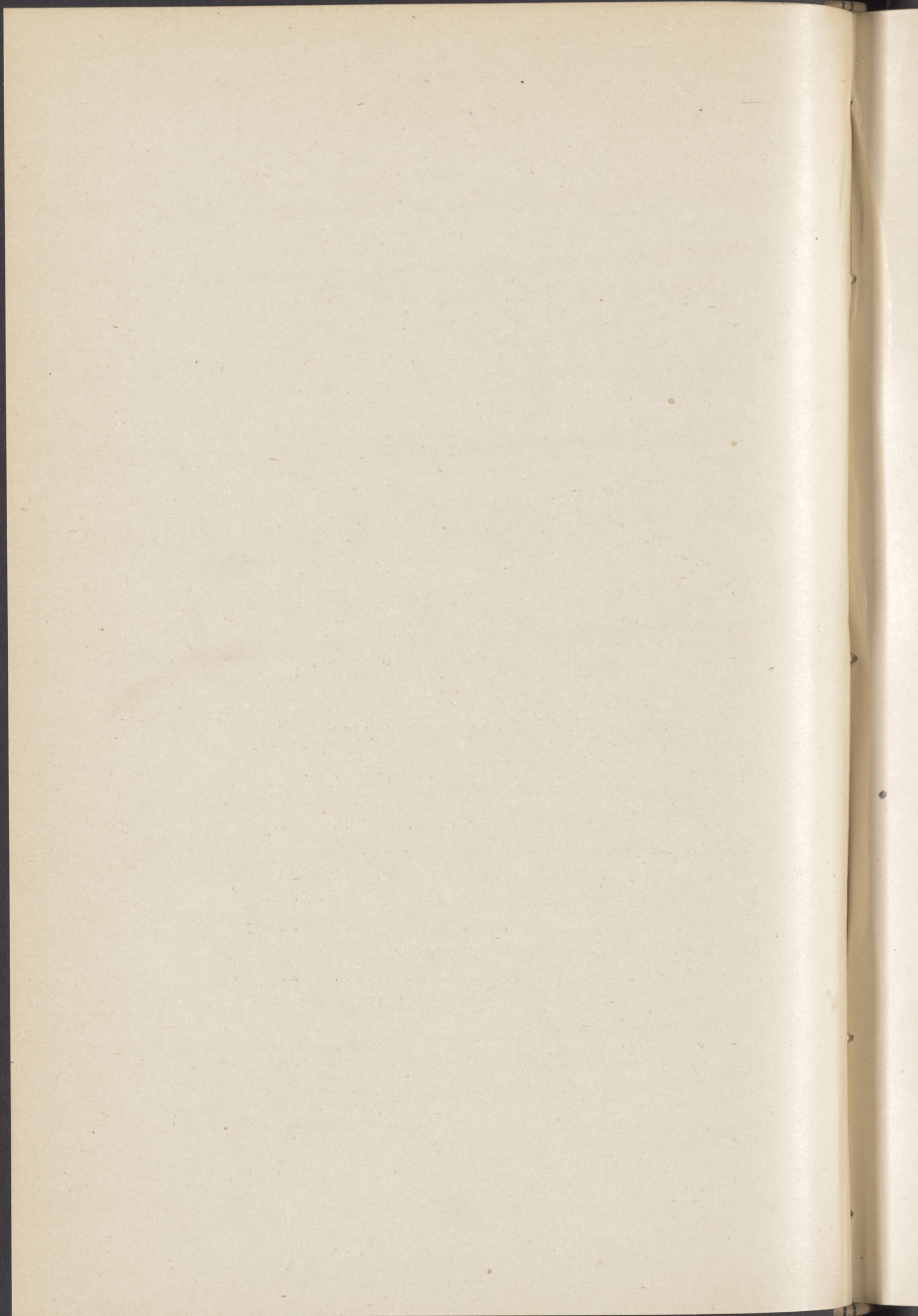


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New Jersey Court of Errors and Appeals

Notice of Appeal

*(Filed, February 7, 1919)
should have been March.*

IN CHANCERY OF NEW JERSEY

Between	}	On Petition	20
HEARSEY GIRVAN,			
	Petitioner,	for Annulment.	
and	}	Notice of	Appeal.
GEORGINA GRIFFIN, alias Georg-			
ina Williams,			
	Defendant.		

TAKE NOTICE, that Hearsey Girvan, the petitioner above named, hereby appeals to the Court of Errors and Appeals from the whole of the decree of this Court, dismissing his petition in the above entitled matter. I, Samuel W. Boardman, Jr., one of the counsellors admitted to practice in the several Courts of the State of New Jersey hereby certify that I conceive that the petitioner has good cause for this appeal. 30

Dated, February 6, 1919.

SAMUEL W. BOARDMAN, JR.,
Solicitor for and of Counsel with Petitioner. 40

Petition for Annulment
(Filed March 1, 1918)

IN CHANCERY OF NEW JERSEY

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

10

The petition of Hearsey Girvan, of the Borough of Glen Ridge, Essex County, New Jersey, respectfully shows that:

1. Your petitioner and Georgina Griffin, commonly called Georgina Williams, of West Orange, New Jersey, the defendant, have been acquainted with each other since September or October, 1914, and have frequently during these three and one-half (3½) years last past attended together shows, dances, and dinners, as they have with other of their youthful acquaintances. Your petitioner has also frequently called upon said defendant at her home.

20

2. In August, 1917, the defendant and your petitioner and other mutual acquaintances were on their summer vacation at Belmar, Monmouth County, New Jersey, the defendant having gone thither August 4, 1917, and your petitioner August 11, 1917.

30

3. The defendant while in Belmar was boarding at Mrs. Sara E. Hindley's boarding house on Tenth Avenue, Belmar, and your petitioner while in Belmar was boarding at the New Columbia Hotel.

40

4. The defendant was at that time and had been for some time previously engaged to be married to one George Boyd of Brooklyn, New York, and

*filed
40 1917
"3 years".*

Petition for Annulment

having written about August 9, 1917, to her mother at West Orange that she was about to be married to said Boyd, her mother had telephoned your petitioner about August 10, 1917, asking if he could not dissuade the defendant from marrying said Boyd.

10

5. Your petitioner then went to Belmar and saw the defendant and had luncheon with her on Monday, August 13, 1917, and it was arranged that the defendant and your petitioner should have a marriage ceremony performed between themselves but without intention to assume the relationship of husband and wife.

6. In pursuance of this arrangement these parties called upon the proper official in Belmar and obtained a marriage license August 13, 1917, and further in pursuance of the same arrangement they called August 16, 1917, about 8:45 p. m., upon Reverend W. Earl Ledden of Belmar, a minister of the Methodist Episcopal Church, who with the briefest form which he would use performed the ceremony of marriage between the defendant and your petitioner.

20

7. Neither the defendant nor your petitioner intended that the words or rites then used by them or by said minister should effect a matrimonial union between them.

30

8. That evening your petitioner went home to the same place where he had previously spent his nights in Belmar, namely the new Columbia Hotel, after taking the defendant to the home where she had always spent her nights in Belmar, namely at Mrs. Hindley's boarding house.

40

Petition for Annulment

9. Neither that night nor any other night nor at any other time has your petitioner had marital intercourse with the defendant; he has never lived with her at all; nor has he in any way before or since said ceremony presented her to the world as his wife.

10. Your petitioner charges that said pretended marriage was no real marriage, having been made in jest, as a vacation frolic and without willingness or consent to anything more than the formal ceremony; without that willingness to contract which is one of the essential elements of a valid marriage.

11. Your petitioner is and always has been a bona fide resident of this State, and at the time of the commencement of this action has his permanent residence at Glen Ridge, Essex County, New Jersey.

12. Your petitioner prays that the said pretended marriage between your petitioner and the defendant may be declared by the decree of this Honorable Court to be and to have been from the beginning utterly null and void for the cause aforesaid under the general equity jurisdiction of this Court and under the statute of 1916; also that the record and report, if any, of said pretended marriage made by said minister and by the official to whom he was required by law to make report, and by the medical superintendent of the State Bureau of Vital Statistics may be decreed to be cancelled and expunged from their records and files; and that you petitioner may have such further relief as may be just.

Petition for Annulment

And your petitioner will ever pray, etc.

SAMUEL W. BOARDMAN, JR.,
Solicitor for and of Counsel with Petitioner.

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

10

Hearsey Girvan, being duly sworn according to law on his oath deposes and says as follows:

I am the petitioner named in the foregoing petition; my said petition is not made by any collusion between me and the defendant, but in truth and good faith for the causes set forth in the petition.

HEARSEY GIRVAN.

Subscribed and sworn to this
25th day of February, 1918,
at Newark, N. J., before me,
Philip D. Elliot,
Master in Chancery,
of New Jersey.

