

failure to support, and he was arrested while talking to her on the street in front of the house in which they had rooms. On March 27, 1912, the court dismissed the charge on the strength, as is stated in the proof, of a letter or statement given by Mrs. Marsh to Mr. Marsh, dated June 28, 1911
10 (Exhibit D. 7). This statement is addressed to Mr. Marsh and is signed by Mrs. Marsh and states "I hereby agree to release you (the petitioner) from all liability for my future support and maintenance and from all monetary obligations whatever." At this time, and for some time before, their life had been anything but continually pleasant and they seem to have been in much controversy. Mrs. Marsh declares she was without support and in fact asserts she supported her husband and gave him much money. She does not
20 establish this statement by any competent proof. He asserts that she never gave him any money and that he always supported her until she left him and went to Kentucky. It is difficult under the proof to satisfy one's self as to the real truth of this matter. Both the petitioner and defendant are members of the New York Bar and Mr. Marsh produces a large number of checks signed in his name by the defendant, covering periods back in
30 1906 and 1907, to show that Mrs. Marsh could have had all she needed for support. Some time in 1911 Mrs. Marsh says her husband was away from home much of the time at night and she began to follow him and discovered things which led her to believe he was boarding in a house where two women lived, with whom she declares he was intimate, and she then learned that he had also gone to Europe on a ship upon which was a woman of his acquaintance.
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Conclusions of the Master.

The petitioner says the European trip was made in 1907 and that he went as the counsel of an elderly woman, of some sixty-four years of age (much older than he) and that the relations with here were perfectly proper and professional only. The two women in the house where Marsh boarded in New York, and with whom defendant claims he was intimate, were not proven in any way to be other than reputable. I am compelled to find that, so far as the proof discloses, these two women were entirely free from the insinuations against them. If a woman's reputation for chastity and respectability could be injured by such evidence as is given in this case against these women, it would, indeed, be unfortunate for womankind. During this period Mrs. Marsh does not seem to have desired her husband to live with her, although she seems to have followed and annoyed him in every way she could while he boarded apart from her. It is testified to by two reputable witnesses that in March, 1912, when she brought him into court, he offered to support her as best he was able. Mr. Irving J. Meyer, an apparently intelligent and credible witness, who was present at the court at the date of the trial on the defendant's application for support, says that the petitioner offered to go to Newark to live and provide for defendant and that she said, "I won't live with you. I won't go to Newark. I won't have anything to do with you." The mother of the petitioner testifies to similar statements and says that the defendant said "I am going to make disclosures that will reflect on my husband." The last of March or the first part of April, 1912, the defendant went to Kentucky and took their son, the only issue of the marriage. It is disputed by the petitioner that he knew the defendant con-

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Conclusions of the Master.

- templated going to Kentucky. But I am satisfied from the proof that he knew she was going, either on the day she left or a few days before. The son so testifies and I think his mother corroborates that fact. They were not living together at this last date, and it is not clear that they ever co-
- 10 habited after the date of re-marriage, March, 1912. What the defendant went to Kentucky for is not clear, unless it was to try to discover some land the petitioner was said to own there, or to try to establish herself there in the practice of the law. It is probable it was for both purposes. In Exhibit P. 2 (without date) she writes from Kentucky, "I am not earning anything as yet but I have a shining reputation here for virtue, bravery, loving kindness and medical skill(?).
- 20 The leading two lawyers here have prevented me, thus far, from practising, but the people are with me and I have a very bright future." This would seem to indicate the defendant contemplated remaining in Kentucky as she says "I have a very bright future." She did not remain, however, in Kentucky, but after a few months there returned to New York. That the defendant went to Kentucky without the consent, at least, of the petitioner, and probably against his wish, seems clear.
- 30 I think also that the letters she wrote him from there are indications of a doubtful intent on her part to ever return to him again. But I am also forced to the conviction that the petitioner was not sorry she had gone. Nor was he desirous of her return. I believe that both before she went and after her return he was hopeful of procuring a divorce from her, and was anxious that a situation might arise whereby he could divorce her. That she ever desired to divorce him, I question. All our cases
- 40 hold it to be incumbent upon the husband to en-

Conclusions of the Master.

deavor to secure his wife to return to him. The duty is upon him to make the first advances looking to reconciliation, unless such an effort would be evidently useless. I am fully convinced that the petitioner never made any honest and sincere effort to secure her to return to him, notwithstanding the recitals hereinafter made; and I am equally clear that it is not shown that such an honest and sincere effort on his part would not have been accepted by the defendant. At this point is where the petitioner's case, in my opinion, fails. The authorities on this point are numerous and the rule here stated is well settled. Under such circumstances the desertion is not *obstinate*. *Bowlby v. Bowlby*, 10 C. E. Gr. 406; Affirmed 570. *Van Wart v. Van Wart*, 12 Dick. Ch. 598. In this last case, Stevens, V. C., cites all the cases on this point which fully establish the rule here stated. 10 20