20

Depositions*(Filed, July 3, 1918)*

IN CHANCERY OF NEW JERSEY

10	Between HEARSEY GIRVAN, and GEORGINA GRIFFIN, alias Georg- ina Williams, 	Petitioner, Defendant.	}	On Petition for Annulment. Depositions.
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20 Testimony of witnesses, etc., taken before Harry N. Reeves, a Special Master in Chancery at his office No. 810 Broad Street, Newark, New Jersey, on the fourth day of June, nineteen hundred and eighteen and on the fourteenth day of June, nineteen hundred and eighteen at two o'clock in the afternoon, in pursuance of an order of reference heretofore made and entered on the fourth day of May, nineteen hundred and eighteen, in the presence of Samuel W. Boardman, Jr., solicitor for the petitioner.

30 HARRY N. REEVES,
Special Master in Chancery of
New Jersey.

Mary C. Brienza, being duly sworn upon her oath according to law says: that she will truly take stenographically and reproduce in manuscript or typewriting the testimony given in the above cause.

MARY C. BRIENZA.

40 Sworn to before me this
4th day of June, and subscribed to this
22d day of June, 1918.
Harry N. Reeves,
Special Master in Chancery of
New Jersey.

Hearsey Girvan—Direct

I certify that the foregoing depositions were taken by Mary C. Brienza, a stenographer selected by me and by me duly sworn, faithfully and truly to take stenographically and reproduce in type-writing the testimony given. That such depositions were taken in my immediate presence and hearing by said stenographer sworn as above stated and that I believe that she has accurately stated the evidence given. 10

HARRY N. REEVES,
Special Master in Chancery of
New Jersey.

HEARSEY GIRVAN, being duly sworn by the Master testifies as follows: 20

Examination by Mr. Boardman:

I am the petitioner in this case and I am acquainted with the defendant Georgina Griffin. She is commonly called Georgina Williams and the reason for this is, when her mother re-married she assumed the name of "Williams," her mother's name, instead of retaining the name of Griffin. I met Georgina Williams in November, 1914, I don't remember the date. 30

I went to Belmar, New Jersey, last August and she was there at the time. I went there on a Saturday, August 11th and this is how I came to go there. I was very well acquainted with Georgina and I think it was the Thursday before I went to Belmar, her mother called me up and asked me if I could go over to see her. So I went to see her mother and she told me about Georgina being down at Belmar, that she had been there that week 40

Hearsey Girvan—Direct

and there was a fellow from Brooklyn who had been acquainted with her for about a year, by the name of George Boyd. She had been engaged to him for a month or so before that. I don't know whether it was announced but there was an engagement between them. Her mother did not like this fellow very much and she knew I had some influence with Georgina and she asked me if I couldn't go down to Belmar and see if I could prevent her from marrying this fellow. He was in the army and was going away very shortly and her mother was afraid Georgina would marry him down there. I had this interview with her mother the Thursday night before I went down. I went to Belmar on Saturday. I was working and of course I couldn't get away until Saturday afternoon. I put up at the New Columbia Hotel. As soon as I arrived at Belmar I went to her boarding house just to let her know I had arrived I sent her a special delivery before I got there. I went directly to the boarding house where she was staying on Tenth Avenue, that Mrs. Hindley kept. The talk I had with her at that time had no bearing on her marriage to George Boyd. When I met her I simply said, "Hello," and after a few words I went back to the station and met a friend of mine, a Corporal that was coming down. He and I went back to the hotel, changed our clothes, had dinner and went back to her boarding house. This fellow's name is Harry Kyte. While I was in Belmar I went through a marriage ceremony with Georgina Williams. The matter was first approached on Monday afternoon, the 13th of August. I made plans to go home that Monday and was going to leave in the machine at 2 o'clock

Hearsey Girvan—Direct

so as to get home by six or seven. We had lunch at the Coleman House in Asbury Park and I said to her, "I have to go back to work," and she said, "Why don't you take a vacation?" I said, "I can't take a vacation. The only way I could get a vacation is to take a fireman's job or get married." She said, "Why don't you get married?" and I said, "Who?" "Why don't you and I get married," she said. That is the way it first started. We decided then that that was what we would do so we searched around in Belmar in a machine and find out where the Justice of the Peace lived or the party who issued the marriage licenses, but we found he was out and would be back that evening. So we went back that evening to get a license. On Thursday night about 8:30 or 9 o'clock the marriage ceremony was performed by Earl Ledden, a minister of the Methodist Church in Belmar. The witnesses were Elliott R. Chapin, who is at Anniston now with the Essex Troop. He was at Sea Girt at the time. I have made efforts to get him here. I wrote him and asked him to come up on a furlough, if it were possible to get here and he sent me word that it was impossible for him to get here as they had packed all their belongings and ready to leave in twenty-four hours and he couldn't get a furlough (he used the expression) "if his mother died." Another witness was Ira Shattuck. I do not know where he is. The last I heard of him he was in Anniston. He was also at Sea Girt with the troops at the time. I did not know him very well. I can't tell whether he has left Anniston, but the young lady outside can tell you. She was also one of the witnesses. Her name is now Mrs. Earl

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Hearsey Girvan—Direct

Hehn and her name at that time was Ethel Scholl. This Ira Shattuck was a friend of hers. I did not know anything about him.

10 My actual frame of mind and intention with regard to this marriage is a two-fold question. I went down there with the purpose of seeing if I couldn't use what influence I had to keep this fellow from marrying Georgina. As for my getting married to her, it was brought up in a joke and it was carried through under that joke all the way through, with a couple of days between when we had to get the license to the time of the ceremony; it was brought about a hundred times that if she would back out or if I would back out the thing would not go through, but when one would suggest it the other would say it was poor sport. 20 I suppose you would call it "summer vacation, the seashore and foolishness."

After the ceremony, I did not spend the night with her and neither did I spend any other night with her. I have never had marital intercourse with her. I spent the night at the New Columbia Hotel in Belmar. She has never spent any night with me while I was there. To the best of my knowledge and belief she spent her nights at the boarding house where she was staying. By night 30 or by day I have had no intercourse with her. I have never lived with her.

I live at 20 Washington Place, Glen Ridge, New Jersey. I have lived there since September, 1916. I have lived in Glen Ridge altogether eighteen years. I first lived at 246 Washington Street for five years then we went to 161 Thomas Street, Bloomfield and lived there two months during the 40 summer; then we went to 41 Hillside Avenue,

Hearsey Girvan—Direct

Glen Ridge and was there for practically eleven years. We went to an apartment in Park Avenue, that was in Bloomfield and we were there two or three months, in the summer of 1916 and in September, 1916, we went to 20 Washington Place and I have lived there ever since. This covers my entire residence. 10

I have never presented Geogina Williams as my wife. She has always used her own name that of Georgina Williams and she is known as "Miss." I do not know where she is now. The last I heard of her or saw her was on Thanksgiving Day. I live with my brother and sister. He is my half-brother I should say.

Miss Williams worked in the Mutual Benefit Life Insurance Company at the time of the summer vacation. Mr. Halsey and Mr. Andrews are here as witnesses from the Mutual Benefit Life. 20

I was born on March 10th, 1894. At the time of the marriage I think Georgina was nineteen or twenty years old. Her birthday was in November—I think she was twenty—I don't know whether she was nineteen or twenty. She was living at 67 Harrison Avenue, West Orange with her mother at the time.

When we went to the minister on August 16th to get married, we simply told him that we wanted to get married and asked if he would perform the ceremony. I was sober. I do not remember the exact words the minister used in performing the ceremony, but he asked me if I took this girl to be my wife and I said yes, and he asked her if she took me to be her husband and she said yes. I realized what that meant, that it was a real marriage ceremony, but I realized from the very be- 30
40

Hearsey Girvan—Direct

ginning through the thing I was making an awful fool of myself. I think she realized it too, and when I look back on it, I wonder why I did go through it. I think I must have been mentally unbalanced at the time. I would not put that up as a plea, that I was mentally unbalanced—I could
10 tell you the conversation we had the day before the ceremony. I remember we were riding along Ocean Parkway and we got talking about it as we did, and I asked her if she knew what we were doing, that we were not going to be married but simply going through a ceremony and if she would back out, I would, but neither of us would. She was a very good sport and I suppose I was the same. I realized all along it was a mistake and I
20 knew what would be the outcome of it, but we went through it. I knew that we were making fools of ourselves. At that time I was more interested in another girl.

After the marriage ceremony, I saw Georgina on Friday, Saturday and Sunday and Sunday we came home and I left them here in Newark. When she went to Belmar, she lived at 81 Montclair Avenue, Newark with Miss Scholl, or Mrs. Hehn. After we came home, I saw her sometimes once,
30 twice or three times a week up to the later part of November since which time I have not seen her. I might have seen her as much after the ceremony, but no more than before and when I did see her, after the ceremony, it was during the day because she quit her position and I lost my position by taking the vacation, and very often we would go out for rides about three or four times a week. The evenings spent after the ceremony
40 were not as many as they were before. She went

Ethel Scholl Hehn—Direct

out with other young men more often than she did before. I have never contributed anything toward her support and she has never made any claim for any. I have had no letters from her since November and the letters previous to that I destroyed, as I do with all my other letters. 10

After the marriage she still called me by my nickname "Babs." It is a nickname that I have had since I was four years old and have always been known by that name.

By the Master: Q. I inquire of you whether or not previous proceedings have been had between you and the defendant regarding the marriage or its dissolution or the maintenance of your wife?
A. No.

Q. She has never instituted any proceeding against you? A. No. 20

Q. Or you against her, except this present action? A. No.

Sworn to before me this
4th day of June, 1918.

Harry N. Reeves,
Special Master in Chancery of
New Jersey.

30

ETHEL SCHOLL HEHN, being duly sworn
by the Master testifies as follows:

Examination by Mr. Boardman:

I know Mr. Harsey Girvan and I also know Georgina Griffin, although I know her by the name of Georgina Williams. I have known Mr. Girvan, I should say about one and a half years and 40

Ethel Scholl Hehn—Direct

Mrs. Girvan, I don't know exactly, I think about three years. She worked in the same office, with me in the Mutual Benefit Life Insurance Company.

10 I remember being in Belmar last August. My name then was Ethel May Scholl. I was also present at a marriage ceremony, I don't remember the date, but it was during August. It was performed at the home of a minister of the Methodist Church. I do not recall his name. The parties to this ceremony were Mr. and Mrs. Girvan of course; Mr. Chapin, Mr. Shattuck and myself were witnesses. I came to be a witness because I was with Miss Williams for a two weeks' vacation and she and I stopped at the same boarding house, at Mrs. Hindley's on Tenth Avenue, Belmar. Mr. and Mrs. 20 Girvan both asked me to go to the minister's house and these two men were also asked by them, so far as I know. One of the men was a very good friend of mine and the other I met through Mr. Girvan. Mr. Shattuck, I believe, is at Anniston, Alabama. I don't know where the other man is.

I had heard about this proposed marriage before I went to the minister's house. I was asked to stand up with them about three days prior to the wedding. Both Mr. Girvan and Miss Williams asked me, as far as I remember. When 30 we went to the minister's house, he came in and the ceremony was very brief. I have attended marriage ceremonies before, but I think this one was brief, but I am quite sure it was perfectly legal. The minister asked Miss Williams if she took Mr. Girvan to be her wedded husband and she said yes and he asked Mr. Girvan if he took Miss Williams to be his lawful wedded wife and 40 he said yes. I say the ceremony was brief be-

Ethel Scholl Hehn—Direct

cause I always had an idea that they were longer, probably a longer prayer. I do not remember whether there was a prayer. He must have at least asked a blessing. After that we got into Mr. Girvan's machine and took Mr. Shattuck back to camp at Sea Girt and left him there, then we went to some little inn about one-half or an hour's ride and had something to eat. It was either 8 or 9 o'clock at night. After that we came back and left Mr. Chapin at camp and then they brought me home. I did not hear either of them say where they were going. I believe Miss Williams said they had a short ride and she came in that night and slept with me. I did not hear her come in. It was very late when she came in. She slept with me every night during the vacation. She did not always retire at the same time I did, but she was with me every night. She never talked to me about the ceremony and it did not seem strange that she did not go live with her husband, because they wanted it kept a secret. I promised I would not tell anyone. She did not tell me why they got married or why she wanted to keep it a secret. I had no conversation with Mr. Girvan about the marriage. Neither Mr. Girvan nor Mrs. Girvan told me after the marriage that the ceremony was a joke. It certainly did not look like a joke to me, or I would not have helped them with it. I do not know where Mr. Girvan has lived since the time of the marriage.

Georgina lived with me part of the time at 81 Montclair Avenue, Newark. We both came back here after the vacation and she lived with me until October then she went home to her mother in West Orange, New Jersey. I do not know exactly

Ethel Scholl Hehn—Direct

where she is now. I heard from her about three or four weeks ago. The letter came from Texas, San Antonio. I never did have her exact address. In her letter to me she said the marriage was a mistake and she also stated that he was
10 having the marriage annulled. She told me that before she left for Texas. I can't tell exactly when she left but it was in the winter time, January or February. I think she said she had seen him. She did not say anything about having been served with any papers, but I think she had a paper with her. I recall she had something. I simply glanced at the paper.

20 She did not tell me why she went to Texas. She had left her position about a month or so before and had been with the Vitagraph Moving Picture Company. She was only with them a short time and I do not believe they gave her enough work to keep her going. She left the concern before she went to Texas. Of course I had a great many talks with her because we lived together but I don't recall anything that I have not already spoken of.

30 At first she was very happy and afterwards she said it was a sad mistake. They never lived together, not to my knowledge. I think she was happy at first because she had married Mr. Girvan. I know they had several quarrels while she was at Belmar. The state of happiness continued between the quarrels. She was happy when she came to Newark. After that she said it was a mistake. I do not know what these quarrels were about. I did not overhear anything as I did not
40 think it was any of my affairs.

40 After the marriage Georgina still retained the

Ethel Scholl Hehn—Direct

name of Williams, until of course, it was announced. That was while she was living with her mother and during the winter. It was after October, because we separated in October. She announced it at the gymnasium at the Central High School. There were just girls from the office there. The next day it was known in the office of the Mutual Benefit Life Insurance Company. It was after she left there. After that her friends still continued to call her Georgie except a few gentlemen friends who were used to calling her Miss Williams, so naturally they called her Mrs. Girvan. Mr. Girvan was known as "Babs." I have always known him by that name. I never knew his right name for a long time. I never heard Mrs. Girvan say anything about having married him to keep him from marrying another girl, neither did I hear him say that he married her to keep her from marrying another fellow. I do not believe they were married for that reason. I knew there was another man very fond of her, Lieutenant George Boyd. She had no ring but I believe he spoke of marriage to her.

Sworn to before me this

4th day of June, 1918.

Harry N. Reeves,

Special Master in Chancery of
New Jersey.

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Clinton G. Halsey—Direct

CLINTON G. HALSEY, being duly sworn by the master testifies as follows:

Examination by Mr. Boardman:

I am connected with the Mutual Benefit Life Insurance Company and am assistant secretary.
 10 I have charge of the accounting department. I am acquainted with Georgina Griffin, although at the office we knew her by the name of Miss Williams. She worked in the office nearly three years and she served in my department about a year and a half. I have known her probably two years. She left about the tenth of October, 1917. She was always known by the name of Williams. As far as I know I never heard her addressed by any other name.

20 Miss Williams never said to me that she had been married. I did not know Mr. Girvan at all until I met him here this afternoon. I knew that Miss Williams had married after she left the office. I don't recall whether she told me or not. She never talked to me about her marriage.

From August to October, 1917, she lived at 81 Montclair Ave., Newark, N. J. I was on my vacation last August and she was away at the same time, and I think she was still living at 81
 30 Montclair Ave. That is the address I have on my card now. I knew that Mr. Girvan was her friend and she spoke to me of Mr. Girvan. He was one of her young men so far as I know, but I cannot recall whether she ever talked about the marriage. She used to come to me with a good many things. She never told me that she was married or gave me any information that she was going to be married.

40 Sworn to before me this
 4th day of June, 1918.

Harry N. Reeves,
 Special Master in Chancery of
 New Jersey.

David B. Andrews—Direct

DAVID B. ANDREWS, being duly sworn by the master testifies as follows:

Examination by Mr. Boardman:

I am working with the Mutual Benefit Life Insurance Co. and have worked there seven years, 10
in the claim department. I am acquainted with Hearsey Girvan. I met him once before. It was either the last part of June or the first part of July of last year. I am not sure. It was during an automobile ride and Mrs. Hehn, (she was then Miss Scholl), Georgina Williams, Mr. Girvan and another lady and gentleman, I don't remember their names, were in the party. I have known Miss Williams since she came to the Mutual Benefit Life Ins. Co., perhaps two or three years. I 20
don't remember when she left the place. It was probably in the autumn if I remember right. I think it was later than August that she left. As far as I know, she was always known as Miss Williams. I never heard her called "Mrs." I do not know anything about the marriage. I had only one episode with her—we had a little ride at night.

Sworn to before me this
4th day of June, 1918.

30

Harry N. Reeves,
Special Master in Chancery of
New Jersey.