The "hound of hell" letter, on which the petitioner much relies, was written in reply to the typewritten letter claimed by the defendant to have been sent to her by the petitioner. It is not necessary to decide here that it was. That letter asked her to divorce him or to consent to a divorce. It is evident it was written in answer to some letter of the petitioner which made such a suggestion, if not to the typewritten one as the defendant contends. In any event such a letter as the "hound of hell" letter called for a request on the part of the husband for an explanation of its cause and for a denial of his ever having written her asking her to give him a divorce. No such letter or personal request for explanation was ever written by petitioner, and no fair and honorable attempt is shown to have been made by him to straighten out the situation which led to the writing of the "hound of hell" letter. With- 30 40

Conclusions of the Master.

out such an attempt to explain the error causing that letter, or any effort to get her to return and live with him, he cannot be said to have made any effort for reconciliation which all the cases seem to require. *Hall v. Hall*, 59 N. J. Eq. 402.

10 Now, as to the cross petition in which the defendant seeks for a decree of this court to compel the petitioner to support her. In reaching the conclusion that the petitioner is not entitled to a decree of divorce for desertion, I have treated the case as if the petitioner were a *bona fide* resident of this state for two years before his petition was filed in this case. About that, however, I think there are grave doubts; in fact, I think I would have held against him on that point if the case
20 could not have been disposed of on the ground that I have disposed of it. Both the petitioner and defendant were, in my opinion, at the time of filing this petition, residents of New York State. Will this court, under such circumstances, make a decree directing the petitioner to support the defendant? I think it should not do so. There has never been a time in all the period in controversy when the petitioner could not have been served in New York State in a proceeding for support. The court could undoubtedly take jurisdiction on
30 the cross-petition for support; but the court can I think, also, when service could have been made in New York and the parties are not citizens of this state, refuse to do so. Both are residents of New York and there is no reason why this court should dispose of this claim for support. Under the circumstances I think our courts should refuse to do so. The defendant is in no way likely to become chargeable upon the public in this state and she should be compelled to seek her remedy in
40 the forum and jurisdiction where both reside and

Conclusions of the Master.

where a decree would be effective without proceedings upon our decree, and where our decree could not be made effective without further action in New York by the defendant. Our courts should refuse to take jurisdiction, in support proceedings under our statute, between citizens of another state in which the courts of that state have unquestioned jurisdiction and where it appears in the proof that both parties are non-residents of this state and are clearly subject to the process of the state of their residence and matrimonial domicile in another state. Otherwise a non-resident may catch another non-resident in our state and get the advantage of our statute which is passed to protect our own citizens, and thus secure an advantage that the statute of the state of the residence and domicile of the parties might not grant. *Hervey v. Hervey*, 56 N. J. Eq. 424 (428); *Dithmar v. Dithmar*, 68 N. J. Eq. 533.

In this case there is another feature which, with me, is also controlling. The proof in the case shows that some time in the year 1911 the petitioner gave to the defendant a deed for land in New York State, testified by the petitioner to be worth \$15,000 with only \$500 mortgage encumbrance upon it. The defendant denies that that property equals this value, but she admits that she still owns it, and it is of value. It is also proven in this case that because of the defendant owning this property as a gift from petitioner (as cited above from Exhibit No. 1 for defendant), the defendant was refused an order for support by the courts of New York.

Under the facts in this case I do not think this court should make an order, under the authority conferred by the 26th section of our Divorce Act (Compiled Stat. vol. 2, p. 2,038), even if it should

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Conclusions of the Master.

decide to take jurisdiction. The petitioner has no property in this state. The residence nor domicile of either party is here. The desertion and refusal to support, if they exist, occurred in New York State. The matrimonial domicile at the time of the alleged injury was not in this state, and under the proof I do not think the defendant should upon her cross-petition be given aid by the courts of New Jersey.

The petition and cross-petition will both be dismissed, with costs to the defendant on the petition, but without costs to either party on the cross-petition. I will advise a decree in accordance with these conclusions.

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*Decree of Dismissal.***Decree of Dismissal.**

Filed March 29, 1916.