Henry Nelson Conklin Girvan—Direct

HENRY NELSON CONKLIN GIRVAN, being duly sworn by the master testifies as follows:

Examination by Mr. Boardman:

10 I am a half-brother to the petitioner in this case. I live in Glen Ridge, N. J., and he has lived practically all his life with me, with the exception of three or four years when he was south with his parents. He has lived with me for about fifteen years. During that time we lived in Glen Ridge and occasionally in Bloomfield, during the summer.

20 I knew of my brother's marriage the latter part of October last. He told me one evening when Miss Williams was at the house. She told me the first time at my house on Washington Place. I can't say that I remember the exact conversation. The substance was only that they had been married at Belmar the previous August and they had found that they had made a mistake and they were willing to have the marriage annulled. That is the term she used to the best of my recollection. My brother told me later in the day about the circumstances under which the marriage took place. He went down to Belmar to meet her. I believe she was there on a vacation and they had decided suddenly to get married. As far as knowing how long they contemplated it, I do not know. I judged from his remarks it came to him suddenly. He told me they were married at Belmar at the home of a minister. I don't recall his name. Miss Williams never went into detail about the marriage. I saw very little of her, no more than 30 three occasions, either at our house or out in the automobile. She did not speak about the mar- 40

Henry Nelson Conklin Girvan—Direct

riage on any other occasion but this one. She did not say to me that she considered the marriage a joke but she made very light of it. She treated it more as a joke. Reference was made to the fact that they had not lived together, that they had not seen one another since they were married. He called at her house on various occasions, but they had not lived together. On the one occasion that I speak about, I think she came to see my sister. My recollection is that he brought her there, although I may be mistaken. When I got home they were both there and she said she had had a long talk with my sister. I take it that she knew I would hear of it in a very short time and that is the reason she told me about the marriage. It was very unusual for her to be in the house. She lived in West Orange on Harrison St. I know this because I stopped there perhaps on two occasions and left her there after we had been riding. On one occasion I left my brother there too. On those two occasions I did not know she was my brother's wife. I simply considered her a friend of my brother's.

I know when my brother was on his vacation but I don't remember the date. I remember he came back alone. At that time I did not know he was married. I could not say positively whether he spent the night at our house when he came back from his vacation. I know that he has been home every night with the exception of five or six occasions when he was away with a friend by the name of Whiting on an automobile trip. He was away with me one night when we were in Milford, Pa. I don't recall him being away on any other night than those I have spoken about.

Walter Earle Ledden—Direct

I know Miss Williams has not been in my home over night.

Sworn to before me this
4th day of June.

10 Harry N. Reeves,
Special Master in Chancery of
New Jersey.

Further testimony taken this 14th day of June,
1918 at 2 p. m.

WALTER EARLE LEDDEN, being duly
sworn by the master testifies as follows:

20

Examination by Mr. Boardman:

I am a minister of the gospel of the Methodist Episcopal Church and I am stationed at Belmar, N. J. I was there in August, 1917, and I remember a couple coming to me on the 16th of August, who gave their names as Hearsey Girvan and Georgina Griffin. I performed the ceremony between them. I have just this little stub on which I make notes of all weddings. The witnesses were Ethel M. Scholl, and Elliott R. Chapin. Hearsey Girvan gave his residence as 20 Washington Place, Glen Ridge, N. J., Miss Griffin gave hers as 216 Tenth Ave., Belmar, Miss Scholl gave hers as 216 Tenth Ave., Belmar, and Mr. Chapin as Glen Ridge, N. J. Mr. Girvan stated his age was 23 and Miss Griffin 21. They produced to me the certificate or license which they had received from Mr. Hudnott. Mr. Hudnott died last
40 November. He was a very aged man. The cer-

Walter Earle Ledden—Direct

tificate that I hold is in Mr. Hudnott's handwriting giving the details that I have mentioned, filled in at the time of the issuance of the license. The little stub was presented to me by Mr. Girvan when he came to see me about the marriage. I don't remember the day. I think it was the 16th. 10
I had seen Mr. Girvan on Monday when I happened to go to Mr. Hudnott's office. Mr. Girvan was there at that time for his license. I did not hear any of the conversation at that time. I did not talk to Mr. Girvan there.

Upon Mr. Hudnott's suggestion Mr. Girvan called at the parsonage sometime between Monday and Thursday. It was before the day of the marriage. He told me in a general way that he wanted to be married on Thursday evening and wanted to know if that date would be convenient. 20
I told him that I happened to have a recital at that time and it would be necessary for me to be in the church but that he might come around at the time that I suggested as I lived next door to the church, as I could leave the church during the recital of a long reading by Miss Taylor. There were no other persons present at the time of this conversation. The ceremony was completed at 9 o'clock or between 8:45 and 9 p. m. The parties and the witnesses arrived in an automobile just before I came out of the church and as I came out I saw them going up the steps of the parsonage. They appeared to be four happy young folks. We all went into the front room and they were seated. I was introduced to the members of the party by Mr. Girvan and we talked just casually. Nothing was said that I can recall. Just casual, unaffected conversation, and after a few minutes I got 40

Walter Earle Ledden—Direct

the ritual out and had the witnesses stand on either side of the parties and conducted the ceremony the same as any other Methodist Episcopal clergyman. There was no evidence of any levity or insincerity about the ceremony. I could not
10 distinguish it from any other ceremony that I ever performed. The ceremony itself occupied a period of between twelve and fifteen minutes. I should say about twelve minutes to be more accurate. The other ceremonies that I performed occupied that length of time. At the close of the ceremony there were the usual congratulations and I was handed a fee of \$5.00, and with the usual farewells I returned to the church for the last of the recital. I have not seen any of the parties
20 until today when I saw Mr. Girvan here in this office.

Going back to the time when I first saw Mr. Girvan at the Town Clerk's Office I am sure I did not have any conversation with Mr. Girvan. I was very close to Mr. Hudnott who was the President of my Board of Trustees and later, as I frequently saw him, he told me he was very much impressed with Mr. Girvan and thought he was a very fine young man and then hinted, with a
30 twinkle in his eye, that he would give him my address. I was introduced to Mr. Girvan but there was no conversation between us, certainly none about the marriage ceremony. The next time I saw Mr. Girvan was when he called upon me to make arrangements for the wedding. That was sometime between the Monday when I met him in the Town Clerk's Office and Thursday evening when I performed the ceremony. The conversation
40 that we had at that time was just this, he re-

Walter Earle Ledden—Direct

called himself to me as having been introduced to me at Mr. Hudnott's office. I recognized him as the young man I had met in Mr. Hudnott's office. He wanted to know if I would marry him and I said I would and he asked me about the date and I asked him when he would like to have the marriage performed and *he suggested Thursday evening*. I told him that I had this recital but that I could leave during one of the long numbers in the recital which was a reading by Miss Taylor which I had heard and I could easily step out and nobody would notice it and as the recitation took about a half hour it would give me plenty of time for the ceremony. When he came to my house he was alone and I don't think she was in the car. I believe the first time I saw Miss Griffin was when I came out of Mr. Hudnott's office and I saw her sitting in the front seat of the automobile that was standing in front of the Town Clerk's Office, waiting for Mr. Girvan to come out with the license. At that time I thought she looked rather shy and blushing as if she might suspect that I knew what Mr. Girvan was in there for. That was my impression at the time. When she was at my house I thought she acted just as any other very happy bride might. I thought she was a very attractive bride. There was nothing about her manner that would distinguish her from any one else. Her responses were given with distinctness and accuracy, as were his. They did not seem to be nervous and they acted as though they knew what they were doing. There was not the slightest indication to my mind that there was any idea in either of them that this was a joke or without any contemplation of the seriousness of

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Walter Earle Ledden—Direct

10 the step. There was no conversation between Mr. Girvan and the bride that there was any such idea in their minds. I would not have been a party to such an affair. There was nothing to indicate that either or both of them intended that the words or rites used by them or by me should not effect a matrimonial union between them. I never suspected there was anything abnormal about the ceremony, until I was served with a subpoena. Mr. Boardman delivered this subpoena and at that time I was made aware of the case and I was given a brief sketch of what lead up to the case. I was shown a copy of the petition which I read through. That was the first suspicion I ever had that the marriage was not entirely normal in every respect.

20 I did not use the briefest form of ceremony. There was no necessity for that and I performed the ceremony exactly as I would in all other cases. At the conclusion of the ceremony there is a prayer by the officiating clergyman and I used that prayer. I used the prayer which is in the service proper. That is not necessary. It comes after you have pronounced them man and wife. In regard to the service of which I spoke, there is a part, in fact it opens with a warning that if any person present who knows any reason why these two should not be joined in matrimony should speak and I read that and there was no response.

Sworn to before me this
14th day of June, 1918.

Harry N. Reeves,

Special Master in Chancery of

40 New Jersey.

Sarah E. Hindley—Direct

SARAH E. HINDLEY, being duly sworn by the master testifies as follows:

Examination by Mr. Boardman:

In the summer time I live in Belmar, N. J., sometimes six or seven months and in the winter time I am sometimes with my parents in Connecticut and sometimes in the south so I don't know just what to call my home. Last summer I was living at 216 Tenth Ave., Belmar, N. J., and I had as a boarder a young lady by the name of Georgina Griffin. I knew her as Miss Williams and that her father was dead but never inquired further. There was another young lady with her, a Miss Ethel Scholl. 10

While Miss Williams was with me last summer she asked me to sign a license. I did not know anything about the marriage until she came to my house. She came in and asked me if I would do a favor. I said, "It depends," and she said that she and Hearsey Girvan wanted to get married and would have to have a resident of Belmar to sign for her, and that they were going to Mr. Hudnott's office and if I would go with them as a witness. I said, "No." And she said, "Why." "Because your mother is not here," and she said, "That makes no difference," and I answered, "She might not like it." She said, "She knows all about it and it is all right." She went out and came back for me in about twenty minutes and I went. Mr. Hudnott asked me my name and where I lived. Miss Williams, Mr. Girvan and another young man was present, I can't recall his name. Mr. Hudnott asked me if I knew Georgina Griffin. I did not know her name as Griffin. I never ad- 20 30 40

Sarah E. Hindley—Direct

dressed her as that. I have always called her Williams. I said that I knew her and he said how long and I said she came to board at my house with her mother two years before that time; that made her third season at my house.
 10 He asked me if she was living at my house and I said yes. I think she gave her age as 21. I did not know how old she was only I thought she was about twenty.

I think Mr. Girvan called at my house the summer before that but I would not have known him. He came to the house to take Miss Williams and the other young lady out. That was last summer on a Saturday. I can't tell you the day that Mr. Girvan came to Belmar. He did not come
 20 to my house. The girls came on a Saturday afternoon and it was one week from the following Monday that Miss Williams came and asked me to go to Mr. Hudnott's office.

The name of Boyd is familiar to me and it seems to me that that is the young man who called at my house. He called up on the 'phone and I answered it. I asked him who was talking and I think he said Boyd but I can't be sure and he said, "But don't tell Miss Williams. I will
 30 surprise her." He came in the morning about 8:30 and went into the front room. Miss Scholl was at breakfast and Miss Williams had not come down and as I went back to the dining room, I said to Miss Scholl that there was a young man to see Miss Williams. She went upstairs and in a few minutes Miss Williams came down and they had breakfast and went out and I never saw him
 40 again excepting standing in front of the house about 12 o'clock the same day. I observed that

Sarah E. Hindley—Direct

Miss Williams and Miss Scholl was there and I think Mr. Girvan came along while they were holding a conversation. Miss Williams came in to dinner about 12:45 and she simply took her place at the table. She never talked to me about Mr. Boyd and neither did she say that he wanted to marry her. She said it was all right for her to marry Mr. Girvan; that her mother was satisfied, but that there was another young man that her mother did not want her to marry, but she did not tell me his name and I didn't ask her. She didn't tell me that Mr. Boyd wanted to marry her. She told me that she was going to marry Mr. Girvan and I said to her, "Be sure you are right before you make any false steps."

I was not present at the marriage ceremony. She only told me that she was going to be married on Thursday evening by Mr. Ledden at the Methodist parsonage. She asked the privilege to wash a white crepe dress and iron it and I saw her wash and dry it and then bring it in, sprinkle it and iron it and she said, "I thank you very much, it was very kind of you." She came home the night of the marriage and slept at my house and has slept at my house every night. Mr. Girvan never spent any night at my house and I think he was upstairs just once and was there not more than five minutes. Miss Scholl, Mr. Girvan and myself were there and he asked if he might go upstairs and speak to Georgina and I said yes. He said, "I will not be more than five minutes." He went up and I stood in the doorway and saw him go up and come down and when he came down, he said, "Thank you."

Miss Williams told me that they were married

Sarah E. Hindley—Direct

on Thursday evening and Mr. Girvan went up to see her after the marriage. I thought permission to see Miss Williams was necessary as Mr. Girvan had never been in my house before or after the marriage, and Miss Scholl occupied the same room with Georgina and it was her room as well
 10 as Georgina's. Mr. Girvan had not come to my house to board or room and he was paying nothing and even though she was his wife, Miss Scholl was in the room with her. Georgina said that they were not going to say they were married at the present time. I said to her, "If I were you young people, I would announce my marriage, no good will come of keeping it a secret." I have had no conversation with him about the marriage.
 20 The only conversation I had with Georgina about the marriage was that she said there was another young man who wanted to marry her and she said she wanted to marry Mr. Girvan. She said something about being married but not having lived together. I said, "When you go back to Glen Ridge you can live together." She didn't say anything to that, she kind of laughed.

Miss Williams never intimated to me that she had had intercourse with Mr. Girvan, she simply said that they had not lived together.

30 I have not seen Miss Williams since she left my house the following Sunday after dinner. Mr. Girvan was never at my house in the evening. He came in his car to get her. I saw him sitting on the porch one evening while he was in Belmar for a few minutes, waiting for her. Miss Williams generally came home about 9:30, 10 or 10:30 and sometimes 11:30 at night. The folks usually
 40 go to Asbury Park and I couldn't tell you just

Hearsey Girvan—Direct

what time she retired. I did not observe anything different in her attitude after Thursday night from what I had observed before Thursday night.

I would like to say that the gentleman who called at the house was Mr. Boyd and he had on a soldier's uniform. 10

I have had no communication from Mrs. Williams regarding this matter and did not know anything about it until you came to my house.

Sworn to before me this
14th day of June, 1918.

Harry N. Reeves,
Special Master in Chancery of
New Jersey.

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The petitioner HEARSEY GIRVAN, being recalled by the master testifies as follows:

Examination by Mr. Boardman:

I have some letters that I wrote on August 14, 1917 to a friend of mine, Miss Gladys Sims Scott. They are the original letters and I asked her if I couldn't have them. 30

Solicitor for petitioner offers in evidence letter dated Aug. 14, 1917 addressed to "Dear Scotty, signed, As ever, Babs;" also letter dated August 15, 1917 addressed to "Dear Scotty and signed As ever, Babs."

By the Master: The solicitor offers in evidence these letters to corroborate the petitioner as to his attitude of mind toward his marriage on the dates of the aforesaid 40

Hearsey Girvan—Direct

10 letters and particularly that portion of his testimony that he was more interested in another young lady than in the defendant. The master declines to admit said letters in evidence on the ground that they are self-serving declarations and not the best evidence, with the petitioner himself present and able to testify, but for the purpose of having the letters before the Court upon an appeal from the master's ruling, the letters are received by the master and transmitted with his report.

(Witness continues):

20 When I applied for a license with Georgina she gave her age as twenty-one because we were not certain on that point and she thought it would be best to give her age as twenty-one. She did not present a written consent from her mother and neither did she say anything about her mother's consent. The question of our marriage was never mentioned before this vacation in Belmar. We might have used the word in conversation but not in reference to ourselves. It was first mentioned on Monday afternoon, the 13th of August, 1917.

30 Sworn to before me this
14th day of June, 1918.
Harry N. Reeves,
Special Master in Chancery of
New Jersey.

Master's Report*(Filed, July 3, 1918)*

IN CHANCERY OF NEW JERSEY

 Between
 HEARSEY GIRVAN,

Petitioner,

and

GEORGINA GRIFFIN, alias Georg-
 ina Williams,

Defendant.

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 On Petition
 for Annulment.
 Master's Re-
 port.

In pursuance of an order of this Court made in the above entitled cause, bearing date the Fourth day of May, Nineteen Hundred and Eighteen, whereby it was referred to me, the subscriber, one of the Special Masters of this Court, to ascertain and report as to the truth of the allegations of the petition and my opinion thereon; and that the petitioner proceed to take depositions and other evidence before me to substantiate and prove the allegations in said petition and to bring on the hearing *ex parte*; and that I do return, together with my report and as part thereof, such depositions and other evidence as might be taken before me in pursuance of said order.

I do respectfully report that I have been attended by Samuel W. Boardman, Solicitor of the petitioner, and have taken the depositions of the witnesses produced before me, and have examined into the matters referred to me.

And I find and report that the said petitioner, Hearsey Girvan, and the defendant, Georgina

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Master's Report

Griffin, commonly called Georgina Williams, were lawfully married on August Sixteenth, Nineteen Hundred and Seventeen, by Reverend W. Earle Ledden, a minister of the Gospel, at Belmar, in the State of New Jersey.

10 And I find and report that it is proved to my satisfaction that the petitioner is, and always has been a bona fide resident of this State and at the time of the commencement of this action had his permanent residence at Glen Ridge, Essex County, New Jersey.