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

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*On Petition
and Cross-
Petition.**Decree of
Dismissal.*

This cause coming on to be heard in the presence of Charles M. Mason, Esquire, of counsel with the petitioner, and Conover English, Esquire, of counsel with the defendant, on petition, answer and oral proofs taken in open court, whereupon, and upon duly considering the said pleadings, proofs and hearing, and considering the arguments of counsel; and it appearing to the court that the petitioner has not sustained the truth of the allegations of his petition, and is not entitled to the relief therein prayed,

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It is, thereupon, on this 28th day of March, nineteen hundred and sixteen, on motion of Messrs. McCarter & English, solicitors of the defendant, ORDERED, ADJUDGED and DECREED, that the petitioner's petition be and the same is hereby dismissed.

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And it is further ORDERED, ADJUDGED and DECREED that the petitioner pay to the defendant, or her solicitors, the costs of this suit to be taxed, (and also a counsel fee of \$150 and that

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Decree of Dismissal.

she have execution thereof, according to the practice of this court).

10 And the defendant having filed a cross petition against the petitioner, and the said matter coming on to be heard in the presence of counsel, as above stated, on said petition, answer and oral proofs taken in open court, and it appearing to the court that the defendant as petitioner in said cross petition has not sustained the truth of the allegations of her said petition, and is not entitled to the relief therein prayed,

20 It is thereupon, ORDERED, ADJUDGED and DECREED that the said defendant's cross petition be and the same is hereby dismissed, but without costs to either party on the said cross petition.

E. R. WALKER,
C.

Respectfully advised,

JOHN FRANKLIN FORT,
Advisory Master.

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Notice of Appeal.

Notice of Appeal.

Filed April 1, 1916.

IN CHANCERY OF NEW JERSEY.

Between

JAMES H. MARSH,

Petitioner,

and

HELEN BENNETT MARSH,

Defendant.

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*Notice of
Appeal on
Petition.*

James H. Marsh, the above named petitioner, hereby appeals from the decree final of dismissal filed in this cause and dated March 28, 1916, and from so much thereof as decrees that the petitioner's petition be dismissed, and from so much thereof as decrees that the petitioner pay to the defendant or her solicitors the costs of this suit to be taxed, and also a counsel fee of \$150, and that she have execution thereof, according to the practice of this court.

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Dated: March 31, 1916.

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CHARLES M. MASON,

Solicitor for and of Counsel with Petitioner.

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

CHARLES M. MASON,

Of Counsel.

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Petition of Appeal.

Petition of Appeal.

Filed April 1, 1916.

New Jersey Court of Errors and Appeals

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Between

JAMES H. MARSH,

Appellant,

and

HELEN BENNETT MARSH,

Respondent.

*On Appeal
from
Chancery.*

*Petition of
Appeal.*

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To the honorable the Court of Errors and Appeals in the last resort in all causes.

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The petition of James H. Marsh, appellant, respectfully shows that your petitioner finds himself aggrieved by a decree final made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the twenty-eighth day of March, A. D., 1916, in that the said decree recites and adjudges that your petitioner has not sustained the allegations of his petition and is not entitled to the relief therein prayed, and doth decree that your petitioner's said petition be dismissed, and your petitioner appeals from said decree and from so much thereof as decrees that the petitioner's petition be dismissed, and from so much thereof as decrees that the petitioner pay to the defendant or her solicitors the costs of this suit to be taxed, and also a counsel fee of \$150, and that she have execution thereof, according to the practice of this court, on the

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Petition of Appeal.

ground that the same is erroneous and that the Chancellor should have found and adjudged the several allegations of your petitioner's petition to have been proved, and the respondent Helen Bennett Marsh to have been guilty of wilful, continued and obstinate desertion by her of your petitioner for the term allèged in your petitioner's petition and to 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 in and by his said petition. 10

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

CHARLES M. MASON,
Solicitor for and of Counsel with Appellant. 20

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Answer to Petition of Appeal.

Answer to Petition of Appeal.

Filed May 3, 1916.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

JAMES H. MARSH,
Petitioner-Appellant,

and

HELEN BENNETT MARSH,
Defendant-Respondent.

*On Petition
for
Divorce.*

*On Appeal
from
Chancery.*

*Answer of
Appeal.*

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The answer of the respondent, Helen Bennett Marsh, to the petition of appeal of the appellant, James H. Marsh.

Respondent admits it to be true that a certain final decree was on the 28th day of March, A. D. 1916, made and entered in the Court of Chancery, as in the petition of appeal is stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

30

And this respondent is advised and believes that the 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.

McCARTER & ENGLISH,
*Solicitors for and of Counsel
with Defendant-Respondent.*

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