20 And I find and report that the allegations of fact in the first six paragraphs of the petition and in paragraphs eight and nine thereof are probably true, although not altogether corroborated, but I am unable to find and report from the testimony before me that said marriage was no real marriage, and was made in jest as a vacation frolic, for it is quite apparent from the testimony of Ethel Scholl Hehn, the intimate friend of the defendant and one of the witnesses of the marriage ceremony and from the testimony of the minister who performed the ceremony, that it was not a matter of jest. Furthermore, it is quite apparent that the marriage was not performed upon the spur of the moment or in a frolicsome spirit, for 30 a license was duly obtained, arrangements were made by the parties for the performance of the ceremony and after four days of contemplation by the parties, the ceremony was performed in regular form in the presence of invited witnesses, and without any evidence of levity or insincerity. It is not, in my opinion, clearly shown that both parties intended and understood that the marriage 40 words were not to have effect.

Exceptions to Master's Report

All of which matters will more fully appear by the testimony of the witnesses produced before me, which is annexed to this, my report, and returned herewith.

And I accordingly report that, in my opinion, the petitioner is not entitled to the relief prayed for and I do recommend that the petition be dismissed. 10

Respectfully submitted this Second day of July, Nineteen Hundred and Eighteen.

(Signed) HARRY N. REEVES,
Special Master,
In Chancery of New Jersey.

Exceptions to Master's Report 20

(Filed, July 26, 1918)

IN CHANCERY OF NEW JERSEY

Between HEARSEY GIRVAN, and GEORGINA GRIFFIN <i>alias</i> Georg- ina Williams, Defendant.	}	Exceptions to Master's Report. 30 On Petition for Annulment.
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Exceptions taken by the petitioner to the report of Harry N. Reeves, Special Master, filed July 3, 1918.

First Exception. For that the said Special Mas- 40

Exceptions to Master's Report

ter has reported as follows: "And I find and report that the said petitioner, Hearsey Girvan, and the defendant, Georgina Griffin, commonly called Georgina Williams, were lawfully married on August Sixteenth, Nineteen Hundred and Seven-
10 teen, by Reverend W. Earle Ledden, a minister of the Gospel, at Belmar, in the State of New Jersey;" whereas the petitioner insists that under the evidence taken and the law applicable to the case, the parties were not lawfully married, and that said Special Master should have so reported.

Second Exception. For that the said Special Master has reported as follows: "I am unable to find and report from the testimony before me that said marriage was no real marriage, and was
20 made in jest as a vacation frolic, for it is quite apparent from the testimony of Ethel Scholl Hehn, the intimate friend of the defendant and one of the witnesses of the marriage ceremony and from the testimony of the minister who performed the ceremony, that it was not a matter of jest;" whereas the petitioner insists that it appears by the evidence that the ceremony was, on the part of the petitioner at least, a jest or a vacation frolic, in the sense that he had no intention
30 to become the husband of the defendant or to enter into a matrimonial union, and that the said Special Master should have so reported.

Third Exception. For that the said Special Master has reported as follows: "Furthermore, it is quite apparent that the marriage was not performed upon the spur of the moment;" whereas the petitioner insists that the evidence annexed
40 to the report shows that the marriage license was

Exceptions to Master's Report

obtained upon the spur of the moment, that the marriage ceremony was performed as soon thereafter as the law would allow, and that under the law applicable to the case the marriage was performed upon the spur of the moment, within all material or relevant meaning of such words, and that the said Special Master should have so reported. 10

Fourth Exception. For that the said Special Master has reported as follows: "The marriage was not performed * * * in a frolicsome spirit;" whereas the petitioner insists that under the evidence and within the meaning of the law it was performed in a frolicsome spirit within all material or relevant meaning of such words, and that the said Special Master should have so reported. 20

Fifth Exception. For that the said Special Master has reported as follows: "After four days of contemplation by the parties, the ceremony was performed, whereas the petitioner insists that under the evidence there were not four days of contemplation, the maximum being three days and a very few hours, from Monday till Thursday, August 13 to 16, 1917, and that this period was the shortest period after which a ceremony could take place without refusal on the part of the officiating clergyman; and that said Special Master should have so reported. 30

Sixth Exception. For that the said Special Master has reported as follows: "The ceremony was performed in regular form in the presence of invited witnesses," whereas the petitioner insists that this conclusion begs the question, that 40

Exceptions to Master's Report

a regular formal ceremony is a jurisdictional fact in this case and is not adverse to the petitioner and that the said Special Master should have so reported.

10 Seventh Exception. For that the said Special Master has reported as follows: "The ceremony was performed * * * without any evidence of levity or insincerity," whereas the petitioner insists as against this finding, the same considerations set forth in the next preceding exception and also the naturalness of the concealment of levity and insincerity when standing for a ceremony before a Methodist Clergyman; and that the said Special Master should have so reported.

20 Eighth Exception. For that the said Special Master has reported as follows: "It is not, in my opinion clearly shown that both parties intended and understood that the marriage words were not to have effect," whereas the petitioner insists that under the law applicable to the case it is not necessary that both parties should have intended and understood that the marriage words were not to have effect, it being sufficient to prevent a contract, that one of the parties should have so intended and understood; while the evidence indicates that both parties did in fact intend and understand that the marriage words were not to have effect and it further indicates that the parties were not of contracting ability of mind at the time and that the said Special Master should have so reported.

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Ninth Exception. For that the said Special Master has reported as follows: "And I accordingly report, that in my opinion, the petitioner

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Memorandum

is not entitled to the relief prayed and I do recommend that the petition be dismissed," whereas the petitioner insists that under the evidence and under the law applicable to the case he is entitled to the relief prayed and to the recommendation that a decree be made in accordance with the prayer of his petition and the said Special Master should have so reported. 10

SAMUEL W. BOARDMAN, JR.,
Solicitor for Petitioner.

Memorandum

(Filed, February 7, 1919)

IN CHANCERY OF NEW JERSEY 20

Between HEARSEY GIRVAN, and GEORGINA GRIFFIN, alias Georg- ina Williams, Defendant.	}	On Petition for Annulment. Memorandum in Favor of the Denial of the Relief Asked.
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I have examined the evidence and I agree with the Master that the proof shows that the parties were not married in jest. There is nothing in the surrounding circumstances to indicate jest. All we have is petitioner's statement, which amounts to nothing more than his present opinion as to the effect of what was done. There is nothing at all to indicate that the defendant regarded the ceremony as a joke or that it was so regarded by those who participated in it. 30

FREDERIC W. STEVENS, 40
V. C.

Adverse Decree*(Filed, February 14, 1919)*

IN CHANCERY OF NEW JERSEY

10	Between HEARSEY GIRVAN, and GEORGINA GRIFFIN, alias Georg- ina Williams, Defendant.	}	On Petition for Annulment.
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20 This cause coming on to be heard in this Court at the Chancery Chambers in Newark, in the presence of Samuel W. Boardman, Jr., of counsel with petitioner, upon exceptions to the adverse report of Harry N. Reeves, Special Master, and the pleadings and proofs having been read and the argument of counsel having been heard and considered; and it appearing to the Court that the petitioner is not entitled to the relief prayed for by him in his petition and a memorandum in favor of the denial of the relief asked having been filed

30 by His Honor, Frederic W. Stevens, Vice Chancellor, to whom said exceptions were argued;

IT IS on this 14th day of February, 1919, by Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED, that the petitioner's petition be and the same is hereby dismissed.

E. R. WALKER,
C.

Decree printed on page 40 of CASE
is a draft never filed. The actual

DECREE

(filed February 14, 1919)

is as follows:

IN CHANCERY OF NEW JERSEY.

BETWEEN

Hearsey Girvan,

Petitioner,

and -

Georgina Griffin alias
Georgina Williams,

Defendant.

On Petition
For Annulment

DECREE

Harry N. Reeves, the Special Master to whom this cause was referred for his opinion and report, having filed an adverse report and exceptions having been duly taken thereto and brought on for argument before his Honor Frederic W. Stevens, Vice Chancellor, and he having considered of the matter upon said exceptions and being of opinion that the Master's Report should be confirmed and the exceptions overruled, and having filed a memorandum or opinion in favor of the denial of the relief asked

It is on this thirteenth day of February 1919,
ORDERED that the petitioner's petition be and the same is hereby dismissed.

E. R. Walker,
C.

Respectfully advised
Frederic W. Stevens,
V. C.

BETWEEN
Hearsey Girvan, Petitioner,
- and -
Georgina Griffin alias
Georgina Williams,
Defendant

Substitute for Page 40
of CASE
ACTUAL FORM OF DECREE

IN CHANCERY OF NEW JERSEY.

Defendant.
Georgina Williams,
Georgina Griffin alias
Petitioner,
On Petition
For amendment
Decree

Harry M. Reeves, the special Master, to whom this
cause was referred for his opinion and report, having filed
an adverse report and exceptions having been duly taken
thereon and brought on for argument before the honor-
able W. Stevens, Vice Chancellor, and he having considered of the
matter upon said exceptions and being of opinion that the
said report should be confirmed and the exceptions
overruled, and having filed a report thereon in favor
of the denial of the relief asked
It is on this thirteenth day of February 1913,
ORDERED that the petitioner's petition be and the same be
herby dismissed.

Respectfully advised
W. Stevens,
V. C.

E. H. Walker,
C.

is as follows:
(filed February 14, 1913)
DECREE
is a draft never filed. The actual
Decree printed on page 40 of CASE

Petition of Appeal

on the part of the petitioner at least to assume the matrimonial status; for that it refuses a decree annulling the ceremonial marriage between the parties and cancelling the record thereof whereas it should have granted the same; and for that it
10 fails to afford the petitioner the relief to which he is entitled.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

SAMUEL W. BOARDMAN, JR.,
Solicitor for and of Counsel with Appellant.

20 (*Endorsed*)
"Filed, Apr. 1, 1919.
Thomas F. Martin,
Clerk."

New Jersey Court of Errors and Appeals

Between: HEARSEY GIRVAN, Petitioner-Appellant, and GEORGINA GRIFFIN alias Georgina WILLIAMS, Defendant-Appellee.	}	On Petition for Annullment of Marriage On Appeal from Chan- cery.
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BRIEF FOR APPELLANT

Statement of Facts

The petitioner, Hearsy Girvan, living at Glen Ridge, Essex County, New Jersey, had for three (3) years previous to 1917 been acquainted with the defendant, Georgina Griffin of West Orange and of Newark, both in the same county. She lived with her mother and had assumed the latest surname of her mother, the name Williams. "Miss Williams" worked for the Mutual Benefit Life Insurance Co. until the fall of 1917 and in the month of August of that year, she and a fellow worker there, Miss Scholl, were having their vacation at Belmar, Monmouth County, New Jersey, where the defendant and her mother had in previous summers spent their vacation with Mrs. Sara E. Hindley, 216 Tenth Avenue. In August,

1917 Mrs. Williams was not with her daughter at Belmar. Early in August, 1917 the petitioner was asked by Mrs. Williams whether he could not dissuade Georgina from marrying a certain fellow, to whom she was engaged, and whom her mother was afraid she would marry before he went away for army service. Accordingly the petitioner went to Belmar Saturday, August 11, 1917 and took lodging at the New Columbia Hotel. He called on the defendant as soon as he reached Belmar and then went to the station to meet a friend, Corporal Harry Kite, with whom that evening he called on the defendant. His plans were to return to his work in Newark the following Monday but while a party of these young people were having luncheon at the Coleman House in Asbury Park, Monday noon, just before his leaving at 2. p. m., according to his plan, the petitioner said "I hate to go back to work" and the defendant said "Why don't you take a vacation," petitioner replying "I can't take a vacation. The only way I could get a vacation is to take a fireman's job or get married." She said, "Why don't you get married" and petitioner said "Who," to which she replied "Why don't you and I get married." So on the spur of the moment they started to hunt for the marriage license officer, who being out at that time was found that evening, when the license was obtained. During the next three days, which had to elapse by legal requirement before a marriage ceremony could take place, the subject was brought up, as petitioner says "about a hundred times that if she would back out or if I would back out the thing would not go through" but when one would suggest it the other would say "you're a poor sport." During these days the petitioner wrote affectionate letters to another

young lady living in Newark, which letters however the master refused to admit in evidence.

The ceremony was performed Thursday evening August 16, 1917, by Rev. Walter Earle Ledden, a Minister of the Methodist Church at Belmar. The witnesses were Miss Scholl, Elliott R. Chapin and perhaps Ira Shattuck. The ceremony was performed in the usual manner. Neither Mr. Ledden nor Miss Scholl (at the time of the hearing named Mrs. Hehn) remembered it as anything other than all such marriage ceremonies as they had attended. After the ceremony, however, the parties maintained the same relationship as before. The petitioner after escorting the defendant to her boarding place, as he naturally would escort any young lady with whom he was out in the evening, returned to his own lodgings at the New Columbia Hotel and spent the night there as he did all the other two or three nights that he remained in Belmar. Neither there nor anywhere did he ever spend any night with the defendant nor has he at any time had marital intercourse with her. During his remaining days in Belmar when the petitioner called upon the defendant he saw her as he had seen her before and when as on one occasion he went up to her room he asked Mrs. Hindley whether he might do so and staid but five minutes. He called her "Georgina" the same as before and she called him "Babs" the same as before. The defendant continued to go by the name of Miss Williams and was so known through the fall by all her fellows and superiors in the Mutual Benefit Life Insurance Co. Neither party has held out the other to the world as husband or wife and only those who attended the ceremony, then, and a few others, late in the fall like the brother and sister of the petitioner and the mother

of the defendant have known of the occurrence; only in October or November, 1917 did the defendant make a semi-public announcement of what had happened and the petitioner thereupon promptly started this annulment suit. The petitioner has never furnished any support to the defendant nor offered to or been asked to nor has there been anything in the least degree suggesting a relationship of matrimony between the parties since the date of the ceremony.

When the marriage license was applied for the defendant gave her residence as Belmar, although that was not her residence and she gave her age as 21 although she was in fact under that age, thus avoiding the supposed requirement of her mother's consent.

As required by the Rule of June Term of 1912 the above statement of the Case is intended to present succinctly the question involved, namely whether the parties to this suit were married to each other, and the manner in which that question is raised.

Specification of Errors

The decree is alleged to be erroneous in the following particulars:

(1) In decreeing that the parties were lawfully married, whereas there was no real marriage between them; there was no intention on the part of the petitioner at least to assume the matrimonial status;

(2) In refusing an annulment of the ceremonial marriage between the parties and cancelling the record thereof, whereas it should have granted the same,

(3) And in failing to afford the petitioner the relief to which he is entitled.

It is erroneous in sustaining the master's adverse report in these particulars and in sustaining the master in refusing to admit in evidence letters written by the petitioner to his sweet-heart (not the defendant) between the date of obtaining the license and the date of marriage ceremony. The substance of the evidence thus rejected was the petitioner's expression of his interest in and attachment to said Miss Scott, inconsistent with his intention to become the husband of the defendant. The decree is erroneous also in foreclosing the right of the petitioner to introduce further evidence, as he had requested leave to do and as he now requests leave of this Court to do for purposes of corroboration, if further corroboration would establish the petitioner's case, for instance testimony of the defendant, which petitioner believes he might now be able to obtain ^{by subpoena,} and evidence resulting from a physical examination as in the *Raymond* case.

Argument

The petitioner, recognizing that the present case is somewhat unique, begs leave to submit the following memorandum, confident of the propriety of the relief sought and conceiving that public policy as well as private right calls for the granting of such relief.

MARRIAGE REQUIRES:

Willingness,
Ability,
Verba de presenti.

Blackstone Book I. c. xv, p. 433.

It does not require a ceremony.

A ceremony, however formal, does not conclude a marriage.

Divorce Act, 1907. I I to VI

Even in the absence of these statutory disabilities.

McClurg v. Terry, 21 N. J. Eq., 225.

Public policy demands an annulment here. Marriage is for proper sexual relations.

Raymond v. Raymond. 79 Atl. 430

Rector v. Rector. 78 N. J. Eq. 386; 79 Atl. 295.

Paruly v. Paruly 106 Atl. 456.

Ceremonial marriages, not consummated, have been actually annulled in the following cases:

McInnes v. More. Ferg. Consist Law Rep., 33.

Stewart v. Menzies, 2 Robinson Ap., 547.

With cohabitation it would be in Bolmer v. Edsall 106 Atl 646. (N. J.) just out.

A valid marriage, according to Blackstone, requires three things: (1) a willingness to contract; (2) an ability to contract; and (3) an actual contracting *per verba de presenti*.

As to the *second* requisite: One of the parties, Miss Williams, was under one disability to obtain the statutory marriage license which she obtained (no residence at Belmar) and *imagined* herself under another statutory disability, for which reason she gave her age as twenty-one instead of twenty, her actual age.

As to the *third* requisite: In the present case the words used although in the present tense were intended, if they had any intention at all, as words in the future tense, and such words constitute no marriage but only an engagement, from which the parties may release each other at any time.

As to the *first* requisite: The great objection, however to the validity of the marriage under consideration, is the lack of willingness, of consent, to be "conjugally matrimonified" to use the language of Gilbert's "*Pirates of Penzance*." The testimony of the petitioner shows that there was no purpose to become husband and wife, and prior and subsequent circumstances corroborate this.

That the petitioner should prove some marriage or apparent marriage is necessary as a jurisdictional condition. Such proof must not be taken therefore as *against* the petitioner.

That the ceremony proved had all the outward regularity possible as testified to by Reverend W. Earle Ledden and to some extent by Mrs. Hehn must also not be counted as adverse. Even without proof on the subject, it would be presumed that a ceremony was regular in its outward form. Beside Reverend Ledden naturally has a prejudice in favor of the ceremony being effective and a pride which resents the questioning of the effectiveness of one of his official acts. Nevertheless he can not read the minds of the parties. Even admitting the ceremony to be unimpeachable, to be "actually and legally performed" to use the language of *McClurg vs. Terry*, 21 N. J. Eq., 225, yet the intention, the *animus matrimonium contrahendi* is the vital element. Here nothing but the ceremony and the legal preliminary of obtaining a license indicate any intention. Look at what preceded. Look at what followed.

The *previous* relationship of the parties negative the idea of a marriage. They had known each other for over two years and had seen much of each other but had no thought of marriage to each other, the ordeal being first suggested the afternoon of the same day on which the license was obtained. They had relationship to other persons which discredit the thought of marriage: the defendant was engaged to Mr. Boyd or to some other man; the petitioner was more interested in Miss Scott than he was in the defendant, even writing to her letters showing his attachment during the very period between the securing of a license to marry the defendant and the performance of the ceremony. The reasons for the performance were contrary to those which cause marriage; petitioner's trip to Belmar at that time at her mother's request, was to dissuade the defendant from marrying; the reason which appears actually to have driven them to this lark was petitioner's ability, as he thought, to get his vacation extended by getting married and only by so doing. The only engagement between the parties was this sudden "dare," as it may be called.

When we look at the *subsequent* relation of the parties there is just as little to indicate an intention to become husband and wife. Although the ceremony was performed in the evening they did not spend together even that night, nor have they spent together any night nor have they in any way so acted as husband and wife nor changed their relative attitude except to have some what less to do with each other after this occasion than before. Mrs. Hindley corroborates the testimony of the petitioner when she says that even for going up to the defendant's room the day after the marriage, the only time when he did go up there, he

asked permission and was there only a few minutes. She testified that the defendant within the time she continued that summer vacation, for she has not seen her since, admitted that she and the petitioner had never "lived together," evidently referring to marital connection. The petitioner's brother corroborates his testimony by showing that the petitioner had been at home at their common Glen Ridge house substantially all the nights since his return from Belmar a few days after the ceremony. The companions and superiors of the defendant at the Mutual Benefit Life Insurance Company, where she was employed until two months after the ceremony continued to call her Miss Williams and knew nothing of any ceremony having been performed until well into the fall and it was not then brought to their attention by the petitioner nor was it by the defendant in any announcement of married life. The petitioner has never contributed to the support of the defendant nor has she made any demand upon him for support or for contribution to her support. After she left the Mutual Benefit Life Insurance Company, she supported herself in the Vitagraph Company, a moving picture concern, and has undoubtedly continued to support herself.

The defendant was served personally with the initial papers in this suit at her home in West Orange, where service of additional papers has been made since that time and if she had any denial to make of the allegation appearing in the original pleading that the ceremony was performed without intention on the part of the parties to become husband and wife, she could have answered, denying such allegation.

As a matter of public policy an annulment should be decreed in this case. It is against good

morals that two persons, in all practical respects single persons, should be compelled to remain in their present state, where marriage to persons to whom they may be or may become truly and honorably attached is impeded. It may be said that a marriage ceremony should be safely guarded and that mischief would result from its being treated as a form through which young people may lightly go. As a door to sexual relations, that is true, but where there has been no connection between the parties it is a greater evil to keep them from proper relations with others than to keep them in a condition where their relations with others must be counted meretricious.

Not only ⁱⁿ the case of *McClurg vs. Terry*, in which the officiating magistrate was uncertain whether ~~the~~ ceremony was in jest or in earnest (and certainly he would have had it clearly in mind that it was a jest if it had been substantially different in character from the ceremony in our present case), but in other cases our Court of Chancery has annulled marriage on the ground of no real consent such as the case of *Selah vs. Selah*, 23 N. J. Eq., 185. The case of *Raymond vs. Raymond*, 79 Atl., 430, was a case as unique as this. That was a case where divorce was sought on the ground of desertion but the principles discussed in the case are applicable to this. Special Master Bennett Van Sickle reasons there learnedly on the purpose of marriage and the supreme importance of the actual matrimonial relationship of the parties. At bottom such relationship *is* marriage, when not meretricious and its absence equally imports the absence of marriage. He says:

“The relation of marriage cannot exist between man and man, or between woman and woman. The human race was created

male and female with the manifest purpose of perpetuating the race. Marriage without sexual intercourse utterly defeats its purpose, as sexual intercourse except in the marital relation is contrary to the divine law, and criminal under our laws. All other duties which inhere in the marriage relation can be contracted for, and performed without violating any law, before marriage. The controlling purpose of marriage is to enable the sexes to gratify lawfully the natural desire for pro-creation which has been implanted in them, that the race may be preserved upon the earth.”
 * * * “Marriage is encouraged for reasons of public policy and morality, and the parties should not be held in an unnatural relation, repugnant to sex, and promotive of adultery.”

The case of *Rector vs. Rector*, 78 N. J. Eq., 386, 79 Alt. 295 follows the law declared in the Raymond case. This is also followed in *Parmly vs. Parmly*, 106 Atl. 456, in which Lane, V. C. says (page 458 second column).

“The Raymond case might well have been brought by Bill in equity to set aside the marriage on the ground of fraud; that is, the intent not to consummate the marriage might have conclusively presumed to have been in the mind at the time the marriage was contracted.”

And the Vice Cancellor indicates that the wife petitioner would have succeeded in securing a decree of nullity. The case at bar was commenced by Bill in November, 1917, recast as a petition under the Statute of 1916, the printed case com-

mencing with such petition. Why should not the failure ever to consummate the marriage in the case at bar raise a conclusive presumption that the intent not to do so was present in the mind at the time the marriage was contracted.

Justinian goes to the heart of the subject thus:

“Nuptiae, autem, sive matrimonium est viri et mulieris conjunctio, individuum vitae consuetinem.”

It needs only the definition of marriage to show that no marriage existed between the parties in this case.

“Marriage (in Christian countries), is a mutual and voluntary compact, properly based on mutual regard and affection and suitably ratified, to live together as husband and wife until separated by death. Its main design is to constitute the family, for the preservation of moral and social purity, the continuance of the race, the training of the young for the duties of life, etc.”

Funk & Wagnalls' Standard Dictionary.

A ceremony is not necessary to marriage in New Jersey. Equally true is it that a marriage ceremony does not of itself effect a valid marriage. This is universally recognized where the parties are:

- (1) Mentally incapable.
- (2) Physically incapable.
- (3) Under the ages of 12 and 14, although possibly physically capable.
- (4) Where too closely related to each other.
- (5) Where either is already married.

Marriages with every solemnity are nevertheless invalid if procured by force, by duress or by fraud (*Smith vs. Smith*, 51 Mich., 607).

In New Jersey there is express authority to the effect that a ceremony does not make a marriage.

“A marriage ceremony, though actually and legally performed, when it was in jest and not intended to be a contract of marriage, and it was so understood at the time by both parties, and is so considered and treated by them, is not a contract of marriage.”

McClurg vs. Terry, 21 N. J. Eq., 225.

This case is our great authority for the law that a ceremony is not in itself a marriage although actually and legally performed. It is unfortunate that the Court of Chancery has interpreted our position to be that we rely upon the “jest” character of the marriage such as existed in *McClurg vs. Terry*. What we rely on is absence of intent as illustrated by that case.

The crux of the matter is of course the question whether the parties had any present agreement to marry. The *words* at the ceremony have indeed that tendency, but these words as used by the defendant had a future, not a present, meaning, in the light of the testimony of Mrs. Hehn and Mrs. Hindley and *verba de futuro* are not sufficient to create a marriage relation nor should words, even when present in *form* but future in intention, have that effect in the absence of any consummation. The petitioner moreover insists that *he* had not intended the words even in a present or future sense. It is not fair to say that he now interprets his words differently from the interpretation which he then gave them. It is fair to count

his present interpretation, consistently always the same since he gave the same interpretation in starting suit in November, 1917, as now and he commenced his suit promptly after the defendant had published to the world the fact that they had been ceremonially married. That the ceremony was perfect in form and solemnity is admitted but the *animus matrimonium contrahendi* is absent; the one thing needful is lacking; and petitioner submits that his own testimony is corroborated by all the facts and circumstances which preceded as well as ^{those} which followed the ceremony.

Respectfully submitted,

SAMUEL W. BOARDMAN, JR.,
Solicitor for and of Counsel with Appellant.

and Southwestern 330

O. B. Marshall & Co.

London